

# TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

## CHAPTER 65-70 PESTICIDE REGULATIONS

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Chapter Authority: 1 CMC §§ 2646-2649; 1 CMC § 2650; 2 CMC §§ 3101-3135; 2 CMC §§ 3311-3333, 2 CMC §§ 3511-3521.

Chapter History: Amds Adopted 39 Com. Reg. 39324 (Mar. 28, 2017); Amdts Proposed 38 Com. Reg. 39070 (Dec. 28, 2016); Certified and Adopted 37 Com. Reg. 36789 (July 30, 2015); Amdts Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013); Amdts Adopted

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19 Com. Reg. 15564 (Aug. 15, 1997); Amdts Proposed 19 Com. Reg. 15197 (Mar. 15, 1997); Amdts Proposed 16 Com. Reg. 11943 (June 15, 1994);\* Amdts Adopted 16 Com. Reg. 11716 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11101 (Dec. 15, 1993); Adopted 5 Com. Reg. 2108 (May 27, 1983); Proposed 5 Com. Reg. 1912 (Mar. 31, 1983).

\*A notice of adoption for the June 1994 proposed amendments was never published.

Commission Comment: For a complete history of the authority of the Division of Environmental Quality (DEQ), see the commission comment to NMIAC chapter 65-10.

The “Commonwealth Groundwater Management and Protection Act of 1988,” PL 6-12 (effective Nov. 3, 1988), is codified at 2 CMC §§ 3311-3333. The act creates a permitting system to regulate the withdrawal and use of groundwater resources in the Commonwealth. 2 CMC § 3312. DEQ is authorized to promulgate rules and regulations to implement the act. 2 CMC § 3321.

The “Commonwealth Solid Waste Management Act of 1989,” PL 6-30 (effective May 23, 1989), is codified as amended at 2 CMC §§ 3511-3521. The act provides for collection, disposal and management systems for solid waste. DEQ is authorized to issue regulations to implement the act. 2 CMC § 3515.

The 2013 amendments repealed and re-enacted this chapter with extensive revisions.

Executive Order No. 2013-24, promulgated at 35 Com. Reg. 34596 (Nov. 28, 2013), established a new Bureau of Environmental and Coastal Quality. This Order reorganized the Division of Environmental Quality as a division of the Bureau of Environmental and Coastal Quality, and provided that “all rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.”

### **Part 001 - General Provisions**

#### **§ 65-70-001 Authority and Scope**

The regulations in this chapter have been promulgated by the Division of Environmental Quality in accordance with 2 CMC §§ 3101 to 3134 (Commonwealth Environmental Protection Act), 2 CMC §§ 3311 to 3333 (Groundwater Management and Protection Act), and 2 CMC §§ 3511 to 3521 (Solid Waste Management Act). These regulations shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013); Amdts Proposed 16 Com. Reg. 11943 (June 15, 1994); Amdts Adopted 16 Com. Reg. 11716 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11101 (Dec. 15, 1993); Adopted 5 Com. Reg. 2108 (May 27, 1983); Proposed 5 Com. Reg. 1912 (Mar. 31, 1983).

Commission Comment: The February 1994 amendments readopted and republished the 1983 Pesticide Regulations in their entirety with extensive revisions. The Commission, therefore, cites the 1994 amendments in the history sections throughout this chapter.

The June 1994 proposed amendments republished the Pesticide Regulations in their entirety with numerous amendments. A notice of adoption for the June 1994 proposed amendments was never published and, therefore, although the Commission cites the June 1994 proposed amendments in the history sections through out this chapter, the Commission has not incorporated the proposed changes.

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The Commission inserted the word “with” after “in accordance” to correct a manifest error.

### § 65-70-005 Purpose

The purpose of the regulations in this chapter is to establish a system of control over the importation, distribution, sale, use, storage, and disposal of pesticides by persons within the Commonwealth of the Northern Mariana Islands for the protection of public health and the prevention of environmental contamination.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013); Amdts Proposed 16 Com. Reg. 11943 (June 15, 1994); Amdts Adopted 16 Com. Reg. 11716 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11101 (Dec. 15, 1993); Adopted 5 Com. Reg. 2108 (May 27, 1983); Proposed 5 Com. Reg. 1912 (Mar. 31, 1983).

Commission Comment: The Commission inserted commas after the words “use” and “storage” pursuant to 1 CMC § 3806(g).

### § 65-70-010 Definitions

(a) “Active ingredient” means:

- (1) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, mitigate any pest.
- (2) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.
- (3) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.
- (4) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(b) “Adulterated” means any pesticide if its strength or purity falls below the professed standard of quality as expressed on the labeling under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(c) “Agricultural establishment” means any operation engaged in the production and maintenance of agricultural plants, which may include a farm, nursery, green house, or forest area.

(d) “Banned pesticide” means any pesticide that has been banned by the Division of Environmental Quality for importation, distribution, sale, and use. DEQ has banned pesticides with an active ingredient that is toxic, cancer-causing, or which poses a well-established risk to human health and the environment.

(e) “Banned use” means any use or application which is prohibited by the Division of Environmental Quality, any use which is suspended or canceled by the U.S. EPA.

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- f) “Core training” means the basic pesticide safety and education training required for certification for commercial and private applicators; training shall include but is not limited to labeling, safety factors, environmental consequences, pest identification and characteristics, pesticide types, formulations and dilutions, equipment maintenance and calibration, application techniques, pesticide laws and regulations, and other relevant information as deemed necessary, including but not limited to worker protection standards, record keeping, new developments, and other pertinent matters.
- (g) “Certified pesticide applicator” means any individual who is certified by the Director to use general use or restricted use pesticides under these regulations.
- (h) “Commercial applicator” means any applicator that applies pesticides for commercial purposes.
- (i) “Commercial purposes” means the use of pesticides:
- (1) By persons in the business of providing pest control services or contracting to provide pest control plans or providing pest control services for hire, including, but not limited to, the extermination of ants, termites, rodents, or plants, and;
  - (2) By persons using pesticides in the maintenance of exterior resort grounds, golf courses, green houses, or other agricultural establishments.
- (j) “Compensation” means pay or wages, payment through services or goods, or barter of services or goods.
- (k) “DEQ” means the Division of Environmental Quality unless otherwise specified.
- (l) “Device” means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately there from.
- (m) “Director” means the Director of the Division of Environmental Quality unless otherwise specified.
- (n) “Employer” means for the purposes of the workers protection program a person who:
- (1) Employs or contracts for the services of workers (including themselves and members of their family) for any type of compensation to perform tasks related to the production of agricultural plants, maintenance of resorts, or commercial pest control (e.g. rodent and termite extermination); or
  - (2) Owns or operates an agricultural, resort, or commercial pest control facility.
- (o) “EPA” or “USEPA” means the United States Environmental Protection Agency.

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(p) “FIFRA” means the U.S. Federal Insecticide, Fungicide, and Rodenticide Act, codified at 7 U.S.C. §§ 136 to 136y.

(q) “Fumigant” means any pesticide that is a vapor or gas or forms a product that is a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

(r) “Handler” or “pesticides handler” means any person, including a self-employed person:

(1) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment, or commercial resort and who is:

(i) Mixing, loading, transferring, or applying pesticides.

(ii) Disposing of pesticides or pesticide containers.

(iii) Handling opened containers of pesticides.

(iv) Acting as a flagger.

(v) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(vi) Assisting with the application of pesticides.

(vii) Entering a greenhouse or other enclosed area after the application and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria or in the labeling has been met to operate ventilation equipment, to adjust or remove covering used in fumigation or to monitoring air levels\*:

(viii) Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.

(ix) Performing tasks as a crop advisor during any pesticide application, before any inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria or in the labeling has been met and during any restricted-entry interval.

(2) The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions, or in the absence of such instructions, have been subjected to triple-rinsing or its equivalent.

(s) “Label” means the written, printed or graphic matter on, or attached, to, the pesticide or device or any of its containers or wrappers.

(t) “Labeling” means all labels and all other written, printed, or graphic matter accompanying the pesticides, or to which reference is made on the label or in literature accompanying the pesticide, except to current official publications of the U.S. Environmental Protection Agency, the United States Departments of Agriculture and Interior, or the U.S. Department of Health and Human Services.

(u) “Licensed dealer” means any person who is licensed by the Director to sell or distribute restricted use pesticides.

(v) “MSDS” means material safety data sheets as required under the Occupational Safety and Health Act of 1970 (29 USC §§ 651, et seq.) as amended and its implementing regulations.

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- (w) “Misbranded” means any pesticide if:
- (1) The label does not conform to the US EPA requirements for labeling or packaging.
  - (2) The labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
  - (3) The label is not in English, or lacks any of the following information:
    - (i) Name of a pesticide in bold letters;
    - (ii) Restricted use designation (if applicable);
    - (iii) Description of which pests are controlled;
    - (iv) Chemical name of pesticide;
    - (v) Active ingredients;
    - (vi) Appropriate signal words
      - (A) Caution;
      - (B) Warning; or
      - (C) Danger Poison;
    - (vii) Directions for proper use; and
    - (viii) Any additional DEQ labeling requirement not conspicuously displayed on each container.
- (x) “Owner” means any person who has a present possessory interest (e.g. fee, leasehold, rental, or other) in land or a business, except where the owner has relinquished control over and transferred full authority to another to manage the use of the land or business.
- (y) “Person” means an individual, corporation, partnership, association, joint ventures, commercial entity, government, political subdivision, commission, or interstate body.
- (z) “Personal protective equipment” or “PPE” means apparel and devices worn to protect the body from contact with pesticides or pesticide residues, including:
- (1) Coveralls;
  - (2) Chemical-resistant suits;
  - (3) Chemical-resistant gloves;
  - (4) Chemical-resistant footwear;
  - (5) Chemical-resistant aprons;
  - (6) Chemical-resistant headgear;
  - (7) Protective eye-wear; and
  - (8) Respirators.
  - (9) Items of ordinary clothing, including long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing, are not considered personal protective equipment for purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.
- (aa) “Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest as defined pursuant to FIFRA. A product is not a pesticide if it is a product intended for use only for the control of fungi, bacteria, viruses, other microorganisms or invertebrate parasites or nematodes in or on living

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humans or animals, and labeled accordingly; and products that are intended to exclude pests only by providing a physical barrier against pest access.

