

333 CMR: PESTICIDE BOARD

333 CMR 13.00: STANDARDS FOR APPLICATION

Section

- 13.01: Definitions
- 13.02: General Provisions
- 13.03: Exclusions from Pesticide Application
- 13.04: Application by Aircraft
- 13.05: Subsurface Application of Termiticides
- 13.06: Application for Turf Pests
- 13.07: Protection of Honey Bees
- 13.08: Commercial Application of Pesticides to Indoor Settings
- 13.09: Foliar Application of Pesticides to Trees in Residential Settings
- 13.10: Suppression and Control of Public Nuisance Pests
- 13.11: Special Requirements for School, Day Care and Child Care Program Property

13.01: Definitions

For the purpose of 333 CMR 13.00, the definitions set forth in 333 CMR 2.00, 333 CMR 10.02, and 333 CMR 13.01 apply, unless the context or subject matter requires a different interpretation.

Agricultural Applications. Those pesticide applications to agricultural land as defined under M.G.L. c. 128, § 1A.

Chief Forester. Chief Forester of the Bureau of Forest Fire Control and Forestry, Department of Conservation and Recreation.

Contracting Entity. The individual, party, or organization primarily responsible for the procurement of pest control services.

Control Program. Any program designated to control Public Nuisance Pests which entails the application of a pesticide using either ground or aerial application equipment.

DCR. Department of Conservation and Recreation.

District Supervisor. District Supervisor of DCR, Bureau of Forest Fire Control and Forestry.

Local Superintendent. Local Superintendent of Shade Tree Management and Pest Control as established by M.G.L. c. 132, § 13.

Protected Areas. Those areas defined as follows:

- (a) Any residential, commercial, municipal, hospital, school or other building where people gather and the area within a 100-foot radius surrounding these structures, provided that such Protected Area shall not exceed the property line; and
- (b) Any developed recreation area open to public accommodation, including any developed public or commercial campground, developed picnic area, developed park and recreation facility, playground, school bus stop, or other area developed for organized recreation.

Public Building. The indoor area of any building to which the public has access for work, recreation or other purposes including but not limited to commercial buildings, day care centers and facilities, nursery schools, institutions, health care facilities, restaurants, hotels, motels, schools, places of worship, public meeting places, stores, malls, and airports.

Public Nuisance Pests. The term "Public Nuisance Pest" shall include those plant diseases, insects, and related pests which are declared to be "public nuisances" by DCR or the Department. This term includes the following:

- (a) Gypsy and brown tail moths, tent caterpillars, cankerworms, oriental hag moths, fall webworms, Japanese beetles, saddled prominents, pine loopers, and elm leaf beetles which damage forest and shade tree foliage;
- (b) Diseases and leaf eating and sucking insects which damage forests and shade trees; and
- (c) Beetles which spread Dutch Elm Disease.

13.01: continued

Wide Area Applications. All aerial applications made for the control of Public Nuisance Pests, and all ground applications made for the control of Public Nuisance Pests which cross property lines or are made to areas that exceed one acre.

13.02: General Provisions

(1) Anti-siphonage Devices. Pesticide application or mixing equipment designed, sold or intended for use in Massachusetts shall:

- (a) If attached to pipes or fixtures which carry potable water, be separated from the water supply by an effective anti-siphonage device.
- (b) If drawing water from the surface waters of the Commonwealth, have an effective anti-siphonage device.

(2) Applications Broader than 25 Acres. No application of a restricted or state limited use pesticide, as classified in 333 CMR 8.04(1)(b), to any area in excess of 25 acres shall be made unless the conditions set forth in 333 CMR 13.02(2)(a) through (b). 333 CMR 13.02 shall not apply to Agricultural Applications except for those made to forested land under production.

(a) Notification of the proposed application has been given to the Department by the applicator or his/her employer at least two Department business days prior to the proposed application and the Department has reviewed and approved said application. Said notification shall include but not be limited to the following information:

1. Proposed dates of pesticide application, including alternative dates to be used in the event of improper conditions.
2. Location identified on a U.S.G.S. topographical or other map as specified by the Department.
3. Name and EPA Registration Number of the pesticide product to be applied.
4. Quantity of the pesticide to be applied.
5. Name and phone number of applicator from whom additional information can be obtained.

(b) The Department shall issue a written approval or rejection of the proposed application, as soon as possible, but in no case later than two weeks after the receipt of a complete notification.

