

# Colorado Department of Agriculture

## Plant Industry Division

### Administration and Enforcement of the Pesticide Act

#### 8 CCR 1203-1

#### Part 1. Definition and construction of terms.

- 1.1. As used in these Rules, the singular includes the plural, the masculine gender includes the feminine and neuter, and vice versa. All terms used in these Rules shall have the meaning set forth for such terms in the Act.
- 1.2. As used in these Rules, unless the context otherwise requires:
- (a) "Act" means the Pesticide Act, Title 35, Article 9, C.R.S.
  - (b) "Applicant" means a person who applies for a registration or renewal of a registration under the Act.
  - (c) "Brand" or "Brand name" means the name, number or trademark, or designation applied to a pesticide of any particular description by the manufacturer, distributor, importer or vendor. Each pesticide differing in the ingredient statement, analysis, manufacturer or distributor, name, number or trademark shall be considered as a distinct and separate brand.
  - (d) "Certified applicator" means an individual who is certified or licensed to use or supervise the use of restricted use pesticides;
  - (e) "Distribute or sell" and other grammatical variations of the term such as "distributed or sold" and "distribution and sale" means the acts of distributing, advertising, offering for sale, holding for distribution, holding for sale, selling, bartering, or supplying in any fashion any pesticide product in this state.
  - (f) "Federal restricted use pesticide" means any pesticide classified for restricted use by the administrator of the Environmental Protection Agency under the FIFRA.
  - (g) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act including all amendments and rules and regulations.
  - (h) "Final printed labeling" means the label or labeling of the product when distributed or sold. Final printed labeling does not include the package of the product, unless the labeling is an integral part of the package.
  - (i) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
  - (j) "Labeling" means all labels and all other written, printed, or graphic matter:
    - (1) accompanying the pesticide or device at any time; or

- (2) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the United States Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.
- (k) “Liquid chemical sterilant product” means any liquid chemical sterilant product (including any product with sterilant or subordinate disinfectant claims) for use on a critical or semi-critical device, as defined in the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321 (h) (incorporated by reference herein, later amendments not included). For purposes of this definition, the term “critical device” includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body; the term “semi-critical device” includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.
- (l) “Pesticide product” means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide. The term also includes any device whose labeling includes or should include an establishment number issued pursuant to 40 C.F.R. § 167.20 (2016) (incorporated by reference herein, later amendments not included) except for those devices exempted in Part 14. The term also includes the characteristic designation by words, symbols, name, number, or trademark of a specific, particular pesticide or formulation thereof, under which the pesticide is distributed or sold in the State of Colorado. For more than one pesticide product to be considered the same pesticide product, each pesticide product must exhibit the same:
- (1) product name;
  - (2) registrant name;
  - (3) manufacturer name;
  - (4) EPA registration number (if the pesticide product is subject to registration by EPA pursuant to the FIFRA); and
  - (5) labeling.
- (m) “Registrant” means any person who has registered any pesticide with the state of Colorado.
- (n) “State restricted use pesticide” means any pesticide which when used as directed or in accordance with the generally accepted practice, the Commissioner determines requires additional restrictions for that use to prevent unreasonable -adverse effects on the environment including, but not limited to people, lands, beneficial insects, animals, crops, and wildlife, other than pests.
- (o) “Under the direct supervision” means the application of a pesticide by a competent person acting under the instructions and control of a certified applicator who is available

when needed, even though said applicator is not physically present at the time and place the pesticide is applied.

## **Part 2. Status of products as pesticides.**

A substance or mixture of substances will be considered to be a pesticide if:

- 2.1. The label or labeling of the product bears claims for use as a pesticide.
- 2.2. Claims or recommendations for use as a pesticide are made in collateral advertising such as publications, advertising literature which does not accompany the product, or advertisements by radio or television.
- 2.3. Claims or recommendations for use as a pesticide are made verbally or in writing by representatives of the manufacturer or distributor.
- 2.4. The product is intended for use both as a pesticide and other purposes.
- 2.5. The product contains one or more substances that are listed as active ingredients in any pesticide that has been registered by EPA as a pesticide under FIFRA and that have no significant commercially valuable use in the product as distributed or sold other than use for a pesticidal purpose.

## **Part 3. The registration system.**

- 3.1. Every pesticide product which is distributed in this state must be registered with the Commissioner.
  - (a) The Commissioner may exempt certain pesticides from registration in accordance with §35-9-106(2), C.R.S. (incorporated by reference herein, later amendments not included).
  - (b) The following pesticide products shall not be exempt from registration;
    - (1) minimum risk pesticides as described under 40 C.F.R. § 152.25(f) (2016) (incorporated by reference herein, later amendments not included);
    - (2) pesticides distributed under an experimental use permit, as described under 40 C.F.R. § 152.30(c)(1) (2016) (incorporated by reference herein, later amendments not included).
    - (3) pesticides distributed under an emergency exemption, as described in 40 C.F.R. § 152.30(e) (2016) (incorporated by reference herein, later amendments not included).
- 3.2. Each pesticide product shall be registered separately.
- 3.3. Repealed.
- 3.4. The annual application fee for registration or renewal of a registration shall be \$205.00.
- 3.5. Repealed.

- 3.6. Any person is eligible to be a registrant.
- 3.7. Effect of registration: If a pesticide product is registered under the Act, no further registration under the Act is required unless the label or ingredient statement differ from the representations made in connection with registration.
- 3.8. The Commissioner will send all correspondence concerning the application and any subsequent registration information to the address provided by the applicant. It is the responsibility of the applicant and any registrant to ensure that the Commissioner has a current and accurate address. Any change of address submitted on the application form or renewal form shall result in a change of address for the registrant. Otherwise, any change of address must be in writing and specifically indicate an intention to change the official mailing address of the registrant.
- 3.9. Any change of address submitted to the Commissioner by a registrant will result in a change of address for all pesticide products registered by said registrant.
- 3.10. Applications and correspondence relating to registration should be submitted as specified by the Commissioner to:  
  
Colorado Department of Agriculture Division of Plant Industry 305 Interlocken Parkway,  
Broomfield, CO 80021
- 3.11. At any time the Commissioner, under the authority of the Act, may require from the registrant, a description or descriptions of tests and the results thereof upon which labeling claims are made.
- 3.12. Effective date of registration. Registration of a pesticide product shall become effective on the date the application is approved and accepted by the Commissioner. A Certificate of Registration will be issued to the registrant for each pesticide product registered with the Commissioner.
- 3.13. Responsibility of a registrant. The registrant is responsible for the accuracy and completeness of all information submitted in connection with his application for registration of a pesticide product.
- 3.14. Changes in labeling or ingredient statement. Changes in the labeling or ingredient statement of a registered pesticide product shall be submitted prior to any sales using the changed label or ingredients in Colorado. The exact changes shall be described.
- 3.15. Claims must conform to registration. Claims made for a pesticide product must not differ in substance from representations made in connection with registration or revised labeling submissions, including representations with respect to effectiveness, ingredients, directions for use, or pests against which the product is recommended. Any claims which differ in substance from representations made in connection with registration shall be described.
- 3.16. Compliance with the FIFRA. The Commissioner shall refuse application for registration of any pesticide product that is not in compliance with the FIFRA.
- 3.17. Failure to provide the information required by Section 3.11, Section 3.18 and/or Section 3.19 within 60 days from the date the first Notice of Lack of Compliance is printed, shall be considered an incomplete application and no registration or renewal of a registration for the pesticide product shall be issued.
- 3.18. Each applicant for a registration shall submit a signed, complete, accurate, and legible application, including: the form provided by the Commissioner; the application fee set by the

Commissioner; unless provided on the application form, a list of each inert ingredient and its percentage when requested by the Commissioner; and a final printed label and labeling as it appears on the pesticide product in the marketplace.

