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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Gary Mendivil
Department of Environmental Conservation

FROM: Scott Meriwether, Office of the Lieutenant Governor 465.4081 

DATE: September 28, 2017

RE: Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation regulations re: pesticides, particularly updates to reflect federal certification and training requirements under 40 C.F.R. Part 171 (18 AAC 90.205; 18 AAC 90.210; 18 AAC 90.300 - 18 AAC 90.310; 18 AAC 90.410 - 18 AAC 90.420; 18 AAC 90.610 - 18 AAC 90.635; 18 AAC 90.850 - 18 AAC 90.860; 18 AAC 90.990)

Attorney General File:	JU2017200296 (Part 1)
Regulation Filed:	9/27/2017
Effective Date:	10/27/2017
Print:	224, January 2018

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

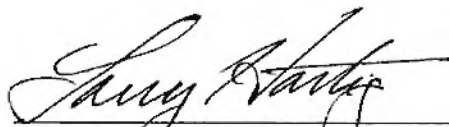
The attached 17 pages of regulations, dealing with 18 AAC 90 Pesticide Control regulations, are adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 44.46.025; AS 46.03.020; AS 46.03.320; and AS 46.03.330 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken. The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action as required by AS 46.03.024.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: September 21, 2017



Larry Harig, Commissioner

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on September 27, 2017, at 11:50A m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: October 27, 2017

Register: 224, January 2018

18 AAC 90.205 is repealed and readopted to read:

18 AAC 90.205. Pesticide product registration and registration renewal. (a) A product registration issued under 18 AAC 90.200 - 18 AAC 90.235 is valid for the calendar year for which the registration is issued, and is subject to the renewal requirements of (c) of this section.

(b) A producer seeking to register a pesticide for the first time under 18 AAC 90.215 must submit an application to the department on a form or in the format required by the department and the fee required under 18 AAC 90.850. The application must include

(1) the applicant's name, telephone number, address, and, if available, electronic mail address;

(2) the name, telephone number, and address of the person whose name appears on the EPA label, if not the applicant's;

(3) the name and EPA registration number of the pesticide;

(4) a complete copy of the most current registration label stamped by the EPA;

(5) a complete copy of the most current product labeling;

(6) the correct name and total percentage of each active ingredient;

(7) the total percentage of inert ingredients;

(8) the most current safety data sheet; and

(9) other information that the department requests and that the department considers pertinent to product registration.

(c) A producer seeking to renew registration of a currently registered pesticide under 18 AAC 90.215 must submit an application to the department on a form or in the format required

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by the department and the fee required under 18 AAC 90.850. The application must include

- (1) the applicant's name and address;
- (2) the name and EPA registration number of the pesticide;
- (3) a complete copy of the most current product labeling if any changes to the

label have been made since the previous registration; and

(4) other information that the department requests and that the department considers pertinent to product registration. (Eff. 2/15/98, Register 145; am 2/15/2006, Register 177; am 9/30/2007, Register 183; am 4/10/2010, Register 194; am 10/27/2017, Register 224)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730

AS 46.03.020 AS 46.03.330

18 AAC 90.210 is amended to read:

18 AAC 90.210. Change in labeling. A producer who has registered a pesticide under 18 AAC 90.215 shall notify the department if there is a change to the labeling of that pesticide and provide a copy of the items described in 18 AAC 90.205(b)(4) and (5) not later than [18 AAC 90.205(4) AND (5) WITHIN] 30 days after the change occurs. (Eff. 2/15/98, Register 145; am 10/27/2017, Register 224)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730

AS 46.03.020 AS 46.03.330

18 AAC 90.300(a) is amended to read:

(a) Certification under 18 AAC 90.300 - 18 AAC 90.315 for the applicable category of

use described in (c) of this section is required before an individual may

(1) use a restricted-use pesticide [, UNLESS THAT USE IS UNDER THE DIRECT SUPERVISION OF A CERTIFIED APPLICATOR FOR THE APPLICABLE CATEGORY OF USE];

(2) supervise the use of a restricted-use pesticide;

