NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 83
PESTICIDE CONTROL

324.8301 Meanings of words and phrases.
Sec. 8301. For the purposes of this part, the words and phrases defined in sections 8302 to 8306 have the meanings ascribed to them in those sections.


Popular name: Act 451

Popular name: NREPA

324.8302 Definitions; A to C.
Sec. 8302. (1) "Active ingredient" means an ingredient that will prevent, destroy, repel, or mitigate pests, or that will act as a plant regulator, defoliant, or desiccant or otherwise alter the behavior of plants or products.

(2) "Activity plan" means a plan for the mitigation of groundwater contamination at a specific location, including a time frame for implementation.

(3) "Adulterated" applies to a pesticide if its strength or purity is less than, or significantly greater than, the professed standard or quality as expressed on its labeling or under which it is sold; if any substance was substituted wholly or in part for a pesticide; or if a valuable constituent of the pesticide was wholly or in part abstracted.

(4) "Agricultural commodity" means a plant or part of a plant, or an animal or animal product, produced primarily for sale, consumption, propagation, or other use by human beings or animals.

(5) "Agricultural pesticide" means a pesticide that bears labeling that meets federal worker protection agricultural use requirements established in 40 CFR parts 156 and 170.

(6) "Agricultural pesticide dealer" means a person engaged in distributing, selling, or offering for sale an agricultural pesticide to the ultimate user.

(7) "Animal" means all vertebrate and invertebrate species, including, but not limited to, human beings and other mammals, birds, fish, and shellfish.

(8) "Antimicrobial pesticide" means a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbial organisms, as defined under FIFRA.

(9) "Application season" means a time period of pesticide application, consistent with the category of application, within a calendar year.

(10) "Aquifer" means a geologic formation, a group of formations, or a part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(11) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of pesticides into that aquifer.

(12) "Avicide" means a pesticide intended for preventing, destroying, repelling, or mitigating pest birds.

(13) "Building manager" means the person who is designated as being responsible for the building's pest management program and to whom any reporting and notification shall be made pursuant to this part or rules promulgated under this part.

(14) "Certified applicator" means an individual who is authorized under this part to use and supervise the use of a restricted use pesticide.

(15) "Commercial applicator" means a person who is required to be a registered or certified applicator under this part, or who holds himself or herself out to the public as being in the business of applying pesticides. A commercial applicator does not include a person using a pesticide for a private agricultural purpose.

(16) "Commercial building" means a portion of a building that is not a private residence, where a business is located, and that is frequented by the public.

(17) "Confirmed contaminant" means a contaminant that has been detected in at least 2 groundwater samples collected from the same groundwater sampling point at an interval of greater than 14 days.

(18) "Contaminant" means a pesticide originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected.

(19) "Contamination" means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity.
324.8303 Definitions; D to G.

Sec. 8303. (1) "Day care center" means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child, and which is licensed as a child care organization by the department of human services under 1973 PA 116, MCL 722.111 to 722.128.

(2) "Defoliant" means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(3) "Department" means the department of agriculture.

(4) "Desiccant" means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(5) "Device" means an instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating a pest, but does not include equipment used for the application of pesticides when sold separately.

(6) "Direct supervision" means directing the application of a pesticide while being physically present during the application. However, direct supervision by a private agricultural applicator means either of the following:

(a) The private agricultural applicator is in the same field or location as an uncertified applicator, directing the application of a restricted use pesticide by the uncertified applicator.

(b) The private agricultural applicator supervises an uncertified applicator and is physically present during the initial restricted use pesticide application on an agricultural commodity or agricultural structure, including calibration, mixing, application, operator safety, and disposal.

(7) "Director" means the director of the department or his or her authorized representative.

(8) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, inventory or receive for others for a period greater than 21 days, or deliver pesticides in this state.

(9) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(10) "Environment" includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(11) "EPA" means the United States environmental protection agency.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y.

(13) "Fungi" means all nonchlorophyll bearing thallophytes; that is, all nonchlorophyll bearing plants of a lower order than mosses and liverworts, as for example rusts, smuts, mildews, molds, yeasts, and bacteria, except those in or on other animals, and except those in or on processed foods, beverages, or pharmaceuticals.

(14) "General use pesticide" means a pesticide that is not a restricted use pesticide.

(15) "Groundwater" means underground water within the zone of saturation.

(16) "Groundwater protection rule" means a rule promulgated under this part that specifies a minimum operational standard for structures, activities, and procedures that may have contributed or may contribute to the contamination of groundwater and that specifies the standard's scope, region of implementation, and implementation period. As used in this subsection:

(a) "Structures, activities, and procedures" includes, but is not limited to, mixing, loading, and rinse pads, application equipment, application timing, application rates, crop rotation, and pest control thresholds.

(b) "Scope" means applicability to a particular pesticide, structure, activity, or procedure or pesticides containing specific ingredients.

(c) "Region of implementation" may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(17) "Groundwater resource protection level" means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of community health using risk assessment protocol established by rule under this part.

(18) "Groundwater resource response level" means 20% of the groundwater resource protection level. If 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit is the groundwater resource response level.
324.8304 Definitions; I to M.

Sec. 8304. (1) "Inert ingredient" means an ingredient that is not active.

(2) "Ingredient statement" means:

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

(b) When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(3) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example beetles, bugs, bees, and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example spiders, mites, ticks, centipedes, and wood lice.

(4) "Insecticide" means a pesticide intended for preventing, destroying, repelling, or mitigating an insect.

(5) "Integrated pest management" means a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels.

(6) "Integrated pest management program" means a program for integrated pest management that includes at least all of the following elements:

(a) The following integrated pest management practices and principles:
   (i) Site evaluation, including site description, inspection, and monitoring and the concept of threshold levels.
   (ii) Consideration of the relationship between pest biology and pest management methods.
   (iii) Consideration of all available pest management methods, including population reduction techniques, such as mechanical, biological, and chemical techniques and pest prevention techniques, such as habitat modification.
   (iv) Pest control method selection, including consideration of the impact on human health and the environment.

(b) Recordkeeping which shall be maintained by the applicator and which shall include all of the following:
   (i) The site address.
   (ii) The date of service.
   (iii) The target pest or pests.
   (iv) The inspection report, including the number of pests found or reported, and the conditions conducive to pest infestation.
   (v) The pest management recommendations made by the applicator, such as structural or habitat modification.
   (vi) The structural or habitat modification or other measures that were initiated as a part of the pest management program.
   (vii) The name of each pesticide used.
   (viii) Quantity of each pesticide used.
   (ix) The location of the area or room or rooms where pesticides were applied.
   (x) The name of the applicator.
   (xi) The name of the pest control firm, if a firm is employed, and the emergency telephone number.

(c) Provision of the following information to the building manager:
   (i) The integrated pest management program and initial service inspection record, which shall be provided at the time of, or made available electronically within 48 hours after, the initial service.
   (ii) A record that includes the information specified in subdivision (b), which shall be provided upon or made available electronically within 48 hours after the completion of each inspection, application, or service call.

(d) The acceptance of responsibility by the building manager to post signs provided by the pesticide applicator in compliance with rules promulgated under section 8325.

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

(8) "Labeling" means the label and all other written, printed, or graphic matter accompanying the pesticide or device, or to which reference is made on the label or in literature accompanying the pesticide or device, and all applicable modifications or supplements to official publications of the EPA, the United States departments of agriculture and interior, the United States departments of education and health and human services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(9) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, 42 USC 300f to 300jj-25, and regulations promulgated under that act.

(10) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(11) "Minor use" means the use of a pesticide on a crop, animal, or site where any of the following exist:
(a) The total United States acreage for the crop or site is less than 300,000 acres.
(b) The acreage expected to be treated nationally as a result of that use is less than 300,000 acres annually.
(c) The use does not provide sufficient economic incentive to support the initial registration or continuing registration of the use.

(12) "Misbranded" applies to any pesticide or device if it is an imitation of or is offered for sale under the name of another pesticide, or if its labeling does not comply with labeling requirements of this part, the rules promulgated under this part, FIFRA, or regulations promulgated under FIFRA.

(13) "Molluscicide" means a pesticide intended for preventing, destroying, repelling, or mitigating a mollusk.


Popular name: Act 451

Popular name: NREPA

324.8305 Definitions; N to P.
Sec. 8305. (1) "Nematode" means invertebrate animals of the phylum nemathelmintes and class nematoda, which are unsegmented roundworms with elongated, fusiform, or sac-like bodies covered with cuticle that inhabit soil, water, plants, or plant parts. A nematode may also be called a nema or eelworm.

(2) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(3) "Pest" means an insect, rodent, nematode, fungus, weed, and other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, or any other organism that the director declares to be a pest under section 8322, except viruses, fungi, bacteria, nematodes, or other microorganisms in or on living animals.

(4) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests or intended for use as a plant regulator, defoliant, or desiccant. Pesticide does not include liquid chemical sterilant products, including any sterilant or subordinate disinfectant claims on such products, for use on a critical or semi-critical device, as defined in section 201 of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 321. As used in this subsection:
(a) "Critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body.
(b) "Semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

(5) "Pesticide registration renewal" means the registration of any pesticide that was previously registered by the department.

(6) "Place of business" means a location that is staffed by at least 1 person who independently, without supervision, sells or uses pesticides within this state or where a person exercises the right to control others in the sale or use of pesticides within this state.

(7) "Plant regulator" means a substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants. Plant regulator does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(8) "Private agricultural applicator" means a certified applicator who uses or supervises the use of a restricted use pesticide for a private agricultural purpose.

(9) "Private agricultural purpose" means the application of a pesticide for the production of an agricultural...
commodity on either of the following:

(a) Property owned or rented by the person applying the pesticide or by his or her employer.

(b) Property of another person if applied without compensation, other than trading of personal services between producers of agricultural commodities.

(10) "Protect health and environment" means protection against any unreasonable adverse effects on the environment.

(11) "Public building" means a building that is owned or operated by a federal, state, or local government, including public universities.


Popular name: Act 451

Popular name: NREPA

324.8306 Definitions; R to W.

Sec. 8306. (1) "Registered applicator" means an individual who is authorized to apply general use pesticides for a private or commercial purpose as provided in this part and in the rules promulgated under this part.

(2) "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol insecticide or rodenticide bait pack that does not require mixing or loading prior to application.

(3) "Registrant" means a person who is required to register a pesticide pursuant to this part.

(4) "Restricted use pesticide" means a pesticide classified for restricted use by the EPA or the director.

(5) "Restricted use pesticide dealer" means a person engaged in distributing, selling, or offering for sale restricted use pesticides to the ultimate user.

(6) "Rodenticide" means a pesticide intended for preventing, destroying, repelling, or mitigating rodents.

(7) "School" means public and private schools, grades kindergarten through the twelfth grade, but does not include a home school.

(8) "Supervise" means directing the application of a pesticide with or without being physically present during the application.

(9) "Unreasonable adverse effect on the environment" means any unreasonable risk to human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide.

(10) "Use of a pesticide" means the loading, mixing, applying, storing, transporting, and disposing of a pesticide.

(11) "Vendor" means a person who sells or distributes pesticides.

(12) "Violates this part" or "violation of this part" means a violation of this part, a rule promulgated under this part, or an order issued under this part.

(13) "Weed" means a plant which grows where it is not wanted.


Popular name: Act 451

Popular name: NREPA


Compiler's note: The repealed section pertained to procedures for registration of pesticides.

Popular name: Act 451

Popular name: NREPA

324.8307a Distribution, sale, exposure, or offering sale of pesticide; registration required.

Sec. 8307a. (1) Every pesticide distributed, sold, exposed, or offered for sale in this state shall be registered with the director pursuant to this part. The registration shall be submitted on a form provided by the director and shall be renewed annually before July 1. The director shall not register a pesticide under this part unless the registrant has paid all groundwater protection fees and late fees required under part 87, registration fees under this part, and any administrative fines imposed under this part.

(2) A pesticide is considered distributed, sold, exposed, or offered for sale in this state when the offer to sell either originates within this state or is directed by the offeror to persons in this state and received by those persons.

(3) If a registrant distributes identical pesticides under more than 1 brand name, or distributes more than 1 pesticide formulation, each brand or formulation shall be registered as a separate product.
(3) A commercial certified or registered applicator must be at least 18 years of age.

(4) A person who is not subject to the licensing requirements in section 8313 may apply a general use antimicrobial pesticide without being a certified or registered applicator if there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater.

(5) A commercial applicator shall only make pesticide applications in the category for which he or she is certified or registered.

(6) A registered applicator shall do all of the following:
   (a) Complete a training program that is approved by the director and conducted by a trainer who has the minimum qualifications established by rule. The training program for applicators who apply pesticides for private agricultural purposes may utilize other methods of training and testing as provided in section 8311(1).
   (b) Pass a test that is approved by the director.
   (c) Possess a valid registration certificate issued by the director.

(7) A trainer shall issue a temporary registration to an applicant who completes an approved training program and passes a test administered by the director. A temporary registration is valid from the time it is issued until the applicant receives a registration certificate from the director. The department shall provide the applicant with the registration certificate upon payment of the fee provided for in section 8317 and when the approved trainer completes and submits a program completion form.

(8) A registered applicator who applies general use pesticides and is not subject to commercial pesticide applicator licensing requirements is exempt from the provisions requiring supervision by a certified applicator.

(9) A person shall display his or her registration certificate upon the request of the director.

(10) A registered applicator shall complete a training program every 3 years to be eligible to renew his or her registration.

(11) The director may at any time deny, revoke, or suspend a certification or registration for a violation of this part or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

(12) The director shall develop and provide the documents and forms necessary to implement this section.

Popular name: Act 451
Popular name: NREPA

324.8315 Aerial application of pesticides; requirements.
Sec. 8315. (1) A private agricultural applicator or a commercial applicator, in addition to complying with the other requirements of this part, shall meet 1 or more of the following requirements before engaging in the aerial application of pesticides:
   (a) Attainment of at least 3 years of experience with not fewer than 200 hours of agricultural aerial application under the supervision of a commercial aerial applicator.
   (b) Be licensed as a commercial aerial applicator before December 27, 1988.
   (c) Successfully complete an aerial applicator training program recognized by the director as sufficient to assure the protection of the public health, safety, and welfare and the environment.

(2) A private agricultural applicator or a commercial applicator authorized under this part to make aerial application of pesticides shall do either of the following once every 3 years:
   (a) Demonstrate to the director the applicator's personal participation in a self-regulating application flight efficiency clinic sponsored or recognized by the Michigan cooperative extension service and approved by the department with an aircraft that the applicant operates.
   (b) Retake the certification examinations and submit to an inspection of the applicator's aircraft, equipment, and spray operations by an authorized representative of the director.

Popular name: Act 451
Popular name: NREPA

324.8316 Notice of pesticide application at school or day care center.
Sec. 8316. (1) Beginning 1 year after the effective date of the amendatory act that added this subsection, a person shall not apply a pesticide in a school or day care center unless the school or day care center has an integrated pest management program in place for the building.

(2) The primary administrator of a school or day care center or his or her designee shall annually notify the parents or guardians of children attending that school or cared for at that day care center that the parents or
guardians will receive advance notice of the application of a pesticide, other than a bait or gel formulation, at
the school or day care center. The primary administrator of a school or his or her designee shall give the
annual notification not more than 30 days after the beginning of the school year, and the primary
administrator of a day care center or his or her designee shall give the annual notification in September.

(3) An annual notification under subsection (2) shall satisfy all of the following requirements:

(a) Be in writing.

(b) Specify 2 methods by which advance notice of the application of a pesticide will be given at least 48
    hours before the application. The first method shall be by posting at the entrances to the school or day care
    center. Subject to subdivision (c), the second method shall be 1 of the following:

(i) Posting in a public, common area of the school or day care center, other than an entrance.

(ii) E-mail.

(iii) A telephone call by which direct contact is made with a parent or guardian of a student of the school or
    a child under the care of the day care center or a message is recorded on an answering machine.

(iv) Providing students of the school or children under the care of the day care center with a written notice
to be delivered to their parents or guardians.

(v) Posting on the school’s or day care center’s website.

(c) State that, in addition to notice under subdivision (b), parents or guardians are entitled to receive the
    notice by first-class United States mail postmarked at least 3 days before the application, if they so request,
    and the manner in which such a request shall be made.

(d) For a school, inform parents and guardians that they may review the school’s integrated pest
    management program, if any, and records on any pesticide applications.

(e) For a school, provide the name, telephone number, and, if applicable, e-mail address of the person at
    the school building responsible for pesticide application procedures.

(f) An advance notice of application of a pesticide, other than a bait or gel formulation, shall contain all of
    the following information:

(a) A statement that a pesticide is expected to be applied.

(b) The target pest or pests.

(c) The approximate location of the application.

(d) The date of the application.

(e) The name, telephone number, and, if available, e-mail address of a contact person at the school or day
    care center responsible for maintaining records with specific information on pest infestation and actual
    pesticide application as required by rules.

(f) A toll-free telephone number for a national pesticide information center recognized by the department
    and a telephone number for pesticide information from the department.

(5) Before applying a pesticide, other than a bait or gel formulation, a school or day care center shall
    provide advance notice to parents and guardians consistent with subsections (3)(b) to (e) and (4). However, in
    an emergency, a school or day care center may apply a pesticide without providing advance notice to parents
    or guardians. Promptly after the emergency pesticide application, the school or day care center shall give
    parents or guardians notice of the emergency pesticide application that otherwise meets the requirements of
    subsection (3)(b) and (c). The notice shall contain a statement that a pesticide was applied and shall meet the
    requirements of subsection (4)(b) to (f).

(6) Liquid spray or aerosol insecticide applications shall not be made in a room of a school building or day
care center building unless the room will be unoccupied by students or children for not less than 4 hours after
the application or unless the product label requires a longer reentry period. The building manager shall be
notified of the reentry restrictions by the applicator.

(7) The department shall do both of the following:

(a) Within 1 year after the effective date of the amendatory act that added this subsection, develop a model
    integrated pest management policy for schools, in consultation with the department of education and the
    pesticide advisory committee created in section 8326, and make the policy available to all school districts,
    intermediate school districts, public school academies, and private schools.

(b) Encourage local and intermediate school boards and boards of directors of public school academies to
    do both of the following:

(i) Adopt and follow the model integrated pest management policy developed under subdivision (a).

(ii) Require appropriate staff to obtain periodic updates and training on integrated pest management from
    experts on the subject.

(8) Subsections (1) to (7) do not apply to sanitizers, germicides, disinfectants, or antimicrobial agents.

324.8324 Groundwater protection rules.

Sec. 8324. (1) The director shall promulgate a groundwater protection rule that defines the scope and region of implementation of the rule if any of the following occur:

(a) A pesticide has been confirmed in groundwater at levels exceeding its groundwater resource response level in at least 3 distinct locations as a result of similar activities as determined under section 8323(1) and the director determines that voluntary adoption of the groundwater stewardship practices pursuant to part 87 has not been effective in preventing groundwater contaminant concentrations from exceeding the groundwater resource response level.

(b) The EPA proposes to suspend or cancel registration of the pesticide, prohibits or limits the pesticide’s sale or use in the state, or otherwise initiates action against the pesticide because of groundwater concerns.

(2) The director may promulgate a groundwater protection rule for a specific pesticide if the pesticide contains an active ingredient with a method detection limit greater than its groundwater resource response level.

(3) In determining the need for and scope of a groundwater protection rule, the director shall consider the type of contaminant or contaminants and the extent to which any of the following apply:

(a) The source or sources of the contaminant or contaminants can be identified.
(b) An identified source or sources are associated with a specific activity or activities.
(c) Local response to the contamination is adequate to protect groundwater.
(d) There are state label restrictions as allowed under sections 18 and 24 of FIFRA, chapter 125, 86 Stat. 995 and 997, 7 U.S.C. 136p and 136v, that could adequately address the problem.
(e) Restricted use classification could adequately address the problem.
(f) The use, value, and vulnerability of the resource and whether the groundwater is a currently or reasonably expected source of drinking water.
(g) The technical and economic feasibility of any mandated practices on persons in the region.
(h) The overall productivity and economic viability of the state’s agriculture.

(4) In determining the region of implementation for a groundwater protection rule, the director shall consider both of the following:

(a) The reliability and geographical distribution of groundwater sample test data.
(b) The extent to which local aquifer sensitivity conditions can be considered characteristics of a larger region.

(5) The director may approve alternative operations to those defined in a groundwater protection rule if they can be shown to provide the equivalent level of groundwater protection.


Popular name: Act 451

Popular name: NREPA

324.8325 Rules.

Sec. 8325. (1) The director shall promulgate rules for implementing this part, including, but not limited to, rules providing for the following:

(a) The collection, examination, and reporting the results of examination of samples of pesticides or devices.
(b) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
(c) The designation of restricted use pesticides and agricultural pesticides for the state or for specified areas within the state. The director may include in the rule the time and conditions of sale, distribution, and use of restricted use pesticides and agricultural pesticides.
(d) The certification and licensing of applicators and the licensing of restricted use pesticide dealers and agricultural pesticide dealers.
(e) The maintenance of records by certified commercial applicators with respect to applications of restricted use pesticides.
(f) Good practice in the use of pesticides.
(g) Notification or posting, or both, designed to inform persons entering certain public or private buildings or other areas where the application of a pesticide, other than a general use ready-to-use pesticide, has occurred.
(h) Use of a pesticide in a manner consistent with its labeling including adequate supervision of noncertified applicators if appropriate.
(i) Prenotification by the building manager upon request for affected persons regarding the application of a pesticide at daycare centers and schools.

Rendered Thursday, November 03, 2011

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(j) Responsibility of a building manager to post signs provided to him or her by a commercial applicator.

(k) Designation of posted school bus stops as sensitive areas.

(l) The establishing of a schedule of civil fines for violation of local ordinances as described in section 8328(3).

(2) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules pertaining to all of the following:

(a) The development of a training program for applicators who apply pesticides for private agricultural purposes on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(b) The development of training programs for integrated pest management systems in schools, public buildings, and health care facilities.

(c) The duty of commercial applicators to inform customers of potential risks and benefits associated with the application of pesticides.

(3) By June 27, 1990, the director shall submit rules to the joint committee on administrative rules pertaining to the protection of agriculture employees who hand harvest agricultural commodities regarding all of the following:

(a) The establishment of field reentry periods after the application of agricultural pesticides.

(b) The posting and notification of areas where pesticides have been applied.

(c) The use of protective clothing, safety devices, hand washing, or other methods of protection from pesticide exposure.

(d) Notification of agricultural workers of poison treatment facilities.

(4) If the EPA at any time adopts and publishes agricultural worker protection standards, the federal standards shall supersede any promulgated under subsection (3).

(5) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules. These rules shall include all of the following:

(a) Minimum standards of competency and experience or expertise for trainers of certified and registered applicators.

(b) The development of a training program for applicators on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling. The number of directly supervised application hours required before a registered applicator may apply each category of restricted use pesticide without direct supervision.


Popular name: Act 451

Popular name: NREPA


324.8326 Pesticide advisory committee; creation; appointment, qualifications, and terms of members; vacancies; meetings; quorum; duties and responsibilities; meetings open to the public.

Sec. 8326. (1) A pesticide advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director.

(b) The director of the department of natural resources.

(c) A representative of the department of natural resources selected by the director of the department of natural resources who has expertise regarding water quality programs.

(d) The director of public health.

(e) The director of the Michigan cooperative extension service.

(2) The director shall appoint additional members to the committee, 1 each representing the following:

(a) The Michigan pest control association.

(b) Licensed outdoor commercial applicators.

(c) Producers of agricultural commodities.
R 285.637.1 Definitions; A to O.

Rule 1. As used in these rules:

(a) "Act" means 1994 PA 451, MCL 324.8301.

(b) "Broadcast" means any application of pesticides over an area, such as a lawn, field, room, crawl space, or other such surface. The term does not include crack and crevice or spot applications made to selected plants, insects, soil, or other surfaces.

(c) "Building manager" means the person who is responsible for the building's pest management program and to whom any reporting and notification shall be made pursuant to these rules.

(d) "Commercial building" means any building or portion thereof which is not a private residence where a business is located and which is frequented by the public.

(e) "Community pesticide application" means an application of pesticides to multiple properties for which the commercial applicator does not have a service agreement with each individual property owner or resident, such as local mosquito control and gypsy moth spray programs. Apartments, townhouses or condominiums are considered a single property under this definition.

(f) "Crack and crevice" means the application of insecticide into openings commonly found at expansion joints, between different elements of construction, and between equipment and floors.

(g) "Dry break" means a 1 or 2-piece 'in-line' aperture or area used for accepting or drawing liquid, which is separate from the active circulating system, and not subject to positive or negative pressure during the application process. This aperture may include a spring operated plunger device to prevent leakage in the event of shutoff valve failure.

(h) "Emergency situation" means an occurrence which is not reasonably foreseeable and which requires attention and action before the time required for notice pursuant to MCL 324.8316(3) in order to protect or enhance the health or safety of those reasonably believed to be involved with, or exposed to, the occurrence.

(i) "FIFRA" means the federal insecticide, fungicide, and rodenticide act of 1947, as amended, 7 U.S.C. §136 et seq.

(j) "Health care facility" means a facility which is not a private home and at which people may stay 1 or more nights and receive medical care, such as a hospital or nursing home.

(k) "Mixing and loading facility" means a site for commercial applicators that has the following meanings:

(i) For commercial aerial applicators, the term means the primary location in Michigan at which pesticides are repackaged, loaded, mixed, or transferred from 1 container to another.

(ii) For all other commercial applicators, the term means a location or site where pesticides are transferred from one container to another, repackaged, or mixed in dry or liquid form for over 10 days in any calendar
year, but does not mean a pesticide-producing establishment as defined by FIFRA, unless the establishment also transfers, repackages, or mixes dry or liquid pesticides. Transfer between containers includes transfers to pesticide application equipment and nurse tanks. Any mixing or loading site that is owned or operated within a 1/2-mile radius of another site that is owned or operated by the same person will be considered as the same facility or site.

(1) "Multiple-use areas" means developed outdoor public recreation areas, such as, but not limited to, campgrounds, rest areas, parks, playgrounds, picnic areas, and athletic fields. The term does not include undeveloped forested areas.

(m) "Nonpowered equipment" means pesticide application equipment that pumps or disperses pesticides without utilizing a motorized power source. Examples include manual pumps, aerosols, or other non-motorized self-contained or operated spray equipment.

(n) "Off-target direct discharge" means the direct application of pesticides onto a property that is beyond the boundaries of the intended treatment area.

(o) "Off-target drift" means the physical movement of a pesticide at the time of application from the targeted site of application to any nontarget site. Off-target drift shall not include the off-target movement of a pesticide by means of erosion, volatilization, or windblown soil particles after the application of a pesticide.

(p) "Organic farm" means a location or site that is registered under MCL 286.911(4).

History: 1992 AACS; 1995 AACS; 2008 AACS.

R 285.637.2 Definitions; P to W.

Rule 2. As used in these rules:

(a) "Pesticide-containing material" means any of the following:

(i) Any container of a pesticide product that has not been triple rinsed or the equivalent thereof.

(ii) Any rinsate that is derived from a pesticide container, pesticide application equipment, or equipment washing.

(iii) Any material that is used to collect or contain excess or spilled pesticide or rinsate.

(iv) Any mixture of pesticide and diluent.

(v) Material that is generated as a result of contact with or utilization of a pesticide in an application, containment, recovery, reuse, or treatment system. The term does not include personal protective equipment that contains pesticide residue.

(b) "Pesticide-producing establishment" means any site where a pesticide is manufactured, packaged, repackaged, prepared, processed, or held for distribution or sale.

(c) "Properties adjacent to" means properties which share a common boundary line or corner with the property to be treated or which are directly across an undivided road, stream, or right-of-way from the property to be treated.

(d) "Public building" means a building that is owned or operated by a federal, state, or local government, including public universities.

(e) "Registry" means a list of persons who must be notified before a pesticide is applied, as described in R 285.637.5.

(f) "Rinsate" means any material that may result from the rinsing of interior surfaces of pesticide containers, pesticide application equipment, or containment areas that has or may have pesticide residues.
(g) "School" means public and private schools, grades kindergarten through the twelfth grade.

(h) "Sensitive area" means any of the following:

(i) Occupied school buildings, together with any land that is part of the same property and is within 100 feet of such buildings, and including any playgrounds, athletic fields, or other such facilities which are in use at the time of the pesticide application.

(ii) Developed recreation areas that are in use and open to the public, including any of the following:
- Developed public or commercial campgrounds.
- Developed picnic areas.
- Marked roadside rest areas.
- Marked publicly owned or maintained hiking trails.
- Developed park and recreation facilities.
- Playgrounds.
- Other areas that are developed for organized sports or recreation.

(iii) Apiary locations.

(iv) Water bodies, including plotted streams, brooks, rivers, ponds, and lakes, if any such water body contains water at the time of the pesticide application.

(v) Organic farms as defined in R 285.637.1(p).

(vi) Health care facilities.

(vii) Commercial preschool and day-care centers that are located in buildings which are in use and identified by signs or other means and which are recognizable to the public.

(viii) Posted school bus stops which are identified by signs and which are recognizable to the public.

(i) "Space" means the application of a pesticide that is intended to discharge a pesticide into the air throughout an entire volumetric area.

(j) "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb spills, leaks, releases, or other discharges of pesticides.

(k) "Spot treatment" means a pesticide application to a portion of a definable area, such as floors, walls, ceilings, bases or undersides of equipment, turf, or ground. A "spot" shall not be more than 2 square feet, and the total area treated shall not exceed 20% of the definable area.

(l) "Use of a pesticide in a manner inconsistent with its label" means to use any pesticide in a manner that is not consistent with the labeling, except that the term does not apply to any of the following:

(i) Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the labeling, unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.

(ii) Applying a pesticide against any target pest that is not specified on the labeling if the application is to the crop, animal, or site that is specified on the labeling.

(iii) Employing any method of application that is not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling.

(iv) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.

(v) Any use of a pesticide that is in compliance with the provisions of section 5, 18, or 24 of FIFRA.

(m) "Washing or rinsing facility" means a site for commercial applicators where pesticides and pesticide-containing materials are cleaned, washed, or rinsed from containers or from pesticide application, handling, storage, or transportation equipment for more than 10 days in any calendar year.

(n) "Wash water" means water that is used to wash exterior surfaces of
the plan.

(5) A record of the sites where the drift management plan was implemented and a copy of the drift management plan shall be retained for a period of 1 year for general use pesticides and 3 years for restricted use pesticides and shall be made available to the director upon request.

(6) Operating under a drift management plan does not exempt an applicator from complying with appropriate federal or state statutes and regulations. However, the department shall consider the presence and use of a drift management plan as a factor in determining appropriate enforcement action.

History: 1992 AACS; 2008 AACS.