3.19. Registration expiration and renewal:

- (a) All pesticide registrations shall expire on December 31 of each year.
- (b) Each applicant for renewal of a registration shall submit, prior to expiration on December 31, a signed, complete, accurate, and legible application, including: the form provided by the Commissioner and the application fee set by the Commissioner.

3.20. Repealed.

3.21. Repealed.

3.22. Repealed.

3.23. Repealed.

3.24. Repealed.

**Part 4. Label requirements.**

4.1. All pesticides except those pesticide products determined to be exempt from registration pursuant to § 35-9-106(2), C.R.S. (incorporated by reference herein, later amendments not included), and Part 3.1, that are distributed or registered in Colorado must have a label which conforms to this Part 4.

4.2. These Rules incorporate by reference rules of the Environmental Protection Agency, United States of America 40 C.F.R. §156 (2016) (later amendments not included) concerning labeling requirements and the rules of the Environmental Protection Agency, United States of America 40 C.F.R. §152.25(f) (2016) (later amendments not included) concerning minimum risk pesticides.

- (a) Labels and labeling for pesticide products must comply with all of the labeling requirements of 40 C.F.R. §156 (2016), as incorporated above, unless exempted from federal registration pursuant to 40 C.F.R. §152.25(f) (2016), as incorporated above.
- (b) Labels and labeling for pesticide products exempted from federal registration pursuant to 40 C.F.R. §152.25(f) (2016), as incorporated above shall:
  - (1) comply with 40 C.F.R. §152.25(f)(3) (2016), as incorporated above; and
  - (2) comply with all provisions of the act and these Rules except § 35-9-120(1)(g)(ii), C.R.S. (incorporated by reference herein, later amendments not included), and parts 6.1(i) and 6.1(j) of these Rules.

4.3. This Rule does not include later amendments to or editions of the incorporated material.

4.4. Repealed.

4.5. Repealed.

## **Part 5. Coloration and discoloration.**

- 5.1. These Rules incorporate rules of the Environmental Protection Agency, United States of America 40 C.F.R. § 153.140 through 153.155 (2016) (incorporated by reference herein, later amendments not included).
- 5.2. This Rule does not include later amendments to or editions of the incorporated material.
- 5.3. Repealed.

## **Part 6. Misbranding.**

- 6.1. False and misleading statements. A pesticide or a device is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:
  - (a) A false or misleading statement concerning the composition of the product;
  - (b) A false or misleading statement concerning the effectiveness of the product as a pesticide or device;
  - (c) A false or misleading statement about the value of the product for purposes other than as a pesticide or device;
  - (d) A false or misleading comparison with other pesticides or devices;
  - (e) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any governmental agency;
  - (f) The name of a pesticide product (except devices) which contains two or more principal active ingredients if the name suggests one or more but not all such principal active ingredients even though the names of the other ingredients are stated elsewhere in the labeling;
  - (g) A true statement used in such a way as to give a false or misleading impression to the purchase;
  - (h) Label disclaimers which negate or detract from labeling statements required. An example of a disclaimer which would render a product misbranded is: "The information furnished herein is provided gratuitously by the manufacturer who assumes no responsibility whatsoever for the effectiveness or safety of this product regardless of whether or not it is used as directed.";
  - (i) Claims as to the safety of the pesticide or pesticide product or its ingredients, including statements such as "safe:", "nonpoisonous", "noninjurious", "harmless", or "nontoxic to humans and pets" with or without such a qualifying phrase as "when used as directed"; or
  - (j) Non-numerical and/or comparative statements on the safety of the product, including but not limited to:
    - i) "Contains all natural ingredients";

- ii) "Among the least toxic chemicals known";
- iii) "Pollution approved";

6.2. Justification of false and misleading statements not permitted. The use of any false or misleading statement on any part of the labeling, given as the statement or opinion of any person or based upon such statement or opinion shall not be justified nor may such statement be justified by the fact that the statement or opinion is actually that of such person.

## **Part 7. Refusal or cancellation of registration.**

Any of the following causes is sufficient to justify refusal or cancellation of registration of a product:

- 7.1. If it is determined that the pesticide product will not perform its intended function;
- 7.2. If the labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;
- 7.3. If found to be an imitation of or illegally offered for sale under the name of another pesticide or pesticide product;
- 7.4. If the labeling accompanying the pesticide product does not contain directions for use which are necessary, and if complied with, adequate for the protection of the public under customary conditions of use;
- 7.5. If the label does not contain the required warning or precautionary statements;
- 7.6. If the label does not bear an ingredient statement as required;
- 7.7. If any word, statement, or other information required to appear on the label or labeling is omitted or not prominently placed thereon and in such terms as to render it likely to be read and understood under customary conditions of purchase and use;
- 7.8. If a pesticide product does not warrant the proposed claims for it, or if the pesticide or pesticide product and its labeling and other material required to be submitted, do not comply with the act or these Rules;
- 7.9. If it is determined that, when used in accordance with label directions or in accordance with commonly recognized standards of practice, the pesticide product will generally cause, or is likely to cause if the pesticide or pesticide product is registered, unreasonable adverse effects on the environment including, without limitation, groundwater, vegetation (except the target pest) to which it is applied, living man or other useful vertebrate animals, and the person applying such pesticide or pesticide product; or
- 7.10. If the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this act or any rules and regulations promulgated thereunder; provided, that no registration shall be revoked or refused until the registrant shall have been given an opportunity for a hearing by the Commissioner.

## **Part 8. Enforcement.**

- 8.1. Collection of samples. Samples of pesticides and devices shall be collected by a designated agent. An official representative sample shall be one taken by the Commissioner or his designee. An unbroken original package shall be taken as the official sample where the pesticide is packed in small bottles, or small packages. Where the pesticide is packed in large containers, the official sample shall be a portion taken from one original package in a lot.

## **Part 9. Experimental use products.**

- 9.1. Any pesticide product shipped or delivered for experimental use must be registered and the following information must be submitted to the Commissioner. If a pesticide product shipped or delivered for experimental use is registered in Colorado, no further registration is required. However, the following information must be submitted to the Commissioner.

- (a) In addition to the information required for routine registration an application for registration shall include:
- (1) the federal Experimental Use Permit number;
  - (2) a copy of the federal experimental use approval;
  - (3) a copy of the labeling;
  - (4) the Colorado contact for such use;
  - (5) if requested any information pertinent to the program being performed in Colorado.

- 9.2. A pesticide intended for experimental use shall not be offered or advertised for general sale.

## **Part 10. Distribution.**

- 10.1. No person or business shall distribute any of the following:

- (a) Any pesticide product which does not conform to its purported standard of quality.
- (b) Any pesticide product except in the manufacturer's or registrant's original unbroken package, except for bulk, and there is affixed to such container a registered label.
- (c) Any pesticide product which is not labeled, or on which the label is illegible in any respect.
- (d) Any pesticide product on which the caps, lids, or other sealing devices on the container are not tight or secure. Defective, unsound or broken containers shall not be placed on display, sold, offered for sale or transported.
- (e) Bags containing granular ready-to-use pesticides (including ready-to-use combinations of pesticide and fertilizer ingredients) shall not be considered broken if they are repaired in accordance with the following criteria.
  - (1) Any repairs to a broken bag must be sufficient to return the bag to its original condition of soundness such that no leakage can occur when the bag is subjected to normal handling.

- (2) No repair may be made to a broken bag if the damage measures more than 3 inches in any dimension.
  - (3) All words, numbers, and warning symbols on the product bag must be legible and not obscured by the repair in any way.
  - (f) Any pesticide product which is misbranded or adulterated.
  - (g) Any pesticide product which has not been registered in accordance with the provisions of the Act.
  - (h) Any pesticide product in a refillable container for which the pesticide residue removal procedure was not conducted in accordance with Part 15 of these Rules.
- 10.2. Failure of any person or business to cease distributing any pesticide or pesticide product or device on which a written or printed cease and desist order has been issued in accordance with the Act shall be sufficient reason for the Department to enjoin said distribution.
- 10.3. Any pesticide that spills from a broken container in any area where a product is stored or displayed for sale must be cleaned up immediately and disposed of according to all applicable laws and regulations.

