

333 CMR 9.00: LICENSING PESTICIDE DEALERS

Section

- 9.01: Purpose
- 9.02: Definitions
- 9.03: License Requirements
- 9.04: General Provisions
- 9.05: Procedures for Licensing Pesticide Dealers
- 9.06: License Documents
- 9.07: Modification, Suspension, and Revocation
- 9.08: Record Keeping Requirements
- 9.09: Rights of Appeal
- 9.10: Penalties

9.01: Purpose

The purpose of 333 CMR 9.00 is to establish the standards, requirements, and procedures for the licensing of pesticide dealers.

9.02: Definitions

For the purposes of 333 CMR 9.00, the definitions set forth in 333 CMR 2.00: *General Information* and in 333 CMR 9.02 apply, unless the context or subject matter requires a different interpretation.

Contamination and Pollution means the presence in the environment (air, land, water or food) of one or more pesticides, degradation products of pesticides or formulation constituents or combinations thereof in such concentration and of such duration as to cause an unreasonable adverse effect on the environment as determined by the Department.

Damage and Injury means to cause an unreasonable adverse effect on the environment.

9.03: License Requirements

No person shall distribute pesticides classified by the Subcommittee as being for restricted or state limited use unless that person is in possession of a current valid license issued by the Department. At least one licensee shall be required for each location or outlet from which restricted or state limited use pesticides are distributed. Each salesperson operating outside of the outlet, and each direct sales representative of an out-of-state distributor, must be licensed separately. The Department shall grant pesticide dealer licenses subject to such terms, conditions, restrictions and provisions as it deems necessary or appropriate.

9.04: General Provisions

- (1) No person shall distribute a pesticide that is not registered by the Subcommittee. This prohibition shall not apply:
 - (a) To transfer of a pesticide from one plant or warehouse to another plant or warehouse and used solely at such plant or warehouse as a constituent part to make a pesticide which is or will be registered.
 - (b) To the use of a pesticide consistent with the terms of an experimental use permit.
- (2) No person possessing a pesticide dealer license shall violate or allow to be violated any term, condition, restriction or provision of said license.
- (3) The Department may refuse to grant or re-issue a pesticide dealer's license if it finds that the proposed distributor or its agent has acted in a manner inconsistent with the purposes or requirements of the Massachusetts Pesticide Control Act or FIFRA. Any person aggrieved by a determination by the Department to deny a license shall be provided notice and an opportunity for a hearing pursuant to the procedures set forth in 333 CMR 9.00.

9.04: continued

- (4) No person shall distribute a pesticide classified by the Department as being for restricted or state limited use to a person not appropriately certified to use that pesticide. This prohibition shall not apply to the distribution of a pesticide to a competent individual acting under the direct supervision of an individual appropriately certified to use that pesticide.
- (5) No person shall distribute a pesticide that is adulterated, misbranded, or deteriorated in content.
- (6) No person shall distribute any pesticide unless it is in the registrant's or the producer's container which has not been damaged, opened, or deteriorated, or is unsafe due to design. This prohibition shall not apply to the repackaging of pesticides because of damage in transit so long as the repackaging results in safe and sound packaging. These prohibitions shall not preclude distribution of undamaged, unopened, and undeteriorated individually labeled containers from shipping containers, or containers from which an official state or federal agency sample has been taken in carrying out the responsibilities of their laws.
- (7) No person shall distribute any pesticide that does not conform to any requirement of its registration or permit.
- (8) No person shall detach, alter, deface or destroy, wholly or in any part, any label or labeling provided for the Massachusetts Pesticide Control Act, or FIFRA, or in rules and regulations adopted under either.
- (9) No person shall add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the Massachusetts Pesticide Control Act, FIFRA, or the regulations adopted under either.
- (10) No person shall distribute, handle, dispose of, discard or store any pesticide or pesticide container in such a manner, as determined by the Department, as to cause or which is likely to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects, to cause damage to the environment or to pollute any water supply, waterway, groundwater or waterbody.
- (11) Pesticide dealers displaying restricted or state limited use pesticides shall display such pesticides in an area separate from general use pesticides.
- (12) Pesticide dealers displaying restricted or state limited use pesticides shall post a sign bearing the statement "for sale to certified applicators only", at the display in a prominent position. The statement shall be in letter at least one inch high.
- (13) No pesticide may be distributed if part or all the label is missing, unreadable or otherwise damaged beyond recognition.
- (14) In the application of 333 CMR 9.00, each pesticide dealer shall be responsible for the acts of those people in their employ.

