

CHAPTER 128. PESTICIDES

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Authority

The provisions of this Chapter 128 issued under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), unless otherwise noted.

Source

The provisions of this Chapter 128 adopted February 2, 1990, effective February 3, 1990, 20 Pa.B. 488, unless otherwise noted.

Cross References

This chapter cited in 7 Pa. Code § 138i.3 (relating to limitation on grants); 7 Pa. Code § 138j.3 (relating to limitation on grants); 7 Pa. Code § 138k.3 (relating to limitations on grants); and 7 Pa. Code § 147.726 (relating to operation).

Subchapter A. GENERAL PROVISIONS

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§ 128.1. Scope.

This chapter prescribes policies and procedures relating to the following:

- (1) The labeling, distribution, storage and registration of pesticides.
- (2) The classification of restricted use pesticides.
- (3) The certification of pesticide applicators.
- (4) The licensing of pesticide dealers, commercial and public pesticide businesses and pest management consultants.
- (5) The registration of pesticide application technicians and the prior notification of proposed pesticide applications.

§ 128.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).

Application site—The specific location where a pesticide is applied.

Applicator certificate—A form issued by the Department to a commercial or public applicator following the successful completion of a certification examination or other certification requirements.

Area-wide application—A nonagricultural pesticide application to areas of 25 or more contiguous acres or a nonagricultural pesticide application made by or at the direction of a governmental entity to properties of more than one person.

Available if and when needed—The ability of a certified applicator to communicate with a person applying pesticides under his supervision so that the certified applicator can provide instructions and exercise control over the application and can be at the application site within 5 hours of receiving notification that his physical presence is necessary.

Business—A governmental entity or commercial establishment for profit or not-for-profit. For a pesticide application business having more than one place of business or operating under more than one name within this Commonwealth, each place of business and each name shall be considered a separate business. For a State or Federal entity, each district or region will be considered a separate business.

Common access area—The areas within a school building where students/attendees normally congregate, assemble or frequent during normal academic instruction or extracurricular activities. The term does not include areas such as kitchens, boiler rooms, utility/maintenance rooms and areas which are physically blocked or restricted from student/attendee access.

Constructive notification—A person shall be deemed to have received notification if an adult residing in the same dwelling unit is so notified; orally, or by certified mail, or by a message left on an answering device activated by contacting the residence, including electronic mail or facsimile.

Current registry—The Pesticide Hypersensitivity Registry with the most recent effective date.

Department—The Department of Agriculture of the Commonwealth.

Dosage or rate of application—The concentration of each pesticide, such as, a percent, ounces or quarts per gallon, pounds per 100 gallons, applied to a specific application site or target such as a crop, ornamental, cut stump, weed, animal, utility pole, reported as gallons per acre, pounds per 1,000 square feet, ounces per linear foot, ounces per cubic foot or ounces per animal.

EPA—The United States Environmental Protection Agency.

FIFRA—Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).

Fumigant—A pesticide that when released forms a gas.

General use pesticide—A pesticide not classified for restricted use.

Governmental entity—An executive or independent agency or unit of the Commonwealth, or local agency, including a county, a city, a borough, town, township, school district, municipal authority or political subdivision thereof.

Integrated pest management—The managed use of combined pest control alternatives, including cultural, mechanical, biological and chemical, to most effectively prevent or reduce to acceptable levels damage caused by pests.

Land contiguous to a restricted use pesticide application site—Premises which share a mutual border with the premises upon which the application site is located. The term does not include premises located more than 100 feet from the application site.

Perimeter treatment—

(i) The application of pesticide to the exterior of a structure to a maximum distance of 10 feet from the structure, unless the pesticide label clearly states otherwise, to prevent pests from invading the structure.

(ii) The term excludes tamper resistant bait stations.

Person—An individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

Pesticide dealer manager—An owner or individual employed by a licensed pesticide dealer who is responsible for storage and distribution of restricted use pesticides.

Pesticide end-use dilution—Pesticide material resulting from the dilution of a registered pesticide according to label direction.

Pesticide hypersensitivity—Excessive or abnormal sensitivity to pesticides.

Primary residence—An individual's legal residence.

Prior notification—

(i) Notification of a proposed application of pesticides given not more than 45 days and not less than 14 days prior to the date of application which contains the following information:

(A) The proposed date of application.

(B) The municipalities where the proposed application sites are located.

(C) The name, address and telephone number of the pesticide application business to whom requests for additional information should be directed.

(ii) A request for prior notification shall expire on December 31 in the year in which it is made.

Private park—Privately owned outdoor real estate which includes a recreational area for use by the public, including an area with restricted access.

Production of an agricultural commodity—The term includes activities involved in the raising of plants or animals and their products. The term does not include the protection or maintenance of harvested crops, slaughtered livestock or plant and animal products unless the protection or maintenance is carried out by the original producer of the agricultural commodity, who is a private applicator, or another private applicator.

Public park—Publicly owned outdoor real estate which includes a recreational area for use by the public, including an area with restricted access.

Recreational area—An outdoor place of relaxation, play or exercise.

Restricted use pesticide—The term includes the following:

(i) A pesticide classified for restricted use under section 3(d) of FIFRA (7 U.S.C.A. § 136(d)).

(ii) A pesticide designated by the Secretary for restricted use under section 7(b)(6) of the act (3 P. S. § 111.27(b)(6)).

School—A public, nonpublic or licensed private elementary or secondary school wherein a resident of this Commonwealth may fulfill the compulsory school attendance requirements and which meets the applicable requirements of Title IV of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000c) (Public Law 88-352, 78 Stat. 241). The term also includes a kindergarten or preschool program operated by a school and a child day care center operating under a certificate of compliance issued by the Department of Public Welfare.

Secondary location—An address where an individual may be located other than the individual's primary residence, limited to the following:

- (i) Place of employment.
- (ii) School.
- (iii) Vacation home.

Secretary—The Secretary of the Department.

Service container—A container other than the original labeled container of a registered pesticide used for the purpose of holding, storing or transporting an original registered pesticide material or a pesticide end-use dilution.

Specific site application—A nonagricultural pesticide application made by or at the direction of a person to property owned or rented by that person.

Swimming pool—An outdoor or indoor place used for bathing or for amateur, professional or recreational swimming, excluding single-family residential pools.

Therapeutic swimming pool—An indoor swimming pool or spa with a water temperature above 85° F used solely for the rehabilitation or medically recommended treatment.

Under the direct supervision of—The term includes the following:

(i) For a commercial or public certified applicator, the application of a pesticide by a registered pesticide application technician acting with the instructions and under the control of a certified applicator who is responsible for the actions of the technician and who is available when needed; or the application of a pesticide by a nonregistered or noncertified person acting with the instructions and under the continuous voice and visual control of a certified applicator who is responsible for the actions of the person and physically present at the application site. The supervising applicator shall be certified in the appropriate category relating to the application.

(ii) For a private certified applicator, the application of a restricted use pesticide by a noncertified person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available when needed.

Upon written request—The term includes a notice of inspection issued by the Department.

Use, or cause to be used, a pesticide inconsistent with its labeling—The use of a pesticide in a manner not permitted by its labeling. This phrase does not include:

- (i) Applying a pesticide at a dosage, concentration or frequency less than that specified on its labeling.
- (ii) Applying a pesticide against a target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may only be used for the pests specified on the labeling.
- (iii) Employing a method of application not prohibited by the labeling.
- (iv) Mixing a pesticide with a fertilizer where the mixture is not prohibited by the labeling.

Worker Protection Standard—Includes all provisions of the Federal Worker Protection Standard as set forth in 40 CFR Part 170 (relating to worker protection standard).

Authority

The provisions of this § 128.2 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.2 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (301741) to (301744).

Cross References

This section cited in 7 Pa. Code § 128.103 (relating to handling, transportation, storage, use and disposal of pesticides).

§ 128.3. Fees.

(a) *Pesticide dealer's license*. The annual fee for a pesticide dealer's license is \$10 per location. The fee for a duplicate pesticide dealer's license is \$3.

(1) The annual fee for a pesticide dealer manager's certificate is \$15 per individual.

(2) The fee for a duplicate pesticide dealer manager's certificate is \$3.

(b) *Pest management consultant's license*. The annual fee for a pest management consultant's license is \$25. The fee for a duplicate pest management consultant license is \$8.

(c) *Pesticide application business' license*. The annual fee for a pesticide application business' license is \$35. The fee for a duplicate pesticide application business license is \$8.

(d) *Commercial applicator's certificate*. The annual fee for the commercial applicator's certificate is \$40. When the initial certification requires examination, no fee will be charged. The fee for a duplicate commercial applicator's certificate

is \$10. If an applicator is employed by more than one pesticide application business, a separate certificate and fee is required.

(e) *Public applicator's certificate.* The triennial fee for a public applicator's certificate is \$10. A fee is not required when the initial certification requires examination. The fee for a duplicate public applicator's certificate is \$3.

