

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2014 AUG 20 AM 11:38

IRRC RECEIVED

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency  
Agriculture

(2) Agency Number: 2

Identification Number: 179

IRRC Number: 3050

(3) PA Code Cite: Act of March 1, 1974, P.L. 90, No. 24, as amended, known and cited as the "Pennsylvania Pesticide Control Act of 1973" ("Act")(3 P.S. §§ 111.54(4) and 111.57a.); 7 Pa.Code §128.3(f)(6)

(4) Short Title:

Pesticides – Third Party Transactions

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

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(6) 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

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

The current regulations do not expressly permit the Department to collect and pass on an examination processing charge or cost levied by a third party. The industry has asked for greater convenience in pesticide examination certification availability. The Department is proposing to amend the Pesticides regulations at section 128.3, by adding a paragraph which would allow the Department to contract with public agencies and private vendors to administer pesticide examinations. The regulation would also provide for the ability of such contracted vendors to charge and collect or be reimbursed for the services provided, including the cost of the utilization of their testing facilities. The regulation authorizes a contracted private vendor to levy and collect additional fees for use of its facilities and services provided. In addition, it allows the Department to pass along fees that would be charged by a contracted public agency to the person taking the test and then reimburse the contracted public agency. The reason for the difference in the collection of fees is that contracted public agencies are unable to charge the individual test participants directly and must instead enter into a contract with the Department setting forth the amount of the fees to be charged and reimbursed for the services provided. The Department will add the public agencies' fees to the cost of the test and then repay the contracted public agencies for the utilization of their testing facilities and services provided. The Department will continue to offer examinations on at least a monthly basis at Department of Agriculture sites where no additional charges shall be assessed.

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

Sections 34 and 37.1 of the Act of March 1, 1974, P.L. 90, No. 24, as amended, known and cited as the "Pennsylvania Pesticide Control Act of 1973" ("Act")(3 P.S. §§ 111.54(3) and (4) and 111.57a.).

(9) 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);

(10) 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.

Current regulations do not expressly allow the department to collect a convenience, service or processing fee, charged by a public agency willing to administer certification examinations in addition to those given by the department nor does it specifically provide for a contracted independent vendor to charge and collect a fee for testing facilities and services provided. Examination fees set by regulation range from \$0 to \$50.00 and in some cases include the first year certification fee. Therefore, the department cannot pay a third party from the fees currently charged unless there was a general testing fee increase. This change will allow the department to enter into agreements with other agencies or private vendors to administer pesticide certification examinations. It would allow the department to pass on user or processing costs charged by contracted agencies and allow contracted private vendors to charge and collect fees for facilities and services related to the exam administration process. The department would forward fees charged by a contracted agency and assessed by the Department to that agency, as would be established in an agreement or understanding between the department and that agency. The change will avoid a general fee increase to the regulated community to offer the service thereby not affecting individuals that continue to use the department's examination sites.

Industry approached the Department to request more convenience in obtaining the pesticide certification for new employees. Currently the Department offers testing at various locations across the commonwealth administering over 7,000 exams annually. Some locations have limited capacity due to room size and inspector availability which can cause a delay or extra travel for businesses to have new employees take the required certification examinations. Other state agencies and private vendors have testing facilities available but would charge a "convenience service processing" fee to administer the examination in addition to the testing fee set by regulation (Title 7 CH 128.3 Fees). Pesticide businesses have stated a willingness to pay an additional charge for access to more testing sites and greater convenience. The department does not wish to profit or incur expense from the service processing charges levied by others, but is willing to aid in the collection and distribution of charges levied by contracted agencies for services provided. Businesses have stated this added availability will allow them to have employees working sooner when hired between testing sessions or when retesting following failures. They have stated the added cost for paying the "convenience service processing" fee to the provider would greatly offset by the ability to have the employee available for more profitable activities. There are over 6,000 small pesticide application businesses licensed by the department that could take advantage of this optional testing.

(11) 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.

No.

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

Several other states currently offer third party testing. This proposal will have no effect on Pennsylvania's ability to compete with other states.

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

No. It is specific to Title 7 CH. 128.3.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The request was submitted to the Department by industry. It was vetted at the Summer Turf & Ornamentals School (Lebanon Valley College, 7-16-13), to the representative of the Lawn Care Association of PA (LCAP) and before the Pesticide Advisory Board (PAB) meeting (7-24-13). On 8-7-13 an email request for comments with a copy of the proposed change was sent to Melissa Sankey (PennAg Industries, Agronomic Council), Matt Jesson/Shawn Kravitsky (Past President/President, LCAP) and David Hyles/McCee Baker (President PA Pest Management Association/Versant Strategies).

There were no negative comments received. All were supportive of the change with the understanding that the department will continue to offer the exams as we have in the past with no service charge attached.

The consensus of the PAB was to move forward with the proposal as quickly as possible, as participation would be voluntary and provide a benefit to those who choose to take advantage of the opportunity.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The regulation will directly affect only the Department of Agriculture and agencies with testing capabilities that wish to host examinations (Civil Service, Penn DOT) and private vendors wishing to provide the service.

