

Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE

Amended

INDEPENDENT REGULATORY
REVIEW COMMISSION

2009 SEP 15 PM 2:14

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(1) Agency:
AGRICULTURE

(2) Agency Number: 2

Identification Number: 149

IRRC Number:

2793

(3) Short Title:
"Pesticides"

(4) PA Code Cite:
7 Pa. Code, Chapter 128

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

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(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Same.

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The existing Pesticide regulations have not been updated for many years. This regulation is intended to: clarify and update the existing regulations; render the regulations gender neutral; bring the existing requirements into compliance and uniformity with changes in Commonwealth law, and recent restrictions put forth by the US Environmental Protection Agency (EPA). Additional amendments were included for state registration of EPA accepted pesticides, especially in the areas relating to sales of restricted use pesticides and identification of individuals seeking to sell or receive restricted use pesticides. These amendments were added to address homeland security issues.

Several sections were deleted or changed in the regulations to reduce the record-keeping requirements of applicators and provide cost savings to the Commonwealth, commercial and public pesticide application businesses. This includes reducing the publication and distribution of the Hypersensitivity Registry from 4 to 2 times per year.

The regulation will increase the fee charged pesticide registrants to register a pesticide for sale and use within the commonwealth from \$135.00 to \$250.00 and establish new fees for testing (\$50) and licensing (\$10) pesticide dealer managers.

(9) Include a schedule for review of the regulation including:

- | | |
|---|--|
| A. The date by which the agency must receive public comments: | <u>30 days after published as proposed</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>Unknown</u> |
| D. The expected effective date of the final-form regulation: | <u>upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>immediately</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>Dealers within one year</u> |

(10) Provide the schedule for continual review of the regulation.

The Department, with the advice and assistance of the Pesticide Advisory Board ("PAB") and members of the regulated community will continue to review and monitor any necessary changes to the regulations.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Pennsylvania Pesticide Control Act of 1973, March 1, 1974, P.L.90, No. 24, *as amended*, 3 P.S. §111.27(b); The "Federal Insecticide Fungicide, and Rodenticide Act of 1947, as amended 1972, 7 U.S.C. §136 et seq.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The Pennsylvania Pesticide Control Act of 1973, March 1, 1974, P.L.90, No. 24, *as amended*, 3 P.S. §111.27(b); The "Federal Insecticide Fungicide, and Rodenticide Act of 1947, as amended 1972, 7 U.S.C. §136 et seq.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Pesticides are valuable to our State's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life. But it is essential to the public health and welfare that they be regulated to prevent adverse affect on human life and the environment. The proposed changes will set minimum age requirements for certification; provide for requirements for identification of individuals in the interests of homeland security, seeking to obtain or receive or sell Restricted Use Pesticides; institute competency and identification requirements for persons managing pesticide dealerships selling Restricted Use Pesticides. These changes will increase the traceability and security for the most toxic pesticides. The changes will also reduce the burden on record keeping for the regulated community. Change to the financial responsibility section will allow for cost savings for regulated business from the increase of the maximum allowable deductible. Protect young children from possible exposure to pesticides at schools and daycare centers.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

600 Pesticide dealerships will be required to have a licensed manager at each location. The manager will be required to pass a written examination and have a \$15.00/yr fee increase. New dealerships in year one and existing locations in year 2+ will have a \$50.00 examination fee for a manager license. Persons under the age of 18 will not be eligible for certification as a pesticide applicator. 1,200 Pesticide manufactures/distributors will be required to pay an additional \$115.00/product to register 13,000 different products for sale in Pennsylvania. Persons listed in the Pesticide Hypersensitivity Registry will only be able to update listings twice per year. Limit the number of hours permitted for pesticide application at schools and daycare facilities.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

1,200 pesticide manufactures/distributors, 600 pesticide dealerships, 650 persons on the Hypersensitivity Registry, 1,500 municipalities and school districts, 6000 pesticide application business, 4,500 private schools and daycare centers including outdoor applications, 35,000 certified pesticide applicators, and any citizen of the Commonwealth who uses a pesticide.

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SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Pesticide dealerships will have an increase in recurring costs of \$15.00/year and additional recurring costs of \$0-50.00/year. Forty five hundred (4,500) businesses will have recurring administrative savings of \$100/year. Twelve hundred (1,200) currently regulated pesticide manufactures/disturbers will have a recurring cost of \$115.00 per product registered (for 13,000 products avg. cost per company \$1245). Fifteen hundred (1,500) local governments, school districts and other state agencies recurring administrative savings of \$100.00/year.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

1,500 Local governments and school districts have recurring administrative/insurance savings of \$100.00/year totaling \$150,000. No additional costs would be incurred by local governments

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Pennsylvania state agencies at 50 locations throughout the Commonwealth will have recurring administrative savings of \$100.00/year totaling \$5,000. Agriculture will have reoccurring annual savings of \$24,000/year in printing/ mailing costs. Agriculture will have initial implementation costs for the first year of \$15,000 and reoccurring administrative costs of \$2000 annually.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	500,000	500,000	500,000	500,000	500,000
Local Government	0	150,000	150,000	150,000	150,000	150,000
State Government	0	29,000	29,000	29,000	29,000	29,000
Total Savings	0	679,000	679,000	679,000	679,000	679,000
COSTS:						
Regulated Community	0	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
Local Government	0	0	0	0	0	0
State Government	0	2,000	2,000	2,000	2,000	2,000
Total Costs	0	1,502,000	1,502,000	1,502,000	1,502,000	1,502,000
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Pesticide Program	\$2,706,000	\$2,684,000	\$3,163,000	\$3,581,000

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<p>(21) Explain how the benefits of the regulation outweigh any cost and adverse effects. Currently no regulations exist for requiring identification of the applicant or knowledge of pesticides in order to acquire a license to obtain/distribute the most hazardous pesticides. The amendment will require at least one person from a pesticide dealership to prove identification and knowledge of pesticides and pesticide storage. With the possibility of pesticides being used as weapons, the industry is supportive of the regulation, which has a minimal impact on individual business. By regulation the Department cannot raise fees until there is a projection of 2-years of deficit spending. Without the fee increase, sections of the existing program will need to be reduced or eliminated. The pesticide manufacturers are required to provide product stewardship as part of their federal EPA registration and support the use of fees they pay into dedicated programs, such as this, which are utilized for product stewardship activities as a cost-effective way to meet this obligation. Without the fee increase, pesticide disposal and container recycling programs will be eliminated or greatly reduced, limiting the options and greatly increasing the costs to businesses and hazards to the citizens of the commonwealth. Reducing the publication of the Hypersensitivity Registry and moving the publication dates will cut these costs by 50%. The new publication dates will be more inline with the times of the year when pesticides are applied and will still allow for mid-season additions and changes which will have only a minor delay in the revisions to the Registry over the current publication schedule. Additionally the information is now available in real-time on the internet.</p>				
<p>(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved. Pesticide Advisory Board meetings in 6-18-02, 8-20-02, 12-17-02, 5-1-03, 10-3-03, 11-19-03 5-6-08 , 9-18-2008; Newsletter articles mailed to 6,200 application business and 600 dealerships in 8-2002, and 8-2003 8-2004, 10-2008; Newsletter articles mailed to 20,000 private pesticide applicators in 12-2002, and 11-2003; Direct mailing to 700 persons on Hypersensitivity Registry in 12-2002; Direct mailing to 620 Pesticide Dealerships in 07-2003; Presentations on the proposed changes were given at numerous meetings attended by pesticide applicators, business owners and dealers, including PA Christmas Tree Growers Association Annual Meeting (1-04), Northeast Agricultural Aviation Association (1-04, 01-08), PennAg Industries Annual Meeting (12-02), PA Campground Owners Association Annual Conference (11-04), Lawn Care Association of Pennsylvania board meeting (10-03), PA Office of Rural Health Satellite Training Conference, 7 locations to 300 applicators (9-03) Professional Pest Management School 12-08 (300) and others.</p>				
<p>(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected. As the federally-designated lead agency for pesticide regulation within the state, the Department receives \$600,000 annually to administer the pesticide program in accordance with EPA's grant guidance. There is no alternative regulatory provision which can affectively regulate the pesticide application community while maintaining the safety of the citizens of the Commonwealth.</p>				