(f) *Examination fees.* Examination fees are nonrefundable. The following examination fees, with payment made in advance, will be charged:

- (1) Commercial/public applicator's core examination—\$50.
- (2) Commercial/public applicator's category examination—\$10.
- (3) Pesticide dealer manager's examination—\$50.
- (4) Private applicator's examination—no charge.
- (5) Pest management consultant's examination—no charge except that a fee of \$5 will be charged if an examination is requested on other than a regularly scheduled examination date.

(6) In addition to the examination fees in this subsection, when a person chooses to take a pesticide examination offered by an agency or vendor that is under contract with the Department, any additional costs as may be charged by the contracted agency or vendor shall be assessed to the person taking the examination. When a contracted agency assesses an additional fee for costs such as use of its facilities, administration of the test and services provided, the Department will pass that fee along to the person taking the test. When a private vendor under contract with the Department is utilized, the private vendor shall collect any additional fees it may charge for costs such as use of its facilities, administration of the test and services provided. The Department will continue to offer pesticide certification examinations on at least a monthly basis at Department sites where additional charges will not be assessed. The Department will post on its web site the addresses of the contracted examinations, the dates and times examinations are offered at those locations, and the additional costs that will be charged by the contracted agency or vendor.

(g) *Registration fee for a pesticide application technician.*

(1) *Commercial pesticide application technician.* An annual registration fee of \$30 will be charged to register a commercial pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(2) *Public pesticide application technician.* An annual registration fee of \$20 will be charged to register a public pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(h) *Private applicator's permit.* The triennial fee for a private applicator's permit is \$10. The fee for a duplicate private applicator's permit is \$3. A fee will not be charged for a special permit which may be issued in conjunction with the private applicator's permit.

(i) *Product registration.* The annual fee to register a pesticide is \$250.

Authority

The provisions of this § 128.3 amended under sections 7(b), 34(3) and (4) and 37.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.27(b), 111.54(3) and (4) and 111.57a).

Source

The provisions of this § 128.3 adopted February 2, 1990, effective February 3, 1990, 20 Pa.B. 488; amended October 18, 1991, effective October 19, 1991, 21 Pa.B. 4949; amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended October 12, 2001, effective October 13, 2001, 31 Pa.B. 5704; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044; amended January 16, 2015, effective February 17, 2015, 45 Pa.B. 308. Immediately preceding text appears at serial pages (371599) to (371600).

Cross References

This section cited in 7 Pa. Code § 128.44 (relating to eligibility); 7 Pa. Code § 128.45 (relating to recertification); 7 Pa. Code § 128.63 (relating to recertification); and 7 Pa. Code § 128b.5 (relating to funding).

Subchapter B. LICENSES, CERTIFICATES AND PERMITS

PESTICIDE DEALERS

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PESTICIDE DEALERS

§ 128.10. Licensing requirements for pesticide dealer.

(a) A person may not purchase or attempt to purchase a restricted use pesticide for resale or distribution unless the person has a current and valid pesticide dealer license.

(b) Each pesticide dealer shall, at all times, employ at least one individual who possesses a valid pesticide dealer manager certificate.

(1) A licensed pesticide dealer shall notify the Department in writing within 15 days of a change in its license information including the employment status of its pesticide dealer manager certificate holder.

(2) A licensed pesticide dealer shall return to the Department within 15 days the voided pesticide dealer manager's certificate of an employee that is no longer employed by the pesticide dealer. If the pesticide dealer manager's certificate issued by the Department is not available, the pesticide dealer shall notify the Department in writing within 15 days of the employee's termination and provide an explanation of why the certificate is unavailable and the last known home address for the individual.

(c) A pesticide dealer may not distribute a restricted use pesticide unless the receiver provides proof of appropriate valid certification or license and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

Authority

The provisions of this § 128.10 issued under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.10 adopted December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044.

§ 128.11. Recordkeeping.

(a) A pesticide dealer shall keep for each distribution of a restricted use pesticide a record containing the following information:

- (1) The name and address of the customer and his applicator's certificate number or business or dealer's license number.
- (2) The brand name of the restricted use pesticide.
- (3) The EPA registration number of the restricted use pesticide.
- (4) The amount of the restricted use pesticide.
- (5) The date of the distribution.
- (6) Signature and identification information of the individual accepting delivery.

(b) A record required to be kept under this section shall be completed within 24 hours of the distribution in written or printable form, maintained for at least 3 years and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency.

Authority

The provisions of this § 128.11 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.11 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305257).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

§ 128.12. Issuance of a pesticide dealer manager certificate.

(a) The Department will issue a pesticide dealer manager certificate to an applicant 18 years of age or older, upon verification of passing a written competency examination and payment of the appropriate fee. Renewal of the dealer manager certificate will be based on receipt by the Department of an application accompanied by the appropriate fee.

(b) If a pesticide dealer manager fails to renew the certificate for a period of 1 or more years, the pesticide dealer manager shall reestablish eligibility as described in § 128.13 (relating to determination of competence).

(c) The certificate for a pesticide dealer manager will expire on December 31st of each year.

(d) For currently licensed pesticide dealer locations, the requirements for employment of a pesticide dealer manager certificate holder will become effective December 11, 2011. Initial examination fee will be waived until December 11, 2011. The requirements for a pesticide dealer manager certificate holder will be immediately effective for pesticide dealer locations licensed on or after December 11, 2010.

(e) The pesticide dealer manager certificate is only valid when the certificate holder is employed by the licensed pesticide dealer indicated on the certificate. A new certificate will be issued without charge if the certificate holder is subse-

quently employed by a different licensed pesticide dealer and has not lost eligibility as set forth in subsections (b) and (c).

Authority

The provisions of this § 128.12 issued under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.12 adopted December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044.

§ 128.13. Determination of competence.

(a) At least one individual at each pesticide dealer location shall show competence in the storage and distribution requirements for restricted use pesticides. Competence will be determined on the basis of a written examination. The examination will include the following:

- (1) Safety.
- (2) Labeling and label comprehension.
- (3) Storage and security.
- (4) Spill control.
- (5) Transportation.
- (6) Pesticide disposal.
- (7) Recognition of pesticide poisoning symptoms and first aid.

(b) An application to take an examination shall be filed along with the appropriate fee with the Department at least 10 working days prior to the date of the examination.

(c) The examination will be proctored. Successful completion of the examination will entitle a person to hold a pesticide dealer managers certificate. An opportunity will be provided to retake an examination if a passing grade has not been achieved.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

(e) A person may not use reference materials during an examination unless approved by the Department or its designated agents.

(f) An application for a new pesticide dealer manager's certificate will be accepted throughout the calendar year. A full year's license fee will be required for a portion of a year, except that the Department may issue a certificate for an additional year when a new application is filed during the last 2 months of the certificate year.

Authority

The provisions of this § 128.13 issued under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.13 adopted December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044.

PEST MANAGEMENT CONSULTANTS**§ 128.21. Determination of competence.**

A pest management consultant shall prove his competence by passing a written proctored examination.

§ 128.22. Licensing.

Upon passing a written examination and the payment of the annual fee, the Department will issue a pest management consultant's license.

§ 128.23. Categories of pest management consultant.

The specialty categories for a pest management consultant will conform with the categories of commercial and public applicators established under § 128.42 (relating to categories of commercial and public applicators).

§ 128.24. Recordkeeping.

(a) A pest management consultant shall keep for each instance in which he provides technical advice, supervision or aid or makes a recommendation to the user of a restricted use pesticide, the following information:

- (1) The name and address of the person for whom this service was provided.
- (2) The brand name of the pesticides recommended to be used.
- (3) The amount of the pesticides recommended to be used.
- (4) The dosage or rate of the pesticides recommended to be used.
- (5) The date on which this service was provided.

(b) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request or to medical personnel in an emergency.

Authority

The provisions of this § 128.24 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.24 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305257) to (305258).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

PESTICIDE APPLICATION BUSINESSES**§ 128.31. Licensing requirements.**

(a) A pesticide application business may not be operated without first obtaining a pesticide application business license.

(b) The license period shall end on December 31 each year, except that the Department may issue a license for the following year when an initial license application is filed during the last 2 months of a licensing year.

(c) A pesticide application business shall prominently display on every vehicle involved in the pesticide application phase of its business the license number assigned by the Department. The number must be in figures at least 3 inches high and be located on both sides of the vehicle at a readily visible location in a contrasting color.

(d) A licensed business shall notify the Department in writing within 15 days of a change in information in its application for licensing, or if it is no longer engaged in the application of pesticides.

(1) A licensed pesticide application business shall return to the Department within 15 days the voided applicator certification or register technician card of an employee that is no longer employed by the pesticide application business.

(2) If the certification or registered technician card issued by the Department is not available, the pesticide application business shall notify the Department in writing within 15 days of the employee termination and provide an explanation of why the card is unavailable and the last known home address for the individual.

