

DEPARTMENT OF ENVIRONMENTAL CONSERVATION



18 AAC 90

Pesticide Control

Effective April 10, 2010

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IMPORTANT NOTE TO READER

THE REGULATIONS REPRODUCED HERE HAVE BEEN PROVIDED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AS A PUBLIC COURTESY. WHILE EVERY EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE REPRODUCED VERSION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION CANNOT GUARANTEE ITS ABSOLUTE ACCURACY. PAPER COPIES OF THE REGULATIONS AS ORIGINALLY FILED BY THE LIEUTENANT GOVERNOR ARE AVAILABLE FROM THE OFFICE OF THE COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION. IF ANY DISCREPANCY IS FOUND BETWEEN THIS BOOKLET AND THE ALASKA ADMINISTRATIVE CODE, THE CODE SHOULD BE CONSIDERED THE FINAL AUTHORITY, UNLESS THE DISCREPANCY IS THE RESULT OF A MANIFEST ERROR IN THE CODE.

THESE REGULATIONS HAVE AN EFFECTIVE DATE OF APRIL 10, 2010, ARE IN REGISTER 194, AND WILL APPEAR IN OFFICIAL PUBLISHED FORM IN THE JULY, 2010 SUPPLEMENT TO THE ALASKA ADMINISTRATIVE CODE.

Chapter 90. Pesticide Control.

Article

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Editor's note: The regulations in this chapter, effective February 15, 1998, and distributed in Register 145, constitute a comprehensive reorganization and revision of this material. They replace all previous regulations in this chapter which were repealed simultaneously with the adoption of these regulations. The history line at the end of each section does not reflect the history of the replaced provisions before the effective date of this chapter, nor is the section numbering related to the numbering before that date. Previous amendments to this chapter may be reviewed at the Office of the Lieutenant Governor, and are found at Register 47, effective 9/1/73; and at Register 64, effective 11/25/77; Register 74, effective 4/27/80, and Register 115, effective 8/2/90.

Article 1. Purpose, Applicability, Prohibitions, and Discharge Notification.

Section

- 10. Purpose and applicability
- 20. Prohibitions
- 30. Distribution, sale, and purchase requirements
- 40. Discharge notification required

18 AAC 90.010. Purpose and applicability. (a) The purpose of this chapter is to protect human health, safety, and welfare, animals, and the environment by ensuring the proper use, sale, distribution, transportation, storage, and disposal of pesticides and their containers.

(b) This chapter applies to any person who uses, advises regarding use, manufactures, sells, distributes, formulates, stores, or disposes of pesticides. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

Editor's note: Words and phrases used in this chapter are defined in 18 AAC 90.990.

18 AAC 90.020. Prohibitions. In addition to other prohibitions set out in this chapter, a person may not

(1) display, store, abandon, transport, use, sell, distribute, or dispose of a pesticide or a pesticide container in a manner that might endanger human health, safety, or welfare, animals, or the environment;

(2) dispose of a pesticide or a pesticide container except in compliance with labeling instructions and other applicable state or federal law;

(3) use, or advise regarding the use of, a pesticide in a manner that requires certification or a permit under this chapter without the required certification or permit;

(4) use, or advise regarding the use of, a pesticide in a faulty, careless, or negligent manner;

(5) use, or advise regarding the use of, a pesticide in a manner that is inconsistent with labeling instructions, a condition of registration under this chapter, or a condition of a permit or otherwise in violation of this chapter;

(6) operate faulty or unsafe pesticide application equipment;

(7) submit a false, misleading, fraudulent, or incomplete record, report, or application under this chapter;

(8) formulate, distribute, purchase, sell, or offer for sale

(A) an unregistered, misbranded, or adulterated pesticide or device; or

(B) a pesticide that is not in the producer's original unbroken container; or

(C) a pesticide product that lacks both EPA registration and registration under this chapter; or

(9) detach, alter, deface, or destroy, in whole or in part, the label of a pesticide unless that action is approved by the department or EPA. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

18 AAC 90.030. Distribution, sale, and purchase requirements. (a) A person may not distribute or sell

(1) any pesticide unless it has been registered as required by 18 AAC 90.200 - 18 AAC 90.235; or

(2) a restricted-use pesticide unless the person is a certified pesticide dealer and has proof that the purchaser is

(A) certified under this chapter in the applicable category of use; or

(B) authorized in writing by an applicator certified in the applicable category of use to purchase the restricted-use pesticide for use by the certified applicator.