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The amended sections of this regulation which require proof of identity within the licensing provisions is regarded as vital to address the security of pesticide sales and allow for the proper identification of persons with the ability to purchase large quantities of the most hazardous pesticides. US EPA has recommended these changes along with minimum age requirements and is presently working to codify these items in its own regulations.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation is consistent with other states and will not place Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The proposed amendments will require the pesticide dealer to retain signatures of the person receiving deliveries of "restricted use" pesticides. The proposed amendments will however, eliminate the existing requirement for businesses to maintain the "formulation" of pesticides applied. These are all internal records that are to be made available upon request for inspection and are not submitted to the agency.

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(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Accommodations were made to allow for small business pesticide dealerships to license persons for the first year with the examination fee waived, and allow for currently certified commercial applicators to have the examination fee waived for one year to become licensed an a pesticide dealer manager.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: *Amy M. Elliott*
(Deputy Attorney General)
SEP 10 2009

DATE OF APPROVAL

! Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-149

DATE OF ADOPTION 2-13-09

BY *D. Wayt*

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY: *Andrew C. Clark*
AUG 14 2009
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(~~Strike inapplicable title~~)

! Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

**Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 128
Pesticides**

PROPOSED RULEMAKING

TITLE 7 – PESTICIDE RULES AND REGULATIONS

DEPARTMENT OF AGRICULTURE

[7 Pa. Code, Chapter 128]

Statutory Authority

The Department of Agriculture (“Department”) proposes to amend Chapter 128 of the Pesticide Regulations (7 Pa. Code, Chapter 128) as set forth in Annex A. This regulation is adopted under the specific authority of the Secretary of Agriculture to promulgate appropriate regulations for the safe handling, transportation, storage, display, distribution and disposal of pesticides as set forth in §7(b)(2) of act of March 1, 1974,(P.L. 90, No.24) known as the “Pesticide Control Act of 1973” (“Act”) (3 P.S. §111.27(b)(2)).

Purpose

The purpose of this proposed regulation is to clarify, update, and in some instances, delete, the existing pesticide regulations in order to ensure that the regulated community has a better understanding of the regulatory requirements and to maintain the Department’s statutory mandate to protect the public health and welfare. Some of the Department’s changes were also included to make the regulations gender neutral, bring the existing requirements into compliance with changes in Commonwealth law, and comply with additional restrictions put forth by the U.S. Environmental Protection Agency (EPA). Additional requirements set forth in the regulations were included for state registration of EPA approved pesticides, especially in the areas relating to sales of restricted use pesticides and the identification of individuals seeking to sell or receive restricted use pesticides. These changes were added to address homeland security issues.

The Department also removed several sections from the regulations to ease the requirements on applicators and provide substantial cost savings to the Commonwealth, commercial and public pesticide application business.

Background

In developing and drafting the proposed regulations, the Department has continuously sought the input and comments from numerous industry entities including the Pesticide Advisory Board (“PAB”), members of the general public, members of the regulated community, as well as various pesticide trade groups, associations and organizations. These regulations have been the subject of significant discussions at PAB public meetings starting in 2002 through 2008. To date, the PAB continues to monitor the proposed regulation and its impact upon the regulated community and advise the Secretary accordingly.

Specifically, as part of its public outreach and input, the Department conducted direct mailing to over 650 persons on the Hypersensitivity Registry since December 2002. The Department mailed newsletters discussing the proposed regulations to 6,000 pesticide application businesses. The Department also conducted presentations regarding the proposed changes at numerous meetings attended by pesticide business owners and dealers, including, but not limited to the annual meeting of the PA Christmas Tree Growers Association.

As a result of years of public and pesticide industry input, the Department has subsequently incorporated many of the suggested comments and other changes to the

proposed regulation. The Department believes that the input from the industry has been vital in producing a reasonable and prudent regulation, designed to protect the public health and welfare of the citizens of the Commonwealth.

Summary of the Major Provisions of the Proposed Rulemaking

Subchapter A. GENERAL PROVISIONS

Section 128.2 (relating to definitions) contains several new definitions, including constructive notification, dosage or rate of application, FIFRA, perimeter treatment, person, pesticide dealer manager, therapeutic swimming pool, worker protection standard. The definition of “formulations” was deleted.

Section 128.3(a) (relating to fees) clarifies that the annual fee for a pesticide dealer’s license is \$10 “per location.” Many pesticide dealers have more than one location, but for years have been able to utilize only one license. The Department believed it necessary to control the dealer’s license by location.

Subsection (i) creates a \$15 annual fee for the new pesticide dealer manager’s license per individual and subsection (ii) creates a \$3 duplicate pesticide dealer manager’s license fee.

Section 128.3(f) (3) (relating to examination fees) creates a \$50 fee for the “pesticide dealer manager’s examination. Subsections previously number (3) and (4) are renumbered to (4) and (5) respectively.

Section 128.3(g) renumbered subsections (i) and (ii) for purpose of consistency.

Section 128.3(i) increased the annual fee to register pesticide products from \$135 to \$250. The last increase was in 2001 when the fee was changed from \$100 to \$135. The Department believes that this fee increase is reasonable and consistent with the fees other states charge to register pesticide products and in certain circumstances, the proposed fee increase is far less than that charged by New York (\$300), California (\$1000) and Louisiana (\$700), for example. With respect to all the above fee increases, the Department has weighed the impact the increase will have on the regulated community with the increase in the operational costs associated with administering and regulating this industry.

Subchapter B. LICENSES, CERTIFICATES AND PERMITS

PESTICIDE DEALERS

Section 128.10 (relating to license requirements for pesticide dealer) establishes new licensing requirements for businesses and individuals that resell or distribute restricted use pesticides. Each pesticide dealer must employ one person as a “pesticide dealer manager.” This section prohibits the pesticide dealer from distributing restricted use pesticides to persons without proof of proper identification.

Section 128.11 (relating to recordkeeping) changes the word “sale” to distribution and the recordkeeping information regarding distribution of restricted use pesticides. Individuals were not keeping proper records and documentation because the restricted use pesticide was not being technically sold, but distributed. PDA believes that this amendment will clarify the recordkeeping requirement.

Section 128.12 (relating to licensing of a pesticide dealer manager) establishes the parameters of a pesticide dealer manager’s license, including age, qualifications, renewal and expiration.

Section 128.13 (relating to determination of competence) establishes the components of the written examination and the procedure for obtaining the pesticide dealer manager’s license upon successful completion of the written examination.