(e) A business that meets the definition of a commercial applicator as defined in section 4(6)(C) of the act (3 P. S. § 111.24(6)(C)) may not apply a pesticide without having a valid certified applicator physically present at the application site unless all application personnel on site are valid registered technicians.

(f) If the application business includes aerial applications, the applicant shall provide proof of compliance with the Federal Aviation Administration regulations as described in 14 CFR Part 137 (relating to agricultural aircraft operations).

Authority

The provisions of this § 128.31 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.31 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305258).

§ 128.32. Categories of business licenses.

A commercial or public business shall identify in its application those business categories in which it desires to operate. A business shall employ for each business category in which it makes a pesticide application at least one applicator who is certified in a specific applicator category recognized under the general business category and shall limit its applications to those applicator categories in

which it employs at least one certified applicator. The business categories are listed in paragraphs (1)—(10). The applicator categories recognized under a particular business category are listed under that business category.

- (1) *Category (A)*—Agricultural Plant Pest Control.
 - 01 Agronomic Crops
 - 02 Fruits and Nuts
 - 03 Vegetable Crops
 - 05 Forest Pest Control
 - 08 Seed Treatment
- (2) *Category (B)*—Agricultural Animal Pest Control.
 - 04 Agricultural Animals
- (3) *Category (C)*—Ornamental and Turf Pest Control.
 - 06 Ornamental and Shade Trees
 - 07 Lawn and Turf
 - 22 Interior Plantscape
- (4) *Category (D)*—Aquatic Pest Control.
 - 09 Aquatic Pest Control
 - 24 Swimming Pools
 - 26 Sewer Root Control
- (5) *Category (E)*—Right-of-Way Pest Control.
 - 10 Right-of-Way and Weeds
- (6) *Category (F)*—Industrial, Institutional, Structural and Health Related.
 - 11 Household and Health Related
 - 12 Wood Destroying Pests
 - 14 (Reserved)
 - 15 Public Health Vertebrate Pest Control
 - 16 Public Health Invertebrate Pest Control
 - 19 Wood Preservation
 - 23 Park or school Pest Control
- (7) *Category (G)*—Fumigation.
 - 13 Structural Fumigation
 - 20 Commodity and Space Fumigation
 - 21 Soil Fumigation
- (8) *Category (H)*—Demonstration and Research.
 - 18 Demonstration and Research Pest Control
- (9) *Category (I)*—Regulatory.
 - 17 Regulatory Pest Control
- (10) *Category (J)*—Aerial Applicator.
 - 25 Aerial Applicator

Authority

The provisions of this § 128.32 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.32 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305258) and (206525) to (206526).

Cross References

This section cited in 7 Pa. Code § 128.85a (relating to ornamental or turf application notification).

§ 128.33. Assignment of work.

A pesticide application business may not allow an individual to make a pesticide application in an applicator category in which the individual has not been certified as an applicator or trained and registered as a technician.

Authority

The provisions of this § 128.33 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.33 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (206526).

§ 128.34. Financial responsibility.

(a) The Department will consider a certificate of insurance from an insurer or surety to be evidence of financial responsibility if the insurer or surety is licensed to do business under section 1605 of the Insurance Company Law of 1921 (40 P. S. § 991.1605), or otherwise permitted by Federal law or the Insurance Department to do business in this Commonwealth, if the following conditions are met:

(1) The certificate of insurance includes the name of the insurance company, policy number, insurance amount, type of coverage afforded and exclusions relating to damage arising from the use of pesticides and expiration date of the policy.

(2) The minimum comprehensive general liability insurance provided is \$100,000 for each occurrence of bodily injury liability and \$100,000 for each occurrence of property damage liability. A policy may be written with combined limits if the limits equal or exceed the sum of the individual limits.

(3) The certificate indicates coverage for completed operations and includes a statement indicating that the coverage applies to pesticide application.

(4) The maximum deductible amount does not exceed \$2,500 of the combined policy limits. If a pesticide application business has not satisfied the deductible amount in a prior claim, the policy may not contain a deductible amount.

(5) A current certificate of insurance is forwarded to the Department at each insurance renewal date which sets forth the same information specified in paragraphs (1)—(4).

(b) A pesticide application business desiring to qualify as a self-insurer may submit a written proposal of self-insurance to the Department for approval.

(1) The proposal shall include the following:

- (i) A master self-insurance and security agreement.
 - (ii) A balance sheet and income statement which shall reflect the actual financial condition of the business as of the last complete calendar or fiscal year preceding the date of the proposal. These documents shall be prepared in accordance with generally accepted accounting principles and shall be certified by a certified public accountant.
- (2) A business will not be approved as a self-insurer unless it posts certain collateral with the Department. This paragraph does not apply to government agencies or authorities.
- (3) The minimum required security that shall be furnished to the Department is \$500,000.
- (4) Only the following will be accepted as valid collateral for self-insurance purposes:
- (i) United States currency, including United States Treasury bills, United States Treasury notes or other negotiable obligations of the United State Government. United States Savings Bonds are not negotiable.
 - (ii) Evidence of escrow deposits in Federal or State banks, credit unions or savings and loan associations if Federally insured. Escrow deposits shall be established for the sole purpose of providing security to meet the duties of a self-insurer.
 - (iii) Irrevocable letters of credit issued by a bank in this Commonwealth or another bank as approved by the Department.
 - (iv) Surety bonds issued by insurers authorized or eligible to do business in this Commonwealth.
 - (v) Bonds or other negotiable obligations issued by a state, subdivision or instrumentality of a state in the United States, if not in default as to principal or interest.
 - (vi) Corporate bonds, issued by an entity other than the proposed self-insurer, rated A or better by Moody's Bond Record, Moody's Investors Service, Inc.
 - (vii) Other security approved upon petition to the Department.
- (5) The Department will hold the collateral furnished for the benefit of the persons to whom the self-insurer is obligated.
- (i) The self-insurer shall pay for obligations incurred under the act by assets readily reduced to liquid assets, such as demand deposits, time deposits, negotiable instruments and other assets which may be readily reduced to liquid form.
 - (ii) If the self-insurer is not able to discharge its obligations, the self-insurer may petition the Department to release the collateral posted as is necessary to satisfy the obligations of the self-insurer.
 - (iii) If withdrawals from collateral are required, the self-insurer shall replace the security within 72 hours from the date of withdrawal, to retain its certificate as a self-insurer.

(6) A self-insurer shall annually furnish to the Department a report of claims incurred during the preceding calendar year.

(7) Upon approval by the Department of a self-insurance proposal, a self-insurance certificate will be issued to the self-insurer. The certificate shall be renewed annually, after review that the Department deems appropriate.

(c) If the evidence of financial responsibility furnished by a pesticide application business no longer complies with this section, the business shall immediately provide other evidence of financial responsibility which complies with this section. If it fails to do so, the Secretary may revoke its license.

Authority

The provisions of this § 128.34 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.34 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (206526) and (305259) to (305260).

Cross References

This section cited in 7 Pa. Code § 130d.26 (relating to financial responsibility).

§ 128.35. Recordkeeping.

(a) A pesticide application business shall keep for every application of a pesticide a record containing the following information:

(1) The date of application. For a pesticide requiring a reentry time, the date of application must include the hour completed. For continuous applications, such as swimming pools and chemigation, the record must include start and finish dates and the total amount of pesticide products used during that time period. For each addition of a pesticide to the system, an entry to the record is required.

(2) The name and address of the customer and the address and location of the application site if different from the address of the customer.

(3) The brand name of the pesticides used.

(4) The EPA product registration number.

(5) The total amount of every pesticide used in pounds, ounces, gallons, liters, applied to a treated area.

(6) The dosage or rate of application, of every pesticide used.

(7) The names and the certification or technician's registration number of each person making or supervising the application. When applicable the names of noncertified/nonregistered persons involved in the application.

(8) The identification of the application site, including the specific field or land area and the crop and size of the area treated for pesticides used in the production of an agricultural commodity.

(b) When a restricted use pesticide is used in the production of an agricultural commodity, a copy of the record required under this section shall be provided by the application business to the customer within 30 days of the pesticide application.

(c) Pesticide product and application information shall be made immediately available to medical personnel in an emergency.

(d) A pesticide application record must be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

(e) A record required to be kept under this section shall be maintained for at least 3 years.

Authority

The provisions of this § 128.35 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.35 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305260).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

COMMERCIAL AND PUBLIC APPLICATIONS

§ 128.41. Requirements for certification.

(a) A person is deemed to be a commercial or public applicator and required to be certified if one or more of the following criteria are met:

(1) A person who applies or supervises the application of a pesticide on an easement or on the property or premises of another (other than his employer). This includes the use of a pesticide exempted from Federal registration under § 128.91 (relating to EPA approval required).