R 285.637.11 Commercial notification and posting requirements.

Rule 11. (1) The requirements of this rule shall not apply to general-use ready-to-use pesticide.

(2) When making a broadcast, foliar, or space application of pesticides to an ornamental or turf site, other than a golf course or farm production operation, a commercial applicator shall comply with both of the following provisions:

(a) In addition to requirements specified in R 285.637.12(1) and (2), an applicator shall inform a customer that lawn markers should remain posted for 24 hours, after which time the customer should remove the lawn markers.

(b) Immediately following the application, a commercial applicator shall place a lawn marker sign at the primary point or points of entry. Lawn markers specified in subrule (2) of this rule shall only be used when making pesticide applications and shall be in compliance with all of the following specifications:

(i) Be 4 inches high by 5 inches wide.

(ii) Be constructed of rigid, weather-resistant material.

(iii) Be attached to a supporting device with the bottom of the marker extending not less than 12 inches above the turf.

(iv) Be identically printed on both sides in green letters on a white background using the indicated point type size.

(v) Include only the following information:

(A) The statement "CAUTION" in 11/16-inch high (72-point) type.

(B) The statement "Pesticide Application" in 9/32-inch (30-point) type.

(C) The statement "Keep Off Until Dry" in 9/32-inch (30-point) type.

(D) Have not less than a 2-inch diameter circular illustration that depicts an adult and child walking a dog on a leash. The illustration shall depict, using a diagonal line across the circle, that this action is prohibited.

(E) The statement "Customer: Please Remove After 24 Hours" in 3/32-inch (11-point) type.

(F) Additional information not required under subrule (2) of this rule may only be placed on the lawn marker or supporting device with the written approval of the department.

PDF Pesticide Application Image

(3) All broadcast, foliar, or space pesticide applications that are made to public or private golf courses by a commercial applicator shall be in compliance with all of the following provisions:

(a) Applicators shall notify users of, or visitors to, the golf course in accordance with all of the following requirements:

(i) Notification of pesticide application shall be provided on a poster or placard that is constructed of all-weather material.

(ii) The poster or placard shall contain a general statement that from
time to time pesticides are in use in the management of turf and ornamental pests.

(iii) The poster or placard shall state that questions or concerns that arise in relation to the pesticide application shall be directed to the golf course superintendent or his or her designated representative.

(iv) The poster or placard shall state that, upon request, the superintendent or his or her representative will supply the information specified in subdivision (b) of this subrule.

(v) The poster or placard shall be displayed prominently in the pro shop, locker rooms, or registration area.

(b) At the time of broadcast, foliar, or space pesticide application to golf course property, the applicator shall post, on the first and tenth tees, in a conspicuous place, a sign that states all of the following information:

(i) The date and time of application.

(ii) The common name of the pesticide applied.

(iii) The areas treated.

(iv) The label reentry precautions.

(v) The name of a person who may be contacted for further information.

(c) Posting requirements shall remain in effect until specific label reentry requirements have been fulfilled.

(4) A commercial applicator who makes a broadcast, foliar, or space insecticide application in a commercial building, public building, or health care facility shall comply with all of the following:

(a) The applicator shall, upon completion of an insecticide application, provide a sign to be displayed in a readily observable place at the primary point of entry by the building manager.

(b) The applicator shall instruct the building manager that the sign must be displayed and remain posted for not less than 48 hours after the most recent application of an insecticide.

(c) The building manager shall post all signs provided by the applicator in accordance with this subrule.

(d) Signs that are used for posting shall be in compliance with the following specifications:

(i) The sign shall be a minimum of 2 1/2 inches high by 2 1/2 inches wide.

(ii) Information shall be in black letters on a muted background.

(iii) The sign shall have an illustration which is not less than 1 3/4 inches high by 2 inches wide and which depicts a cloud symbol encompassing a house. This illustration shall serve to inform the public that insecticides have been applied in the building.

(iv) The sign shall have a space provided in which the date of application is to be indicated by the applicator. This information shall read: "DATE ____________" in a minimum 1/8-inch (16-point) type.

(5) All of the following provisions apply to notification requirements for community or right-of-way applicators:

(a) A commercial applicator shall not make a broadcast or foliar application of pesticides for community or right-of-way pest management without making documented efforts to provide prior notification to persons who own or reside on property that is within the target area or to their authorized representatives. Prior notification shall be provided by the commercial applicator or his or her agent.

(b) Documented efforts to notify property owners, their agents, or persons who own or reside on property that is within the target area for community mosquito control pesticide applications include at least 1 of the following methods:

(i) Personal contact.

(ii) A comprehensive community outreach program, which shall be filed
annually with the director.

(iii) Prior written notification.

(c) Commercial applicators who make community pesticide applications for mosquito control shall do all of the following:

(i) Provide prior notification to persons who request it.

(ii) Exclude mosquito pesticide applications from the property of those persons who request to be excluded.

(iii) Provide general information or literature about the pesticide application in response to inquiries within the targeted community. This does not include any proprietary or confidential business information.

(d) Reasonable efforts to notify property owners, their agents, or persons residing within the target area for right-of-way or community pesticide applications other than those for mosquito control shall include at least 1 of the following methods:

(i) Personal contact.

(ii) Advertisement in at least 1 newspaper of general circulation within the area of application. The notice shall be placed in the legal advertisement section.

(iii) Prior written notification.

(e) Notification of property owners shall include all the following information:

(i) The name, address, and phone number of the application firm or individual.

(ii) The brand name and active ingredients of the pesticide or pesticides used.

(iii) The method of application.

(iv) The scheduled cate or dates of application.

(v) The name, address, and phone number of a person who may be contacted and who is responsible for supplying updated information concerning the application for those people who request it.

(vi) Any reentry restrictions.

(f) Multiple-use areas shall be posted for not less than 24 hours at the primary point or points of entry immediately after a pesticide application has occurred within the area. The posting shall state all of the following information:

(i) The name, address, and phone number of the application firm or individual.

(ii) The brand name and active ingredients of the pesticide or pesticides used.

(iii) The date of the application.

(iv) Precautionary warnings or reentry restrictions that appear on the label of the pesticide or pesticides that are applied.

(g) Upon petition, the director may exempt community or area-wide applicators from the requirements of subdivision (f) of this subrule if there is sufficient documentation to indicate that residues of a particular pesticide are not detectable after application.

(h) Notification requirements shall be waived in the event of a public health emergency as determined by the Michigan department of community health.

History: 1992 AACS; 1995 AACS; 2008 AACS.

Editor's Note: An obvious error in R 285.637.11 was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in Michigan Register, 2008 MR 4. The memorandum requesting the correction was published in Michigan Register, 2008 MR 4.
R 285.637.12 Applicator service agreements.

Rule 12. (1) Before applying a pesticide, a commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall enter into an oral or written service agreement with the customer or authorized agent. The agreement shall specify all of the following:

(a) The customer's consent to services.
(b) The name, address, and telephone number of the firm that provides the pesticide application services.
(c) The approximate schedule, frequency, and duration of anticipated services.
(2) A commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written information to the customer or to the customer's authorized agent:

(a) The name, address, and telephone number of the firm that provides the pesticide application services.
(b) The full name of the applicator who provides services.
(c) A general description of the target pest or pests to be controlled.
(d) A list of the pesticides applied, including the common name of the active ingredient.
(e) The time and date of the application.
(f) Applicable precautionary warnings or reentry restrictions which appear on the label of the pesticide or pesticides that are applied.
(3) The information required in subrule (2) of this rule shall be provided in one of two ways:

(a) Not later than at the time of each pesticide application.
(b) The information may be provided electronically within 48 hours after the application if the commercial applicator has the written approval of the customer or the customer's authorized agent prior to the application.
(4) Not later than at the time of initial pesticide application, a commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written risk and benefit information to the customer or the customer's authorized agent:

(a) The definition of a pesticide.
(b) A general description of how pesticides work.
(c) Why pesticides are used.
(d) General toxicity information related to all of the following:
   (i) The type of compound used.
   (ii) The environment in which the pesticide is applied.
   (iii) General exposure information.
   (iv) The amount or rate of pesticide applied.
   (v) Proper pesticide applications in compliance with the label.
   (e) Common sense precautionary measures for the customer regarding pesticides.
   (f) General information on the environmental fate of pesticides.
   (g) Instructions to the customer to discuss site preparation and precautionary measures with the pesticide applicator.
   (h) Instructions to the customer to consult with a physician if an unusual reaction occurs.
(5) A commercial agricultural or aerial applicator may provide the information specified in both of the following provisions to the customer or the customer's authorized agent in place of the information requirements specified in subrules (2) and (3) of this rule:

(a) Oral instructions to the customer or the customer's authorized agent on labeled reentry and preharvest interval requirements before application.
(b) A copy of the risk and benefit information sheet or the pertinent
section of the label that pertains to risks and benefits.

(6) If an emergency requires immediate pesticide application, the information that is required in subrule (2) of this rule may be provided after the application has occurred.

(7) The department reserves the right to review and prohibit the use of written information required to be provided to customers in subrule (3) of this rule if the director determines that the information does not meet the intent of subrule (3) of this rule.

(8) The duration of a service agreement shall not be more than 12 months unless either written notification of continuation of service is provided annually or unless the service agreement is a signed contract that specifies a definite time period during which the contract is valid. Written notification of continuation of service shall provide information to the customer regarding how to discontinue service.

(9) When requested by the customer or his or her authorized agent, the commercial applicator shall provide all of the following documents to the customer:
   (a) Product labels.
   (b) Material safety data sheets.
   (c) Environmental protection agency fact sheets, if available.
   (d) A document that specifies the rate of application of the active ingredients of the products applied.

(10) If the customer is acting in the interest of residents of the treated premises, then the customer shall make the information provided in this rule available to the residents upon request.

History: 1992 AACS; 1995 AACS; 2008 AACS.

R 285.637.13 Misrepresentation of pesticide safety prohibited.

Rule 13. A commercial applicator shall not make false, misleading, deceptive, or fraudulent representations concerning pesticide safety. All of the following claims or statements are prohibited:
   (a) Any statement that implies a pesticide is recommended or endorsed by any federal or state agency.
   (b) Claims of absolute safety.
   (c) Unsubstantiated or comparative statements on the safety of the pesticide, including but not limited to any of the following statements:
      (i) "Contains all natural ingredients."
      (ii) "Among the least toxic chemicals known."
      (iii) "Pollution approved."

History: 1992 AACS; 2008 AACS.

R 285.637.14 Integrated pest management.

Rule 14. For all pesticide applications other than sanitizers, germicides, disinfectants, or anti-microbial agents made in schools, public buildings, day care centers, and health care facilities, both of the following provisions shall be complied with before any pesticide application:
   (a) A pesticide applicator shall have verifiable participation in a training program which is approved by the director, and which includes all of the following integrated pest management elements:
      (i) Site evaluation, including all of the following:
         (A) Site description.
         (B) Site inspection.
         (C) Site monitoring.
(D) The concept of threshold levels.

(ii) The relationship between pest biology and pest management methods.

(iii) Pest management methods, including population reduction techniques, such as mechanical, biological and chemical techniques, and pest prevention techniques, such as habitat modification.

(iv) The development and implementation of an integrated pest management program, with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides.

(v) Evaluation of an integrated pest management program to determine the program's effectiveness and need for modification.

(vi) Recordkeeping requirements for public buildings and health care facilities the same as those defined in MCL 324.8304(6)(b) for schools and day care centers.

(vii) The need to communicate with, and enlist the assistance of, building managers for the implementation of integrated pest management programs.

(b) A written integrated pest management program shall be in place for each building in which pesticide applications take place. A copy of the integrated pest management program shall be located at the school, public building, day care center or health care facility and shall include all the same elements as defined in MCL 324.8304(6) for schools and day care centers.

History: 1992 AACS; 2008 AACS.

R 285.637.15 Pesticide use in and around schools and day care centers.

Rule 15. (1) All pesticide applications other than sanitizers, germicides, disinfectants, and anti-microbial agents that are made in and around schools, public buildings, day care centers, and health care facilities, are subject to the provisions of this rule.

(2) Outdoor ornamental and turf applications of liquid spray pesticides shall not be made on school grounds within 100 feet of occupied classroom buildings during normal school class hours or when persons are using the treatment area.

(3) An applicator shall notify the school or day care center's building manager of any reentry intervals that are required by labels of any pesticide that the applicator has applied in a school building or day care center, or on any school or day care center property.

(4) Annual notification of pesticide applications required under MCL 324.8316(2) shall include designation of the commonly used primary entrances at which posting of pesticide application information required under MCL 324.8316(3) shall occur.

(5) During the months when school is not in regular session, school administrators may utilize a message notification system that parents or guardians may access at least 1 day before application. If this alternative is utilized, parents or guardians shall be advised how the information may be obtained.

History: 1992 AACS; 1995 AACS; 2008 AACS.

R 285.637.16 Organic farms; listing.

Rule 16. (1) The department shall annually compile a listing of organic farms.

(2) The department shall provide the listing to all commercial pesticide application firms that are licensed in agricultural, right-of-way, or
(3) A person who owns or operates an organic farm may appear on the department's organic farm listing by doing both of the following:
   (a) Submitting a request to the department, on the department's form, by March 1 of each year.
   (b) Marking the organic farm so that a person who makes a pesticide application to an adjacent property can easily recognize the property as an organic farm.

History: 1992 AACS.

R 285.637.1/ Penalties for violation of local pesticide ordinances.

Rule 17. (1) A local unit of government shall utilize the following schedule of fines for violation of local ordinances authorized by section 21a(3) of the act:
   (a) A violation of R 285.637.5(8), which requires prior notification to persons on the registry, shall be subject to a fine of $50.00 for the first offense, $100.00 for the second offense, $250.00 for the third offense, and $500.00 for the fourth offense.
   (b) A violation of R 285.637.11(1), (2), (3) or (5), which requires posting of lawn and ornamental sites, golf courses, community applications, and rights-of-way, shall be subject to a fine of $25.00 for the first offense, $50.00 for the second offense, $100.00 for the third offense, and $200.00 for the fourth offense.
   (c) A violation of R 285.637.11(4), which requires applicators to provide building managers of commercial or public buildings, health care facilities, day-care centers, and schools with signs, shall be subject to a fine of $25.00 for the first offense, $50.00 for the second offense, $100.00 for the third offense, and $200.00 for the fourth offense.
   (d) A violation of R 285.637.11(4)(c) by a building manager shall be subject to a formal warning for the first offense, a fine of $50.00 for the second offense, a fine of $100.00 for the third offense, and a fine of $200.00 for the fourth offense.
   (e) A violation of MCL 324.8316(2) to (4), requiring schools and day-care centers to provide information regarding pesticide applications to parents or guardians, shall be subject to a fine of $25.00 for the first offense, $50.00 for the second offense, $100.00 for the third offense, and $200.00 for the fourth offense.
   (2) Multiple violations of a particular ordinance or rule that occur on the same day shall be treated as 1 violation.
   (3) Each type of offense shall accumulate on a calendar year for each person subject to the local ordinance, so that at the beginning of each calendar year the offense cycle begins again, except that, for purposes of subrule (1)(d) of this rule, a building manager who has previously received a formal warning shall be subject to a fine of $25.00 for the first offense.
   (4) All offenses shall be considered as a single violation of each type until a person is notified of the issuance of a citation by the authorized local government agency.
   (5) A local unit of government shall notify the person or firm alleged to be in violation within 72 hours of the issuance of a citation.
   (6) A person may appeal a citation and fine assessment to the department.
   (7) A local unit of government shall refer a fifth or subsequent violation by a person within a calendar year to the department for investigation and enforcement action.
   (8) A local unit of government shall notify the department within 10 working days of the issuance of a citation for a violation of a local
CHAPTER 18B
PESTICIDE CONTROL

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18B.01 DEFINITIONS.

Subdivision 1. Applicability. The definitions in this section apply to this chapter.


Subd. 1b. Agricultural pesticide dealer. "Agricultural pesticide dealer" means a person who distributes an agricultural pesticide in the state or into the state to an end user. This action
would commonly be described as a retail sale.

Subd. 2. **Approved agency.** "Approved agency" means a state agency, other than the Department of Agriculture, or an agency of a county, municipality, or other political subdivision that has signed a joint powers agreement under section 471.59 with the commissioner.

Subd. 3. **Beneficial insects.** "Beneficial insects" means insects that are: (1) effective pollinators of plants; (2) parasites or predators of pests; or (3) otherwise beneficial.

Subd. 4. **Bulk pesticide.** "Bulk pesticide" means a pesticide that is held in an individual container, with a pesticide content of 56 United States gallons or more, or 100 pounds or greater net dry weight.

Subd. 4a. **Collection site.** "Collection site" means a permanent or temporary designated location with scheduled hours for authorized collection where pesticide end users may bring their waste pesticides.

Subd. 5. **Commercial applicator.** "Commercial applicator" means a person who has or is required to have a commercial applicator license.

Subd. 6. **Commissioner.** "Commissioner" means the commissioner of agriculture or an agent authorized by the commissioner.

Subd. 6a. **Container.** "Container" means a portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

Subd. 6b. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up an incident.

Subd. 7. **Device.** "Device" means an instrument or contrivance, other than a firearm, that is intended or used to destroy, repel, or mitigate a pest, a form of plant or animal life other than humans, or a bacterium, virus, or other microorganism on or in living animals, including humans. A device does not include equipment used for the application of pesticides if the equipment is sold separately from the instrument or contrivance.

Subd. 8. **Distribute.** "Distribute" means offer for sale, sell, barter, ship, deliver for shipment, receive and deliver, and offer to deliver pesticides in this state or into this state.

Subd. 9. **Environment.** "Environment" means surface water, ground water, air, land, plants, humans, and animals and their interrelationships.

Subd. 9a. **Fixed location.** "Fixed location" means all stationary restricted and bulk pesticide facility operations owned or operated by a person located in the same plant location or locality.


Subd. 10a. **Genetic engineering.** "Genetic engineering" means the modification of the genetic composition of an organism using molecular techniques. This does not include selective breeding, hybridization, or nondirected mutagenesis.

Subd. 10b. **Genetically engineered pesticide.** "Genetically engineered pesticide" means an organism that has been modified through the use of genetic engineering, intended to prevent, destroy, repel, or mitigate a pest, and an organism that has been modified through the use of
genetic engineering, intended for use as a plant regulator, defoliant, or desiccant.

Subd. 11. Hazardous waste. "Hazardous waste" means any substance identified or listed as hazardous waste in the rules adopted under section 116.07, subdivision 4.

Subd. 12. Incident. "Incident" means a flood, fire, tornado, transportation accident, storage container rupture, leak, spill, emission discharge, escape, disposal, or other event that releases or immediately threatens to release a pesticide accidentally or otherwise into the environment, and may cause unreasonable adverse effects on the environment. "Incident" does not include a release from normal use of a pesticide or practice in accordance with law.

Subd. 13. Label. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or their containers or wrappers.

Subd. 14. Labeling. "Labeling" means all labels and other written, printed, or graphic matter:

(1) accompanying the pesticide or device;
(2) referred to by the label or literature accompanying the pesticide or device; or
(3) that relates or refers to the pesticide or to induce the sale of the pesticide or device.

"Labeling" does not include current official publications of the United States Environmental Protection Agency, United States Department of Agriculture, United States Department of Interior, United States Department of Health, Education and Welfare, state agricultural experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

Subd. 14a. Local unit of government. "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, another special purpose district, and local or regional board.


Subd. 15. Noncommercial applicator. "Noncommercial applicator" means a person who has or is required to have a noncommercial applicator license.

Subd. 15a. Organism. "Organism" means an animal, plant, bacterium, cyanobacterium, fungus, protist, or virus.

Subd. 15b. Owner of real property. "Owner of real property" means a person who is in possession of, has the right of control, or controls the use of real property, including a person who has legal title to property and a person who has the right to use or contract use of the property under a lease, contract for deed, or license.

Subd. 16. [Repealed, 1996 c 310 s 1]

Subd. 17. Pest. "Pest" means an insect, rodent, nematode, fungus, weed, terrestrial or aquatic plant, animal life, virus, bacteria, or other organism designated by rule as a pest, except a virus, bacteria, or other microorganism on or in living humans or other living animals.

Subd. 18. Pesticide. "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate a pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
Subd. 19. **Pesticide dealer.** "Pesticide dealer" means a person who has or is required to have a pesticide dealer license.

-Subd. 19a. **Pesticide end user.** "Pesticide end user" means a farmer or other person who uses, intends to use, or owns a pesticide. Pesticide end user does not include a dealer, manufacturer, formulator, or packager.

Subd. 20. **Plant regulator.** "Plant regulator" means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation of a plant, or to otherwise alter the behavior of ornamental or crop plants or the produce of the plants. Plant regulator does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

Subd. 21. **Private applicator.** "Private applicator" means a person certified or required to be certified to use restricted use pesticides.

Subd. 22. **Registrant.** "Registrant" means a person that has registered a pesticide under this chapter.

Subd. 22a. **Release.** "Release" means the placement or use of a genetically engineered organism outside a contained laboratory, greenhouse, building, structure, or other similar facility or under other conditions not specifically determined by the commissioner to be adequately contained.

Subd. 23. **Responsible party.** "Responsible party" means a person who at the time of an incident has custody of, control of, or responsibility for a pesticide, pesticide container, or pesticide rinsate.

Subd. 24. **Restricted use pesticide.** "Restricted use pesticide" means a pesticide formulation designated as a restricted use pesticide under FIFRA or by the commissioner under this chapter.

Subd. 24a. **Returnable container.** "Returnable container" means a container for distributing pesticides that enables the unused pesticide product to be returned to the distributor, manufacturer, or packager, and includes bulk, mini-bulk, or dedicated containers designed to protect the integrity of the pesticide and prevent contamination through the introduction of unauthorized materials.

Subd. 25. **Rinsate.** "Rinsate" means a dilute mixture of a pesticide or pesticides with water, solvents, oils, commercial rinsing agents, or other substances, that is produced by or results from the cleaning of pesticide application equipment or pesticide containers.

Subd. 26. **Safeguard.** "Safeguard" means a facility, equipment, device, or system, or a combination of these, designed to prevent an incident as required by rule.

Subd. 26a. **School pest management coordinator.** "School pest management coordinator" means a person employed by a Minnesota kindergarten through 12th grade public school who is responsible for the school's pest management plans and implementation of pest management at the school, including the application of pesticides to the inside or outdoor property of the school.

Subd. 27. **Site.** "Site" means all land and water areas, including air space, and all plants, animals, structures, buildings, contrivances, and machinery whether fixed or mobile, including anything used for transportation.

Subd. 28. **Structural pest.** "Structural pest" means a pest, other than a plant, in, on, under, or near a structure.
Subd. 29. **Structural pest control.** "Structural pest control" means the control of any structural pest through the use of a device, a procedure, or application of pesticides in or around a building or other structures, including trucks, boxcars, ships, aircraft, docks, and fumigation vaults, and the business activity related to use of a device, a procedure, or application of a pesticide.

Subd. 30. **Structural pest control applicator.** "Structural pest control applicator" means a person who has or is required to have a structural pest control applicator license.

Subd. 30a. **Substantially altering; substantially alter; substantial alteration.** "Substantially altering," "substantially alter," or "substantial alteration" means modifying a bulk agricultural chemical storage facility by:

1. changing the capacity of a safeguard;
2. adding storage containers in excess of the capacity of a safeguard as required by rule; or
3. increasing the size of the single largest storage container in a safeguard as approved or permitted by the Department of Agriculture. This does not include routine maintenance of safeguards, storage containers, appurtenances, piping, mixing, blending, weighing, or handling equipment.

Subd. 31. **Unreasonable adverse effects on the environment.** "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

Subd. 31a. **Waste pesticide.** "Waste pesticide" means a pesticide that the pesticide end user considers a waste. A waste pesticide can be a canceled pesticide, an unusable pesticide, or a usable pesticide.

Subd. 32. **Wildlife.** "Wildlife" means all living things that are not human, domesticated, or pests.

**History:** 1987 c 358 s 43; 1989 c 326 art 5 s 1-15; 1991 c 250 s 6-9; 1993 c 367 s 1,2; 1Sp2001 c 2 s 34; 2009 c 94 art 1 s 44-47

**18B.02 PREEMPTION OF LOCAL LAW.**

Except as specifically provided in this chapter, the provisions of this chapter preempt ordinances by local governments that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides. It is not the intent of this section to preempt local responsibilities for zoning, fire codes, or hazardous waste disposal.

**History:** 1987 c 358 s 44

**18B.03 POWERS AND DUTIES OF COMMISSIONER.**

Subdivision 1. **Administration by commissioner.** The commissioner shall administer, implement, and enforce this chapter and the Department of Agriculture is the lead state agency for the regulation of pesticides. The commissioner has the sole regulatory authority over the terrestrial application of pesticides, including, but not limited to, the application of pesticides to agricultural crops, structures, and other nonaquatic environments. Except as provided in subdivision 3, a state agency other than the Department of Agriculture shall not regulate or require permits for the terrestrial or nonaquatic application of pesticides.

Subd. 2. **Delegation of duties.** The functions vested in the commissioner by this chapter
pesticides could enter or contaminate the surface waters, ground water, or wells, as a result of 
overflow, leakage, or other causes.

(b) This subdivision does not apply to permitted application of aquatic pesticides to 
public waters.

Subd. 8. Pesticide, rinsate, and container disposal. A person may only dispose of 
pesticide, rinsate, and pesticide containers in accordance with this chapter and FIFRA. The 
manner of disposal must not cause unreasonable adverse effects on the environment.

History: 1987 c 358 s 49; 1989 c 326 art 5 s 21-24; 1990 c 391 art 8 s 4; 1994 c 482 s 1; 
1994 c 619 s 4; 1995 c 95 s 1; 2002 c 369 s 1; 2003 c 127 art 13 s 1; 1Sp2003 c 21 art 11 s 5; 
2004 c 254 s 3; 2008 c 297 art 1 s 6

18B.08 CHEMIGATION.

Subdivision 1. Permit required. (a) A person may not apply pesticides through an irrigation 
system without a chemigation permit from the commissioner. A chemigation permit is required 
for one or more wells or other sources of irrigation water that are protected from contamination by 
devices as required by rule. The commissioner may allow irrigation to be used to apply pesticides 
on crops and land, including agricultural, nursery, turf, golf course, and greenhouse sites.

(b) A person must apply for a chemigation permit on forms prescribed by the commissioner.

Subd. 2. Pesticide. A pesticide used under a chemigation permit must be suitable and 
labeled for application through an irrigation system.

Subd. 3. Equipment. A chemigation system must be fitted with effective antisyphon devices 
or check valves that prevent the backflow of pesticides or pesticide-water mixtures into water 
supplies or other materials during times of irrigation system failure or equipment shutdown. The 
devices or valves must be installed between:

(1) the irrigation system pump or water source discharge and the point of pesticide 
injection; and

(2) the point of pesticide injection and the pesticide supply.

Subd. 4. Application fee. A person applying for a chemigation permit must pay a 
nonrefundable application fee of $250. A person who holds a fertilizer chemigation permit under 
section 18C.205, is exempt from the fee in this subdivision.

Subd. 5. [Repealed, 1996 c 310 s 1]

History: 1987 c 358 s 50; 1989 c 326 art 5 s 25-27; 1Sp2005 c 1 art 1 s 16

18B.09 PESTICIDE APPLICATION IN CITIES.

Subdivision 1. Applicability. This section applies only to statutory and home rule charter 
cities that enact ordinances as provided in this section.

Subd. 2. Authority. Statutory and home rule charter cities may enact an ordinance 
containing the pesticide application warning information contained in subdivision 3, including 
their own licensing, penalty, and enforcement provisions. Statutory and home rule charter 
cities may not enact an ordinance that contains more restrictive pesticide application warning 
information than is contained in subdivision 3.

Subd. 3. Warning signs for pesticide application. (a) All commercial or noncommercial
applicators who apply pesticides to turf areas must post or affix warning signs on the property where the pesticides are applied.

(b) Warning signs must project at least 18 inches above the top of the grass line. The warning signs must be of a material that is rain-resistant for at least a 48-hour period and must remain in place up to 48 hours from the time of initial application.

(c) The following information must be printed on the warning sign in contrasting colors and capitalized letters measuring at least one-half inch, or in another format approved by the commissioner. The sign must provide the following information:

(1) the name of the business organization, entity, or person applying the pesticide; and

(2) the following language: "This area chemically treated. Keep children and pets off until ...(date of safe entry)...", or a universally accepted symbol and text approved by the commissioner that is recognized as having the same meaning or intent as specified in this paragraph. The warning sign may include the name of the pesticide used.

(d) The warning sign must be posted on a lawn or yard between two feet and five feet from the sidewalk or street. For parks, golf courses, athletic fields, playgrounds, or other similar recreational property, the warning signs must be posted immediately adjacent to areas within the property where pesticides have been applied and at or near the entrances to the property.

History: 1987 c 358 s 51

18B.095 PESTICIDE APPLICATION IN SCHOOLS.

Subd. 1. Authorized applicators. To the extent authorized under this chapter, application of a pesticide to the inside or outdoor property of a Minnesota kindergarten through 12th grade public school must be performed by a:

(1) structural pest control applicator;

(2) commercial or noncommercial pesticide applicator with appropriate use category certification; or

(3) school pest management coordinator or a school employee with school pest management knowledge.

Subd. 2. Exemption. Pesticides determined by the commissioner to be sanitizers or disinfectants are exempt from subdivision 1.

Subd. 3. Registry and information. The commissioner, in consultation with the Departments of Health; Administration; and Education; the University of Minnesota Extension Service; the Minnesota School Boards Association; and other persons as necessary and appropriate, must:

(1) establish and maintain a registry of school pest management coordinators; and

(2) provide information on a regular and periodic basis to school pest management coordinators on pest management techniques and programs, including model school policies; proper pesticide use, storage, handling, and disposal; and other relevant pesticide and pest management information.

History: 1Sp2001 c 2 s 36; 2003 c 130 s 12
121A.30 PESTICIDE APPLICATION AT SCHOOLS.

Subdivision 1. Parents' Right-to-Know Act. Subdivisions 2 to 14 may be cited as the Janet B. Johnson Parents' Right-to-Know Act of 2000.

Subd. 2. Pesticide application notification. A school that plans to apply a pesticide which is a toxicity category I, II, or III pesticide product, as classified by the United States Environmental Protection Agency, or a restricted use pesticide, as designated under the Federal Insecticide, Fungicide, and Rodenticide Act, on school property, must provide a notice to parents and employees that it applies such pesticides. The notice required under subdivision 3 must:

(1) provide that an estimated schedule of the pesticide applications is available for review or copying at the school offices where such pesticides are applied;

(2) state that long-term health effects on children from the application of such pesticides or the class of chemicals to which they belong may not be fully understood;

(3) inform parents that a parent may request to be notified by the school in the manner specified in subdivision 6 before any application of a pesticide listed in this subdivision.