(3) purchase a restricted-use pesticide, unless that purchase is authorized in writing by a certified applicator for the applicable category of use;

(4) act as a restricted-use pesticide dealer;

(5) engage in the custom, commercial, or contract use of a pesticide unless that use is under the direct, on-the-job supervision of a certified applicator certified in [FOR] the applicable category of use;

(6) supervise the custom, commercial, or contract use of a pesticide;

(7) act as a pesticide consultant;

(8) use or supervise the use of a pesticide [PESTICIDES] at a school unless the pesticide is

(A) a general-use [AN] antimicrobial pesticide;

(B) a rodenticide in a tamper-resistant bait station; or

(C) an application of silica gel and other ready-to-use paste, foam, or gel; or

(9) use or supervise the use of a pesticide at a public place unless the pesticide is

(A) a general-use [AN] antimicrobial pesticide;

(B) a rodenticide in a tamper-resistant bait station; or

(C) an application of silica gel and other ready-to-use paste, foam, or gel.

18 AAC 90.300(c) is repealed and readopted to read:

(c) The department may certify an applicant for one or more categories of use listed in this subsection if the applicant meets the requirements of 18 AAC 90.305:

(1) regulatory pest control: state, federal, or other government employees, or their agents, who use or supervise the use of pesticides for the control of regulated pests;

(2) pesticide consultation and demonstration: individuals who demonstrate to the public the proper use and techniques of application of restricted-use pesticides or supervise that demonstration; those individuals include government employees, extension specialists, or extension agents who use or supervise the use of pesticides or who advise, demonstrate, supervise demonstrations, or make pesticide recommendations;

(3) agricultural pest control: individuals who apply pesticides

(A) to agricultural commodities or properties including greenhouses and nurseries;

(B) to feed, bedding, or bodies of animals; or

(C) to treat seeds grown and stored for distribution or planting;

(4) ornamental and turf pest control: individuals who apply pesticides to control pests in the maintenance and production of ornamental plants and turf;

(5) antifouling paint: individuals who apply EPA-registered antifouling paints;

(6) aquatic pest control: individuals who apply pesticides to water;

(7) structural pest control: individuals who apply pesticides, excluding fumigants and general-use antimicrobial pesticides, in, on, or around structures and adjacent areas to control pests;

(8) public health pest control: individuals who use or supervise the use of pesticides in government-sponsored public health programs for the control of regulated pests; those individuals include environmental health officers, public health nurses, entomologists, and others in a preventive medicine or health care field who use or recommend pesticides for control of pests with medical or public health importance;

(9) right-of-way and industrial grounds pest control: individuals who use pesticides to control pests along the rights-of-way of roads, waysides, railroads, airfields, pipelines, or power lines, or at tank farms or industrial sites;

(10) mosquito and biting fly pest control: individuals who apply pesticides to control mosquitoes or biting flies;

(11) aerial pest control: pilots of manned or unmanned aircraft who apply pesticides by air;

(12) forest pest control: individuals who use pesticides in forests, forest nurseries, or forest seed production;

(13) restricted-use pesticide dealer: individuals who distribute or sell restricted-use pesticides;

(14) pesticide research: individuals who conduct field research on pesticide use;

(15) soil fumigation: individuals who apply fumigants to soil to control pests;

(16) non-soil fumigation: individuals who apply fumigants to fumigate anything

other than soil;

(17) vertebrate pest control: individuals who apply pesticides to control vertebrate animals within one or more of the following categories:

(A) full vertebrate pest control: individuals who apply pesticides to control various species of vertebrate animals, whether indoors or outdoors, excluding the use of sodium cyanide ejectors or sodium fluoroacetate collars for predator control;

(B) limited vertebrate pest control - rodents: individuals who apply pesticides to control only rodent populations, whether indoors or outdoors;

(C) limited vertebrate pest control - predators: individuals who apply sodium cyanide ejectors or sodium fluoroacetate collars for predator control;

(18) oilfield biocides: individuals who apply biocides during the process of oil and gas exploration, production, storage, or transport;