PEST MANAGEMENT CONSULTANTS

Section 128.24 (relating to recordkeeping) deletes the requirement to maintain the “formulation” of pesticides in light of the deletion of the definition of “formulation” in section 128.2.

PESTICIDE APPLICATION BUSINESSES

Section 128.31(c) (relating to license requirements) requires that the pesticide application business license number assigned to that business be applied in a contrasting color.

Section 128.31(d)(1) and (2) requires a pesticide application business to return voided applicator certificates or registered technician cards to the Department if those individuals are no longer employed by that business or a written explanation why the applicator certificates and/or registered technician cards are unavailable.

Section 128.31(f) requires application businesses which include aerial applicators to provide the Department proof of compliance with Federal Aviation Administration regulations relating to agricultural aircraft operations.

Section 128.32 (relating to categories of business licenses) creates a new applicator category for sewer root control under the business category (D) and expands right-of-way to include “weeds” in category (E). This section deletes the industrial “weeds” category from category (F).

Section 128.33 (relating to assignment of work) changed the word “permit” to “allow” to avoid confusion.

Section 128.34 (relating to financial responsibility) raises the maximum allowable deductible amount from \$1,000 to \$2,500.

Section 128.35 (relating to recordkeeping) modifies, updates, clarifies and renumbers the recordkeeping requirements and provisions relating to pesticide applications by pesticide businesses. The Department believes that reordering and renumbering this section provides a more clear understanding of the pesticide businesses' responsibilities.

COMMERCIAL AND PUBLIC APPLICATIONS

Section 128.41 (relating to requirements for certification) clarifies the language of this section as it relates to commercial and public applicators. The proposed amendment also includes the use of pesticides which are otherwise deemed exempted from federal registration. In subsection (b), the proposed regulation deletes the references to private-residential swimming pools and adds a specific exemption for therapeutic pools.

Section 128.42 (relating to categories of commercial and public applicators) clarifies applicator Category 26 - Sewer Root control (§128.32), which formally adopts and complies with the United States Environmental Protection Agency's pesticide classification change. The proposed amendment combines pesticide applicator Categories 10 and 14 into one single category covering both areas of "right-of-way and weed" control. The proposed amendment also re-words the language of applicator categories 11, 12 and 15 with no change to the meaning.

Section 128.43 (relating to determination of competence) sets forth the identical criteria and areas of knowledge and competence for the written examination which is set forth in the Pesticide Control Act of 1973 (3 P.S. §111.36a). The proposed amendment also requires proper proof of identity when taking a proctored examination and increases the time for completing the core examination plus at least one category from 180 days to one year.

Section 128.44 (relating to eligibility) establishes the minimum age a person is eligible for certification at 18 years of age. It also requires compliance with the provisions of the Federal Agricultural Aircraft Operations contained in 14 CFR Part 137.

Section 128.45 (relating to recertification) updates the security issues in core training and requires that the trainer have at least 3 years experience as a certified applicator or equivalent education to conduct the training. The proposed amendment also provides for penalties for falsification of training or attendance at recertification courses.

PESTICIDE APPLICATION TECHNICIANS

Section 128.51 (relating to training program) reiterates the knowledge areas of training required by the Act for pesticide application technicians.

Section 128.52 (relating to registration) provides that a pesticide application technician must be at least 16 years old at the time of registration. The amendment also clarifies that the training period for pesticide application technicians must be at least 30 calendar days long.

Section 128.53 (relating to recordkeeping) requires, as a security measure, the retention of pesticide business employees' photo identification and other forms of valid

identification. The proposed amendment also requires that identification records must be completed and made available to the Department no later than 24 hours after the training set forth in §128.51.

PRIVATE APPLICATORS

Section 128.61 (relating to determination of competence) reiterates the knowledge areas of training required by the Act for private applicators, including security relating to pesticide use. The proposed amendment requires that private applicators must provide personal identification, including photo identification to the examination proctor.

Section 128.62 (relating to eligibility) provides that a private applicator must be at least sixteen years old in order to be eligible for a permit for the application of pesticides. The proposed amendment clarifies that a private applicator with an expired permit cannot use a restricted use pesticide, unless under the direct supervision of a certified applicator.

Section 128.63 (relating to recertification) sets forth the required core and category courses for the recertification of private applicators as specified in the Act. The proposed amendment enumerates the penalties for the falsification of course attendance and course information.

Section 128.64 (relating to fumigation by a private applicator) clarifies that a private applicator must hold a permit in the proper fumigation category in to be able to purchase or use a restricted use fumigation product. The proposed amendment also clarifies that only materials approved by the Department may be used during an examination for private applicators. It also requires that the private applicator provide to the examination proctor proper and valid photo identification.

Section 128.65 (relating to recordkeeping) removes the requirement of “formulation” in private applicator’s recordkeeping and reorders the topics in this section for clarity. The proposed amendment requires that a restricted use pesticide application record must be completed in writing and made available to the Department within 24 hours after the application date.

RECIPROCITY

Section 128.71 (relating to general provision) allows for additional out-of-state obtained pesticide categories to be added to an existing reciprocal certification.

Section 128.72 (relating to procedure) requires that any person seeking reciprocity with the Commonwealth must be at least 18 years old and provide valid photo identification and proof of out-of-state residency.

Subchapter C. PRIOR NOTIFICATION

Section 128.81 (relating to right-of-way application) clarifies and provides uniformity with other prior notification sections within the regulations. The language does not alter the meaning.

Section 128.82 (relating to nonagricultural specific site application) clarifies and provides uniformity with other prior notification sections within the regulations. The language does not alter the meaning.

Section 128.83 (relating to ornamental or turf application) of the existing regulations has been moved and renumbered as Section 128.85. The Department moved this section to arrange the types of notification requirements together for purposes of consistency and uniformity.

Section 128.84 (relating to nonagricultural area-wide application) of the proposed amendment clarifies and provides uniformity with other prior notification sections.

Section 128.85 (relating to agricultural applications) of the existing regulations has been moved and renumbered as "Section 128.83." The Department moved this section to arrange the types of notification requirements together for purposes of consistency and uniformity.

Section 128.86 (relating to constructive notification) has been deleted in its entirety and moved to the definition section in Section 128.2. This section is reserved.

Section 128.87 (relating to prior notification by certified mail) has been deleted and reserved.

Section 128.88 (relating to recordkeeping) establishes that records created under this provision must be completed within 24 hours after the application date.

Subchapter D. REGISTRATION OF PESTICIDES

Section 128.91 (relating to EPA approval required) completely modifies this section to allow for United States Environmental Protection Agency approval or registration for standards for state registration. EPA's changes to pesticide registration requirements exempted some pesticides from the EPA registration process. The proposed amendment will clarify that those exempted pesticides are included within the Department's registration process.

Subchapter E. MISCELLANEOUS

Section 128.101 (relating to reporting of significant pesticide accidents or incidents) adds the word "incident" to the reporting requirement and further defines the term significant to provide clarity in the existing regulation. The proposed amendment will require the reporting to the Department of unexpected adverse effects resulting from a pesticide product even when applied consistent with the label directions.

Section 128.102 (relating to protected designated areas) expands the list of protected areas to include conservation areas and those areas containing endangered or threatened plant or animal species as those terms are defined by various statutes. The proposed amendment requires the Secretary to approve or deny within 60 days of the receipt of a request for a waiver to apply pesticides in an otherwise protected designated area.