(2) A person who applies or supervises the use of a restricted use pesticide on property owned by him or his employer when not applied for the purpose of producing an agricultural product.

(3) A person who applies or supervises the application of a pesticide to the following locations or who is involved in the following types of application:

(i) *Fumigation*—Includes a person who uses fumigants except a person who meets the definition of a private applicator.

(ii) *Golf courses*—Includes a person who uses pesticides in the establishment and maintenance of a golf course.

(iii) *Public and private parks*—Includes a person who uses a pesticide in a recreational or campground area of a public or private park.

(iv) *Educational and research institutions*—Includes a person employed by a public or private educational and research facility that uses pesticides in its educational or research programs.

(v) *Playgrounds and athletic fields*—Includes a person who applies a pesticide to a public playground or an athletic field.

(vi) *Apartment dwellings*—Includes an owner of an apartment building or an employee of an owner who applies a pesticide other than a disinfectant

to an apartment structure of four or more units. Commercial certification is not required if the owner or employee resides in the apartment structure and applies general use pesticides to the unit in which he resides.

(vii) *Schools*—Includes a person who uses a pesticide on school property, except for the use of disinfectants and sanitizers within the school building.

(viii) *Swimming pools*—Includes a person who uses a pesticide in the care and maintenance of swimming pools or water recreation facilities associated with a public or private park, excluding lakes, ponds, rivers or streams.

(b) The following are exceptions to subsection (a)(3)(viii):

(1) Disinfectants and sanitizers not used for water treatment.

(2) The use of general use pesticides in the care and maintenance of a swimming pool at a private single-family residence.

(3) The use of a general use pesticide by an owner or employee in the care or maintenance of a swimming pool used solely as a therapeutic swimming pool.

Authority

The provisions of this § 128.41 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.41 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305260) and (206529).

Cross References

This section cited in 7 Pa. Code § 128.44 (relating to eligibility).

§ 128.42. Categories of commercial and public applicators.

A commercial or public applicator applying or supervising the application of a pesticide shall be certified in one or more of the following applicator categories:

(1) *Agronomic crops*—The use of a pesticide in the production of an agricultural crop, including tobacco, grain, soybeans and forages and the application of a pesticide to noncrop agricultural land.

(2) *Fruits and nuts*—The use of a pesticide in the production of tree fruits, nuts and berries.

(3) *Vegetable crops*—The use of a pesticide in the production of vegetables, including, tomatoes, cabbage and celery.

(4) *Agricultural animals*—The use of a pesticide on animals, including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry or other livestock and to premises where these animals are confined.

(5) *Forest pest control*—The use of a pesticide in a forest, forest nursery or forest seed producing area.

(6) *Ornamental and shade trees*—The use of a pesticide in the maintenance of an ornamental tree, shrub, flower or other ornamental.

(7) *Lawn and turf*—The use of a pesticide in the maintenance or production of lawn and turf.

(8) *Seed treatment*—The use of a pesticide on seed.

(9) *Aquatic pest control*—The use of a pesticide on standing or running water, excluding the use of a pesticide in a public health-related activity described in paragraph (16).

(10) *Right-of-way and weeds*—The use of a pesticide to maintain a public road, an electrical power line, a pipeline, a railway right-of-way or a similar type of area or to control vegetation around a structure, such as an oil tank, utility sub stations, an industrial railway siding, an airport, a parking lot, a fence or an industrial building or for the control of an invasive weed species in other areas.

(11) *Household and health related*—The use of a pesticide in, on or around a food handling establishment, a human or nonagricultural animal dwelling, an institution such as a school or hospital, an industrial establishment, a warehouse, a grain elevator and other types of structures whether public or private. The application of a pesticide to protect a stored, processed or manufactured product is also included. The use of a rodenticide or avicide is permitted in this category. The use of a pesticide in outdoor perimeter treatments to control pests, which may infest the structure, is included.

(12) *Wood destroying pests*—The use of a pesticide to control or prevent termites, powder post beetles or other wood destroying pests infesting a residence, school, hospital, store, warehouse or other structures or structural components, including wooden objects contained in or associated with the structure and the area adjacent to those structures.

(13) *Structural fumigation*—The use of a fumigant in or to a structure for the control of pests affecting the structure or its fixtures or inhabitants.

(14) (Reserved).

(15) *Public health vertebrate pest control*—The use of a pesticide to manage and control a vertebrate pest such as rodents or birds, affecting public health.

(16) *Public health invertebrate pest control*—The use of a pesticide to manage and control an invertebrate pest affecting public health.

(17) *Regulatory pest control*—The use of a pesticide to control an organism designated by the Commonwealth or the Federal government to be a pest requiring regulatory restrictions or control procedures to protect man or the environment.

(18) *Demonstration and research pest control*—The use of a pesticide to demonstrate to the public the proper method of application for a pesticide and the use of a pesticide in research such as that undertaken by an extension specialist, county agent or vocational agriculture teacher.

(19) *Wood preservation*—The use of a pesticide in wood impregnation to control or prevent fungi, insects, bacteria, marine borers and other wood destroying pests and includes pole treating or restoration and the use of a fumigant for in-place treatment of utility poles.

(20) *Commodity and space fumigation*—The use of a fumigant in or to a structure, trailer, railcar, onboard ship, or in any type of fumigation chamber, such as under a tarpaulin for the control of pests in stored or in-transit commodities.

(21) *Soil fumigation*—The application of a fumigant to a soil environment.

(22) *Interior plantscape*—The use of a pesticide to control plant pests when the soil or plant to be treated is located within an enclosed structure.

(23) *Park or school pest control*—The use of a pesticide in a campground or recreational area of a public or private park or on school property.

(24) *Swimming pools*—The use of a pesticide in the care and maintenance of swimming pools.

(25) *Aerial applicator*—The use of a pesticide applied by aircraft to any crop or land area. Applicators in this category shall comply with § 128.85a (relating to ornamental or turf application) when making ornamental or turf applications.

(26) *Sewer root control*—The use of a pesticide to control vegetative growth in public and private sewage collection and distribution lines.

Authority

The provisions of this § 128.42 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.42 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (206529) to (206531).

Cross References

This section cited in 7 Pa. Code § 128.23 (relating to categories of pest management consultant); 7 Pa. Code § 128.43 (relating to determination of competence); and 7 Pa. Code § 128.44 (relating to eligibility).

§ 128.43. Determination of competence.

(a) For each of the categories listed in § 128.42 (relating to categories of commercial and public applicators), competence in the use and handling of pesticides shall be determined on the basis of a written examination. The examination will include the following:

(1) Areas of knowledge and competence set forth in section 16.1 of the act (3 P. S. § 111.36a).

(i) Identification of pests to be controlled and the damages caused by pests.

(ii) The appropriate control measures to be used, including pesticides.

(iii) The hazards that may be involved in applying pesticides, to protect people and the environment.

(iv) The proper use of pesticide application equipment, including calibration and dosage calculations.

(v) Protective clothing and respiratory equipment required during application and handling of pesticides.

- (vi) General precautions to be followed in cleaning and maintaining equipment used.
 - (vii) Transportation, storage, security and disposal of pesticides.
 - (viii) Applicable Federal and State pesticide laws and regulations.
- (2) Safety.
 - (3) Labeling and label comprehension.
- (b) An examination for certification will consist of two parts:
 - (1) One part of the examination, the core area, will be based on general information required of commercial and public applicators.
 - (2) The second part of the examination will be based on information related to the specific categories of commercial and public applicators.
 - (c) An examination will be proctored. The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address. Only reference materials approved by the Department may be used during the examination. Successful completion of the core area and successful completion of part two of the examination in a specific category will entitle a person to certification in that category. A person desiring certification for additional categories will be required to be examined for each additional category. An opportunity will be provided to retake an examination when a passing grade has not been achieved.
 - (d) If a person successfully completes only one part of the two-part examination, successful completion of the remaining part of the examination shall be obtained within 1 year from the date the initial part of the examination was successfully completed.
 - (e) An application to take an examination shall be filed along with the appropriate fee with the Department at least 10 working days prior to the date of the examination.
 - (f) A person may not use a reference source during an examination unless approved by the Department or its designated agents.

Authority

The provisions of this § 128.43 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.43 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (206531) to (206532).

Cross References

This section cited in 7 Pa. Code § 128.44 (relating to eligibility).

§ 128.44. Eligibility.

(a) A person is eligible for certification upon reaching 18 years of age and fulfilling the requirements under §§ 128.41—128.43 (relating to requirements for certification; categories of commercial and public applicators; and determination of competence). In addition to the requirements for a commercial applicator's certification, an aerial applicator shall have a current commercial agricultural aircraft operator's certificate issued by the Federal Aviation Administration or show evidence of compliance with 14 CFR Part 137 (relating to agricultural aircraft operations).