Indirectly, the regulation will affect members of the regulated community that voluntarily choose to use a contracted agency or private vendor. The regulated community range from family farms, small and large commercial application businesses, municipal, state and federal governments and agencies totaling over 6,500 businesses. The department processes 7,000 examinations for pesticide certification per year. We estimate 700 could utilize this option.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

This regulation change is to provide specific authority for invoicing or collection of service charges by contracted vendors should an individual choose to participate. No one would be required to pay the convenience service processing fee if they utilize a department test site.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

By giving the Department the ability to collect and pass through convenience service processing fees charged by contracted public agencies and allowing the Department to contract with private vendors who will bill directly for services rendered for testing, the financial impact will be limited to pesticide businesses and applicators that choose to utilize the third party testing and to a private vendor that might contract to provide the service. The applicants could benefit from a shorter travel distance and flexibility to take the examination sooner, thereby enabling the employee to meet the state certification requirements making them available for more profitable activities. The private vendor would benefit by increasing their customer base and utilizing leased property to its capacity and the public agency would benefit by being able to utilize state facilities to their fullest capacity. This option would also allow for businesses that are out of compliance due to the loss of an employee resume operations sooner. Industry suggests they could shorten an employee's down time by an average of 2 weeks.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation only gives the department the authorization to collect and pass on fees for other agencies or for a private vendor to charge and collect fees for a service they provide which is at the request of the applicant. Any costs incurred would be voluntary on the part of the applicant. We do not see any adverse effects in giving the Department this ability.

(19) 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.

Estimated cost for utilizing a Civil Service test center \$15/person, private vendor sites \$50/examination over Agriculture sites which are free.

Savings in employee travel and down time \$720/employee ( \$9.00/hour X 80 hours delay in testing) X 200 employees = \$144,000 in savings

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

Cost for utilizing a Civil Service test center \$15/person, private vendor site \$50/person over an Agriculture site which is free.

Savings in employee travel and down time \$720/employee ( \$9.00/hour X 80 hours delay in testing) X 10 employees = \$7,200 in savings

(21) Provide a specific estimate of the costs and/or savings to the **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.

Cost for utilizing a Civil Service test center \$15/person, private vendor site \$50/ examination over an Agriculture site which is free.

Savings in employee travel and down time \$720/employee ( \$9.00/hour X 80 hours delay in testing) X 10 employees = \$7,200 in savings.

Cost to Department to establish fund distribution collection and processing \$1,000 - Employee costs to establish electronic funds transfer protocol. Savings to Civil Service as they will increase use of existing test sites 120 X \$15/person = \$1,200.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

Regulated community- no additional requirements

Local government- no additional requirements

State Government (other than PDA or test provider)- no additional requirements

State Government (PDA and test site provider) – interoffice transfer of funds collected for testing agency. The Department would add information to the online registration form allowing applicants to select an optional site and informing them of any costs that would be charged by the vendor. The program will track “service” amount and post to a separate accounting code from examination fee (if any) collected. Transfer of funds from that account will be made to other agency on a mutually accepted schedule. If a private vendor is selected applicant will be directed from our registration site to theirs to schedule the examination and pay any associated charges by that vendor.

(23) 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	144,000	144,000	144,000	144,000	144,000
<b>Local Government</b>	0	7,200	7,200	7,200	7,200	7,200
<b>State Government</b>	0	7,200	7,200	7,200	7,200	7,200
<b>Total Savings</b>	0	158,400	158,400	158,400	158,400	158,400
<b>COSTS:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	5,000	0	0	0	0	0
<b>Total Costs</b>	5,000	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3 2010</b>	<b>FY -2 2011</b>	<b>FY -1 2012</b>	<b>Current FY As of 6/17/2014</b>
Pesticide	3,970,700	3,348,200	4,143,400	3,601,473

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

No adverse impact on businesses.

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

This regulation was developed in response to requests from businesses for the Department to contract allowing other entities make examination accommodations more accessible. It will enable individuals to obtain pesticide certifications they may need on short notice to respond to a farming situation or employment opportunity.

(26) 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.

Due to the regulated cost for testing ranging from \$0 to \$50 it was determined the Department cannot absorb the costs incurred by others to offer the examinations as a convenience. Our current regulation would permit private vendors or other agencies to charge separately for any testing service they provide. However, for contracted public agencies collection of service charges is problematic and would require a regulation change and development of a collection mechanism. The Department already has the ability to accept credit card payments and the online programming in place to facilitate the registration with minimal new programming efforts. The proposed regulation will have the least burden on state government and will also provide applicants information and payment as one centralized location all ready in use for scheduling testing at Department offered sites.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

There will be no adverse effect on businesses as the regulation does not require them to participate.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

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

- A. The date by which the agency must receive public comments: 30 days from publication of proposed regulation
- B. The date or dates on which public meetings or hearings will be held: Not Applicable
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: September 2014
- D. The expected effective date of the final-form regulation: Upon publication as Final
- E. The date by which compliance with the final-form regulation will be required: Upon publication as Final
- F. The date by which required permits, licenses or other approvals must be obtained: Not Applicable

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Following implementation, a review of the number of applicants using the alternate test sites will be evaluated at 3 month intervals for two years. A representative number of users will be surveyed to determine any need to improve the registration system and testing sites. Any private vendor utilized would be contracted using accepted Commonwealth bidding practices. That contract would be reviewed on a biannual schedule. Based on survey results and any correspondence received, the program will be adjusted to provide better service to the regulated community.