Section 128.103 (relating to handling, transportation, storage, use and disposal of pesticides) eliminates references to open burning of pesticide containers and brings the regulation into compliance with the PA Department of Environmental Protection's Air and Solid Waste regulations. The proposed amendment also clarifies the Department's ability to enforce the provisions of the Federal Worker Protection Standard as set forth in 40 CFR, part 170.

Section 128.104 (relating to experimental use permits) clarifies that it is the responsibility of the registrant of a pesticide to notify the Department of an EPA-approved experimental use permit.

Section 128.106 (relating to additional responsibilities within school buildings) specifically includes "school grounds" in the existing prohibition from applying pesticides in common access areas within a school building when students are expected to be in that area for normal academic instruction or other related activities. The proposed amendments provide a list of exemptions to the pesticide application prohibition.

Section 128.107 (relating to providing information upon request) is a new provision which requires that all pesticide businesses and individuals maintain records regarding the sales, application, distribution, storage and transportation of pesticides and to provide those records to the Department upon request.

Subchapter F. PESTICIDE HYPERSENSITIVITY REGISTRY

Section 128.111 (relating to the registry) allows the Department to distribute the hypersensitive registry by means other than mail. In order to reduce costs, the proposed amendment allows the Department to reduce the number of publications of the registry from 4 times per year to only two. The amendment changes the registry renewal date from January to October of each year.

Section 128.112 (relating to notification of hypersensitive individuals) allows additional means of notification to the pesticide hypersensitive individual by pesticide businesses. The proposed amendment clarifies existing exemptions to the notification requirement and specifically exempts notification regarding an application of a pesticide in the normal care and maintenance of a swimming pool.

Fiscal Impact

Commonwealth: The Department has determined that the regulation will have little or no adverse financial impact on the Commonwealth since all funds budgeted for the Program are derived from the Pesticide Restricted Account. The funds in that account are obtained

from licensing, permitting and registration fees and civil penalties placed upon pesticide manufacturers, dealers and applicators doing business within the Commonwealth.

There will, however, be some cost savings in the amount of time needed to review and process Hypersensitivity Registries as a result of the reduced number of times the registry is published.

Political Subdivisions: The regulation will impose no costs and have no adverse fiscal impact on political subdivisions.

Private Sector: The regulation will have a direct fiscal impact on the private sector. Specifically, pesticide manufacturers will have increased fees for the registration of their pesticide product. Pesticide dealers will also have an increased fee. The regulation will, however, provide some cost savings to the private sector by raising the insurance deductible levels.

General Public: The regulation will not have any fiscal impact on the general public.

Paperwork Requirements

The proposed regulations would not appreciably increase the paperwork burden of the Department or other government units or citizens, including the regulated community since there are already paperwork record-keeping requirements in the existing regulations.

Effective Date

The proposed regulation will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Subset Date

There is no sunset date for the proposed regulation. The Department will review the efficacy of this regulation on an ongoing basis.

Contact Person

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Plant Industry, 2301 N. Cameron Street, Harrisburg, Pennsylvania 17110-9408. Attention: Earl Haas

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on September 15, 2009, the Department submitted a copy of the proposed regulation and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulation within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act sets forth detailed procedures for review, prior to final publication of the regulations, by the

Department, the General Assembly and the Governor of comments, recommendations or objections raised.

DENNIS C WOLFF,
Secretary

ANNEX A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 128. PESTICIDES

Subchapter

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Subchapter A. GENERAL PROVISIONS

Sec.

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§ 128.1. Scope.

This chapter prescribes policies and procedures relating to the following:

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

§ 128.2. Definitions.

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

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

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

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

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

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

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

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

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

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

Department—The Department of Agriculture of the Commonwealth.

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

EPA—The United States Environmental Protection Agency.

FIFRA—Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (“FIFRA”) (7 U.S.C. §136 et seq) as amended.

[*Formulation*—The physical composition of the pesticide product; for example, “dust,” “emulsifiable concentrate,” “wettable powder” and “granular” are ways to describe the formulation of a pesticide product.]

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—The application of pesticide to the exterior of a structure to a maximum distance of ten (10) feet from the structure, unless the pesticide label clearly states otherwise, to prevent pests from invading the structure. (The term excludes tamper resistant bait stations)

Person—Means any 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—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:

- (i) The proposed date of application.
- (ii) The municipalities where the proposed application sites are located.
- (iii) The name, address and telephone number of [a person] the pesticide application business to whom requests for additional information should be directed.

(iv) Requests 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 the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (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 [employee] 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 [employee] 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.

§ 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.

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

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

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

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

(d) *Commercial applicator's certificate.* The annual fee for the commercial applicator's certificate is \$40. When the initial certification requires examination, no fee will be charged. The fee for a duplicate commercial applicator's certificate is \$10. If an applicator is employed by more than one pesticide application business, a separate certificate and fee is required.

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

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

(1) Commercial/public applicator's core examination—\$50.

(2) Commercial/public applicator's category examination—\$10.

(3) Pesticide dealer manager's examination—\$50.

[(3)] (4) Private applicator's examination—no charge.

[(4)] (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.*

[(i)] (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.

[(ii)] (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 [\$135] \$250.

Subchapter B. LICENSES, CERTIFICATES AND PERMITS

PESTICIDE DEALERS

Sec.

128.10 Licensing requirements for pesticide dealer.

128.11 Recordkeeping.

128.12 Licensing of a pesticide dealer manager.

128.13 Determination of competence.

PEST MANAGEMENT CONSULTANTS

- 128.21. Determination of competence.
- 128.22. Licensing.
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PESTICIDE APPLICATION BUSINESSES

- 128.31. Licensing requirements.
- 128.32. Categories of business licenses.
- 128.33. Assignment of work.
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COMMERCIAL AND PUBLIC APPLICATORS

- 128.41. Requirements for certification.
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- 128.51. Training program
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PRIVATE APPLICATORS

- 128.61. Determination of competence.
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- 128.64. Fumigation by a private applicator.
- 128.65. Recordkeeping.

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PESTICIDE DEALERS

§ 128.10. Licensing requirements for pesticide dealer.

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

(b) Each pesticide dealer must, at all times, employ at least one licensed pesticide dealer manager.

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

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

(c) A pesticide dealer may not distribute a restricted use pesticide unless the receiver provides proof of appropriate valid certification or license and proof of personal identification by presenting a photo identification document issued by an agency of the US government or affiliated jurisdiction (i.e. state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two (2) non-photo identification documents one of which must be a US government issued document bearing the persons signature, such as a social security card. The other non-photo identification documents must identify the holder by name and address.

§ 128.11. Recordkeeping.

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

(1) The name and address of the customer and his applicator's certificate number or business or dealer's license number.

(2) The brand name [and formulation] of the restricted use pesticide [that was purchased].

(3) The EPA registration number of the restricted use pesticide.

[3](4) The amount of the restricted use pesticide [that was purchased].

[4](5) The date of the [purchase] distribution.

(6) Signature and identification information of the individual accepting delivery.

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

§128.12. Licensing of a pesticide dealer manager.

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

(b) If a pesticide dealer manager fails to renew his license for a period of one or more years, he must reestablish eligibility as described in §128.13 (relating to determination of competence).

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

(d) For currently licensed pesticide dealer locations the requirements for employment of a pesticide dealer manager will become effective one year from the effective date of this section. Initial examination fee will be waived for one year from the date of promulgation. The requirements for a dealer manager will be immediately effective for pesticide dealer locations licensed on or after the effective date of this section.

§128.13. Determination of competence.