## **Part 11. Dealer licensing.**

### **11.1. The Dealer Licensing System.**

- (a) Any person who distributes any restricted use pesticide to any other person must possess a valid pesticide dealer license.
- (b) Each separate business location, including branch offices, and each separate business name must have a separate pesticide dealer license.
- (c) Each applicant for a pesticide dealer license shall make application to the Commissioner. Said application shall be on a form furnished by the Commissioner and shall be accompanied by payment of an application fee of \$50.00.
- (d) Each pesticide dealer shall make an application to renew its license on or before the first working day of January for the year of renewal. Said application shall be on a form furnished by the Commissioner and shall be accompanied by payment of a \$50.00 renewal fee.
- (e) Licenses expire on January 1st of each year and must be renewed on an annual basis.
- (f) Applicants for renewal of a pesticide dealer license whose applications are received after the first working day of January but received on or before February 1st must pay a penalty fee of 10%.
- (g) No pesticide dealer license can be renewed until the entire fee is paid.
- (h) If the application for renewal is not received on or before February 1, of the year following the year of licensure, the license will not be renewed and the dealer must apply for a new license.

- (i) Any dealer distributing restricted use pesticides after the expiration date of their license and prior to their renewal or new license application acceptance date will be in violation of § 35-9-120(1)(f), C.R.S. (incorporated by reference herein, later amendments not included), and subject to civil penalties authorized under § 35-9-124, C.R.S. (incorporated by reference herein, later amendments not included).

11.2. Recordkeeping requirements for state and federal restricted use pesticides shall be as required by Section 13.3.

## **Part 12. Emergency exemptions.**

The following general conditions are set in order to comply with provisions of exemptions which may be issued under Section 18 of the FIFRA (incorporated by reference herein, later amendments not included) for the use of pesticides in emergency situations. However, in addition, due to the highly unique and special nature of each exemption, each exemption shall have its own specific conditions.

- 12.1. Any Section 18 pesticide product must be registered in Colorado. If a Section 18 pesticide product is registered in Colorado, no further registration is required.
- 12.2. Definition and construction of terms. As used in this part, unless the context otherwise requires:
  - (a) "Authorization" means that document prepared by EPA and delivered to the Department by EPA stating the compound, the use and conditions for use under which approval for the Section 18 emergency exemption was granted.
  - (b) "Commercial applicator" means persons licensed by the state of Colorado as commercial applicators pursuant to §§ 35-10-101 to 128, C.R.S. (incorporated by reference herein, later amendments not included).
  - (c) "Permit" means a permit granted by the Department to persons for the sale or use of pesticides granted emergency exemption status under Section 18 of the FIFRA.
  - (d) "Section 18" means any exemption from registration under the authority of Section 18 of the FIFRA, and any rules or regulations thereto.
  - (e) "Section 18 pesticide" means any pesticide designated by the Commissioner for use in any Section 18 exemption.
- 12.3. Any pesticide compound determined to be a Section 18 pesticide shall maintain that status for the duration of the Section 18 authorization.
- 12.4. Permit Required.
  - (a) All persons wishing to sell, purchase, and/or use a Section 18 pesticide shall obtain a permit for such sale, purchase, and/or use from the Department of Agriculture prior to any such sale, purchase, and/or use. The Department may waive such requirement if such a permit is not included in the Section 18 authorization.
  - (b) In the event a permit is not required by a Section 18 authorization any and all individuals wishing to sell, purchase, and/or use a Section 18 pesticide shall be bound by all conditions and restrictions as set forth by the Commissioner, in the Section 18 authorization, and on the product label.

- (c) Permits shall be requested by the submission of an application in the form prescribed by the Department.
    - (1) There shall be no charge for the issuance of a permit by the Department.
    - (2) Permits for the purchase and/or use of a Section 18 pesticide shall only be issued to persons licensed, registered, or certified by the Commissioner pursuant to §§ 35-10-101 through 128 C.R.S.
    - (3) Permits to sell a Section 18 pesticide shall only be issued to those persons who are dealers licensed pursuant to the Act.
  - (d) All permits shall be subject to the conditions specified and any and all conditions or restrictions which may appear on the approved product label or labeling.
  - (e) The permit shall authorize the sale or purchase and/or use of the pesticide product or products indicated in the Section 18 authorization. The sale or use of any other product containing the identical active ingredient(s) for control of the specified pest under the provisions of this permit is expressly prohibited.
  - (f) The Department may suspend or revoke any and all permits issued under these Rules in the event there is any reason to believe that the continued sale or use of the Section 18 pesticide by any or all persons presents an unreasonable hazard to man, any other species, the environment or public or personal property. All administrative procedures and hearings shall be governed by the provisions of the Administrative Procedure Act.
  - (g) Any permit issued under these Rules may be suspended immediately if there is sufficient evidence to show the Section 18 pesticide was sold or used in violation of the conditions of the permit and/or in a manner so as to present an unreasonable hazard to man, any other species, the environment or public or personal property.
  - (h) Each permittee shall be furnished with a copy of the actual EPA Section 18 authorization by the Department.
- 12.5. Conditions of the Permit. The following conditions shall be placed upon the sale, purchase, and use of a Section 18 pesticide under the permits issued.
- (a) Each Section 18 pesticide shall be subject to all specific restrictions and conditions as may be stated by the Commissioner and in the Section 18 authorization from the EPA to the Department and all permittees must abide by these conditions.
  - (b) No applications shall be performed in any area until the Department has determined that area to meet the qualifications for treatment as specified by the Commissioner and in the Section 18 authorization.
  - (c) No field or other site shall be treated unless it has been determined by the permittee or his representative that it fulfills each and all specific qualifications for treatment as specified by the Commissioner and in the Section 18 authorization.
  - (d) Under no circumstances shall applications be performed in any area to any site other than those specifically authorized by the Commissioner and in compliance with the Section 18 authorization.

- (e) The Colorado Department of Agriculture must be notified in writing by the permittee within twenty-four (24) hours of knowledge of any adverse effects on man, any other species, the environment or public or personal property which result from the application of a Section 18 pesticide under any permit issued under the provisions of these Rules.
- (f) All permittees shall keep records as required by the permit and must make such records available to the Department on request at any reasonable hour.
- (g) All permittees shall submit such report(s) as required by the permit.
- (h) All commercial applicators licensed pursuant to §§ 35-10-101 to 128, C.R.S. (incorporated by reference herein, later amendments not included) who are issued a permit under the provisions of these Rules shall take all necessary steps to notify their customers of the appropriate restricted entry, preharvest, crop rotation, root crop planting or other intervals, or feeding restrictions; and any other pertinent precautionary information as specified by the Commissioner, the Section 18 authorization to the Department, and the label. All such notification shall be in writing or be a copy of approved required labeling unless exempted by the Department and shall be in a timely manner or within such time period as may be specified by the Commissioner and in the Section 18 authorization so as to permit the customer to adequately comply with all restrictions and prohibitions.
- (i) Persons permitted to apply, or applying, as the case may be, a Section 18 pesticide under these Rules shall not be construed to be pesticide dealers provided they do not engage in the resale for use of any Section 18 pesticide.
- (j) The sale of any Section 18 pesticide for the purpose for which the Section 18 authorization was granted to any individual who does not meet the qualifications established by the Commissioner and of the Section 18 authorization as required is strictly prohibited. Violation of this provision will be deemed a violation of the regulations and Act, and may result in further administrative actions against the dealer or permittee or immediate suspension of the dealer permit.