Subd. 3. Notice; timing; distribution. The notice must be provided no later than September 15 of each school year during which pesticides listed in subdivision 2 are planned to be applied. The notice may be included with other notices provided by the school, but must be separately identified and clearly visible to the reader.

Subd. 4. School handbook or statement of policies. In addition to the notice provided according to subdivision 3, a school that is required to provide notice under this section shall include in an official school handbook or official school policy guide of a general nature a section informing parents that an estimated schedule of applications of pesticides listed in subdivision 2 is available for review or copying at the school offices, and that a parent may receive prior notice of each application if specifically requested.

Subd. 5. Notice availability. A school that uses a pesticide listed in subdivision 2 must keep a copy of all notifications required under subdivisions 2 and 3 for at least six years in a manner available to the public.

Subd. 6. Notification for individual parents. A parent of a student at a school may request that the school principal or other person having general control and supervision of the school notify the parent prior to the application of any pesticides listed in subdivision 2 at the school on a day different from the days specified in the notice under subdivision 3. The school principal or other person having general control and supervision of the school must provide reasonable notice to a parent who has requested such notification prior to applying such pesticides. The notice may be waived for emergency applications required only by appropriate state or local health officials. The notice must include the pesticide to be applied, the time of the planned application, and the location at the school of the planned application. A school may request reimbursement for the school's reasonable costs of providing notice under this subdivision, including any costs of mailing, from individuals requesting notification under this subdivision.

Subd. 7. Model notice. The Department of Health, in consultation with the Department of Education, the Pollution Control Agency, and University of Minnesota Extension Service, shall develop and make available to schools by August 1, 2000, a model notice in a form that can be used by a school if it chooses to do so. The model notice must include the information required by this section. The Department of Health must provide an opportunity for environmental groups,
interested parents, public health organizations, and other parties to work with the department in developing the model notice.

Subd. 8. **Plan.** A school is not required to adopt an integrated pest management plan. A school board may only notify students, parents, or employees that it has adopted an integrated pest management plan if the plan is a managed pest control program designed to minimize the risk to human health and the environment and to reduce the use of chemical pesticides, and which ranks the district's response to pests in the following manner:

(1) identifying pests which need to be controlled;
(2) establishing tolerable limits of each identified pest;
(3) designing future buildings and landscapes to prevent identified pests;
(4) excluding identified pests from sites and buildings using maintenance practices;
(5) adapting cleaning activities and best management practices to minimize the number of pests;
(6) using mechanical methods of controlling identified pests; and
(7) controlling identified pests using the least toxic pesticides with the least exposure to persons as is practicable.

Subd. 9. **Pesticide defined; cleaning products excluded.** For purposes of this section, the term "pesticide" has the meaning given it in section 18B.01, subdivision 18, except that it does not include any disinfectants, sanitizers, deodorizers, or antimicrobial agents used for general cleaning purposes.

Subd. 10. **Pest defined.** For purposes of this section, the term "pest" has the meaning given it in section 18B.01, subdivision 17.

Subd. 11. **School defined.** For the purposes of this section, "school" means a school as defined in section 120A.22, subdivision 4, excluding home schools.

Subd. 12. **Immunity from liability.** No cause of action may be brought against a school district, a school, or the districts or school's employees or agents for any failure to comply with the requirements under this section.

Subd. 13. **Evidence of failure to comply excluded.** A failure to comply with the requirements of this section may not be presented as evidence in any lawsuit based upon physical injury resulting from exposure to pesticides applied at a school.

Subd. 14. **No special rights.** Nothing in this section affects the duty of a parent or a student to comply with the compulsory attendance law or the duty of a school employee to comply with the provisions of an applicable employment contract or policy.

**History:** 1986 c 444; 2000 c 489 art 7 s 1; 2003 c 130 s 12; 1Sp2005 c 1 art 2 s 161
MISSISSIPPI LEGISLATURE
2010 Regular Session
To: Education
By: Senator(s) Carmichael, King, Burton, Watson, Jordan, Blount, Flowers, Harden, Lee (35th), Davis, Yancey, Hopson

Senate Bill 2393
(As Sent to Governor)
AN ACT TO AMEND SECTION 41-79-31, MISSISSIPPI CODE OF 1972, TO CLARIFY THE POLICY FOR THE POSSESSION AND SELF-ADMINISTRATION OF PRESCRIPTION ASTHMA AND/OR ANAPHYLAXIS MEDICATION BY PUBLIC AND NONPUBLIC SCHOOL STUDENTS WHILE ON SCHOOL PROPERTY OR AT SCHOOL ACTIVITIES; TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO REQUIRE ALL SCHOOL DISTRICTS TO TAKE CERTAIN ACTIONS RELATING TO CHILDREN WITH ASTHMA; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 41-79-31, Mississippi Code of 1972, is amended as follows:

41-79-31. (1) The school board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of asthma and anaphylaxis medication pursuant to the requirements of this section.

* * *

(2) As used in this section:

(a) "Parent" means parent or legal guardian.

(b) "Asthma and anaphylaxis medication" means inhaled bronchodilator and auto-injectable epinephrine.

(c) "Self-administration of prescription asthma and/or anaphylaxis medication" means a student's discretionary use of prescription asthma and/or anaphylaxis medication.

(3) A student with asthma and/or anaphylaxis is entitled to possess and self-administer prescription asthma and/or anaphylaxis medication while on school property, on school provided transportation, or at a school-related event or activity if:

(a) The prescription asthma and/or anaphylaxis medication
has been prescribed for that student as indicated by the prescription label on the medication;

(b) The self-administration is done in compliance with the prescription or written instructions from the student's physician or other licensed health care provider; and

(c) A parent of the student provides to the school:

(i) Written authorization, signed by the parent, for the student to self-administer prescription asthma and/or anaphylaxis medication while on school property or at a school-related event or activity;

(ii) A written statement, signed by the parent, in which the parent releases the school district and its employees and agents from liability for an injury arising from the student's self-administration of prescription asthma and/or anaphylaxis medication while on school property or at a school-related event or activity unless in cases of wanton or willful misconduct;

(iii) A written statement from the student's physician or other licensed health care provider, signed by the physician or provider, that states:

1. That the student has asthma and/or anaphylaxis and is capable of self-administering the prescription asthma and/or anaphylaxis medication;

2. The name and purpose of the medication;

3. The prescribed dosage for the medication;

4. The times at which or circumstances under which the medication may be administered; and

5. The period for which the medication is prescribed.
(4) The physician's statement must be kept on file in the office of the school nurse of the school the student attends or, if there is not a school nurse, in the office of the principal of the school the student attends.

(5) If a student uses his/her medication in a manner other than prescribed, he/she may be subject to disciplinary action under the school codes. The disciplinary action shall not limit or restrict the student's immediate access to the medication.

SECTION 2. (1) The State Department of Education shall require each public school district to take the following actions relating to the management of asthma in the school setting:

(a) Recommend that each child with asthma have a current asthma action plan (AAP) on file at the child's school for the 2010-2011 school year, and require that each child with asthma have a current AAP on file at the child's school for the 2011-2012 school year and each school year thereafter, for use by the school nurse, teachers and staff. Parents and guardians of a child with asthma are to have the child's AAP developed and signed by the child's health care provider. The AAP should include the child's asthma severity classification, current asthma medication and emergency contact information. The AAP must be updated annually.

(b) Adopt an emergency protocol that includes instructions for all school staff to follow in case of a major medical emergency for asthma and all other life-threatening diseases.

(c) Fully implement Section 41-79-31, which authorizes the self-administration of asthma medication at school by students.

(d) Provide comprehensive, in-service training on asthma for teachers, assistant teachers, school nurses, administrators, and
operations, maintenance and support staff. The training should include instruction on the use of AAPs, the requirements of Section 41-79-31, emergency protocols for asthma and policies in effect in that school relating to asthma.

(e) Require school nurses to attend certified asthma educators training. The cost of the training required for school nurses shall be paid by the American Lung Association.

(f) Require local school health councils to conduct a school health needs assessment that addresses and supports the implementation of the following: healthy school environment, physical activity, staff wellness, counseling/psychological services, nutrition services, family/community involvement, health education and health services. The results of the assessment must be used in the development of long-range maintenance plans that include specific indoor air quality components for each school building. The long-range maintenance plans must be included in the local school wellness policy. The long-range plans must be completed before January 1, 2012.

(g) Require local school health councils to adopt and support the implementation of a local school wellness policy that includes minimizing children's exposure to dust, gases, fumes and other pollutants that can aggravate asthma in the school setting. The policy must require the air quality and ventilation systems of schools to be assessed annually, which assessment may be accomplished with the Environmental Protection Agency's Tools for Schools Indoor Air Quality Checklist. The policy also must prohibit the use of hazardous substances such as, but not limited to, chemical cleaning products and pesticides in and around school buildings during the hours that
children are present at school. The policy must require all school construction projects to implement containment procedures not later than July 1, 2012, for dusts, gases, fumes and other pollutants that trigger asthma.

(h) Implement an integrated pest management program that includes procedural guidelines for pesticide application, education of building occupants and inspection and monitoring of pesticide applications. The integrated pest management program may limit the frequency, duration and volume of pesticide application on school grounds.

(i) Require school bus operators to minimize the idling of school bus engines to prevent exposure of children and adults to diesel exhaust fumes.

(j) Require coaches and physical education teachers to participate in the American Lung Association Coaches Care/Asthma 101 training by the 2011-2012 school year, subject to funding by the school district.

(2) This section shall stand repealed on July 1, 2014.

SECTION 3. This act shall take effect and be in force from and after July 1, 2010.
commodities, livestock, or the environment. As used in this subsection (i), "misuse" means the use, handling, or release of a pesticide by a person in a manner inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and loading rules or pesticide and container disposal rules. 

(ii) selling of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides;

(iii) use or sale of unregistered pesticides;

(iv) failure to maintain any individual pesticide application and sales records;

(v) using or selling pesticides without having obtained the required license or permit;

(vi) noncompliance with pesticide worker protection standards and labeling;

(vii) noncompliance with pesticide ground water and environmental protection agency endangered species standards and labeling;

(viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements and standards; or

(ix) reoccurrence of any identical violation of this chapter within 2 years of the first violation.

(f) If the department is unable to collect the civil penalty or if a person fails to pay all or a portion of the civil penalty as determined by the department, the department may recover that amount by action in the appropriate district court.

Part 4

Model School Integrated Pest and Pesticide Management Safety Program

80-8-401. Short title. This part may be cited as the "Model School Integrated Pest and Pesticide Management Safety Program Act".

80-8-402. Statement of policy. The legislature finds and declares that:

(1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;

(2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;

(3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and

(4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

80-8-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture as provided for in 2-15-3001.

(2) "Director" means the director of agriculture as provided for in 2-15-3001.

(3) "School district" means a school district established according to Title 20, chapter 6.

80-8-404. Model school integrated pest and pesticide management safety program. (1) The department shall develop a model school integrated pest and
pesticide management safety program and distribute the program to school districts by July 1, 1994. The model program must provide guidance and recommendations to school districts on management of pests and pesticides and on alternatives within schools and on school grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting school children from exposure to pesticides and the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting school children from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, school personnel, and the public on any aspect of the model school integrated pest and pesticide management safety program.

80-8-405. Policymaking authority. The department may adopt policies and guidelines to implement this part.
80-8-106. Administrative procedures. The administration of this chapter and all rulemaking and hearing functions under this chapter shall be conducted in accordance with the Administrative Procedure Act.

80-8-107. Notice -- public information. (1) As used in this section, the following definitions apply:

(a) "Building operator" means the owner, the owner’s agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant’s building manager.

(b) “Public building” means a building that is owned or leased by a public agency, as defined in 18-1-101, and that is open to the public, including but not limited to:

(i) a building that is used for educational, office, or institutional purposes; or

(ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:

(a) be permanently displayed if the pesticide is applied on a regular basis;

(b) be posted at the time of the application if the pesticide is not applied on a regular basis;

(c) contain the name of the pesticide applied; and

(d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.

(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.

(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).

(6) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person.

80-8-108. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet
current licenses and/or shall not be issued a license until the requirements of this section are fully satisfied.

History: Sec. 80-8-105 MCA; IMP. Sec. 80-8-214 MCA; NEW, 1979 MAR p. 437, Eff. 5/11/79.

4.10.106 REVOCAATION OF LICENSE

(1) The department shall revoke the license(s) of any applicator not satisfying the final judgement rendered against or agreed to by him, within thirty (30) calendar days from the date the judgement is filed with the department or in the same time period established in the judgement. The revocation shall remain in effect and no license shall be issued to the applicator unless and until the judgement is satisfied or until the applicator files with the department his written direction to his financial responsibility guarantors to respond in full to the damages specified in the judgement.

(2) In the event the financial responsibility guaranteed is not adequate to satisfy the judgement when fully applied thereto, then, and in that event, the applicator shall apply such additional monies or assets as may be required to fully satisfy the judgement, and the applicator's license shall not be issued until the judgement has been fully satisfied and the required financial responsibility once again brought up to the amount required of the particular applicator under rule.

History: Sec. 80-8-105 MCA; IMP. Sec. 80-8-214 MCA; NEW, 1979 MAR p. 437, Eff. 5/11/79; AMD. 1986 MAR p. 1007, Eff. 6/13/86.

4.10.107 PERSONAL LIABILITY FOR DAMAGES

(1) Nothing in these regulations shall be construed to relieve any person, landowner or applicator, from liability for any damage to the person, lands, or property of another, caused by their use of pesticides even though such use conforms to the rules of the department.

History: Sec. 80-8-105 MCA; IMP. Sec. 80-8-214 MCA; NEW, 1979 MAR p. 437, Eff. 5/11/79.

4.10.108 LICENSING PERIOD

(1) The licensing period shall be from the date of license issuance through December 31 of that calendar year. An applicator who applies pesticide seasonally may cancel his financial responsibility (in effect, cancelling his license) sixty (60) days after the date of his last application. The sixty (60) day requirement may be waived if his means of providing financial responsibility is such that it provides effective ongoing coverage during the period of time a damage action could be maintained under statute of limitation section 27-2-204 and/or 27-2-207 MCA.

(2) An applicator who provides an indemnity trust fund as his means of establishing financial responsibility may cancel his financial responsibility sixty (60) days after the date of his last application. Cancellation of an indemnity trust fund may be accomplished by submitting a notarized statement to the department, for its discretionary approval, declaring that there are no known claims pending or judgement unsatisfied.

(a) The fact that an applicator obtains a cancellation of his indemnity trust fund in no way is to be construed as absolving an applicator from a suit nor claim of damages filed in a court of competent jurisdiction within the time provided by statute of limitation sections 27-2-204 and/or 27-2-207 MCA.

History: Sec. 80-8-105 MCA; IMP. Sec. 80-8-214 MCA; NEW, 1979 MAR p. 437, Eff. 5/11/79.

4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS

(1) An individual who by contract or for hire uses or applies pesticides not under the special supervision of a licensed applicator is required to become a licensed commercial pesticide applicator, except as provided for in these rules. Each pesticide applicator business location must have a licensed pesticide applicator. Any owner or person who has a financial interest in a pesticide applicator business may appoint a partner or salaried employee to become the licensed pesticide applicator. The owner or person having the financial interest in a pesticide application business shall continue to assume and is financially responsible for all uses and applications of a pesticide. The owner, manager, or licensed applicator of a pesticide applicator business may elect to have some or all of the employees of the business licensed as applicators.

(2) A person must apply for a license on the department's application form. The application must be completed in its entirety, accompanied by the licensing fee and a completed statement of financial responsibility. Applicants submitting incomplete applications and not meeting the conditions and standards expressed in the Act and department rules will be notified of such deficiencies and the procedure for correcting the deficiencies. The department will return the application along with the notice.

(3) Nonresident applicants shall be required to submit the license application, fee, financial responsibility and a completed form provided by the department designating an agent for service of process in the state. The form shall be accompanied by the appropriate fee for filing payable to the Secretary of State. The service of process shall remain valid until cancelled or modified.

(a) A nonresident corporation, which has an effective certificate of process shall appoint its own resident agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the agent or attorney. Service of process for these corporations shall apply to all employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revisions of the list for those employees licensed or to be licensed as pesticide applicators.

(b) A nonresident individual or partnership may designate the Secretary of State as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the Secretary...
of State. Service of process for individuals or partnerships shall apply to all employees transacting business in the state. The individual or partnership shall provide to the department a list of the employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.

(c) A nonresident corporation which does not have an effective certificate of authority from the Secretary of State to transact its business in Montana and which does not transact business in Montana so as to require it to procure such a certificate of authority may designate the Secretary of State as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made on the Secretary of State shall constitute valid service. Service of process for corporations shall apply to all its employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.

(4) An individual applying for a public utility applicator's license shall be required to meet the same conditions and standards established within these rules for commercial applicators. For purposes of this subchapter, "public utility" means any governmental organization supplying water, electricity, transportation, etc. to the public, including utilities operated by a private entity under governmental regulation.

(5) An individual applying for a government applicator's license shall be required to meet the conditions and standards of these rules except for those specifically exempted in the Act. The department may accept for certification those federal employees certified through an EPA approved federal agency certification program or if the employee has been certified by another state with comparable requirements and standards of the department. The department reserves the responsibility to require federal employees to meet any special state certification standards.

(6) Those individuals who cannot be classified as a commercial, public utility, or government pesticide applicator or who cannot be classified as a farm applicator, but desire the use of restricted-use pesticides, shall be considered to be noncommercial applicators.

(a) The noncommercial applicators desiring to use restricted use pesticides in the state shall be required to meet the same application, examination, qualification, general and specific competency standards, recordkeeping, requalification, and other related pesticide usage and application standards as required of commercial applicators by the Act.

(b) The individual shall be classified into one of the categories established for commercial applicators.

(c) Noncommercial applicators may only use restricted use pesticides on lands owned, rented, or leased by his/her employer or himself/herself.

(d) Noncommercial applicators, whether certified or not, violating the Act or these rules shall be subject to the same penalties and administrative procedures as commercial applicators.

(7) No licenses shall be issued to any person until the application, fees and all examination or requalification requirements are fulfilled and approved by the department.

(8) A licensed pesticide applicator changing his employment to another company or business within a licensing period shall be required to submit his license and any employee licenses referenced to his license to the department for cancellation. The applicator, by submission of a written request or application, may request the issuance of a new license. If the applicant paid the license fee, the department will reissue the license. If the company or business originally employing the applicator paid the license fee, the department shall not reissue the applicator's license until the fee is paid by the applicator or the applicator's new employer. If the original company paid the licensing fee, the department will credit the fee to the company for issuance of another applicant's license within the same licensing period provided that the license must not be issued until the applicant passes the required written examination or is already an approved applicator. Licenses and licensing fees must not be transferable between licensing periods.

(9) An applicator not renewing and maintaining his license and certification within the established qualification period shall be required to retake and pass the complete examination series prior to the issuance of a new license at the beginning of the next qualification period. The applicator must maintain his qualifications by attending approved requalification programs for a period of time not to exceed four years. The applicator will be required to maintain his records of requalification for submission to the department for relicensing. The department reserves the right to require special examination(s) on new requirements or technology.

(10) Applicators and their employees licensed as applicators or operators shall reveal their license upon request by any individual or business, for whom the applicator or his employee is performing pesticide applications or to an authorized representative of the department.

(a) When an applicator terminates his employment, transfers his license, or modifies or cancels his license, all employee operator licenses issued under the applicator's name and license are terminated, modified, or cancelled. Employees certified as applicators may retain their license if their financial responsibility is still valid. New licenses will be issued to employee operators previously licensed once the business has appointed a new supervisory certified applicator.


4.10.202 CLASSIFICATION OF PESTICIDE APPLICATORS

(1) All applicants applying for a pesticide applicator's license required by 80-8-203 and 80-8-213, MCA, or desiring certification, shall be classified as either a commercial pesticide applicator, public utility applicator, government pesticide applicator, or noncommercial applicator as defined in ARM 4.10.201. Applicants that meet competency standards required by ARM 4.10.203 may use general and restricted-use pesticides.

(2) A person, whether certified as a commercial, public utility, government, or noncommercial licensed, aerial or ground applicator, shall be further classified into one or more of the specific classifications set forth in this rule. The specific classification(s) shall determine the type, substance, and comprehensiveness of each applicant's examinations and the areas, classes of pesticides, and conditions by which the applicant may conduct pesticide operations.

(a) A person certified as an applicator may use general and restricted-use pesticides for which he is qualified throughout the state.

(b) The department shall determine and classify each applicant into the most appropriate specific classification that reflects or describes the applicant's business or operation. Applicants may be classified and licensed into more than one specific classification.
if they meet and satisfy the requirements of each specific classification.

(c) The following specific classifications set forth in this rule do not apply to the following individuals for purposes of this regulation:

(i) individuals conducting laboratory-type research involving restricted use pesticides; and

(ii) doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice.

(3) The following classifications are:

(a) Agricultural pest control classification includes any applicator using or supervising the use of pesticides in the following subclasses:

(i) Pest classification includes any applicator using or supervising the use of pesticides in the production of agricultural crops, including without limiting the foregoing: small grains, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and noncrop agricultural lands.

(ii) Animal classification includes any applicator using or supervising the use of pesticides on animals including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying restricted use pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in a large scale use of restricted pesticide are included in this classification and must be certified-licensed.

(iii) Vertebrate classification includes any applicator using or supervising the use pesticides in the management of vertebrate animals normally wild or feral, including certain predators, rodents and birds, which may adversely affect man's health or property or are a nuisance to man.

(b) Forest pest control classification includes any applicator using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.

(c) Ornamental and turf pest control classification includes any applicator using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(d) Seed treatment and elevator pest control classification includes any applicator using or supervising the use of pesticides onto seeds, the use of fumigants in seed storage areas or on or in seeds and the use of pesticides in or around the elevator seed storage facilities.

(e) Aquatic pest control classification includes any applicator using or supervising the use of pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in classification (3)(l).

(f) Right-of-way, rangeland, pasture, and noncrop pest control classification includes any applicator using or supervising the use of pesticides to manage weeds or other vegetation in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas. This classification includes any applicator using or supervising the use of pesticides to manage weeds or other vegetation on grassland and pastures that are not harvested for forage, and any applicator using or supervising the use of pesticides on noncrop areas to manage weeds or other vegetation.

(g) Industrial, institutional, structural, and health related pest control classification includes any applicator using or supervising the use of pesticides in, on, or around food handling and manufacturing establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses, and any other structures and adjacent areas, public or private, and for the protection of stored, processed, or manufactured products.

(h) School integrated pest management (IPM) classification includes applicators using or supervising the use of pesticides in the school environment under a “Model School Integrated Pest and Pesticide Management Safety Program”, including but not limited to school yards, buildings, playing fields, and other property under the jurisdiction of the school districts.

(i) Wood product pest control classification includes any applicator using or supervising the use of pesticides for pole framing, scribing applications, some home and farm uses, brush on treatments, sapstain control, and uses in nonpressure treatment plants for the protection of wood products.

(j) Public health pest control classification includes state, federal, or other governmental employees or contracted commercial applicators using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance. The jurisdictional health officer, state veterinarian, their duly authorized representatives, and governmental research personnel are exempt from licensing when applying general use pesticides to experimental areas.

(k) Regulatory pest control classification includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests. The following subclassifications of government applicators are established to more accurately reflect some government applicator's specific duties and areas of operation:

(i) mosquito abatement;

(ii) predator;

(iii) quarantine;

(iv) rodent;

(v) weed;

(vi) school IPM; and

(vii) piscicide.

(k) Demonstration and research pest control classification includes:

(i) individuals who, as part of their business or job responsibility, demonstrate to the public the proper use of pesticides and pesticide application techniques or supervise such demonstrations or make or approve recommendations on pesticide product use and/or selection. Such individuals may include extension specialists, county extension agents, government employees, representatives of pesticide manufacturers or related businesses. Not included are individuals licensed as pest control operator or individuals that make recommendations for pesticide products used only for home, yard, lawn or garden use; and

(ii) individuals conducting field research with pesticides and in doing so, use or supervise the use of pesticides. Such individuals include state, federal, commercial, and other individuals conducting field research or utilizing pesticides. Demonstration and research applicators shall qualify in one or more of the classifications in (3)(a) through (l) that best represent their operations or responsibilities.

(1) Special utility classification includes applicators using or supervising the use of pesticides in the maintenance of utility rights of way, substations, and pole conditioning or other similar areas.
(m) Piscicide classification include applicators using or supervising the use of pesticides purposefully applied to waters to eliminate fish species as a fishery management tool.


4.10.203 COMPETENCY STANDARDS FOR CERTIFICATION OF PESTICIDE APPLICATORS

(1) An individual applying for a commercial, public utility, governmental, or noncommercial applicator's license shall be required to pass a written examination prior to issuance of a license.

(a) Examinations may be taken at the department's Helena office or the applicant may make arrangements for examination at other locations in the state or in other states at the convenience and approval of the department.

(b) Any individual applying for a license shall meet the general and specific competency standards of ARM 4.10.204 and 4.10.205.

(c) The competency of applicants shall be determined by their knowledge and passage of written examinations on the subjects set forth in the department's designated manuals for applicators, including revisions, and any other manual, guide, or materials as designated by the department. Examination questions will be derived from these manuals and their degree of difficulty will be based upon the degree of importance established by the department for the various subject areas. (d) The department may accept the applicant's examination scores from other states if the examination or examinations are equivalent to the department's examination. However, all other standards and requirements of the department must be met by the applicant. All out of state applicators will be required to take and pass an examination based on the Montana Pesticide Act and these rules. The scores required are set forth in (3).

(2) An applicator's examination must consist of:

(a) A core examination consisting of, but not limited to, questions based on pesticide laws, rules, regulations, definitions, labeling, safety, toxicology, effects on animals, plants, and the environment, safety equipment, first aid, and alternatives to chemicals.

(b) A specific examination or examinations consisting of, but not limited to, questions based on the pests to be controlled, various control methods, pesticides utilized, environmental and safety considerations, pesticide formulations, and equipment calibration and maintenance, in the specific classification or classifications the applicator chooses for certification.

(3) The minimum passing score for applicants shall be:

(a) 80% for the core pesticide examination, and 80% for each respective specific examination required.

(b) Applicants licensed prior to April 30, 2010 who did not receive a score of 80% or higher on their core pesticide examination and/or specific classification examinations must retest or have obtained 12 hours of recertification training approved by the department before April 30, 2011.

(4) An applicant not receiving a passing score on one or more of the examinations shall be required to retake and pass the failed examination(s) prior to issuance of a license. The applicant taking more than one specific examination may elect to be certified only for the specific examination(s) passed if the applicant has passed the core pesticide examination, and at least one specific examination.

(a) Applicants failing the core pesticide examination or any other examination the first time shall not be allowed to retake the examination(s) for seven days after notification of failure. Applicants failing the examination(s) a second time may retake the examination(s) 15 days after notification. Applicants failing the examination(s) a third time shall not be allowed to retake the examination(s) until the next licensing period beginning January 1 of the next year. Reexamination may be taken at the department's Helena office or the applicant may make arrangements for reexamination at other locations in the state or in other states at the convenience and approval of the department.

(5) Applicators shall be required to requalify for licensing prior to every fifth licensing period.

(a) The department has a staggered four-year requalification time period designated by applicator classification and subclassification. Applicator classifications must requalify by December 31 of the year designated by the department. Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.

(b) Applicator requalification must be accomplished by either passing the complete examination series or by attending 12 hours of training approved by the department. Courses must be either six, four, three, or two hours. An applicator requalifying for certification by attending pesticide training courses must have written verification of his/her attendance.

(6) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for recertification. Training course sponsors must petition the department for approval of their courses at least 30 days prior to being held. The petition must include dates, time, location, projected attendance, speakers, and a synopsis of their presentations.

(7) The department may require applicants to pass an examination during any certification period on new pesticide technology which applies to the applicator's classification.


4.10.204 GENERAL STANDARDS OF COMPETENCY FOR ALL APPLICATORS

(1) All commercial, public utility, and government applicators shall demonstrate by written examination and, as appropriate, performance testing, practical knowledge of the principles and practices of pest control and safe use of pesticides. Examination shall be based on knowledge and examples of problems and situations appropriate to the applicator's classification or
subclasses and the following areas of competency for which a license or certification-license is desired:

(a) Label and labeling comprehension:
(i) the general format and terminology of pesticide labels and labeling;
(ii) the understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
(iii) classification of the product, general or restricted;
(iv) necessity for use consistent with the label.
(b) Safety factors including:
(i) pesticide toxicity and hazard to man and common exposure routes;
(ii) common types and causes of pesticide accidents;
(iii) precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
(iv) need for and use of protective clothing and equipment;
(v) symptoms of pesticide poisonings;
(vi) first aid and other procedures to be followed in case of a pesticide accident;
(vii) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.
(c) Environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
(i) weather and other climatic conditions;
(ii) types of terrain, soil, or other substrate;
(iii) presence of fish, wildlife, and other non-target organisms;
(iv) drainage patterns.
(d) Pest factors such as:
(i) common features of pest organisms and characteristics of damage needed for pest recognition;
(ii) recognition of relevant pests;
(iii) pest development and biology as it may be relevant to problem identification and control;
(e) Pesticide factors such as:
(i) types of pesticides;
(ii) types of formulations;
(iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;
(iv) hazards and residues associated with use;
(v) factors which influence effectiveness or lead to such problems as resistance to pesticides;
(vi) dilution procedures.
(f) Equipment factors (relevant to applicator's operation) including:
(i) types of equipment and advantages and limitations of each type;
(ii) uses, maintenance, and calibration.
(g) Application technique factors including:
(i) methods and procedures used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique of application to use in a given situation;
(ii) relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse;
(iii) prevention of drift and pesticide loss into the environment.
(h) State and federal laws, regulations, and rules.

History: 80-8-105, MCA; IMP, 80-8-105 and 80-8-206, MCA; NEW, Eff. 7/5/76; AMD, 1986 MAR p. 1007, Eff. 6/13/86.

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION

(1) Certified commercial, public utility, government, and noncommercial pesticide applicators shall be examined and qualified with respect to the following practical knowledge standards:
(a) Agricultural pest control applicators may be classified into one of three areas:
(i) Plant applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, non-target injury, and community problems resulting from the use of pesticides in agricultural areas.
(ii) Animal applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge concerning specific pesticide toxicity and residue potential is also required since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.
(iii) Vertebrate applicators must demonstrate practical knowledge of vertebrates for which they may be using pesticides. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. The applicator must demonstrate a practical knowledge of control and application methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. These applicators must demonstrate knowledge of the use of these pesticides which will minimize or prevent hazards to humans, pets, and other domestic animals.
(b) Forest pest control applicators shall demonstrate practical knowledge of the types of forest, forest nurseries, and seed production in their state and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge of the relative biotic agents and their vulnerability to the pesticides to be applied is required. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must
therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may be related to meteorological factors and adjacent land use.