(19) pesticide technician: individuals who apply general-use pesticides only under the direction of an applicator certified in the appropriate category under (1) - (17) of this subsection; the certified applicator shall

(A) make all decisions related to pest control;

(B) be immediately available for consultation by telephone or other means if needed; and

(C) before pesticide application, provide written instructions that identify

(i) the complete pesticide product name;

(ii) the EPA registration number of the pesticide;

(iii) the date of application;

- (iv) the address of the application;
- (v) the method of application;
- (vi) the rate of application;
- (vii) the dilution of the pesticide;
- (viii) the estimated total amount of pesticide product to be applied;
- (ix) the target pests;
- (x) the site of the application;
- (xi) the name and current certification number of the pesticide technician to apply the pesticide; and
- (xii) the name and current certification number of the certified applicator directing the pesticide application.

18 AAC 90.300(g)(3) is amended to read:

- (3) the use is not in a public place or a school except for applications of
 - (A) general-use antimicrobial pesticides;
 - (B) rodenticides in tamper-resistant bait stations; or
 - (C) applications of silica gels and other ready-to-use pastes, foams, or gels.

18 AAC 90.300 is amended by adding a new subsection to read:

- (h) An individual certified as a pesticide technician under (c)(19) of this section shall have a copy of the written instructions provided by the directing certified applicator in that

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individual's possession when conducting an activity described in (a) of this section. (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; am 11/30/2003, Register 168; am 9/30/2007, Register 183; am 10/27/2017, Register 224)

Authority:	AS 41.17.100	AS 46.03.020	AS 46.03.330
	AS 46.03.010	AS 46.03.320	AS 46.03.730

18 AAC 90.305(b)(3) is amended to read:

(3) demonstrates knowledge of pesticide statutes, regulations, hazards, and safety by passing a written [OR ORAL] examination administered by the department or the department's representative.

(Eff. 2/15/98, Register 145, am 2/15/2006, Register 177; am 9/30/2007, Register 183; am 10/27/2017, Register 224)

Authority:	AS 46.03.010	AS 46.03.320	AS 46.03.730
	AS 46.03.020	AS 46.03.330	

The introductory language of 18 AAC 90.310(a) is amended to read:

(a) An individual who seeks to renew a certification issued under 18 AAC 90.300 **must** [SHALL]

...

18 AAC 90.310(a)(1) is amended to read:

(1) **not later than 30 days after expiration of certification**, submit an

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application on a form supplied by the department;

18 AAC 90.310(a)(2) is amended to read:

(2) **before expiration of certification**, attend a training session, complete an Internet or other correspondence course, or obtain a minimum of 12 continuing education hours, all approved by the department; and

(Eff. 2/15/98, Register 145, am 2/15/2006, Register 177; am 9/30/2007, Register 183; am 10/27/2017, Register 224)

Authority:	AS 46.03.010	AS 46.03.320	AS 46.03.730
	AS 46.03.020	AS 46.03.330	

The introductory language of 18 AAC 90.410 is amended to read:

18 AAC 90.410. Recordkeeping requirements for private [AGRICULTURAL] applicators of restricted-use pesticides. A private [AGRICULTURAL] applicator shall keep accurate records of all uses of restricted-use pesticides for at least two years after each use. The records must be available to the department upon request and must contain the

...

(Eff. 2/15/98, Register 145; am 10/27/2017, Register 224)

Authority:	AS 46.03.010	AS 46.03.320	AS 46.03.730
	AS 46.03.020	AS 46.03.330	

18 AAC 90.415 is repealed and readopted to read:

18 AAC 90.415. Recordkeeping requirements for other applicators of restricted-use pesticides. An applicator of restricted-use pesticides who is not subject to 18 AAC 90.400 or 18 AAC 90.410 shall keep accurate written records of all purchases and uses of restricted-use pesticides for at least two years after each purchase or use. The records must be available to the department upon request and must contain

