

333 CMR: PESTICIDE BOARD

333 CMR 7.00: EXPERIMENTAL USE PERMITS

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7.01: Purpose

The purpose of 333 CMR 7.00 is to establish the standards, requirements and procedures for issuance of state experimental use permits for testing of pesticides under certain specified circumstances consistent with and no less stringent than the requirements of the Federal Insecticide, Fungicide and Rodenticide Act and regulations promulgated thereunder at 40 CFR 172.

7.02: Definitions

For the purpose of 333 CMR 7.00, the definitions set forth in 333 CMR 2.00 and in 333 CMR 7.02 apply, unless the context or subject matter required a different interpretation.

Cooperator, any person who grants permission to a permittee or a permittee's designed participant for the use of an experimental use pesticide at an application site owned or controlled by the cooperator.

Participant, any person acting as a representative of the permittee and responsible for making available for use, or supervising the use or evaluation of, and experimental use pesticide to be applied at a specific application site.

Permittee, any applicant to whom an experimental use permit has been granted.

New Chemical, shall refer to any chemical not contained in one or more federally registered pesticide products.

Unregistered-use, shall refer to any experimental use of a federally registered pesticide product not otherwise prohibited by accepted labeling.

New Product, shall be any product that is not registered federally and one with a composition of matter containing active and inert ingredients currently found in other federally registered products consistent with 40 CFR 172.24(c)(2).

7.03: Permit Requirement

(1) State experimental use permits are required to control potential hazards of pesticide experimentation under out-of-door, greenhouse, and domestic animal trial conditions. State Experimental use permits are not required for indoor experimentation, excepting greenhouse and animal test work as specified in 333 CMR 7.00.

(2) All pesticide applications made pursuant to a state experimental use permit must be applied by an applicator certified in Cat. 10 Demonstration and Research or by someone acting under the direct supervision of such a certified applicator.

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(3) A state experimental use permit will be required for all experimentation, except as provided for under 333 CMR 7.03(4)(b), with any "new chemical" for which a Federal experimental use permit has been issued or for any new chemical otherwise exempted by Federal experimental use permit requirements under 40 CFR 172.3. A state experimental use permit will not be issued for any other use of a new chemical.

(4) State experimental use permits will further be required as follows:

(a) Outdoor Applications

1. Experimental use of "new chemicals" shall be in accordance with 333 CMR 7.03(3).
2. Experimentation involving "unregistered uses" and "new products".

a. Where plot size is less than $\frac{1}{4}$ acre -

A state experimental use permit will not be required where an "unregistered use" or a "new product" is applied to less than $\frac{1}{4}$ acre.

b. Where plot size is between $\frac{1}{4}$ and ten acres -

A state experimental use permit is required only if the application rate of any active ingredient is higher than any application rate registered by EPA for any other use of the compound regardless of crop.

c. Where plot size is over ten acres -

A state experimental use permit is required for all experiments that involve the application of an "unregistered use" or a "new product" to more than ten acres.

d. Where the material is applied by Aircraft -

A state experimental use permit is required for all experiments that involve the application of an "unregistered use" or a "new product" by aircraft.

(b) Greenhouse Applications. A state experimental use permit will be required in two cases:

1. Experiments involving a "new chemical" applied to more than 100 sq. ft. of greenhouse bench space of plant material; and
2. Experiments involving an "unregistered use" or a "new product" applied at a rate greater than any EPA registered rate for the active or inert ingredients and applied to more than 100 sq. ft. of greenhouse bench space of plant material.

(c) Application to Animals. With regards to domestic animal experimentation, such as tests on cattle, sheep, poultry or other species of farm or domestic animals, a state experimental use permit is required when more than ten individuals of a large species (cow, hog, sheep, horse, etc.) or 25 individuals of a small species (cat, dog, etc.) or 50 individuals of poultry are to be treated with either a "new product" or an "unregistered use" compound for which the rate is greater than any rate registered by EPA for that active ingredient's use on any other species of animal.

State experimental use permits are not required for laboratory testing of pesticide on rodents or other species when conducted at a research facility on animals purchased and maintained exclusively for such experimentation and not part of an agricultural operation.

(5) Uses of food, feed, or animal products treated with pesticides covered by state experimental use permits:

(a) Plants - All raw agriculture food or feed crops treated with pesticides that exceed or do not have EPA established tolerances for the crops in question must be destroyed at the end of the experiment by burning or plowing under. Portions of food or feed crops utilized further in experimental animal feeding studies are exempted.

(b) Animals - All domestic animals treated with pesticides that exceed or do not have EPA established tolerances for the species and part (milk, meat, etc.) in question and which may be used for food or feed must be destroyed at the end of the experiment. Specific arrangements shall be made in the state experimental use permit to monitor declining residue levels when the temporary or established residue tolerance is expected to be exceeded.