(e) Seed treatment and elevator pest control applicators shall demonstrate practical knowledge of the types of seeds that require pesticide protection against pests, and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and in use of treated seed such as introduction of treated seed into food and feed channels as well as proper disposal of unused treated seeds. Applicators must demonstrate proper use of grain fumigants to protect seeds, knowledge of the safe handling and application techniques, worker exposure and protection considerations, and reentry standards into fumigated structures. They must demonstrate practical knowledge of using herbicides around and rodenticides and avicides in and around these structures.

(f) Right-of-way, rangeland, pasture, and noncrop pest control applicators shall demonstrate practical knowledge of a wide variety of environments since right-of-way, rangeland, pasture, and noncrop sites can traverse many different terrains, including watersways. They shall demonstrate practical knowledge of problems on runoff, drift, excessive foliage destruction, and potential effects on livestock and non-target organisms. Applicators must have the ability to recognize target plants and differentiate them from nontarget plants. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the target application site, and the impact of their application activities in the adjacent areas and communities.

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

(h) School integrated pest management applicators must demonstrate a practical knowledge in the principles of integrated pest management and a knowledge of pesticides registered for use in the school environment, in addition to the knowledge required by applicators in the industrial, institutional, structural, and health-related category.

(i) Wood product pest control applicators shall demonstrate practical knowledge of the specific wood preservative products used in their operation (creosote, pentachlorophenol, inorganic arsenicals). They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste. They must be familiar with the consumer awareness program (CIP) which will be implemented through the use of Consumer Information Sheets (CIS's) provided to the end users of the products (consuming public).

(j) Public health pest control applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application practices. A wide variety of pests are involved. It is essential that they be known as recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal, and drainage.

(k) Regulatory pest control applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. In the case of some federal agency applicators, their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(l) Demonstration and research pest control applicators demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different problem situations will be encountered in the course of activities associated with demonstrations. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in ARM 4.10.204. In addition, they shall meet the specific standards required for classifications in (1)(a) through (g) applicable to their particular activity. Persons conducting field research or method development work with restricted-use pesticides shall be expected to know the general standards required for classifications in (1)(a) through (l), applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration."

(i) Special utility pest control applicators shall demonstrate practical knowledge of a wide variety of utility right-of-way
environments. They shall demonstrate practical knowledge of problems on runoff, drift and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and soil sterilants, the need for containment of these pesticides within the designated areas, and the impact of their application activities in the adjacent areas. They shall demonstrate practical knowledge of the specific wood preservative products used in their operation. They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste.

(m) Piscicide pest control applicators shall demonstrate a knowledge of registered piscicides, and safety practices for use, storage and transportation. They shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations, the potential of downstream effects and piscicide decontamination procedures. They must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. They must show practical knowledge of water chemistry, pest identification, and the ecology within the aquatic environment. Applicators also have knowledge of applicable laws and regulation related to introduction of pesticides into state waters, and demonstrate practical knowledge of the principles of limited area application.


4.10.206 INDIVIDUALS REQUIRING A PESTICIDE OPERATOR’S LICENSE

(1) Employees of certified applicators under certain conditions of use for general and restricted-use pesticides shall be required to become licensed pesticide operators. Only one certified applicator, or licensed operator shall be required for each spraying equipment unit when in actual operation. Application for an operator’s license shall be made on a standard application form provided by the department.

(2) Licensed operators shall be allowed to use and apply only those pesticides that the certified applicator he is supervised by is qualified to use and apply. A licensed operator may use general or restricted-use pesticides within 100 miles of the applicator when he is under the direct supervision of a certified applicator. Licensed operators may not apply general or restricted-use pesticides beyond 100 miles of the applicator.

(3) An individual may have certain conditions be licensed as a noncommercial operator under the direct supervision of a certified noncommercial applicator. In these cases, the licensed operator may use restricted-use pesticides under the direct supervision of the certified applicator provided that the uses of the pesticides are restricted to any of the employer’s premises or materials on the premises, and that the treated materials are not sold to the general public.

(4) Applicator employees required to become licensed operators shall make application for license on a form approved by the department. The license fee shall be $25 per applicator, provided that only the first two operator applicants per applicator business shall have to pay the $25 licensing fee. Thereafter, the fee per additional applicant shall be $10. Fifteen dollars ($15) of the fee for each of the first two operators and $5 of the fee for each additional operator shall be deposited in the state special revenue account as required by 80-8-205, MCA.

(5) Individuals using and applying general or restricted use pesticides shall qualify for an operator license by:
(a) passing a department examination;
(b) attending a department training course; or
(c) receiving training from a certified applicator of the business or government agency who must certify the individual’s completion of the training.

(6) The training or examination shall include knowledge of pesticide law and rules, labels and labeling, safety, first aid and toxicology, effect of pesticides, factors affecting pesticide application, equipment calibration, dilution and mixing of pesticides, and recognition of common pests to be controlled. The examination or training for operators must be as specific as possible to their operations and responsibilities. Examinations will be given at the convenience and approval of the department or its authorized representative. The department shall cooperate with individual applicators or groups of applicators in establishing the training materials and examination questions, and may provide assistance to applicators in training applicants for an operator’s license. The passing score for the examination must be 80%. Operators who pass the examination may not be required to pass another examination. Operators may renew their license each year by receiving in-service business or government agency training or by attending a training course approved by the department.

(7) Government operators shall meet all the standards established for commercial operators in this regulation. Government operators shall only operate within their respective governmental boundaries regardless of the number of miles from the government certified applicator’s business location.


4.10.207 RECORDS

(1) All certified commercial, public utility, government, certified noncommercial applicators and their operators shall be required to keep and maintain operational records for two years. For every application performed either by an applicator or operator, the application record must include:
(a) The name of the applicator or operator applying the pesticide. Initials or an assigned number are acceptable if the full name
NEW HAMPSHIRE DEPARTMENT OF AGRICULTURE, MARKETS & FOOD

Division of Pesticide Control

P.O. Box 2042
Concord, N. H. 03302-2042

CHAPTER Pes 100 ORGANIZATION RULES

Statutory Definitions: RSA 430:31

PART Pes 101 DEFINITIONS

Pes 101.01 "Abutter" means any person who owns shoreline within 200 feet of the treatment area of the surface waters.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

Pes 101.02 "Agricultural commodity" means any plant, or part thereof, or animal or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, agriculturalists, floriculturists, orchardists, foresters, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

Pes 101.03 "Board" means the pesticide control board as established by RSA 430:28-49.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

Pes 101.04 "Chemical liability" means that the insurance coverage required under Pes 301.03 pertains to the handling and use of pesticides.

Source. #4309, eff 9-1-87; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

Pes 101.05 "Chemigation" means the application of a chemical through an irrigation system by injecting or introducing the chemical into the water flowing through the system.

Source. #5734, eff 11-5-93; ss and moved by #6239, eff 5-2-96 (formerly Pes 101.045)

Pes 101.06 "Commercial applicator not for hire" means those commercial applicators who apply pesticides to their own premises, that of their immediate employers or when performing duties required
of

them by a governmental subdivision, and any other commercial applicator other than a "commercial applicator for hire", including but not limited to golf course personnel, state, federal and municipal employees.

Source. #1058.1, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.05)

Pes 101.07 "Common chemical name" means a well-known, simple name of a pesticide accepted by the pesticide regulation division of the Environmental Protection Agency or those adopted by the American National Standards Institute (ANSI).

Source. #4867, eff 7-19-90; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.06)

Pes 101.08 "Crew" means:

(a) One or more men working with one piece of mechanically powered equipment that has a capacity exceeding 3 gallons of liquid or 25 pounds of dry material; and

(b) Those men working within speaking distance of one another and each applying pesticides by hand or each operating a piece of mechanically powered equipment that has a capacity of not more than 3 gallons of liquid or 25 pounds of dry material.

Source. #150, eff 1-9-74, amd by #1410.2, eff 8-1-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.07)

Pes 101.09 "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals. The term does not include equipment used for the application of pesticides when sold separately therefrom.

Source. #2002, eff 4-19-82; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.08)

Pes 101.10 "Disposal" means discarding, open burning, or incineration of excess of unusable pesticide materials and discarding of pesticide containers, or the sale or transfer of ownership of pesticide containers for use other than to contain pesticides.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;
ss and moved by #6239, eff 5-2-96 (from Pes 101.09)

Pes 101.11 "Division" means the division of pesticide control as established within the department of agriculture.

Source. #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.10)

Pes 101.12 "Drift" means the airborne movement of pesticides resulting from a pesticide application such as to carry pesticides beyond the target pest area.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.11)

Pes 101.13 "Food handling area" means those areas where food is prepared, stored or handled for human and animal consumption.

Source. #1301, eff 1-10-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.12)

Pes 101.14 "Janitor" means person or persons, classified as commercial applicator not for hire, including but not limited to custodians, maintenance personnel and building maintenance supervisors, designated by their immediate employer as being responsible for maintaining the condition of the building and the property immediately adjacent to those buildings. Such definition does not include golf course superintendents, parks and recreation personnel or others not primarily engaged in building maintenance.

Source. #1301, eff 1-10-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.13)

Pes 101.15 "Label" or "labeling" means:

(a) The written, printed, or graphic matter on, or attached to, the pesticide, or the immediate container thereon;

(b) The outside container or wrapper of the retail package, if there is one, of the pesticide; and

(c) Written printed or graphic matter which is incorporated into the label by reference.

Source. #6047, eff 6-3-95; ss and moved by #6239, eff 5-2-96 (formerly Pes 101.131)
certificate of attendance as described in Pes 303.01(i)(1)-(2) for each such seminar completed.

(m) A person who submits a valid written certificate of attendance as described under Pes 303.01(i) shall be deemed eligible to apply for a supervisory registration certificate-general use pursuant to Pes 303.01(d).

(n) Within 30 days of receipt of applicant's resume form the division shall communicate to the applicant, in writing, its finding as to whether or not said applicant has satisfied the eligibility requirements of Pes 303.01.

(o) Persons applying for registration as commercial applicators not for hire as defined in Pes 101.06 shall be exempt from the requirements of Pes 303.01(a).

Pes 303.02 Qualifications For Operational Level Certificates. To be eligible for registration at the operational level applicants shall have attained their 18th birthday.

Pes 303.03 Exemptions. Janitors using general use pesticides in non-food areas in buildings and property immediately adjacent to buildings, and those using prepackaged general use aerosols or general use aerosol dispensing devices for control of flying insects in food handling areas shall be exempt from certification requirements under Pes 300.

PART Pes 304 COMMERCIAL APPLICATOR’S EXAMINATION

Pes 304.01 General Examination Procedure.

(a) All persons applying for commercial applicator registration shall demonstrate by examination a practical knowledge of the principles and practices associated with pest control and the safe use of pesticides.

(b) In order to take an examination an applicant shall, prior to the examination:

(1) Have satisfied all of the requirements of Pes 303.01(a) or Pes 303.02, as applicable; and

(2) Follow the procedures specified in Pes 304.07, including the filling out of all applicable application forms and paying all applicable fees.

(c) Applicants electing to retake an examination pursuant to Pes 304.08 shall, prior to taking the exam, fill out an exam application form and pay a re-examination fee as specified in RSA 430:34 III.

(d) Except where exempted under Pes 304.05, applicants seeking commercial applicator certification at the supervisory level shall, upon having passed all required written examinations, take an oral examination as described in Pes 304.02(f)(1).

(e) Upon having passed all of the required examinations for a given level and category of commercial applicator certification, and where all requirements of certification under Pes 303 have been met and fees paid, an applicant shall be issued a certificate of registration by the division.
New. #8131, eff 8-13-04

Pes 507.02 Prevention of Drift/Contamination. No application of pesticides shall be made by mechanically powered equipment at such times when the wind velocity shall cause said pesticide to contaminate a non-target area.

Source. #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96, EXPIRED: 5-30-04

New. #8131, eff 8-13-04

Pes 507.03 Conditions for the Application of Pesticides to Minimize Drift and Contamination.

(a) For the protection of the public health and the environment, following a hearing where a finding is made indicating the possibility of adverse effects of pesticides and that conditions on licenses and permits issued to commercial and private applicators would be effective in reducing contamination or the likelihood of contamination, the division shall impose such conditions.

(b) Such conditions shall include but not be limited to:

(1) Specification of limitations as to types of application equipment which can be used;

(2) The methods of application to be followed; and

(3) The weather conditions which shall prevail during application.

Source. #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96, EXPIRED: 5-30-04

New. #8131, eff 8-13-04

Pes 507.04 Conditions Constituting Drift/Contamination. In situations where pesticides have been applied to a target area but have been allowed to drift to off target areas, the following shall be considered to be drift/contamination in violation of these rules:

(a) A pesticide or pesticides are present on non-target food crops or pasturage in quantities exceeding the FDA tolerance for the specific pesticide on the specific non-target food crop or pasturage;

(b) Any measurable amount of pesticides present on a non-target crop subject to FDA tolerances, but which does not have an established FDA tolerance for said pesticide or pesticides;

(c) Any measurable amount of pesticides which constitute an inconsistency with and violation of manufacturer's label recommendations and precautions for that pesticide; or

(d) The presence in the environment including air, land or water, of one or more pesticides, degradator products of pesticides or formulation constituents or combinations thereof in such concentration and of such duration as to cause, or might tend to cause, an unreasonable adverse effect on the environment, or unreasonable harm or injury to persons, as determined by the division.

Source. #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96, EXPIRED: 5-30-04

New. #8131, eff 8-13-04

PART Pes 508 COMMERCIAL APPLICATIONS TO TURF SITES

Pes 508.01 Notification Prior to Application of Pesticides to Turf Areas. Commercial applications of pesticides to turf areas shall comply with the following requirements:

(a) Signs as required by Pes 508 shall satisfy the following requirements:

(1) They shall be 8 1/2 X 11 inches in size, be made of weather resistant materials with black letters
on a yellow background;

(2) They shall contain the following information:

a. The word "Notice" in 2 1/2 inch block letters;

b. The pesticide(s) used expressed as common chemical name;

c. Date of treatment;

d. Area treated;

e. A statement that the notice has been provided for public information and to those who may be sensitive to chemicals; and

f. Name, address and telephone number of the person who may be contacted; and

(3) Signs shall remain posted for a minimum of 48 hours after application is made;

(b) Written notification as required by Pes 508 means a written notice which shall include the following information:

(1) Name, address and telephone number of the contact person and the firm offering the services;

(2) Name of the pesticide(s) to be used, expressed by common chemical name;

(3) Form(s) of material(s) to be applied and methods of application;

(4) A schedule of services to be provided; and

(5) A statement which:

a. Grants the opportunity for those persons receiving the service to request, and receive, advanced notification, and other specific information requested, of the pesticide application which is to take place; and

b. States "you have the right to request and receive advanced notification of the date that each pesticide application will be made"; and

(6) Designation of the area treated when making pesticide applications to multifamily dwellings and public and recreational properties.

(c) Without superseding or modifying any provisions or restrictions specified on a pesticide's label, in addition to label requirements, commercial applicators shall provide notification to those persons receiving their services prior to the application of pesticides to turf area, including but not limited to lawns, public and private golf courses and those areas covered under Pes 302.01 (d)(2).

(d) When a commercial applicator contracts with the client or recipient of services for application of pesticides to private properties, the commercial applicator shall give written notification regarding the pesticide application which is to take place, according to (b) above, to the client, or in a situation where the client does not reside at the property, to the persons residing at the property, including the following:

(1) Notification shall be given prior to the application of pesticide; and

(2) Notification shall be given at least on an annual basis.

(e) When making applications to multifamily dwellings, notification shall be given by:

(1) Complying with Pes 508.01(d);

(2) Providing written notification to the management, owners or official spokesperson of the multifamily dwelling, according to the provision of (b) above, at least 72 hours but no more than 2
weeks prior to the pesticide application;

(3) Providing at least one of the following:

a. Posting of signs, as specified under (a) above, at common entryways including but not limited to the main entrance ways to the multifamily dwelling complex, mail boxes, road intersections and treatment area; or

b. Prior written notification to all inhabitants according to (b) above.

(f) Prior to application of pesticides to public and recreational properties, commercial applicators shall provide notification by at least one of the following methods:

(1) Posting of signs, as specified under (a) above, around the treatment area, at access points or other places noticeable by the public when entering the treated area;

(2) Posting written notification pursuant to Pes 508.01(b), on bulletin boards that are noticeable to persons entering the area for a minimum period of 48 hours after application is made;

(3) In addition to (1) or (2) above, commercial applicators may also utilize such methods as direct mailing, newspaper notices, organizational publications and newsletters.

(g) When making pesticide applications to commercial business properties such as banks, office buildings, restaurants, and retail stores, notification shall be provided by one or both of the following methods:

(1) Posting of signs, as specified under (a) above, at points of access and egress to the building;

(2) Posting written notification pursuant to Pes 508.01(b)(1)-(4) on bulletin boards within the building that are noticeable to everyone occupying the building for a minimum period of 48 hours after application is made.

(h) In situations where notification would be made in compliance with the provisions of Pes 508.01(d)(e) (g) where there are recreational or other areas with public use, such as play areas, picnic areas, or where turf areas provide some form of recreation, notification shall also comply with Pes 508.01(f).

Source. #4867, eff 7-19-90; ss by #5611, eff 4-13-93; ss by #6258, eff 5-30-96, EXPIRED: 5-30-04

New. #8131, eff 8-13-04

APPENDIX

<p>| Pes 501.01 | RSA 430:36 |
| Pes 502.01 | RSA 430:31, IV(e) |
| Pes 502.02 – Pes 502.07 | RSA 430:41, IV |
| Pes 503.01 – Pes 503.02 | RSA 430:41, IV |
| Pes 503.03 | RSA 430:31, IV(a), (e) |
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13:1F-19. Short title
1. This act shall be known and may be cited as the "School Integrated Pest Management Act."

L.2002,c.117,s.1.

13:1F-20. Findings, declarations relative to the "School Integrated Pest Management Act."

2. The Legislature finds and declares that in 1992, the National Parent Teacher Association passed a resolution calling for the reduced use of pesticides in schools and calling on policy makers to consider all possible alternatives before using any pesticides; that the National Education Association and many national public interest organizations have announced support for reducing or eliminating pesticide use in schools; that the State, as well as 87 local government entities throughout the State, have adopted integrated pest management policies for their buildings and grounds; that childhood cancer is continuing to increase at the alarming rate of one percent per year; that the overall incidence of childhood cancer increased 10 percent between 1974 and 1991, making cancer the leading cause of childhood death from disease; and that approximately 4,800,000 children in the United States under the age of 18 have asthma, the most common chronic illness in children, and the incidence of asthma is on the rise.

The Legislature further finds and declares that children are more susceptible to hazardous impacts from pesticides than are adults; that numerous scientific studies have linked both cancer and asthma to pesticide exposure; that the United States Environmental Protection Agency has recommended the use of an integrated pest management system by local educational agencies, which emphasizes nonchemical ways of reducing pests, such as sanitation and maintenance; that integrated pest management is an effective and environmentally sensitive approach to pest management that relies on common sense practices; that integrated pest management programs use current, comprehensive information on the life cycles of pests and their interaction with the environment, and that this information, in combination with available pest control methods is used to manage pest damage with the least hazard to people, property and the environment and by economical means; and that integrated pest management programs take advantage of all pest management options possibly including, but not limited to, the judicious use of pesticides; that a notification process should be established for schools under which each student, parent, guardian, staff member, and teacher shall be notified of a pesticide application; that parents and guardians have a right to know that there is an integrated pest management system in their children's schools; that an integrated pest management system provides long-term health and economic benefits; and that parents and guardians should have a right to be notified in advance of any use of a pesticide in their children's schools.

The Legislature therefore determines that it is in the public interest of all of the people of New Jersey that the schools in this State establish an integrated pest management policy.

L.2002,c.117,s.2.

13:1F-21. Definitions relative to the "School Integrated Pest Management Act"

3. As used in this act:

"Charter school" means a school established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.).
"Commissioner" means the Commissioner of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Integrated pest management coordinator" or "coordinator" means an individual who is knowledgeable about integrated pest management systems and has been designated by a local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, as the integrated pest management coordinator pursuant to section 5 of this act.

"Low Impact Pesticide" means any pesticide or pesticidal active ingredient alone, or in combination with inert ingredients, that the United States Environmental Protection Agency has determined is not of a character necessary to be regulated pursuant to the "Federal Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C. s.136 et seq. and that has been exempted from the registration and reporting requirements adopted pursuant to that act; any gel; paste; bait; antimicrobial agent such as a disinfectant used as a cleaning product; boric acid; disodium octaborate tetrahydrate; silica gels; diatomaceous earth; microbe-based insecticides such as bacillus thuringiensis; botanical insecticides, not including synthetic pyrethroids, without toxic synergists; and biological, living control agents.

"Pesticide" means any substance or mixture of substances labeled, designed, intended for or capable of use in preventing, destroying, repelling, sterilizing or mitigating any insects, rodents, nematodes, predatory animals, fungi, weeds and other forms of plant or animal life or viruses, except viruses on or in living man or other animals. "Pesticide" shall also include any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant or plant regulator.

"School" means any public or private school as defined in N.J.S.18A:1-1.

"School integrated pest management policy" means a managed pest control policy that eliminates or mitigates economic, health, and aesthetic damage caused by pests in schools; that delivers effective pest management, reduces the volume of pesticides used to minimize the potential hazards posed by pesticides to human health and the environment in schools; that uses integrated methods, site or pest inspections, pest population monitoring, an evaluation of the need for pest control, and one or more pest control methods, including sanitation, structural repair, mechanical and biological controls, other nonchemical methods, and when nonchemical options are ineffective or unreasonable, allows the use of a pesticide, with a preference toward first considering the use of a low impact pesticide for schools.

"School pest emergency" means an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student or staff member.

"School property" means any area inside and outside of the school buildings controlled, managed, or owned by the school or school district.

"Staff member" means an employee of a school or school district, including administrators, teachers, and other persons regularly employed by a school or school district, but shall not include an employee hired by a school, school district or the State to apply a pesticide or a person assisting in the application of a pesticide.

"Universal notification" means notice provided by a local school board, a board of trustees of a
charter school, or the principal or chief administrator of a private school, as appropriate, to all parents or guardians of children attending a school, and staff members of a school or school district.

L.2002,c.117,s.3.

13:1F-22. Development of model school integrated pest management policy

4. a. No later than 12 months after the effective date of this act, the commissioner, in consultation with the Commissioner of Education, the New Jersey School Boards Association, and the New Jersey Cooperative Extension of Rutgers, The State University shall develop a model school integrated pest management policy that is based upon recommended integrated pest management plans for schools disseminated by the United States Environmental Protection Agency and that conforms to the rules adopted by the department pursuant to the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.).

b. No later than 18 months after the effective date of this act, the superintendent of the school district, for each school in the district, the board of trustees of a charter school, and the principal or chief administrator of a private school, shall adopt and implement a school integrated pest management policy for the school property consistent with the model policy developed pursuant to subsection a. of this section and that complies with the provisions of this act.

L.2002,c.117,s.4.

13:1F-23. Designation of integrated pest management coordinator

5. a. Each local school board of a school district, each board of trustees of a charter school, and each principal or chief administrator of a private school, as appropriate, shall designate an integrated pest management coordinator to carry out the school integrated pest management policy required pursuant to section 4 of this act.

b. The integrated pest management coordinator for a school or school district shall:

(1) maintain information about the school or school district’s school integrated pest management policy and about pesticide applications on the school property of the school or the schools within the school district;

(2) act as a contact for inquiries about the school integrated pest management policy; and

(3) maintain material safety data sheets, when available, and labels for all pesticides that are used on the school property of the school or of the schools in the school district.

L.2002,c.117,s.5.

13:1F-24. Maintenance of records of pesticide application; notices of policy

6. a. The local school board of a school district, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall request from the pesticide applicator and shall maintain records of pesticide applications used on school property at each school or for each school in the school district for three years after the application, and for five years after the application of a pesticide designed to control termites, and on request, shall make the data available to
the public for review.

b. Annually, each local school board, each board of trustees of a charter school, or each principal or chief administrator of a private school, as appropriate, shall include a notice of the school integrated pest management policy of the school or school district in school calendars or other forms of universal notification.

c. The notice shall include:

(1) the school integrated pest management policy of the school or school district;

(2) a list of any pesticide that is in use or that has been used in the last 12 months on school property;

(3) the name, address, and telephone number of the integrated pest management coordinator of the school or school district;

(4) a statement that: (a) the integrated pest management coordinator maintains the product label and material safety data sheet, when available, of each pesticide that may be used on school property; (b) the label and data sheet is available for review by a parent, guardian, staff member, or student attending the school; and (c) the integrated pest management coordinator is available to parents, guardians, and staff members for information and comment;

(5) the time and place of any meetings that will be held to adopt the school integrated pest management policy; and

(6) the following statement:

"As part of a school pest management plan, (insert school name) may use pesticides to control pests. The United States Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection (DEP) register pesticides to determine that the use of a pesticide in accordance with instructions printed on the label does not pose an unreasonable risk to human health and the environment. Nevertheless, the EPA and DEP cannot guarantee that registered pesticides do not pose any risk to human health, thus unnecessary exposure to pesticides should be avoided. The EPA has issued the statement that where possible, persons who are potentially sensitive, such as pregnant women, infants and children, should avoid unnecessary pesticide exposure."

d. After the beginning of each school year, each local school board, each board of trustees of a charter school, or each principal or chief administrator of a private school, as appropriate, shall provide the notice required pursuant to subsection b. of this section to: (1) each new staff member who is employed during the school year; and (2) the parent or guardian of each new student enrolled during the school year.

L.2002,c.117,s.6.

13:1F-25. Permitted use of certain pesticides; notice

7. a. If a local school board, board of trustees of a charter school or principal or chief administrator of a private school, as appropriate, determines that a pesticide, other than a low impact pesticide, must
be used on school property, a pesticide may be used only in accordance with this section.

b. At least 72 hours before a pesticide, other than a low impact pesticide, is used on school property, the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall provide to a parent or guardian of each student enrolled at the school and each staff member of the school, notice that includes:

(1) the common name, trade name, and federal Environmental Protection Agency registration number of the pesticide;

(2) a description of the location of the application of the pesticide;

(3) a description of the date and time of application, except that, in the case of outdoor pesticide applications, one notice shall include three dates, in chronological order, on which the outdoor pesticide applications may take place if the preceding date is canceled;

(4) a statement that The Office of Pesticide Programs of the United States Environmental Protection Agency has stated: "Where possible, persons who potentially are sensitive, such as pregnant women, infants, and children, should avoid any unnecessary pesticide exposure”;

(5) a description of potential adverse effects of the pesticide based on the material safety data sheet, if available, for the pesticide;

(6) a description of the reasons for the application of the pesticide;

(7) the name and telephone number of the integrated pest management coordinator for the school or the school district; and

(8) any additional label instruction and precautions related to public safety.

c. The local school board of a school district, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, may provide the notice required by subsection b. of this section by:

(1) written notice sent home with the student and provided to each staff member;

(2) a telephone call;

(3) direct contact;

(4) written notice mailed at least one week before the application; or

(5) electronic mail.

d. If the date of the application of the pesticide must be extended beyond the period required for notice under this section, the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall reissue the notice required under this section for the new date of application.
L.2002,c.117,s.7.

13:1F-26. Posting of sign prior to use of certain pesticides

8. a. At least 72 hours before a pesticide, other than a low impact pesticide, is used on school property, the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall post a sign that provides notice of the application of the pesticide (1) in a prominent place that is in or adjacent to the location to be treated; and (2) at each entrance to the building or school ground to be treated.

b. A sign required pursuant to subsection a. of this section for the application of a pesticide shall (1) remain posted for at least 72 hours after the end of the treatment; (2) be at least 8 « inches by 11 inches; and (3) state the same information as that required for prior notification of the pesticide application pursuant to section 7 of this act.

c. In the case of outdoor pesticide applications, each sign shall include three dates, in chronological order, on which the outdoor pesticide application may take place if the preceding date is canceled due to weather. A sign shall be posted after an outdoor pesticide application in accordance with subsection b. of this section.

d. The requirement imposed pursuant to this section shall be in addition to any requirements imposed pursuant to the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.), and any rules or regulations adopted pursuant thereto.

L.2002,c.117,s.8.

13:1F-27. Applicability of notice and posting requirements

9. The provisions of sections 7 and 8 of this act shall apply if any person applies a pesticide, other than a low impact pesticide, on school property, including a custodian, staff member, or commercial applicator. These provisions shall apply to a school during the school year, and during holidays and the summer months, only if the school is in use by children during those periods. During those periods, notices shall be provided to all staff members and the parents or guardians of the students that are using the school in an authorized manner.

L.2002,c.117,s.9.

13:1F-28. Emergency use of certain pesticides

10. a. A pesticide, other than a low impact pesticide, may be applied on school property in response to an emergency, without complying with the provisions of sections 7 and 8 of this act, provided the requirements of subsection b. of this section are met.

b. Within 24 hours after the application of a pesticide pursuant to this section, or on the morning of the next school day, whichever is earlier, the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall provide to each parent or guardian of a student enrolled at the school, and staff member of the school, notice of the application of the pesticide for emergency pest control that includes: (1) the information required for a notice under section 7 of this act; (2) a description of the problem and the factors that qualified the
problem as an emergency that threatened the health or safety of a student or staff member; and (3) if necessary, a description of the steps that will be taken in the future to avoid emergency application of a pesticide pursuant to this section.

c. The local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, may provide the notice required by subsection b. of this section by: (1) written notice sent home with the student and provided to the staff member; (2) a telephone call; (3) direct contact; or (4) electronic mail.

d. When a pesticide is applied pursuant to this section, the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall post a sign warning of the pesticide application at the time of the application of the pesticide, in accordance with the provisions of section 8 of this act.

e. If there is an application of a pesticide pursuant to this section, the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, shall modify the school integrated pest management policy of the school or school district if necessary, to minimize the future emergency applications of pesticides under this section.

L.2002,c.117,s.10.