(3) Agricultural Applications Near Public Ways. No application of a pesticide bearing the signal word "Danger" on the label and classified as a restricted use or state limited use pesticide pursuant to 333 CMR 8.04(1)(b) shall be made for the purpose of producing an agricultural commodity to a site within 50 feet of a public way unless notice of the application is given by the posting of a sign. Such sign shall:

- (a) Be posted at least every 200 feet along the perimeter of the treated area facing the public way and at every principal entrance to the treated area facing the public way;
- (b) Be posted between two and 24 hours prior to the application;
- (c) Be removed no sooner than 48 hours after the application and no sooner than the expiration of the Restricted Entry Interval (REI) stated on the label instructions under the heading "Agricultural Use Requirements";
- (d) Be removed no later than 48-hours after the expiration of the Restricted Entry Interval (REI) stated on the label instructions under the heading "Agricultural Use Requirements";
- (e) Have a background color that contrasts with red. The words "Danger" and "Peligro", plus "Pesticides" and "Pesticidas" shall be at the top of the sign, and the words "Keep Out" and "No Entre" shall be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be at the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information; and
- (f) Be at least 14 inches by 16 inches in size, with letters at least one inch in height.

13.02: continued

- (4) Applications Adjacent to Agricultural Lands. Pesticide applications made to areas adjacent to crops or pasturelands shall be so made that residues in excess of Environmental Protection Agency tolerances for crops and pasturage do not occur.
- (5) All persons shall use pesticides in such a manner that there be no unreasonable adverse effect on the non-target environment.
- (6) All persons shall:
- Use only methods and equipment which insure proper application of materials.
 - Operate in a careful manner and only when conditions are proper for controlling pests in the locality.
 - Make no false or fraudulent claims. The term fraud includes misrepresentation personally or through the media, falsified records, invoices or reports.

13.03: Exclusions from Pesticide Application

- (1) General.
- Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board shall not be made to private property which has been designated for exclusion from such application by a person living on or legally in control of said property.
 - Designation for exclusion from Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board may be made by supplying the clerk of the municipality in which such lands lie with a certified letter providing the name, address, and telephone number (if any) of the person requesting the exclusion, the address of the property to be excluded, and a description of the types of pesticide application programs for which exclusion is requested.
 - Designation for exclusion may be made prior to March 1st of each year and shall be effective from April 1st of that year through March 31st of the following year.
 - A designation for exclusion made by a tenant shall not be deemed to limit the right of the landlord to apply, or authorize the application of, pesticides to that land if by the express or implied terms of the written or oral rental agreement the owner retains the right to apply or authorize the application of such pesticides.
 - 333 CMR 13.03 shall not be deemed to limit the right of an easement holder to apply pesticides to land which is subject to the easement if the easement expressly or implicitly includes the right to apply pesticides.
 - A designation for exclusion made by a joint owner, tenant in common, or owner of a condominium unit shall not be deemed to limit the right of any other joint owner, tenant in common, condominium unit owner or condominium association to apply or authorize the application of pesticides to land if by the express or implied terms of the deed, condominium agreement or other agreement governing such land such other joint owner, tenant in common, condominium unit owner or condominium association retains the right to apply or authorize the application of such pesticides.
- (2) Marking Areas for Exclusion. All areas designated for exclusion from Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board shall be marked as follows:
- Applications by Aircraft. The person requesting exclusion shall clearly mark boundaries or areas to be excluded with helium filled balloons or other marking methods previously approved by the Department. Such balloons or other marking materials shall be provided by the Contracting Entity. The Contracting Entity shall appropriately mark the excluded areas on the maps required under 333 CMR 13.04(5) and on maps used by the pilots who shall be alerted by the Contracting Entity of the markings delineating the excluded area.
 - Ground Applications. The person requesting exclusion shall mark the boundaries or areas to be excluded at least every 50 feet with orange surveyor's tape or another Department-approved marking device which clearly defines the area of exclusion. These markings shall be made known to the Contracting Entity, who shall be responsible for communicating the details of their marking to those who will carry out the application.

13.03: continued

- (3) Requests for exclusion shall not be honored in those cases in which:
- (a) The Commissioner of Public Health has certified that the application is to be made to protect the Public Health;
 - (b) The Commissioner of the Department of Conservation and Recreation has certified that the application is necessary to contain an infestation of a recently introduced pest; or
 - (c) The Commissioner of the Department of Agricultural Resources has certified that the application is necessary to contain an infestation of a pest which is a significant threat to agriculture.