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU

(Pursuant to Commonwealth Documents Law)

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

By: \_\_\_\_\_  
(Deputy Attorney General)

\_\_\_\_\_  
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. 2-179

DATE OF ADOPTION 7-31-14

BY George D Greig  
George D. Greig

TITLE Secretary of Agriculture

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY \_\_\_\_\_

AUG 08 2014  
DATE OF APPROVAL

~~(Exec. 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 FINAL-FORM RULEMAKING  
DEPARTMENT OF AGRICULTURE  
BUREAU OF PLANT INDUSTRY  
7 Pa. CODE CHAPTER 128, SECTION 128.3(f)  
Pesticides - Third Party Transactions

# **RULES AND REGULATIONS**

## **Title 7 – AGRICULTURE**

### **DEPARTMENT OF AGRICULTURE BUREAU OF PLANT INDUSTRY**

#### **[7 PA.CODE CHAPTER 128, SECTION 128.3]**

#### **Pesticides – Third Party Transactions**

##### **Preamble**

The Pennsylvania Department of Agriculture (“Department”) hereby creates Chapter 128.3(f)(6)(related to Pesticides – Third Party Transactions) to read as set forth in Annex A.

##### *Statutory Authority*

The Department establishes and adopts this final-form regulation pursuant to the authority delegated to the Department under sections 34 and 37.1 of the Act of March 1, 1974, P.L. 90, No. 24, as amended, known and cited as the “Pennsylvania Pesticide Control Act of 1973” (“Act”)(3 P.S. §§ 111.54(3) and (4) and 111.57a.). More specifically, the final-form regulation is offered under authority of sections 111.54(3) and (4) and 111.57a. of the Act (3 P.S. §§ 111.54(3) and (4) and 111.57a.), which allow the Department to: (1) cooperate and enter into agreements with other agencies, private or public, and to contract for training with other agencies for the purpose of training certified applicators and (2) allows the Secretary to change fees through regulation.

This final-form regulation amends the current Pesticides regulations at section 128.3 (7 Pa.Code § 128.3)(related to Fees) to allow for the administration of and payment for examination of certified applicators and pesticide dealer managers conducted by other agencies and/or private contractors under agreements with the Department.

##### *Purpose of the Final-Form Regulation*

The final-form regulation is necessary to meet the demands of the regulated community for the Department to provide additional locations where and a broader spectrum of times when pesticide certification examinations are available. The Department, at this time, only has the resources available to offer examination opportunities for certifying pesticide applicators and dealer managers on a monthly basis at the seven regional offices and some additional examination locations during normal

business hours. The regulated community has been requesting that the Department provide examination opportunities on a more frequent basis and at expanded locations across the Commonwealth. In an effort to address the needs of the regulated community and expand the examination opportunities, the Department has reached out to other agencies of the Commonwealth, including the State Civil Service Commission and the Pennsylvania Department of Transportation, and contacted private industry in order to assess whether they may have the resources, physical facilities, technology and capability to offer certification examinations in manner that is consistent with the provisions of the Act and regulations. Both of the agencies mentioned and private industry have the resources and capabilities to address the needs and concerns expressed herein and to thereby enable the Department to better attend to the needs of the regulated community.

The current regulations do not expressly permit the Department to contract with other agencies or private vendors to administer pesticide examinations or to collect or process a service charge levied by a third party. The Department therefore, seeks to amend the Pesticide regulations at section 128.3, by adding a paragraph (6) to subsection (f), which would allow the Department to contract with public agencies and private vendors to administer pesticide examinations. The regulation would also provide for the ability of such contracted vendors to charge and collect or be reimbursed for the services provided, including the cost of the utilization of their testing facilities. The regulation authorizes a contracted private vendor to levy and collect additional fees for use of its facilities and services provided. In addition, it allows the Department to pass along fees that would be charged by a contracted public agency to the person taking the test and then reimburse the contracted public agency. The reason for the difference in the collection of fees is that contracted public agencies are unable to charge the individual test participants directly and must instead enter into a contract with the Department setting forth the amount of the fees to be charged and reimbursed for the services provided. The Department will add the public agencies' fees to the cost of the test and then repay the contracted public agencies for the utilization of their testing facilities and services provided. The Department would be required to continue to offer examination on at least a monthly basis at Department of Agriculture sites where no additional charges shall be assessed.

In summary, the Department is satisfied there is a need for the final-form regulation, and that the regulation is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

#### *Comment and Response Document*

The Department received only one comment on the proposed regulation. That comment came from the Independent Regulatory Review Commission and concerned implementation procedures and clarity. The comment and response is set forth below:

**Comments of the Independent Regulatory Review Commission**  
**Department of Agriculture Regulation #2-179 (IRRC #3050)**  
**Pesticides; Third Party Transactions**  
**June 4, 2014**

We submit for your consideration the following comments on the proposed rulemaking published in the April 5, 2014 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

**Comment: Implementation procedures; Clarity.**

**Section 128.3. Fees. – Implementation procedures; Clarity.**

This proposal would allow the Department to collect and pass on any additional service charges or costs levied by a contacted state agency or private vendor that provides additional testing opportunities for certified applicator or pesticide dealer manager applicants. Based on conversations with the Department, it is our understanding that the Department will not collect additional service charges or costs associated with the administration of an examination administered by a private vendor. Under this circumstance, the applicant would register to take the examination with the Department and pay the Department the required fees enumerated in this section. The applicant would then pay any additional service charges or costs directly to the private vendor. This understanding conflicts with the new language of Subsection (f)(6) and language in the Regulatory Analysis Form and Preamble that indicates the Department will collect and pass on the additional service charges or costs to contracted state agencies and vendors. We ask the Department to provide further clarification on how this provision will be implemented and how an applicant will pay the additional service charges or costs associated with taking a test at the site of a private vendor.