13:1F-29. Prohibited use of certain pesticides

11. a. A pesticide, other than a low impact pesticide, shall not be applied on school property where students are expected to be present for academic instruction or for organized extra-curricular activities prior to the time prescribed for re-entry to the application site by the United State Environmental Protection Agency on the pesticide label, except that if no specific numerical re-entry time is prescribed on a pesticide label, such a pesticide, other than a low impact pesticide, shall not be applied on school property where students are expected to be present for academic instruction or for organized extra-curricular activities within seven hours of the application.

b. A pesticide, other than a low impact pesticide, shall not be applied in a school building when students are present. Students may not be present in an untreated portion of a school building unless the area being treated with a pesticide, other than a low impact pesticide, is served by a separate ventilation system and is separated from the untreated area by smoke or fire doors.

c. A low impact pesticide may be applied in areas of a school building where students will not contact treated areas until sufficient time is allowed for the substance to dry or settle, or after the period of time prescribed for re-entry or for ventilation requirements on the pesticide label has elapsed.

d. This section shall not apply when pesticides are applied on school property for student instructional purposes or by public health officials during the normal course of their duties.
13:1F-30. Immunity from liability of commercial pesticide applicator

12. A commercial pesticide applicator shall not be liable to any person for damages resulting from the application of a pesticide at a school if the damages are solely due to the failure of the local school board, the board of trustees of a charter school, or the principal or chief administrator of a private school, as appropriate, to provide the notice required prior to the application of a pesticide pursuant to the provisions of section 7, 8, 9, or 10 of P.L.2002, c.117 (C.13:1F-25, C.13:1F-26, C.13:1F-27 or C.13:1F-28).


13. The department shall develop and make available to commercial pesticide applicators a form which a commercial pesticide applicator may request an integrated pest management coordinator to sign prior to the application of a pesticide, other than a low impact pesticide, on school property. The form developed pursuant to this section shall set forth a certification by the integrated pest management coordinator that the notice and posting requirements for the application of a pesticide established pursuant to section 7 and section 8 of this act, or the posting requirement established pursuant to section 10 of this act, as appropriate, have been complied with. Upon being presented by a commercial pesticide applicator with a form pursuant to this section, the signature of the integrated pest management coordinator shall be required as a condition for the application of the pesticide.

13:1F-32. Issuance of administrative order; notice of violation

14. a. The Department of Environmental Protection may issue an administrative order against a local school board, the board of trustees of a charter school, or a principal or chief administrator of a private school that fails to adopt and implement a pesticide use and school integrated pest management policy in compliance with the provisions of this act. Upon identification of a violation of this act, the department shall issue a notice of violation by certified mail or personal service to the person responsible for the violation that identifies the violation and states that an administrative order may be issued requiring compliance with the act. Any notice of violation or administrative order shall (1) specify the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation; (2) cite the action that caused the violation; and (3) require compliance with the provision of this act or the rule or regulation adopted pursuant thereto of which the person is in violation. In addition, any administrative order issued pursuant to this section shall give notice to the person of his right to a hearing on the matters contained in the order. The person shall have 20 days from receipt of the order within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon finding that a violation has occurred, the commissioner may issue a final order. If no hearing is requested, the order shall become a final order upon the expiration of the 20-day period.

b. The provisions of section 10 of P.L.1971, c.176 (C.13:1F-10) shall not apply to this act.
13:1F-33. Rules, regulations
15. The commissioner shall adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules or regulations as are necessary to implement the provisions of this act.
SUBCHAPTER 13. INTEGRATED PEST MANAGEMENT IN SCHOOLS

7:30-13.1 Scope and Purpose; Integrated Pest Management Policy

(a) Integrated Pest Management (IPM) is a way to manage pest control through practical and preventive methods that eliminate or reduce damage caused by pests with a goal of reducing the reliance on pesticide use. This subchapter establishes the requirements for IPM in schools in accordance with the School Integrated Pest Management Act, N.J.S.A. 13:1F-19 et seq. A school shall outline its obligations to perform IPM by adopting an IPM Policy as described in (b) below.

(b) The superintendent of a school district for each school in the district, the board of trustees of a charter school, and the principal or lead administrator of a private school shall adopt an IPM Policy that covers the following elements:
   1. A description of IPM procedures to be followed at the school;
   2. The local school board, board of trustees, principal or lead administrator, as appropriate, that is responsible for designating an IPM coordinator for the school;
   3. Education of the school community about IPM fundamentals;
   4. The establishment of record keeping requirements for pesticide and pest information;
   5. The establishment of notification and posting requirements;
   6. The establishment of re-entry requirements after a pesticide application;
   7. The establishment of pesticide applicator oversight requirements;
   8. Requirements for the development and implementation of an IPM Plan; and
   9. The requirement for an annual evaluation of the IPM Plan.

7:30-13.2 Integrated Pest Management Plan

(a) As a requirement of its IPM Policy, each school shall develop and implement a site-specific IPM Plan that describes how the school will manage pests through IPM methods and comply with all aspects of the IPM Policy. The site specific IPM Plan shall be maintained at the school for which it was developed. The Department shall provide a model IPM Plan for schools and make this available as part of training and compliance assistance materials.

1. For public schools, the local school board, in collaboration with the school building administrator (principal), is responsible for the development of the IPM Plan for the school.
2. For charter schools and non-public schools, the board of trustees or principal or the lead administrator is responsible for the development of the IPM Plan.
3. The IPM Plan shall contain at minimum, the following:
   i. The school’s goals regarding the management of pests and the use of pesticides;
ii. The school’s site-specific needs regarding the management of pests;
iii. A description of how each component of the school’s IPM Policy will be implemented at the school;
iv. The name of the IPM coordinator designated by the appropriate school authority identified in accordance with N.J.A.C. 7:30-13.1(b)2.

(b) When implementing its IPM Plan, each school shall use IPM methods to determine when to control pests, including:
   1. Considering the full range of pest management options, including no action at all;
   2. Using non-pesticide pest management methods whenever possible; and
   3. Choosing to use a pesticide based on a review of all other available options and a determination that these options are not effective or not reasonable.

i. When it is determined that a pesticide must be used, low impact pesticides and methods are preferred and shall be considered for use first.

(c) As part of its IPM Plan, the school and the IPM coordinator shall be responsible for educating the school community, including, but not limited to, teachers, staff, students, and parents or guardians, about potential pest problems and IPM methods used to achieve pest management objectives.
   1. School staff involved with implementation of the school IPM Policy and Plan shall be trained by the IPM coordinator in appropriate components of IPM as it pertains to the school environment.
   2. Students, their parents or guardians, and school staff, shall be provided information and instructed by the IPM coordinator on how they can contribute to the success of IPM in their school.

(d) Annually, at the close of each school year, each school shall report on the effectiveness of its IPM Plan and make recommendations for improvements as needed.
   1. For public schools, the principal shall be responsible for reporting to the local school board.
   2. For non-public schools and charter schools, the lead administrator or principal shall be responsible for reporting to the governing boards.

7:30-13.3 Integrated pest management coordinator

(a) Each local school board of a school district, each board of trustees of a charter school, and each principal or lead administrator of a private school, as appropriate, shall designate an IPM coordinator to implement the IPM Plan.
   1. The IPM coordinator shall be responsible for:
      i. Implementing the IPM Policy and Plan;
      ii. Maintaining information about the school or school district’s school IPM Policy and Plan, and about pesticide applications on the school property of the school or the schools within the school district;
      iii. Acting as a contact for inquiries about the school IPM Policy and Plan;
iv. Maintaining material safety data sheets, when available, and labels for all pesticides that are used on the school property of the school or of the schools in the school district; and

v. Ensuring that commercial pesticide applicators operating on school property are in compliance with the following:
   (1) Licensing requirements at N.J.A.C. 7:30-6 and 7.1;
   (2) Applicable notification and posting requirements at N.J.A.C. 7:30-9;
   (3) Label precautions from the Federal registered label of each pesticide used on school property; and
   (4) All applicable provisions of the school IPM Policy and Plan.

(b) The IPM coordinator for a school or school district shall obtain Department-approved training sufficient to implement an IPM Policy and IPM Plan. This training may include classroom training, publicly available website presentations, or other means. The training shall include at a minimum, the following:
   1. A general overview of the principles of IPM;
   2. Information on regulations pertaining to IPM in schools; and
   3. An overview of a model IPM Policy, and a model IPM Plan that can be adapted to address the site-specific conditions at the IPM coordinator’s school or schools.

(c) Each school shall submit the following information to the Department:
   1. The full name and title of the IPM coordinator; and
   i. The birth date of the IPM Coordinator; and
   ii. The telephone number, work address and electronic mail address.
   2. Name and physical address (and mailing address if different) of the school(s) or school district for which the IPM coordinator is responsible; and
   i. The name, title, mailing address and telephone number of the head of the local school board or the lead administrator of a private or charter school.
   3. County, district and school code of each school for which the IPM Coordinator is responsible, or any other identifying school information;
   4. A statement certifying that the IPM coordinator has received DEP approved training in order to implement the IPM Policy and Plan; and
   5. Any changes in the designation of the IPM coordinator shall be submitted to the Department within 30 days, including the name of the former IPM coordinator, and the name of the newly designated IPM coordinator.

7:30-13.4 Records

(a) The local school board of a school district, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall request from the commercial pesticide applicator and shall maintain records of pesticide applications used on school property in accordance with the following:
1. Records for all pesticide applications at a school shall be maintained at that school;
2. Records shall be maintained for three years after the application, and maintained for five years after the application of a pesticide designed to control termites;
3. Records shall be available upon request to the public for review;
4. Records shall be immediately provided to the Department upon request; and
5. Records shall be provided immediately to medical personnel in emergency situations; and
6. Records shall include, at a minimum, the application records required at N.J.A.C. 7:30-6.8 and 7.3.

(b) Records shall also include, but are not limited to, pest surveillance data sheets and other non-pesticide pest management methods and practices utilized.

7:30-13.5 Annual Notification

(a) Annually, at the beginning of each school year, each local school board, each board of trustees of a charter school, or each principal or lead administrator of a private school, as appropriate, shall include a notice of the school IPM Policy of the school or school district in school calendars or other forms of universal notification.

1. The notice shall include:
   i. The IPM Policy of the school or school district;
   ii. A list of any pesticide that is in use or that has been used in the last 12 months on school property;
   iii. The name, address, and telephone number of the IPM coordinator of the school or school district;
   iv. A statement that:

   (1) The IPM coordinator maintains the product label and material safety data sheet, when available, of each pesticide that may be used on school property;

   (2) The label and data sheet is available for review by a parent, guardian, staff member, or student attending the school; and

   (3) The IPM coordinator is available to parents, guardians, staff members, and students to provide information for, and receive comments about, IPM activities and pesticide use;

   v. The time and place of any meetings that will be held to adopt the school integrated pest management policy; and

   vi. The statement: "As part of a school pest management plan, (insert school name) may use pesticides to control pests. The United States Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection (DEP) register pesticides to determine that the use of a pesticide in accordance with instructions printed on the label does not pose an unreasonable risk to human health and the environment. Nevertheless, the EPA and DEP cannot guarantee that registered
pesticides do not pose any risk to human health, thus unnecessary exposure to pesticides should be avoided. The EPA has issued the statement that where possible, persons who are potentially sensitive, such as pregnant women, infants and children, should avoid unnecessary pesticide exposure."

(b) After the beginning of each school year, each local school board, each board of trustees of a charter school, or each principal or lead administrator of a private school, as appropriate, shall provide the notice required in (a) above to:
   1. Each new staff member who is employed during the school year; and
   2. The parent or guardian of each new student enrolled during the school year.

7:30-13.6 Notification: Other than Low Impact Pesticide Use

(a) If a local school board, board of trustees of a charter school or principal or lead administrator of a private school, as appropriate, determines that a pesticide, other than a low impact pesticide, must be used on school property, such pesticide shall be used only in accordance with this section.
   1. The provisions of this section shall apply to a school during the school year, and during holidays and the summer months, only if the school is in use by children during those periods. During those periods, notices shall be provided to all staff members and the parents or guardians of the students that are using the school in an authorized manner; and
   2. The provisions of this section shall apply if any person applies a pesticide, other than a low impact pesticide, on school property, including a custodian, staff member, or commercial applicator.

(b) At least 72 hours before a pesticide, other than a low impact pesticide, is used on school property, the local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall provide to a parent or guardian of each student enrolled at the school and each staff member of the school, notice that includes:
   1. The common name, trade name, and Federal Environmental Protection Agency registration number of the pesticide;
   2. A description of the location of the application of the pesticide;
   3. A description of the date and time of application, except that, in the case of outdoor pesticide applications, one notice shall include three dates, in chronological order, on which the outdoor pesticide applications may take place if the preceding application date is canceled;
   4. A statement that The Office of Pesticide Programs of the United States Environmental Protection Agency has stated: "Where possible, persons who potentially are sensitive, such as pregnant women, infants, and children, should avoid any unnecessary pesticide exposure";
   5. A description of potential adverse effects of the pesticide based on the material safety data sheet, if available, for the pesticide;
6. A description of the reasons for the application of the pesticide;
7. The name and telephone number of the IPM coordinator for the school or the school district; and
8. Any additional label instruction and precautions related to public safety.

(c) The local school board of a school district, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, may provide the notice required in (b) above by any of the methods listed at (c)1 through 5, below. This notice may be combined with any other notice provided to students, parents or guardians, and staff:
1. Written notice sent home with the student and provided to each staff member;
2. A telephone call;
3. Direct contact;
4. Written notice mailed at least one week before the application; or
5. Electronic mail.

(d) If the date of the application of the pesticide must be extended beyond the period required for notice under this section, the local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall reissue the notice required under this section for the new date of application.

(e) The local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall post signs that provide notice of the application of a pesticide, other than a low impact pesticide.
1. Signs shall be posted at least 72 hours before a pesticide is used on school property:
   i. In a prominent place that is in or adjacent to the location to be treated; and
   ii. At each entrance to the building or school ground to be treated.
2. The sign for the application of a pesticide shall:
   i. Be at least 8 ½ inches by 11 inches; and
   ii. State the same information as that required for prior notification of the pesticide application required in (b) above.
3. Signs shall remain posted for at least 72 hours after the end of the treatment.

(f) In the case of outdoor pesticide applications, each sign shall include three dates, in chronological order, on which the outdoor pesticide application may take place if the preceding application date is canceled due to weather. A sign shall be posted after an outdoor pesticide application as required by (e) above.

(g) The Department shall develop and make available to commercial pesticide applicators a form, which a commercial pesticide applicator may request an IPM coordinator to sign prior to the application of a pesticide, other than a low impact pesticide, on school property.
1. The form shall set forth a certification by the IPM coordinator that the notice and posting requirements for the application of a pesticide, or the posting requirement, established pursuant to The School Integrated Pest Management Act and this subchapter, have been complied with.

2. Upon being presented by a commercial pesticide applicator with a form pursuant to this paragraph, the signature of the IPM coordinator shall be required as a condition for the application of the pesticide.

7:30-13.7 Notification: Emergency Application of a Pesticide Other than a Low Impact Pesticide

(a) A pesticide, other than a low impact pesticide, may be applied on school property in response to an emergency, without complying with the requirements of N.J.A.C. 7:30-13.6, provided the requirements of subsection (b) below are met.

(b) Within 24 hours after the application of a pesticide pursuant to this section, or on the morning of the next school day, whichever is earlier, the local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall provide to each parent or guardian of a student enrolled at the school, and staff member of the school, notice of the application of the pesticide for emergency pest control that includes:
1. The information required for a notice under N.J.A.C. 7:30-13.6;
2. A description of the problem and the factors that qualified the problem as an emergency that threatened the health or safety of a student or staff member; and
3. If necessary, a description of the steps that will be taken in the future to avoid emergency application of a pesticide pursuant to this section.

(c) When a pesticide is applied pursuant to this section, the local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall post a sign warning of the pesticide application at the time of the application of the pesticide, in accordance with the provisions N.J.A.C. 7:30-13.6(e).

(d) The local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, may provide the notice required by subsection b. of this section by:
1. Written notice sent home with the student and provided to the staff members;
2. A telephone call;
3. Direct contact; or
4. Electronic mail.

(e) If there is an application of a pesticide pursuant to this section, the local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall modify the IPM Plan of the school
or school district if necessary, to minimize the future emergency applications of pesticides under this section.

7:30-13.8 Other than Low Impact Pesticide Applications: Prohibitions

(a) A pesticide, other than a low impact pesticide, shall not be applied on school property where students are expected to be present for academic instruction or for organized extra-curricular activities prior to the time prescribed for re-entry to the application site by the United State Environmental Protection Agency on the pesticide label, except that if no specific numerical re-entry time is prescribed on a pesticide label, such a pesticide, other than a low impact pesticide, shall not be applied on school property where students are expected to be present for academic instruction or for organized extra-curricular activities within seven hours of the application.

(b) A pesticide, other than a low impact pesticide, shall not be applied in a school building when students are present, unless in accordance with (a) above, and (b)1 and 2 below:

1. Students may not be present in an untreated portion of a school building unless the area being treated with a pesticide, other than a low impact pesticide, is served by a separate ventilation system and is separated from the untreated area by smoke or fire doors; and

2. Residential areas for students not used by school children during normal school hours may be treated during normal school hours, provided that the notification requirements of N.J.A.C. 7:30-9.12(b) have been carried out.

(c) A low impact pesticide may be applied in areas of a school building where students will not contact treated areas until sufficient time is allowed for the substance to dry or settle, or after the period of time prescribed for re-entry or for ventilation requirements on the pesticide label has elapsed.

(d) This section shall not apply when pesticides are applied on school property for student instructional purposes or by public health officials during the normal course of their duties, such as inspections of food service locations.

(e) A commercial pesticide applicator shall not be liable to any person for damages resulting from the application of a pesticide at a school if the damages are solely due to the failure of the local school board, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, to provide the notice required prior to the application of a pesticide pursuant to the School Integrated Pest Management Act, and this subchapter at N.J.A.C. 7:30-13.5, 13.6 and 13.7.

7:30-13.9 Enforcement Action

(a) The Department may issue an administrative order against a local school board, the board of trustees of a charter school, or a principal or chief administrator of a
private school that fails to comply with the provisions of this subchapter or the provisions of the IPM Act, N.J.S.A. 13:1F-19 et seq.

(b) Upon identification of a violation, the Department will notify the violator by certified mail (return receipt requested) or by personal service. The notice shall:
   1. Identify each section or requirement of this subchapter violated;
   2. Concisely state the facts alleged to constitute the violation;
   3. Specify action necessary to cure the violation; and
   4. Advise the violator of the right to request an adjudicatory hearing.

(c) A person requesting an adjudicatory hearing shall provide the following information in writing to the Department at the address in (e) below within 20 days from receipt of the notice:
   1. The name, address, and telephone number of the person requesting the hearing;
   2. A copy of the administrative order;
   3. A brief description of any findings of fact or conclusions of law which are challenged or contested;
   4. A description of any facts or issues which the person believes constitute a defense to the administrative order;
   5. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
   6. An estimate of the time required for the hearing (in days and/or hours); and
   7. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(d) If the person fails to include all of the information required by (c)1 through 7 above, the Department may deny the hearing request.

(e) A request for an adjudicatory hearing shall be submitted to the Department at the address listed below, with a copy to the Pesticide Control Program at: P.O. Box 411, Trenton, New Jersey 08625-0411:
   Office of Legal Affairs
   New Jersey Department of Environmental Protection
   P.O. Box 402
   Trenton, New Jersey 08625-0402
   Attention: Adjudicatory Hearing Requests

(f) A notice of administrative order shall become a final order as follows:
   1. If no hearing is requested, a notice of administrative order becomes a final order on the 21st day after the violator receives the notice;
   2. If the Department denies a hearing request, a notice of administrative order becomes a final order upon the violator’s receipt of the denial; or
3. If the Department grants an adjudicatory hearing, the resolution of the contested case shall constitute a final order. Hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) The penalty provisions of the "Pesticide Control Act of 1971," N.J.S.A. 13:1F-10, shall not apply to this subchapter.
TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 29 STANDARDS FOR EXCELLENCE
PART 1 GENERAL PROVISIONS

6.29.1.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.29.1.1 NMAC - Rp, 6.30.2.1 NMAC, 6-30-2009]

6.29.1.2 SCOPE: All public schools, state educational institutions and educational programs conducted in
state institutions other than New Mexico military institute.
[6.29.1.2 NMAC - Rp, 6.30.2.2 NMAC, 6-30-2009]

6.29.1.3 STATUTORY AUTHORITY:
A. Section 22-2-2 NMSA 1978 grants the authority and responsibility for the assessment and
evaluation of public schools, state-supported educational institutions and educational programs conducted in state
institutions other than New Mexico military institute.
B. Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools
accountable. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance
standards and to measure the performance of public schools in New Mexico.
C. Subsection E of Section 22-13-1.1 NMSA 1978 authorizes the department to establish a policy for
administrative interpretations to clarify curricular and testing provisions of the Public School Code.
D. Section 22-5-13 NMSA 1978 grants authority to the department to develop mandatory training of
local school board members.
E. Section 22-13-14 NMSA 1978 requires the department to establish penalties for non-compliance
with this section prescribing the frequency with which public schools and private schools shall hold emergency
drills.
F. Subsection D of Section 9-24-8 NMSA 1978 authorizes the secretary to adopt rules necessary to
carry out the duties of the department.
[6.29.1.3 NMAC - Rp, 6.30.2.3 NMAC, 6-30-2009]

6.29.1.4 DURATION: Permanent.
[6.29.1.4 NMAC - Rp, 6.30.2.4 NMAC, 6-30-2009]

6.29.1.5 EFFECTIVE DATE: June 30, 2009, unless a later date is cited at the end of a section.
[6.29.1.5 NMAC - Rp, 6.30.2.5 NMAC, 6-30-2009]

6.29.1.6 OBJECTIVE:
A. This rule provides for the implementation for educational standards and expectations for all
students who attend schools defined in the scope of this regulation.
B. The New Mexico content standards with benchmarks and performance standards specify the goals
for instruction.
1) Part 1. Standards for Excellence. General Provisions specifies general requirements for procedures and
programs. Parts two through eleven outline content standards with benchmarks and performance standards for
subjects as follows:
2) Part 2. Arts Education
3) Part 3. Career and Technical Education
4) Part 4. English Language Arts
5) Part 5. English Language Development
6) Part 6. Health Education
7) Part 7. Mathematics
8) Part 8. Modern, Classical and Native Languages (content standards only)
9) Part 9. Physical Education
10) Part 10. Science
11) Part 11. Social Studies
[6.29.1.6 NMAC - Rp, 6.30.2.6 NMAC, 6-30-2009]
DEFINITIONS:

A. "Ability program of study" means an alternative graduation option for students with disabilities. This option is based upon the student's meeting or exceeding IEP goals and objectives, with or without reasonable accommodations of delivery and assessment methods, referencing skill attainment at a student's ability level which provides a clear and coordinated transition to meaningful employment or other appropriate day habilitation or community membership and independent living, as appropriate to meet anticipated functional needs.

B. "Academic achievement" means the relative success of students in learning and mastering the school subjects that they study as measured by tests of the knowledge and skills that were taught.

C. "Academic choices" means required courses, elective courses, co-curricular activities and extra-curricular activities available to students.

D. "Accountability" means that individuals or organizations should be held responsible for improving student achievement and should be either rewarded for their success or sanctioned for their lack of success. In education, accountability requires measurable proof that teachers, schools, districts and states are teaching students efficiently and well.

E. "Accreditation" means the official recognition that a school or district meets required standards. Schools are accredited in two ways: by voluntary regional accrediting associations or by state government. Accreditation also refers to the process of certifying that institutions of higher education meet certain standards in relation to such matters as the qualifications of their faculty, the condition of their facilities and the appropriateness of their curriculum.

F. "Achievement" means demonstrated accomplishment and the mastery of a clearly identified essential skill or of knowledge as a consequence of the individual's effort, learning and practice.

G. "Achievement gap" means the persistent differences in achievement among different groups of students as indicated by scores on standardized tests, grades, levels of educational attainment, graduation rates and other data.

H. "Adequate yearly progress (AYP)" means the state's measure of yearly progress toward achieving state academic standards, as described in the No Child Left Behind Act of 2001 (NCLB). Adequate yearly progress is the minimum level of improvement that states, school districts and schools shall achieve each year. This progress is determined by a collection of performance measures that a state, its school districts and sub-populations of students within its schools are expected to meet if the state receives Title I, Part A federal funding.

I. "Advanced placement (AP)" means a course taught by high school teachers trained in advanced placement course delivery provided through the college board. These courses are more difficult and involve more work than a standard class. AP courses are considered college-level courses and may allow a student to earn college credit, depending upon college and university policies at an institution the student may later attend.

J. "Advisor" means a student's guidance counselor or other designated school official, which may include teachers assisting students and their parents with course work planning.

K. "Aligned professional development" means professional development that is aligned to the instructional or organizational needs of the school or district, and to the district's EPSS. Professional development is tied directly to the student achievement data of the school and district.

L. "Annual measurable objective (AMO)" means the target used to determine student performance for NCLB. This law requires states to develop target annual measurable objectives that will determine whether a school, a district or the state as a whole is making adequate yearly progress toward the goals of having all students performing academically at an acceptable rate by the year 2014.

M. "Applied technology education" means using technology in a course.

N. "Articulation" means planning a comprehensive and logical sequence of a program of studies.

O. "Assessment" means measurement. An assessment may be part of a system for testing and evaluating individual students, groups of students, schools or districts. Different types of assessment instruments include: achievement tests, minimum competency tests, developmental screening tests, aptitude tests, observation instruments, performance tasks, portfolio and authentic assessments. Assessments may contain questions in any of a number of formats. Common formats for standardized tests include: multiple-choice, short response and open-ended response.

P. "Benchmark" means a specific, measurable goal or objective for students to meet at various points during the school year. Benchmarks describe what all students shall know and be able to do in a content area by the end of designated grades or levels.

Q. "Bilingual multicultural education" means an instructional program that uses two languages (English and the home language of students) as mediums of instruction in the teaching-learning process.
R. "Career and technical education" means organized programs offering a sequence of courses, (including technical education and applied technology education) which are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree. This phrase is also referred to as "vocational education" at 22-14-1 NMAC 1978.

S. "Career and technical education course" means a course with content that provides technical knowledge, skills and competency-based applied learning, and that aligns with the regulations for educational standards and expectations for all New Mexico students who attend schools as defined in the scope of 6.29.1.2 NMAC.

T. "Career cluster" means a grouping of occupations in industry sectors based on recognized commonalities. Career clusters provide an organizing tool for developing instruction within the educational system.

U. "Career pathways" means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations/career specialties that share a set of common knowledge and skills for career success.

V. "Career readiness program" means an alternative graduation option for students with disabilities. This option is based upon meeting the department's employability and career education standards with benchmarks and performance standards as identified in the student's IEP.

W. "Caseload" means the total number of students receiving special education and speech-only services as special education, for whom a special education teacher or speech language pathologist has responsibility for developing and monitoring the students' IEPs. "Caseload" may also mean the number of students for which individual support services staff members are responsible.

X. "Charter school" means a school authorized by a chartering authority to operate as a public school.

Sections 22-2-1, 22-8-1 through 22-8-47, and 22-8B-1 through 22-8B-17, NMSA, 1978.

Y. "Chartering agency" means a school district or agency that approves and oversees a charter school.

Z. "Commission" means the public education commission.

AA. "Competency-based applied learning" means ensuring that applied learning courses are aligned with the appropriate content standards, benchmarks and performance standards.

AB. "Class load" means the number of students for whom a teacher structures activities at a given time.

AC. "Content standard" is a statement about performance that describes what students should know and be able to do in content areas at each grade level.

AD. "Core academics" are the required subjects in middle and high schools.

AE. "Core curriculum" means the body of knowledge that all students are expected to learn.

AF. "Correspondence course" means a form of distance learning that is conducted via traditional mail. A correspondence course is used to teach non-resident students by mailing them lessons and exercises, which upon completion, are returned to the correspondence school for grading.

AG. "Culturally and linguistically different" means a student who is of a different cultural background than "mainstream United States culture," and whose home or heritage language, inherited from the student's family, tribe or country of origin, is a language other than English.

AH. "Data-based decision making" means the process of making decisions about curriculum and instruction based on the data of comprehensive analysis of student performance data and schoolwide performance data.

AI. "Department" means the New Mexico public education department (PED), which is the state educational agency (SEA) for New Mexico.

AJ. "Diagnostic tools" means the category of measurement tools informing the effectiveness of instruction, materials or techniques that address the academic needs of students in their performance of expected levels of achievement of learning targets.

AK. "Distance learning" means the technology and the educational process used to provide instruction for credit or for a grade when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching.

AL. "District" means the geographic boundary in which a K-12 set of public schools resides, under the supervision of a locally-elected board of education (22-4-1 and 22-4-2, NMSA 1978).

AM. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

AN. "Educational plan for student success (EPSS)" is the strategic plan written by all districts and schools to improve student performance.
"Elective unit" means a unit ("credit") that is not specified as a graduation requirement, but that can be taken to complete the number of units required for graduation.

"Emergency drills" means the requirement that a total of twelve drills be conducted in each public and private school. These emergency drills shall consist of nine fire drills, two shelter-in-place drills and one evacuation drill at the intervals set forth in Paragraph (1) of Subsection N of 6.29.1.9 NMAC.

"English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade-level English proficient peers and native English speakers.

"Formative assessment" means measures of academic achievement during the learning process.

"Free appropriate public education (FAPE)" means special education and related services that are provided at public expense, under public supervision and direction without charge, which meet the standards of the department in providing appropriate preschool, elementary or secondary education in New Mexico; and which are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR, Sections 300.320 through 300.324.

"Family Educational Rights and Privacy Act (FERPA)" means rights, pursuant to 20 U.S. Code 1232(g) and 34 CFR Part 99, afforded to parents and students over 18 years of age with respect to the student's education records, that include: the right to inspect and review the student's education records within 45 days, the right to request amendment to the student's education records for various reasons, the right to consent or refuse to consent to disclosures of personally identifiable information in the student's records (except for those records that FERPA authorizes for disclosure without consent) and the right to file a complaint with the U. S. department of education concerning non-compliance with FERPA.

"Fidelity" means the implementation of a program, strategy or intervention exactly as it was developed by the vendor, researcher or author. The commitment to fidelity is essential to determine if the change in instruction is based on a program, strategy, or intervention.

"Final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job, as stated at 22-13-1.1(M)(1) NMSA 1978.

"Gifted child" means a school-age person, as defined in Section 22-13-6 (D) NMSA 1978, whose intellectual ability paired with subject matter, aptitude/achievement, creativity/divergent thinking or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC, and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

"Grade configuration" means the grade band(s) in which schools are organized in a district, such as: K-5, K-6, K-8, 6-8, 7-8.

"Heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin.

"Home language" means a language other than English that is the primary or heritage language spoken at home or in the community.

"Honors course" means a course developed locally to meet the needs of accelerated students. Honors courses offer the same curriculum that standard courses offer, but are more challenging. Honors courses are generally faster-paced and cover topics in more depth; however, these courses are not generally considered equivalent to college-level work.