(b) A person may not purchase a restricted-use pesticide unless that person is

(1) certified under this chapter in the applicable category of use; or

(2) authorized in writing by an applicator certified in the applicable category of use to purchase a restricted-use pesticide for use by the certified applicator. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

18 AAC 90.040. Discharge notification and containment required. (a) As required by 18 AAC 75.300(a)(1)(A), if there is a discharge of a pesticide from a vessel, vehicle, container, or area that is used to store, transport, or dispose of a pesticide, the person having responsibility for the vessel, vehicle, container, or area that is used to store, transport, or dispose of a pesticide shall notify the department of the discharge as soon as that person has knowledge of the discharge. The person shall safely contain that discharge.

(b) For purposes of this section, "discharge" means the release of a pesticide in a manner that is not in compliance with this chapter. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

Article 2. Pesticide Registration.

Section

- 200. Pesticide registration requirements
- 205. Application for registration
- 210. Change in labeling
- 215. Department action on application for registration
- 220. Unregistered pesticides
- 225. Modification, suspension, or revocation of registration
- 230. Application for registration for a special local need
- 235. Registration of a pesticide for a special local need

18 AAC 90.200. Pesticide registration requirements. (a) Except as provided in (b) of this section, a person may not distribute or sell a pesticide unless that pesticide is currently registered under 18 AAC 90.215.

(b) The following pesticides are exempt from registration under this chapter:

(1) a pesticide shipped intrastate from one producing establishment to another operated by the same producer solely for repackaging or solely for use as a constituent part of another pesticide produced at the second establishment;

(2) a pesticide labeled under FIFRA for “experimental use only”; and

(3) a pesticide produced or packaged in the state solely for export from the United States. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

18 AAC 90.205. Application for registration. A producer seeking to register a pesticide under 18 AAC 90.215 shall submit an application to the department on a form or in the format required by the department and the fee required by 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 material safety data sheet and Chemical Abstracts Service (CAS) number; and

(9) 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)

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. 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(4) and (5) within 30 days after the change occurs. (Eff. 2/15/98, Register 145)

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

18 AAC 90.215. Department action on application for registration. (a) Within 60 days after an application for pesticide registration is submitted, the department will, in its discretion,

(1) register the pesticide, using the pesticide's EPA registration number;

(2) refuse to register the pesticide; or

(3) notify the producer regarding restrictions on pesticide delivery, distribution, sale, or use by classifying that pesticide as a state restricted-use pesticide; examples of restrictions include

(A) sale to certified applicators only;

(B) prohibition of use in designated areas;

(C) permit required for use; or

(D) limitation on application rate or frequency.

(b) In its decision under (a) of this section, the department will consider

(1) the threat to human health, safety, and welfare, animals, and the environment that might result from distribution, sale, or use of the pesticide;

(2) applicable findings and recommendations of a local, state, or federal agency;
and

(3) protection of waters of the state from pesticide contamination. (Eff. 2/15/98,

Register 145; am 11/30/2003, Register 168)

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

18 AAC 90.220. Unregistered pesticides. A pesticide that is distributed or sold but not registered in the state is subject to a stop sale, use, or removal order under 18 AAC 90.705. (Eff. 2/15/98, Register 145)

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

18 AAC 90.225. Modification, suspension, or revocation of registration. (a) If the department finds that a pesticide or its labeling does not comply with FIFRA, or when necessary to prevent a pesticide from having an unreasonable adverse effect on human health, safety, or welfare, animals, or the environment, the department will, in its discretion, modify, suspend, or revoke the registration of that pesticide issued under 18 AAC 90.215, using the criteria in 18 AAC 90.215(b), or will pursue other sanctions provided by law.