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

(1) Safety.

(2) Labeling and label comprehension.

(3) Storage and security.

(4) Spill control.

(5) Transportation.

(6) Pesticide disposal.

(7) Recognition of pesticide poisoning symptoms and first aid.

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

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

(d) The applicant must provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the US government or

affiliated jurisdiction (i.e. state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two (2) non-photo identification documents one of which must be a US government issued document bearing the persons signature, such as a social security card. The other non-photo identification documents must identify the holder by name and address.

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

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

PEST MANAGEMENT CONSULTANTS

§ 128.21. Determination of competence.

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

§ 128.22. Licensing.

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

§ 128.23. Categories of pest management consultant.

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

§ 128.24. Recordkeeping.

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

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

(5) The date on which this service was provided.

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

PESTICIDE APPLICATION BUSINESSES

§ 128.31. Licensing requirements.

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

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

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

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

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

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

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

(f) If the application business includes aerial applications, the applicant must provide proof of compliance with the Federal Aviation Administration regulations as described in 14 CFR Part 137 –Agricultural Aircraft Operations.

§ 128.32. Categories of business licenses.

A commercial or public business shall identify in its application those business categories in which it desires to operate. A business shall employ for each business category in which it makes a pesticide application at least one applicator who is certified in a specific applicator category recognized under the general business category and shall limit its applications to those applicator categories in which it employs at least one certified applicator. The business categories are listed in paragraphs (1)—(10). The applicator categories recognized under a particular business category are listed under that business category.

(1) Category (A)—Agricultural Plant Pest Control.

- 01 Agronomic Crops
- 02 Fruits and Nuts
- 03 Vegetable Crops
- 05 Forest Pest Control
- 08 Seed Treatment

(2) Category (B)—Agricultural Animal Pest Control.

- 04 Agricultural Animals

(3) Category (C)—Ornamental and Turf Pest Control.

- 06 Ornamental and Shade Trees
- 07 Lawn and Turf
- 22 Interior Plantscape

(4) Category (D)—Aquatic Pest Control.

- 09 Aquatic Pest Control
- 24 Swimming Pools
- 26 Sewer Root Control

(5) Category (E)—Right-of-Way Pest Control.

- 10 Right-of-Way & Weeds

(6) Category (F)—Industrial, Institutional, Structural and Health Related.

- 11 Household and Health Related
- 12 Wood Destroying Pests
- 14 [Industrial Weeds] Reserved
- 15 Public Health Vertebrate Pest Control
- 16 Public Health Invertebrate Pest Control
- 19 Wood Preservation
- 23 Park or school Pest Control

(7) Category (G)—Fumigation.

- 13 Structural Fumigation
- 20 Commodity and Space Fumigation
- 21 Soil Fumigation

(8) Category (H)—Demonstration and Research.

- 18 Demonstration and Research Pest Control

(9) Category (I)—Regulatory.

17 Regulatory Pest Control

(10) **Category (J)—Aerial Applicator.**
25 Aerial Applicator

§ 128.33. Assignment of work.

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

§ 128.34. Financial responsibility.

(a) The Department will consider a certificate of insurance from an insurer or surety to be evidence of financial responsibility if the insurer or surety is licensed to do business under section 7 of the act of January 24, 1966 (P. L. 1509, No. 531) (40 P. S. §1006.7), known as the Surplus Lines Insurance Law, or otherwise permitted by Federal law or the Insurance Department to do business in this Commonwealth, if the following conditions are met:

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

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

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

(4) The maximum deductible amount does not exceed [\$1,000] \$2,500 of the combined policy limits. If a pesticide application business has not satisfied the deductible amount in a prior claim, the policy may not contain a deductible amount.

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

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

(1) The proposal shall include the following:

(i) A master self-insurance and security agreement.

(ii) A balance sheet and income statement which shall reflect the actual financial condition of the business as of the last complete calendar or fiscal year preceding the date of the proposal. These documents shall be prepared in accordance with generally accepted accounting principles and shall be certified by a certified public accountant.

(2) A business will not be approved as a self-insurer unless it posts certain collateral with the Department. This paragraph does not apply to government agencies or authorities.

(3) The minimum required security that shall be furnished to the Department is \$500,000.

(4) Only the following will be accepted as valid collateral for self-insurance purposes:

(i) United States currency, including United States Treasury bills, United States Treasury notes or other negotiable obligations of the United State Government. United States Savings Bonds are not negotiable.

(ii) Evidence of escrow deposits in Federal or State banks, credit unions or savings and loan associations if federally insured. Escrow deposits shall be established for the sole purpose of providing security to meet the duties of a self-insurer.

(iii) Irrevocable letters of credit issued by a bank in this Commonwealth or another bank as approved by the Department.

(iv) Surety bonds issued by insurers authorized or eligible to do business in this Commonwealth.

(v) Bonds or other negotiable obligations issued by a state, subdivision or instrumentality of a state in the United States, if not in default as to principal or interest.

(vi) Corporate bonds, issued by an entity other than the proposed self-insurer, rated A or better by Moody's Bond Record, Moody's Investors Service, Inc.

(vii) Other security approved upon petition to the Department.

(5) The Department will hold the collateral furnished for the benefit of the persons to whom the self-insurer is obligated.

(i) The self-insurer shall pay for obligations incurred under the act by assets readily reduced to liquid assets, such as demand deposits, time deposits, negotiable instruments and other assets which may be readily reduced to liquid form.

(ii) If the self-insurer is not able to discharge its obligations, the self-insurer may petition the Department to release the collateral posted as is necessary to satisfy the obligations of the self-insurer.

(iii) If withdrawals from collateral are required, the self-insurer shall replace the security within 72 hours from the date of withdrawal, to retain its certificate as a self-insurer.

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

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

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

§ 128.35. Recordkeeping.

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

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

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

(3) The brand name [and formulation] of the pesticides used.

(4) The EPA product registration number.

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

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

[(6)] (7) The name(s) and the [certificate] certification or technician's registration number [, whichever is applicable,] of each person making or supervising the application. When applicable the names of non-certified/non-registered persons involved in the application.

[(7) The EPA product registration number.]

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

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

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

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

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

COMMERCIAL AND PUBLIC APPLICATIONS

§ 128.41. Requirements for certification.

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

(1) A person[, whether or not his a private applicator with respect to some uses,] who applies or supervises the application of a pesticide on an easement or on the property or premises of another [, including an easement] (other than their employer). This includes the use of a pesticide exempted from federal registration (relating to §128.91 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 [by an owner or resident] 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.

§ 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 & 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 [fumigant, except where applied out of doors to a rodent burrow which does not lead into a dwelling or other structure, and except in the case of termite or other structural pest control is included. The treatment of an emergence crevice, an ant runway or a surface to control carpenter bees or the surface application of a pesticide to a wooden box, furniture or lumber is included.] 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 [an] 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) [Industrial weeds – The use of a pesticide to control vegetation around a structure, such as an oil tank, an industrial railway siding, an airport runway, a parking lot, a fence or an industrial building.] 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 § [128.83] 128.85 (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.

§ 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 at section 16.1 of the act (3 P. S. §111.36a).

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

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

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

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

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

(vi) General precautions to be followed in cleaning and maintaining equipment used.

(vii) Transportation, storage, security, and disposal of pesticides.

(viii) Applicable Federal and State pesticide laws and regulations.

(2) Safety.

(3) Labeling and label comprehension.