- (1) for each purchase of a restricted-use pesticide by the applicator
 - (A) the product or brand name of the pesticide;
 - (B) the EPA registration number of the pesticide;
 - (C) the company name where the pesticide was purchased;
 - (D) the address where the pesticide was purchased;
 - (E) the date the pesticide was purchased; and
 - (F) the amount of pesticide purchased; and
- (2) for each use of a restricted-use pesticide by the applicator
 - (A) the product or brand name of the pesticide;
 - (B) the EPA registration number of the pesticide;
 - (C) the date of use;
 - (D) the time of use;
 - (E) the address or location of use;
 - (F) the site of use;
 - (G) the size of the area treated;
 - (H) the rate of application;

- (I) the dilution of the pesticide applied;
- (J) the total amount of pesticide product used;
- (K) the target pests;
- (L) the name of the person applying the pesticide;
- (M) the certification number of the person applying the pesticide;
- (N) the name of the person for whom the pesticide is being applied;
- (O) the address of the person for whom the pesticide is being applied; and
- (P) if the pesticide is a fumigant, instead of application rate and dilution,
 - (i) the temperature during the exposure period;
 - (ii) the duration of the exposure period; and
 - (iii) pounds of gas released per 1,000 cubic feet of space. (Eff.

2/15/98, Register 145; am 9/30/2007, Register 183; am 10/27/2017, Register 224)

Authority:	AS 46.03.010	AS 46.03.320	AS 46.03.730
	AS 46.03.020	AS 46.03.330	

18 AAC 90.420 is amended to read:

18 AAC 90.420. Recordkeeping requirements for custom, commercial, or contract applicators of pesticides. In addition to meeting the requirements of 18 AAC 90.415, a custom, commercial, or contract applicator of pesticides shall keep accurate written records of all uses of general use pesticides for at least two years after each use. The records must be available to the department upon request and contain

- (1) the product or brand name of the pesticide;
- (2) the EPA registration number of the pesticide;
- (3) the date of use;
- (4) the address or location of use;
- (5) the site of use;
- (6) the size of the area treated;
- (7) the rate of application;
- (8) the dilution of the pesticide applied;
- (9) the total amount of pesticide product used;
- (10) the target pests;
- (11) the name of the person applying the pesticide;
- (12) the certification number of the person applying the pesticide;
- (13) a copy of any instructions provided to pesticide technicians under a certified applicator's supervision; and
- (14) if the pesticide is a fumigant, instead of application rate and dilution,
 - (A) the temperature during the exposure period;
 - (B) the duration of the exposure period; and
 - (C) pounds of gas released per 1,000 cubic feet of space [THE

INFORMATION LISTED IN 18 AAC 90.415(2)(A) – (H)]. (Eff. 3/31/2002, Register 161; am 10/27/2017, Register 224)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330

18 AAC 90.610 is amended to read:

18 AAC 90.610. Drift control and dispersion restrictions. A person may not

(1) apply a pesticide in a manner that results in pesticide drift;

(2) apply a pesticide when wind speed, as measured using a calibrated device to measure wind velocity and direction, exceeds

(A) the maximum wind speed stated in the labeling; or

(B) seven miles per hour, if no wind speed is stated in the labeling; [OR]

(3) disperse a pesticide from aircraft while in flight, except over the target site at the customary height for the target; emergency dumping is not a violation of this paragraph but is a discharge that must be reported as required under [BY] 18 AAC 90.040; or

(4) use or install an automatic sprayer or mister intended for outdoor insect control unless that equipment incorporates the use of

(A) wind speed monitors that will suspend application of a pesticide whenever wind speeds are greater than seven miles per hour or a lower wind speed specified on the product label;

(B) rain monitors that will suspend application of a pesticide during rainfall exceeding 0.1 inch per hour;

(C) thermometers that will suspend application of a pesticide whenever ambient temperatures fall below 50 degrees Fahrenheit; and

(D) motion detectors that will suspend application of a pesticide whenever people or pets are active in the application area. (Eff. 2/15/98, Register

145; am 11/30/2003, Register 168; am 10/27/2017, Register 224)

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Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330

18 AAC 90.615(c) is amended to read:

(c) **A person** [PRIVATE AGRICULTURAL APPLICATORS AND DEALERS] shall store restricted-use pesticides as required **under** [BY] (d) – (h) of this section.

(Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 183; am ~~10/27/2017~~, Register ~~224~~)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330

18 AAC 90.620(a) is amended to read:

(a) Except as provided in (c) **or (d)** of this section, a person may not **obtain certification for** [ENGAGE IN THE] custom, commercial, or contract use of a pesticide unless the person or the person's employer has furnished evidence to the department of a liability insurance policy of not less than \$500,000 per person for bodily injury, and not less than \$300,000 per incident for property damage. The person shall notify the department in writing each year of the current liability coverage, and [WITHIN 30 DAYS] if coverage is changed, **not later than 30 days after the change in coverage.**

18 AAC 90.620 is amended by adding a new subsection to read:

(d) An individual may declare the individual in writing as a designated private applicator,

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affirming that the individual will apply only non-fumigant pesticides on property owned or leased by the individual. (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; am 10/27/2017, Register 224)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330

18 AAC 90 is amended by adding a new section to read:

18 AAC 90.635. Tenant notification of pesticide application. A person may not apply a pesticide within a dwelling unit used as a home, residence, or sleeping place leased to another person, without first notifying the tenant

(1) by posting, at each entrance to the treated area, a written notice that complies with the requirements listed in 18 AAC 90.630; or

(2) verbally, including the date and time of application, the name of the pesticide, and instructions about when the structure may safely be reentered, based on the pesticide label instructions. (Eff. 10/27/2017, Register 224)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330

18 AAC 90.850(a) is amended to read:

(a) An initial [OR SUBSEQUENT] application for registration submitted under 18 AAC 90.205 or an application for renewal of registration submitted under 18 AAC 90.205 must be accompanied by a fee of [(1) \$90 FOR EACH PRODUCT FOR WHICH THE

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REGISTRATION APPLICATION IS SUBMITTED BY MEANS OF THE DEPARTMENT'S INTERNET REGISTRATION PROCESS; OR (2)] \$120 for each product [FOR WHICH THE REGISTRATION APPLICATION IS SUBMITTED DIRECTLY TO THE DEPARTMENT].

18 AAC 90.850(c) is amended to read:

(c) If an application for **renewal of** [A SUBSEQUENT] registration is not filed on or before the day the previous registration expires, an additional fee of \$15 will be assessed and added to the fee required in (a) of this section. (Eff. 2/15/2006, Register 177; am 4/10/2010, Register 194; am 10/27/2017, Register 224)

Authority:	AS 37.10.050	AS 44.46.025	AS 46.03.330
	AS 37.10.052	AS 46.03.020	AS 46.03.730
	AS 37.10.058	AS 46.03.320	

18 AAC 90.860 is amended to read:

18 AAC 90.860. Certified applicator fee requirements. An applicator certified under **18 AAC 90.300** [18 AAC 90.300(c)(1) - (13)] will be assessed a fee of \$25 before the issuance of the initial certification document and at the time of each annual renewal or recertification. An applicator certified in one category will not be assessed a fee for certifications in other categories. (Eff. 2/15/2006, Register 177; am 10/27/2017, Register 224)

Authority:	AS 37.10.050	AS 44.46.025	AS 46.03.330
	AS 37.10.052	AS 46.03.020	AS 46.03.730
	AS 37.10.058	AS 46.03.320	

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18 AAC 90.990(43) is repealed:

(43) repealed 10/27/2017;

18 AAC 90.990 is amended by adding new paragraphs to read:

(59) "aircraft" means an airplane, helicopter, or other machine capable of flight, that is used in application of pesticides at a height of one meter or greater above the ground or top of vegetation;

(60) "fumigant" means a pesticide that delivers the active ingredient to the target in the form of a gas;

(61) "regulated pest" means a particular species of pest specifically subject to state or federal regulatory restrictions, regulations, or control procedures intended to protect public health, safety, or welfare, animals, or the environment. (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; [AM 3/31/2002, REGISTER 161;] am 11/30/2003, Register 168; am 9/30/2007, Register 183; am 10/27/2017, Register 224)