13.04: Application by Aircraft

(1) Certification Requirement. No person shall apply pesticides by aircraft unless certified by the Department in Category 34 - Aerial.

(2) Permit Requirement. Except as provided for below, all who elect to control pests by the use of pesticides applied by aircraft shall do so only after receiving a permit issued by the Department. The Department shall issue such permit in those cases in which the applicant presents to the Department a plan acceptable to the Department and in compliance with the provisions of M.G.L. c. 132B, and the regulations promulgated thereunder.

(3) Exemptions from Permit Requirement. The following classes of applications by aircraft are exempted from the provisions of 333 CMR 13.04(2):

- (a) Those carried out on lands owned or controlled by the DCR and under the authority of M.G.L. c. 132;
- (b) Those carried out in the conduct of mosquito control programs approved by the State Reclamation and Mosquito Control Board;
- (c) Those made to state, county, and municipal lands under the authority granted to the public agencies having control of such lands, so long as these applications are designed to confine said applications to such public lands; and
- (d) Agricultural Applications as defined.

(4) Notification for Aerial Applications. With the exception of Agricultural Applications, no applications of pesticides by aircraft shall be made unless the following conditions have been met:

- (a) Notification of the proposed application has been given by the Contracting Entity to the public residing on adjacent lands by publication of a notice in a newspaper of general circulation normally used by the municipality for legal notices not later than two days before the application and no sooner than ten days before application. The notice shall include all of the following information:
 1. Purpose of application;
 2. Method of application;
 3. Area of application;
 4. Name and EPA Registration Number of the pesticide product to be applied;
 5. Anticipated commencement date and time of application;
 6. Phone number of a contact person from whom additional information can be obtained;
 7. Location where the public may view maps delineating the area of application; and
 8. Locations where materials, used for marking areas of exclusion, will be distributed.
- (b) Notification of the proposed application has been given to the Department by the Contracting Entity at least two Department business days prior to the proposed application. Said notice shall include but not be limited to information required by 333 CMR 13.04(4)(a)1. through 8.
- (c) Notification of proposed application has been given by the Contracting Entity to the Local Superintendent. Said notice shall include but not be limited to information required by 333 CMR 13.04(4)(a)1. through 8.

(5) Use and Maintenance of Maps. The site of each application of pesticides by aircraft, other than for the production of an agricultural commodity, shall be recorded on a U.S.G.S. topographical or other map as specified by the Department, which shall be maintained by the applicator or his/her employer for a period of three years and shall be made available to the Department upon request.

13.04: continued

(6) Aerial Applications Within 150 feet of a Public Way. No aerial application of pesticides shall occur within 150 feet of persons or vehicles transiting a public way which is owned or maintained by a government entity.

(a) Exemptions. 333 CMR 13.04(6) shall not apply to Wide Area Applications to which one or more of the following applies:

1. The Commissioner of the Department of Conservation and Recreation has certified that the application is necessary to contain an infestation of a recently introduced pest;
2. The District Supervisor or Local Superintendent has determined that the application is necessary to control Public Nuisance Pests; or
3. The Commissioner of the Department of Agricultural Resources has certified that the application is necessary to contain an infestation of a pest, which is a significant threat to agriculture.

(b) Exemption. 333 CMR 13.04(6) shall not apply to mosquito-adulticide applications approved by the State Reclamation and Mosquito Control Board.

(7) Exemptions for Aerial Application of Mosquito Larvicides. Mosquito larvicide applications made by mosquito control programs approved by the State Reclamation and Mosquito Control Board are exempt from 333 CMR 13.04(4) and 333 CMR 13.04(6) if all of the following conditions have been met:

(a) Notice of the proposed application has been published in a newspaper of general circulation in the affected municipality between February 1st and March 1st of the year the application is intended to be made. The notice shall include the following information:

1. Purpose of control program;
2. Method of application;
3. Area of application if known;
4. Name and EPA Registration Number of the pesticide product to be applied; and
5. Phone number of a contact person from whom additional information can be obtained.

Within seven calendar days of publication, a copy of the notice shall be provided to the Department and the Board of Health in the municipality where the application is to be made.