(b) An examination for certification will consist of two parts:

(1) One part of the examination, the core area, will be based on general information required of commercial and public applicators.

(2) The second part of the examination will be based on information related to the specific categories of commercial and public applicators.

(c) An examination shall be proctored. [A person may use approved reference sources during an examination.] The applicant must provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the US government or affiliated jurisdiction (i.e. state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two (2) non-photo identification documents one of which must be a US government issued document bearing the persons signature, such as a social security card. The other non-photo identification documents must identify the holder by name and address. Only reference materials approved by the Department may be used during the examination. Successful completion of the core area and, successful completion of part two of the examination in a specific category will entitle a person to certification in that category. A person desiring certification for additional categories will be required to be examined for each additional category. An opportunity will be provided to retake an examination when a passing grade has not been achieved.

(d) If a person successfully completes only one part of the two-part examination, successful completion of the remaining part of the examination shall be obtained within [180-calendar days] one year from the date the initial part of the examination was successfully completed.

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

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

§ 128.44. Eligibility.

(a) A person is eligible for certification upon reaching the age of eighteen (18) and fulfilling the requirements under §§128.41—128.43 (relating to requirements for certification; categories of commercial and public applicators; and determination of competence). In addition to the requirements for a commercial applicator's certification, an aerial applicator shall have a current commercial agricultural aircraft operator's certificate issued by the Federal Aviation Administration [under] or show evidence of compliance with 14 CFR [§ 137.19(a) (relating to certification requirements)] Part 137 Agricultural Aircraft Operations.

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

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

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

(e) If a person fails to complete delinquent recertification credits within 1 year from the triennial certification expiration date or fails to renew their certification for any reason during that time period, the person is required to reestablish their eligibility by meeting the requirements of § 128.3, 128.43 and 128.44 (relating to fees; determination of competence; and eligibility).

§ 128.45. Recertification.

(a) At intervals of 3 years, a certified commercial or public applicator shall provide evidence of having received current update training in technology relating to pesticides in the specific categories in which he is certified to maintain certification. Training will be divided into core and category specific areas as follows:

(1) *Core.*

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

(2) *Category specific.*

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

(b) Recertification credits will be given on the basis of attendance at [meetings] courses or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the "Pennsylvania State Plan for Certification of Pesticide Applicators." This plan has been filed with and approved by the EPA in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. §§136—136y). Records of training will be maintained by the Department and a yearly statement will be sent to each certified commercial or public applicator describing credits obtained and credits due to meet recertification standards.

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

(1) Training shall be conducted or sponsored by an educational institution, an individual, an association, a business or a governmental agency.

(2) Training shall be approved for recertification credits at the rate of 1 credit per 30 minutes of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like.

(3) Sponsors of recertification training shall submit a written request for course approval to the Department's regional office for the region in which the meeting will be held. A request to approve out-of-State training shall be submitted to the Department of Agriculture, Bureau of Plant Industry, [Agronomic Services] Health and Safety Division, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted at least 15 working days prior to the training date.

(4) A request for training approval shall include the following information:

(i) The name, address, and phone number of the contact person who is coordinating the meeting.

(ii) The specific location of the meeting.

(iii) The date and time of the meeting.

(iv) A listing of the [speakers] trainers, subject matter and time allotted to each subject.

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

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

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

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

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

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

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

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

PESTICIDE APPLICATION TECHNICIANS

§ 128.51. Training program.

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

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

(i) Identification of pests relative to job responsibility.

(ii) The proper use of pesticides and use of application equipment, including calibration and maintenance equipment used on the job.

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

(iv) Transportation and disposal of pesticides used in and around the workplace.

(v) Applicable State and Federal regulations as they affect the work assignments.

(2) Spill handling.

(3) Human health and environmental effects.

(4) Safety and security.

(b) The technician training program shall include a sufficient level of on-the-job training to allow the technician to competently perform the functions associated with an application of pesticides in which the technician is anticipated to be involved.

(c) A technician is not permitted to make a pesticide application using techniques, pesticides or equipment not included in his training.

(d) A technician shall undergo annual training to assure that his knowledge is adequate for satisfactory completion of his work related duties.

(e) A certified applicator with at least 1 year's experience in the categories in which the technician is to be trained shall be responsible for administering the training program. This person shall develop a training program which includes the appropriate level of training needed by the technician to satisfactorily complete work related duties subject to disapproval by the Department.

§ 128.52. Registration.

(a) A business shall submit to the Department [by first class mail, postage prepaid, on a form provided by the Department,] a list of persons it intends to register as technicians. The postmarked date or date of receipt will indicate the beginning of a training period to consist of at least 30 calendar days of training.

(b) At the completion of training, the business shall file with the Department an application to register the technician. The application shall be signed by the certified applicator responsible for administering the training program and the technician verifying satisfactory completion of the training program. The annual registration fee shall be submitted with the application.

(c) A registration expires on February 28 each year.

(d) An application for a new registration will be accepted throughout the calendar year. A full year's registration fee will be required for a portion of a year, except that the Department

may issue a registration for an additional year when an application is initially filed during the last 2 months of the registration year.

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

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

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

§ 128.53. Recordkeeping.

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

(b) The pesticide application business must keep as part of its records proof of personal identification by retaining copies of a photo identification document issued by an agency of the US government or affiliated jurisdiction (i.e. state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two (2) non-photo identification documents one of which must be a US government issued document bearing the persons signature, such as a social security card. The other non-photo identification documents must identify the holder by name and address.

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

PRIVATE APPLICATORS

§ 128.61. Determination of competence.

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

(1) Areas of knowledge described at section 17.2 of the act (3 P. S. §111.37b).

(i) Labeling and label comprehension.

(ii) Safety and health.

(iii) Environmental protection.

(iv) Pests.

(v) Pesticides.

(vi) Integrated pest management.

(vii) Equipment.

(viii) Application techniques and technology.

(ix) Laws and regulations.

(2) Transportation, storage, security and disposal.

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

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

(d) The applicant must provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the US government or affiliated jurisdiction (i.e. state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two (2) non-photo identification documents one of which must be a US government issued document bearing the persons signature, such as a social security card. The other non-photo identification documents must identify the holder by name and address.

§ 128.62. Eligibility.

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

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

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

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

§ 128.63. Recertification.

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

(1) Core.

(i) Safety and health.

(ii) Labeling and label comprehension.

(iii) Environmental protection.

- (iv) Equipment use, calibration and dosage calculations.
- (v) Protective clothing and respirator equipment.
- (vi) Cleaning and maintaining equipment.
- (vii) Transportation, storage, security, and disposal.
- (viii) Applicable State and Federal laws.

(2) Category specific.

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

(b) Recertification credits will be given on the basis of attendance at meetings or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the Pennsylvania State Plan for Certification of Pesticide Applicators. This plan has been filed with and approved by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. § 136—136y). Records of training will be maintained by the Department and a yearly statement will be sent to each private applicator describing credits obtained and credits due to meet recertification standards. Training will be approved as described under §128.45(c) (relating to recertification).

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

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

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

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

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

§ 128.64. Fumigation by a private applicator.

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

[(a)] (b) In addition to the requirements in §128.61 (relating to determination of competence), a private applicator using [structural,] commodity and space, or soil fumigants shall demonstrate competence in the proper and safe use of these pesticides. Competency shall be demonstrated by passing a proctored written examination specifically relating to each

type of fumigant the applicator intends to use. Only reference materials approved by the Department may be used during the examination. The applicant must provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the US government or affiliated jurisdiction (i.e. state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two (2) non-photo identification documents one of which must be a US government issued document bearing the persons signature, such as a social security card. The other non-photo identification documents must identify the holder by name and address.