(bb) “Private applicator” means a certified applicator who uses any pesticide which is classified as restricted use for purposes of producing any agricultural commodity on property owned or rented by him or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(cc) “Restricted use pesticide” or “RUP” means a pesticide, one or more uses of which have been restricted by USEPA under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or by DEQ under these regulations, or which bears on its label the phrase “restricted use pesticide.”

(dd) “Restricted-entry interval” means the time after the end of a pesticide application during which entry to the treated area is restricted.

(ee) “Use” means:

(1) All activities related to the instructions and precautions contained on the label, including but not limited to, directions for use, handling and disposal, precautionary statements, worker protection, protective equipment, and storage and transportation requirements;

(2) Pre-application activities, including, but not limited to:

(i) Arranging for the application of the pesticide;

(ii) Mixing and loading the pesticide; and

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of handlers, decontamination, use and care of personal protective equipment, emergency information, and heat stress management;

(3) Application of the pesticide;

(4) Post-application activities necessary to reduce the risks of illness and injury resulting from handlers’ and workers’ occupational exposures to pesticide residues during the restricted-entry interval plus 30 days. These activities include, but are not limited to, responsibilities related to worker training, notification, and decontamination; or

(5) Other pesticide-related activities, including, but not limited to, providing emergency assistance, transporting or storing pesticides and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(ff) “Worker” means anyone who:

(1) Is employed (including self employed) for any type of compensation and

(2) Is doing tasks, such as harvesting, weeding, or watering, relating to the production of agricultural plants on a farm, forest, nursery, or greenhouse.

(gg) “40 CFR” shall mean Title 40 of the Code of Federal Regulations revised as of July 1, 2012.

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\* So in original.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Amds Adopted 39 Com. Reg. 39324 (Mar. 28, 2017); Amdts Proposed 38 Com. Reg. 39070 (Dec. 28, 2016); Amdts Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013); Amdts Proposed 16 Com. Reg. 11943 (June 15, 1994); Amdts Adopted 16 Com. Reg. 11716 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11101 (Dec. 15, 1993); Adopted 5 Com. Reg. 2108 (May 27, 1983); Proposed 5 Com. Reg. 1912 (Mar. 31, 1983).

Commission Comment: The February 1994 amendments added 44 new definitions, deleted former subsection (e) and made numerous amendments to the existing definitions.

The June 1994 amendments proposed to add a new subsection (rrr) and republished this section in its entirety with numerous amendments. A notice of adoption for the June 1994 amendments was never published and, therefore, the Commission has not incorporated the proposed changes.

The 2013 amendments made extensive changes to this section.

The Commission The Commission inserted commas after the words “sale” and “use” in subsection (d), “developments” in subsection (f), “plants” in subsection (i)(1), “houses” in subsection (i)(2), and “commission” in subsection (y) pursuant to 1 CMC § 3806(g). The Commission corrected punctuation at the ends of subsections (i), (i)(1), and (ee)(2) pursuant to 1 CMC § 3806(g). The paragraphs of subsection (z) were undesignated in the original regulation. The Commission designated them as subsections (z)(1) through (z)(9) pursuant to 1 CMC § 3806(a). The Commission corrected the spelling of “U.S.” in subsection (p) pursuant to 1 CMC § 3806(g).

### **§ 65-70-015 Administration of the CNMI Pesticides Regulations**

The Director is authorized to take such action as may be necessary in the administration and enforcement of these regulations.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013); Amdts Proposed 16 Com. Reg. 11943 (June 15, 1994); Amdts Adopted 16 Com. Reg. 11716 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11101 (Dec. 15, 1993); Adopted 5 Com. Reg. 2108 (May 27, 1983); Proposed 5 Com. Reg. 1912 (Mar. 31, 1983).

## **Part 100 - Unlawful Acts**

### **§ 65-70-101 General**

(a) Except as otherwise exempted in § 65-70-105 it shall be unlawful for any person within the CNMI to use, to import, or to sell, distribute, deliver, or offer to deliver to any person:

- (1) Any pesticide which is adulterated or misbranded including, but not limited to, pesticides that are not labeled in English;
- (2) Any pesticide that is banned by DEQ or, cancelled, suspended, not registered by EPA;
- (3) Any pesticide or device that is misbranded or not produced in an EPA registered establishment; or

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(4) Any pesticide that DEQ determines to pose an unreasonable risk to human health and the environment.

(b) It shall be unlawful for any person:

(1) To detach, alter, deface, or destroy, in whole or in part, any labeling, unless such action is taken with the written approval of the Director to correct an improper label or labeling;

(2) To refuse to keep any records required pursuant to these regulations; or to refuse to allow the inspection of any records; or to refuse to allow the Director or the Director's designee to investigate potential pesticide violations or to take samples of pesticides and pesticide residues as authorized by law for any purpose consistent with these regulations;

(3) To use any pesticide in a manner inconsistent with its labeling;

(4) To violate any order issued pursuant to these regulations or the Acts;

(5) To violate any ban or restriction regarding the use, importation, or distribution or sale of pesticides or devices issued by DEQ;

(6) To knowingly falsify all or part of any application for certification, license, importation, or use, or any record required to be maintained under these regulations;

(7) To sell or distribute restricted use pesticides unless licensed by DEQ to do so;

(8) To sell or distribute any restricted use pesticide to any person other than a licensed dealer or an applicator certified by DEQ;

(9) To use, store, transport, mix or discard any pesticide or the containers of such pesticide in such a way as to pose a hazard to human health or the environment;

(10) To use or apply restricted use pesticides unless certified by DEQ or under the direct supervision of an applicator certified by DEQ;

(11) To use or apply pesticides for commercial purposes unless acting under the supervision of a certified applicator;

(12) To reveal any confidential information acquired in the administration of these regulations relative to formulas of products to persons other than proper officers or employees of the DEQ or U.S. government, or to courts in response to subpoena, or to physicians, or, in emergencies, to pharmacists or other qualified persons for use in the preparation of antidotes or to use such confidential information for personal advantage;

(13) To violate these regulations in any way including but not limited to violating requirements regarding storage, use, record keeping, and worker's protection whether set forth in these regulations, the label, a permit, an order or a certification;

(14) To manufacture or otherwise produce pesticides, including re-packaging, refilling, or relabeling, for sale or resale, in the CNMI.

(c) When a permit application is required prior to application of a pesticide, application of a pesticide without a permit is a violation of these regulations. Applicants must follow all requirements in the permit.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013); Amdts Proposed 16 Com. Reg. 11943 (June 15, 1994); Amdts Adopted 16 Com. Reg. 11716 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11101 (Dec. 15, 1993); Adopted 5 Com. Reg. 2108 (May 27, 1983); Proposed 5 Com. Reg. 1912 (Mar. 31, 1983).

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Commission Comment: The February 1994 amendments added new subsections (b)(13) through (b)(15), deleted former subsections (b)(4) and (b)(7) and readopted and republished this section in its entirety with numerous amendments.

The June 1994 amendments proposed to amend subsection (b). A notice of adoption for the June 1994 proposed amendments was never published and, therefore, the Commission has not incorporated the proposed changes.

The 2013 amendments repealed former subsection (b)(15), added subsection (c), and amended several other subsections.

The Commission inserted commas after the words “deliver” in subsection (a), “importation” in subsections (b)(5) and (b)(6), and “refilling” in subsection (b)(14) pursuant to 1 CMC § 3806(g).

### **§ 65-70-105 Exemptions**

(a) The penalties provided for a violation of § 65-70-101 shall not apply to:

(1) Any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device in violation solely from the carrier’s reasonable failure to detect that an item shipped was an illegal pesticide or device. If such a carrier upon request of any officer or employee duly designated by DEQ shall permit such officer or employee to copy all of its records concerning such pesticide or device;

(2) The use of a pesticide that is a blend that conforms to the standards in 40 CFR § 167.3 for custom blenders, where the person uses the pesticide on his own property;

(3) Any public official while engaged in the performance of the official duties of the public official;

(4) Any person using or possessing an experimental use permit from EPA pursuant to federal law and with concurrent approval from DEQ for the pesticide’s use or possession;

(5) Any person who ships a substance or mixture of substances being put through tests in which the purpose is solely to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use; or

(6) Any person lawfully acting in compliance with an order from the Director to remove a pesticide from the CNMI.

(b) Section 65-70-101(a)(2) does not apply to products not registered by EPA if:

(1) Distribution and sale without registration has been authorized by EPA by 40 CFR 152.20 (pesticides adequately regulated by another federal agency); 40 CFR 152.25 (pesticides of a character not requiring FIFRA registration); or 40 CFR 152.30(e), (f), and (g) (pesticides that may be transferred, sold, or distributed without registration) provided that such product is not banned by DEQ; or

(2) Use of an unregistered pesticide if that pesticide has not been manufactured or produced in violation of Section 5.1.1.N\*, not been banned by DEQ, and not been transferred, distributed, or sold in violation of FIFRA.

\* So in original. See Commission Comment.

Modified, 1 CMC § 3806(c), (f).

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History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The February 1994 amendments deleted former subsections (b) and (c). The 2013 amendments completely rewrote this section. Section 5.1.1.N, referenced in subsection (b)(2), did not exist in the original regulations.

The Commission inserted commas after the words “(f)” in subsection (b)(1) and “distributed” in subsection (b)(2) pursuant to 1 CMC § 3806(g).

### **Part 200 - Importation**

#### **§ 65-70-201 Introduction**

(a) DEQ regulates the importation of pesticides in the Commonwealth. Importation of any banned or misbranded pesticide or pesticide device is a violation of these regulations under 65-70-101(a). Importation of any unregistered pesticide, but not pesticide device, is a violation of these regulations.

(b) Any banned, misbranded or unregistered pesticide, any pesticide device without an establishment number, or any pesticide shipment otherwise not in compliance with these pesticide regulations, may be detained, or denied entry to the extent permitted by law, by the DEQ Director or by Customs Officers, or Agricultural Quarantine Officers.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: This section was an introduction to Part 6 of the original regulation. The Commission divided it into subsections and codified it as section 65-70-201 pursuant to 1 CMC § 3806(a). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

#### **§ 65-70-205 Shipments Requiring Advance Notice**

(a) DEQ regulates the importation of pesticides in the Commonwealth, specifically any restricted use pesticide from any country into the CNMI; any pesticide or pesticide device manufactured in or shipped by or through a foreign country; any termiticide, including those used for crack, crevice, and spot treatment; and all general use pesticides used to control pests on fruit and/or vegetable crops or other agricultural products.