(b) Within 12 months of becoming eligible to be certified as a commercial applicator, a person shall file with the Department an application for certification. A person who fails to file an application within this 12-month period will lose certification eligibility and shall again establish eligibility in accordance with §§ 128.41—128.43. An application for initial certification will be accepted from an eligible person throughout the year. A certificate will expire on September 30 following the date of application, except that the Department may issue a certificate for an additional year when an application is initially filed during the last 2 months of the certification year.

(c) Once a certification has expired, no further use of pesticides as allowed by the certification will be permitted. Eligibility for certification shall remain under subsection (b).

(d) If a person allows his certification to expire in the triennial year in which recertification credits are due, recertification shall require completion of delinquent recertification credits as described in § 128.45 (relating to recertification) and satisfaction of the requirements for eligibility of subsection (b).

(e) If a person fails to complete delinquent recertification credits within 1 year from the triennial certification expiration date or fails to renew the certification for any reason during that time period, the person is required to reestablish eligibility by meeting the requirements in § 128.3 (relating to fees), § 128.43 and this section.

Authority

The provisions of this § 128.44 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.44 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (206532) to (206533).

§ 128.45. Recertification.

(a) At intervals of 3 years, a certified commercial or public applicator shall provide evidence of having received current update training in technology relat-

ing to pesticides in the specific categories in which the applicator is certified to maintain certification. Training will be divided into core and category specific areas as follows:

- (1) *Core.*
 - (i) Safety and health.
 - (ii) Labeling and label comprehension.
 - (iii) Environmental protection.
 - (iv) Equipment use, calibration and dosage calculations.
 - (v) Protective clothing and respirator equipment.
 - (vi) Cleaning and maintaining equipment.
 - (vii) Transportation, storage, security and disposal.
 - (viii) Applicable State and Federal laws.
- (2) *Category specific.*
 - (i) Identification of pests.
 - (ii) Appropriate control measures.
 - (iii) Integrated pest management.

(b) Recertification credits will be given on the basis of attendance at courses or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the "Pennsylvania State Plan for Certification of Pesticide Applicators." This plan has been filed with and approved by the EPA in accordance with FIFRA. Records of training will be maintained by the Department and a yearly statement will be sent to each certified commercial or public applicator describing credits obtained and credits due to meet recertification standards.

(c) Training will be approved based on the following criteria:

- (1) Training shall be conducted or sponsored by an educational institution, an individual, an association, a business or a governmental agency.
- (2) Training shall be approved for recertification credits at the rate of 1 credit per 30 minutes of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like.
- (3) Sponsors of recertification training shall submit a written request for course approval to the Department's regional office for the region in which the meeting will be held. A request to approve out-of-State training shall be submitted to the Department of Agriculture, Bureau of Plant Industry, Health and Safety Division, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted at least 15 working days prior to the training date.
- (4) A request for training approval must include the following information:
 - (i) The name, address and phone number of the contact person who is coordinating the meeting.
 - (ii) The specific location of the meeting.
 - (iii) The date and time of the meeting.
 - (iv) A listing of the trainers, subject matter and time allotted to each subject.

(v) The trainer has at least 3 years experience as a certified applicator in the appropriate category or has submitted documentation of other qualifications to serve as a trainer such as educational background.

(vi) A statement of whether the meeting is opened to the public and if there is a charge to attend.

(5) Statements made in a request to approve training shall be supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(6) Credits will be assigned to each training meeting based upon the subjects covered and the amount of time expended on each subject.

(7) If an employee of the Department is unable to monitor the training, the meeting coordinator is responsible for authenticating attendance and shall compile an approved list of Pennsylvania certified applicators in attendance. The lists shall be returned to the Department within 10-working days following the meeting date and shall include the name of each individual attending and his applicator's certificate number.

(8) Credits assigned may be modified if either the content or time of the actual meeting differs from the original written request for approval.

(9) Falsification by a pesticide business or other course sponsor of information required under this subsection may result in a warning, a fine, suspension and the withdrawal of course approvals as set forth in this section.

(10) A person may not falsify attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, a fine or suspension or revocation of the applicator's certification and require recertification as required under §§ 128.3 and 128.61 (relating to fees; and determination of competence).

Authority

The provisions of this § 128.45 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.45 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (206533) to (206534) and (305261).

Cross References

This section cited in 7 Pa. Code § 128.44 (relating to eligibility); and 7 Pa. Code § 128.63 (relating to recertification).

PESTICIDE APPLICATION TECHNICIANS

§ 128.51. Training program.

(a) A pesticide application technician shall obtain instruction in, and possess adequate knowledge of, the proper use and handling of pesticides. The training program must include:

(1) Those areas of knowledge described in section 16.2 of the act (3 P. S. § 111.36b).

- (i) Identification of pests relative to job responsibility.
 - (ii) The proper use of pesticides and use of application equipment, including calibration and maintenance equipment used on the job.
 - (iii) Protective clothing and respiratory equipment required during the application and handling of pesticides.
 - (iv) Transportation and disposal of pesticides used in and around the workplace.
 - (v) Applicable State and Federal regulations as they affect the work assignments.
- (2) Spill handling.
 - (3) Human health and environmental effects.
 - (4) Safety and security.
- (b) The technician training program shall include a sufficient level of on-the-job training to allow the technician to competently perform the functions associated with an application of pesticides in which the technician is anticipated to be involved.
- (c) A technician is not permitted to make a pesticide application using techniques, pesticides or equipment not included in his training.
- (d) A technician shall undergo annual training to assure that his knowledge is adequate for satisfactory completion of his work related duties.
- (e) A certified applicator with at least 1 year experience in the categories in which the technician is to be trained shall be responsible for administering the training program. This person shall develop a training program which includes the appropriate level of training needed by the technician to satisfactorily complete work related duties subject to disapproval by the Department.

Authority

The provisions of this § 128.51 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.51 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305261).

Cross References

This section cited in 7 Pa. Code § 128.53 (relating to recordkeeping).

§ 128.52. Registration.

- (a) A business shall submit to the Department a list of persons it intends to register as technicians. The postmarked date or date of receipt will indicate the beginning of a training period to consist of at least 30 calendar days of training.
- (b) At the completion of training, the business shall file with the Department an application to register the technician. The application shall be signed by the certified applicator responsible for administering the training program and the technician verifying satisfactory completion of the training program. The annual registration fee shall be submitted with the application.
- (c) A registration expires on February 28 each year.

(d) An application for a new registration will be accepted throughout the calendar year. A full year's registration fee will be required for a portion of a year, except that the Department may issue a registration for an additional year when an application is initially filed during the last 2 months of the registration year.

(e) A pesticide application business shall register a technician annually with the Department and shall submit evidence of training, as required by the Department, in addition to the registration fee.

(f) A technician's registration may not be transferred from one business to another.

(g) A technician must be 16 years of age or older at the time of application for registration.

Authority

The provisions of this § 128.52 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.52 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5945; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305261) to (305262).

§ 128.53. Recordkeeping.

(a) A pesticide application business employing a technician shall keep records of training provided to meet the requirements of § 128.51 (relating to training program).

(b) The pesticide application business shall keep as part of its records proof of personal identification for all technicians by retaining copies of a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver's license, valid passport, military identification card or an immigration card; or at least two non-photo identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address. All copies of identification documents must be secured in a manner to prevent identity theft or unauthorized access.

(c) A record required to be kept under this section shall be maintained for at least 3 years and completed in written or printable form no later than 24 hours after the training and shall be made immediately available to the Department upon request.

Authority

The provisions of this § 128.53 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.53 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305262).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

PRIVATE APPLICATORS**§ 128.61. Determination of competence.**

(a) Competency in the use and handling of restricted use pesticides by a private applicator will be determined on the basis of a proctored written examination. The examination will include the following:

- (1) Areas of knowledge described in section 17.2 of the act (3 P. S. § 111.37b).
 - (i) Labeling and label comprehension.
 - (ii) Safety and health.
 - (iii) Environmental protection.
 - (iv) Pests.
 - (v) Pesticides.
 - (vi) Integrated pest management.
 - (vii) Equipment.
 - (viii) Application techniques and technology.
 - (ix) Laws and regulations.

(2) Transportation, storage, security and disposal.

(b) An opportunity will be provided to retake an examination if a passing grade has not been achieved.

(c) Only reference materials approved by the Department may be used during the examination.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

Authority

The provisions of this § 128.61 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.61 amended December 10, 2010, effective December 11, 2010, 40 Pa.b. 7044. Immediately preceding text appears at serial page (305262).

Cross References

This section cited in 7 Pa. Code § 128.45 (relating to recertification); 7 Pa. Code § 128.62 (relating to eligibility); 7 Pa. Code § 128.63 (relating to recertification); and 7 Pa. Code § 128.64 (relating to fumigation by a private applicator).

§ 128.62. Eligibility.

(a) A private applicator will be eligible for a permit upon reaching 16 years of age and fulfilling the requirements of § 128.61 (relating to determination of competence) and subsection (b).