#### 12.6. Responsibilities of All Users and/or Dealers.

- (a) Nothing herein shall be construed as abrogating applicator responsibility under the FIFRA or the Colorado Pesticide Applicators' Act, or as abrogating dealer responsibility under the FIFRA or the Colorado Pesticide Act.
- (b) If the permit required has been waived, then no application, use, or sale shall be contrary to the requirements of the Commissioner, the Section 18 authorization, or the product's label.
- (c) Storage and disposal of a Section 18 pesticide shall be in accordance with all provisions of the Commissioner, of the Section 18 authorization, the product's label, and all state and federal hazardous waste laws.
- (d) All applications and sales shall be in accordance with all provisions established by the Commissioner and of the Section 18 authorization.
- (e) All commercial applicators shall take all necessary steps to notify their customers of the appropriate restricted entry, preharvest, crop rotation, root crop planting or other

intervals; or feeding restrictions; and any other pertinent precautionary information as specified by the Commissioner, in the Section 18 authorization to the Department, and on the label. All such notification shall be in writing or by copy of approved required labeling unless exempted by the Department.

- (f) Any supplemental label or labeling for the use of a Section 18 pesticide must accompany the sale for use of such product(s).
- (g) The Department may suspend the authorized sale or use of a Section 18 pesticide in the event there is any reason to believe that the continued sale or use of the Section 18 pesticide by any or all persons presents an unreasonable hazard to man, any other species, the environment, or public or personal property. All administrative procedures and hearings shall be governed by the provisions of the Administrative Procedure Act.

### **Part 13. Restricted use pesticides.**

13.1. Pesticides containing the following active ingredients when used as herbicides are hereby declared to be state restricted use pesticides that may be distributed only to licensed dealers, licensed applicators, or their authorized agents. State restricted use pesticides shall not be distributed to any applicator who is not licensed in the appropriate category to apply that pesticide.

- (a) Bromacil
- (b) Diuron
- (c) Monuron
- (d) Prometon
- (e) Sodium chlorate
- (f) Tebuthiuron
- (g) Sodium metaborate

13.2. Federal restricted use pesticides may be distributed only to licensed dealers, licensed applicators, or their authorized agents. Federal restricted use pesticides shall not be distributed to any applicator who is not licensed in the appropriate category to apply that pesticide.

13.3. Every pesticide dealer shall maintain at each licensed dealership location records of all transactions in which a state or federal restricted use pesticide is distributed by that dealership to any person. Records of each such transaction must be maintained for a period of 24 months after the date of the transaction, and must include the following information:

- (a) The name of the licensed applicator, to whom the pesticide was distributed, and the name and address of his or her principle place of business.
- (b) Either:
  - (1) The certification number on the document evidencing that person's certification, the State (or other governmental unit) that issued the document, the expiration

date of the certification, and the appropriate categories in which the applicator is certified; or

- (2) The pesticide dealer license number, if sold to another dealer.
- (c) The product name, EPA registration number, and the Colorado special local need registration number, granted under section 24(c) of the FIFRA (incorporated by reference herein, later amendments not included) (if any) on the label of the pesticide;
- (d) The quantity of the pesticide distributed in the transaction; and
- (e) The date of the transaction.
- (f) Restricted use pesticides may be distributed to a licensed applicator via an unlicensed person authorized by the licensed applicator to act as his or her agent for that purpose. If distribution is made through such an agent, the dealer records must also include:
  - (1) The name and current address of the authorized agent through which such distribution was made;
  - (2) A record of the applicator's license showing the categories of licensure.
  - (3) A signed statement from the licensed applicator authorizing the agent to receive delivery of restricted use pesticides on behalf of that applicator.

#### **Part 14. Devices exempt from registration requirements.**

14.1. The following classes of devices are not subject to the Act.

- (a) Devices designed to deliver into burrows and ignite a mixture of propane and oxygen or similar combinations of explosive gases to control burrowing rodent pests.

#### **Part 15. Pesticide refiller residue removal requirements.**

15.1. Records. Refillers must maintain, at the refilling establishment, the registrant's written refilling residue removal procedure for each pesticide product distributed in refillable containers. These records must be maintained for the current operating year and for 3 years after that.

15.2. Refillers must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (a) of this Section and either paragraph (b) or (c) of this Section are satisfied:

- (a) If required, each tamper-evident device and one-way valve is intact.
- (b) The refillable container is being refilled with the same pesticide product.
- (c) Both of the following conditions are satisfied.
  - (1) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

- (2) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3 (incorporated by reference herein, later amendments not included). Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

15.3 Refillers must clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve as required in part 15.2 of this Section. Refillers must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container.

15.4 This part 15 shall become effective August 16, 2011.

## **Part 16. – 18. Reserved**

## **Part 19. Materials Incorporated By Reference**

19.1 Certified copies of material incorporated by reference in these Rules is available for public inspection during regular business hours. This incorporated material may be obtained at a reasonable charge or examined by contacting the Pesticide Section Chief, Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the internet at:

<https://www.law.cornell.edu/uscode/text/7/chapter-6/subchapter-II/FFDCA>;

<https://www.law.cornell.edu/uscode/text/21/chapter-9/40CFR>; or

[https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl)

Please contact the Department for assistance if you have difficulty in accessing any of these websites.

## **Part 20. Statements of Basis, Specific Statutory Authority, and Purpose**

*Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1968 through 1992 are no longer in the Departments files and are presumably in the state archives.*

### **20.1 Adopted July 28, 1994 – Effective September 30, 1994**

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under §35-9-118, C.R.S. (1993 Suppl.)

The purpose of these rules is to implement the provisions of the Pesticide Act, Title 35, Article 9, C.R.S. (1993 Suppl.).

These rules: establish procedures for registration of pesticides including experimental use products; establish requirements for pesticide labels; establish standards for coloration and discoloration of pesticides; establish what constitutes false and misleading statements; establish the reasons for refusal or cancellation of pesticide registration; establish the procedures for pesticide dealer licensing and record keeping requirements; establish the conditions for use of a Section 18 pesticide; and establish a list of pesticides whose use is restricted in the state.

Because of the revision of Article 9 of Title 35, and Article 10 of Title 35 (the Pesticide Applicators' Act) the language of the rules associated with the Pesticide Act needed to be changed to conform with the statutes. The language in Parts 1 to 13 now reflects the terminology in the current statutes. The language was also changed to conform with current terminology in the code of federal regulations where necessary. Other than Part 3 the requirements set out in Parts 1 to 13 remain basically unchanged from the rules in place.

The format and organization of the rules was also simplified.

Factual issues encountered when developing these rules include:

1. How to describe the administrative procedures for registering a pesticide product system so an applicant can understand and comply with them.
2. An application for registration, including a label, is received in the office. The pesticide product to be registered is then identified using the language on the label which accompanies the application. Often this label is not identical to, and sometimes does not even resemble, the label which appears on the product found in the marketplace. Inspections for compliance with the statute occur in the marketplace using data generated from the applications received in the office. Differences between the labels submitted for registration and the labels as they appear in the marketplace have caused numerous problems in enforcement complaints from registrants who believed their product to be registered.
3. It is not unusual for a registrant to submit several applications for product registration together with one check for payment of all applications.
4. It is not unusual to receive an application for registration of a pesticide product which is under Cease and Desist Order along with other applications for registration.
5. The state restricted use pesticide list has been in place since 1989. At that point in time the Cooperative Extension and/or the Department were receiving several complaints or reports each year concerning damage related to the use of the listed materials in landscape areas. Only one such case was reported last year.
6. Pesticides are regulated at the federal level under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Some rules pertaining to pesticides at the state level must be identical to those associated with FIFRA.

Policy issues encountered when developing these rules include:

1. To help resolve the dilemma addressed in factual issues concerning labels submitted with the application and those found on the container in the field. The rules now state the label to be submitted with the application for registration is to be the final printed label as it appears on the pesticide product in the field.

