

333 CMR: PESTICIDE BOARD

333 CMR 2.00: GENERAL INFORMATION

Section

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2.01: Purpose

The purpose of 333 CMR 2.00 is to describe the Massachusetts Pesticide Control Act and the mechanisms established by it to administer the Massachusetts pesticide program. The purpose of 333 CMR 2.00 is also to establish rules of general applicability and to define terms that apply, whenever appropriate, to 333 CMR 2.00 through 13.00.

2.02: Basic Information

The Massachusetts Pesticide Control Act was inserted as M.G.L. c. 132B by St. 1978, c. 3, as an emergency law and took effect immediately. The purpose of the Pesticide Control Act is to conform the laws of the Commonwealth with federal requirements on registration and certification of pesticides as set forth in the Federal Insecticide, Fungicide, and Rodenticide Act, Public Law 92-516, as amended, (FIFRA), and the federal regulations thereunder. To this end, the Massachusetts Pesticide Control Act creates administrative mechanisms to regulate the labeling, distribution, sale, storage, transportation, use and application and disposal of pesticides. The Massachusetts Act also establishes standards and sets forth prohibitions with regard to each regulatory function.

The responsibility for implementing the commands of the Massachusetts Pesticide Control Act is distributed by the Pesticide Control Act among three governmental bodies.

(1) Department of Food and Agriculture. The Massachusetts Department of Food and Agriculture has been designated as the state lead agency for implementation and administration of the Pesticide Control Act and the Massachusetts pesticide program.

The Pesticide Control Act charges the Department with a wide range of specific regulatory functions and empowers it to promulgate and adopt regulations, standards and forms as are necessary for implementation and administration. Among the duties assigned to the Department by the Pesticide Control Act are:

- (a) Entering into cooperative agreements and contracts in matters related to M.G.L. c. 132B and FIFRA.
- (b) Taking actions necessary to secure for the Commonwealth the benefits of FIFRA and other federal legislation.
- (c) Establishing Advisory Councils.
- (d) Declaring pests and devices to be subject to the provisions of M.G.L. c. 132B.
- (e) Establishing the fee and preparing and accepting the applications for experimental use permits.
- (f) Establishing requirements for licensing and supervising pesticide dealers.
- (g) Establishing requirements for certifying, licensing and supervising various categories of pesticide applicators.
- (h) Controlling both storage and disposal of pesticides.
- (i) Issuing administrative orders to prevent unreasonable adverse effects on the environment or violations under the Pesticide Control Act.
- (j) Right of entry and inspection as needed to administer the Pesticide Control Act.

Within the Department, the pesticide regulatory functions shall be under the administrative supervision of a Pesticides Program Director.

(2) Pesticide Board. The Massachusetts Pesticide Control Act creates within the Department of Food and Agriculture a Massachusetts Pesticide Board.

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(a) Board Members. The Commissioner of Food and Agriculture or his designee shall be Chairman of the Pesticide Board. The Board is additionally composed of the Commissioner of Environmental Quality Engineering or his designee, the Commissioner of Fisheries, Wildlife and Recreational Vehicles or his designee, the Commissioner of Environmental Management or his designee, the Commissioner of Public Health or his designee, the Director of the Division of Food and Drugs or his designee and the seven persons appointed by the Governor one of whom shall have been engaged in the commercial production of a plant-related agricultural commodity for at least the preceding five years on land owned or rented by him, one of whom shall have been an active commercial applicator of pesticides for at least the preceding five years, one of whom shall have expertise in the health effects of pesticide use, one of whom shall be a physician, one of whom shall be experienced in the conservation and protection of the environment, and two of whom shall represent the public at large. Each appointive member shall be appointed for a term of four years, except for persons appointed to fill vacancies, who shall serve for the unexpired term.

(b) Compensation. The appointive members of the Board shall receive \$50.00 for each day or portion thereof spent in the discharge of their official duties and shall be reimbursed for their necessary expenses incurred in the discharge of their official duties.