(b) Within 1 year of fulfilling the requirements of § 128.61, a private applicator shall file with the Department an application for a permit accompanied by the appropriate fee. A person who fails to file within this 1 year period shall again establish eligibility under § 128.61.

(c) A private applicator will be issued a numbered permit which shall be used by the applicator when purchasing a restricted use pesticide.

(d) A private applicator with an expired permit may not make an application of a restricted use pesticide (unless the individual is working under the direct supervision of a certified applicator).

Authority

The provisions of this § 128.62 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.62 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305263).

Cross References

This section cited in 7 Pa. Code § 128.63 (relating to recertification).

§ 128.63. Recertification.

(a) At intervals of 3 years, a private applicator shall have accumulated credits as a result of having received update training approved by the Department in technology relating to the proper and safe use of pesticides to continue as a permitted private pesticide applicator. Training will be divided into core and category specific areas as specified in § 128.45(a) (relating to recertification).

(1) *Core.*

- (i) Safety and health.
- (ii) Labeling and label comprehension.
- (iii) Environmental protection.
- (iv) Equipment use, calibration and dosage calculations.
- (v) Protective clothing and respirator equipment.
- (vi) Cleaning and maintaining equipment.
- (vii) Transportation, storage, security and disposal.
- (viii) Applicable State and Federal laws.

(2) *Category specific.*

- (i) Identification of pests.
- (ii) Appropriate control measures.
- (iii) Integrated pest management.

(b) Recertification credits will be given on the basis of attendance at meetings or other appropriate training approved by the Department. Training will be

evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the *Pennsylvania State Plan for Certification of Pesticide Applicators*. This plan has been filed with and approved by the EPA under FIFRA. Records of training will be maintained by the Department and a yearly statement will be sent to each private applicator describing credits obtained and credits due to meet recertification standards. Training will be approved as described under § 128.45(c).

(c) If a private applicator fails to renew his permit by the date of expiration, renewal requires the following:

(1) Completion of due recertification credits as described in subsections (a) and (b).

(2) Completion of the examination requirements as described in §§ 128.3, 128.61 and 128.62 (relating to fees; determination of competence; and eligibility) by the applicator if the due recertification credits are not completed within 1 year from the expiration date of the permit or the permit is expired for more than 1 year for any reason.

(d) Falsification by a pesticide business or other course sponsor of information required under this subsection may result in a warning, fine and suspension or the withdrawal of course approvals as set forth in § 128.45 and this section.

(e) A person may not falsify his attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, fine or suspension or revocation of the applicator's certification and require recertification as required under § 128.61.

Authority

The provisions of this § 128.63 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.63 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305263).

Cross References

This section cited in 7 Pa. Code § 128.64 (relating to fumigation by a private applicator).

§ 128.64. Fumigation by a private applicator.

(a) A private applicator shall hold a permit in the proper fumigation category to purchase or attempt to purchase or use a restricted use fumigant product.

(b) In addition to the requirements in § 128.61 (relating to determination of competence), a private applicator using commodity and space, or soil fumigants shall demonstrate competence in the proper and safe use of these pesticides. Competency shall be demonstrated by passing a proctored written examination specifically relating to each type of fumigant the applicator intends to use. Only reference materials approved by the Department may be used during the examination. The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United

States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

(c) A special permit will be issued, relating to fumigation, and will be valid for a 3-year period. A fee will not be charged for this special permit. A special permit will not be issued for the use of a fumigant unless the applicant has a private applicator's permit.

(d) Recertification requirements shall be met through attendance at approved meetings and consist of at least two credits of category specific education relating to the appropriate area of fumigation in which the applicator is certified. The credits obtained by a private applicator to meet the requirements of this subsection may also be used to meet the requirements of § 128.63 (relating to recertification).

Authority

The provisions of this § 128.64 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.64 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305264).

§ 128.65. Recordkeeping.

(a) A private applicator shall keep for each application of a restricted use pesticide a record containing the following information:

- (1) The date of application. For a restricted use pesticide requiring a reentry time, the date of application must include the hour completed.
- (2) The place of application including the name and address of the farm and the specific field or land area and the crop treated.
- (3) The size of the area treated.
- (4) The brand name of every restricted use pesticide used.
- (5) The EPA product registration number.
- (6) The total amount of every restricted use pesticide used in pounds, ounces, gallons, liters, applied to a treated area.
- (7) The dosage or rate of application of every restricted use pesticide used.
- (8) The names and the permit or certification numbers of the persons making or supervising the application. When applicable, the names of the noncertified applicators acting under the direct supervision of the private applicator shall be recorded.

(b) A record required to be kept under this section shall be maintained for at least 3 years.

(c) Pesticide product and application information shall be made immediately available to medical personnel in an emergency.

(d) A restricted use pesticide application record must be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

Authority

The provisions of this § 128.65 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.65 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305264).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping).

RECIPROCITY

§ 128.71. General.

A person who is not a resident of this Commonwealth, but who has a valid license, certificate or permit from another state, may obtain an appropriate Pennsylvania license, certificate or permit if the state in which the person is licensed has a reciprocal agreement with the Commonwealth under section 22 of the act (3 P. S. § 111.42). A license, certificate or permit will be issued under this section only for the initial period of issuance for that eligible category.

Authority

The provisions of this § 128.71 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.71 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305265).

Cross References

This section cited in 7 Pa. Code § 128.72 (relating to procedure).

§ 128.72. Procedure.

A person desiring a license under § 128.71 (relating to general) shall submit to the Department a properly completed application, the appropriate fee and evidence of financial responsibility as required along with a copy of the person's current license, certificate or permit, proof of having reached the 18 years of age, out-of-State residency and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two non-photo identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

Authority

The provisions of this § 128.72 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.72 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305265).

Subchapter C. PRIOR NOTIFICATION

Sec.

- 128.81. Right-of-way application.
- 128.82. Nonagricultural specific site application.
- 128.83. [Reserved].
- 128.83a. Agricultural application.
- 128.84. Nonagricultural area-wide application.
- 128.85. [Reserved].
- 128.85a. Ornamental or turf application notification.
- 128.86. [Reserved].
- 128.87. [Reserved].
- 128.88. Recordkeeping.
- 128.89. Notification request.

§ 128.81. Right-of-way application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide to a right-of-way without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Alternative form of notification.* In lieu of the notification requirements described in subsection (a), an applicator may give prior notification by constructive notification to a person residing in every dwelling unit on land contiguous to the restricted use pesticide application site.

(c) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and provide the following additional information at least 12 hours prior to the time of application:

- (i) The proposed date and time of the application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

(d) *Exceptions.* The following types of ground application do not require prior notification:

- (1) Injections internal to utility poles and trees.

- (2) Ground line applications to utility poles.

Authority

The provisions of this § 128.81 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.81 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305265) to (305266).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.82. Nonagricultural specific site application.

(a) *Prior notification required.* A commercial/public applicator may not make a specific site application of a restricted use pesticide without first giving prior notification by constructive notification to a person residing in every dwelling unit on land contiguous to the application site.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and provide the following additional information at least 12 hours prior to the time of application:

(i) The proposed date and time of application.

(ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Upon written request, the pesticide application business shall within 10 days of receiving a request under this subsection provide a copy of the label for every restricted use pesticide used or to be used.

(c) *Exceptions.* The following types of application do not require prior notification:

(1) An application of a restricted use pesticide within a detached structure.

(2) An application of a restricted use pesticide where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or where a soil fumigant is used.

(3) An application of a restricted use pesticide in a tamper resistant bait tray or placed in a rodent burrow which is inaccessible to children or pets.

(4) An application of a restricted use pesticide that is injected into trees or utility poles.

Authority

The provisions of this § 128.82 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.82 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305266) to (305267).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.83. [Reserved].**Source**

The provisions of this § 128.83 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924; reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305267).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.83a. Agricultural application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide for an agricultural purpose without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the restricted use pesticide application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification at least 12 hours prior to the time of application, and provide the following additional information:

- (i) The proposed date and time of application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.
- (iii) The business name, address and phone number.

(2) The person making a request under this subsection shall identify in the request the name and address of every person operating agricultural land which shares a common border with property resided on by the person making the request.

(3) Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

(c) *Alternate forms of notification.*

(1) In lieu of requirements in subsection (a), a pesticide application business may give constructive notification to a person residing in every dwelling unit on land contiguous to the restricted use pesticide application site at least 18 hours prior to the time of application. The pesticide application business shall provide the proposed date and location of the application, the brand name of every restricted use pesticide to be applied including the EPA registration number and the business name, address and phone number.

(2) In lieu of requirements in subsection (a), an applicator may post placards at usual points of entry to the application site and at the borders with adjoining properties owners at least 18 hours prior to the time of application.