2. To resolve the dilemma of which application to process first when multiple applications for the same registrant are received at the same time it was determined the applications would be processed in the order in which the registrant submitted them, except as noted.
3. To be responsive to the needs of Colorado businessmen it was decided if multiple applications from the same registrant were received at the same time and any of those applications were for products which were under Cease and Desist Order, the applications for the products under Cease and Desist Order would be processed first, even if that was not the order in which they were submitted.
4. It appears the state restricted use list had the desired result. Consequently, the list will continue with a minor modification which removes a trade name of a product.
5. It was decided to incorporate by reference those regulations which are identical to the code of federal regulations instead of duplicating all of the language in these rules.

## **20.2 Adopted January 19, 1995 - Effective March 2, 1995**

### Statement of Basis and Purpose

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under §35-9-118, C.R.S. (1993 Suppl.)

The purpose of these rules is to implement the provisions of the Pesticide Act, Title 35, Article 9, C.R.S. (1993 Suppl.).

These rules: establish procedures for registration of pest control devices; and comply with the recommendations of Legal Services concerning consistency in wording with the statute.

Factual issues encountered when developing these rules include:

1. How to describe the administrative procedures for registering a pest control device so an applicant can understand and comply with them.
2. Pest control devices are regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).
3. Rule 8.2 relating to the examination of pesticides samples failed to meet the incorporation by reference standards of §24-4-103 (12.5) of the Administrative Procedure Act C.R.S.
4. The date in Rule 11.1 does not coincide with the date of the statute.

Policy issues encountered when developing these rules include:

1. The Department needed to determine which pest control devices would require registration in order to apply and enforce the provisions in an equitable and consistent manner. After discussions concerning the numerous types of devices and device technologies, it was decided the manner which best achieved this was to use requirements already set forth in 40 CFR 150-189 and its associated interpretations and policies. Under these requirements producers of devices which work through the efforts of an individual, such as fly swatters or mouse traps, are exempted from registering their producing establishments; while producers of other devices must

register their producing establishments. This requirement was used as the criteria for requiring registration with the Commissioner.

2. It was decided to use the same registration process already in place for pesticide products to administer the registration of devices with a few exceptions.
3. Methods used to analyze pesticides change constantly as new analytical instruments enter the marketplace, as new pesticides enter the marketplace, and as our own chemists modify methods to fit the instrumentation available to them. The statute does not require that the Department establish by rule the methods it will use to analyze pesticides. Consequently, it was decided to repeal the clause.

### **20.3 Adopted April 17, 1995 - Effective May 30, 1995**

#### STATEMENT OF REASONS FOR ADOPTION OF EMERGENCY RULE

This rule is adopted under the Pesticide Act pursuant to §35-9-118 (2), C.R.S. (1994 Supp.) and pertains to the administration and enforcement of the registration of pesticides under the Pesticide Act.

Parts 4.1 and 4.2 of the Rules and Regulations Associated with the Pesticide Act state:

“All pesticides sold or registered in Colorado must have a label which conforms to this Part 4.”

“These rules incorporate rules of the Environmental Protection Agency, United States of America 40 C.F.R. §156.10.”

The rules in 40 C.F.R. §156.10 require such things as net contents, warning or precautionary statements, physical or chemical hazards, storage and disposal directions, etc.

The Commissioner has received application for registration of a “plant-pesticide”. This plant-pesticide has been registered by EPA. In so doing EPA is not requiring the label contain many of the elements set forth in 40 C.F.R. §156.10.

In order to register the plant-pesticide for distribution and use in Colorado the requirements set forth in part 4.2 must be modified to conform with current policy of EPA.

The immediate adoption of Parts 1.2 (j.5) and 4.5 is imperatively necessary and compliance with notice and hearing requirements of §24-4-103 of the Colorado Administrative Procedure Act would be contrary to the public interest.

### **20.4 Adopted December 6, 1999 – Effective January 30, 2000**

STATUTORY AUTHORITY: C.R.S. 35-9-118 (2) and (3)

GENERAL DISCUSSION: To establish requirements for registration of pesticide products to reflect changes made in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); to codify existing policy for registration of discontinued products; and to make miscellaneous technical amendments.

### **20.5 Adopted November 9, 2000 – Effective December 30, 2000**

Statutory Authority:

These permanent rules are adopted by the Commissioner of the Colorado Department of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act (the "Act" ) at §35-9-118 (2) and (3) C.R.S. (2000).

Purpose:

The purpose of this amendment is to: increase the amount of the annual application fee for the registration or renewal of a pesticide product registration from \$70.00 to \$80.00.

Factual and Policy Issues:

The factual and policy issues encountered in the proposal of this amendment are as follows:

- (1.) The Commissioner adopted a rule change effective January 1, 2000 that established the registration renewal fee for pesticide products designated as discontinued. This rule reduced the registration renewal fee for the pesticide products designated as discontinued from \$70.00 to \$21.00.
- (2.) In Fiscal Year 2000, this fee reduction decreased the pesticide product registration program's revenue by approximately \$185,000.00.
- (3.) Because of this loss of revenue, the pesticide product registration program expects that it will have personal services and operating expense deficits for Fiscal Year 2001.
- (4.) The average pesticide product registration fee among the 50 states for calendar year 2000 is approximately \$120.00.
- (5.) The last pesticide product registration fee increase occurred in 1994 for the purpose of implementing the Agricultural Chemical Groundwater Protection Act. This fee change did not impact or produce any additional revenue for the pesticide product registration program.
- (6.) The Department estimates that this proposed fee increase will be sufficient to meet the personal service and operating cost expenses of the pesticide product registration program for at least three years without additional fee increases.

## **20.6 Adopted August 29, 2002 – Effective October 30, 2002**

Statutory Authority:

These amendments to the permanent rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act (the "Act" ) at section 35-9-118 (2) and (3) C.R.S.

Purpose:

The purpose of these amendments is to:

1. Increase the amount of the annual pesticide fee for registration or renewal of a pesticide product registration from \$80.00 to \$95.00.

2. Eliminate “Discontinued” product registration. With this type of registration, the registrant affirms that they are no longer producing the particular pesticide product, and then pays a reduced fee of \$21 for up to four years. After four years, the product registration is automatically cancelled.
3. Revise the rules to conform with the decision of Judge Babcock of The United States District Court for the District of Colorado in Bioganic Safety Brands, Inc., v. Don Ament, Colorado Commissioner of Colorado, Civil Action No. 01-B-1808.

Factual and Policy Issues:

The factual and policy issues encountered in proposing these amendments are as follows:

1. Rule changes affecting registration fees:
  - a) The pesticide registration and dealer licensing activities of the Colorado Department of Agriculture are funded solely by the fees collected for pesticide registrations and dealer licenses. These funds are credited to the pesticide fund. Annual appropriations are made from this fund to carry out the purposes of the Act. Of the funds collected, 97% are from pesticide registration fees, and 3% from dealer license fees.
  - b) The current pesticide or pesticide device registration fee is \$80. Of this \$80, \$20 goes to the groundwater fund, and \$60 goes to the pesticide fund.
2. Rule changes affecting “discontinued” pesticide registrations.
  - a) About 30% of registered products are in “discontinued” registration. These products pay a registration fee of \$21. Of this \$21, \$20 goes to the groundwater fund, and only \$1 goes to the pesticide fund.
  - b) Maintaining and processing discontinued product registrations increases administrative efforts and costs. The \$1 fee for these products does not support the administrative costs involved.
  - c) There have been numerous cases of registrants requesting to change products back from “discontinued” to a normal active registration status. This was not anticipated to be a reversible process.
  - d) There are some cases of products with cancelled federal registrations being renewed as “discontinued” in Colorado, even though sales are now illegal under federal law.
  - e) The large number of registered products that are in “discontinued” status has contributed to the current financial shortfall in the pesticide registration program.
  - f) Pesticides are registered on a calendar year basis, with most revenue received during the December-January registration renewal period. The Colorado fiscal year is on a July-June period. At the beginning of the 2003 fiscal year (July, 2002) the fund balance (including reserve fund balance) will be insufficient to pay expenses for the following months. By October of 2002, the projected fund deficit is about \$150,000.
  - g) With the proposed changes to the fee structure, the pesticide fund should be returned to a sound financial footing by the end of FY04, with funds sufficient to operate the program

until the renewal period and a reserve reestablished for future emergencies or economic changes.