(b) The department will provide written notice to the producer of the pesticide of the department's action under (a) of this section within 10 working days after the department decides to modify, suspend, or revoke registration. A producer who disagrees with the department's decision may

(1) appeal the decision under 18 AAC 90.900; and

(2) request an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340. (Eff. 2/15/98, Register 145; am 7/11/2002, Register 163)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330 AS 46.03.760

18 AAC 90.230. Application for registration for a special local need. (a) In addition to registration of a pesticide under 18 AAC 90.215, a person seeking to register a pesticide for sale, distribution, or use for a special local need shall submit to the department

(1) a completed and signed EPA "Application for/Notification of State Registration of a Pesticide to Meet a Special Local Need";

(2) a copy of the current EPA-approved label and labeling registered under FIFRA for the pesticide;

(3) a copy of the proposed supplemental labeling, including a statement of all claims made for the pesticide, and directions for its use to meet the special local need;

(4) evidence that the pesticide

(A) has an established tolerance or exemption under 21 U.S.C. 301 – 21 U.S.C. 395 (Federal Food, Drug, and Cosmetic Act) for use on food or animal feed to be included in the supplemental labeling; or

(B) is not for use on food or animal feed;

(5) data showing that use of the pesticide according to the supplemental labeling will not cause an unreasonable adverse effect on human health, safety, or welfare, animals, or the environment;

(6) a letter from the EPA registrant confirming that there is no objection to the proposed use; and

(7) other pertinent information requested by the department.

(b) The department will approve or deny the application within 90 days after receiving a complete application. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

18 AAC 90.235. Registration of a pesticide for a special local need. (a) When the department receives an application under 18 AAC 90.230, the department will, in its discretion, register a pesticide for a special local need and approve supplemental labeling if

(1) the pesticide is registered with EPA under FIFRA;

(2) the pesticide is registered under 18 AAC 90.215;

(3) the department finds that a special local need exists that is not adequately covered by the labeling registered with EPA;

(4) the pesticide

(A) has an established tolerance or exemption under 21 U.S.C. 301 – 21 U.S.C. 395 (Federal Food, Drug, and Cosmetic Act) for use on food or animal feed to be included in the supplemental labeling; or

(B) is not for use on food or animal feed;

(5) the department finds that use according to supplemental labeling will not cause an unreasonable adverse effect on humans, animals, or the environment if used according to labeling directions; and

(6) registration for the proposed use has not been previously denied or canceled by EPA, unless that action was later rescinded by EPA.

(b) The department will deny a request under this section for a pesticide

(1) with a composition that is not similar to a pesticide registered under FIFRA;

(2) involving a use pattern not similar to a use registered under FIFRA for the same pesticide or a pesticide with a similar composition;

(3) for which other uses of the same pesticide, or a pesticide with a similar composition, have had registration denied or canceled by EPA; or

(4) used to control a pest problem that is present nationwide. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

Article 3. Certification Requirements.

Section

- 300. Certification requirements
- 305. Certification procedures
- 310. Certification renewal
- 315. Certification modification, suspension, or revocation

18 AAC 90.300. Certification requirements. (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 supervision of a certified applicator 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 pesticides at a school unless the pesticide is an antimicrobial pesticide; or

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

(b) Unless specifically authorized in writing by the department, an individual certified under (a) of this section may use pesticides only in a category of use for which that individual is certified.