9.05: Procedures for Licensing Pesticide Dealers

- (1) Applicants. Any individual seeking a dealer's license must be at least 18 years of age as of the date of the examination.
- (2) Examination. No person shall be granted a pesticide dealer's license unless they shall have satisfactorily passed a written and, in addition, if necessary, an oral examination to determine their knowledge of the following: pesticide labels; state and federal laws governing the sale, storage and distribution of restricted and state limited use pesticides; effectiveness of pesticides; classifications of pesticides; related dangers and necessary precautions for the handling of pesticides; and disposal of pesticides. However, the examination requirement shall not apply to a manufacturer, registrant or distributor who has no fixed distribution center or sales representative within the Commonwealth but who wishes to distribute restricted or state limited

9.05: continued

use pesticides directly to certified applicators. In *lieu* of an examination, such applicants shall submit a form attesting to knowledge of Massachusetts and federal laws governing distribution and agreeing to be bound by Massachusetts laws; shall submit evidence of being licensed by the pesticide control agency of their state; and shall complete all requirements of the Department relative to licensing, including payment of appropriate fees, with the exception of taking the examination. The Department may waive all or part of the examination requirement upon receipt of evidence from the applicant of having successfully passed a comparable examination in another jurisdiction.

(a) Application for Examination. Application shall be made on forms supplied by the Department and shall contain such information as the Department requires. The application shall be filed in a manner determined by the Department. The required dealer's license application fee shall accompany the application. Applications must be received by the Department five business days prior to the test date. No one will be allowed to take the examination if their application and fee are received after the applicable cutoff date unless this requirement is waived by the Department. Late or incomplete applications will be returned to the applicant.

(b) Examination Fee. A fee shall be charged for each core, class, category or subcategory examination. The fee shall be paid in a manner determined by the Department to the Commonwealth of Massachusetts.

(c) Examination Rules. The following examination rules will prevail, and violation of any part will be considered grounds for disqualification of the applicant:

1. Time allowed for examinations will be set forth in the instructions to examinees;
2. The copying of questions or the making of notes relative thereto is prohibited;
3. No applicant shall be permitted to remove from the examination room copies of the examination prior to or after the examination;
4. Examinees shall not leave the examination room for any reason until they have turned in the complete examination papers to the proctor conducting the examination;
5. Exams shall be closed book; the use of books or notes will not be allowed; and
6. Additional rules the Department deems necessary will prevail.

(d) Notification of Results. Results of the examination shall be provided to the applicant within a reasonable time.

(e) Re-examination. After a failed examination, an applicant may file an application for the next available date for re-examination with the appropriate fee. An applicant who fails the exam twice must wait three months before applying again for that exam. If an exam candidate fails any exam three times, the candidate will be required to wait one year before applying for it again.

(f) Examination Not to Be Returned. The examination papers written by the applicant will not be returned to the applicant but will be available for review at the offices of the Department.

(3) Licensing.

(a) Application for Certification or License. An applicant who has been notified of passing the examination must file an application for certification or licensing within one year of the date of notification. The application shall be made on forms supplied by the Department, shall contain such information as the Department shall require and shall be accompanied by the appropriate certification or license fee. If an application is not made within the specified time period, the applicant shall be required to file a new application for examination, pay the prescribed fee and satisfactorily pass the examination, prior to being certified or licensed. The time limit may be waived by the Department for good cause.

(b) Fee. A fee shall be paid prior to the issuance of each initial license document at the time of each annual renewal. Fees shall be paid in a manner determined by the Department to the Commonwealth of Massachusetts.

9.05: continued

(c) Duration of License. An initial license shall be valid for a period beginning with the actual date of issuance and ending on March 1st unless it has been modified, revoked or suspended prior thereto by the Department. Thereafter, the license year will extend from March to February 28th or 29th, and each license must be renewed annually by March 1st. In the event that an individual files with the Department an application to renew a license which is in effect on the date of an application for renewal and pays the appropriate fee therewith, such license shall be deemed to be in effect until the earlier of the following two events shall occur: 90 days have elapsed after the certification or license was scheduled to expire; or the Department notifies the applicant that the license has been renewed, modified or denied.

(d) Restrictions on License. Any license may at any time be further limited or restricted as the Department deems necessary.

(e) Renewal of License. Notification for the renewal of a license will be sent to holders at least 30 days prior to the due date. Licenses may be renewed annually for up to three years without re-examinations or retraining provided:

1. The conditions under which the original license was issued have not changed, and the certification or license has not been allowed to lapse, unless the lapse has been waived by the Department for good cause.
2. The Department may, at any time, require additional instruction or examination as it deems necessary to meet changed conditions or to protect human health or the environment.

(f) Retraining Requirements. All licensed dealers must obtain three contact hours, which will be required within a three year period for re-licensure by attendance at Department-approved training programs. A contact hour will equal 50 consecutive minutes of training. Failure to meet the retraining requirements will result in having to retake the exam. A training will qualify for a contact hour if it meets one of the following criteria:

1. Ensure that they continue to understand the changing technology covering uses for products which they distribute;
2. Ensure that they maintain a continuing level of competence and ability to use pesticides safely and properly; and
3. Ensure that they are familiar with changes in state and federal law.

(4) Continuing Education Provider Standards.