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

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

§ 128.65. Recordkeeping.

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

(1) The date of application. For a restricted use pesticide requiring a reentry time, the date of application shall include the hour completed.

(2) The place of application including the name and address of the farm and the specific field or land area and the crop treated.

(3) The size of the area treated.

[(3)] (4) The brand name [and formulation] of every restricted use pesticide used.

(5) The EPA product registration number.

[(4)] (6) The total amount of every restricted use pesticide used in pounds, ounces, gallons, liters, applied to a treated area.

[(5)] (7) The dosage or rate of application, of every restricted use pesticide used.

[(6)] (8) The names and [, when applicable,] the permit or certification numbers of the persons making or supervising the application. When applicable the name(s) of the non-certified applicator(s) acting, under the direct supervision of the private applicator, shall be recorded.

[(7)] The EPA product registration number]

[(8) The size of the area treated.]

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

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

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

RECIPROCITY

§ 128.71. General.

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

§ 128.72. Procedure.

A person desiring a license under §128.71 (relating to general) shall submit to the Department a properly completed application, the appropriate fee and evidence of financial responsibility as required along with a copy of the person's current license, certificate or permit, proof of having reached the minimum age of eighteen (18), out-of-state residency and proof of personal identification by presenting a photo identification document issued by an agency of the US government or affiliated jurisdiction (i.e. state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two (2) non-photo identification documents one of which must be a US government issued document bearing the persons signature, such as a social security card. The other non-photo identification documents must identify the holder by name and address.

Subchapter C. PRIOR NOTIFICATION

Sec.

128.81 Right-of-way application.

128.82 Nonagricultural specific site application.

[128.83. Ornamental or turf application]

128.83 Agricultural application.

- 128.84 Nonagricultural area-wide application.
[128.85 Agricultural application.]
128.85. Ornamental or turf application notification
128.86. [Constructive notification.] Reserved.
128.87 [Prior notification by certified mail.] Reserved.
128.88 Recordkeeping for prior notification.
[128.89. Notification request.]

§ 128.81. Right-of-way application.

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

(b) *Alternative form of notification.* In lieu of the notification requirements described in subsection (a), an applicator may give prior notification [orally or by certified mail to every] by constructive notification to a person residing in [a] every dwelling unit on land contiguous to the restricted use pesticide application site. [This subsection does not apply to an aerial application of a restricted use pesticide.]

(c) *Additional information.*

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

(i) The proposed date and time of the application.

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

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

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

(1) Injections internal to utility poles and trees.

(2) Ground line applications to utility poles.

§ 128.82. Nonagricultural specific site application.

(a) *Prior notification required.* A commercial/public applicator may not make a specific site application of a restricted use pesticide without first giving prior notification [orally or by

certified mail to every] by constructive notification to a person residing in [a] every dwelling unit on land contiguous to the application site.

(b) *Additional information.*

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

(i) The proposed date and time of application.

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

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

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

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

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

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

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

[§ 128.83. Ornamental or turf application.

(a) *Notification.*

(1). A pesticide business that meets the definitions of category 06 (ornamental and shade trees) or 07 (lawn and turf) of §128.42 (relating to categories of commercial and public applicators) regarding general use pesticides shall at least 12 hours prior to the time of application provide every person residing in a dwelling on land contiguous to the application site with 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.

(2) Within 10 days of receiving a request , the pesticide application business shall provide a copy of the label for every pesticide to be used.

(b) *Exceptions.*- A person is not entitled to notification under subsection (a) unless the person makes a written request at least 7 days prior to the proposed date of application.

(c) *Premises sharing mutual border.* The request described in subsection (b) shall list by street address premises which share a mutual border with the premises owned by the person making the request.]

§ 128.83. Agricultural application.

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

(b) *Additional information.*

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

(i) The proposed date and time of application.

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

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

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

~~[(2)]~~(3) [Within] Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, [the designated person shall] provide a copy of the label for every restricted use pesticide used or to be used.

[(3) The person making a request under this subsection shall identify in his request the name and address of every person operating agricultural land which shares a common border with property owned by the person making the request.]

(c) Alternate forms of notification.

[(c)Use of placards.] (1) In lieu of requirements contained in subsection[s] (a) [and (b), an applicator] a pesticide application business may give [prior notification orally or by certified mail] constructive notification to [every] a person residing in [a] every dwelling unit on land contiguous to the restricted use pesticide application site [or may post placards around the application site] at least 18 hours prior to the time of application.[If the applicator uses placards, the placards shall contain the information required by this section for prior notification.] The pesticide application business shall provide the proposed date and location of the application, the brand name of every restricted use pesticide to be applied including the EPA registration number and the business name, address, and phone number.

(2) In lieu of requirements contained in subsection (a), an applicator may post placards at usual points of entry to the application site and at the borders with adjoining properties owners at least 18 hours prior to the time of application. This placard must remain posted until the conclusion of any restricted reentry time listed on the pesticide label. The placards must be at least 8 1/2 inches by 11 inches in size and be printed with the following words: "Public Notice of Pesticide Application" and contain the pesticide application business's name, address, phone number and the brand name of every restricted use pesticide to be applied including the EPA registration number.

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

§ 128.84. Nonagricultural area-wide application.

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

(b) Additional information.

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

(i) The proposed date and time of application.

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

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

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

§ 128.85. Ornamental or turf application notification.

(a) *Notification.*

[(1). A pesticide business that meets the definitions of category 06 (ornamental and shade trees) or 07 (lawn and turf) of §128.42 (relating to categories of commercial and public applicators) regarding general use pesticides shall at least 12 hours prior to the time of application provide every person residing in a dwelling on land contiguous to the application site with 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.]

(1) A person must submit a written request for notification of lawn, turf, ornamental, or shade tree pesticide applications, applicator categories 06 or 07 as described in §128.42 (relating to categories of commercial and public applicators) to the pesticide application business for notification of pesticide applications by that business.

(i) This written request for notification is limited to and must list by owners name and street address of the premises sharing a mutual border with the residence of the person making the request.

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

(2) Upon receiving a written request at least 7 days prior to the application date, a pesticide business making lawn, turf, ornamental or shade tree applications shall make constructive notification of applications on contiguous lands at least 12 hours prior to the application providing 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.

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

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

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

[(b)] (d) *Exceptions.*- [A person is not entitled to notification under subsection (a) unless the person makes a written request at least 7 days prior to the proposed date of application.]
An application of a pesticide to a tree by means of injection is not subject to notification.

[(c) *Premises sharing mutual border.* The request described in subsection (b) shall list by street address premises which share a mutual border with the premises owned by the person making the request].

[§ 128.85. Agricultural application.

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

(b) *Additional information.*

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

(i) The proposed date and time of application.

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

(2) Within 10 days of receiving a request under this subsection, the designated person shall provide a copy of the label for every restricted use pesticide to be used.

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

(c) *Use of placards.* In lieu of requirements contained in subsections (a) and (b), an applicator may give prior notification orally or by certified mail to person residing in a dwelling on land contiguous to the restricted use pesticide application site or may post placards around the application site at least 18 hours prior to the time of application. If the applicator uses placards, the placards shall contain the information required by this section for prior notification.