- h) Further registration fee increases for the portion allocated to the pesticide fund are not anticipated for the next five years.
- 3) Rule changes to conform with the decision of Judge Babcock of United States District Court for the District of Colorado in *Biorganic Safety Brands, Inc., v. Don Ament*, Colorado Commissioner of Colorado, Civil Action No. 01-B-1808.
- a) Section 35-9-120(1)(g)(II), C.R.S. states: "It is a false representation to make claims as to the safety of any pesticide or device or their components or ingredients, including, but not limited to, such claims as "safe", "noninjurious", "harmless", or "nontoxic to humans and pets", with or without such qualifying phrases as "when used as directed" and "when properly applied".
  - b) The Pesticide Act Rules include the following as prohibited false and misleading statements on pesticide labels:
    - "(i) Claims as to the safety of the pesticide or pesticide product or its ingredients, including statements such as "safe:", "nonpoisonous", "noninjurious", "harmless", or "nontoxic to humans and pets" with or without such a qualifying phrase as "when used as directed"; or
    - (ii) Non-numerical and/or comparative statements on the safety of the product, including but not limited to:
      - i) "Contains all natural ingredients"
      - ii) "Among the least toxic chemicals known"
      - iii) "Pollution approved";"
  - c) In the court decision referenced above, Judge Babcock ruled that the sections of the Act and Rules prohibiting safety claims on labeling of pesticides exempted from federal regulation as minimum risk pesticides (section 25(b) of FIFRA) are preempted by FIFRA. This Pesticide Act prohibition with regards to Biorganic Shoobug insect repellent was declared a violation of both the First Amendment (free speech) and the Commerce clause of the U.S. Constitution.
  - d) The Commissioner did not appeal this ruling.
  - e) The proposed amendments conform to the order issued in this case.

## **20.7 Adopted October 19, 2006 – Effective January 1, 2007.**

Statutory Authority:

These amendments to the permanent rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act (the "Act" ) at §§ 35-9-118 (2) and (3), C.R.S.

Purpose:

The purpose of these amendments is to:

1. Change references to licensed applicators to recognize that CDA will be licensing private pesticide applicators as of January 1, 2007.
2. Modify pesticide dealer licensing requirements to include record-keeping requirements for federal restricted use pesticides.

Factual and Policy Issues:

The factual and policy issues encountered in proposing these amendments are as follows:

1. House Bill 1274 amended the Pesticide Applicator Act (Title 25, Article 10) to authorize the CDA to begin issuing licenses to private pesticide applicators on and after January 1, 2007 and to require that any person acting as a private applicator using or supervising the use of restricted use pesticides be licensed as a private applicator by the Commissioner.
2. Historically private pesticide applicators making pesticide applications in Colorado have been licensed by the Environmental Protection Agency ("EPA"), specifically EPA region 8, Denver, Colorado. Once CDA assumes responsibility for licensing private applicators, EPA will cease issuing such licenses. We anticipate that this transfer of authority will take place on January 1, 2007.
3. Part 13 of the current rules for the Pesticide Act allows for the permitting of each user of a section 18 pesticide, and requires that each permittee be either licensed by the Commissioner or licensed with EPA region 8, Denver, Colorado as a private applicator.
4. The current rules of the Pesticide Act only require recordkeeping on the part of licensed dealers for state restricted use pesticides, not federal restricted use pesticides.
5. EPA currently imposes record-keeping requirements on Colorado pesticide dealers of federal restricted use pesticides, under the authority of FIFRA §11(a)(1) and CFR 171.11(g). However, this federal authority only exists in any state in which the EPA conducts a certification program. Once CDA takes over the private applicator certification program from EPA region 8, federal authority to require Colorado pesticide dealers to keep records concerning federal restricted use pesticides will cease.

## **20.9 Adopted January 4, 2007 – Effective March 4, 2007.**

STATUTORY AUTHORITY:

These amendments to the Rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Pesticide Act ("Act" ), § 35-9-110 (2), C.R.S.

PURPOSE:

The purpose of these amendments is to exempt a certain class of devices from the registration requirements of the Act.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in proposing these amendments are as follows:

1. The Act requires certain devices to be registered, and authorizes the Commissioner to designate which classes of devices are subject to this requirement.
2. Colorado producers are suffering an economic loss due to an increase in burrowing animals in and around agronomic fields and in rangeland areas. Black-tailed prairie dogs have been increasing in recent years across eastern Colorado. Although exact figures are not available from most agronomic production areas, the Comanche and Pawnee National Grasslands have documented increasing number of prairie dog colonies, with a 79% increase in active colonies in 2004 and a 30% increase in 2005. The overall hectares affected has more than doubled between 2003 and 2005 (from 2680 ha to 6323 ha).
3. The Commissioner has determined that destructive rodents pests, particularly prairie dogs, pose a significant threat to agricultural production in this State, and that additional control methods, including the devices that are the subject of this rulemaking, are needed to protect the public welfare.
4. The devices proposed for exemption from registration, which inject a mixture of propane and oxygen into the burrow and then ignite it, are currently available and widely used in adjacent states. Until recently, however, the use of these devices in Colorado was considered a prohibited method of take by the Colorado Division of Wildlife ("DOW"). On November 1, 2006, a new DOW regulation took effect allowing the use of such devices. DOW decided to allow the use of these devices in response to the urgent need of agricultural producers to have better control methods for burrowing animals.
5. Because DOW has regulatory authority over use of such devices, the regulation of the distribution of these particular devices under the Act is duplicative and unnecessary. Due to the length of time that registration of a new device under the Act typically requires, the Commissioner adopted emergency amendments to the Rules, effective November 13, 2006, exempting this class of devices from registration to permit the timely use of these devices to control prairie dogs. These permanent amendments to the rules continue this exemption.

## **20.10 Adopted August 12, 2008 – Effective September 30, 2008.**

### STATUTORY AUTHORITY

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act (the "Act"), §§ 35-9-118(2)(c),(f), and (h), C.R.S.

### PURPOSE

The purpose of these proposed rules is to:

1. Amend Rule 10.1 to specify conditions to allow distribution of repaired bags containing certain pesticides.
2. Create a new Rule 10.3 to require distributors to properly clean up and dispose of pesticides when pesticide spills occurred.

3. Amend Rule 13.1 and create a new Rule 13.2 to restrict distribution of State and Federal Restricted Use Pesticides to licensed dealers, licensed applicators, and their authorized agents and only for uses allowed by the applicator's license category.
4. Amend current Rule 13.3 to require pesticide dealers to maintain records of any distribution of a State or Federal Restricted Use Pesticide to an authorized agent of a licensed applicator.

## FACTUAL AND POLICY ISSUES

The factual and policy issues encountered when developing these rules include:

- 1) Rules 10.1(b) and (d) currently do not allow any distribution of a pesticide except in its original unbroken container. The CDA believes that if bags containing granular ready to use pesticides or ready-to-use combinations of pesticide and fertilizer ingredients can be repaired to their original condition and the product's label does not become misbranded in the process, sale of such products should be allowed to facilitate application to a labeled site and minimize disposal of these pesticides in Colorado landfills. CDA proposes to amend Rule 10.1 to create guidelines to allow this practice.
- 2) CDA is proposing to create a new Rule Part 10.3 to require distributors to clean up and dispose of any pesticide product that spills from a broken container to prevent any pesticide exposure to customers or employees.
- 3) Currently, Rule 13.1 requires that State Restricted Use Pesticides only be distributed and used by licensed applicators or persons under their direct supervision and only for uses covered by the applicator's licensure category(s). Part 13 of the Rules only addresses distribution and use of State Restricted Use Pesticides, but it does not currently address distribution and use of federal restricted use pesticides.