(b) Notice of Intent

(1) Restricted Use Pesticide (RUP). Any person desiring to import a Restricted Use Pesticide (RUP) regardless of origin or quantity must submit a notice of intent to the Director on a form provided for that purpose. The form must be accompanied with the Material Safety Data Sheet and a copy of the pesticides label. Upon approval of the RUP, the importer can make importation arrangements. For the purposes of this section, any pesticide that has had a particular use banned by DEQ, but which can be imported into the CNMI, shall require advance notice as set forth in this Part. Import of a banned pesticide wholly prohibited for import is also a violation of this section.

(2) General Use Pesticides (GUP).

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(i) A person desiring to import a pesticide or pesticide device manufactured in or shipped from or through any country other than the United States or U.S. territories into the CNMI shall submit a notice of intent to the Director on a form provided for that purpose. The form must be accompanied with the Material Safety Data Sheet and a copy of the pesticides label. Upon approval of the GUP, the importer can make importation arrangements.

(ii) A person desiring to import a pesticide labeled for use for agricultural plants, hospital-grade disinfection, fumigation, or termite control, including crack, crevice, and spot treatment in houses, apartment buildings, hotels, restaurants, schools, stores, warehouses, and other industrial buildings, shall submit a notice of intent to the Director on a form provided for that purpose. Persons engaging in a commercial purpose as defined in section 65-70-101(i), such as resorts, farmers and exterminators, must also submit a notice of intent in order to import any pesticide used for a commercial purpose. The form must be accompanied with the Material Safety Data Sheet and a copy of the pesticides label. Upon approval of the GUP, the importer can make importation arrangements.

(3) Each Notice of Intent to Import (“NOI”) shall indicate how the importer intends to use the pesticide, so that DEQ can ensure that such use complies with the law, prior to arrival of the pesticide. The form must be accompanied with the Material Safety Data Sheet and a copy of the pesticides label. Upon approval of the NOI, the pesticide or device may be ordered or shipped. The importer must submit to DEQ the label and MSDS for each pesticide or device imported for the first time in a calendar year. If the importer intends to import the same pesticide or device during the same calendar year, and has submitted all of the appropriate paperwork, the label and MSDS is not required to be submitted again in the same calendar year.

### (c) Notice of Arrival

Upon arrival of the pesticide or device specified in this section, the Director shall be notified by the importer on a form provided by DEQ. The Notice of Arrival is not to be substituted for the Notice of Intent to import. No pesticide or device can be imported or released into the CNMI without DEQ’s written approval on the Notice of Arrival. Approval of the Notice of Intent or Notice of Approval shall not be a defense against liability and shall not limit any action taken by DEQ for any violation of these regulations.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission designated subsection (a) and (b)(3) pursuant to 1 CMC § 3806(a). The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission inserted commas after the words “crevice” and “warehouses” in subsection (b)(2)(ii) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the word “territories” in subsection (b)(2)(i) pursuant to 1 CMC § 3806(f).

### **§ 65-70-210 Shipments Arriving Without Notice**

When a shipment of a pesticide or device specified in section 65-70-205 arrives in the CNMI without either the Notice of Intent or the Notice of Arrival, the shipment shall be

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detained or denied entry into the CNMI. The Director shall then determine whether the pesticide should be admitted into the CNMI and provide instructions for disposition of the shipment.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

### **§ 65-70-215 Inspection**

#### (a) Inspection

Upon arrival of any shipment containing a pesticide or device, DEQ, or other agencies or their personnel as agreed by the Director, may inspect the pesticide or device.

#### (b) Inspection of Shipments Requiring Notice

Upon arrival of the shipment of a pesticide or device requiring notice under this section, DEQ, or other agencies or their personnel as agreed by the Director, may inspect the pesticide or device and shall compare the findings from examining the pesticide or device to entry papers for the shipment with the information provided by the consignee/importer on the notice to DEQ. If no discrepancies are noted and no violations are found, the shipment shall be released. However, if any discrepancies are noted or violations are found, the shipment may be detained until the Director resolves such discrepancies or determines that the pesticide or device must be denied entry, returned, or destroyed in accordance with section 65-70-220.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission inserted a comma after the word “returned” pursuant to 1 CMC § 3806(g).

### **§ 65-70-220 Detained, Denied, and Impounded Shipments**

(a) All expenses arising from detainment, denial, impoundment, or disposing of a pesticide or device shipment that would have been averted by compliance with these regulations, including but not limited to the timely submission of the Notice of Intent or Notice of Arrival, shall be payable by the importer.

(b) For any detained shipment, the consignee/importer shall have sixty days from arrival in which to return or dispose of the pesticide or device in a manner approved of by the Director. If the importer/consignee fails to return or dispose of the pesticide or device within the 60 day period, the Director may sell, dispose, or destroy the pesticide or device in a manner consistent with law and all expenses for storage, cartage, labor, shipping, and disposal costs shall be payable by the consignee/importer and in default of such payment shall constitute a lien against any further items of any nature imported by the consignee/importer.

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(c) If the consignee/importer does not satisfy any and all liens against such imports within 60 days after notification in writing of the amount of said liens, the Director shall instruct the Attorney General to enter into such action as may be necessary to effect transfer of ownership of the imports to the CNMI government for satisfaction of said liens. This section does not preclude recovery of any additional costs that may be expended by the government.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The paragraphs of this section were undesignated in the original regulation. The Commission designated them as subsections (a) through (c) pursuant to [1 CMC § 3806\(a\)](#). The Commission struck the figure “60” from subsection (b) pursuant to [1 CMC § 3806\(e\)](#). The Commission inserted commas after the words “dispose” and “shipping” in subsection (b) pursuant to [1 CMC § 3806\(g\)](#). The Commission corrected the capitalization of the word “government” in subsection (c) pursuant to [1 CMC § 3806\(f\)](#).

In July 2015, the Bureau of Environmental and Coastal Quality published a Notice of Certification and Adoption of Rule, Adoption of “Interpretive Rule on Pesticide Storage Certification Fees” in the Commonwealth Register, 37 Com. Reg. 36789 (July 30, 2015). This rule was adopted pursuant to [1 CMC § 9102](#) and not in accordance with [1 CMC § 9104](#). As such, the rule is not codified as a numbered section.

In July 2017, the Bureau of Environmental and Coastal Quality published a Notice of Repeal of Rule, Repeal of “Interpretive Rule on Pesticide Storage Certification Fees” in the Commonwealth Register, 39 Com. Reg. 39847 (July 28, 2017).

### **§ 65-70-225 Fees**

(a) Persons desiring to import a Restricted Use Pesticide shall pay a non-refundable fee of fifty dollars for each shipment, accompanying the Notice of Arrival (NOA) form.

(b) Persons desiring to import a General Use Pesticide shall pay a non-refundable fee of fifteen dollars for each shipment, accompanying the Notice of Arrival (NOA) form.

(c) Consignee/importer who imports a pesticide or device that has been detained or denied entry and impounded, shall pay a non-refundable storage fee of \$10 per day for each storage container (i.e. 55-gal drum) starting from the date of arrival, as intercepted by DEQ or authorized agents, until the pesticides and/or devices are returned or disposed, for the first 30 days. After the initial 30 days, the storage fee shall be increased to \$20 per day for each storage container until the pesticide or device is shipped to a certified disposal facility.

(d) Consignee/importer who imports a pesticide or device that has been detained or denied entry and impounded, that require special handling, including but not limited to restricted use pesticides (RUP), fumigants, gaseous pesticides, and banned pesticides shall be assessed a non-refundable storage fee of \$25 per day for each storage container (i.e. 55-gal drum) starting from the date of arrival, as intercepted by DEQ or authorized agents, until the pesticides and/or devices are returned or disposed, for the first 30 days. After the initial 30 days, the storage fee shall be increased to \$35 per day for each storage container until the pesticide or device is shipped to a certified disposal facility.

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Modified, 1 CMC § 3806(g).

History: Amds Adopted 39 Com. Reg. 39324 (Mar. 28, 2017); Amdts Proposed 38 Com. Reg. 39070 (Dec. 28, 2016); Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission struck the figure “\$50” from subsection (a) and “\$15” from subsection (b) pursuant to 1 CMC § 3806(e).

In codifying 39 Com. Reg. 39324, the Commission changed “banned pesticides and shall” to “and banned pesticides shall” pursuant to 1 CMC § 3806(g).

### **Part 300 - Use of Pesticides**

#### **§ 65-70-301 Introduction**

DEQ may, at its discretion, based on factors such as acreage, types of pesticides, volume of pesticides, location, and geological features, including proximity to surface water and drinking water, require the submission of an integrated pest management plan for DEQ’s approval. The integrated pest management plan is an approach to manage pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks. DEQ may prescribe the forms for the submission of the plan. The plan must be approved by DEQ prior to pesticide use. The plan must be revised and resubmitted once every two years for DEQ’s approval. Applicator is required to follow the approved plan and deviations must be approved by DEQ in advance. Failure to follow the plan shall be considered a violation of these regulations.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: This section was an introduction to Part 7 of the original regulation. The Commission codified it as section 65-70-301 pursuant to 1 CMC § 3806(a).

#### **§ 65-70-305 Pesticide Use Permit Application for Termiticide Treatment**

##### **(a) Permit**

(1) For all structures to be treated for termites in the foundation or ground area surrounding or under the foundation, the applicator must submit a Pesticide Use Permit Application for Termiticide Treatment to the Director on a form provided for that purpose, accompanied by a non-refundable fee of fifty dollars. The request for a permit must be submitted to DEQ at least twenty business days prior to the proposed date of application. The applicator\*

(2) Upon receipt of the Pesticide Use Permit Application for Termiticide Treatment, DEQ has up to ten business days to process the permit. The permit is valid for 6 months after the date of issuance.