"Individuals With Disabilities Education Improvement Act of 2004 (IDEA)" addresses special needs of individual students with disabilities.

"Individualized education program (IEP)" means a written statement for a student (with a disability) that is developed, reviewed and revised in accordance with 34 CFR, Sections 300.320 through 300.324.

"Interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the course work that will allow the student to achieve those goals, as stated at 22-13-1.1(M)(2) NMSA 1978. The "interim next step plan" includes all next-step plans in grades 9 through 11.

"Laboratory component" means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students should have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results and discuss their findings.

"Local educational agency (LEA)" means a local educational agency as defined in 34 CFR Sec. 300.28. The LEA may be a public school district, a state-chartered charter school or a state educational institution.

"Locally chartered charter school" means a charter school authorized by a local school board.
BH. "National standards" means an agreement at the national level about what students are supposed to learn in a given subject area at each grade level.

BL. "Next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution, in consultation with the student's parent and school counselor or other school official charged with course work planning for the student (22-13-1.1(M)(3) NMSA 1978).

BK. "New Mexico school boards association (NMSBA)" means the organization made up of the local public school boards and the governing bodies of charter schools in New Mexico.

BL. "New Mexico standards-based assessment (SBA)" means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

BM. "Occupational safety and health administration (OSHA)" means a division of the U.S. department of labor.

BN. "Online" means utilizing the internet.

BO. "Pathway" means the academic plan of study for a student to achieve graduation, including courses to take in Grades 9-12.

BP. "Performance standard" means the statement of a standard that describes the specific level of mastery expected in achieving the New Mexico content standards with benchmarks and performance standards.

BQ. "Positive behavior support (PBS)" means implementing individualized, classroom and school-wide behavior interventions and strategies to decrease inappropriate and disruptive behaviors.

BR. "Primary language" means the first language a child learns, also called the "native language."

BS. "Prior written notice (PWN)" means the written notice that goes to parents from the school district, informing them that the district proposes or refuses to initiate or change the identification, evaluation or educational placement of their child, or the provision of FAPE to the child, and which meets the requirements of 34 CFR, Sections 300.503 and 300.504.

BT. "Professional development" means the continuing education process for teachers and administrators to provide them with the knowledge and skills needed to perform their jobs well.

BU. "Proficiency" means the mastery of skills and knowledge for a specific grade or subject.

BV. "Proficient" means one of four classifications of achievement levels of districts, schools and students based on the SBA and schools on the national assessment of educational progress (NAEP).

BW. "Program of study" is a progressive continuum of courses that may be offered across grades 9-14. A program of study is a means to provide technical training, training to prepare for employment and training to prepare for entry into post-secondary education.

BX. "Response to intervention (RtI)" means a multi-tiered organizational framework that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a system for making educational programming and eligibility decisions. It is a continuum of school-wide support that contributes to overall comprehensive school improvement efforts. In New Mexico, the RtI framework is called the "the three-tier model of student intervention."

BY. "School improvement framework" means a document written by the department that is used by public schools and districts to develop and monitor their school improvement plans. The school improvement framework shall align with the district's EPSS.

BZ. "Schoolwide" means a Title I program model implemented at a school where all students could potentially benefit from Title I funding.

CA. "Scientifically-based research" means research that involves the application of rigorous, systematic and objective procedures to obtain reliable and valid knowledge relevant to educational activities and programs.

CB. "Secretary" means the secretary of the New Mexico public education department.

CC. "Short-cycle assessment" is a formative measure that is regularly used to assess student performance over a short time period.

CD. "Skills" are competencies or abilities, mental or physical, which may be improved by practice.

CE. "Socioeconomic status" means the stratification of groups of people by status ascribed through social constructs such as race, gender, ethnicity, educational attainment, economic resources, language and national origin.
"Standard program of study" means a program of study that is based upon the student's meeting or exceeding all requirements for graduation as specified in Section 22-13-1.1 NMSA 1978.

"Standardized grading system" means that all schools and districts are required by SY 2009-2010 to implement a standardized grading system for grades 5 through 12 (Section 22-2-8.13, NMSA 1978).

"State-chartered charter school" means a charter school authorized by the public education commission.

"State education agency (SEA)" is the agency primarily responsible for supervising a state's public schools.

"State educational institution" means a school that is under the direction of a state agency other than the department or a separate board of regents.

"Strategy" means a plan or tactic to solve a problem or carry out a decision. In education, a strategy refers to almost every action that a teacher or a student does in a classroom, such as asking a question, reading a story, figuring out the meaning of a word, planning the next day's lesson.

"Student and teacher accountability reporting system (STARS)" means the data reporting system directed by the department.

"Student assistance team (SAT)" is a school-based group of people whose purpose is to provide additional tier II support (consistent with requirements of the three-tier model of student intervention provided in Subsection D of 6.29.1.9 NMAC) to students who are experiencing academic or behavioral difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. (Public agencies may have similar names used for this team, such as "student success team" or "student support team.")

"Targeted assistance" means a Title I program model where Title I services are provided to a small number or a particular group of students.

"Technical assistance" means support and guidance provided to states, districts, schools and classrooms.

"Transition" means the goal of creating a seamless transition from one part of the educational system to the next.

"Transition plan" means a coordinated set of activities for a student with a disability, which specifies special education and related services designed to meet a student's unique needs and to prepare the student for future education, employment and independent living. The use of individualized educational program (IEP) transition planning, graduation planning and post-secondary transitions is described in Subparagraph (a) of Paragraph (13) of Subsection I of 6.29.1.9 NMAC.

[6.29.1.7 NMAC - Rp, 6.30.2.7 NMAC, 6-30-2009; A, 10-31-2011]

6.29.1.8 IMPLEMENTATION: This regulation shall assist in the implementation of standards for excellence through the use of the educational plan for student success (EPSS), content standards with benchmarks and performance standards, and additional program and procedural requirements specified in this regulation. The primary mechanism for planning and implementation is the educational plan for student success (EPSS).

A. District responsibilities for the EPSS. The EPSS is a strategic improvement plan that is written or revised based on trend data and the academic achievement of the school and district. Each district is required to develop, implement, monitor and evaluate the plan on an annual basis. Additionally, the district shall ensure that a site-level EPSS is developed by each school within the district and by each charter school for which the district is the chartering agency. State-chartered charter schools shall develop a site-level EPSS. Districts with fewer than 600 students may write only one EPSS for the entire district; however, a district with a school in or receiving a school improvement status classification is not eligible for this option. The EPSS shall be guided by the following four questions:

(1) What is the current level of performance compared with the annual measurable objectives (AMOs)? This requires a review of student performance data using SBA trends, available short-cycle assessments and other assessments used at local sites.

(2) Where does the district or charter school need to be, compared with the AMOs? This requires a review of overall goals/target areas (performance indicators).

(3) How will the district or charter school achieve its stated goals/target areas? This requires development of strategies and activities for improvement.

(4) How does the district or charter school know it is meeting short-term and annual goals? This requires a review of available short-cycle and SBA data.
(i) With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request written approval from the secretary to award a diploma to a student who has not passed the eleventh grade SBA. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's eleventh grade SBA waiver request form. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy; list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

(ii) With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the eleventh grade SBA.

M. Indigent identification and guidelines.

(1) A student who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

N. Emergency drills and practiced evacuations.

(1) Emergency drills shall be conducted in each public school and private school in the state, as follows:
   (a) at least once per week during the first four weeks of the school year, and at least once per month during the remainder of the school year;
   (b) two of these drills shall be shelter-in-place drills;
   (c) one of these drills shall be an evacuation drill;
   (d) nine of these drills shall be fire drills, with one fire drill required each week during the first four weeks of school;
   (e) in locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism;
   (f) it shall be the responsibility of the person in charge of a school to carry out the provisions related to emergency drills.

(2) Requirements to comply and penalties for non-compliance:
   (a) It shall be the responsibility of the superintendent of a school district, a charter school administrator or private school counterpart(s) to ensure that each school under the person's authority follows the requirements set forth in Subsection N of 6.29.1.9 NMAC.
   (b) In the event that the person responsible for complying with Subsection N of 6.29.1.9 NMAC fails or refuses to comply with this subsection, the department may, in the case of a public school, take any action designed to ensure prompt corrective action or future compliance, including reporting the non-compliance to either the state fire marshal or to a local fire department. In the case of a private school, the department will report the non-compliance to either the state fire marshal or to a local fire department and may consider adverse licensure action.
   (c) Failure or refusal to comply with the requirements in Subsection N of 6.29.1.9 NMAC for holding emergency drills shall constitute grounds to suspend or revoke the license of the person responsible for compliance. The due process procedures under the Uniform Licensing Act (Sections 61-1-1 through 61-1-31 NMSA 1978) shall apply.

O. School facilities and grounds. Pursuant to Subsection B of 6.29.1.9 NMAC (Duties of the Superintendent); Subsection D of 6.12.6.8 NMAC (School District Wellness Policy); and 6.19.3 NMAC (Unsafe School Choice Option), each school district or charter school shall ensure that all buildings, facilities and grounds provide a safe and orderly environment for public use; i.e., that they shall be:
   (1) safe, healthy, orderly, clean and in good repair;
   (2) in compliance with the Americans with Disabilities Act-Part III and state fire marshal regulations, Sections 59A-52-1 through 59A-52-25 NMSA 1978;
   (3) safe for conducting experiments and school projects in all school laboratories and shops, as established in written school safety procedures which are reviewed annually; these procedures include, but are not limited to:
      (a) personal protective equipment;
      (b) adequate ventilation and electrical circuitry;
      (c) material safety data sheets;
      (d) body and eye washes; and
      (e) training appropriate for each teaching situation;
(4) the maximum number of occupants in a laboratory or shop teaching space shall be based on the following:
(a) the number of work stations;
(b) the building and fire safety codes;
(c) the design of the laboratory or shop teaching facility;
(d) appropriate supervision and the special needs of students; and
(e) all applicable OSHA regulations;
(5) appropriate procedures for the storing, handling and removal of toxic or dangerous substances shall be established and implemented; all school programs (including those areas noted above and custodial areas, art room, library and cafeteria) shall comply with standard safety practices and all applicable state and federal regulations;
(6) use of pesticides by districts and charter schools will be governed by the following standards:
(a) Definitions as used in this section:
(i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
(ii) "Pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, which is declared to be a pest pursuant to the Pesticide Control Act, Sections 76-4-1 through 76-4-39 NMSA 1978.
(b) Districts and charter schools will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to, the following:
(i) No pesticide may be applied to public school property and no pest control device, as defined in the New Mexico Pesticide Control Act, may be used on public school property except those pesticides and devices currently registered for legal use in the state by the New Mexico department of agriculture.
(ii) No pesticide may be applied to public school property except by those persons certified in the applicable category and currently licensed by the New Mexico department of agriculture or by employees under their direct supervision.
(iii) Pesticides will only be applied in or on the outside of school buildings when a pest is present, and will not be applied on a regular or calendar basis unless it is to treat an infestation and is a part of a pest management system being implemented to address a particular target pest. A pest is considered to be present when it is observed directly or can reasonably be expected to be present based on finding evidence, such as droppings, body parts, or damage that is typically done by the pest. This section of the regulation does not apply to pre-construction termite treatments or the use of outdoor herbicides.
(iv) Pesticides that are applied in a liquid, aerosolized or gaseous form through spraying, aerosol cans, bombs, fumigation or injections into the ground, foundation or plants will not be applied on public school property when students, staff or visitors are present, or may reasonably be expected to be present within 6 hours of the application.
In emergency cases, where a pest infestation threatens the safety of the occupants of public school property, and which requires the immediate application of a pesticide to remediate, students, staff and other school occupants will be removed from the treatment area prior to the application. Small amounts of gel or liquid pesticides applied to cracks and crevices or baits used to treat pest infestation are exempt from this section.
(v) At the beginning of each year, and when new students register, schools will develop a list of parents and guardians who wish to be notified prior to pesticide application during the school year. These parents/guardians will be notified in writing prior to pesticide application. General notification of anticipated pesticide applications will occur by posting or dissemination of notices, by oral communication or other means of communication. In emergency cases where a pest infestation threatens the health or safety of the occupants of public school property, no pre-notification is required. Immediately following the application of a pesticide in emergency cases, signs will be posted indicating an application was made.
(vi) Written records of pesticide applications will be kept for three years at each school site and be available upon request to parents, guardians, students, teachers and staff.
(vii) If any part of Paragraph (6) of Subsection O of 6.29.1.9 NMAC is found to be in conflict with the provisions of the Pesticide Control Act, the remainder of the regulation will remain in full force and effect.

P. School district budgeting. Section 22-8-4 NMSA 1978 requires the department to prescribe forms for, supervise and control the preparation of all budgets of all public schools and school districts, and to compile accurate information concerning public school finance and administration. Sections 22-8-5 through 22-8-12.1 NMSA 1978 set out specific budget preparation and submission requirements for the department, public schools and public school districts. Regulations governing budgeting and accounting for New Mexico public schools and school districts are set out in 6.20.2 NMAC.
§ 409-h. Requirements for notification of pesticide applications. 1. For purposes of this section the following terms shall have the meanings set forth below:

(a) "School" shall mean any public school district or private or parochial school or board of cooperative educational services.

(b) "Pesticide" shall have the same meaning as in subdivision thirty-five of section 33-0101 of the environmental conservation law.

(c) "Facility" means any school building used for instructional purposes and its surrounding grounds, sites and other grounds to be used for playgrounds, athletics and other instructional purposes, and any administrative offices.

(d) "Written notification" shall mean notice in writing that is: provided directly to the student or staff; or delivered to a receptacle designated for that student or staff; or mailed to the student's or staff's last known address; or delivered by any other reasonable methods authorized by the commissioner.

(e) "School year" shall mean the period commencing on the first day of regular instruction and shall end on the last day of session.

(f) "Relevant facility" shall mean any facility where the staff person receiving notification regularly works or where a child of the person in parental relation receiving notification regularly receives instruction.

2. Schools shall establish a pesticide notification procedure to provide information on pesticide applications at school facilities. Schools shall provide written notification of pesticide applications at any relevant facility to staff and persons in parental relation according to the following provisions:

(a) The school shall provide written notification to all staff and persons in parental relation at the beginning of each school year. Provided however, that if a child enrolls after the beginning of the school year, notification shall be provided within one week of such enrollment. The notification provided at the beginning of the school year shall include at a minimum the following information:

(i) a statement that pesticide products may be used periodically throughout the school year;

(ii) a statement that schools are required to maintain a list of staff and persons in parental relation who wish to receive forty-eight hour prior written notification of pesticide applications at relevant facilities, and instructions on how to register with the school to be on such list for notification; and
(iii) the name of a school representative and contact number to obtain further information.

(b) Within ten days of the end of the school year and within two school days of the end of winter recess and spring recess, the school shall provide written notification to all staff and persons in parental relation listing the date, location and product used, for each application which required prior notification and each emergency application made, at relevant facilities, during the period of time since the previous notice. Such notification shall also include a statement that schools are required to maintain a list of staff and persons in parental relation who wish to receive forty-eight hour prior written notification of pesticide applications and instructions on how to register with the school to be on such list for prior notification; how to obtain further information about the products being applied, including any warnings that appear on the label of the pesticides that are pertinent to the protection of humans, animals or the environment; and the name of a school representative and contact number for additional information.

(c) Each school shall establish and maintain a list of staff and persons in parental relation requesting written notification forty-eight hours in advance of pesticide applications at relevant facilities. Schools shall add any staff or person in parental relation to such list upon request.

(d) Not less than forty-eight hours prior to the application of a pesticide at a facility, a school shall provide to those on the list relevant to such facility, written notification which shall include, at a minimum the following information:

(i) the specific date and location of the application at the relevant facility. In case of outdoor applications the notice must provide a specific date, and may include two alternative dates in case the application cannot be made due to weather conditions;

(ii) the product name and pesticide registration number assigned by the United States Environmental Protection Agency;

(iii) the following statements: "This notice is to inform you of a pending pesticide application to a school facility. You may wish to discuss with the designated school representative what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product(s) being applied, including any warnings that appear on the label of the pesticide(s) that are pertinent to the protection of humans, animals or the environment, can be obtained."


by calling the National Pesticide Telecommunications Network information phone number 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158."; and
(iv) the name of a school representative and contact number for additional information.
(e) For purposes of this section the following pesticide applications shall not be subject to prior notification requirements:
(i) the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. § 136 (mm) and 136q (h)(2);
(ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces, or less, when used to protect individuals from an imminent threat from stinging and biting insects including venomous spiders, bees, wasps, and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;
(iii) any application where the school facility remains unoccupied for a continuous seventy-two hour period following the application of the pesticide;
(iv) nonvolatile rodenticides in tamper resistant bait stations or in areas inaccessible to children;
(v) silica gels and other nonvolatile ready-to-use, paste, foam or gel formulations of insecticides in areas inaccessible to children;
(vi) nonvolatile insecticidal baits in tamper resistant bait stations or in areas inaccessible to children;
(vii) application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under Section 40 CFR Part 152.25;
(viii) boric acid and disodium octaborate tetrahydrate;
(ix) the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide; or
(x) any emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided however, that prior to any such emergency application, the person making such application shall make a good faith effort to supply the written notice required pursuant to this section. Upon making such an emergency application, the person making such application shall notify the commissioner of the department of health, using a form developed by the commissioner for
such purposes that shall include minimally the name of the person making the application, the pesticide business registration number or certified applicator number of the person making such application, the location and date of such application, the product name and USEPA registration number of the pesticide applied and the reason for such application. The commissioner shall review such form to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department for three years from the date of application and shall be available to any individual upon request.

3. The commissioner is hereby charged with ensuring the compliance of schools with the requirements of this section, and shall establish a procedure for parents to notify the state of any school's failure to comply with the requirements of this section. Whenever it shall have been demonstrated to the satisfaction of the commissioner that a school district has failed to adopt a procedure for notification, or to faithfully and completely implement this section, the commissioner may, on thirty days notice to the district, withhold from the district monies to be paid to such district for the current school year pursuant to section thirty-six hundred nine-a of this chapter, exclusive of monies to be paid in respect of obligations to the retirement systems for the school and district staff and pursuant to collective bargaining agreements. Where it has been demonstrated to the satisfaction of the commissioner that a private or parochial school has failed to adopt a procedure for notification, or to faithfully and completely implement this section, the commissioner may, on thirty days notice to such school, withhold from the school state aid monies to be paid to such school for the current school year pursuant to chapter five hundred seven of the laws of nineteen hundred seventy-four, as amended by chapter nine hundred three of the laws of nineteen hundred eighty-four. Prior to such withholding, the commissioner shall provide the school an opportunity to present evidence of extenuating circumstances; when combined with evidence that the school shall promptly comply within short time frames that shall be established by the commissioner as part of an agreement between the school and the commissioner, the commissioner may temporarily stay the withholding of such funds pending implementation of such agreement. If the school is in full compliance with this section, the commissioner shall abate the withholding in its entirety.

4. No school or employee of a school shall be held civilly or
cidentally liable for any failure to comply with the requirements of this section, unless such failure constitutes negligence, gross negligence, or intentional misconduct. Nothing contained herein shall be construed as limiting any legal cause of action or remedy at law, in statute or in equity that existed prior to the effective date of this section.

§ 409-k. Pesticide alternatives. 1. For purposes of this section the following terms shall have the meanings set forth below:
(a) "School" shall mean any public school district or private or parochial school or board of cooperative educational services.
(b) "Pesticide" shall have the same meaning as set forth in subdivision thirty-five of section 33-0101 of the environmental conservation law, provided however that it shall not include:
(i) the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136 (mm) and 136 q (h)
(2);
(ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets;
(iii) the use of non-volatile insect or rodent bait in a tamper resistant container;
(iv) the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;
(v) the use of boric acid and disodium octaborate tetrahydrate; or
(vi) the use of horticultural soap and oils that do not contain synthetic pesticides or synergists.
2. No school shall apply pesticide to any playgrounds, turf, athletic or playing fields, except that an emergency application of a pesticide may be made as determined by the county health department or for a county not having a health department such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school board.
§ 155.24 School pesticide neighbor notification.

(a) Definitions. For purposes of this section, the following terms shall have the meanings set forth below.

(1) Facility means any school building used for instructional purposes and its surrounding grounds; sites and other grounds used for playgrounds, athletics and other instructional purposes; transportation facilities; and any administrative offices.

(2) Pesticide shall have the same meaning as in section 33-0101(35) of the Environmental Conservation Law.

(3) Relevant facility shall mean any facility where the staff person receiving notification regularly works, or where a child of the person in parental relation receiving notification regularly receives instruction.

(4) School shall mean any public school district, private or parochial school, or board of cooperative educational services.

(5) School pesticide representative shall mean an employee of a public school district, private or parochial school, or board of cooperative educational services (BOCES), who is designated to act as a person to provide written notification, and from whom further information may be obtained, concerning pesticide applications at such school district, private or parochial school, or BOCES.

(6) School year shall mean the period commencing on the first day of regular instruction and ending on the last day of session.

(7) Spring recess shall mean the vacation period following winter recess and prior to the end of the school year.

(8) Summer school shall mean the period commencing on the first day of summer school instruction and ending on the last day of the session.

(9) Winter recess shall mean the vacation period on or about January 1st.

(10) Written notification shall mean notice in writing that is: provided directly to the student or staff; or delivered to a receptacle designated for that student or staff; or mailed to the student's or staff's last known home address; or delivered by any other reasonable methods authorized by the commissioner, including, but not limited to, delivery by means of a school newsletter.

(b) Notification procedures. Schools shall establish written pesticide notification procedures to provide information on pesticide applications at relevant facilities according to the following provisions.

(1) The school shall provide written notification to all staff and persons in parental relation at the beginning of each school year or summer school session. If a child enrolls after the beginning of the school year or summer school session, written notification shall be provided to the person in parental relation within one week of such enrollment. Such written notification shall include at a minimum the following information:

(i) a statement that pesticide products may be used periodically throughout the school year or summer school session;

(ii) a statement that schools are required to maintain a list of staff and persons in parental relation who wish to receive 48-hour prior written notification of pesticide applications at relevant facilities, and instructions on how to register with the school to be on such list for prior notification; and

(iii) the name and phone number of a school pesticide representative who may be contacted to obtain further information.

(2) Within 10 days of the end of the school year, and within two school days of the end of winter recess and spring recess, and within two days of the end of summer school, the school shall provide written notification to all staff and persons in parental relation listing the date, location and product used, for each application which required prior notification and each emergency application made, at relevant facilities, during the period of time since the previous notice. Each notification shall also include a statement that schools are required to maintain a list of staff and persons in parental relation who wish to receive 48-hour prior written notification of pesticide applications and instructions on how to register with the school to be on such list for prior notification; how to obtain further information about the products being applied, including any warnings that appear on the label of the pesticides that are pertinent to the protection of humans, animals or the environment; and the name and phone number of a school pesticide representative who may be contacted for additional information.

(3) Each school shall establish and maintain a list of staff and persons in parental relation who have requested written notification 48 hours in advance of pesticide applications at relevant facilities. Schools shall add any staff or person in parental relation to such list upon request.

(4) Except as provided in Education Law section 409-h(2)(e), not less than 48 hours prior to the application of a pesticide at a facility, the school pesticide representative shall provide to those on the list relevant to such facility, written notification which shall include, at a minimum, the following information:
(i) the specific date and location of the application at the relevant facility. In case of outdoor applications, the notice may also include two alternative dates in case the application cannot be made due to weather conditions;
(ii) the product name and the United States Environmental Protection Agency pesticide registration number;
(iii) the following statements: "This notice is to inform you of a pending pesticide application to a school facility. You may wish to discuss with the designated school representative what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product(s) being applied, including any warnings that appear on the label of the pesticide(s) that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticide Telecommunications Network information phone number 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158";
(iv) the name and phone number of a school pesticide representative who may be contacted for additional information; and
(v) a copy of the 48-hour notification shall also be posted in a public location within the relevant facility.

(c) Enforcement.
(1) Complaint. Persons in parental relation, staff and other individuals may notify the Commissioner of Education or his/her designee of a school's alleged failure to comply with the requirements of Education Law section 409-h and this section by submitting a written complaint, in a format prescribed by the commissioner, to the State Education Department, Office of Facilities Planning. Such complaint shall include:
(i) the name, address and telephone number of the complainant;
(ii) the name of the school district, board of cooperative educational services or nonpublic school against which the complaint is made;
(iii) the name and address of the specific facility that is the subject of the complaint; and
(iv) a detailed description of the complaint, including the nature of the school's alleged failure to comply and a statement of the facts in support of such alleged failure to comply.
(2) Investigation. Upon receipt of a written complaint alleging a school's failure to comply with the requirements of this section, the Commissioner of Education or his/her designee shall conduct an investigation to ascertain the school's compliance with this section.
(3) Withholding.
(i) Whenever it shall have been demonstrated to the satisfaction of the commissioner that a public school district has failed to adopt a procedure for notification, or to faithfully and completely implement this section, the commissioner may, on 30 days' notice to the district, withhold from the district monies to be paid to such district for the current school year pursuant to Education Law section 3609-a, exclusive of monies to be paid in respect of obligations to the retirement systems for the school and district staff and pursuant to collective bargaining agreements.
(ii) Where it has been demonstrated to the satisfaction of the commissioner that a private or parochial school has failed to adopt a procedure for notification, or to faithfully and completely implement this section, the commissioner may, on 30 days' notice to such school, withhold from the school State aid monies to be paid to such school for the current school year pursuant to chapter 507 of the Laws of 1974, as amended by chapter 903 of the Laws of 1984.
(iii) Prior to such withholding, the commissioner shall provide the school an opportunity to present evidence of extenuating circumstances. When combined with evidence that the school shall promptly comply within a short time frame that shall be established by the commissioner as part of an agreement between the school and the commissioner, the commissioner may temporarily stay the withholding of such funds pending implementation of such an agreement. If it is subsequently determined by the commissioner that the school is in full compliance with this section, the commissioner shall abate the withholding in its entirety.

Historical Note

§155.25 Safety requirements for electrically operated partitions.

(a) Purpose. The purpose of this subdivision is to establish standards pursuant to Education Law section 409-f, relating to the construction, maintenance and operation of electrically operated partitions located in classrooms or other facilities used by students in public and nonpublic schools or educational institutions within the State.

(b) Definitions. As used in this section, "electrically operated partition" means any partition, room divider,
GUIDANCE ON CHAPTER 85, LAWS OF 2010
SUMMARY OF PESTICIDE PROHIBITION REQUIREMENTS AND PESTICIDE ALTERNATIVES REGARDING SCHOOLS AND DAY CARE CENTERS IN NEW YORK STATE
DECEMBER 22, 2010

In May 2010, New York State enacted Chapter 85 of the Laws of 2010 (Chapter 85), a new law containing limitations regarding pesticide use on playing fields and playgrounds at schools and day care centers. This guidance is intended to help schools and day care centers comply with the new law, by providing information on its requirements and on allowable alternatives to pesticides for grounds maintenance.

A. WHAT THE NEW LAW REQUIRES

- **Amendments to Existing Laws and Identification of Involved New York State Agencies:** Under Chapter 85, new requirements were added to the State Education Law (SEL) and the Social Services Law (SSL). The State Education Department (SED) is responsible for administering the sections of the SEL added by Chapter 85, and the State Office of Children and Family Services (OCFS) is responsible for administering the new sections of the SSL. Also, a requirement was added to the Environmental Conservation Law (ECL) for the State Department of Environmental Conservation (DEC) to develop this guidance. Chapter 85 is summarized in the remainder of this Section of the guidance. See Section E (Where to Read the Law and Ask Questions) for information on where to read the new requirements and which agency to contact with questions. DEC’s role in the implementation of the new requirements is limited to issuing this guidance and to being one of the entities authorized to make determinations regarding emergency pesticide applications. (See Section D Emergency Determinations.)

- **Guidance:** As required under Chapter 85, DEC developed this guidance in consultation with the State Department of Health (State DOH) and the SED. DEC also consulted OCFS.

- **Pesticide Prohibition and Exceptions:** Schools and day care centers are prohibited from using pesticides on playgrounds (includes playground equipment), turf, and athletic or playing fields. The prohibition does not apply to indoor use of pesticides or pesticide applications to buildings or structures (e.g. school buildings, garages). If you have questions about whether a portion of grounds are subject to the law, contact SED or OCFS (see Section E for contact information). In general, “pesticide” covers a broad range of products: insecticides, herbicides, fungicides, rodenticides, and others. The new law specifies that “pesticide” has the same meaning as under Section 33-0101.35 of the ECL. However, under the new law, “pesticide” does not include six types of pesticide products, which can be applied on playgrounds, turf, and athletic or playing fields at schools and day

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1 Environmental Conservation Law (ECL) 33-0101.35 “Pesticide” means: a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and b. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.
care centers. For details about these exceptions, see Section C (Which Pesticides Are Allowed). NOTE: Under a separate new law, (Chapter 205 of the Laws of 2010), fertilizer use restrictions become effective January 1, 2012. Please see “Attention” section at the end of this guidance.

- **Emergency Pesticide Applications**: An exception from the pesticide prohibition is provided for emergency applications, which may be made only as determined by entities specified in the new law (e.g. schools boards and certain State agencies). For further information, see Section D (Emergency Determinations).

- **Who Must Comply**: The new requirements apply to schools and day care centers, as defined in the SEL and SSL. These encompass public school districts (including the New York City (NYC) Department of Education), non-public schools, boards of cooperative education (BOCES), and child and Head Start day care centers. The law also applies to a school or day care center located at a college or university. The law does not apply to family day care centers, group family day care centers, school-age child care programs, day care centers in the five boroughs of NYC. To find out if this new law applies to a specific school or day care center, contact SED or OCFS, as applicable (see Section E Where to Read the Law and Ask Questions).

- **When to Comply**: The prohibition, exceptions, emergency allowance and other provisions go into effect on November 14, 2010 for day care centers and May 18, 2011 for schools.

**Pesticide Application Requirements**: Schools and day care centers must continue to comply with previously existing requirements when applying pesticides, including when applying those pesticides excepted from the prohibition in Chapter 85. Section C (Which Pesticides Are Allowed) and the “Attention” at the end of this guidance provide a summary of existing State requirements regarding pesticide use and pesticide application notification.

**B. How to Maintain Child-Safe Playing Fields and Turf Without Pesticides**

- **Managing Grounds withAlternatives to Pesticides**: Many schools and day care centers already care for their grounds without the use of conventional pesticides. Others, however, may be making the shift away from pesticides for the first time. Depending on their current practices, schools and day care centers may only need to fine tune their methods, or they may need to learn a new, systematic approach to sustainable grounds management through alternatives to pesticides. Training in alternative methods of grounds management could help those with less experience successfully make the transition. Check the on-line resources in this section for links to training programs.