**Response:**

This is a good comment and the Department agrees the proposed regulation, as drafted, did not provide clarity with regard to the difference in collection of fees and costs charged by a contracted private vendor and those fees and costs charged by a contracted state agency. The intent of the regulation is to allow contracted private vendors to charge any fees and costs associated with providing the test site and administration of an examination directly to the person taking the test. Contracted state agencies on the other hand have no manner by which they can directly charge fees and costs associated with providing a test site and administration of an examination directly to the person taking the test. Therefore, one of the goals of the regulation is to establish those two separate procedures for collection of such fees and costs. The Department agrees that the proposed regulation does not address this procedural issue with enough clarity and that the language of the proposed regulation conflicts with the language in the Preamble and

Regulatory Analysis Form. Therefore, the Department has made the following changes to the final form regulation to assure it has addressed the procedural and clarity issues detected by the Independent Regulatory Review Commission:

1. The Department added a second sentence to Subsection (f)(6) of the Final Form Regulation which sets forth language that specifically enumerates the separate procedures that will be utilized to collect fees charged by a contracted agency and fees charged by a private vendor for such costs as use of facilities, administration of the test and services provided. The sentence reads, "Where a contracted agency assesses an additional fee for costs such as use of its facilities, administration of the test and services provided the Department of Agriculture will pass that fee along to the person taking the test, where a private vendor, under contract with the Department, is utilized the private vendor shall collect any additional fees it may charge for costs such as use of its facilities, administration of the test and services provided." In addition, in the Final Form Regulation the Department removed the final phrase of the last sentence of Subsection (f)(6) which read "...and assessed by the Department." That phrase was removed to assure consistency and clarification that not all fees will be "assessed by the Department."

2. The Department added language to the provisions of the Preamble entitled "*Purpose of the Final-Form Regulation*" and "*Summary of Major Features*" of the Final-Form Regulation, which more clearly distinguishes between private vendors and public agencies and clarifies the difference in the fee collection process. As part of this response, the Department below has underlined the new language for your convenience and ease of reading.

The major change to the "*Purpose of the Final-Form Regulation*" section of the Preamble was to the second paragraph of that provision. It now reads, "The current regulations do not expressly permit the Department to contract with other agencies or private vendors to administer pesticide examinations or to collect or process a service charge levied by a third party. The Department therefore, seeks to amend the Pesticide regulations at section 128.3, by adding a paragraph (6) to subsection (f), which would allow the Department to contract with public agencies and private vendors to administer pesticide examinations. The regulation would also provide for the ability of such contracted vendors to charge and collect or be reimbursed for the services provided, including the cost of the utilization of their testing facilities. The regulation authorizes a contracted private vendor to levy and collect additional fees for use of its facilities and services provided. In addition, it allows the Department to pass along fees that would be charged by a contracted public agency to the person taking the test and then reimburse the contracted public agency. The reason for the difference in the collection of fees is that contracted public agencies are unable to charge the individual test participants directly and must instead enter into a contract with the Department setting forth the amount of the fees to be charged and reimbursed for the services provided. The Department will add the public agencies' fees to the cost of the test and then repay the contracted public agencies for the utilization of their testing facilities and services provided...."

The Department changed the “*Summary of Major Features*” section to read, “The proposed regulation would establish a new subsection – (f)(6) – which would allow the Department to contract with another public agency or private vendor to utilize their facilities to administer pesticide examinations. The Department would also be authorized to bill or pass through costs or service charges levied by a contracted public agency offering pesticide examinations. A contracted private vendor would be authorized to levy and collect any additional fees it may charge for use of its testing facilities and services provided....”

3. In order to assure complete clarity and consistency between the Final Form Regulation and the Regulatory Analysis Form the Department made slight changes to the responses to paragraphs (7),(10),(15),(17),(18) and (26) of the Regulatory Analysis Form.

### *Summary of Overall Changes*

The major features of and changes to the final-form regulation are summarized as follows:

The Department agrees the proposed regulation, as drafted, did not provide clarity with regard to the difference in collection of fees and costs charged by a contracted private vendor and those fees and costs charged by a contracted state agency. The intent of the regulation is to allow contracted private vendors to charge any fees and costs associated with providing the test site and administration of an examination directly to the person taking the test. Contracted state agencies on the other hand have no manner by which they can directly charge fees and costs associated with providing a test site and administration of an examination directly to the person taking the test. Therefore, one of the goals of the regulation is to establish those two separate procedures for collection of such fees and costs. The Department agrees that the proposed regulation does not address this procedural issue with enough clarity and that the language of the proposed regulation conflicts with the language in the Preamble and Regulatory Analysis Form. Therefore, the Department has made the following changes to the final form regulation to assure it has addressed the procedural and clarity issues detected by the Independent Regulatory Review Commission:

1. The Department added a second sentence to Subsection (f)(6) of the Final Form Regulation which sets forth language that specifically enumerates the separate procedures that will be utilized to collect fees charged by a contracted agency and fees charged by a private vendor for such costs as use of facilities, administration of the test and services provided. The sentence reads, “Where a contracted agency assesses an additional fee for costs such as use of its facilities, administration of the test and services provided the Department of Agriculture will pass that fee along to the person taking the test, where a private vendor, under contract with the Department, is utilized the private vendor shall collect any additional fees it may charge for costs such as use of its facilities, administration of the test and services provided.” In addition, in the Final Form Regulation the Department removed the final phrase of the last sentence of Subsection

(f)(6) which read "...and assessed by the Department." That phrase was removed to assure consistency and clarification that not all fees will be "assessed by the Department."

2. The Department added language to the provisions of this final-form Preamble entitled "*Purpose of the Final-Form Regulation*" and "*Summary of Major Features*," which more clearly distinguishes between private vendors and public agencies and clarifies the difference in the fee collection process. As part of this response, the Department below has underlined the new language for your convenience and ease of reading.

The major change to the "*Purpose of the Final-Form Regulation*" section of this final-form Preamble was to change it to read, "The current regulations do not expressly permit the Department to contract with other agencies or private vendors to administer pesticide examinations or to collect or process a service charge levied by a third party. The Department therefore, seeks to amend the Pesticide regulations at section 128.3, by adding a paragraph (6) to subsection (f), which would allow the Department to contract with public agencies and private vendors to administer pesticide examinations. The regulation would also provide for the ability of such contracted vendors to charge and collect or be reimbursed for the services provided, including the cost of the utilization of their testing facilities. The regulation authorizes a contracted private vendor to levy and collect additional fees for use of its facilities and services provided. In addition, it allows the Department to pass along fees that would be charged by a contracted public agency to the person taking the test and then reimburse the contracted public agency. The reason for the difference in the collection of fees is that contracted public agencies are unable to charge the individual test participants directly and must instead enter into a contract with the Department setting forth the amount of the fees to be charged and reimbursed for the services provided. The Department will add the public agencies' fees to the cost of the test and then repay the contracted public agencies for the utilization of their testing facilities and services provided...."

The Department changed the "*Summary of Major Features*" section to read, "The proposed regulation would establish a new subsection – (f)(6) – which would allow the Department to contract with another public agency or private vendor to utilize their facilities to administer pesticide examinations. The Department would also be authorized to bill or pass through costs or service charges levied by a contracted public agency offering pesticide examinations. A contracted private vendor would be authorized to levy and collect any additional fees it may charge for use of its testing facilities and services provided...."

3. In order to assure complete clarity and consistency between the Final Form Regulation and the Regulatory Analysis Form the Department made slight changes to the responses to paragraphs (7),(10),(15),(17),(18) and (26) of the Regulatory Analysis Form.

## *Summary of Major Features*

The major features of the proposed regulation are summarized as follows:

### *Section 128.3(f) Fees.*

The proposed regulation would establish a new subsection – (f)(6) – which would allow the Department to contract with another public agency or private vendor to utilize their facilities to administer pesticide examinations. The Department would also be authorized to bill or pass through costs or service charges levied by a contracted public agency offering pesticide examinations. A contracted private vendor would be authorized to levy and collect any additional fees it may charge for use of its testing facilities and services provided. Such costs would only be assessed where a person chooses to take a pesticide examination offered by an agency or vendor that is under contract with the Department of Agriculture. The Department would be required to continue to offer examinations on at least a monthly basis at Department of Agriculture sites where no additional charges would be assessed.

### *Fiscal Impact*

#### *Commonwealth*

The proposed regulation, once published as final-form regulations, would impose minimal additional fiscal impacts upon the Department's Bureau of Plant Industry (Bureau). The Bureau already invoices persons for pesticide examinations. The outside vendor charge would only require an additional line item be added to the invoice. The fund transfers would not cost any additional money and any changes to the computer program to administer the outside vendor programs and charges would be minimal and would be done internally. The Department would not incur any additional costs for the use of the contracted facilities and the convenience offered to the regulated community.

#### *Political Subdivisions*

The proposed regulation, once published as final-form regulations, would impose no additional fiscal impacts upon any political subdivisions. There is no role, enforcement or otherwise, for any political subdivision with regard to this regulatory amendment.

#### *Private Sector*

The regulations once published as final-form regulations will impose additional costs only on those persons that chose to utilize the outside vendor locations to take pesticide certification examinations. The Department will continue to offer all certification at Department locations on at least a monthly basis and no additional costs will be incurred by the regulated community.



### *General Public*

The regulations, once promulgated as final-form regulations will not impose any additional costs on the general public.

### *Paperwork Requirements*

The Department will not have to develop new application forms or review procedures. It will need to amend billing statements to include any additional charges by the contracted vendor and will need to interface with the vendor's payment systems. All transfers of information between the Bureau and the outside vendors will be done via computer with no new computer systems and only minor programming modification will have to be developed in order to effectuate such exchanges.

### *Effective Date*

The proposed rulemaking will be effective 30 days after publication in the *Pennsylvania Bulletin* as final-form rulemaking.