##### **(b) Notification**

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The applicator is required to notify DEQ in writing 48-hours prior to any termiticide application made under an approved permit. Unless pre-approved by DEQ, termiticide treatment shall not be phased or divided for a single structure. Termiticide applications conducted under an approved permit must be scheduled during DEQ's normal working hours. Further, the applicator must provide written notices of the date of application and the name and registration number used to each household and business that is located within seventy-five feet of the proposed application. A copy of this written notice must be submitted to DEQ prior to the termiticide application.

(c) Preconstruction

(1) The following information must be provided as part of the permit application for pre-construction termiticide applications:

- (i) EPA Registration Numbers (and copies of labels, if requested) for pesticide products to be used;
- (ii) Date(s) and time(s) of proposed application(s);
- (iii) Name(s) of each applicator and pesticide company;
- (iv) Certification number of each applicator involved in the project;
- (v) Address of the application site;
- (vi) Description of the site;
- (vii) Size of area to be treated;
- (viii) Application method; and
- (ix) Map, showing bodies of water within 100 feet of the area that termiticide is to be applied.

(2) To prevent contamination of surface water, the following restrictions must be observed:

(i) After the application, cover the treatment site in order to prevent runoff in the event of rain; Note: The applicator must either cover the soil him/herself or provide written notification of the above requirement to the contractor on site and to the person commissioning the application (if different than the contractor). If notice is provided to the contractor or the person commissioning the application, then they are responsible to ensure that:

(A) If the concrete slab cannot be poured over the treated soil within 24 hours of application the treated soil is covered with a waterproof covering (such as polyethylene sheeting), and

(B) the treated soil is covered if precipitation is predicted to occur before the concrete slab is scheduled to be poured;

- (ii) Do not treat soil that is water-saturated;
- (iii) Do not treat when raining;
- (iv) Do not allow treatment to runoff from the target area;
- (v) Do not apply within 10 feet of storm drains;
- (vi) Do not apply within 25 feet of bodies of water or aquatic habitats (such as, but not limited to, lakes, reservoirs, lagoon, permanent streams, marshes or ponds, estuaries, and commercial fish farm ponds);
- (vii) Do not make on-grade applications when sustained wind speeds are above 10 mph (at application site) at nozzle end height; and

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(viii) Follow any additional restrictions or requirements included in a permit issued by DEQ.

(d) Post-construction

(1) Application to surrounding soils

The following information must be provided as part of the permit application for post-construction termiticide application to soils surrounding structures:

(i) EPA Registration Numbers (and copies of labels, if requested) for pesticide products to be used;

(ii) Date(s) and time(s) of proposed application;

(iii) Name of each applicator and pesticide company;

(iv) Certification number of each applicator involved in the project;

(v) Address of the application site;

(vi) Description of the site;

(vii) Size of area to be treated;

(viii) Method of application; and

(ix) Map, showing bodies of water within 100 feet of the area that termiticide is to be applied.

(2) Fumigation

Fumigation is the use of a vapor or gas or similar forms in order to suffocate, kill, or mitigate termites. A fumigant is any pesticide that is a vapor or gas or forms a product that is a vapor or gas on application and whose method of pesticidal action is through the gaseous state. The following information must be provided as part of the permit application for post-construction termiticide fumigations:

(i) EPA Registration Numbers (and copies of labels, if requested) for pesticide products to be used;

(ii) Date(s) and time(s) of proposed application;

(iii) Name of each applicator and pesticide company;

(iv) Certification number of each applicator involved in the project;

(v) Address of the application site;

(vi) Description of the site;

(vii) Description of equipment to be used;

(viii) Description or history of the company's experience conducting similar fumigations;

(ix) Description of any prior problems or issues with fumigations;

(x) Health and safety plan;

(xi) Map showing all residential homes and businesses within 25 feet of the application site;

(xii) Fumigant management plan and any additional information required by product label;

(xiii) The applicator must provide written notices to each household and business that is located within seventy-five feet of the proposed application. If the application area is a single-owner complex with multiple units, then the applicator must inform all tenants of the fumigation project. Notices must be made no less than 14 days prior to the fumigation project.

(e) Termiticide applications exempt from permitting requirements:

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- (1) Injection into structural voids;
- (2) Spot, crack, crevice treatments; and
- (3) Treatments that use enclosed baiting systems.

\* So in original.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission struck the figures “\$50” and “20” from subsection (a)(1), “10” from subsection (a)(2), “75” from subsection (b), and “75” from subsection (d)(2)(xiii) pursuant to 1 CMC § 3806(e). The paragraphs of subsection (c)(2)(i) were undesignated in the original regulation. The Commission designated them as subsections (c)(2)(i)(A) and (c)(2)(i)(B) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the word “method” in subsection (c)(1)(viii), the words “safety plan” in subsection (d)(2)(x), and the words “management plan” in subsection (d)(2)(xii) pursuant to 1 CMC § 3806(f). The Commission struck an extraneous slash from subsection (a)(1) and an extraneous dash from subsection (a)(2) pursuant to 1 CMC § 3806(g). The Commission corrected semicolons in subsections (c)(1)(ix) and (d)(1)(ix) to periods pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the word “kill” in subsection (d)(2) pursuant to 1 CMC § 3806(g).

### **§ 65-70-310 Pesticide Use Permit Application for Aerial Treatment**

(a) Aerial pesticide applications are granted on a case by case basis and are restricted to applications sites that are 150 acres or larger. Any person intending to apply pesticides by aircraft must have a valid aerial pesticide application license (pilot license to apply pesticides aerially) from any state or territory of the United States. The aircraft used for aerial application must be in accordance with Federal Aviation Administration rules and regulations.

#### **(b) Pesticide Use Permit Application for Aerial Treatment**

(1) For all sites which will be undergoing aerial pesticide treatment, the applicator must submit an application to the Director on a form provided for that purpose, accompanied by a non-refundable fee of \$500. The request for a permit must be submitted to DEQ at least twenty business days prior to the proposed date of application. Upon receipt of the aerial pesticide application permit, DEQ has up to ten business days to process the permit. The permit is valid for 6 months after the date of issuance.

(2) The following information must be provided as part of the permit application for aerial pesticide applications:

- (i) EPA Registration Numbers (and copies of labels, if requested) for pesticide products to be used;
- (ii) Purpose of application, including description of alternatives;
- (iii) Date(s) and time(s) of proposed application;
- (iv) Name of each applicator and pesticide company, including pilot information;
- (v) Copy of the certification for the applicant and pilot/applicator, if different from the applicant;
- (vi) Copy of the pilot license;
- (vii) Physical and mailing address of the application site;

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- (viii) Description of the site, which shall include a map of the application site, identifying bodies of water or aquatic habitats, residential homes, schools, hospitals, and businesses within 1000 feet of the application site;
  - (ix) Description of equipment to be used;
  - (x) Description or history of the company's experience conducting similar aerial treatments;
  - (xi) Description of any prior problems or issues with pesticides; and
  - (xii) Health and safety plan.
- (3) The DEQ director may refuse to issue an aerial application permit if it is determined that the proposed aerial pesticide application threatens to cause or causes unreasonable adverse effects to human health or the environment.

(c) Notification

- (1) The applicator is required to notify DEQ in writing 48 hours prior to any aerial application made under an approved permit. Unless pre-approved by DEQ, aerial application shall not be phased or divided. Aerial pesticide applications conducted under an approved permit must be scheduled during DEQ's normal working hours. Further, the applicator must provide written notices of the date and time(s) of application and brand or common name and EPA registration of the pesticide to be used to each household and business that is located within a one-mile radius of the proposed application. A copy of this written notice must be submitted to DEQ prior to the pesticide application.
- (2) Every possible effort should be made to control pesticide drift during aerial pesticide applications.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words "aerial pesticide application" in subsections (a) and (b)(3), "aerial pesticide application permit" in subsection (b)(1), "safety plan" in subsection (b)(2)(xii), and "director" in subsection (b)(3) pursuant to 1 CMC § 3806(f). The paragraphs of subsection (b) were undesignated in the original regulation. The Commission designated them as subsections (b)(1) through (b)(3) pursuant to 1 CMC § 3806(a). The Commission struck the figures "20" and "10" from subsection (b)(1) pursuant to 1 CMC § 3806(e). The Commission struck extraneous dashes from subsections (b)(1) and (c)(1) and corrected the punctuation at the ends of subsections (b)(2)(ii), (b)(2)(v), and (b)(2)(vi) pursuant to 1 CMC § 3806(g).

### **§ 65-70-315 Pesticide Use Permit Application for Other Pesticide Treatment**

- (a) In the event that DEQ is not able to conduct routine inspections where restricted use pesticides or general use pesticides are regularly applied, such as in remote locations, the establishment may be required to submit a Pesticide Use Permit Application for Other Pesticide Treatment to the Director on a form provided for that purpose, accompanied by a non-refundable fee of fifty dollars. The request for a permit must be submitted to DEQ at least twenty business days prior to the proposed date of application. Upon receipt of Pesticide Use Permit Application for Other Pesticide Treatment, DEQ has up to ten business days to process the permit. The permit is valid for 6 months after the date of issuance.

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(b) The following information must be provided as part of the permit application for other pesticide applications:

- (1) EPA Registration Numbers (and copies of labels, if requested) for pesticide products to be used;
- (2) Date(s) and time(s) of proposed application(s);
- (3) Name(s) of each applicator and pesticide company;
- (4) Certification number of each applicator involved in the project;
- (5) Address of the application site;
- (6) Description of the site;
- (7) Size of area to be treated;
- (8) Application method; and
- (9) Map, showing bodies of water within 100 feet of the area that termiticide is to be applied.

(c) Notification

(1) The applicator is required to notify DEQ in writing 48 hours prior to any pesticide application made under an approved permit. Further, the applicator must provide written notices of the date and time(s) of application and brand or common name and EPA registration of the pesticide to be used to each household and business that is located within a one-mile radius of the proposed application. A copy of this written notice must be submitted to DEQ prior to the pesticide application.

(2) Every possible effort should be made to control pesticide drift during pesticide applications.