(c) Purpose of the Board. The Board's responsibilities entail advising the Commissioner of Food and Agriculture with respect to the implementation and administration of M.G.L. c. 132B. The Board also hears appeals of those aggrieved by the actions or decisions of the Department or the Subcommittee of the Pesticide Board. The Pesticide Control Act, additionally, assigns the Board the responsibility for approving a variety of Departmental actions. Among the actions requiring Board approval are:

1. All regulations, standards and forms proposed by the Department to implement and administer the Pesticide Control Act.
2. Appointment of the Pesticides Program Director.
3. Cooperative agreements and contracts with respect to M.G.L. c. 132B and FIFRA.
4. Action necessary to secure for the Commonwealth the benefits of FIFRA and other federal legislation.
5. Establishment of Advisory Councils.
6. Declarations of pests and devices to be subject to the provisions of M.G.L. c. 132B.

(3) Subcommittee of the Pesticide Board. The Massachusetts Pesticide Control Act creates within the Pesticide Board of the Department of Food and Agriculture a Subcommittee.

(a) Subcommittee Members. The Director of the Division of Food and Drugs shall be the Chairman of the Subcommittee. The Subcommittee is additionally composed of the Commissioner of Food and Agriculture or his designee, the Commissioner of Environmental Management or his designee, the Commissioner of Public Health or his designee, and one person appointed by the Governor, who shall have been actively engaged in commercial application of pesticides for at least the preceding five years who shall be a member of the Pesticide Board.

(b) Purposes of the Subcommittee. Under the Pesticide Control Act, the Subcommittee has the responsibility of registering all pesticides for use in the Commonwealth and for issuing all experimental use permits.

2.03: Rules of General Applicability

In construing 333 CMR, the rules in 333 CMR 2.03 shall be observed, unless their observance would involve a construction inconsistent with or repugnant to the context.

(1) Mailing List. The Department and the Board shall maintain a mailing list, shall place upon the list the name and address of any person so requesting, and shall give written notice to persons on the list of hearings, meetings and such other activities of the Department or Board for which notice may be appropriate. Failure to give notice to any person on the list shall not, in itself, render any act of the Department or Board invalid. The Department or Board may remove from the mailing list any person whose recorded address is not currently valid and, after notification, those persons no longer expressing interest in receiving notices.

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(2) Number and Gender. Words importing the singular number may extend and be applied to several persons or things. Words importing the plural number may include the singular. Words importing the masculine gender may include the feminine.

(3) Construction of Words and Phrases. Words and phrases shall be construed according to common and approved usage; provided, that technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

(4) Definitions. For the purpose of 333 CMR, 1.00 through 13.10 inclusive, the following definitions shall apply unless the context or subject matter require a different interpretation.

Active ingredient, in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates any pest; in the case of a plant regulator, an ingredient which through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of ornamental or crop plants or the products thereof; in the case of a defoliant, an ingredient which causes the leaves or foliage to drop from a plant; and, in the case of a desiccant, an ingredient which artificially accelerates the drying of plant tissue.

Administrator, the Administrator of the United States Environmental Protection Agency.

Adulterated, when used with reference to a pesticide, any pesticide the strength or purity of which falls below the professed standard of purity as expressed on its labeling under which it is sold; a pesticide for which any substance has been substituted wholly or in part; or a pesticide from which any valuable constituent has been wholly or in part abstracted.

Advisory Council, a council established by regulations adopted in 333 CMR 4.00.

Agricultural Commodity, a plant, or part thereof, or animal product produced by a person primarily for sale, consumption, propagation, or other use by man or animals.

Animal, all vertebrate and invertebrate species, including but not limited to man and other animals, birds, fish and shellfish.

Applicators.

(a) Certified Applicator, an individual who is certified as authorized to use or supervise the use of any pesticide which is classified by the Department as being for restricted or state limited use.

(b) Private Applicator, a certified applicator who uses or supervises the use of any pesticide which is classified by the Department as being for restricted or state limited use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

(c) Commercial Applicator, a certified applicator, whether or not he is a private applicator with respect to some users, who uses or supervises the use of any pesticide which is classified by the Department as being for restricted or state limited use for any purpose or on any land other than as provided in the preceding paragraph.