(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;

(2) Demonstration and Research Pest Control: individuals such as government employees, extension specialists, and extension agents who use or supervise the use of pesticides or who advise, demonstrate, supervise demonstrations, make recommendations, or conduct field research on pesticide use;

(3) Private Agricultural Pest Control: individuals who apply restricted-use pesticides to

(A) agricultural commodities and property, including greenhouses and nurseries;

(B) the feed, bedding, or bodies of animals; and

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

(4) Ornamental and Turf Pest Control: individuals who apply pesticides to plants and grass used for decorative and sporting purposes on residential, commercial, federal, state, or municipal property;

(5) Antifouling Paint: individuals who apply antifouling paint, such as Tri-butyl-tin antifouling paint;

(6) Aquatic Pest Control: individuals who apply pesticides to water to control unwanted animals, fish, microbes, plants, or other pests;

(7) Industrial, Institutional, Structural, and Health-Related Pest Control: individuals who apply pesticides to residential, commercial, federal, state, or municipal structures to control insects, fungi, viruses, rodents, bacteria, and other pests;

(8) Public Health Pest Control: individuals such as environmental health officers, public health nurses, entomologists, and others in a preventive medicine or health care field who use or recommend pesticides;

(9) Right-of-Way Pest Control: individuals who use pesticides to control unwanted vegetation along the rights-of-way of roads, waysides, railroads, airfields, pipelines, power lines, 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 fixed-wing, rotary wing, and air cushion vehicles who apply pesticides by air;

(12) Forest Pest Control: individuals who use pesticides to control forest insects, control vegetation for forestry vegetation management programs, to maintain or create logging roads, paths, or loading areas, or for other similar uses;

(13) Wood Preservatives: individuals who apply pesticides to preserve wood; and

(14) Restricted-Use Pesticide Dealer: individuals who distribute or sell restricted-use pesticides.

(d) An individual certified under 18 AAC 90.300 - 18 AAC 90.315 shall have a copy of the certification

(1) in that individual's possession when conducting an activity described in (a) of this section; or

(2) displayed in that individual's place of business.

(e) An individual certified under 18 AAC 90.300 - 18 AAC 90.315 shall notify the department within 30 days after a change in

(1) the individual's business name or organization of the individual's business; or

(2) other information provided in the certification application.

(f) Certification under 18 AAC 90.300 - 18 AAC 90.315 may not be transferred.

(g) An individual who uses only a general-use pesticide as part of the individual's workplace activity is exempt from the certification requirements of 18 AAC 90.300 - 18 AAC 90.315 if

(1) the use is only on property owned or leased by the individual or the individual's employer;

(2) the individual's employer is not engaged in the custom, commercial, or contract use of pesticides; and

(3) the use is not in a public place. (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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. Certification procedures. (a) An individual who seeks certification under 18 AAC 90.300 shall submit an application on a form supplied by the department and the fee required by 18 AAC 90.860.

(b) Subject to (f) of this section, the department will certify an applicant who

(1) is at least 18 years of age;

(2) attends a training session or completes an Internet or other correspondence course approved by the department; and

(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.

(c) The department will include in an examination administered under (b)(3) of this

section questions regarding labeling comprehension, safety, environmental factors, the consequences of use and misuse of pesticides, knowledge of pests, knowledge of pesticides and types of formulations, equipment use, treatment techniques, applicable state and federal statutes and regulations, hazards associated with residues, and other pertinent information.

(d) The department will impose specific conditions upon a certification issued under 18 AAC 90.300 to protect human health, safety, welfare, animals, and the environment.

(e) A certification issued under 18 AAC 90.300 - 18 AAC 90.315 is valid for no more than three years after the date it is issued and is subject to the renewal requirements of 18 AAC 90.310.

(f) The department will, in its discretion, deny an application for certification if the applicant

(1) fails to meet the requirements of this section;

(2) makes false or misleading statements on the application;

(3) has failed to comply with a provision of this chapter in the past;

(4) has been convicted of a violation under FIFRA or the pesticide laws of another state; or

(5) is under a final order imposing a civil penalty under FIFRA or the pesticide laws of another state. (Eff. 2/15/98, Register 145; am 2/15/2006, Register 177; am 9/30/2007, Register 183)

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

18 AAC 90.310. Certification renewal. (a) An individual who seeks to renew a certification issued under 18 AAC 90.300 shall

(1) submit an application on a form supplied by the department;

(2) 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

(3) pass a written or oral renewal examination administered by the department or the department's representative. The department will waive the examination requirement if

(A) recertification is obtained with 12 continuing education hours; or

(B) the applicant demonstrates that an examination given in any course under (2) of this subsection is substantially equivalent to the department's examination.