(d) To prevent contamination of surface water, the following restrictions must be observed:

- (1) After the application, cover the treatment site in order to prevent runoff in the event of rain;
- (2) Do not treat soil that is water-saturated;
- (3) Do not treat when raining;
- (4) Do not allow treatment to runoff from the target area;
- (5) Do not apply within 10 feet of storm drains;
- (6) Do not apply within 25 feet of bodies of water or aquatic habitats (such as, but not limited to, lakes, reservoirs, lagoon, permanent streams, marshes or ponds, estuaries, and commercial fish farm ponds);
- (7) Do not conduct applications when sustained wind speeds are above 10 mph (at application site) at nozzle end height; and
- (8) Follow any additional restrictions or requirements included in a permit issued by DEQ.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission struck the figures “\$50,” “20,” and “10” from subsection (a) pursuant to 1 CMC § 3806(e). The Commission struck extraneous dashes from subsections (a) and (c)(1) and an extraneous slash from subsection (a) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the word “method” in subsection (b)(8) pursuant to 1 CMC § 3806(f). The Commission corrected the punctuation at the end of subsection (b)(9) pursuant to 1 CMC § 3806(g).

**§ 65-70-320 Storage of Pesticides**

(a) All certified pesticide applicators and licensed dealers shall store pesticides according to pesticide instructions on its label and federal requirements, as such, all pesticides shall be stored in the following manner:

- (1) In a locked, well ventilated, cool and dry storage area out of direct sunlight;
- (2) In a location separate from food, feed, seed, or animals;
- (3) In the original labeled container;
- (4) In a location or such a way that they are kept out of reach of children and pests;
- (5) With absorbent materials such as sand or absorbent clay adequate to absorb all potential spills;
- (6) In a location away from incompatible chemicals;
- (7) In a location away from flammable liquids or solids; or near a flammable source;
- (8) In a location away from personal protective equipment;
- (9) With a fire extinguisher;
- (10) With the Material Safety Data Sheet (MSDS) of the pesticides currently in use;
- (11) In a manner such that spills will not impact ground or surface waters. If storing more than twelve gallons or one hundred pounds of pesticides at any one time, you must, at a minimum, store the pesticides on impermeable surface, such as a concrete slab, and must mark the area prominently with a skull and crossbones to indicate the presence of pesticides; and
- (12) In a manner consistent with its labeling.

(b) All certified pesticide applicators and licensed dealers shall store restricted use and general use pesticides in a storage area posted with a warning sign that states any, all or any combination of the following statements, as applicable:

- (1) "Warning;"
- (2) "Danger;"
- (3) "Pesticide Storage Area;"
- (4) "Poison Storage Area;"
- (5) "All Unauthorized Persons Keep Out;" or
- (6) "Keep Door Locked When Not In Use."

(c) Retailers, wholesalers, and dealers shall store and display pesticides in the following manner:

- (1) All pesticides offered for sale must be in the registrant's approved container with the appropriate labeling required by federal law.
- (2) All restricted use pesticides must be separated from general use pesticides in displays of pesticides offered for sale to the general public.
- (3) All pesticides (either general use or restricted use items) on display to the general public should be displayed at a minimum distance of ten feet from all fresh, soft, loosely packaged, or other types of food or feed items that can or may absorb odors from the pesticides. Examples include but are not limited to bread, pastries, potatoes, fresh meats, cheese, rice, pasta, chips, and candy. All pesticides must be displayed at a minimum distance of four feet from canned foods or any other type of food or edible item.

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(4) Any pesticide container which is leaking or otherwise damaged must be immediately removed from the display area to a location where its contents will be fully contained in the event that its condition deteriorates further. The use of “overpack” containers or similar devices is sufficient to meet this requirement. Any pesticide material spilled or otherwise allowed to move outside of the container must be immediately cleaned up by an appropriate decontamination method. The location where any pesticide material has been spilled must likewise be immediately decontaminated by a method appropriate to the material spilled.

(d) A DEQ storage permit is required for the storage of pesticides that in the aggregate are in excess of 500 gallons or 4,000 lbs or an equivalent combination of liquids and solids in accordance with the following procedures:

(1) Owners and operators of the facility shall apply to the Director for storage permit on a forms\* supplied by the Director at least one hundred and twenty days prior to using the facility for storage as specified in this section.

(2) Permits shall be approved only when containment and secondary containment complies with 40 CFR §§ 165.80-97 (July 2012), which requires containment and secondary containment for all such facilities and includes the use of specific materials and the incorporation of technical design standards. The DEQ storage permit may specify the minimum size of secondary containment needed for storage of pesticides subject to this provision if such storage of pesticides is subject to this regulation, but outside the scope covered by 40 CFR §§ 165.80-97 (July 2012) The Director shall require that all plans for a new facility be prepared by a licensed professional engineer.

(3) The storage permit shall be valid for five years from date of issuance, and applicant shall pay DEQ a \$100 processing fee.

\* So in original.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words at the beginning of subsections (a)(1) through (a)(12) pursuant to 1 CMC § 3806(f). The Commission struck the figures “12” and “100” from subsection (a)(12), “10” and “4” from subsection (c)(3), “120” from subsection (d)(1), and “5” from subsection (d)(3) pursuant to 1 CMC § 3806(e). The Commission inserted commas after the words “wholesaler” in subsection (c) and “packaged” and “chips” in subsection (c)(3) and moved punctuation inside quotation marks in subsections (b)(1) through (b)(6) pursuant to 1 CMC § 3806(g).

### **§ 65-70-325      Transportation**

(a) All Restricted Use Pesticides shall be transported in the following manner:

(1) Not transported in the same compartment with persons, animals, food, feed, seed, clothing, or consumer goods; and

(2) All containers must be secured tightly and loaded in such a way that they will not be damaged during transport, that their labels will not be rubbed off or otherwise compromised, and that they will not shift or fall out of the vehicle.

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(b) Pesticides in any vehicle used for pest control shall not be transported inside the passenger compartment with persons, animals, food, feed, seed, clothing, or consumer goods.

(c) All pesticides shall be transported as required by the label.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words at the beginnings of subsections (a)(1) and (a)(2) pursuant to 1 CMC § 3806(f). The Commission inserted commas after the words “clothing” in subsections (a)(1) and (b) and “compromised” in subsection (a)(2) pursuant to 1 CMC § 3806(g).

### **§ 65-70-330 Disposal**

Pesticides, empty containers, or equipment that holds (or has held) a pesticide, shall not be emptied or disposed of in such a manner that may present a hazard to persons, animals, food, feed, crops, or clothing. Empty non-refillable pesticide containers must be triple\* rinsed and punctured to render useless. To dispose of any non-refillable pesticide container that cannot be triple rinsed and the user must follow directions on the container’s pesticide label.\* To dispose of any pesticide container (including refillable containers and non-refillable containers that cannot be triple rinsed and punctured), the user must follow directions on the label and other federal requirements.

\* So in original.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission inserted a comma after the word “crops” pursuant to 1 CMC § 3806(g).

### **§ 65-70-335 Recordkeeping**

(a) Commercial applicators, private applicators, and licensed dealers shall keep and maintain records for a period of not less than three years.

(b) Commercial applicators shall maintain true and accurate records of the use and application of both restricted use and general use pesticides, including the following information:

- (1) The brand (common) name and EPA registration number of the product;
- (2) The amount of product used and, if the product is to be mixed with another substance prior to use, the name of the other substance and the total amount of mixture prepared;
- (3) The date, time, location, and method of application;
- (4) Total area covered;
- (5) Targeted area or other site; and
- (6) Targeted pest(s).

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(c) Private applicators shall maintain true and accurate records of the use and application of restricted use pesticides, including the following information:

- (1) The brand (common) name and EPA registration number of the product;
- (2) The amount of product used and, if the product is to be mixed with another substance prior to use, the name of the other substance and the total amount of mixture prepared;
- (3) The date, time, location, and method of application;
- (4) Total area covered;
- (5) Targeted area or other site; and
- (6) Targeted pest(s).

(d) Licensed dealers shall maintain true and accurate records of the sale and distribution of restricted use pesticides, including the following information:

- (1) The name, address, and certification number or dealer's license (if applicable) number of the person purchasing or receiving the pesticide;
- (2) The date of sale or distribution;
- (3) The brand name, EPA registration number, and quantity of product sold or distributed;
- (4) The signature of the person selling or distributing the pesticide; and
- (5) Label of the pesticide.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission designated the initial paragraph as subsection (a) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words “applicators,” “private applicators,” and “licensed dealers” in subsection (a), and the words at the beginning of subsections (b)(1) through (b)(6), (c)(1) through (c)(6), and (d)(1) through (d)(5) pursuant to 1 CMC § 3806(f). The Commission struck the figure “3” from subsection (a) pursuant to 1 CMC § 3806(e). The Commission inserted a comma after the word “location” in subsections (b)(3) and (c)(3) pursuant to 1 CMC § 3806(g).

### **§ 65-70-340 Worker Protection Standards**

(a) Applicability and Scope

The CNMI Worker Protection Standard requirements were created to provide agricultural and certain other workers and pesticide handlers with protections against possible exposure and harm from pesticides in the workplace. CNMI Worker Protection Standards apply to any agricultural establishment, and any commercial application of pesticides.

(b) All agricultural establishments (farms, forest, nursery, or greenhouse) must follow the federal Worker Protection Standards at 40 C.F.R. Part 170 as published in the Federal Register at 80 FR 67495.