- **General Guidance on Pesticide Alternatives and Additional Resources**: There are a number of things to consider when managing grounds without pesticides, ranging from familiarity
with the grounds and potential trouble spots to soil and plant health. Because the steps taken for grounds management are specific to each school or day care center, this guidance is necessarily intended as a starting point, rather than a handbook to address every situation at schools and day care centers.

- **Broad Tips and Concepts:** The table on the next two pages outlines overall concepts for use in complying with the new pesticide prohibition. Information on the table serves as an introduction to alternative approaches to grounds maintenance and pest management as well as bottom line rules about soil and plant health. The “right” combination of alternatives to pesticides to prevent and manage pest infestations and for maintaining healthy, resilient grounds is specific to each school and day care center.

- **References to Resources for Further Information** on grounds management without pesticides are provided in the table and following it.

<p>| GENERAL GUIDANCE ON PESTICIDE ALTERNATIVES |
| PROPER GROUNDS MANAGEMENT – BASELINE CONCEPTS |
| Look at the Big Picture | Examine the whole outdoor system. Walk around the site and get an overall understanding of the maintenance needs and where steps should be taken to ensure that it is healthy—able to withstand pests and environmental stresses. Be aware of all possible sources of pest infestations, including dumpsters and recycling containers, and ensure that they are clean and well-maintained. |
| Check for these Conditions | Take note of areas and site characteristics that already have, or are prone to, pest or disease problems for plants, turf and soil. The following are examples of important conditions to check for: |
|  | - overall health of turf or plants, |
|  | - existing pest (insects, weeds, etc.) and disease infestations or areas that appear to have pest- or disease-prone conditions. Identify any existing pest/disease to choose proper management method (see Cooperative Extension link below), |
|  | - poorly drained soil (i.e. pools of water or mud present), or soil that is hard and compacted, |
|  | - shady or sunny areas, |
|  | - storm or seasonal damage, |
|  | - heavy foot traffic areas. |
| Make a Response Plan | Consider whether a certain level of weeds and pests can be acceptable and tolerated at the school or day care centers. |
|  | Decide which areas of the grounds need special attention. |</p>
<table>
<thead>
<tr>
<th>Maintain Soil Health</th>
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<tr>
<td><strong>Soil Conditions:</strong> Keep soils well-drained, properly watered, aerated, and high in organic matter. A variety of soil aeration tools can be found in garden catalogs and supply stores. Organic matter can be enhanced by adding compost, or leaving grass clippings on the lawn after cutting. Adding organic matter will help with drainage as well as soil fertility. Better drainage in heavy clay soils can also be achieved by adding sand or lighter, loamy soil. Ask at a garden supply store for these materials.</td>
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<tr>
<td><strong>pH:</strong> Check for a healthy pH (pH should be close to 7, which is neutral). Soil testing will help determine pH and if nutrient deficiencies exist. A link to Cornell Cooperative Extension’s soil testing service is provided below.</td>
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<tr>
<td><strong>Soil Amendments:</strong> Consider whether soil amendments, such as compost or fertilizer, are needed and which are appropriate for site conditions. PH and other soil conditions can be adjusted by adding the appropriate compost, fertilizer, or lime, available from gardening catalogs and supply stores.</td>
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<tr>
<td>Web resource for soil testing: <a href="http://cnal.cals.cornell.edu/">http://cnal.cals.cornell.edu/</a></td>
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<tr>
<th>Select the Right Turf and Plants</th>
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<tr>
<td>Select turf and plant varieties and/or mixes that are well-adapted to the site (such as soil type, and sun/shade characteristics) and climate. To the extent possible, select disease- and insect-resistant varieties.</td>
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<tr>
<td>Web resources for turf and plant selection:</td>
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<tr>
<td><a href="http://www.yardscaping.org/lawn/seed.htm">http://www.yardscaping.org/lawn/seed.htm</a></td>
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<td><a href="http://www.nativeplantcenter.org">http://www.nativeplantcenter.org</a></td>
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<td><a href="http://www.projectnative.org">http://www.projectnative.org</a></td>
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<tr>
<th>Maintain Healthy Turf and Plants</th>
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<tr>
<td>Manage turf and plants to create healthy conditions that prevent pests and plant diseases. Examples of cultural management practices include:</td>
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<td><strong>Remove diseased plants and debris</strong> from the grounds.</td>
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<tr>
<td><strong>Keep grass longer</strong> (at least 3 inches) to promote a healthy root structure that can out-compete weeds. Keep mower blades sharp to avoid damaging grass. Damage increases its vulnerability to diseases, insects, and weeds.</td>
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<tr>
<td><strong>Spread new grass seed each year,</strong> to cover bare patches and to crowd out weeds in established areas.</td>
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<tr>
<td><strong>Revisit the grounds frequently</strong> to check that the methods used are improving areas of concern and adjust management techniques accordingly.</td>
</tr>
<tr>
<td>Web resources for cultural practices:</td>
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</tbody>
</table>
SOURCES FOR MORE INFORMATION AND TRAINING OPPORTUNITIES
ON MANAGING GROUNDS WITH ALTERNATIVES TO PESTICIDES

Numerous training opportunities and informational resources are available to help school
grounds managers and day care center operators with problem-specific questions and to
provide more detailed, step-by-step instructions for grounds management without pesticides.
Below is a sampling of online resources and suggested titles of books and manuals. Information
can also be found in the garden section of a local library (suggested titles below), or by
contacting Cornell Cooperative Extension or the Master Gardener Program.

NOTE: References to the resources and links in this guidance will be included on the DEC web
site in a set of information on Chapter 85 and the final guidance.

- **Online Resources:** See the webpages below for additional links to informational and
training resources.

  *Cooperative Extension* - A resource for assistance with insect, weed and disease
identification and appropriate turf and optimal turfgrass culture and management,
including the most appropriate turf and plant varieties (including master gardeners in
many counties). Contact the local extension office, see list at
  [http://cce.cornell.edu/Pages/Default.aspx](http://cce.cornell.edu/Pages/Default.aspx)

- **Suggested Publications:** Listed below are a few of the many available publications on
grounds management.


  *The Organic Lawn Care Manual: A Natural, Low-Maintenance System for a Beautiful, Safe

  *The Rodale Book of Composting: Easy Methods for Every Gardener.* By Deborah L. Martin
  0-87857-991-5 (paperback).

NOTE: Prohibited pesticides could be referenced on internet sites or in resources consulted by
schools, day care centers and others. Prohibited pesticides cannot be used at schools and day
care centers in New York State, even if referenced in resources, including those listed above.
Therefore, when consulting these or any other resources about grounds maintenance options,
schools and day care centers should focus on information about pesticide alternatives and soil, plant, and turf care.

C. WHICH PESTICIDES ARE ALLOWED

Establishing healthy grounds is the best way to prevent pest problems. Should the need for pesticides arise, however, the following is a list of types of pesticide products allowed under the new law and information about how to identify them.

- **Antimicrobial Products** are available in several forms, such as sprays, liquids, and concentrated powders, and contain active ingredients such as bleach. There are only a few antimicrobial products registered for use on artificial turf. Also, although fungi are microbes, this excepted category for antimicrobials does not include fungicides used on turf and plants for the purpose of controlling plant diseases. *Use Examples*: Antimicrobials are designed to destroy or suppress the growth of microorganisms such as bacteria or viruses, often on inanimate objects and surfaces.

- **Aerosol Sprays in 18 Ounce Cans (or Smaller)** can be readily identified by their packaging. As specified in the law, these are only to be used to protect individuals from imminent threat from a stinging or biting insect (venomous spiders, bees, wasps and hornets). These sprays are not meant for long-term pest management. Consult the internet resources under **Section B** (B. How To Maintain Child-Safe Playing Fields and Turf Without Pesticides) for ways to remove the sources of the hazards posed by stinging insects, such as covering garbage cans and removing yard waste which may attract and harbor such pests. *Use Examples*: These aerosols are used to control bees and wasps.

- **Non-Volatile Insect and Rodent Baits in Tamper Resistant Containers** are, in general, self-containerized childproof packages or “stations” containing pesticidal bait. Depending upon the product, the container can be purchased with the bait in it or the container can be empty and a certified applicator can fill it with the bait and secure it prior to use.\(^2\) Not allowed under this exception are baits packaged as pellets, granules, treated grain, or any other loose form that can lead to potential exposure to children, non-target organisms and the environment or gel baits in syringes that are applied when squeezed. *Use Examples*: Bait stations are usually used for rodent, roach, and ant control.

- **Products Containing Boric Acid or Disodium Octaborate Tetrahydrate** will have those ingredients listed on the label. They are, in general, insecticide products containing these chemicals in powder form. *Use Examples*: Products with these ingredients are used to help control wood-boring insects, ants and silverfish.

\(^2\) For additional information on EPA’s criteria for tamper-resistant bait stations see: [http://www.epa.gov/pesticides/PR_Notices/pr94-7.html](http://www.epa.gov/pesticides/PR_Notices/pr94-7.html)
- **Horticultural oils and soaps that do not contain synthetic pesticides or synergists** are generally identifiable by reading the label. Make sure the active ingredients listed are limited to paraffinic oil, mineral oil, petroleum oil, citrus oil, or combinations of salts of fatty acids. Most products labeled as horticultural oil, summer oil, dormant oil, or insecticidal soap will not contain synthetic pesticides or synergists, and will therefore be allowed. If you are unsure, look for the acronym “OMRI” on the label. OMRI stands for the Organic Materials Review Institute and horticultural oils and soaps with that label will meet the law’s criteria. **Use Examples**: Such oils and soaps are used, among other purposes, to manage some plant pests, such as aphids, spider mites and leaf hoppers.

- **Pesticides classified as exempt by U. S. Environmental Protection Agency (EPA)** are not registered by EPA, because they contain ingredients EPA considers to pose little or no risk. (These products are also known as Minimum Risk Pesticides or 25(b) exempt pesticides.) A list of those ingredients is on the next page. Schools and day care centers considering use of the EPA-exempt products should investigate the potential uses, as there is more information than is feasible to include in this guidance (EPA resource listed below). **Use Examples**: Corn gluten meal may be used for managing pre-emergent weeds (e.g. crabgrass and dandelions); soybean oil may be used on scales, mites, aphids and other insects; and dried blood is sometimes used as a repellent for deer or rabbits.

There is no comprehensive list of EPA Minimum Risk Pesticides, but there are ways to identify them:

- It may be noted on the label that the product is an EPA Minimum Risk Pesticide, but such an indication is not required.

- All ingredients in an EPA Minimum Risk Pesticide must be listed on the label by name and the pesticide can only contain inert ingredients that are minimal risk. An EPA Minimum Risk Pesticide can ONLY contain one or more of the active ingredients listed on the next page.

Information on EPA-exempt pesticides can be found at:
http://www.epa.gov/oppbppd/biopesticides/regtools/25b_list.htm

For product label information on registered pesticides listed in this section and to learn whether a pesticide is registered for use in NYS, please search http://pims.psur.cornell.edu/ the online New York State Pesticide Product Ingredient and Manufacturer System.
EPA-EXEMPT PRODUCTS - ACTIVE INGREDIENTS

Castor oil (U.S. Pharmacopeia or equivalent)
Cedar oil
Cinnamon and cinnamon oil
Citric acid
Citronella and Citronella oil
Clove and clove oil
Corn gluten meal
Corn oil
Cottonseed oil
Dried Blood
Eugenol
Garlic and garlic oil
Geraniol
Geranium oil
Lauryl sulfate
Lemongrass oil
Linseed oil

Malic acid
Mint and mint oil
Peppermint and peppermint oil
2-Phenethyl propionate (2-phenylethyl propionate)
Potassium sorbate
Putrescent whole egg solids
Rosemary and rosemary oil
Sesame (includes ground sesame plant and sesame oil)
Sodium chloride (common salt)
Sodium lauryl sulfate
Soybean oil
Thyme and thyme oil
White pepper
Zinc metal strips (consisting solely of zinc metal and impurities)

D. EMERGENCY DETERMINATIONS

The purpose of the new law is to minimize the harmful effects of pesticides on children by limiting the use of aesthetic pesticides in sensitive areas such as schools and day care centers and develop pesticide alternatives. An exception to the pesticide prohibition is provided in the State Education Law (SEL) and Social Services Law (SSL). Use of a prohibited pesticide is allowed, when a determination is made that an emergency application is needed.

Schools and day care centers subject to the law must seek an emergency determination from the appropriate entity. The entities which may make such determinations are identified in the SED and SSL. The primary entities are county health departments, State DOH, DEC, and, in the case of public schools requests for determinations, school boards.

The DEC, State DOH, SED and OCFS together, based on their interpretation of Chapter 85, have identified a working framework for emergency determinations, so that schools and day care centers know which entity to contact when seeking an emergency determination to apply a

3 Provisions regarding emergency pesticide applications are included in section 409-k.2 of the State Education Law and section 390-g.2 of the Social Services Law, both of which read as follows: “No school [or day care] shall apply pesticide to any playgrounds, turf, athletic or playing fields, except that an emergency application of a pesticide may be made as determined by the county health department or for a county not having a health department such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school board.”
prohibited pesticide. Also included in the framework are the types of emergencies DEC, State DOH and county health departments will consider. (State DOH oversees most county health departments.)

- **FRAMEWORK FOR IDENTIFYING THE ENTITY A SCHOOL OR DAY CARE CENTER WOULD CONTACT** to seek an emergency determination to apply a prohibited pesticide is outlined below, based on whether a public school, non-public school, or day care center is seeking the determination:

  - **Public Schools:** Each public school must contact its school board to seek an emergency pesticide application determination for any type of situation that may warrant an emergency. The SED has interpreted the SEL to require that the local school boards make all emergency determinations for public schools. Public schools should not contact the State DOH, county health departments or DEC to seek an emergency pesticide application determination. A school board, as it deliberates, may consult those agencies with relevant questions (as well as the in-house expertise of its grounds managers). Specifically, school boards may contact the county health department or the State DOH to consult on public health-related emergency situations and they may contact the DEC with questions about environmentally-related emergency situations.

  - **Non-Public Schools and Day Care Centers:** These entities should contact either the DOH or the DEC, depending upon whether the emergency request relates to the need to apply a prohibited pesticide for a public health-related matter or an environment-related matter, as follows:

    - **Public Health-related Emergency Pesticide Application Determinations:** Non-public schools and daycare centers should contact the DOH (the county health department, State DOH district office in certain counties or the state DOH’s Bureau of Toxic Substance Assessment), when a pest issue arises that may warrant an emergency application of a prohibited pesticide to protect public health (e.g., residual larvicide treatments on grounds to control mosquitoes that carry Eastern Equine Encephalitis virus). The DOH will make determinations for emergency pesticide applications only when a pest poses a significant threat to public health.

    - **To Contact the DOH about Public Health-related Emergency Determinations:** Contact the county health department or applicable district office (telephone number for each county on attached list) or the State DOH, Bureau of Toxic Substance Assessment at 518-402-7820.

    - **Environment-related Emergency Pesticide Application Determinations:** Non-public schools and day care centers should contact the DEC in writing to seek an emergency determination, when an emergency arises which would significantly affect the environment (e.g. invasive species management). For
the form on which requests are to be made to DEC, see the Department website http://www.dec.ny.gov.

To Contact DEC about Environment-related Emergency Determinations for Non-public Schools and Day Care Centers: Contact the DEC Bureau of Pest Management at: 518-402-8788. Use the form at the above link to submit requests to DEC for emergency determinations.

- **Guidance for determining when a situation is an Emergency**

The intent of the new law is to require schools and day care centers to manage grounds and pests without pesticides. Emergency determinations should only be sought or granted for a one-time pesticide application for a specific situation, which presents a true emergency. To provide guidance on deciding when a situation is not an emergency, the DEC, State DOH and SED, in consultation with OCFS, identified the following situations that these state agencies generally would not consider to warrant an emergency pesticide application determination:

- when the problem can be managed with the allowed products and/or alternative pest management methods (even when it takes time to learn and fully practice pesticide alternatives).

- for routine or repetitive pest problems. Pest problems can occur on a regular or seasonal basis, but they do not usually rise to the level of a public health or environmental threat that constitutes an emergency.

- when the pesticide application would be for purely aesthetic (non-emergency) reasons.

**E. WHERE TO READ THE LAW AND ASK QUESTIONS**

- **Where to Read the New Law:** The State Education Law (SEL), Social Services Law (SSL) and Environmental Conservation Law (ECL) can be read online at: http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS

  - **Schools,** see Section 409-k of the SEL.

  - **Day care centers,** see Section 390-g of the SSL.

  - **To read the requirement for this guidance,** see Section 33-0303.7 of the ECL.

- **Questions About the New Requirements**

  - **For public and non-public schools,** direct questions about the new SEL requirements to the SED, Office of Facilities Planning at 518-474-3906.
• **For day care centers**, direct questions about the new SSL requirements to the OCFS, Division of Child Care Services at 518-474-9454.

• **For help with questions about turf and grounds management without pesticides**, contact the local cooperative extension office, see list at [http://cce.cornell.edu/Pages/Default.aspx](http://cce.cornell.edu/Pages/Default.aspx)

• **Questions on this guidance**: Contact the DEC Bureau of Pest Management at 518 - 402-8768.

[ATTENTION SCHOOLS AND DAY CARE CENTERS: OTHER REQUIREMENTS]

Separate from the requirements in Chapter 85, Laws of 2010, there are other new and existing requirements, which schools and day cares must be aware of and comply with, in regard to grounds maintenance and pest management. A summary of them is included below:

**NEW FERTILIZER USE RESTRICTIONS**

Under a separate new law, Chapter 205 of the Laws of 2010, starting January 1, 2012, new restrictions go into effect regarding the use of phosphorus fertilizers and fertilizers on lawns and non-agricultural turf. As of that date, the following are prohibited on lawns or non-agricultural turf:

- The use of phosphorus fertilizers, unless establishing a new lawn or a soil test shows phosphorus is needed for growth, and

- The use of fertilizers between December 1 and April 1 annually.

- The use of fertilizers is prohibited within 20 feet of any surface water except:
  - Where a continuous natural vegetation buffer, at least 10 feet wide, separates lawn and water.
  - Where a spreader guard, deflector shield or drop spreader is used, then the application may not occur within three 3 feet of any surface water.

Additionally, fertilizer cannot be used on any impervious surfaces, and, if such an application occurs, it must be cleaned immediately and legally applied or placed in an appropriate container. Details can be found at [www.dec.ny.gov/chemical/67239.html](http://www.dec.ny.gov/chemical/67239.html) on the DEC website.

**PESTICIDE CERTIFICATION, NOTIFICATION, AND REPORTING REQUIREMENTS**
Anyone who applies pesticides to buildings or grounds at schools or day care centers, including pesticides allowed under the new law, must meet existing pesticide requirements. The following is a summary of these requirements:

- The definition of a pesticide is contained in Section 33-0101.35 of the ECL. Under that definition, all of the exceptions to the ban listed in Section C (Which Pesticides are Allowed) above are classified by DEC as pesticides and are subject to applicable regulations that relate to pesticide use.

- Sections 33-0905 and 33-0907 of the ECL and related regulatory requirements in 6 NYCRR Part 325 contain pesticide applicator certification and business or agency registration requirements. (Under the regulation, certification is not required when using antimicrobials, except where used in cooling towers (exist at some schools) or other processes not present at schools.)

- Pesticide reporting requirements under Section 33-1205 of the ECL apply to all pesticides used, except antimicrobials and EPA-exempt pesticides (also referred to as EPA Minimum Risk Pesticides or 25(b) pesticides).

- Pesticide application notification requirements must be met when using pesticides on structures or grounds, under Section 409-h of the SEL and Section 390-c of the SSL.

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4 See [http://www.dec.ny.gov/regulations/85227.html](http://www.dec.ny.gov/regulations/85227.html) for information on DEC pesticide requirements in law and regulation.
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<tr>
<td>Albany</td>
<td>(518) 447-4620</td>
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<td>Allegany</td>
<td>(585) 268-9254</td>
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<td>Broome</td>
<td>(607) 778-2887</td>
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<td>Cattaraugus</td>
<td>(716) 373-8050 Ex. 3437</td>
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<td>Cayuga</td>
<td>(315) 253-1405</td>
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<td>Clinton</td>
<td>(518) 565-4870</td>
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<td>Columbia</td>
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<td>(516) 227-9723</td>
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<td>New York City</td>
<td>(212) 442-5222</td>
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<td>(in NYC 311)</td>
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<td>Niagara</td>
<td>(212) 788-4646</td>
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<td>Otsego</td>
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<td>Putnam</td>
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<td>Rensselaer</td>
<td>(518) 270-2632</td>
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<td>Rockland</td>
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<td>St. Lawrence</td>
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<td>Westchester</td>
<td>(914) 813-5171</td>
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<td>Wyoming</td>
<td>(585) 786-8894</td>
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<tr>
<td>Yates</td>
<td>(315) 789-3030</td>
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*Source for the above list: New York State Department of Health. The applicable state DOH district office contact number is provided for certain counties.
AN ACT TO ENACT THE SCHOOLCHILDREN'S HEALTH ACT OF 2006.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 is amended by adding a new subdivision to read:

"(33) Duty to Protect the Health of School-Age Children From Toxicants at
School. — The State Board shall address public health and
environmental issues in the classroom and on school grounds by doing
all of the following:

a. Develop guidelines for sealing existing arsenic-treated wood in
playground equipment or establish a time line for removing
existing arsenic-treated wood on playgrounds and testing the
soil on school grounds for contamination caused by the leaching
of arsenic-treated wood in other areas where children may be at
particularly high risk of exposure.

b. Establish guidelines to reduce students' exposure to diesel
emissions that can occur as a result of unnecessary school bus
idling, nose-to-tail parking, and inefficient route assignments.

c. Study methods for mold and mildew prevention and mitigation
and incorporate recommendations into the public school
facilities guidelines as needed.

d. Establish guidelines for Integrated Pest Management consistent
with the policy of The North Carolina School Boards
Association, Inc., as published in 2004. These guidelines may
be updated as needed to reflect changes in technology.

e. Establish guidelines for notification of students' parents,
guardians, or custodians as well as school staff of pesticide use
on school grounds."

SECTION 2. G.S. 115C-47 is amended by adding four new subdivisions to
read:

"(45) To Address the Use of Pesticides in Schools. — Local boards of
education shall adopt policies that address the use of pesticides in
schools. These policies shall:

a. Require the principal or the principal's designee to annually
notify the students' parents, guardians, or custodians as well as
school staff of the schedule of pesticide use on school property
and their right to request notification. Such notification shall be
made, to the extent possible, at least 72 hours in advance of
nonscheduled pesticide use on school property. The notification
requirements under this subdivision do not apply to the
application of the following types of pesticide products:
antimicrobial cleansers, disinfectants, self-contained baits and
crack-and-crevice treatments, and any pesticide products
classified by the United States Environmental Protection
Agency as belonging to the U.S.E.P.A. Toxicity Class IV,
"relatively nontoxic" (no signal word required on the product's label).

b. Require the use of Integrated Pest Management. As used in this subdivision, "Integrated Pest Management" or "IPM" means the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate.

(46) To Address Arsenic-Treated Wood in the Classroom and on School Grounds. – Local boards of education shall prohibit the purchase or acceptance of chromated copper arsenate-treated wood for future use on school grounds. Local boards of education shall seal existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds, according to the guidelines established under G.S. 115C-12(33). Local boards of education are encouraged to test the soil on school grounds for contamination caused by the leaching of arsenic-treated wood.

(47) To Address Mercury in the Classroom and on School Grounds. – Local boards of education are encouraged to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. Local boards of education shall prohibit the future use of bulk elemental mercury, chemical mercury compounds, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

(48) To Address Exposure to Diesel Exhaust Fumes. – Local boards of education shall adopt policies and procedures to reduce students' exposure to diesel emissions.

SECTION 3. Nothing in this act shall be construed to create a private cause of action against the State Board of Education, a local board of education, or their agents or employees.

SECTION 4. G.S. 115C-47(45)b., as enacted by Section 2 of this act, becomes effective October 1, 2011. The remainder of this act becomes effective October 1, 2006.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:39 p.m. this 19th day of July, 2006
901:5-11-14 Integrated pest management standard.

(A) This rule shall apply to persons involved in developing and implementing integrated pest management (IPM) activities for non-agricultural uses in this state. This includes pesticide businesses, school personnel or any other individuals conducting IPM activities. In order to be considered an IPM activity under this rule, the activity shall include the elements set out in paragraph (B) of this rule.

(B) Persons developing and implementing IPM activities shall:

(1) Conduct a comprehensive site assessment of the property for which the IPM activity is being developed. This assessment shall identify the:

(a) Structural, mechanical, storage or sanitation conditions that are producing or could produce pest problems, including pest entry points and areas prone to pest harborage;

(b) Type and extent of pest activity; which may be determined by using monitoring devices when practical; and

(c) Potential impacts presented by the pests to humans, domestic animals and environment;

(2) Determine with the entity contracting for service:

(a) Structural, mechanical, storage or sanitation-related measures that will aid in long-term prevention, elimination or control of pests;

(b) Priorities for pest control and elimination;

(c) Whether chemical control is necessary to prevent, eliminate or control pests; and

(d) The most effective measures, application products and methods that will result in control of pests while minimizing exposure to humans, domestic animals and the environment;

(3) Establish with the entity contracting for service a strategy, schedule, and specific recommendations for ongoing site monitoring and assessment to resolve short term and long-term control or elimination of pest problems consistent with this paragraph; and

(4) Evaluate the results of implementing the IPM activity in accordance with a time frame agreed to with the entity contracting for service. The evaluation shall include a re-assessment of the site and consider whether:

(a) Correction of structural, mechanical, storage or sanitation problems was completed and effective;

(b) Methods used to prevent, control and eliminate pests at the site were effective;

(c) Risks of exposure to humans, domestic animals, and the environment were sufficiently minimized; and

(d) Other measures, products or methods should be chosen for future pest management and control.

Effective: 08/10/2009
R.C. 119.032 review dates: 08/01/2014
Promulgated Under: 119.03
Statutory Authority: 921.18
Rule Amplifies: 921.01, 921.18
901:5-11-15 Pesticide use in schools.

(A) This rule shall apply to the classroom buildings of schools established under Chapter 3311. of the Revised Code, education service centers, community schools established under Chapter 3314. of the Revised Code, STEM schools established under Chapter 3326. of the Revised Code; and non-public schools chartered by the state board of education pursuant to section 3301.16 of the Revised Code.

(B) Pesticides shall be applied on or in the classroom buildings of schools only if:

(1) The pesticide is applied for either the longer of four hours or the minimum time specified by the label of the pesticide applied prior to the beginning of the school day; at a time after the school day has concluded; or when school is not in session under the calendar established by the local school board; or

(2) The pesticide is applied when school is in session provided that:

(a) Persons other than pesticide applicators and necessary school staff are not scheduled to be in the treatment area during treatment and for either the longer of four hours or the minimum time specified by the label of the pesticide applied, if any is specified, as measured from the time that the pesticide application is completed; and

(b) The entrances to the area in which the pesticide is applied are posted with signs meeting the following requirements:

(i) The sign shall measure at least eight and one half inches by eleven inches; and

(ii) The sign is printed with letters at least one inch in height with the following wording: “Pesticide Treatment Area. Do Not Enter Before (the date and time where re-entry will be permitted into the treatment area).” The time shall be the later of four hours or the minimum time specified on the label, as measured from the time that the pesticide application is completed; or

(3) The pesticide applied is one of the following, and is applied in strict accordance with label instructions:

(a) Manufactured paste or gel baits;

(b) Paraffin-based rodent control products placed in industry-identified tamper-resistant bait stations;

(c) Termitic-baiting stations

(d) Rodenticides which are placed in wall voids or other areas that are inaccessible to humans and domestic animals;

(e) Disinfectants, sanitizers, germicides, and anti-microbial agents; or

(f) Dusts used in unoccupied areas of the structure; and

(4) If one of the conditions in paragraph (B) of this rule has been met, except for those items listed in (B)(3)(e), the following information shall be provided to the school’s contact person identified under paragraph (C)(2) of this rule as soon as practicable following the application:

(a) Date and time that the pesticide was applied;
(b) Treatment area;

(c) Target pests;

(d) Brand name and EPA registration number of the pesticide applied; and

(e) If applied under (B)(2) of this rule, time or conditions for re-entering the treatment area as specified by the label of the pesticide applied, if any is specified.

(C) Any school subject to this rule shall:

(1) Develop a policy whereby parents or guardians of minor children, adult students, faculty and staff who are enrolled or employed at the school may request and receive prior notifications of scheduled service visits by pesticide businesses in which pesticides may be applied under B(2) of this rule or scheduled pesticide applications under B(2) of this rule by licensed school employees pursuant to R.C. 921.06.

(a) The method of prior notifications shall be determined by the school and may include but shall not be limited to e-mail and listserv methods; and

(b) If special circumstances arise that prevent prior notification from being provided as required, such as emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide notice as soon as possible. The notice shall explain the reasons why advance notice was not provided.

(2) Designate a school employee to serve as a contact person for pesticide applications made at the school. The school shall maintain for inspection during normal school hours by parents or guardians of minor children, adult students, faculty and staff who are enrolled or employed at the school, or the director or their authorized representative:

(a) Records provided to the contact person pursuant to paragraph (B)(4) of this rule. The records shall be maintained for a period of one year following the date of the pesticide application; and

(b) Documentation that requested notifications were made pursuant to the school policy established under paragraph (C)(1) of this rule.

(3) Pesticides applied under (B)(3)(e) of this rule are excepted from the notification policy contained in (C)(1) and (C)(2).

(D) Guidance for principles of integrated pest management may be published on the department's website or otherwise disseminated as determined by the director.

Effective: 04/26/2010

R.C. 119.032 review dates: 08/01/2014

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.01, 921.18

Prior Effective Dates: 08/10/2009
Prior Effective Dates: 1-1-77; 2-1-94; 8-2-96; 10-29-98; 6-15-99; replaces part of 901:5-11-03, eff. 7-1-04

**901:5-11-09 Notification requirements for lawn pesticide applicators.**

(A) No commercial applicator or trained serviceperson working under the direct supervision of a commercial applicator shall:

(1) Apply any lawn pesticides to residential lawns in any municipal corporation or subdivided area of a township unless:

(a) They provide the following information in writing to the person on whose property the chemical is being applied. This information shall be provided prior to or at the time of application:

(i) The brand or common name of each lawn pesticide applied;

(ii) The chemical type (fungicide, herbicide, or insecticide);

(iii) Any special instruction on the label of the lawn care pesticide product applicable to the customer;

(iv) The company name and telephone number of the applicator's employer;

(v) The date and time of the application;

(vi) Any other pertinent information as required by the label.