### *Further Information*

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Chief of the Division of Health and Safety, Dave Scott – (717) 772-5214 or Bureau Director, John Breitsman – (717) 772-5200. A copy of the final-form regulation, preamble to the regulation, regulatory analysis form and the comment and response document can be found at the Department of Agriculture's website at: <http://www.agriculture.state.pa.us>.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the Notice of Proposed Rulemaking published at 44 *Pennsylvania Bulletin* 2058, on April 5, 2014, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees (Committees) for review and comment.

In compliance with § 5(b), the Department also provided the Commission and the Committees with copies of all comments received. In preparing this final-form regulation, the Department has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was deemed approved by the House Agriculture and Rural Affairs Government Committee on \_\_\_\_\_; was deemed approved by the Senate Agriculture and Rural Affairs Committee on \_\_\_\_\_ and was approved by IRRC on \_\_\_\_\_.

### *Findings*

The Department finds that:

- (1) Public notice of intention to adopt this final-form regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments received were considered.
- (3) Modifications to this regulation in response to comments received were made, however all such modification were within the scope of the original proposed rulemaking and there was no enlargement of the purpose of the proposed regulation published at 44 *Pennsylvania Bulletin* 2058, on April 5, 2014.
- (4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

### *Order*

The Department, acting under the authorizing statute, orders the following:

- (1) The Department of Agriculture adopts the final-form regulation (related to Pesticides – Third Party Transactions) to read as set forth in the Annex A.
- (2) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as required by law.
- (3) The Secretary of Agriculture shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.
- (4) This order shall take effect 30 days after publication in the *Pennsylvania Bulletin* as final-form rulemaking.

---

GEORGE D. GREIG, Secretary

ANNEX A  
Rules and Regulations – Title 7-Agriculture  
Department of Agriculture  
[7 PA.Code CH. 128]

PESTICIDES

CHAPTER 128. PESTICIDES

Subchap.	Sec.
A. GENERAL PROVISIONS.....	128.1

\*\*\*

**Subchapter A. GENERAL PROVISIONS**

Sec.	
128.1.	Scope.
128.2.	Definitions.
128.3.	Fees.

\*\*\*

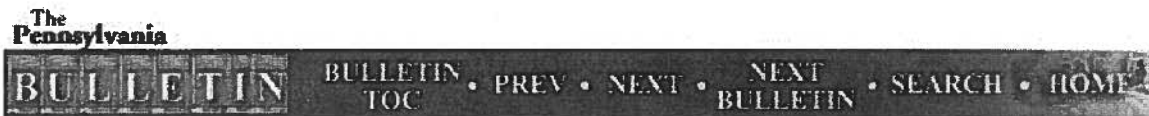
**§ 128.3. Fees.**

\*\*\*

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

\*\*\*

(6) In addition to the examination fees established by this subsection (f), where a person chooses to take a pesticide examination offered by an agency or vendor that is under contract with the Department of Agriculture, such additional costs as may be charged by the contracted agency or vendor shall be assessed to the person taking the examination. WHERE A CONTRACTED AGENCY ASSESSES AN ADDITIONAL FEE FOR COSTS SUCH AS USE OF ITS FACILITIES, ADMINISTRATION OF THE TEST AND SERVICES PROVIDED THE DEPARTMENT OF AGRICULTURE WILL PASS THAT FEE ALONG TO THE PERSON TAKING THE TEST, WHERE A PRIVATE VENDOR, UNDER CONTRACT WITH THE DEPARTMENT, IS UTILIZED THE PRIVATE VENDOR SHALL COLLECT ANY ADDITIONAL FEES IT MAY CHARGE FOR COSTS SUCH AS USE OF ITS FACILITIES, ADMINISTRATION OF THE TEST AND SERVICES PROVIDED. Provided however, that the Department shall continue to offer pesticide certification examinations on at least a monthly basis at Department of Agriculture sites where no additional charges shall be assessed. The Department shall post on its website the addresses of the contracted examinations, the dates and times examinations are offered at those locations and the additional costs that will be charged by the contracted agency or vendor and assessed by the Department.



# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

[ 7 PA. CODE CH. 128 ]

### Pesticides; Third Party Transactions

[44 Pa.B. 2058]

[Saturday, April 5, 2014]

The Department of Agriculture (Department) proposes to amend § 128.3 (relating to fees) to allow for the administration of and payment for examination of certified applicators and pesticide dealer managers conducted by other agencies or private contractors, or both, under agreements with the Department.

#### *Authority*

The rulemaking is proposed under the authority in sections 34(4) and 37.1 of the Pennsylvania Pesticide Control Act of 1973 (act) (3 P. S. §§ 111.54(4) and 111.57a), which allow: (1) the Department to cooperate and enter into agreements with other agencies, private or public, and to contract for training with other agencies for the purpose of training certified applicators; and (2) the Secretary to change fees through regulation.

#### *Need for the Proposed Rulemaking*

The Department, at this time, only has the resources available to offer examination opportunities for certifying pesticide applicators and dealer managers on a monthly basis at the seven regional offices and some additional examination locations during normal business hours. The regulated community has been requesting that the Department provide examination opportunities on a more frequent

basis and at expanded locations across this Commonwealth. In an effort to address the needs of the regulated community and expand the examination opportunities, the Department has reached out to other agencies of the Commonwealth, including the State Civil Service Commission and the Department of Transportation, and contacted private industry to assess whether they may have the resources, physical facilities, technology and capability to offer certification examinations in manner that is consistent with the act and regulations. The State Civil Service Commission, the Department of Transportation and private industry have the resources and capabilities to address the needs and concerns expressed herein and to thereby enable the Department to better attend to the needs of the regulated community.