Authority:	AS 41.17.100	AS 46.03.020	AS 46.03.330
	AS 46.03.010	AS 46.03.320	AS 46.03.730

MEMORANDUM

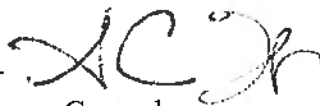
State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: September 25, 2017

File No.: JU2017200296 (Part 1)

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Department of Environmental
Conservation regulations re:
pesticides, particularly updates to
reflect federal certification and
training requirements under 40 C.F.R.
Part 171 (18 AAC 90.205; 18 AAC
90.210; 18 AAC 90.300 - 18 AAC
90.310; 18 AAC 90.410 - 18 AAC
90.420; 18 AAC 90.610 - 18 AAC
90.635; 18 AAC 90.850; 18 AAC
90.860; 18 AAC 90.990)

We have reviewed the attached regulations from the Department of Environmental Conservation against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated September 25, 2017 from the Regulations Attorney. The regulations update the pesticide regulations, including procedures, requirements, and fees for registration of pesticides and certification of persons who apply pesticides, and in particular make amendments to harmonize state regulations with federal certification and training requirements under 40 C.F.R. Part 171.

We find no legal problems. The regulations adopted are Part 1 of this project, pending additional department work on additional regulations in Part 2 of this project. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The June 30, 2017 public notice and the September 21, 2017 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2017200296 (Part 1)

September 25, 2017
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Though the attached regulations do not contain any handwritten corrections, we would like to call the publisher's attention to a manifest error in the history note for 18 AAC 90.990. The history note sets out the entry "am 3/31/2002, Register 161" two times, but my review of the records indicates only one set of amendments on that date. Part 1 of the regulations was adopted with a technical correction to the history note. Please let us know if you have any questions.

SCW

cc w/enc: (via email)

Hon. Larry Hartig, Commissioner
Department of Environmental Conservation

Alice Edwards, Deputy Commissioner
Department of Environmental Conservation

Gary Mendivil, Regulations Contact
Department of Environmental Conservation

Christina Carpenter, Director
Division of Environmental Health
Department of Environmental Conservation

Robert J. Blankenburg
Division of Environmental Health
Department of Environmental Conservation

Rebecca Colvin
Division of Environmental Health
Department of Environmental Conservation

Cameron Q. Jimmo, Assistant Attorney General
Environmental Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: September 25, 2017

FILE NO.: JU2017200296 (Part 1)

TELEPHONE NO.: (907) 465-3600

FROM: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority
regarding regulations review on
Department of Environmental
Conservation regulations re:
pesticides, particularly updates to
reflect federal certification and
training requirements under
40 C.F.R. Part 171 (18 AAC
90.205; 18 AAC 90.210; 18 AAC
90.300 - 18 AAC 90.310;
18 AAC 90.410 - 18 AAC
90.420; 18 AAC 90.610 -
18 AAC 90.635; 18 AAC 90.850;
18 AAC 90.860; 18 AAC 90.990)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/cnc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General and
Assistant Regulations Attorney
Legislation/Regulations Section

NOTICE OF PROPOSED CHANGES ON PESTICIDE PRODUCTS AND
CERTIFIED APPLICATORS IN THE REGULATIONS OF
THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation proposes to amend regulations regarding pesticide product registration and certified applicator standards, including fee changes.

The Alaska Department of Environmental Conservation (ADEC) proposes to adopt regulation changes in Title 18, Chapter 90 of the Alaska Administrative Code, dealing with pesticide products and certified applicators, including the following:

- 1) Amend 18 AAC 90.205 to clarify pesticide product registration period and renewal requirements.
- 2) Amend 18 AAC 90.300 to clarify what activities require pesticide applicator certification, to add and modify categories of use for pesticide applicators, to add requirements for new categories of use, and to clarify conditions exempting individuals from certification requirements.
- 3) Amend 18 AAC 90.305 by removing oral examination as an option for certification procedures.
- 4) Amend 18 AAC 90.310 to clarify the process for renewing applicator certification.
- 5) Amend 18 AAC 90.410, 18 AAC 90.415, and 18 AAC 90.420 to clarify recordkeeping items for pesticide applicators.
- 6) Amend 18 AAC 90.610 to add protective measures for automatic misting systems.
- 7) Amend 18 AAC 90.615 to clarify who must follow the requirements for storage of restricted-use pesticides.
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- 9) Add a new section, 18 AAC 90.635 to set standards for tenant notification of pesticide application.
- 10) Amend 18 AAC 90.850 to remove the discount for online pesticide product registration.
- 11) Amend 18 AAC 90.990 to add and modify definitions, including expanding the definition of school to include licensed childcare facilities.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Rebecca Colvin, ADEC Division of Environmental Health, at 555 Cordova St. Anchorage, AK 99501. Additionally, the ADEC will accept comments by facsimile at 907-269-7510 and by electronic mail at rebecca.colvin@alaska.gov. The comments must be received not later than 5:00pm on August 4, 2017.

You may submit written questions relevant to the proposed action to Karin Hendrickson at karin.hendrickson@alaska.gov or at 1700 E. Board Rd., Bldg. B, Ste. 103, Wasilla, AK 99654. The questions must be received at least 10 days before the end of the public comment period. The ADEC will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and at <http://dec.alaska.gov/eh/pest/>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Natalie Wolfe at natalie.wolfe@alaska.gov or at 907-269-0291 or TDD Relay Service 1-800-770-8973/TTY not later than July 28, 2017 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Rebecca Colvin by email at rebecca.colvin@alaska.gov or online at <http://dec.alaska.gov/eh/pest/>.

After the public comment period ends, the ADEC will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.** Written comments received are public records and subject to public inspection.

Statutory authority: AS 44.46.025, AS 46.03.020, AS 46.03.320, AS 46.03.330.

Statutes being implemented, interpreted, or made specific: AS 44.46.025, AS 46.03.320, AS 46.03.330.

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: June 29, 2017



Larry Hartig, Commissioner
Department of Environmental Conservation

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Environmental Conservation
2. General subject of regulation: pesticide product registration and fees; certified applicator standards
3. Citation of regulation (may be grouped): 18 AAC 90
4. Department of Law file number, if any: JU2017200296
5. Reason for the proposed action:
☐ Compliance with federal law or action (identify): _____
☐ Compliance with new or changed state statute
☐ Compliance with federal or state court decision (identify): _____
☒ Development of program standards
☐ Other (identify): _____
6. Appropriation/Allocation: Environmental Health/Pesticide Program
7. Estimated annual cost to comply with the proposed action to:

a. **Private Persons:**

Pesticide Product Manufacturers Repeal of the online application discount, in 18 AAC 90.850(a), results in a \$30 increase per each pesticide product registered online for use in the State of Alaska. The majority of these products are manufactured outside Alaska, so instate impacts would be minor.

Pesticide Applicator Certification The introduction of new pesticide certification categories has the potential to reduce the time and costs associated with training and certification for certain groups, particularly for individuals specializing in oilfield biocides and rodent fumigation.

Pesticide Notification & Application There is potential for an increase in notification costs for businesses and private persons who own or operate rental properties. Landlords will be required to post written notice at entrances or give verbal notice to inform tenants of pesticide application. Preschools and daycares will be required to adhere to the same pesticide use precautions as schools. This has the potential to increase facility cost, as they must use a certified applicator and provide parents with notification prior to pesticide application.

Pesticide Misting Systems Owners of automatic pesticide misting systems will need to ensure systems have safeguards to prevent unsafe application. This may entail a retrofit or replacement of an existing system.

- b. **Another state agency:** No identifiable additional costs to comply.
c. **Municipalities:** No identifiable additional costs to comply.