(6) Permittee obligations - it is the responsibility of the Permittee to assure that:

(a) All required state and/or federal experimental use permits are obtained.

(b) That applicators using experimental use permits are certified in Cat. 10 or are acting under the direct supervision of a certified applicator.

7.03: continued

- (c) That public access to experimental areas is appropriately limited by posting and/or fencing.
- (d) That food or feed items unfit for consumption due to illegal pesticide residues are destroyed.

7.04: General Provisions

- (1) The Subcommittee shall refuse to grant an experimental use permit if it believes that the pesticide applications to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.
- (2) The Subcommittee shall refuse to grant an experimental use permit if it believes that applicant or person to conduct the experimentation is not competent to conduct such experimentation without causing unreasonable adverse effects on the environment.
- (3) The Subcommittee may issue a permit subject to such terms, conditions, restrictions and requirements as it deems necessary.
- (4) When a pesticide is applied under an experimental use permit, public notice of such use shall be given by the posting of signs stating "Notice Pesticide Testing". Such signs shall be posted at the perimeter of the test area and at every principle entrance fronting on a public road.
Upon application, the Subcommittee may waive this posting requirement, if they determine it is unnecessary to protect the public interest. If a waiver is granted, this information shall be among that given to the Board under the notification provisions of 333 CMR 7.06(3).
- (5) No person shall violate any provisions, term condition, restriction or requirement of any experimental use permit.
- (6) The permittee shall supervise the test program and evaluate the results of testing at each site of application. The permittee shall report immediately to the Department any adverse effects from the use of or exposure to the pesticide.
- (7) Pesticide products used under experimental use permits may not be sold or distributed other than through participants, and, if sold or distributed through participants, may be used only at an application site of a cooperator and in accordance with the terms and conditions of the experimental use permit.
- (8) Establishments in which pesticide products under Massachusetts experimental use permits are produced shall be registered as required by 40 CFR 167.2(a) and producers of such shall maintain books and records as required by 40 CFR 169.2.
- (9) Pesticide products and their containers used under 333 CMR 7.00 must be packaged, stored, transported, used and disposed of in accordance with all applicable Massachusetts or Federal Laws and regulations, including the Resource Conservation and Recovery Act of 1976 as amended (Pub. L. 94-58U; 9U Stat. 2795; 42 U.S.C. 6901 et seq.) (RCRA), and rules promulgated thereunder.

7.05: Application Procedure for Experimental Use Permit

All applications for experimental use permits shall be submitted to the Subcommittee of the Pesticide Board according to the following procedures.

- (1) Applicant Requirements. Any person may apply for an experimental use permit. An applicant may submit his own application or an applicant may appoint an agent to act on his behalf in permit matters, provided that a notarized letter of appointment signed by the applicant or by an authorized officer of the applicant is submitted. The agent's appointment may be revoked at any time by the same method.

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(2) Application for

(a) An application for an experimental use permit or request for amendment to an existing permit shall be submitted on forms provided by the Subcommittee and shall contain or be accompanied by such information as the Subcommittee shall require. The application shall be accompanied by the permit fee and shall be filed in person or by mail at the offices of the Subcommittee of the Pesticide Board. All applications shall be submitted as far as possible in advance of the intended date of shipment or use.

(b) A separate permit application must be made for each pesticide product.

(c) The application shall be submitted as a complete package including all enclosures and attachments. The application shall include, but is not limited to:

1. Name and address of the applicant;
2. Type of product;
3. (Reserved)
4. Registration number of the product, if registered;
5. Federal experimental permit number, if one has been issued by EPA;
6. Purpose or objectives of the proposed testing;
7. Designation of the pest organism involved;
8. Amount of pesticide product proposed for use;
9. Method of application;
10. Crops, fauna, flora, sites, modes, dosage rates and situation of application on or in which the pesticide is to be used;
11. Proposed dates or periods during which the testing program is to be conducted;
12. Manner in which supervision of the program will be accomplished;
13. Name, street address, telephone number, and qualifications of all participants in the program, whether or not in the employ of the applicant. A permit must be amended to add or change participants;
14. Name and street address, of all cooperators, if available at the time an application is submitted or as soon thereafter as available;
15. (Reserved)
16. The proposed method of storage and disposition of any unused experimental use pesticide and its containers;
17. The proposed method of disposal of a treated commercial crop that does not meet Environmental Protection Agency tolerances for that crop or for which no tolerance has been set.
18. Such other information as the Subcommittee may require.

(d) Any information required in 333 CMR 7.05(2)(c) may be submitted in the form of a copy of the Federal Environmental Protection Agency Experimental Use Permit and appropriate attachments.