Contracted private and public agencies would incur costs in providing the services and facilities necessary for administration of certification examinations. The contracted agencies may charge for the cost of services they provide. The charge would be in addition to the examination fee in the regulations. The additional costs of service would be charged only to those members of the regulated community that decide to utilize this optional service being offered for the industry's convenience.

The current regulations do not expressly permit the Department to collect or process a service charge levied by a third party. Therefore, the Department proposes to add § 128.3(f)(6) to allow the Department to pass on to the person taking the examination any additional costs charged by a contracted agency or vendor. The Department will be required to continue to offer examination on at least a monthly basis at Department sites where additional will not be assessed.

#### *Summary of Major Features of the Proposed Rulemaking*

The proposed rulemaking would add § 128.3(f)(6), which would allow the Department to bill or pass through costs or service charges levied by a contracted vendor offering pesticide examinations. The costs would only be assessed when a person chooses to take a pesticide examination offered by an agency or vendor that is under

contract with the Department. The Department will be required to continue to offer examinations on at least a monthly basis at Department sites where additional charges would not be assessed.

#### *Persons Likely to be Affected*

The proposed rulemaking promotes the efficient Statewide administration of the act and meets a need expressed by the regulated community. Only the regulated community will be affected and even then only those members of the regulated community who choose to avail themselves of the convenience offered by the additional locations and hours of operation associated with the contractor locations will be affected by any additional charges levied by the contracted vendor. Pesticide applicators and pesticide dealer managers may continue to utilize Department testing sites where additional charges are not assessed.

The proposed rulemaking is not expected to have a significant adverse impact on any group or entity. The proposed rulemaking will provide the flexibility requested by the regulated community and allow for a more timely approach to pesticide certification. At the same time, those persons not wishing to or able to pay for services provided by a contracted vendor may continue to avail themselves of the certification courses offered at Department sites.

#### *Fiscal Impact*

##### *Commonwealth*

The proposed rulemaking would impose minimal additional fiscal impacts upon the Department's Bureau of Plant Industry (Bureau). The Bureau already invoices persons for pesticide examinations. The outside vendor charge would only require an additional line item be added to the invoice. The fund transfers would not cost additional money, changes to the computer program to administer the outside vendor programs and charges would be minimal and would be done internally. The Department would not incur additional costs for the use of the contracted facilities and the convenience offered to the regulated community.

*Political subdivisions*

The proposed rulemaking will not impose additional fiscal impacts upon political subdivisions. There is no role enforcement or otherwise for political subdivisions with regard to this proposed rulemaking.

*Private sector*

The proposed rulemaking will impose additional costs only on those persons that chose to utilize the outside vendor locations to take pesticide certification examinations. The Department will continue to offer all certification at Department locations on at least a monthly basis and additional costs will not be incurred by the regulated community.

*General public*

The proposed rulemaking will not impose additional costs on the general public.

*Paperwork Requirements*

The Department will not have to develop new application forms or review procedures. It will need to amend billing statements to include any additional charges by a contracted vendor and will need to interface with the vendor's payment systems. Transfers of information between the Bureau and the outside vendors will be done by computer means with no new computer systems and only minor programming modification will have to be developed to effectuate exchanges.

*Effective Date*

The proposed rulemaking will be effective 30 days after final-form publication in the *Pennsylvania Bulletin*.

*Sunset Date*

There is not a sunset date for the regulation. The Department will

review the efficacy of this regulation on an ongoing basis.

### *Public Comment Period*

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments may be mailed to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110, Attention: Dave Scott. These comments are public documents that will be posted on the Independent Regulatory Review Commission (IRRC) web site.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 21, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House and Senate 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 rulemaking 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 specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

GEORGE D. GREIG,  
Secretary

**Fiscal Note:** 2-179. No fiscal impact; (8) recommends adoption.

## **Annex A**

## **TITLE 7. AGRICULTURE**



## PART V. BUREAU OF PLANT INDUSTRY

### CHAPTER 128. PESTICIDES

#### Subchapter A. GENERAL PROVISIONS

#### § 128.3. Fees.

\* \* \* \* \*

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

\* \* \* \* \*

(5) Pest management consultant's examination—no charge except that a fee of \$5 will be charged if an examination is requested on other than a regularly scheduled examination date.

**(6) In addition to the examination fees in this subsection, when a person chooses to take a pesticide examination offered by an agency or vendor that is under contract with the Department, any additional costs charged by the contracted agency or vendor will be assessed to the person taking the examination. The Department will continue to offer pesticide certification examinations on at least a monthly basis at Department sites where additional charges will not be assessed. The Department will post on its web site the addresses of the contracted examinations, the dates and times examinations are offered at those locations, and the additional costs charged by the contracted agency or vendor and assessed by the Department.**

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

\* \* \* \* \*

[Pa.B. Doc. No. 14-709. Filed for public inspection April 4, 2014, 9:00 a.m.]