(c) General requirements for commercial applicators. Under the provisions of the CNMI Worker Protection Standard, employers are required to do the following:

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- (1) Display at a central location where it can be readily be seen and read by workers in a language they understand specific information about pesticide safety, emergency procedures, and recent pesticide applications;
- (2) Supply pesticide safety training for workers as described at 40 C.F.R. 170.130 and for handlers as described at 40 C.F.R. Part 170.230;
- (3) Provide assistance in getting medical treatment in case of work-related pesticide illness or injury;
- (4) Comply with restricted-entry intervals found on the label. These are the times immediately after pesticide applications when workers may not enter treated areas;
- (5) Notify workers through oral or by posted warnings in a manner they understand about areas where pesticide applications are taking place and areas where restricted-entry intervals are in effect;
- (6) Ensure that only trained, properly equipped pesticide handlers enter or remain in the treated area during a pesticide application;
- (7) Provide decontamination sites for workers and handlers to wash pesticides residues off their hands and bodies. Decontamination sites must include enough water for routine washing and emergency eye flushing plus sufficient quantities of soap and single-use towels;
- (8) Provide and maintain any appropriate personal protective equipment and ensure it is stored correctly, away from pesticides and other dangerous chemicals, used correctly for its intended purpose, and used according to the manufacturer's instructions and label directions. Personal protective equipment includes but is not limited to:
  - (i) Coveralls a loose-fitting one or two piece garment that covers, at a minimum, the entire body except head, hands, and feet; that is made of a cotton or a cotton polyester blend fabric; and are not chemical-resistant. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing;
  - (ii) Chemical-resistant suits - a loose-fitting one or two piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet;
  - (iii) Chemical-resistant gloves - gloves that are made of chemical-resistant material;
  - (iv) Chemical-resistant footwear - shoes, boots, or coverings for shoes or boots, that are made of chemical-resistant material. If chemical resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain;
  - (v) Chemical-resistant aprons - an apron that is made of chemical-resistant material and that covers the front of the body from mid-chest to the knees.
  - (vi) Chemical-resistant headgear - hood or hat with wide brim, that is made of chemical-resistant material;
  - (vii) Protective eye wear - goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator; and
  - (viii) Respirators - a device that protects the respiratory system and is either the type listed on the pesticide label or more protective, and must be appropriate for the pesticide product being used and for the activity being performed;
- (9) Instruct all handlers and workers in the correct use of personal protective equipment;
- (10) Instruct all handlers in the correct use of application equipment;

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- (11) Must assure that all handlers understand all label requirements;
  - (12) Must assure that any pesticide handler who is mixing, loading, applying, or otherwise handling any pesticide bearing a skull and crossbones symbol on the label is monitored visually or by voice communication every hour; and
  - (13) Implement other requirements as instituted by the DEQ Director.
- (d) In the event of a conflict between any relevant Worker Protection Standards, the more stringent requirement will apply.

Modified, 1 CMC § 3806(g).

History: Amds Adopted 39 Com. Reg. 39324 (Mar. 28, 2017); Amdts Proposed 38 Com. Reg. 39070 (Dec. 28, 2016); Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission inserted commas after the words “procedures” in subsection (b)(1), “purpose” in subsection (b)(8), “applying” in subsection (b)(12), and “nursery” in subsection (c) pursuant to 1 CMC § 3806(g). The Commission inserted a colon at the end of subsection (b)(8) pursuant to 1 CMC § 3806(g). The Commission struck the numbers “1” and “2” from subsection (b)(8)(viii) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words at the beginning of subsection (b)(8)(i) through (b)(8)(viii) pursuant to 1 CMC § 3806(f).

In codifying 39 Com. Reg. 39324, the Commission changed “/ Vol. 80, No. 211 / Monday, November 2, 2015 / Rules and Regulations” to “at 80 FR 67495.” Pursuant to 1 CMC § 3806(g).

### **Part 400 - Training and Certification**

#### **§ 65-70-401 Training**

(a) **Instructor Qualifications.** Any person intending to provide pesticide certification training must first meet the requirements set forth below:

(1) Sufficient pesticide education, training, and/or experience necessary to exercise professional judgment and has the ability to teach and communicate effectively with student-applicators to prepare them for proper performance of their occupational duties; and

(2) Pass a written pesticide safety examination (testing the applicant’s pesticide knowledge on labeling, safety factors, environmental consequences, pest identification and characteristics, pesticide types, formulations and dilutions, equipment maintenance and calibration, proper storage, use, and disposal of pesticides and containers, pesticide application techniques, applicable local and federal pesticide laws and regulations, recordkeeping, worker protection standards, and other relevant information as deemed necessary, including but not limited to recent updates in pesticide applications and other pertinent matters).

(b) **Instructor Responsibilities**

(1) **Training plan.** Develop a hands-on, interactive training plan that includes but is not limited to labeling, safety factors, environmental consequences, pest identification and characteristics, pesticide types, formulations and dilutions, equipment maintenance and calibration, application techniques, applicable local and federal pesticide laws and

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regulations, and other relevant information as deemed necessary, including but not limited to worker protection standards, record keeping, recent updates in pesticide applications, and other pertinent matters.

(2) Core Training Duration. Training shall be a minimum of eight hours of instruction, which shall include but is not limited to lecture, practicum, and exam preparation.

(3) Training Announcement/Registration. Training shall be advertised through local media (newspaper, radio, television, and other means), and utilize other means of community public announcements such as markets, forums, bulletin boards, etc. at least three weeks prior to the scheduled training.

(4) Training Materials. Instructor shall provide all materials (books, handouts, etc.) for the workshop and update all materials (books, handouts, etc.) as required or as needed.

(c) Reporting. Instructor shall report all pesticide and safety education program activities to Division of Environmental Quality at the end of each quarter (Dec\* 31, March 31, June 30, and September 30).

\* So in original.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words “sufficient” in subsection (a)(1) and “pass” in subsection (a)(2) pursuant to 1 CMC § 3806(f). The Commission converted brackets to parenthesis in subsection (a)(2), inserted commas after the words “applications” in subsection (b)(1) and “television” in subsection (b)(3), and removed the duplicated words “such as” in subsection (b)(3) pursuant to 1 CMC § 3806(g). The Commission struck the figures “8” from subsection (b)(2) and “3” from subsection (b)(3) pursuant to 1 CMC § 3806(e).

### **§ 65-70-405 Required Certification**

(a) Any person who uses or supervises the use of any pesticide for commercial purposes must obtain a certification from DEQ.

(b) Any person who uses, sells, or distributes restricted use pesticides must obtain a certification from DEQ.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

### **§ 65-70-410 Categories of Commercial Applicators, Private Applicators, and Licensed Dealers**

(a) Commercial Applicators

Categories of applicators (other than private) are identified below:

(1) Agricultural pest control

(i) Plant. This category includes commercial applicators using or supervising the use of pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands.

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(ii) Animal. This category includes commercial applicators using or supervising the use of pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

(2) Forest pest control. This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed producing areas.

(3) Ornamental and turf pest control. This category includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, turf, including the maintenance of resort grounds, golf courses, or green houses.

(4) Seed treatment. This category includes commercial applicators using or supervising the use of pesticides on seeds.

(5) Aquatic pest control. This category includes commercial applicators using or supervising the use of pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities as set forth in subsection (a)(7).

(6) Right-of-way pest control. This category includes commercial applicators using or supervising the use of pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Industrial, institutional, structural, and health related pest control. This category includes commercial applicators using or supervising the use pesticides in, on, or around food handling facilities, human dwellings, institutions, such as schools and hospitals, industrial facilities, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

(8) Public health pest control. This category includes governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.

(9) Regulatory pest control. This category includes governmental employees using or supervising the use of pesticides in the control of regulated pests.

(10) Demonstration and research pest control. This category includes: individuals who demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration, and persons conducting field research with pesticides, and in doing so, use or supervise the use of pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes: state, federal, commercial and other persons conducting field research on or utilizing pesticides.

### (b) Private Applicators

Any person who uses or supervises the use of any restricted use pesticide who is not a commercial applicator shall be classified as a private applicator.

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### (c) Licensed Dealer

Any person who engages in the importation, sale, or distribution of restricted use pesticide shall be classified as a licensed dealer and shall be certified in the same manner as a commercial applicator.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission inserted commas after the words “rights-of-way” in subsection (a)(6) and “structural” in subsection (a)(7) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the words “state” and “federal” in subsection (a)(10) pursuant to 1 CMC § 3806(f).

### **§ 65-70-415 Standards of Competency**

(a) Pesticide safety and education training offered in the CNMI shall include but is not limited to:

- (1) Labeling;
- (2) Safety factors;
- (3) Environmental consequences;
- (4) Pest identification and characteristics;
- (5) Pesticide types, formulations, and dilutions;
- (6) Equipment maintenance and calibration;
- (7) Proper storage, use, and disposal of pesticides and containers;
- (8) Pesticide application techniques;
- (9) Pesticide laws and regulations;
- (10) Recordkeeping;
- (11) Worker protection standards; and
- (12) Other relevant information as deemed necessary, including but not limited to recent updates in pesticide applications and other pertinent matters.

(b) Examinations.

- (1) Any person intending to become pesticide applicator or dealer must demonstrate competency based on a written pesticide safety examination.
- (2) The passing grade for the written pesticide safety examination is seventy percent. Such examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which an applicator is to be classified, and to the pesticide or class of pesticides covered by the persons’ certification.
- (3) Examinations are offered as needed; request for examination must be made on a form provided by DEQ for that purpose.

(c) Determination of Competency for Commercial Applicators

(1) General Standards of Competency.

All applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides as described below. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator’s certification and the following areas of competency:

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- (i) Label and Labeling Comprehension. Factors including general format of labels and terminology that are used on pesticide labels and labeling; instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels; classification of the product, general or restricted; and necessity for use consistent with the label.
  - (ii) Safety. Factors including: pesticide toxicity and hazard to man and common exposure routes; common types and causes of pesticide accidents; precautions necessary to guard against injury to applicators and other individuals in or near treated areas; need for and use of protective clothing and equipment; symptoms of pesticide poisoning; first aid and other procedures to be followed in case of a pesticide accident; and proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.
  - (iii) Potential Environmental Consequences of the Use and Misuse of Pesticides. Including influential factors such as: weather and other climatic conditions; types of terrain, soil or other substrate; presence of fish, wildlife and other non-target organisms; drainage patterns.
  - (iv) Pests. Including factors such as: common features of pest organisms and characteristics of damage needed for pest recognition; recognition of relevant pests; and pest development and biology as it may be relevant to problem identification and control.
  - (v) Pesticides. Including factors such as: types of pesticides; types of formulations; compatibility, synergism, persistence and animal and plant toxicity of the formulations; hazards and residues associated with use; factors which influence effectiveness or lead to such problems as resistance to pesticides; and dilution procedures, including calculations to achieve correct application rate.
  - (vi) Equipment. Including factors such as: types of equipment and advantages and limitations of each type; and use, maintenance and calibration.
  - (vii) Application techniques. Including factors such as: methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with knowledge of which technique of application to use in a given situation; relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and prevention of drift and pesticide loss into the environment.
  - (viii) All local and federal requirements, applicable to the CNMI.
- (2) Specific Standards of Competency. Commercial Applicators shall demonstrate competence and shall be particularly qualified with respect to the standards elaborated below.
- (i) Agricultural Pest Control.
    - (A) Plants. Applicators must demonstrate practical knowledge of the crops grown and the specific pests of these crops on which they may be using RUPs. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems from the use of restricted use pesticides in agricultural areas.
    - (B) Animals. Persons applying pesticides directly to animals must demonstrate knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals

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will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation application techniques, age of animals, stress and extent of treatment.