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>18</u>	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/ program	\$ <u>0</u>	\$ <u>0</u>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

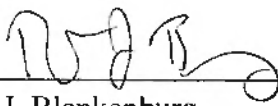
9. The name of the contact person for the regulation:

Name: Rebecca Colvin
Title: Program Coordinator
Address: 555 Cordova St. Anchorage, AK 99501
Telephone: 907-269-7802
E-mail address: rebecca.colvin@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

11. Date: June 29, 2017

Prepared by: 
Name: Robert J. Blankenburg
Title: Program Manager
Telephone: 907-269-7581

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

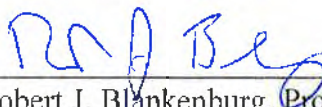
I, Robert J. Blankenburg, Program Manager, of Department of Environmental Conservation, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 18 AAC 90 on pesticide product registration and fees and certified applicator standards has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Resources Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

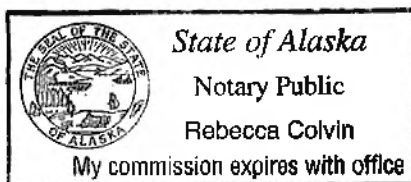
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.


Date: 8/11/17



Robert J. Blankenburg, Program Manager
Solid Waste and Pesticides Programs

Subscribed and sworn to before me at Anchorage, AK on August 11, 2017





Rebecca Colvin
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

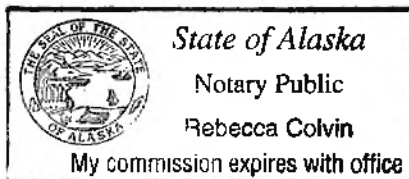
I, Robert J. Blankenburg, Program Manager for the Department of Environmental Conservation, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Environmental Conservation has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Environmental Conservation regulation on pesticide product registration and fees and certified applicator standards.

Date: 8/11/17

Robert J. Blankenburg
Robert J. Blankenburg, Program Manager
Solid Waste and Pesticides Programs

Subscribed and sworn to before me at Anchorage, Alaska on August 11, 2017.



Rebecca Colvin
Rebecca Colvin
Notary Public in and for the State of Alaska

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AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin
being first duly sworn on oath
deposes and says that she is
a representative of the
Alaska Dispatch News, a
daily newspaper. That said
newspaper has been approved
by the Third Judicial Court,
Anchorage, Alaska, and it now
and has been published in the
English language continually as a
daily newspaper in Anchorage,
Alaska, and it is now and during
all said time was printed in an
office maintained at the aforesaid
place of publication of said
newspaper. That the annexed is
a copy of an advertisement as it
was published in regular issues
(and not in supplemental form)
of said newspaper on

June 30, 2017

and that such newspaper was
regularly distributed to its
subscribers during all of said
period. That the full amount of
the fee charged for the foregoing
publication is not in excess of
the rate charged private individuals.

Signed

Subscribed and sworn to before

me this 30 day of June

20 17

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

4/14/21

ANGELA M. SIMMONS
NOTARY PUBLIC
State of Alaska
My Commission Expires Apr. 14, 2021

NOTICE OF PROPOSED CHANGES ON PESTICIDE PRODUCTS AND CERTIFIED APPLICATORS IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Alaska Department of Environmental Conservation (ADEC) proposes to adopt regulation changes in Title 18, Chapter 90 of the Alaska Administrative Code, dealing with pesticide products and certified applicators, including the following:

- 1) Amend 18 AAC 90.205 to clarify pesticide product registration period and renewal requirements.
- 2) Amend 18 AAC 90.300 to clarify what activities require pesticide applicator certification, to add and modify categories of use for pesticide applicators, to add requirements for new categories of use, and to clarify conditions exempting individuals from certification requirements.
- 3) Amend 18 AAC 90.305 by removing oral examination as an option for certification procedures.
- 4) Amend 18 AAC 90.310 to clarify the process for renewing applicator certification.
- 5) Amend 18 AAC 90.410, 18 AAC 90.415, and 18 AAC 90.420 to clarify recordkeeping items for pesticide applicators.
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Statutory authority: AS 44.46.025, AS 46.03.020, AS 46.03.320, AS 46.03.330.

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Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: June 29, 2017

Larry Hartig, Commissioner
Department of Environmental Conservation

Published: June 30, 2017