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**FINAL-FORM REGULATION  
DEPARTMENT OF AGRICULTURE  
BUREAU OF PLANT INDUSTRY  
7 PA. CODE CHAPTER 128, SECTION 128.3(F)  
PESTICIDES – THIRD PARTY TRANSACTIONS  
I.D. NO. 2-179**

**LIST OF COMMENTATORS**

1. Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17120



JOHN F. MIZNER, ESQ., CHAIRMAN  
GEORGE D. BEDWICK, VICE CHAIRMAN  
T. RUSSELL FABER  
LAWRENCE J. TABAS, ESQ.  
DENNIS A. WATSON, ESQ.  
DAVID SUMNER, EXECUTIVE DIRECTOR  
ESLIE LEWIS JOHNSON, CHIEF COUNSEL

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irc@irc.state.pa.us  
<http://www.irc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 4, 2014

Honorable George Greig, Secretary  
Department of Agriculture  
211 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Regulation #2-179 (IRRC #3050)  
Department of Agriculture  
Pesticides; Third Party Transactions

Dear Secretary Greig:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irc.state.pa.us](http://www.irc.state.pa.us). If you would like to discuss them, please contact me.

Very truly yours,

David Sumner  
Executive Director  
sfh  
Enclosure

cc: Honorable Elder A. Vogel, Jr., Majority Chairman, Senate Agriculture and Rural Affairs  
Committee  
Honorable Judith L. Schwank, Minority Chairwoman, Senate Agriculture and Rural Affairs  
Committee  
Honorable John A. Maher, Majority Chairman, House Agriculture and Rural Affairs  
Committee  
Honorable Joseph A. Petrarca, Minority Chairman, House Agriculture and Rural Affairs  
Committee  
Robert A. Mulle, Esq., Office of Attorney General  
Shawn E. Smith, Esq., Office of General Counsel

## Comments of the Independent Regulatory Review Commission



### Department of Agriculture Regulation #2-179 (IRRC #3050)

#### Pesticides; Third Party Transactions

June 4, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the April 5, 2014 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

#### **Section 128.3. Fees. – Implementation procedures; Clarity.**

This proposal would allow the Department to collect and pass on any additional service charges or costs levied by a contracted state agency or private vendor that provides additional testing opportunities for certified applicator or pesticide dealer manager applicants. Based on conversations with the Department, it is our understanding that the Department will not collect additional service charges or costs associated with the administration of an examination administered by a private vendor. Under this circumstance, the applicant would register to take the examination with the Department and pay the Department the required fees enumerated in this section. The applicant would then pay any additional service charges or costs directly to the private vendor. This understanding conflicts with the new language of Subsection (f)(6) and language in the Regulator Analysis Form and Preamble that indicates the Department will collect and pass on the additional service charges or costs to contracted state agencies and vendors. We ask the Department to provide further clarification on how this provision will be implemented and how an applicant will pay the additional service charges or costs associated with taking a test at the site of a private vendor.



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 20, 2014

Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17120

**RE: NOTICE OF FINAL RULEMAKING**  
**Department of Agriculture**  
**7 Pa. Code Chapter 128, Section 128.3(f)**  
**Pesticides – Third Party Transactions - I.D. No. 2-179**  
**Proposed Rulemaking: 44 Pa. Bulletin 2058 (April 5, 2014)**  
**Approved by Office of General Counsel: August 8, 2014**

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation (Preamble and Annex "A"). Copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)). The Department's response to the only comment received with respect to the proposed version of this regulation is set forth in the Preamble and Annex "A" of the final-form regulation. Enclosed is a list setting forth the name of the only commentator for this regulation. Please be aware that the Department, pursuant to 71 P.S. § 745.5a(b), on this same date, sent a copy of the text of the final-form regulation to the only commentator, the Independent Regulatory Review Commission, although no request for such information was made pursuant to 71 P.S. § 745.5a(a). Section 71 P.S. § 745.5a(a), requires enclosure of the list of commentators who requested additional information. The Independent Regulatory Review Commission was the only commentator, so therefore no commentator requested additional information.

I respectfully request the Commission's approval of this final-form regulation. The Department will provide any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your consideration of this document.

Sincerely,

  
David C. Kennedy  
Assistant Counsel

Enclosures

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

**I.D. NUMBER:** 2-179  
**SUBJECT:** PESTICIDES – THIRD PARTY TRANSACTIONS  
**AGENCY:** DEPARTMENT OF AGRICULTURE

**TYPE OF REGULATION**

- Proposed Regulation
- X 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

2014 AUG 20 AM 11:38

**RECEIVED  
IRRC**

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON AGRICULTURE &amp; RURAL AFFAIRS</i>
8-20-14	<i>Shelly Maanew</i>	MAHR MAJORITY CHAIR MAHR
8-20-14	<i>[Signature]</i>	PETRARCA MINORITY CHAIR
		<i>SENATE COMMITTEE ON AGRICULTURE &amp; RURAL AFFAIRS</i>
8-20-14	<i>[Signature]</i>	VOGEL MAJORITY CHAIR VOGEL
8-20-14	<i>[Signature]</i>	SCHWANK MINORITY CHAIR
8-20-14	<i>K Cooper</i>	IRRC INDEPENDENT REGULATORY REVIEW COMMISSION
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>