(ii) Forest Pest Control. Applicators shall demonstrate practical knowledge of the extent and types of forests, forests nurseries, and seed production in the Northern Marianas and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to pesticides to be applied. Because forest stands frequently include aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicators must therefore demonstrate practical knowledge of control methods that will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(iii) Ornamental and Turf Pest Control. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of the application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(iv) Seed Treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seed.

(v) Aquatic Pest Control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(vi) Right-of-way Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of environments since rights-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of the problems of runoff, drift, including drift control measures and procedures, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

(vii) Industrial, Institutional, Structural and Health-Related Pest Control.

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(A) General and Structural Pest Control. Applicators must demonstrate practical knowledge of a variety of pests including their life cycles, as well as types of formulations appropriate for their control and methods of application that avoid contamination of food damage and contamination of habitat, and exposure of people and pets. Since human exposure, especially to babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applications, applicators in this category must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

(B) Structural and Commodity Fumigation. In this subcategory, types of structures include, but are not limited to inhabited buildings, containers, boat. Applicators must demonstrate practical knowledge of core requirements covering fumigant and fumigation use laws and regulations, the basic principles of fumigant use, of handler and worker safety requirements especially pesticide safety training, preventing heat-related illnesses, of fumigant labels, how to interpret and follow label directions and requirements. Applicators must demonstrate practical knowledge of the hazards associated with fumigant use and preventing human exposure, environmental contamination, off-site movement/drift, and phytotoxicity, of safe fumigant handling practices, proper PPE selection, use, and care, and responding to fumigant emergencies. Applicators must demonstrate practical knowledge of proper fumigant application procedures, selecting and using appropriate application equipment and its calibration, and of hazards and safe use practices.

(C) Soil Fumigation. Applicators must demonstrate practical knowledge of core requirements covering fumigant and fumigation use laws and regulations, the basic principles of fumigant use, of handler and worker safety requirements especially pesticide safety training, preventing heat-related illnesses, of fumigant labels, how to interpret and follow label directions and requirements. Applicators must demonstrate practical knowledge of the hazards associated with fumigant use and preventing human exposure, environmental contamination, off-site movement/drift, and phytotoxicity, of safe fumigant handling practices, proper PPE selection, use, and care, and responding to fumigant emergencies. Applicators must demonstrate practical knowledge of proper fumigant application procedures, selecting and using appropriate application equipment and its calibration, and of hazards and safe use practices.

(viii) Public Health Pest Control. Applicators must demonstrate practical knowledge of pests of public health importance, vector-disease relationships, and etiology of disease-host relationships. Since a wide variety of pests are involved, these pests must be known and recognized by public health control applicators, and the life's\* cycles and habitats of each thoroughly understood. These applicators should be familiar with a great variety of environmental conditions ranging from streams to dwellings. They should also be cognizant of such non-chemical control methods as sanitation, waste disposal, and drainage. Applicators shall demonstrate practical knowledge of regulated pests, applicable law relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and

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eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests.

(ix) **Regulatory Pest Control.** Applicators must demonstrate practical knowledge of applicable laws, safety, regulated pests, pesticides and the impact of restricted use introduction, spread, and population dynamics of relevant pests. Applicators shall demonstrate practical knowledge over and above that required by their immediate duties since emergency measures are frequently required and individual judgments in new situations must be made.

(x) **Demonstration and Research Pest Control.** Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problems situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators doing demonstration pest control work, conducting field research or method improvement work with RUPs should possess a practical knowledge of all of the general standards detailed in subsection (a). In addition, they shall be expected to know the specific standards described in subsection (b) as may be applicable to their particular activity.

(3) **Specific Standards of Competency.** Private applicators shall demonstrate that s/he possesses a practical knowledge of the pest problems associated with his or her agricultural operations. Private applicators must be able to:

- (i) Recognize common pests to be controlled and damage caused by them;
- (ii) Read and understand the label and labeling information, including the common name of pesticides he applied, pest(s) to be controlled, timing and methods, of application, safety precautions, any pre-harvest or re-entry restrictions, and any specific disposal procedures;
- (iii) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered and the quantity dispersed in a given period of operation;
- (iv) Recognize local environmental situations that must be considered during the application to avoid contamination.
- (v) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) **Specific Standards of Competency.** Licensed dealers shall demonstrate additional competence and knowledge regarding but not limited to the following:

- (i) Pesticide legislation, regulations, and guidelines;
- (ii) Safety and toxicology;
- (iii) Disposal;
- (iv) Storage and transportation;
- (v) Effects on animals, plants, and environment; fish and wildlife;
- (vi) Factors affecting pesticide applications;
- (vii) Classification and formulations of insecticides;
- (viii) Fungicides, herbicides, and other pesticides and their uses;

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- (ix) Definitions;
- (x) Recommendations for use of pesticides; and
- (xi) Poisoning symptoms and procedures to follow in case of a pesticide accident.

\* So in original.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission made extensive corrections to capitalization in this section. The Commission inserted commas after the words “formulations” in subsection (a)(5) and “regulations” in subsection (c)(4)(i) pursuant to 1 CMC § 3806(g). The Commission struck the figure “70%” from subsection (b)(2) pursuant to 1 CMC § 3806(e). The Commission corrected punctuation at the ends of subsections (a)(2), (c)(1)(iii), (c)(3), and (c)(3)(i) through (c)(3)(v) pursuant to 1 CMC § 3806(g).

### **§ 65-70-420 Applications Forms, Duration, and Renewals**

(a) Application for certification as a pesticide applicator or licensed dealer shall be made to the Director on a form provided for that purpose.

(b) Duration of Certification and Renewals.

(1) All certifications shall be valid for a period of three years from the date of issuance unless earlier suspended or revoked by the Director.

(2) Application for renewal shall be made to the Director on a form provided for that purpose.

(3) Applicants may renew certification by attending continuing education (CE) units, relevant to the certification category, offered by any U.S. state or territory. However, renewals through classes may only be considered if the applicant takes CE units during the certification period in the same or similar category for which the renewal is sought.

(i) Commercial applicators must take a minimum of twelve continuing education units to renew his or her certification.

(ii) Private applicators must take a minimum of six continuing education units to renew his or her certification.

(4) In the event the applicator was not able to attend CE units, the applicant shall be required to pass another examination of the same type required for renewals of certifications to ensure the ability to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly.

(5) In the event the applicator wishes to add or change his or her certification category, the applicant shall pass demonstrate competency in the new category.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission struck the figures “3” from subsection (b)(1), “12” in subsection (b)(3)(i), and “6” in subsection (b)(3)(ii) pursuant to 1 CMC § 3806(e). The Commission corrected the capitalization of the word “applicators” in subsection (b)(3)(i) and (b)(3)(ii) pursuant to 1 CMC § 3806(f).

**§ 65-70-425 Standards for Supervisory of Non-Certified Applicators by Certified Applicators**

A non-certified but competent person acting under the direct supervision a certified applicator may apply general use pesticides in situation that would otherwise require the application by a certified applicator. The availability and active supervision of the certified applicator must be directly related to the hazard of the situation and the pesticide used. Non-certified applicators may only apply restricted use pesticides under the direct supervision of a certified applicator physically located at the site. Responsibility for proper application of general or restricted use pesticides shall remain with the both the\* non-certified and certified applicator.

\* So in original.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

**§ 65-70-430 Reciprocity with Other Jurisdictions and Temporary Certification**

The Director may issue a temporary certification to a person who holds a valid pesticide applicator's certification issued in another state or territory of the United States having an approved state plan. The temporary certification shall remain valid for the length of time that the underlying certification is valid.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

**§ 65-70-435 Extension, Denial, Suspension or Revocation, and Appeal**

(a) If the Director determines there is a need for a specific type of pesticide applicator and that it is in the best interests of the CNMI, he may extend the validity of the temporary certification. Written application for temporary certificate shall be made to the Director on a form provided for that purpose. Temporary certification shall be limited to the same type and category of pesticide use for which the applicant is certified in the other state or territory. Except under such circumstances as the Director may recognize, a temporary pesticide applicator certificate shall be non-renewable.

(b) The Director will deny, suspend, or revoke a certificate and assess criminal and/or civil penalties for misuse of a pesticide or falsification of any records required to be maintained by a certified applicator.

(c) The Director may deny certification to:

- (1) Any person whose certification is suspended or revoked;
- (2) Any person who has been found to be in violation of any part of these regulations;
- (3) Any person who has failed to pass the proficiency test;
- (4) Any person who fails to pay the required fees.

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(d) Any certification issued pursuant to this part will be reviewed for suspension or revocation by the Director for violation of any condition of the certificate or of these regulations, of criminal conviction under Section 14(b) of amended FIFRA, a final order imposing civil penalty under Section 14(a) of amended FIFRA, or a CNMI enforcement action.

(e) Any person who has been denied certification pursuant to this section or whose certificate has been suspended or revoked may request DEQ to set aside such denial, suspension, or revocation pursuant to the Administrative Procedures Act, 1 CMC §§ 9101, et seq. The Director's written decision on the matter shall be final and appeal shall only be available in accordance with law.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization at the beginning of and the punctuation at the end of subsection (c)(1) through (c)(4) pursuant to 1 CMC § 3806(g).

### **§ 65-70-440 Fees**

(a) Persons desiring to obtain certification through examination administered by the Division of Environmental Quality shall pay a non-refundable fee of ten dollars.

(b) Commercial applicators shall pay a non-refundable fee of fifty dollars for the processing of the application.

(c) Private applicators shall pay a non-refundable fee of ten dollars the processing of the application.

(d) Fees for government applicators may be waived, provided the applicator only conducts such applications at government projects.

(e) Restricted use pesticide dealers shall pay a non-refundable fee of fifty dollars for the processing of the application.