(d) Licensed Applicator, an individual who is licensed as authorized to be present while pesticides classified by the Department as being for restricted use are being applied under the direct supervision of a certified applicator, or to use or to be present to supervise the use on land of another for hire any pesticide classified by the Department as being for general use.

Beneficial Insects, insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

Board, the Massachusetts Pesticide Board.

Commissioner, the Commissioner of Food and Agriculture.

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Defoliant, a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

Department, the Department of Food and Agriculture.

Desiccant, a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

Device, an instrument or contrivance, other than a firearm, intended to hold or dispense a pesticide or attractant other than food and used in conjunction with a pesticide, the purpose of which is to trap, destroy, repel, or mitigate any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animal, but not including equipment used for the application of pesticides when sold separately therefrom.

Director, the Pesticides Program Director.

Distribution or Distribute, to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive.

Environment, includes water, air, land, and all plants and man and other living animals therein, and the interrelationships which exist among these.

Federally Registered Pesticide, a pesticide which is registered pursuant to FIFRA.

FIFRA, the Federal Insecticide, Fungicide, and Rodenticide Act, Public Law 92-516, as amended.

Fungi or Fungus, non-chlorophyll-bearing thallophytes of a lower order than mosses and liver-worts, as for example, rusts, smuts, mildews, molds, yeasts, and bacteria except those on or in living man or other animals, and except those in or on processed food, beverages or pharmaceuticals.

Imminent Hazard, a situation in which the continued use of a pesticide would result in unreasonable adverse effects on the environment.

Inert Ingredient, an ingredient which is not active.

Insect, a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, moths, beetles, bugs, bees, flies, and their immature stages, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, millipedes, and wood lice.

Label, the written, printed, or graphic matter, on or attached to, the pesticide or device or any of its containers or wrappers.

Labeling, all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device, but shall not include publications of the United States Environmental Protection Agency, the United States Department of Agriculture, or Interior, or Health, Education and Welfare, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research or disseminate information in the field of pesticides, except as otherwise provided by regulation of the Department.

Land, land and water areas including soil, subsoil, airspace, and structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobil.

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Licensed Pesticide Dealer, a person who distributes pesticides classified by the Department as being for restricted use or pesticides whose uses or distribution are further restricted by regulations adopted by the Department with the approval of the Board.

Misbranded.

- (a) in the case of pesticide or device, if the labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- (b) in the case of pesticide or device, if it is an imitation of, or is offered for sale under the name of, another pesticide or device;
- (c) in the case of pesticide or device, if any word, statement, or other information required by or under authority of FIFRA or the Massachusetts Pesticide Control Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (d) in the case of a pesticide, if it is contained in a package or other container or wrapping which does not conform to standards established pursuant to FIFRA or MPCA;
- (e) in the case of a pesticide, if it does not contain a label bearing the registration number assigned under FIFRA to each establishment in which it was produced;
- (f) in the case of a pesticide, if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under FIFRA or 333 CMR 2.00, is adequate to protect health and the environment;
- (g) in the case of a pesticide, if its label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under FIFRA or MPCA, is adequate to protect health and the environment;
- (h) in the case of a pesticide, if its label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded if the administrator has permitted the ingredient statement to be placed on another part of the container pursuant to FIFRA;
- (i) in the case of a pesticide, if its labeling does not contain a statement of the use classification under which it is registered;
- (j) in the case of a pesticide, if there is not affixed to its container, and the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the name and address of the producer, registrant, or person for whom the pesticide is produced; the name, brand, or trademark under which the pesticide is distributed; the new weight or measure of the content, as required by the Administrator; and the registration number assigned to the pesticide by said Administrator pursuant to FIFRA;
- (k) in the case of a pesticide containing any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by FIFRA or the MPCA the skull and crossbones; the word "POISON" prominently in red on a background of distinctly contrasting color; and a statement of practical treatment, first aid or otherwise, in case of poisoning by the pesticide; and
- (l) in the case of a pesticide, if its container does not bear a label, as required by the Department pursuant to this chapter.

Nematode, invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water plants or plant parts. Nematodes may also be referred to as nemas or eel-worms.

Person, an individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or its political subdivision, administrative agencies, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agent or assign, or a group of persons.