(b) The provisions of 18 AAC 90.305(d) - (f) apply to an individual seeking to renew

certification under this section and to a certification that is renewed under this section. (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; am 9/30/2007, Register 183)

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

18 AAC 90.315. Certification modification, suspension, or revocation. (a) The department will, in its discretion, modify, suspend, or revoke a certification

(1) for violation of

(A) an applicable statute or regulation; or

(B) a specific condition that was imposed on a new or renewed certification under 18 AAC 90.305(d) or that was imposed on a permit under 18 AAC 90.525(c); or

(2) if the department learns of information that

(A) was not available to the department at the time a new or renewed certification was issued; and

(B) would be grounds for denial of certification under 18 AAC 90.305(f).

(3) if the certified pesticide applicator repeatedly prevents the department from conducting an inspection, site visit, or records review by failing to respond in a timely manner.

(b) The department will provide written notice of the department's action under (a) of this section to the affected individual within 10 working days after the department decides to modify, suspend, or revoke certification. An affected individual who disagrees with the department's decision may

(1) appeal the decision under 18 AAC 90.900; or

(2) request an adjudicatory hearing under 18 AAC 15.200. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

Article 4. Recordkeeping Requirements.

Section

- 400. Recordkeeping requirements for restricted-use pesticide dealers
- 410. Recordkeeping requirements for private agricultural applicators of restricted-use pesticides
- 415. Recordkeeping requirements for other applicators of restricted-use pesticides
- 416. Recordkeeping requirements for custom, commercial, or contract applicators of pesticides

18 AAC 90.400. Recordkeeping requirements for restricted-use pesticide dealers. A dealer who purchases or sells restricted-use pesticides shall, for at least two years after each purchase and sale, keep accurate written records. The records must be available to the department upon request and must contain the

- (1) product or brand name, EPA registration number, and amount of each restricted-use pesticide purchased from a dealer or manufacturer;
- (2) current inventory of restricted-use pesticides;
- (3) name and address of each applicator purchasing a restricted use pesticide and
 - (A) current certification number;
 - (B) category of use under 18 AAC 90.300(c) for which the applicator is certified; and
 - (C) expiration date for each category-of-use certification;
- (4) product or brand name, EPA registration number, amount, intended use, and date of sale to a certified applicator of each restricted-use pesticide;
- (5) name, address, and signature of each purchaser of a restricted-use pesticide, if the purchaser is not a certified applicator; and
- (6) each written authorization required under 18 AAC 90.030. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

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

- (1) product or brand name and the EPA registration number of each pesticide;
- (2) date of application;
- (3) location of application;

- (4) total amount of pesticide applied;
- (5) applicator's name and certification number;
- (6) crop commodity or site to which the pesticide was applied; and
- (7) size of the area treated. (Eff. 2/15/98, Register 145)

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. 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 and EPA registration number of the pesticide;
 - (B) the company name and address where the pesticide was purchased;
 - (C) the date and the amount of pesticide purchased; and
- (2) for each use of a restricted-use pesticide by the applicator,
 - (A) the product or brand name and EPA registration number of the pesticide;
 - (B) the date and location of use;
 - (C) the rate of application;
 - (D) the dilution of the pesticide applied;
 - (E) the amount of pesticide product used;
 - (F) the target pests and site of the application;
 - (G) the name of the person applying the pesticide; and
 - (H) if the pesticide is a fumigant, instead of the information required by (C) and (D) of this paragraph,
 - (i) the temperature and duration of the exposure period; and

(ii) pounds of gas released per 1,000 cubic feet of space.
(Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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. 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 must contain the information listed in 18 AAC 90.415(2)(A) – (H).
(Eff. 3/31/2002, Register 161)

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

Article 5. Permit Requirements.