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

§ 128.86. [Constructive notification.] Reserved

[A person shall be deemed to have received notification under this subchapter if an adult residing in the same dwelling is so notified.]

§ 128.87. [Prior notification by certified mail.] Reserved.

[If this subchapter authorizes an applicator to give prior notification by certified mail, the prior notification shall be effective upon receipt.]

§ 128.88. Recordkeeping for prior notification.

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

(1) A copy of the newspaper advertisement or a statement describing other methods of prior notification that this chapter authorizes.

(2) The name and address of every person requesting additional information.

(3) The date and time of individual notification.

(4) A copy of correspondence relating to prior notification or additional information.

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

§128.89. Notification request.

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

Subchapter D. REGISTRATION OF PESTICIDES

Sec.

128.91 EPA [registration] approval required.

128.92 Special local need registration.

§ 128.91. EPA [registration] approval required.

[Only a pesticide with an approved EPA registration will be accepted for registration by the Department.]

(a) Only pesticides which have been approved by EPA for registration under Section 3 of FIFRA or are permitted to be distributed pursuant to a federal exemption under Section 18 or 25(b) of FIFRA may be registered by the State.

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

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

§ 128.92. Special local need registration.

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

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

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

Subchapter E. MISCELLANEOUS

Sec.

- 128.101 Reporting of significant pesticide accidents or incidents.
- 128.102 Protected designated areas.
- 128.103 Handling, transportation, storage, use and disposal of pesticides.
- 128.104 Experimental use permits.
- 128.105 Additional responsibilities of certified applicators.
- 128.106 Additional responsibilities [within] relating to schools [buildings].
- 128.107 Providing information upon request.

§ 128.101. Reporting of pesticide significant accidents or incidents.

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

(b) [An applicator, a pesticide application technician or another person] A person after becoming aware of a significant pesticide accident or incident or who has knowledge of a significant pesticide accident or incident shall immediately report it to the Department.

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

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

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

§ 128.102. Protected designated areas.

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

(1) State forest land designated [“Natural Areas and Wild Areas.”] as a Conservation Area pursuant to 17 Pa. Code Chapter 44 (relating to conservation areas) or as a Natural Area or Wild Area pursuant to 17 Pa. Code Chapter 27 (relating to state forest natural areas—statement of policy), and State park land designated as a Conservation Area pursuant to 17 Pa. Code Chapter 44 (relating to conservation areas) or as a Natural Area pursuant to 17 Pa. Code Chapter 17 (relating to state parks natural areas—statement of policy).

(2) Areas containing endangered or [rare organisms.] threatened plant or animal species. These [organisms] species are [identified] listed at 17 Pa. Code [Chapter 45 (relating to conservation of Pennsylvania native wild plants); and 58 Pa. Code Chapters 75 and 133 (relating to endangered species; and wildlife classification)] § 45.12 (relating to Pennsylvania endangered) and § 45.13 (relating to Pennsylvania threatened); fish identified in §§ 75.1. and 75.2 (relating to endangered species; and endangered species) and 58 Pa. Code Chapter 133; § 133.21. (relating to Pennsylvania classification of birds as Endangered and Threatened), § 133.41. (relating to Pennsylvania classification of mammals as Endangered and Threatened).

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

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

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

(3) Specific evaluation of expected benefits.

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

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

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

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

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

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

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

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

(1) Is inconsistent with its label or labeling.

[(2) Causes or allows the open dumping of pesticides or pesticide containers. Open burning by the owner of small quantities of combustible containers that do not exceed 50 pounds is exempt if the pesticide residue does not contain organic mercury, chlorates, lead, cadmium or arsenic compounds and the Commonwealth or local regulations permit the burning. When the burning takes place, regard shall be given to wind direction in relation to the protection of crops, animals and people from pesticide vapors created through burning.]

[(3)](2) Causes or allows dumping of pesticides in [a stream, river, pond, sewer or lake] sewers or surface waters of the commonwealth, except in conformance with permits issued [jointly] by the Department of Environmental Protection, [and] the Fish and Boat Commission, or other Commonwealth agencies having jurisdiction regarding water pollution.

[(4)](3) Violates an applicable State or Federal [pollution control standard] acts and regulations.

[(e) A person shall dispose and store pesticides, pesticide containers and pesticide container residue in accordance with acts and regulations administered by the EPA and the Department of Environmental Protection.]

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

(e) A person may not use, or cause to be used, a pesticide inconsistent with its labeling. A pesticide containing an advisory instruction concerning the use of the pesticide subject to the federal Worker Protection Standard shall be considered by the Secretary as a further restriction on the pesticide's use.

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

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

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

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

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

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

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

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

§ 128.104. Experimental use permits.

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

§ 128.105. Additional responsibilities of certified applicators.

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

(b) A certified applicator shall be present at the application site on a routine basis to evaluate the work performance of those working under his supervision. The amount of time that a certified applicator spends at the application site shall be based upon the competence and experience of the person being supervised.

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

§ 128.106. Additional responsibilities [within school buildings] relating to schools .

(a) A pesticide [other than a disinfectant or sanitizer] 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 of Act 36 of 2002. (relating to notification)

(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.

§ 128.107. Providing information upon request.

(a) A producer, distributor or any other person shall maintain all books and records as required in §8 of FIFRA. All such records shall be made available for inspection and reproduction when requested by the Department.

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

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

**Subchapter F. PESTICIDE
HYPERSENSITIVITY REGISTRY**

Sec.

128.111 Registry.

128.112 Notification of hypersensitivity individuals.

§ 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) [A] P[p]esticide-hypersensitive individuals who want[s] to be on the registry shall provide to the Department [his] 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 [January] 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 [mail] distribute the current registry to each licensed commercial and public pesticide application business on or before the effective dates of March 1, [June 1, September 1 and December 1] and July 15 of each year. [An] I[i]ndividuals will not be considered officially included on the registry unless [his] their names appear[s] on the current registry.

§ 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, or personal contact or certified mail or if available, electronic mail, or facsimile.

(i) Notification requirements are met [if the information is placed on a telephone answering device activated by calling the registrant's telephone number], 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 [daytime, nighttime or] 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 [telephone] 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 [single family residential] 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. [Prior notification requirements contained in §128.83 (relating to ornamental or turf application) remain applicable.]

(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 [or to medical personnel in an emergency].



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 15, 2009

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

RE: PROPOSED REGULATION
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 128
Pesticides
I.D. No. 2-149

Dear Sir or Madam:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the September 26, 2009 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

Jorge M. Augusto
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

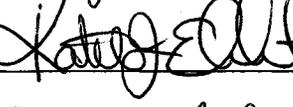
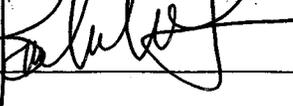
I.D. NUMBER: 2-149
 SUBJECT: PESTICIDES
 AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2009 SEP 15 PM 2:11
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE		DESIGNATION
9-15-09		HANNA	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9-15-09		MAHER	MAJORITY CHAIRMAN <u>HANNA</u>
9-15-09		BRUBAKER	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9-15-09		O'PAKE	MAJORITY CHAIRMAN <u>BRUBAKER</u>
9-15-09		IRRC	INDEPENDENT REGULATORY REVIEW COMMISSION
			ATTORNEY GENERAL (for Final Omitted only)
9-15-09		LRB	LEGISLATIVE REFERENCE BUREAU (for Proposed only)