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Pest, an insect, rodent, nematode, fungus, wood, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other micro-organisms, except viruses, bacteria or other micro-organisms on or in living man or other living animal, which is declared to be a pest by the Administrator or by the Department with the approval of the Board.

Pesticide, a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; provided that the term "Pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug and Cosmetic Act [21 U.S.C. § 321(w)], or that has been determined by the Secretary of the United States Department of Health, Education and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such act [21 U.S.C. § 321(x)].

Plant Regulator, a substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term "plant regulator" shall not include any nutrient mixtures or soil amendments commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted package concentration.

Produce, to manufacture, prepare, compound, propagate, process or repackage any pesticide or device.

Producer, a person who manufactures, prepares, compounds, propagates, processes or repackages any pesticide or device.

Protect Health and the Environment or Protection of health and Environment, protection against any unreasonable adverse effects on the environment.

Receive, for the purposes of 333 CMR the term "receive" as used in the definition of "Distribution" or "Distribute", shall exclude the receipt of pesticides for end use or application.

Registrant, a person who has registered any pesticide pursuant to the provisions of 333 CMR

Subcommittee, the Subcommittee of the Pesticide Board.

To Use Any Registered Pesticide in a Manner Inconsistent With Its Labeling, the term "to use any registered pesticide in a manner inconsistent with its labeling" means to use any registered pesticide in a manner not permitted by the labeling; provided, that the term shall not include:

- (a) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling.
- (b) applying a pesticide against any target pest not specified on the labeling, unless the Administrator has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment.
- (c) employing any method of application not prohibited by the labeling, or
- (d) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.

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Under the Direct Supervision of a Certified Applicator, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, and who is responsible for the pesticide applications made by that person, even though such certified applicator is not physically present at the time and place the pesticide is applied.

Unreasonable Adverse Effects on the Environment, an unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

Weed, a plant which grows where not wanted.

Wildlife, vertebrate or invertebrate animals which are not pests, excluding man, that are wild by nature, including fish, birds, mammals, reptiles and amphibians.

(5) Computation of Time. Unless otherwise provided, any period of time referred to in 333 CMR begins on the first day following the day on which the act initiating the period of time occurs. When the last day of the period of time falls on Saturday, Sunday or a legal holiday, the period runs until the end of the following business day. When the period of time is five days or less, Saturdays, Sundays, and holidays are excluded from the period of time; otherwise, such days are included.

(6) Standard Size Paper. All petitions, memorandums, briefs, requests and the like, which are filed pursuant to 333 CMR shall be submitted on standard size 8 ½ by 11 inch paper.

(7) Repeal Not to Revive a Previous Regulation. The repeal of a regulation shall not revive any previous regulation.

(8) Repeal Not to Affect Penalties Incurred. The repeal of a regulation shall not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed, or for the recovery of a penalty or forfeiture incurred, under the regulation repealed.

(9) Severability. If any provision of 333 CMR or the application thereof is held to be invalid, such invalidity shall not affect the provisions or the applications thereof not specifically held invalid.

2.04: Advisory Rulings

Any interested person or his attorney may at any time request an advisory ruling with respect to the applicability of any statute or regulation enforced or administered by the Board to any person, property or factual situation. The request shall be addressed to the Board and sent by mail or delivered in person during normal business hours. All requests shall be signed by the person making it or his attorney, shall contain his address or the address of his attorney and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views or arguments. Upon receipt of the request the Board shall consider it and shall within 90 days after receipt notify the petitioner either that the request is denied or that the Board will render an advisory ruling. The Board may notify any person that an advisory ruling has been requested and may receive or consider data, views and arguments from persons other than the petitioner. The Board may at any time rescind a decision to render an advisory ruling. If an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his attorney, and any other person requesting a copy and paying a reasonable fee therefor. No advisory ruling shall be binding upon the Board or upon any person. A complete record of every advisory ruling shall be maintained by the Board.

REGULATORY AUTHORITY

333 CMR 2.00: M.G.L. c. 30A, §§ 8 and 9; c. 132B, §§ 3 and 5.

NON-TEXT PAGE