This placard must remain posted until the conclusion of any restricted reentry time listed on the pesticide label. The placards must be at least 8 1/2 inches by 11 inches in size and be printed with “Public Notice of Pesticide Application” and contain the pesticide application business’s name, address, phone number and the brand name of every restricted use pesticide to be applied including the EPA registration number.

(d) *Exceptions.* An application of a restricted use pesticide does not require prior notification where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or a soil fumigant is used.

Authority

The provisions of this § 128.83a issued under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.83a adopted December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044.

§ 128.84. Nonagricultural area-wide application.

(a) *Prior notification required.* A commercial/public applicator may not make an area-wide application of a restricted use pesticide without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and provide the following information at least 12 hours prior to the time of application.

(i) The proposed date and time of application.

(ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(iii) The business name, address and phone number.

(2) Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

Authority

The provisions of this § 128.84 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.84 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305267) to (305268).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.85. [Reserved].**Authority**

The provisions of this § 128.85 reserved under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.85 reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305268) to (305269).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.85a. Ornamental or turf application notification.**(a) Notification.**

(1) A person who wishes to be notified of future pesticide applications to lawn, turf, ornamental or shade trees on neighboring property shall submit a written request to the licensed pesticide application business that will be making the pesticide application. This notification is limited to applications made by pesticide application businesses operating under pesticide applicator Category 06 or 07 (relating to ornamental and shade trees; and lawn and turf) as described in § 128.32 (relating to categories of business licenses) and limited to neighboring property sharing a mutual property border within 100 feet of the pesticide application site.

(i) This written request for notification must provide the neighboring property owner's name and street address for each neighboring property where a pesticide application may occur and notification is desired.

(ii) The requirement to notify becomes effective 7 days following receipt of the request by the pesticide application business.

(2) Upon receiving a written request for notification at least 7 days prior to the application date, a pesticide application business shall make constructive notification to the requester at least 12 hours prior to the application and provide the following information:

(i) The proposed date and time of application.

(ii) The brand name of every pesticide to be applied including the EPA registration number.

(iii) The business name, address and phone number.

(3) If specifically requested in writing, the pesticide application business shall, within 10 days of receiving a request, provide a copy of the labels for every pesticide used or to be used.

(b) *Expiration of request.* A request for notification made under this subchapter shall expire on December 31 in the year in which it is made.

(c) *Records.* The pesticide application business shall keep records of all requests for notification and records of notifications made for 3 years.

(d) *Exceptions.* An application of a pesticide to a tree by means of injection is not subject to notification.

Authority

The provisions of this § 128.85a issued under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.85a adopted December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044.

Cross References

This section cited in 7 Pa. Code § 128.42 (relating to categories of commercial and public applicators).

§ 128.86. [Reserved].**Authority**

The provisions of this § 128.86 reserved under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.86 reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305269).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.87. [Reserved].**Authority**

The provisions of this § 128.87 reserved under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.87 reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305269).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.88. Recordkeeping for prior notification.

(a) The pesticide application business shall keep, for each occasion in which prior notification is required, a record containing the following information:

- (1) A copy of the newspaper advertisement or a statement describing other methods of prior notification that this chapter authorizes.
- (2) The name and address of every person requesting additional information.
- (3) The date and time of individual notification.
- (4) A copy of correspondence relating to prior notification or additional information.

(b) A record required to be kept under this section shall be completed in written or printable form no later than 24 hours after the application date, maintained for at least 3 years and be made immediately available to the Department upon request.

Authority

The provisions of this § 128.88 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.88 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305269).

Cross References

This section cited in 7 Pa. Code § 130d.4 (relating to retained recordkeeping); and 7 Pa. Code § 130d.5 (relating to public notice by applicant).

§ 128.89. Notification request.

A request for notification made under this subchapter shall expire on December 31 in the year in which it is made.

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

Subchapter D. REGISTRATION OF PESTICIDES

Sec.

128.91. EPA approval required.

128.92. Special local need registration.

§ 128.91. EPA approval required.

(a) Only pesticides which have been approved by the EPA for registration under section 3 of FIFRA (7 U.S.C.A. § 136a) or are permitted to be distributed under a Federal exemption under section 18 or 25(b) of FIFRA (7 U.S.C.A. §§ 136p and 136w(b)) may be registered by the State.

(b) State registration of products sold only under an emergency exemption approved under section 18 of FIFRA will remain in effect only for the period specified by the EPA in granting approval of an exemption, and will require the registrant to provide to the State all information required under 40 CFR 166.32 (relating to reporting and recordkeeping requirements for specific, quarantine and public health exemptions).

(c) Pesticide registration is required for all pesticides exempted from regulation under FIFRA under 40 CFR 152.25(f) (relating to exemptions for pesticides of a character not requiring FIFRA regulation). State registration of products under this exemption will be permitted only when the product labeling, composition, efficacy and risks are consistent with the terms for Federal exemption.

Authority

The provisions of this § 128.91 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.91 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305270).

Cross References

This section cited in 7 Pa. Code § 128.41 (relating to requirements for certification).

§ 128.92. Special local need registration.

(a) Special local need registrations are subject to approval by the Department for pesticides currently registered for use in this Commonwealth. A special local need label shall conform with 40 CFR 162.153(e) (relating to state registration procedures).

(b) A copy of the proposed special local need use label, supporting data and a statement verifying the existence of a special local need shall be submitted with the completed form provided by the Department for special local need registration.

(c) A pesticide registered under this section may be cancelled by the Department or by the EPA.

Subchapter E. MISCELLANEOUS

Sec.

128.101. Reporting of pesticide significant accidents or incidents.

128.102. Protected designated areas.

128.103. Handling, transportation, storage, use and disposal of pesticides.

128.104. Experimental use permits.

128.105. Additional responsibilities of certified applicators.

128.106. Additional responsibilities relating to schools.

128.107. Providing information upon request.

§ 128.101. Reporting of pesticide significant accidents or incidents.

(a) The Secretary has designated the Department as the State agency to which significant pesticide accidents or incidents shall be reported.

(b) A person after becoming aware of a significant pesticide accident or incident or who has knowledge of a significant pesticide accident or incident shall immediately report it to the Department.

(c) As used in this section, the term “significant pesticide accident or incident” means an accident or incident involving a pesticide which requires a person to obtain medical treatment, results in illness requiring veterinary treatment of any wild or domestic animal, results in the unintended death of a human or animal, pollutes the waters of this Commonwealth or causes damage which results in an economic loss of plants, organisms, structures or stored commodities.

(d) A regulated person who following a pesticide application becomes aware of an unexpected adverse effect resulting from the pesticide product when applied in a manner consistent with the label directions shall contact the Department and provide information on the application and its effects.

(e) This section does not supersede the reporting procedures of other statutes or the regulations promulgated thereunder.

Authority

The provisions of this § 128.101 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.101 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305270).

§ 128.102. Protected designated areas.

(a) An application of a restricted use pesticide within 100 feet of certain publicly-owned or designated lands will not be permitted unless a waiver is granted by the Secretary. Lands affected by this restriction include:

(1) State forest land designated as a Conservation Area under 17 Pa. Code Chapter 44 (relating to conservation areas) or as a Natural Area or Wild Area under 17 Pa. Code Chapter 27 (relating to State Forest Natural Areas—statement of policy) and State park land designated as a Conservation Area under 17 Pa. Code Chapter 44 or as a Natural Area under 17 Pa. Code Chapter 17 (relating to State Parks Natural Areas—statement of policy).

(2) Areas containing endangered or threatened plant or animal species. These species are listed in 17 Pa. Code §§ 45.12 and 45.13 (relating to Pennsylvania endangered; and Pennsylvania threatened); fish identified in 58 Pa. Code §§ 75.1 and 75.2 (relating to endangered species; and threatened species); and 58 Pa. Code §§ 133.21 and 133.41 (relating to classification of birds; and classification of mammals).

(b) A person may file a request with the Secretary for a waiver of the prohibition contained in subsection (a). The request will contain the following information:

(1) A general statement relating to the purpose and need for the pesticide application.

(2) Specific evaluation of possible detrimental effects on water quality, air quality, groundwater, public health and safety, nontarget plants and animals, habitat diversity and interspersed and biological productivity.

(3) Specific evaluation of expected benefits.

(4) Additional information which may be requested by the Secretary.

(c) A request for a waiver shall be submitted at least 90 days prior to the proposed date of pesticide application.

(d) The Secretary will approve or deny the application within 60 days of receipt of the application.

Authority

The provisions of this § 128.102 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.102 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305271).

§ 128.103. Handling, transportation, storage, use and disposal of pesticides.

(a) A person may not use, handle, transport, store, dispose, display or distribute a pesticide in a manner that endangers man or the environment or contaminates food, feed, feed supplements, medications, fertilizers, seed or other products that may be handled, transported, stored, displayed or distributed with the pesticides or otherwise is in conflict with State or Federal laws or regulations.