(a) Learner Objectives. Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

(b) Subject Matter. Appropriate subject matter for continuing education purposes shall include, but not be limited to, one or more of the following:

1. Applicable State and Federal Laws and Regulations;
2. Integrated Pest Management;
3. Non-chemical Alternatives;
4. Groundwater Protection;
5. Endangered Species;
6. Worker Protection;
7. Pesticide Impact on Human Health;
8. Pesticide Label and Labeling Comprehension;
9. Acute and Chronic Toxicity;
10. Biological Control.

(c) Employees' orientation or in-service presentations concerning standard operating procedures specific to the employing agency shall not be accepted for continuing education purposes.

(d) Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty and evaluation format.

(e) Methods of Obtaining Contact Hours. Workshops, lectures and seminars are acceptable for obtaining continuing education contact hours. Continuing education contact hours may also be obtained from an academic institution, self-study or correspondence course for teaching and/or public activities provided the following standards are adhered to:

1. Academic Course. The course must be within the framework of a curriculum that leads to an academic degree in entomology, botany, plant pathology, agriculture, pest control, toxicology, or public health, or is relevant to pesticide use, or any course within that curriculum that is necessary to an individual's professional growth and development.

9.05: continued

2. Self-study or Correspondence Course. The course should:
 - a. Be developed by a professional group such as an educational corporation or professional association;
 - b. Follow logical sequence;
 - c. Involve the learner by requiring active response to module materials and providing feedback;
 - d. Contain a test to indicate progress and verify completion of module; and
 - e. Supply a bibliography for continued study.
3. Teaching or Publication. Continuing education hours may be earned by teaching a particular course, seminar series, or workshop for the first time, delivering a paper or lecture, or publishing an article or book in pesticide use. As provided above, a course, seminar, or book may be considered the equivalent of up to nine continuing education hours; a published article may be considered the equivalent of up to five hours; and a lecture or paper may be considered the equivalent of up to three hours.
4. Education Methods.
 - a. Learning experiences and teaching methods should be appropriate to achieve the objectives of the program.
 - b. Principles of adult education should be used in the design of the program.
 - c. Time allotted for each activity should be sufficient for the learner to meet the objectives of the program.
5. Faculty Qualifications. Faculty should possess knowledge of the principles of adult education and should provide documentation to the provider/learner illustrating competency in the content of the planned learning experience.
6. Evaluation.
 - a. Provision must be made for evaluating the participant's attainment of the stated learner objectives/outcomes.
 - b. Participants must be given the opportunity to evaluate faculty, learning experiences, instructional methods, facilities and educational resources used for the offerings/programs.
7. Specific Conditions Regarding Continuing Education Requirement. Certificate holders taking courses for the purpose of obtaining a baccalaureate or higher degree in the biological sciences will be considered to have met the continuing education requirements specified in 333 CMR 9.05 provided such courses equal at least the required number of hours. Other academic degree programs may qualify at the discretion of the Department. Individuals must maintain transcripts of courses and hours for a period of three years following license renewal for purposes of verification.

9.06: License Documents

The Department shall issue license documents only after the applicant has successfully complied with the procedure set forth in 333 CMR 9.05. The license documents shall include, at least, the following information: name; address; license number; any limitations or restrictions; the Departmental validation; and the applicant's signature. The document shall be available at the point of distribution.

9.07: Modification, Suspension, and Revocation

The Department may suspend any license, pending a preliminary inquiry, for no longer than ten days, and after affording the license holder notice and an opportunity for a hearing; and may revoke or modify the provisions of any license, if it finds:

- (1) The terms, conditions or restrictions thereof are being violated or are inadequate to avoid unreasonable adverse effects on human health or the environment;
- (2) The license holder has made a false or misleading statement in the application; or
- (3) The license holder has violated any provision of the Massachusetts Pesticide Control Act, FIFRA, or any regulations, standards, orders or licenses issued under either.

9.08: Record Keeping Requirements

(1) Licensed dealers, or their employers, are required to keep true and accurate records containing the following information on each distribution of a restricted or state limited use pesticide:

- (a) Name and address of the residence or principal place of business of the person to whom the restricted use pesticide was distributed, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed for application by a certified applicator;
- (b) License information of the person who has purchased the restricted use pesticides which shall include, but not be limited to:
 - 1. License number and category in which the individual is certified; and
 - 2. Expiration date of the certified applicator's certification;
- (c) The product name and EPA registration number of the restricted use pesticide(s) distributed, including any applicable emergency exemption or state special local need registration number;
- (d) The quantity of the restricted use pesticide(s) distributed;
- (e) The date of purchase;
- (f) The signature of the purchaser and their agent; and
- (g) Other information as deemed necessary by the Department.

(2) Records required by 333 CMR 9.08(1) shall be maintained for a period five years and shall be made promptly available to appropriate Department officials upon a reasonable demand.

(3) Annual reports and records may be required as deemed necessary by the Department.

9.09: Rights of Appeal

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

9.10: Penalties

Any person who violates any provision of 333 CMR 9.00 shall be subject to the criminal and civil penalties set forth in M.G.L. c. 132B, § 14.

REGULATORY AUTHORITY

333 CMR 9.00: M.G.L. c. 132B, §§ 6 and 9.