(b) Notice of the proposed application has been provided to the Department and the Board of Health in the municipality where the application is to be made prior to the application. The notice shall include the following information:

1. Purpose of control program;
2. Method of application;
3. Area of application;
4. Date and time of application;
5. Name and EPA Registration Number of the pesticide product to be applied; and
6. Name of the applicator and phone number of a contact person from whom additional information can be obtained.

(8) Emergency Provision. In the event of an emergency situation requiring immediate application of pesticides by aircraft, the Department may waive or alter any or all of the provisions of 333 CMR 13.04.

(9) Aerial Agricultural Applications. The following conditions shall apply to fixed wing Agricultural Applications of pesticides:

(a) The Department may approve agricultural land for fixed wing aerial application on an annual basis. No aerial Agricultural Application of pesticides shall be made by fixed wing aircraft unless a valid permit has been issued by the Department for the field to be treated. The Department shall issue permits only in those cases where the Department has determined that such fixed wing aerial applications will not cause or will not likely cause injury to humans and will not cause an unreasonable adverse effect on the environment.

(b) Prior to issuing such a permit, the Department will assess conditions at the site to be treated in order to determine the likelihood of off-target movement of pesticides applied. Based on this determination, the Department may attach conditions to the permit. The Department shall notify the local board of health of permit application(s) and any conditions attached to the permit.

13.04: continued

(c) Unless waived by the Department for good cause, permit applications must be received at least 21 calendar days prior to the proposed start of applications and must contain the following information:

1. The name, address and phone number of the manager or farmer of the property;
2. A Town/City Assessor map, if available, or another map acceptable to the Department provided that the map clearly identifies the field and Protected Areas;
3. The crop planted or to be planted in the field;
4. The number of acres of the field; and
5. Names and EPA Registration Numbers of pesticide products to be applied during that season.

(d) Aerial Agricultural Application of pesticides for the purpose of producing an agricultural commodity shall be made subject to the following conditions:

1. No aerial Agricultural Application shall be made with ultra low volume technique.
2. Aerial Agricultural Application shall cease if there is visible drift to non-target areas. Application shall not resume until weather conditions or operating conditions have changed so as to preclude drift.
3. No aerial Agricultural Application of liquid formulation pesticides shall be made to any area of an agricultural field if the area to be treated is within 150 feet of a Protected Area, unless the owner(s) or manager(s) of the property containing the Protected Area has submitted a written waiver to the farmer or manager of the site to be treated.
4. No aerial Agricultural Application of granular formulation pesticides shall be made to agricultural land if the area to be treated is within 50 feet of a Protected Area, unless the owner(s) or manager(s) of the property containing the Protected Area has submitted a written waiver to the farmer or manager of the site to be treated.
5. No aerial Agricultural Application of a liquid formulation pesticide shall be made within 400 feet of a public surface water supply, not to include tributaries thereto.
6. No aerial Agricultural Application of a granular formulation pesticide shall be made within 250 feet of a public surface water supply, not to include tributaries thereto.
7. No aerial Agricultural Application of pesticides shall be made to an area of an agricultural field if the area to be treated is within 50 feet of adjacent non-agricultural property unless the owner(s) or manager(s) of the abutting property has submitted a written waiver to the farmer or manager of the site to be treated.

(e) Unless the pilot or others are endangered, pesticide applicators for aerial Agricultural Applications shall not conduct turns over adjacent Protected Areas and water bodies not located within the confines of the agricultural site.

(f) Unless the pilot or others are endangered, pesticide applicators for Agricultural Applications shall make swaths parallel to roads, water bodies and Protected Areas.

(g) No aerial Agricultural Application of a pesticide for the purpose of producing an agricultural commodity shall be made to a site within 500 feet of a Protected Area unless notice of the application is given by the posting of a sign. All signs posted pursuant to 333 CMR 13.04(g) shall meet with the following requirements:

1. Be posted at conspicuous points but in no case less than every 200 feet and at every principal entrance fronting a public road;
2. Be posted between two and 24 hours prior to the application;
3. Be removed no sooner than 48 hours after the application and no sooner than the expiration of the Restricted Entry Interval (REI) stated on the label instructions under the heading "Agricultural Use Requirements";
4. Be removed no later than 48-hours after the expiration of the Restricted Entry Interval (REI) stated on the label instructions under the heading "Agricultural Use Requirements";
5. Have a background color that contrasts with red. The words "Danger" and "Peligro," plus "Pesticides" and "Pesticidas" shall be at the top of the sign, and the words "Keep Out" and "No Entre" shall be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be at the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information; and