(b) A person may not use, or cause to be used, a pesticide inconsistent with its labeling (as defined in § 128.2 (relating to definitions)). A pesticide label containing an advisory instruction concerning the use of the pesticide being an environmental hazard shall be considered by the Secretary as a further restriction on the pesticide's use.

(c) An application of a pesticide may not be made where weather conditions are such that it can be expected that the pesticide will move off of the proposed application site.

(d) A person may not dispose of, store or receive for disposal or storage a pesticide, pesticide container or pesticide container residue in a manner that does one or more of the following:

(1) Is inconsistent with its label or labeling.

(2) Causes or allows dumping of pesticides in sewers or surface waters of this Commonwealth, except in conformance with permits issued by the Department of Environmental Protection, the Fish and Boat Commission or other Commonwealth agencies having jurisdiction regarding water pollution.

(3) Violates an applicable State or Federal act or regulation.

(4) Causes or allows the open dumping of pesticides or pesticide containers. All pesticide containers shall be triple rinsed or equivalent pressure rinsed and free of all visible pesticide residues, empty and punctured prior to disposal. Plastic pesticide containers should be offered for recycling or reconditioning where programs are available. If not, they may be disposed of in a permitted sanitary landfill or a permitted commercial incinerator.

(e) A person may not use, or cause to be used, a pesticide inconsistent with its labeling. A pesticide containing an advisory instruction concerning the use of the pesticide subject to the Federal Worker Protection Standard (see 40 CFR Part 170 (relating to worker protection standard)) shall be considered by the Secretary as a further restriction on the pesticide's use.

(f) A business may not directly apply pesticides to the property of another without first obtaining permission of the owner, or occupant having care, custody or control of the property to do so, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

(g) A person may not use a pesticide in a manner which results in unwanted residues on the property of another, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

(h) A person may not apply a pesticide unless it has been registered by the Department or it is used under the provisions of an experimental use permit or research conducted under an exemption from an experimental use permit.

(i) A person may not store, transport or otherwise possess a pesticide in a service container unless the service container is legibly marked to indicate the name and percentage of active ingredients and is accompanied by a readily available copy of the registered label that represents the pesticides contained therein. The following exceptions apply:

(1) Service containers containing pesticide end-use dilutions when the containers are used as application devices.

(2) Service containers containing pesticide end-use dilutions which are required by other regulations to have pesticide label information accompany them.

(3) Service containers containing pesticide end-use dilutions when the containers are used as nurse tanks (with a capacity greater than 55 gallons) in the production of an agricultural commodity.

(j) A person may not place or keep a pesticide in a container which has been labeled for food or drink.

Authority

The provisions of this § 128.103 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.103 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305271) to (305272).

§ 128.104. Experimental use permits.

The Department shall be notified by the registrant prior to the use in this Commonwealth of a pesticide with an approved EPA experimental use permit. Notification must include copies of the EPA approval letter, a properly completed product label as defined in 40 CFR 172.6 (relating to labeling) and a list of the participants and cooperators involved in the program.

Authority

The provisions of this § 128.104 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.104 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305273).

§ 128.105. Additional responsibilities of certified applicators.

(a) A certified applicator is responsible for the actions of persons acting under his supervision and shall instruct the persons in the method of application for the pesticides that will be applied.

(b) A certified applicator shall be present at the application site on a routine basis to evaluate the work performance of those working under his supervision.

The amount of time that a certified applicator spends at the application site shall be based upon the competence and experience of the person being supervised.

(c) A certified applicator shall be physically present at the application site if the label for the pesticides being applied so requires.

§ 128.106. Additional responsibilities relating to schools.

(a) *General.* A pesticide may not be applied in a common access area within a school building or on school grounds when students are expected to be in the common access area for normal academic instruction or organized extracurricular activities within 7 hours following the application. The applicator shall also comply with reentry time restrictions contained on the pesticide label, whichever is greater and the requirements in section 772.2 of the Public School Code of 1949 (24 P. S. § 7.772.2), regarding notification of pesticide treatments at schools.

(b) *Exemptions.* The following type of pesticide applications are exempt from this section.

- (1) Disinfectants and Sanitizers.
- (2) Self-containerized baits placed in areas not accessible to students.
- (3) Gel type baits placed in cracks, crevices or voids.
- (4) Swimming pool maintenance chemicals used in the care and maintenance of a swimming pool.

Authority

The provisions of this § 128.106 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.106 amended December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305273).

§ 128.107. Providing information upon request.

(a) A producer, distributor or other person shall maintain all books and records as required under section 8 of FIFRA (7 U.S.C.A. § 136f). The records shall be made available for inspection and reproduction when requested by the Department.

(b) Pesticide application business, pesticide dealer or person who handles, distributes, stores, transports or applies any pesticide shall upon request provide to the Department, information about the pesticides including brand name, EPA registration number and active ingredients.

(c) Pesticide application business, pesticide dealer or person who handles, distributes, stores, transports or applies any pesticide shall in an emergency upon request immediately provide to medical personnel information about the pesticides involved including brand name, EPA registration number and active ingredients.

Authority

The provisions of this § 128.107 issued under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.107 adopted December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044.

**Subchapter F. PESTICIDE
HYPERSENSITIVITY REGISTRY**

Sec.

128.111. Registry.

128.112. Notification of hypersensitive individuals.

Source

The provisions of this Subchapter F adopted December 22, 1995, effective December 23, 1995, 25 Pa.B. 5924, unless otherwise note.

§ 128.111. Registry.

(a) The Department will maintain a list of individuals who have been verified as being hypersensitive to pesticides. The list will be referred to as the Pesticide Hypersensitivity Registry.

(b) Individuals who want to be included on the registry shall have their hypersensitivity to pesticides verified by a physician, and are solely responsible for providing written verification to the Department.

(c) Pesticide-hypersensitive individuals who want to be on the registry shall provide to the Department their name and primary residence including street address, city, state, zip code, county, daytime telephone number and nighttime telephone number. Each individual shall also provide an alternate telephone number where notification information can be conveyed. Individuals may also provide secondary locations, addresses and associated telephone numbers to be maintained as part of their listing. An individual submitting a request for listing less than 2 months preceding the effective date, as described in subsection (e), may not be included on the current registry with that effective date, but will be included in the next registry.

(d) To remain on the registry, an individual shall notify the Department annually during the month of October of the individual's intent to remain on the registry for the next 12 months. Medical verification will not be required for this renewal.

(e) The Department will distribute the current registry to each licensed commercial and public pesticide application business on or before the effective dates of March 1 and July 15 of each year. Individuals will not be considered officially included on the registry unless their names appear on the current registry.

Authority

The provisions of this § 128.111 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.111 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial page (305274).

§ 128.112. Notification of hypersensitive individuals.

(a) *General.* Prior to a pesticide application being made by a commercial or public pesticide application business the following conditions shall be met:

(1) Each individual listed on the current registry whose primary residence or secondary locations property line is within 500 feet of the application site shall be notified of the pesticide application.

(2) Notification shall consist of providing the following information to the individual on the registry:

(i) Date, location (application site), earliest possible start time and latest possible finish time of application. The range between start and finish times may be no greater than 24 hours.

(ii) Brand name, EPA number and active ingredient common name (if on the label) of the pesticide products which may be used.

(iii) The name, telephone number and pesticide business license number of the pesticide application business.

(iv) A copy of the label for every pesticide used within 10 days of a written request.

(3) Notification shall be made between 12 hours and 72 hours prior to the pesticide application.

(4) Notification shall be made by telephone, personal contact or certified mail or, if available, electronic mail or facsimile.

(i) Notification requirements are met through constructive notification by contacting the hypersensitive person's daytime or nighttime listings in the register or if the information is given to an adult contacted by dialing the alternate telephone number.

(ii) If notification cannot be made after at least two telephone contact attempts, notification may be made by placing the written notification information on the front door of the listed residence or secondary location listed in the registry within 500 feet of the application site 12 to 72 hours prior to the application.

(iii) A record shall be kept of every contact and contact attempt made under this paragraph.

(b) *Exceptions.* The following types of application do not require notification under this section:

(1) An application of a pesticide within a detached structure not listed as a secondary location.

(2) An application of a pesticide directly below the soil surface.

(3) An application of a pesticide in a tamper-resistant bait station.

(4) An application of a pesticide to a tree or utility pole by means of injection.

(5) An application of a disinfectant or sanitizer.

(6) Application of a pesticide in the care and maintenance of a swimming pool.

(c) *Recordkeeping.* A record of the notification information required under this section, including the time and method of notification, shall be made within 24 hours following the application and maintained for at least 3 years and shall be made immediately available to the Department upon request.

Authority

The provisions of this § 128.112 amended under section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(2)).

Source

The provisions of this § 128.112 amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7044. Immediately preceding text appears at serial pages (305274) to (305275).

Cross References

This section cited in 7 Pa. Code § 130d.5 (relating to public notice by applicant).

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