(vii) A written statement regarding lawn signs posted in accordance with paragraph (A)(1)(c) of this rule which reads as follows: "Lawn posting signs must remain in place for twenty-four hours following lawn application."; and

(b) The pesticide business has attempted the notification required by paragraph (B)(1) of this rule.

(c) They have placed at conspicuous points, including, but not limited to, common access points on the property to which lawn pesticides have been applied, one or more signs:

(i) The sign shall measure at least five inches by four inches on adjacent sides and be attached to the upper portion of a dowel or other supporting device. The bottom edge of the sign must be at least fourteen inches from the ground and the sign must be weatherproof for twenty-four hours.

The sign shall be in the form and carry the wording and warning symbol illustrated:

[Click to view image](image)

The required warning symbol and lettering on the sign shall be in the same proportion as the wording and warning symbol illustrated herein. No company logos or other advertising graphics...
may appear on the face of the sign. The signs posted at access points must be within five feet of the access point.

(2) Apply any lawn pesticides to commercial lawns in any municipal corporation or subdivided area of a township unless:

(a) They have provided the information required in paragraph (A)(1)(a) of this rule and the date and approximate time of application with the individual on site who is responsible for administration of the property on which the lawn pesticide is applied.

(b) They have posted the signs required under paragraph (A)(1)(c) of this rule in the manner prescribed therein.

(3) Apply any lawn pesticides to public lawns in any municipal corporation or subdivided area of a township unless:

(a) They have provided the information required in paragraph (A)(1)(a) of this rule and the date and approximate time of application to the individual on site who is responsible for administration of the property on which the lawn pesticide is applied. The information required under paragraph (A)(1)(a)(vii) of this rule may be omitted if signs have been permanently placed in accordance with paragraph (A)(3)(b) of this rule.

(b) They have either posted the signs required under paragraph (A)(1)(c) of this rule in the manner prescribed therein or they have permanently placed at common access points to the property a sign no less than eight inches by ten inches with the legend: "PERIODIC APPLICATION OF LAWN PESTICIDES – INQUIRE AT: (location where information may be obtained)." The designated location shall be a site which is accessible to the public during normal hours of operation.

(c) The information in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule must be made available to the public upon request when signs are posted in accordance with paragraph (A)(1)(c) of this rule.

(d) The information in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule must be obtainable at the location designated on signs which are permanently placed in accordance with paragraph (A)(3)(b) of this rule.

(B) The pesticide business shall, for applications made under paragraph (A)(1) of this rule:

(1) Make a reasonable attempt to provide, on or before the business day preceding the applications, the date and approximate time of application, and the name and telephone number of the pesticide business, to any occupant of a residence whose property abuts the treated property and who has notified the pesticide business in a writing that includes the occupant's name, mailing address, and telephone number, that they wish to receive prior notice of pesticide applications;

(2) Make available in writing all the information listed in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule to an occupant of a residence whose property abuts the treated property and who contacts the pesticide business following an application made under this rule requesting information about that application; and

(3) Retain for a period of three years the name, address and telephone number of each person who has requested notification under this paragraph. These records shall be complete, current
and in a form that accommodates inspection by the director. Prior to deleting these records at the end of three years, the pesticide business shall notify the person that their record is going to be deleted. The pesticide business shall not delete the record for any person who indicates in writing that that they wish to continue receiving notification under this paragraph.

For the purposes of this paragraph, properties which are completely separated from the treated property by a right-of-way, or which share with the treated property a single common point along the perimeters of the properties are not considered abutting properties.

(C) No pesticide business or employee of a pesticide business shall bear liability for the removal by unauthorized persons of the signs required by this rule except that no employee of the pesticide business shall remove the signs prior to twenty-four hours following lawn pesticide application.

(D) Any information required to be provided under paragraph (A) of this rule may, if the person to whom the information is to be given is absent or inaccessible at the time the attempt is made, be left at that person’s place of residence or business.

(E) Paragraphs (A)(1), (A)(2) and (A)(3) of this rule do not apply to any commercial applicator while making the following pesticide applications:

(1) Any application to any property that is an agricultural district or that would meet the eligibility requirements established for an agricultural district under Chapter 929. of the Revised Code, on which agricultural commodities are or will be produced;

(2) Any application for the purpose of the maintenance, operation or construction of a public utility;

(3) Any treatment for the eradication or control of pests declared to be a nuisance by the director of the Ohio department of agriculture, director of the Ohio department of health or local health districts, and for which immediate application is necessary to prevent significant human, environmental, or economic harm.

R.C. 119.032 review dates: 05/19/2010 and 05/19/2014

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.16

Prior Effective Dates: 6-5-89; 6-25-99; 7-1-04

901:5-11-10 Recordkeeping.

(A) Commercial applicators:

(1) Applying pesticides to areas other than structures or their contents shall record, in English, on the date of application the following information for each application made by the commercial applicator or trained servicepersons working under the commercial applicator's direct supervision:
problem based on health, public safety, economic or aesthetic thresholds;

(d) Treating pest problems to reduce populations below those levels established by damage thresholds using strategies that may include biological, cultural, mechanical and chemical control methods and that shall consider human health, ecological impact, feasibility and cost effectiveness; and

(e) Evaluating the effects and efficacy of pest treatments.

(2) “Pest” means any vertebrate or invertebrate animal, pathogen, parasitic plant, weed or similar or allied organism which can cause disease or damage to crops, trees, shrubs, grasses or other plants, humans, animals or property. [1991 c.943 §1]

Note: 634.650 to 634.665 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 634 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

634.655 Policy. The Legislative Assembly declares that it is the policy of the State of Oregon to require all state agencies that have pest control responsibilities to follow the principles of integrated pest management. [1991 c.943 §2]

Note: See note under 634.650.

634.660 Agencies required to implement integrated pest management. Each of the following state agencies or services shall implement integrated pest management practices when carrying out the agency’s duties related to pest control:

(1) State Department of Agriculture, including the control of noxious weeds.

(2) State Department of Fish and Wildlife.

(3) Department of Transportation.

(4) State Parks and Recreation Department.

(5) State Forestry Department.

(6) Department of Corrections.

(7) Oregon Department of Administrative Services.

(8) The Department of State Lands.

(9) Each Oregon institution of higher education, for the institution’s own building and grounds maintenance. [1991 c.943 §3; 2003 c.14 §81]

Note: See note under 634.650.

634.665 Agencies to provide personnel training; appointment of coordinators; duties. (1) Each state agency or institution listed under ORS 634.660 shall provide integrated pest management training for employees responsible for pest management.

(2) Each state agency or institution listed under ORS 634.660 shall designate an integrated pest management coordinator. The integrated pest management coordinator shall manage the integrated pest management program of the agency or institution. [1991 c.943 §4; 2001 c.413 §11]

Note: See note under 634.650.

634.670 [1991 c.943 §5; repealed by 2001 c.413 §12]

(Schools)

634.700 Definitions for ORS 634.700 to 634.750. As used in ORS 634.700 to 634.750:

(1) “Campus” means the buildings, other structures, playgrounds, athletic fields and parking lots of a school and any other areas on the school property that are accessed by students on a regular basis.

(2) “Governing body” means a board of directors, agency or other body or person having policymaking and general oversight responsibility for a community college district, education service district, school district, other unit of education governance, private school or other educational entity.

(3) “Integrated pest management plan” means a proactive strategy that:

(a) Focuses on the long-term prevention or suppression of pest problems through economically sound measures that:

(A) Protect the health and safety of students, staff and faculty;

(B) Protect the integrity of campus buildings and grounds;

(C) Maintain a productive learning environment; and

(D) Protect local ecosystem health;

(b) Focuses on the prevention of pest problems by working to reduce or eliminate conditions of property construction, operation and maintenance that promote or allow for the establishment, feeding, breeding and proliferation of pest populations or other conditions that are conducive to pests or that create harborage for pests;

(c) Incorporates the use of sanitation, structural remediation or habitat manipulation or of mechanical, biological and chemical pest control measures that present a reduced risk or have a low impact and, for the purpose of mitigating a declared pest emergency, the application of pesticides that are not low-impact pesticides;

(d) Includes regular monitoring and inspections to detect pests, pest damage and unsanctioned pesticide usage;

(e) Evaluates the need for pest control by identifying acceptable pest population density levels;

(f) Monitors and evaluates the effectiveness of pest control measures;
(g) Excludes the application of pesticides on a routine schedule for purely preventive purposes, other than applications of pesticides designed to attract or be consumed by pests;

(h) Excludes the application of pesticides for purely aesthetic purposes;

(i) Includes school staff education about sanitation, monitoring and inspection and about pest control measures;

(j) Gives preference to the use of nonchemical pest control measures;

(k) Allows the use of low-impact pesticides if nonchemical pest control measures are ineffective; and

(L) Allows the application of a pesticide that is not a low-impact pesticide only to mitigate a declared pest emergency or if the application is by, or at the direction or order of, a public health official.

(4) “Low-impact pesticide” means a product that does not contain a pesticide product or active ingredient described in ORS 634.705 (5).

(5) “Pest” means:

(a) An insect or other arthropod;

(b) A weed, moss, slime or mildew or a plant disease caused by a fungus, bacterium or virus;

(c) A nematode, snail, slug, rodent or predatory animal;

(d) A bacteria, spore, virus, fungus or other microorganism that is harmful to human health; or

(e) Other forms of plant or animal life that may infest or be detrimental to vegetation, humans, animals, structures, managed landscapes or other human environments.

(6) “Pest emergency” means an urgent need to eliminate or mitigate a pest situation that threatens:

(a) The health or safety of students, staff, faculty members or members of the public using the campus; or

(b) The structural integrity of campus facilities.

(7) “Registration number” means the pesticide registration number assigned by the United States Environmental Protection Agency.

(8) “School” means:

(a) A facility operating an Oregon pre-kindergarten or a federal Head Start program;

(b) A public or private educational institution offering education in all or part of kindergarten through grade 12;

(c) An education service district as defined in ORS 334.003;

(d) A community college as defined in ORS 341.005;

(e) The Oregon School for the Blind;

(f) The Oregon School for the Deaf; and

(g) A regional residential academy operated by the Oregon Youth Authority. 2009 c.501 §2.

Note: The Oregon School for the Blind was closed in 2009 pursuant to section 1, chapter 502, Oregon Laws 2009. The text of 634.700 was not amended by enactment of the Legislative Assembly to reflect the school’s closure. Editorial adjustment of 634.700 for the school’s closure has not been made.

634.705 Adoption of integrated pest management plan and related provisions; exceptions; low-impact pesticide list. (1) The governing body responsible for a school shall adopt an integrated pest management plan for use on the campuses of the school. The governing body shall also adopt provisions for:

(a) Designating an integrated pest management plan coordinator;

(b) Identifying plan coordinator responsibilities;

(c) Giving notices under ORS 634.740;

(d) Retaining pesticide application records under ORS 634.750;

(e) Providing a process for responding to inquiries and complaints about noncompliance with the integrated pest management plan; and

(f) Conducting outreach to the school community about the school’s integrated pest management plan.

(2) If a governing body has control over only part of a building, a structure or property where a campus is located, the governing body may limit an integrated pest management plan to those parts of the building, structure or property over which the governing body exerts substantial control.

(3) A governing body is not required to adopt an integrated pest management plan for off-campus buildings, structures or property, notwithstanding any incidental use for instruction.

(4) Unless a governing body expressly provides otherwise, the application of a germicide, disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap at a campus is not subject to the requirements for a pesticide application under an integrated pest management plan. However, this subsection does not permit the application at a campus of a germicide, disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap that is a pesticide in a
manner that is inconsistent with the goal of
the integrated pest management plan.

(5) A governing body shall adopt a list of
low-impact pesticides for use with the inte-
grated pest management plan. The governing
body may include any product on the list ex-
cept products that:

(a) Contain a pesticide product or active
ingredient that has the signal words “war-
ing” or “danger” on the label;
(b) Contain a pesticide product classified
as a human carcinogen or probable human
carcinogen under the United States Environ-
mental Protection Agency 1986 Guidelines
for Carcinogen Risk Assessment; or
(c) Contain a pesticide product classified
as carcinogenic to humans or likely to be
carcinogenic to humans under the United
States Environmental Protection Agency
2003 Draft Final Guidelines for Carcinogen
Risk Assessment. [2009 c.501 §3]

634.710 Plan selection. A governing
body may adopt, improve or continue any inte-
grated pest management plan that provides
protection against pesticide exposure equal
to or greater than the protection against
pesticide exposure required by ORS 634.700
to 634.750. [2009 c.501 §9]

Notes: Sections 11 and 12, chapter 501, Oregon Laws
2009, provide:

Sec. 11. (1) Notwithstanding section 9 of this 2009
Act [634.710], the Oregon State University Extension
Service, in cooperation with the Department of Human
Services, shall develop one or more model integrated
pest management plans for use in schools subject to
sections 2 to 9 of this 2009 Act [634.700 to 634.750]. The
extension service shall make the model plans available
to school governing bodies no later than July 1, 2011.
However, a school governing body may adopt any inte-
grated pest management plan that complies with the
requirements of sections 2 to 9 of this 2009 Act.

(2) Except as provided in subsection (3) of this
section, a governing body required under section 3 of
this 2009 Act [634.705] to adopt one or more integrated
pest management plans shall implement the plans on or
before July 1, 2012.

(3) The deadline established in subsection (2) of this
section does not apply to a school established after the
effective date of this 2009 Act [January 1, 2010]. [2009
59.501 (11)]

Sec. 12. Section 11 of this 2009 Act is repealed

634.720 Plan coordinators. (1) The gov-
erning body shall provide for the designation
of one or more persons as integrated pest
management plan coordinators for the gov-
erned schools. A plan coordinator must be an
employee of the governed district, unit,
school or entity, unless the governing body
delегates pest management duties to an in-
dependent contractor. Each school shall have
the services of at least one integrated pest
management plan coordinator. A plan coor-
dinator may serve more than one school.

The responsibilities of the plan coordinator
shall include, but need not be limited to:

(a) Giving notice and posting warnings
under ORS 634.740;
(b) Overseeing pest prevention efforts;
(c) Providing for the identification and
evaluation of pest situations;
(d) Determining the means of appropri-
ately managing pest damage that will cause
the least possible hazard to people, property
and the environment;
(e) Ensuring the proper and lawful per-
formance of pesticide applications;
(f) Evaluating pest management results;

(g) Keeping records as required by ORS
634.750.

(2) A plan coordinator shall complete not
less than six hours of training each year. The
training shall include at least a general re-
view of integrated pest management princi-
ple s and the requirements of ORS 634.700 to
634.750. [2009 c.501 §4]

634.725 Application of low-impact pes-
ticide. If a school has followed the inte-
grated pest management plan and
onchemical pest control measures were in-
effective, subject to ORS 634.730 the inte-
grated pest management plan coordinator
may authorize the application of a low-
impact pesticide. The low-impact pesticide
application must be made by a pesticide
applicant or by a public applicator. The use of
a pesticide applicant or public applicator
to make an application does not cancel, alter
or reassign any of the duties imposed under
ORS 634.740 or 634.750. [2009 c.501 §5]

634.730 Reentry into sprayed area; ex-
ception; declaration of pest emergency.

(1) Subject to subsection (2) of this section:

(a) If the labeling of a pesticide product
specifies a reentry time, a pesticide may not
be applied to an area of a campus where
the school expects students to be present before
expiration of that reentry time.
(b) If the labeling of a pesticide product
does not specify a reentry time, a pesticide
may not be applied to an area of a campus
where the school expects students to be present before expiration of a reentry time
that the integrated pest management plan
coor dinator determines to be appropriate
based on the times at which students would
normally be expected to be in the area, area
ventilation and whether the area will be
cleaned before students are present.

(2)(a) The application restrictions de-
scribed in subsection (1) of this section do
not apply if the pesticide is applied outdoors
by a pesticide applicator or public applicator
as a component of academic instruction in agriculture.

(b) The application restrictions described in subsection (1)(b) of this section do not apply if the integrated pest management plan coordinator declares a pest emergency under subsection (3) of this section.

(3) An integrated pest management plan coordinator, after consultation with school faculty and administration, may declare the existence of a pest emergency. If necessary, a pesticide other than a low-impact pesticide may be used to mitigate a declared pest emergency. If a pesticide is applied at a campus due to a pest emergency, the plan coordinator shall review the integrated pest management plan to determine whether modification of the plan might prevent future pest emergencies. The plan coordinator shall submit any recommendations for modification of the plan to the governing body. The governing body shall review and take formal action on the recommendations. [2009 c.601 §6]

634.740 Written notice requirements; warning signs; failure to notify or warn. (1) The governing body responsible for a school shall adopt policies and processes for ensuring that the integrated pest management plan coordinator for the school, or a designee of the coordinator, gives written notice of a proposed pesticide application at the campus to, at a minimum, parents and guardians of minor students, adult students, school administrators, faculty members and staff members. The plan coordinator or designee may give a written notice described in this subsection by any reasonable means, including but not limited to, electronic mail.

(2) In adopting policies and processes under subsection (1) of this section, the governing body shall consider the needs of the students attending the school and consider which methods for transmitting notice are most likely to reach the intended recipients.

(3) Except as provided in this subsection, the plan coordinator or designee must give a pesticide application notice in a manner reasonably calculated to reach the intended recipient at least 24 hours before the pesticide application occurs. A notice must identify the name, trademark or type of pesticide products, the registration number assigned to each of the pesticide products, the expected area of application, the expected date of application and the reason for the application. If a pest emergency makes it impracticable to give a pesticide application notice at least 24 hours before the pesticide application occurs, the plan coordinator or designee shall send the notice no later than 24 hours after the application occurs.

(4) Except as provided in this subsection, if a pesticide is applied at a campus, the plan coordinator or a designee of the coordinator shall place warning signs around pesticide application areas beginning no later than 24 hours before the application occurs and ending no earlier than 72 hours after the application occurs. A warning sign must bear the words "Warning: pesticide-treated area" give the expected or actual date and time for the application and provide the telephone number of a contact person. If a pest emergency makes it impracticable to place the warning signs at least 24 hours before the pesticide application, the plan coordinator or designee shall place the signs as soon as practicable but no later than at the time the application occurs.

(5) Failure to give notice or post warnings as required by this section does not create a cause of action for damages and may not be asserted as the basis for a per se negligence claim. [2009 c.601 §7]

634.750 Pesticide application records. (1) If a pesticide is applied at a campus, the integrated pest management plan coordinator or a designee of the coordinator shall place the labeling information and material data safety sheet for the pesticide on file at a school on the campus. The plan coordinator or designee shall record and make available the following information:

(a) The brand name or trademark of the pesticide product;
(b) The United States Environmental Protection Agency registration number assigned to the pesticide product;
(c) The pest condition that prompted the application;
(d) A description of the area on campus where the application occurred;
(e) The approximate amount and concentration of pesticide product applied;
(f) The type of application and whether the application proved effective;
(g) The pesticide applicator or public applicator license numbers and pesticide trainee or public trainee certificate numbers of the persons applying the pesticide;
(h) The names of the persons applying the pesticide;
(i) The dates on which the plan coordinator gave any notices required by ORS 634.740; and
(j) The dates and times for the placement and removal of warning signs under ORS 634.740.

(2) Pesticide application records must include copies of all notices given under ORS 634.740.
(3) A school shall retain pesticide application records required by this section for at least four years following the application date. [2009 c.501 §8]

CIVIL PENALTIES

634.900 Penalty for certain violations; amount. (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of this chapter relating to pesticide application, sale or labeling. The civil penalty for a first violation shall be not more than $1,000. For a subsequent violation, the director may impose a civil penalty of not more than $3,000.

(2) Notwithstanding subsection (1) of this section, if the violation of a provision relating to pesticide application, sale or labeling results from gross negligence or willful misconduct, the civil penalty for a first or subsequent violation may not exceed $10,000.

(3) A civil penalty may not be imposed under this section for violations other than those involving pesticide application, sale or labeling violation under this chapter. [1989 c.943 §2; 2007 c.592 §1]

634.905 When penalty payable; notice; hearing. (1) Any civil penalty under ORS 634.900 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the Director of Agriculture. [1989 c.943 §3; 1991 c.734 §67; 1999 c.59 §186]

634.910 Reduction of penalty; criteria. A civil penalty imposed under ORS 634.900 may be remitted or reduced upon such terms and conditions as the Director of Agriculture considers proper and consistent with the public health and safety. [1989 c.943 §4]

634.915 Schedule for penalty amounts; criteria; rules. (1) The State Department of Agriculture shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a particular violation.

(2) In imposing the penalty pursuant to the schedule authorized by this section, the Director of Agriculture shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules or orders pertaining to pesticide application, sale or labeling.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The violator's cooperativeness and efforts to correct the violation.

(g) The immediacy and extent to which the violation threatens the public health or safety. [1989 c.943 §5]

634.920 [1989 c.943 §§6,7; repealed by 1991 c.734 §122]

634.925 Disposition of penalties collected. All penalties recovered under ORS 634.900 to 634.915 shall be deposited by the State Treasurer in the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the State Department of Agriculture to be used for information and education related to pesticide application. [1989 c.943 §8]

CRIMINAL PENALTIES

634.980 [Amended by 1961 c.294 §13; repealed by 1973 c.341 §37]

634.992 Criminal penalties. Violation of any of the provisions of this chapter is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than $1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than $2,000, or by imprisonment in the county jail for not more than one year, or both. [1973 c.341 §36]
24 P.S. § 7-772.1

§ 7-772.1. Integrated pest management programs
Effective: June 17, 2002

24 P.S. § 7-772.1

Purdon's Pennsylvania Statutes and Consolidated StatutesCurrentness
Title 24 P.S. Education
Chapter I. Public School Code of 1949 (Refs & Annos)
Article VII. Grounds and Buildings (Refs & Annos)
(E) General Provisions
§ 7-772.1. Integrated pest management programs

(a) Each school shall, by January 1, 2003, adopt an integrated pest management plan in accordance with the integrated pest management policies established by the department on the effective date of this section until regulations are promulgated by the department.

(b) The department shall do all of the following:

(1) Maintain a Hypersensitivity Registry to assist in the notification of students and employees who are especially sensitive to pesticides.

(2) Designate an integrated pest management coordinator within the department to assist schools in the adoption and administration of integrated pest management plans.

(3) Prepare a standard structural integrated pest management agreement and distribute the standard agreement to schools.

(4) Provide other materials and assistance to schools to aid them in developing integrated pest management plans.

(5) Promulgate regulations, consistent with its policies in effect on the date of this section, to assist schools in implementing their responsibilities under this section.

(c) The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Department." The Department of Agriculture of the Commonwealth.
"Integrated pest management plan." A plan which establishes a sustainable approach to managing pests by combining biological, cultural, physical and chemical tools in a way which minimizes economic, health and environmental risks.

"Pest." An insect, rodent, nematode, fungus, weed or other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man or other living animals, declared to be a pest under section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136w).

"Pesticide." A substance or mixture of substances intended for preventing, destroying, repelling or mitigating a pest and a substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

"School." A school district, an intermediate unit, an area vocational-technical school or any of these entities acting jointly.

CREDIT(S)

1949, March 10, P.L. 30, art. VII, § 772.1, added 2002, April 18, P.L. 262, No. 35, § 1, effective in 60 days.

24 P.S. § 7-772.1, PA ST 24 P.S. § 7-772.1

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END OF DOCUMENT
24 P.S. § 7-772.2

§ 7-772.2. Notification of pesticide treatments at schools
Effective: January 01, 2003

24 P.S. § 7-772.2

Purdon's Pennsylvania Statutes and Consolidated Statutes **Currentness**
Title 24 P.S. Education
Chapter 1. Public School Code of 1949 (Refs & Annos)
   Article VII. Grounds and Buildings (Refs & Annos)
      (E) General Provisions
          § 7-772.2. Notification of pesticide treatments at schools

(a) The following apply to pesticide applicators:

(1) For a pesticide treatment at a school building, the certified applicator or pesticide
    application technician shall supply the pest control information sheet and a pest control sign,
    which must be at least eight and one-half by eleven (8 1/2 by 11) inches in size, to the chief
    administrator or building manager.

(2) For a pesticide treatment on school grounds, including athletic fields and playgrounds,
    the certified applicator or pesticide application technician shall supply the pest control
    information sheet and a pest control sign, which must be at least eight and one-half by
    eleven (8 1/2 by 11) inches in size, to the chief administrator or grounds manager.

(b) Responsibilities of schools are as follows:

(1) Except as provided in clause (3), notification of pesticide treatments shall be as follows:

   (i) For a pesticide treatment at a school building, the school shall be responsible for all of the
       following:

      (A) Posting the pest control sign received under subsection (a)(1) in an area of common
          access where individuals are likely to view the sign on a regular basis at least seventy-two
          (72) hours before and for at least two (2) days following each planned treatment.

      (B) Providing the pest control information sheet received under subsection (a)(1) to every
          individual working in the school building at least seventy-two (72) hours before each
          planned treatment.
(C) Providing notice, including the name, address and telephone number of the applicator providing the treatment, day of treatment and pesticide to be utilized, to the parents or guardians of students enrolled in the school at least seventy-two (72) hours before each planned treatment as follows:

(I) notice to all parents or guardians utilizing normal school communications procedures; or

(II) notice to a list of interested parents or guardians who at the beginning of each school year or upon the child's enrollment requested notification of individual application of pesticides. The school shall provide procedures or materials for such requests to parents and guardians of students. Notification of each pesticide application shall be provided using first class mail or other means deemed appropriate by the school to each parent or guardian requesting notification.

(ii) For a pesticide treatment on school grounds, the school shall be responsible for all of the following:

(A) Posting the pest control sign received under subsection (a)(2) at the place to be treated at least seventy-two (72) hours before and for two (2) days after the planned treatment.

(B) Providing the pest control information sheet received under subsection (a)(2) to every individual working in the school building at least seventy-two (72) hours before each planned treatment.

(C) Providing notice, including the name, address and telephone number of the applicator providing the treatment, day of treatment and pesticide to be utilized, to the parents or guardians of students enrolled in the school at least seventy-two (72) hours before each planned treatment as follows:

(I) notice to all parents or guardians utilizing normal school communications procedures; or

(II) notice to a list of interested parents or guardians who at the beginning of each school year or upon the child's enrollment requested notification of individual application of pesticides. The school shall provide procedures or materials for such requests to parents and guardians of students. Notification of each pesticide application shall be provided using first class mail or other means deemed appropriate by the school to each parent or guardian requesting notification.
(iii) Notwithstanding any other provision of this section, where pests pose an immediate threat to the health and safety of students or employees, the school may authorize an emergency pesticide application. In the case of an emergency pesticide application, the school shall notify by telephone any parent or guardian who has requested such notification. School officials shall annually advise parents or guardians of their right to request notification of emergency pesticide use and shall explain procedures for requesting such notification.

(2) Except as provided in clause (3), each school shall maintain detailed records of all chemical pest control treatments for a period of at least three (3) years.

(3) The notice and recordkeeping requirements in clauses (1) and (2) and subsection (c) do not apply to the application of:

(i) disinfectant and antimicrobial products;

(ii) self-containerized baits placed in areas not accessible to students and gel-type baits placed in cracks, crevices or voids; or

(iii) swimming pool maintenance chemicals in the care and maintenance of a swimming pool.

(c) The following prohibitions shall apply:

(1) Except as provided in clause (2):

(i) pesticides may not be applied within a school building where students are expected to be present for normal academic instruction or organized extracurricular activities within seven (7) hours following the application or on school grounds where students will be in the immediate vicinity for normal academic instruction or organized extracurricular activities within seven (7) hours following the application; or

(ii) the applicator shall comply with reentry time restrictions contained on the pesticide label; whichever time period is longer.

(2) Students may not be present in an untreated portion of the school building unless the area being treated has a separate ventilation system and is separated from the untreated portion by smoke or fire doors or is a separate building.
(d) The department shall promulgate such rules and regulations as necessary to administer this section.

(e) The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Applicator." A certified applicator, commercial applicator or public applicator.

"Certified applicator." An individual who is certified under section 16.1, 17 or 17.1 of the act of March 1, 1974 (P.L. 90, No. 24), known as the "Pennsylvania Pesticide Control Act of 1973," as competent to use or supervise the use or application of any pesticide.

"Commercial applicator." A certified applicator, whether or not he is a private applicator with respect to some uses, who uses or supervises the use of any pesticide on the property or premises of another or on easements granted under State law, or any applicator who uses or supervises the use of any restricted-use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product. The secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of their employer as commercial applicators.

"Department." The Department of Agriculture of the Commonwealth.

"Insect." Any of the numerous small invertebrate animals generally having a more or less obviously segmented body, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

"Nematode." An invertebrate animal of the phylum Nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform or saclike bodies covered with cuticle and inhabiting soil, water, plants or plant parts. The term includes nemas and eelworms.

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

"Pest." An insect, rodent, nematode, fungus, weed or other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man or other living animals, declared to be a pest under

"Pest control information sheet." A document which contains the date of treatment, the name, address and telephone number of the applicator, the pesticide utilized and any other information that is required by the Secretary of Agriculture.

"Pesticide." A substance or mixture of substances intended for preventing, destroying, repelling or mitigating a pest and a substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

"Pesticide application technician." An individual employed by a commercial applicator or governmental agency who, having met the competency requirements as set forth in the act of March 1, 1974 (P.L. 90, No. 24), [FN2] known as the "Pennsylvania Pesticide Control Act of 1973," is registered by the Secretary of Agriculture to apply pesticides under the direct supervision of a certified applicator.

"Public applicator." A certified applicator who applies pesticides as an employe of the Commonwealth or its instrumentalities or a local agency.

"School." A school district, an intermediate unit or an area vocational-technical school or any of these entities acting jointly.

CREDIT(S)


[FN1] 3 P.S. §§ 111.36a, 111.37, 111.37a.

[FN2] 3 P.S. § 111.21 et seq.

24 P.S. § 7-772.2, PA ST 24 P.S. § 7-772.2

Current through Act 2010-17

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CHAPTER 128. PESTICIDES

Subchap. Sec.

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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

Sec.

128.1. Scope.
128.2. Definitions.
128.3. Fees.

§ 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.


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**


**Cross References**

This section cited in 7 Pa. Code § 46.1026 (relating to pesticides); and 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:

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.

(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 section 7(b) of the Pesticide Control Act of 1973 (3 P. S. § 111.27(b)).

Source


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

Sec.

128.10. Licensing requirements for pesticide dealer.
128.11. Recordkeeping.

PEST MANAGEMENT CONSULTANTS

128.22. Licensing.
128.23. Categories of pest management consultant.
§ 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


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


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).
§ 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


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
(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. § 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


§ 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


Subchapter F. PESTICIDE
HYPERSENSITIVITY REGISTRY

Sec.

128.111. Registry.
128.112. Notification of hypersensitive individuals.

Source


§ 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


§ 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


Cross References

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