The CDA is proposing to amend Rule 13.1 and create a new Rule 13.2 to clarify that both state and federal restricted use pesticides may only be distributed to licensed dealers, licensed applicators or their authorized agents who are licensed in the appropriate category to use that product.

- 4) Prior to January 1, 2007, EPA was performing restricted use pesticide dealer record inspections and, under 40 C.F.R. §171.11(g)(2)(ii), required dealers to maintain a record of any distribution of an RUP to an uncertified agent of a certified applicator documenting that the RUP would be used by a certified applicator or persons under their supervision.

CDA is proposing to amend current Rule 13.3 to require pesticide dealers to maintain records of any distribution of an RUP to a licensed applicator through an authorized agent.

### **20.11 Adopted July 16, 2009 – Effective August 30, 2009.**

#### Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act (the "Act"), §§ 35-9-107(2), and 35-9-118(3)(a) and (b) C.R.S.

#### Purpose

The purpose of this proposed rule amendment is to amend Rule 3.4 to increase the annual pesticide registration fee from \$95 to \$165.

#### Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Under 35-9-118(3)(a) the Commissioner has the authority to promulgate Rules to determine the annual registration fee for each pesticide registered in the state of Colorado.
2. On January 1, 2007, the CDA obtained primacy over all private applicators.
3. CDA's budget projections for the private applicator program took into account the initiation of the program prior to any revenue generation, projected expenses to administer the program and projected revenue from private applicator licensing over a 4 year period. Budget projections showed an annual revenue shortfall of \$250,000. To account for this shortfall CDA combined all pesticide cash funds and subsidized the private applicator expenses through a surplus in the pesticide registration fund. This was done to maintain private applicator examination and licensure fees at less than \$100.
4. The pesticide applicator program, which licenses commercial applicators, has not raised its fees to cover rising costs since 1994, when business licensure fees were increased to \$350, and 2003, when examination licensure fees were increased to \$100. Expenses in the pesticide applicator program have outpaced revenues in 2007 and 2008 by an average of \$80,000. These shortfalls have been covered by the pesticide registration fund and EPA grant funds.
5. In 2007 the pesticide registration fund balance was \$670,517. In FY 07 and FY 08 the private applicator program and the commercial pesticide applicator program operated at an average loss of \$251,000. In FY 2009 the pesticide program is projected to be at a \$250,000+ loss, depleting the remaining pesticide registration funds at the end of FY 2009.
6. In 2009 and 2010 the administration of the private applicator exam and the commercial applicator exam will be shared between a private company, Metro Institute, Colorado State University and CDA. This is being done to allow private applicators to take their examination on-line and allow proctored computer based examinations with CSU and CDA. This will provide an easier, more accessible and improved testing environment for the applicator community; however, it will increase CDA's program expenses to maintain the examination software and hardware and result in a loss in revenue with each examination administered by Metro Institutes or CSU.
7. The current registration fee is set in the Pesticide Act Rules, Part 3.4, which is currently \$95. The CDA registers an average of 11,000 pesticide products per year.
8. The CDA is proposing a fee increase of \$70, making the new registration fee \$165. The fee increase will generate, based on average registration renewals, an additional \$770,000 in revenue. This will cover all projected expenses, allow the CDA to resolve the deficit created in FY 2010, rebuild its fund balance, cover increases in expenditures and allow program growth in future years without having to increase pesticide applicator licensure fees.
9. Under 35-10-118(3)(a) any fee collected under the pesticide registration program shall have an increment approved by the Agricultural Commission to fund the Groundwater Protection Program. Currently the Groundwater increment is set at \$30. In conjunction with this rulemaking, CDA plans to ask the Agricultural Commission to approve an increase in the increment from \$30 to \$40

dollars. This will bring an additional \$110,000 to the Groundwater Program to cover increased program expenses and allow for growth in future years.

10. Twenty-one states have pesticide registration fees that exceed \$165 per product, the highest being \$750 per product; ranking Colorado twenty-second in comparison to the nation.

## **20.12 Adopted October 21, 2010 – Effective November 30, 2010.**

### Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Act (“Act”), specifically §§ 35-9-118(2)(f), (g), (h) and (i), C.R.S.; § 35-9-117, C. R.S.; and § 35-9-117.5, C.R.S.

### Purpose

The purpose of these proposed rules is to:

- 1) Create new Parts 3.1(a) & (b), The Registration System, to conform with new statutory provisions in regards to exempting pesticides consistent with the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”).
- 2) Repeal duplicative provision in Part 3.5.
- 3) Parts 3.10, 3.11, 3.12, 3.15, 3.18 and 3.19 are amended to update registration requirements, clearly reflect current business procedures and set registration expiration and renewal dates in Rule.
- 4) Repeal outdated business procedures, Parts 3.20 through 3.24.
- 5) Amend Parts 4.1 and 4.2 to reflect new statutory provision that allows CDA to exempt certain pesticides and update references to 40 C.F.R.
- 6) Create a new Part 11.1(i) to clearly state it is a violation for a dealer to sell an RUP after the expiration date and prior to the renewal of its dealer license.
- 7) Create a new Part 15. Part 15.1 creates recordkeeping requirements for pesticide refillers. Part 15.2 creates cleaning guidelines for refillable containers. Part 15.3 creates cleaning requirements when tamper-evident devices or one-way valves are not intact. Create a new Part 10.1(h) to prohibit distribution of a pesticide product in a container that has not had the residue removal procedure performed.
- 8) Update application submission language, address information, references to 40 C.F.R. and references to pesticide products through the rules.

### Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. S.B. 10-034 changed the Act to permit the Commissioner to exempt certain pesticides from registration consistent with FIFRA. Part 3.1(a) reiterates the statutory provision that CDA may exempt products in accordance with FIFRA. Part 3.1(b) specifies certain products that are not

exempt from registration in Colorado. CDA will exempt certain pesticides from registration through policy.

2. Part 3.5 is being repealed consistent with the recent repeal of the provisions in the pesticide act that specified collection of a penalty fee from registrants upon registration of a product that had previously been found unregistered in the marketplace.
3. Parts 3.10, 3.11, 3.12, 3.15, 3.18 and 3.19 are amended to update outdated language in the registration requirements, to clearly reflect current business procedures and set registration expiration and renewal dates in Rule as allowed now by S.B. 10-034. The ability to change renewal dates in Rule will allow CDA to stagger registration renewal dates and spread the work load of processing 11,000+ registration renewals if CDA chooses to in the future.
4. Parts 3.20 through 3.24 are business procedures that were placed in Rule in 1996 due to a back log of registration requests and complaints from industry. CDA has since modified procedures and registration processes to avoid backlogs. Repeal of these provisions will allow these processes to be more efficiently addressed through CDA's business procedures and policies.
5. All pesticides registered in Colorado must have labeling that conforms to provisions outlined under 40 C.F.R. § Part 156, which describes what elements must be on a pesticide label such as ingredient statements, net weight, EPA registration number, etc. The existing language in Part 4.1 requires all pesticides to meet these labeling requirements except liquid chemical sterilants. The amendment to Part 4.1 now addresses the additional authority provided as a result of S.B. 10-034 to exempt certain pesticides from registration by clarifying that those pesticides are exempt from the labeling requirements in Part 4.2. Part 4.2 was amended to update references to 40 C.F.R. that detail labeling requirements for pesticides required to registered in Colorado pursuant to Part 3.1 or the Pesticide Act.
6. Pesticide dealer licenses expire on December 31 of each year. CDA has found during records inspections that the some dealers continue to sell RUPs during the time period that their license was expired and prior to their renewal or a new application being submitted. The creation of a new Part 11.1(i) will clearly state that it is a violation, subject to civil penalties, for a dealer to sell an RUP after the expiration date and prior to the renewal or new application for a dealer license.
7. Section 19(f), Residue Removal Requirements, of FIFRA requires that states must have the authority to ensure pesticide refillers comply with the residue removal requirements. CDA historically has only had the authority to regulate registered pesticides from the distribution point forward and had no authority to regulate producer establishment or refiller establishment activities. S.B. 10-034 amended the Pesticide Act to provide CDA the authority to regulate producer establishments for the purpose of enforcing and ensuring compliance with the federal pesticide residue removal requirements. A new Part 15 was created to conform to the statutory provisions that require pesticide refillers to maintain records and clean refillable containers prior to distribution.  
  