(3) Completeness of Application. The applicant is responsible for the accuracy and completeness of all information submitted in connection with the application. When the Subcommittee determines that an application is not sufficiently complete to reach a determination, the Subcommittee shall notify the applicant of the deficiencies and allow the applicant a reasonable time to complete the application. If the applicant fails to satisfactorily complete the application within a reasonable time, it shall be denied.

(4) Permit Fee. The applicant shall pay a permit fee of \$25.00 for each experimental use permit. The fee shall be paid by check or money order payable to the Commonwealth of Massachusetts. The permit fee shall be waived for applications by governmental agencies.

7.06: Disposition of Application

The Subcommittee may issue or refuse to issue an experimental use permit according to the procedures of 333 CMR 7.06.

(1) Time for Action. All applications for permits, renewals, or amendment will be processed as expeditiously as possible. Where practicable the Subcommittee shall approve or deny an application within 90 days of receipt.

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(2) Permit.

(a) General Provision. All applications for experimental use permits for pesticides already issued a federal experimental use permit by the United States Environmental Protection Agency shall be approved by the Commonwealth of Massachusetts and permits shall be issued with the same terms and conditions as those imposed by EPA, except those individually reviewed by the Subcommittee and denied or further restricted pursuant to the procedures set forth in 333 CMR 7.06(2).

(b) Criteria for Individual Review. The Subcommittee shall individually review all applications for which no permit has been issued by the EPA, and may individually review those applications;

1. Recommended for review by the Department.
2. As deemed necessary by the Subcommittee.

(c) Criteria for Granting Permit. In reaching its decision on issuing an experimental use permit, the Subcommittee shall consider a number of factors, including, but not limited to the following:

1. Material submitted pursuant to 333 CMR 7.05(2).
2. The recommendation of the Department.
3. Input from Advisory Councils and hazard reviewers associated with Section 24-C of FIFRA.

(d) Conditions. All permits shall be issued subject to all requirements imposed by the Massachusetts Pesticide Control Act, FIFRA, and the regulations promulgated under either.

(3) Notification of Decision. The Subcommittee shall notify the Board and the applicant promptly after making a decision. If the Subcommittee denies a permit or issues a permit with terms or conditions different than the EPA permit, the notification to the applicant shall be by certified letter and shall set forth the reasons and the factual basis for the determination, and the conditions, if any, which must be met in order for the permit to be approved. The applicant will have 30 days from the date of receipt to take the specified corrective action.

(4) Duration of Permit. Permits will be effective for a specified period depending upon the requirements of the testing program submitted, but shall not exceed one year. The applicant should propose a suitable duration of the permit commensurate with the program submitted.

(5) Applications to Amend or Renew a Permit. Applications to amend a permit shall be submitted as circumstances warrant. Applications for renewals of experimental use permits shall be submitted prior to expiration of the permit. Requirements for renewals are the same as applications under 333 CMR 7.05, except that information previously submitted may be incorporated by reference.

7.07: Permit Documents

The Subcommittee shall issue permit documents only after the applicant has successfully complied with the procedure set forth in 333 CMR 7.05 and 7.06. The permit documents shall include, at least, the following information: applicant's name; address; permit number; any limitations or restrictions; and the departmental validation.

7.08: Modification Suspension and Revocation

The Subcommittee may, at any time, suspend any experimental use permit, pending inquiry, for no longer than ten days, and after affording the permittee notice and an opportunity to be heard, may revoke, or modify the provisions, of the permit, if it finds:

- (1) Its terms or conditions are being violated, or are inadequate to avoid unreasonable adverse effects on the environment, or
- (2) The permittee has made a false or misleading statement in the application, or

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(3) The permittee has violated any provision of the Massachusetts Pesticide Control Act, or FIFRA, or any regulations, standards, orders or permit issued under either.

7.09: Reporting Requirement

A report shall be submitted, by the applicant, to the Subcommittee within six months of the conclusion of the experimental pesticide treatment or the expiration date of the experimental use permit. The report will include the data gathered during the testing program; the dates of application; the total quantities of pesticide used; a description of the disposition of any pesticide containers and any unused pesticides, including amounts disposed of and the method and site of disposition; any indication of adverse health or environmental effects; and any other information the Subcommittee deems necessary.

The permittee shall report immediately to the Department any indication of adverse effects to humans or the environment from the use of or exposure to the pesticide.

7.10: Rights of Appeal

Any person aggrieved by a determination by the Subcommittee to issue, deny, suspend, revoke or modify any experimental use permit may request within 21 days an adjudicatory hearing before the Board as provided for in M.G.L. c. 132B, § 13.

7.11: Penalties

Any person who violates any provision of 333 CMR 7.00 shall be subject to the criminal and civil penalties set forth in M.G.L. c. 132B, § 14.

REGULATORY AUTHORITY