13.04: continued

6. Be at least 14 inches by 16 inches in size, with letters at least one inch in height.

13.05: Subsurface Application of Termiticides

- (1) Certification of Applicators. All pesticide applicators who make subsurface applications of pesticides for control of termites shall be certified by the Department in Category 43 - Termite and Structural Pest Control or shall work under the direct supervision of an individual who is certified by the Department in said Category.
- (2) Sub-slab Elements. Termiticide shall not be injected beneath concrete slabs or other flooring until locations of intra or sub-slab heating ducts, water lines, sewer lines, electrical conduits or other subslab utility elements have been determined.
- (3) Foundations with Holes, Cracks or Voids. Treatment of areas outside the perimeter of buildings which have basements or crawl spaces which extend below the level of the outside grade and which have holes, cracks or voids which may allow infiltration of the pesticides may not take place until the applicator has taken steps to ensure that significant amounts of pesticide will not infiltrate into the basement or crawl space.
- (4) Applicable to all Subsurface Termiticide Applications. Prior to entering into any contract to apply termiticides, the applicator or his/her employer shall provide the Contracting Entity with a Department-approved Consumer Information Bulletin on Termite Applications which shall contain such information that the Department deems necessary.

13.06: Application for Turf Pests

- (1) Residential Properties. No commercial application of pesticides shall be made for the control of turf pests on residential properties without the following provisions:
 - (a) Prior to entering into any agreement to apply pesticides to residential turf or prior to renewal of an existing agreement to apply pesticides to residential turf, the applicator or his/her employer shall provide the Contracting Entity with a written statement approved by the Department which shall contain such information that the Department deems necessary.
 - (b) At the time of entering into any agreement to apply pesticides to residential turf, or at the time of renewal of an existing agreement to apply pesticides to residential turf, the applicator or his/her employer shall provide the Contracting Entity with the opportunity to request prior notification from the applicator or his/her employer of each application made to said property.
 - (c) Upon completion of each application, the applicator or his/her employer shall leave at the residence a written statement containing the following information:
 1. The name and license/certification number of the applicator;
 2. The names and EPA Registration Numbers of the pesticide products that were applied to the property and for what purpose;
 3. Any precautions indicated on the labeling relative to post-application requirements; and
 4. The date and time of application.
 - (d) Owners who occupy the residences associated with the turf being treated may waive the above requirements under the following conditions:
 1. The property owner and immediate family are the only persons occupying the property being treated; or
 2. The residence is unoccupied and will remain unoccupied for a minimum of 72 hours after the application is made.

The waiver must be at the written request of the property owner and made using a Department-approved form. Completed forms must be maintained by the applicator or his/her employer for three years.
 - (e) Prior to commencing each application, the applicator shall post a sign or signs, approved by the Department, on the turf intended for treatment. The applicator must leave such sign(s) posted on the property and shall instruct the customer that signs should neither be removed sooner than 24 hours after the application was made nor left up for more than 72-hours. Said signs must be posted at conspicuous points of access to the property.

13.06: continued

(2) Non-residential Properties. No application of pesticides shall be made for the control of turf pests on public or private non-residential properties without the following provisions:

(a) Prior to entering into any agreement to apply pesticides to public or private non-residential turf, or prior to renewal of an existing agreement to apply pesticides to public or private non-residential turf, the applicator or his/her employer shall provide the Contracting Entity with a written statement approved by the Department which shall contain such information that the Department deems necessary.

(b) At the time of entering into any agreement to apply pesticides to public or private non-residential turf, or at the time of renewal of an existing agreement to apply pesticides to public or private non-residential turf, the applicator or his/her employer shall provide the Contracting Entity with the opportunity to request prior notification from the applicator or his/her employer of each application made to said property.

(c) After each application, the applicator shall notify the Contracting Entity, property manager, or turf superintendent of the application including the information provided for in 333 CMR 13.06(1)(c)1. through 4.

(d) Prior to commencing each application, the applicator shall post a sign or signs, approved by the Department, on the turf intended for treatment. The applicator must leave such sign(s) posted on the property and shall instruct the Contracting Entity, property manager, or turf superintendent that signs should neither be removed sooner than 24 hours after the application was made nor left up for more than 72 hours. Said signs must be posted at conspicuous points of access to the property.