A new Part 10.1(h) was created to prohibit distribution of a pesticide product in a container that has not had the residue removal procedure performed. Part 10.1(h) will make it a violation to distribute a product if the pesticide residue removal procedures have not been conducted in accordance with Part 15 of the Rule.
8. Throughout the Pesticide Act CDA is updating application submission language, such as applications must be "postmarked", to remove impediments for future electronic submissions; updates to CDA's address, references to 40 C.F.R. and references to pesticide products to

ensure the Pesticide Act clearly reflects CDA's current business practices and maintains consistent language throughout the Act.

### **20.13 Adopted November 10, 2015 – Effective December 30, 2015.**

#### Statutory Authority

These amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act ("Act"), specifically § 35-9-118(2), C.R.S

#### Purpose

The purpose of these proposed Rules is to update language to reflect the Department's current physical address and websites for materials incorporated by reference. Specifically:

1. Update Part 3 and Part 19 with the Department's current address.
2. Update Part 19 with current website links.
3. Correct formatting and grammatical errors.
4. These amendments incorporate changes as a result of the Department's Regulatory Efficiency Review Process.
5. Rule 12.4 is being updated to reflect the changes that resulted in the Department taking over the certification and regulation of Private Pesticide applicators in 2007 and who are no longer certified through the EPA.

#### Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. In May of 2014 the Colorado Department of Agriculture moved from 700 Kipling St, Denver, CO to 305 Interlocken Parkway, Broomfield, CO. Part 3 of the Rule outlines registration requirements and references the Department's address for submission. Part 19 outlines where certified copies of materials incorporated by reference may be obtained, which references the Department's address as well. The proposed amendments update the Department's address in each of these Parts.
2. Part 19 provides website address where materials incorporated by reference may be obtained at no cost. The proposed amendments update these web addresses.

### **20.14 Adopted November 9, 2016- Effective December 30, 2016**

#### Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act ("Act"), specifically § 35-9-118(2)(f), C.R.S

## Purpose

The purpose of these proposed rules is to:

1. Amend Part 2 of the Rule to further clarify when substances or mixture of substances will be considered to be a pesticide subject to regulation under the Act.

## Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Part 2 of the current Rule lists several factors the Department considers in determining if a substance or mixture of substances is a pesticide that is subject to regulation under the Act, including: (1) if a product bears pesticidal claims; (2) if collateral advertising makes pesticidal claims or recommendations; (3) if pesticidal claims are made verbally or in writing by the manufacturer or distributor and; (4) if the product is intended for use as a pesticide or other purpose.
2. Part 2 does not address products that contain pesticides where the manufacturer or distributor has made no pesticidal claims or statement of intended use. This amendment clarifies that the physical presence of a pesticide in a product, for which there is no significant commercially valuable non-pesticidal purpose when the product is used as intended (e.g., applied to the leaves of a plant), is sufficient to establish that the product is a pesticide subject to regulation under the Act – regardless of the lack of any pesticidal claims, advertising or statements or intent by the distributor.
3. Recently, it came to the Department's attention that a product was being sold and distributed in Colorado. This product was sold as a leaf polish and made absolutely no pesticidal claims. The product was tested and found to contain the pesticide active ingredient pyrethrin. The Department has subsequently identified other products sold for use on plants that contain other pesticides not disclosed on the label or mentioned in any of the distributor's product advertising.
4. This amendment makes clear that any such product is considered a pesticide under the Act and thus must be registered under the Act in order to be legally distributed in this state. Products containing pesticidal substances that are not registered are subject to stop sale orders and /or civil penalties.
5. This amendment to the Rules implementing Colorado's Pesticide Act compliments the federal regulations implementing the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 40 C.F.R. §152.15, which similarly requires registration under FIFRA of products containing active ingredients that have no non-pesticidal use, regardless of the absence of pesticidal claims.

### **20.15. Adopted September 20, 2017 - Effective November 30, 2017**

#### Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Act ("Act"), specifically § 35-9-118(2)(f) and (h), C.R.S.

#### Purpose

The purpose of the proposed Rules is to:

Amend Parts 1, 3, 4, and 5 of the Rule to cite the most current version of Title 40 of the Code of Federal Regulations ("C.F.R.").

#### Factual and Policy Issues

The factual and policy issues encountered when developing these Rules include:

1. On February 26, 2016, the Environmental Protection Agency revised 40 C.F.R Part 152 to more clearly describe the active and inert ingredients that are permitted in products eligible for the minimum risk pesticide exemption.
2. 40 C.F.R. is incorporated by reference in the Act at Part 1, Definitions and Construction of Terms; Part 3, The Registration System; Part 4, Label Requirements; and Part 5, Coloration and Discoloration. The last 40 C.F.R. date referenced in the Act is 2009.
3. Updating the C.F.R. date reference to 2016 ensures that CDA's administration of the Act is consistent with current Federal law concerning minimum risk pesticide exemptions.

#### **20.16. Adopted September 17, 2019 – Effective October 30, 2019**

#### Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to the authority under the Pesticide Act ("Act"), specifically §§ 35-9-107(2) and 35-9-118(3)(a), C.R.S

#### Purpose

The purpose of these proposed amendments is to:

Amend Part 3 of the Rules Pertaining to the Administration and Enforcement of the Pesticide Act (the "Rule") to increase Pesticide Registration fees by \$40 to increase funding for the Department's state waters protection efforts as expanded by Senate Bill 19-186.

#### Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Pursuant to section 35-9-118(3)(a), C.R.S., any fee collected under the pesticide registration program shall have an increment approved by the Agricultural Commission to fund the Groundwater Protection Program. Currently, the Groundwater increment is set at \$40.
2. During the 2019 legislative session, the Colorado General Assembly introduced SB 19-186, effective August 2, 2019. SB 19-186 modified section 35-9-118(3)(a), changing "groundwater protection efforts" to "state waters protection efforts." This change expanded the scope and cost of implementing the program.
3. The current pesticide registration fee is set forth in the Pesticide Act, Part 3.4, and is \$165. The Department of Agriculture registers an average of 14,000 pesticide products per year.

4. The Department of Agriculture proposes a fee increase of \$40 per pesticide product registered in Colorado, increasing the registration fee to \$205. The fee increase will generate, based on average registration renewals, an estimated \$560,000 to the state waters program to cover increased program expenses.
5. SB 19-186 appropriated \$239,592 for the 2019-20 fiscal year to assist with the implementation of the state water sampling program. Subsequent to the first year of implementation, the estimated annual budget to operate the full state waters program will be \$623,605. The remaining expenditures, not covered by the pesticide registration funding increase, will be realized by fertilizer tonnage fee revenues, as set forth in SB 19-186.
6. The Department discussed the proposed \$40 increase to pesticide registration fees with the Pesticide Advisory Committee on April 22, 2019, at a regularly scheduled committee meeting in accordance with section 35-9-118(3)(a), C.R.S.
7. In 2017 the Virginia Department of Agriculture conducted a national survey on state pesticide registration fees. Thirty-six states responded; of those twelve states have pesticide registration fees that exceed \$205 per product, the highest registration fee being set at \$1,150 per product. Colorado's proposed fee is thirteenth in comparison to those states responding.