(f) All renewal of certification (commercial applicator, private applicator, RUP dealer) shall pay the established processing fee.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words "Quality" in subsection (a) and "government," "applications," and "applicator" in subsection (d) pursuant to 1 CMC § 3806(f). The Commission struck the figures "\$10" in subsection (a), "\$50" in subsection (b), "\$10" in subsection (c), and "\$50" in subsection (e) pursuant to 1 CMC § 3806(e).

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On January 28, 2015, the Bureau of Environmental and Coastal Quality published a Notice of Certification and Adoption of Rule purporting to adopt an attached “Rule on Pesticide Storage Fee for Detained, Denied, and Impounded Shipments.” No such rule was attached. 37 Com. Reg. 36002 (Jan. 28, 2015).

### Part 500 - List of Banned and Restricted Pesticides and Notice of Change in Status

#### § 65-70-501 Restricting of Pesticides

DEQ may restrict any use of any pesticide when it is deemed likely to produce significant adverse effects on human health or the environment. When DEQ determines that a pesticide is a Restricted Use Pesticide (“RUP”), its application is limited to certified applicators in all instances, as set forth in part 400. Applicators bear the responsibility for determining whether any pesticide is an RUP under these regulations. If the use of any pesticide is restricted by U.S. EPA, it shall immediately become an RUP under this section, regardless if the pesticide is contained on the list maintained by the Director. In the event of a conflict in the listed status of a pesticide, the more stringent classification applies.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

#### § 65-70-505 Banning of Pesticides

DEQ may prohibit the importation, sale, distribution, and use of any pesticide or prohibit a specific use of any pesticides when such use or uses has produced or is deemed likely to produce substantial adverse effects on human health or the environment.

History: Amds Adopted 39 Com. Reg. 39324 (Mar. 28, 2017); Amdts Proposed 38 Com. Reg. 39070 (Dec. 28, 2016); Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

#### § 65-70-510 List of Banned Pesticides

For the purpose of Public Law 19-54 and 6 CMC § 2301(a), BECQ shall develop and maintain a list of banned pesticides in order to protect and safeguard the health and safety of the people of the Commonwealth. The following active ingredients shall be banned:

| CHEMICAL NAME   | CHEMICAL ABSTRACT SERVICE (CAS) NUMBER    |
|-----------------|---|
| Captafol        | 2425-06-1 / 2939-80-2                     |
| Chlordane       | 57-74-9, 12789-03-6, 5103-71-9, 5103-74-2 |
| DDT             | 50-29-3 / 789-02-6                        |
| Dieldrin        | 60-57-1                                   |
| Fluoroacetamide | 640-19-7                                  |
| Heptachlor      | 76-44-8                                   |

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|  |            |
|--|------------|
| Hexachlorobenzene  | 118-74-1   |
| Lindane  | 58-89-9    |
| Methamidophos  | 10265-92-6 |
| Methyl-parathion (Emulsifiable concentrates (EC) at or above 19.5% active ingredient and dusts at or above 1.5% active ingredient) | 298-00-0   |
| Monocrotophos  | 6923-22-4  |
| Phosphamidon (Soluble liquid formulations of the substance that exceed 1000 g active ingredient/l)                                 | 13171-21-6 |
| Toxaphene (Camphechlor)  | 8001-35-2  |

Modified, 1 CMC § 3806(g).

History: Amds Adopted 39 Com. Reg. 39324 (Mar. 28, 2017); Amdts Proposed 38 Com. Reg. 39070 (Dec. 28, 2016); Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

### **§ 65-70-515      Responsibility of Applicators/Dealers/Importers**

(a) It shall be the responsibility of any person using, distributing, selling, or importing pesticides to ensure that they are aware of the current status of the pesticide under FIFRA prior to use, distribution, sale, or import.

(b) It shall further be the responsibility of any person using, distributing, or selling or importing pesticides to ensure that they are aware of the current status of the pesticide under CNMI law prior to the use, distribution, sale, or import.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The paragraphs of this section were undesignated in the original regulation. The Commission designated them as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission inserted commas after the words “selling” in subsection (a), “distributing” in subsection (b), and “sale” in subsections (a) and (b) pursuant to 1 CMC § 3806(g).

### **§ 65-70-520      Experimental Use Permits**

Experimental permits for use of pesticides may be used only if the pesticide has received a permit from EPA as required under FIFRA § 5 and 40 CFR Part 172 Subpart A (as may be amended), with concurrence from DEQ.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words “permits” and “pesticides” pursuant to 1 CMC § 3806(f).

## **Part 600 - Enforcement and Penalties**

**§ 65-70-601      Instituting Actions**

The Director may enforce the regulations in this chapter by the initiation of an administrative action and/or requesting the initiation of a civil or criminal case in the Commonwealth Courts pursuant to the Commonwealth Environmental Protection Act, 2 CMC § 3131.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word “chapter” pursuant to 1 CMC § 3806(f).

**§ 65-70-605      Banning of Pesticides**

(a) At any facility where pesticides are imported, sold, used, stored, transported, or disposed, the Director and his representatives may conduct inspections, enter properties, review records, and take samples pursuant to 2 CMC § 3132 in order to enforce these regulations and protect the public health and environment and of the CNMI.

(b) The Director may issue a written or printed “stop sale, use or removal” order to any person who owns, controls, or has custody of a misbranded pesticide, and after receipt of such order no person shall sell, use, or remove the pesticide described in the order except in accordance with the provisions of the order.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission inserted commas after the words “stored” and “transported” in subsection (a) and “use” in subsection (b) pursuant to 1 CMC § 3806(g).

**§ 65-70-610      Administrative Orders**

(a) The Director may issue administrative orders and take other administrative actions, including requiring remedial action and issuing penalties specified in 2 CMC § 3131. Administrative action shall be taken in accordance with the Administrative Procedures Act, 1 CMC §§ 9101 et seq.

(b) Procedures for Administrative Orders

(1) The Director may issue and order any person to pay a civil fine of not more than \$25,000.00 for each violation of the Act, regulations adopted pursuant to the Act, or any permit or license issued pursuant to the Act and such regulations. Each day of continued violation after issuance of written notice by the Director or designee and the expiration of any reasonable period allowed for corrective action is a separate offense.

(2) Where the Director initiates an administrative action, the respondent is entitled to request an administrative hearing within seven calendar days of the receipt of the order. The written request for a hearing shall serve as the answer to DEQ’s administrative order or complaint. The request for hearing or “answer” shall clearly and directly admit, deny,

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or explain each of the factual allegations contained in the complaint with regard to which the respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state:

- (i) The circumstances or arguments which are alleged to constitute the grounds of defense; and
- (ii) The facts which respondent intends to place at the issue.
- (3) Failures to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegations. An oral answer may also be given at the time of hearing should a hearing be requested.
- (4) The respondent may also request an informal settlement conference. An informal settlement conference shall not affect the respondent's obligation to file a timely request for hearing. If a settlement is reached the parties shall forward a proposed consent order for the approval of the Director.
- (5) If a hearing is conducted, the Director or his designee will preside over the hearing. The Director shall control the taking of testimony and evidence and shall cause to be made an audio, audio-video, or stenographic record the hearing. The type of record made shall be the discretion of the Director. Evidence presented at such a hearing need not conform to the prescribed rules of evidence, but may be limited by the Director in any manner he reasonably determines to be just and efficient and promote the ends of justice. The Director shall issue a written decision within fifteen working days of the close of the enforcement hearing. The decision shall include written findings of fact and conclusions of law. The standard of proof for such a hearing and decisions shall be the preponderance of the evidence.
- (6) Upon issuance of the written decision, the respondent may seek relief from the decision by the Director. The request for relief must be filed within ten days of the date of issuance of the decision. The request must concisely state the specific objections to the decision. There is no right to review or a rehearing before the Director. The Director may in his discretion elect to review the case and issue a written decision amending or affirm in the decision. He will issue a written decision within thirty calendar days.
- (7) The Director's decision shall be final. An appeal from the final enforcement decision shall be to the Commonwealth Superior Court within thirty calendar days following service of the final agency decision.
- (8) For filing deadline purposes counting of the days shall start on the day after receipt of the administrative order or complaint. If any filing date falls on a Saturday, Sunday, or Commonwealth Holiday, the filing date shall be extended to the next working day.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The paragraphs of this section were undesignated in the original regulation. The Commission designated them as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission struck the figures "7" from subsection (b)(2), "15" from subsection (b)(5), "10" and "30" from subsection (b)(6), and "30" from subsection (b)(7) pursuant to 1 CMC § 3806(f). The Commission inserted a colon at the end of subsection (b)(2) pursuant to 1 CMC § 3806(g).

### **§ 65-70-615      Seizures**

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The Director may seize any banned, adulterated, misbranded, or unregistered pesticide for violation of these regulations if the pesticide poses a risk to the public welfare and the environment, and may take emergency actions necessary as permitted by law to prevent a serious and imminent hazard to the human health or welfare. A storage fee will be assessed for any pesticide or pesticide device that has been detained or denied entry and impounded in accordance with § 65-70-225.

History: Amds Adopted 39 Com. Reg. 39324 (Mar. 28, 2017); Amdts Proposed 38 Com. Reg. 39070 (Dec. 28, 2016); Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission inserted a comma after the word “misbranded” pursuant to 1 CMC § 3806(g).

### **§ 65-70-620 Penalties**

Any person who violates or who refuses or neglects to comply with any provision of the regulations in this chapter or any certification, standard, notification, permit, or order issued by the Director or the Division shall be subject to the penalties set forth in 2 CMC § 3131.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word “chapter” pursuant to 1 CMC § 3806(f).

## **Part 700 - Miscellaneous Provisions**

### **§ 65-70-701 Application of Laws**

In the event of any conflict between legally applicable standards, the more stringent standard shall apply.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).

### **§ 65-70-705 Severability**

Should any part, section, paragraph, sentence, clause, phrase, or application of these rules and regulations be declared unconstitutional or invalid for any reason by competent authority, the remainder or any other application of these rules and regulations shall not be affected in any way thereby.

History: Adopted 35 Com. Reg. 34263 (Sept. 28, 2013); Amdts Proposed 35 Com. Reg. 33821 (July 28, 2013).