(3) Golf Courses. In addition to the requirements of 333 CMR 13.06(2)(a) through (c), the following provisions shall apply to the application of pesticides made for the control of turf pests on golf courses:

(a) All records of pesticides application made for the control of turf pests on golf courses shall be kept on-site and made available to any individual upon a reasonable request.

(b) Prior to commencing each application, the applicator shall post signs, approved by the Department. The applicator must leave such signs posted on the property and shall instruct the Contracting Entity, property manager, or turf superintendent that signs should neither be removed sooner than 24 hours after the application was made nor left up for more than 72 hours. Said signs must be posted at the following points:

1. At the location where individuals must register or sign in before use of the turf;
2. At the first tee; and
3. At the tenth tee, if applications are made to turf that is used to play or access holes ten through 18 of the course.

13.07: Protection of Honey Bees

(1) Use of Microencapsulated Methyl Parathion. Microencapsulated methyl parathion shall be used or applied in Massachusetts only as provided for below:

(a) Microencapsulated methyl parathion shall only be used or applied to control first generation European corn borer on sweet corn, San Jose scale on apples, or for those uses which the Department finds do not expose honey bee populations to the spray pattern or the resultant residues of the pesticide.

(b) Applications to control European corn borer shall not be made after July 1st of any year, unless such date is amended by the Department for good cause.

(c) Each use of microencapsulated methyl parathion shall only be made under the authority of a permit issued by the Department.

(d) A condition of any permit issued for outdoor use of microencapsulated methyl parathion shall be that where there exists an occurrence of significant flowering plants being visited by honey bees for the purpose of gathering nectar or pollen in the field or orchard being treated, or on those areas bordering such field or orchard to which spray may drift, applicators must take appropriate steps such as mowing ground cover prior to application to minimize the occurrence of bloom at the time of the pesticide use.

(e) No licensed dealer in restricted pesticides or any other dealer shall sell microencapsulated methyl parathion to any person who does not possess a currently valid permit to use this pesticide.

(f) No other person shall sell, trade, or otherwise transfer microencapsulated methyl parathion to any person who does not possess a currently valid permit to use this pesticide.

13.07: continued

(g) At least 24 hours prior to any application of microencapsulated methyl parathion, applicators will notify all apiary owners listed on the Department Apiary list whose hives are within five miles of the site of application. Applicators shall also check with known agricultural establishments within a five mile radius of the application site to determine if pollinator hives are on-site, and shall provide at least 24 hours' prior notification of application to any of these establishments that are determined to have pollinator hives on-site.

(2) All persons are prohibited from applying pesticides, which bear a warning statement on the label concerning bees, to fruit trees, alfalfa, clover, or trefoil grown as field-crops while in bloom without making reasonable inquiry as to the presence of apiaries on the premises or within a 2.5 mile radius of the application site. If apiaries are found to occur within 2.5 miles of the application site, the applicator shall provide 24 hours' pre-notification to owners of the apiaries. Reasonable inquiry shall consist of obtaining a current Apiary list from the Department and checking with known agricultural establishments within a 2.5-mile radius of the application site to determine if pollinator hives are on-site.

13.08: Commercial Application of Pesticides to Indoor Settings

(1) General Requirements.

(a) Applicators of pesticides to indoor settings shall take all practical steps necessary to avoid applications with people present in a room or area to be treated. Individuals occupying a room or area to be treated at the time of application shall be informed of the procedure.

(b) Applications of disinfectants, algacides, antimicrobials, paints, stains, wood preservatives, insecticidal baits placed in tamper-resistant bait stations or in generally inaccessible locations, and applications to wall or floor voids are exempt from 333 CMR 13.08.

(c) Rodenticides placed in generally accessible areas of indoor settings must be placed in tamper-resistant bait stations and must be secured in place so as to prevent lifting and/or removal of these bait stations.

(d) The applicator or his/her employer must notify the Contracting Entity of all post-application label requirements pertinent to the application.

(e) The applicator or his/her employer shall provide pre-notification to any person upon request between seven days and 48 hours prior to any application of pesticides to areas which the individuals occupy or have access. Pre-notification shall be made in writing and contain the following information:

1. Name and phone number of the company making the application;
2. Proposed date of application;
3. Locations to be treated; and
4. Names, EPA Registration Numbers, and active ingredients for the pesticide products that may be used.

(f) Rodenticide bait stations shall carry a label which indicates the following:

1. Name and phone number of the company making the application;
2. Date of the application;
3. Name and EPA Registration Number of the pesticide product; and
4. Active ingredients in product.

(g) Upon completion of each application, the applicator or his/her employer shall provide the Contracting Entity, and, upon request, the building residents and occupants, with the following information:

1. Name and phone number of the pest control company;
2. Name and license number of applicator;
3. Target pests;
4. Names and EPA Registration Numbers of the pesticide products applied; and
5. Date and approximate time of application.

(2) Residential Buildings where the Contracting Entity Resides in the Unit to be Treated. In addition to the requirements of 333 CMR 13.08(1), whenever the Contracting Entity resides in the unit to be treated with pesticides, the applicator or his/her employer shall provide the Contracting Entity with a Department-approved Consumer Information Bulletin prior to entering into an agreement for pesticide application.

13.08: continued

(3) Residential Buildings where the Contracting Entity Does Not Reside in the Unit to be Treated. In addition to the requirements of 333 CMR 13.08(1), the following shall apply whenever a pesticide application is made to a unit in which the Contracting Entity does not reside:

(a) Upon entering into an agreement for pesticide application, the applicator or his/her employer shall provide the Contracting Entity with a Department-approved Information Bulletin for Building Managers and Landlords.

(b) The applicator or his/her employer shall pre-notify all occupants of residential units between seven days and 48 hours prior to any application of pesticides to areas which residents occupy or have access. Pre-notification shall be made in writing and shall contain the following information:

1. Name and phone number of the company making the application;
2. Proposed date and time of application;
3. Locations to be treated;
4. Product names, EPA Registration Numbers, and active ingredients for the pesticide products that may be used;
5. Purpose of application;
6. Preparation procedures required by the pesticide label to protect items such as food, utensils, and pets; and
7. Department-approved Consumer Information Bulletin.

(c) Prior to commencing each application, the applicator shall post a notice, approved by the Department, on all of the entrances of areas to be treated to which residents or others may have access. The applicator must leave these notices posted after the application. Entrances to units of individuals do not require posting.

Contracting Entities who do not wish to have notices posted must sign a Department-approved form stating that they do not want notices posted. Such signed forms shall be maintained by the applicator or his/her employer for a period of three years and shall be made available to the Department upon request.

(4) Notification and Disclosure Requirements Applicable to Pesticide Applications Made in Non-residential Public Buildings. In addition to the requirements of 333 CMR 13.08(1) the following shall apply whenever a pesticide application is made in a non-residential public building:

(a) Prior to entering into an agreement, the applicator or his/her employer shall provide the Contracting Entity with a Department-approved Information Bulletin for Building Managers and Landlords.

(b) Prior to commencing each application, the applicator shall post a notice, approved by the Department, on all of the entrances to the treated room or area to be treated. The applicator must leave these notices posted after the application.

Contracting entities who do not wish to have notices posted must sign a Department-approved form stating that they do not want notices posted. Such signed forms shall be maintained by the applicator or his/her employer for a period of three years and shall be made available to the Department upon request.

(c) The applicator or his/her employer shall provide the following information on previously conducted applications to any individual upon reasonable request:

1. All locations treated, including locations of rodenticide bait stations;
2. The date and time of application; and
3. The names of products used, EPA Registration Numbers, product active ingredients, and a copy of the label for each product used.

(d) Upon the request of any person, the applicator or his/her employer shall pre-notify that person between seven days and 48 hours prior to any application of pesticides. Pre-notification shall be made in writing and contain the following information:

1. Name and phone number of the company making the application;
2. Proposed date and time of application;
3. Locations to be treated;
4. Product name, EPA Registration Numbers, and active ingredients for the pesticide products that may be used; and
5. Purpose of application.

13.08: continued

- (5) Waiver of Pre-notification for Emergency Applications.
- (a) Pre-notification may be waived for pesticide applications made to indoor settings when there is an immediate threat to public health or safety.
 - (b) Use of this pre-notification waiver may be made only under the following conditions:
 - 1. Each waiver may be used for only one pesticide application;
 - 2. The rationale for the need for the waiver must be documented in writing by the applicator or his/her employer;
 - 3. The applicator or his/her employer must keep a written record of the waived pesticide application, along with the written rationale for the need for the waiver, for at least three years;
 - 4. The written record of the waived pesticide application, along with the written rationale for the need for the waiver, must be made available to any individual upon a reasonable request;
 - 5. A written record of the waived pesticide application, along with the written rationale for the need for the waiver, must be submitted to the Department within 24 hours after the pesticide application; and
 - 6. A written record of the waived pesticide application, along with the written rationale for the need for the waiver, must be provided to all individuals who have requested pre-notification within 48 hours after application.

13.09: Foliar Applications of Pesticides to Trees in Residential Settings

Prior to entering into an agreement or renewing an existing agreement which entails foliar application to trees on or bordering residential properties, the applicator or his/her employer shall provide to the Contracting Entity a written statement approved by the Department. The statement shall include information on the applicable Department pesticide regulations, techniques that will be used to minimize human exposure, drift precautions that will be taken, and a recommendation that notification be provided to abutters who might be impacted by the application.

13.10: Suppression and Control of Public Nuisance Pests

- (1) With the exception of Agricultural Applications, all plans to apply pesticides for the control of Public Nuisance Pests shall be subject to the following provisions:
- (a) No later than March 1st of each year, the Local Superintendent shall forward to the District Supervisor descriptions of all planned aerial and ground Control Programs to be conducted within the municipality for the control and suppression of Public Nuisance Pests between the last day of March of that year and the first day of April of the following year. Such descriptions shall be provided by the Local Superintendent on a standard form provided by the Bureau of Forest Fire Control and Forestry.
 - (b) The District Supervisor in consultation with the Local Superintendent shall review all ground Control Programs to determine if a program constitutes Wide Area Application and requires public notice under 333 CMR 13.10(2)(a).
 - (c) In the event that a ground Control Program is determined to constitute a Wide Area Application, the District Supervisor shall notify the Local Superintendent, who shall notify the Contracting Entity that public notification is required in accordance with 333 CMR 13.10(2)(a). When the Contracting Entity is a county, state or federal agency, the District Supervisor shall communicate the public notification requirement directly to the Contracting Entity.
- (2) Notification of Wide Area Applications. With the exception of Agricultural Applications, no Wide Area Application of pesticides shall be made for control of Public Nuisance Pests unless the following notification provisions are met:
- (a) The Applicant must publish a notice of the application in a newspaper of general circulation in the municipality where the application is to take place. The notice must be posted no more than ten days, and no less than two days, prior to the proposed application, and may include alternative dates to be used in the event of improper conditions, provided that no application is made more than ten days after or less than two days after the notice has been published. Notice shall include all of the following information:

333 CMR: PESTICIDE BOARD

13.10: continued

1. Purpose of application;
2. Method of application;
3. Area of application;
4. Location where the public may review maps delineating the area of application;
5. Name and EPA Registration Number of the pesticide product to be applied;
6. Approximate time of application;
7. Phone number of a contact person from whom additional information can be obtained; and
8. Locations where marking materials for areas of exclusion will be distributed.

(b) No later than ten days prior to the anticipated date of the application, such notice shall be forwarded to the Local Superintendent who shall post the notice in the city/town hall of the municipality where the application is to be made, and other locations as he or she deems appropriate. The local superintendent shall also forward this notice to the Board of Health, Chief Elected Official, as well as to the Pesticide Bureau within the Department, prior to the application.

(3) Exclusion for Application. Land may be designated for exclusion from applications made for the control of Public Nuisance Pests in accordance with the requirements of 333 CMR 13.03.

(4) Aerial Applications that are Wide Area. In the case of an aerial Control Program which has been determined by the District Supervisor to constitute a Wide Area Application, such application must be made in accordance with the requirements of 333 CMR 13.04.

13.11: Special Requirements for School, Day Care and Child Care Program Property

As of November 1, 2000, all pesticide applications on the indoor and outdoor property of schools, day care centers and school age child care programs shall comply with the applicable requirements of St. 2000, c. 85: *An Act Protecting Children and Families from Harmful Pesticides*, to be inserted in M.G.L. c. 132B, §§ 2 and 6C through 6I.

REGULATORY AUTHORITY

333 CMR 13.00: M.G.L. c. 132B, §§ 5, 6A and 10 and St. 2000, c. 85.