Section

- 500. Permit for certain public pesticide programs or projects
- 505. Permit for water and aerial application of pesticides
- 510. Exemptions from permit requirements
- 515. Permit application
- 520. Public notice requirements; public hearings
- 525. Permit issuance or denial
- 530. Permit term and renewal
- 535. Summary of treatment results
- 540. Permit modification, suspension, or revocation

18 AAC 90.500. Permit for certain public pesticide programs or projects. Except as provided in 18 AAC 90.510, a government entity may not, without first obtaining a permit issued by the department, direct, carry out, allow, or participate in the spraying or application of a pesticide in any program or project

(1) in a state-owned greenhouse or nursery, on a state right-of-way, or on more than one acre of land owned or leased by the state, except where the pesticide is applied on less than one acre of land on a right-of-way wholly within the boundaries of an airport owned either by the state or a municipality and the pesticide is not applied by aircraft or helicopter; or

(2) if that spraying or application affects property owned separately by two or more persons. (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

18 AAC 90.505. Permit for water and aerial application of pesticides. A person or government entity may not, without first obtaining a permit issued by the department, direct, conduct, participate in, or allow the use of a pesticide

(1) to waters of the state; or

(2) by aircraft or helicopter. (Eff. 2/15/98, Register 145)

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

18 AAC 90.510. Exemptions from permit requirements. (a) Antimicrobial pesticides are exempt from the permit requirements of this chapter if the antimicrobial pesticides are applied only for oilfield operations or the treatment of drinking water.

(b) The commissioner may, upon written request, exempt the application of a pesticide from a requirement of this chapter if the commissioner determines that an emergency exists, including a significant

- (1) risk to human health;
- (2) risk to the environment; or
- (3) economic loss.

(c) The department will, upon written request, exempt a proposed pesticide application, except for an application by aircraft or helicopter, from a permit requirement of this chapter if the department determines that granting the exemption will not result in an unreasonable adverse effect, and that the

(1) application of the pesticide is necessary for the safe operation of nonpublic areas of an airport certificated by the Federal Aviation Administration under 14 C.F.R. 139; or

(2) pesticide is to be applied on no more than 20 acres for a research project conducted

(A) by the University of Alaska; or

(B) on land owned or leased by the state. (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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 90.515. Permit application. A person required to have a permit under 18 AAC 90.500 or 18 AAC 90.505 shall submit a completed application to the department as required by 18 AAC 15.020, using a form supplied by the department. The application must identify

(1) the common or brand name of each pesticide to be used, the name of the seller or distributor from whom the pesticide is obtained, and the EPA registration number for each pesticide;

(2) the targeted pests to be controlled by the pesticide;

(3) each type of formulation to be used;

(4) each type of adjuvant to be used;

(5) the percentage of each active ingredient in each formulation;

(6) the rate of application for each active ingredient to be applied;

(7) the proposed protective area under 18 AAC 90.800, if the pesticide is to be applied as part of a forestry vegetation management project;

(8) a description of the treatment area where the pesticide will be applied, including

- (A) the location depicted on a map or plat issued by the United States, the state, or a municipality;
- (B) the size of the treatment area;
- (C) vegetation in the treatment area;
- (D) each potentially affected surface water or marine water body within 200 feet of the treatment area, or each public or private water system within 200 feet of the treatment area; in this subparagraph, “public water system” and “private water system” have the meanings given in 18 AAC 80.1990;
- (E) soil type, including drainage characteristics, in the treatment area; and
- (F) average annual precipitation;
- (9) the proposed date and time of each pesticide application;
- (10) the method of application;
- (11) the method of disposal of excess pesticides and empty pesticide containers;
- (12) special precautions planned to protect human health, safety, and welfare, animals, and the environment;
- (13) evidence that a person who directs, carries out, or participates in a pesticide program or project described in 18 AAC 90.500 or 18 AAC 90.505 has working knowledge of the pesticides to be applied, the necessary safety precautions, and potential impact on the environment; the evidence required by this paragraph must include proof of appropriate certification under 18 AAC 90.300 - 18 AAC 90.315;
- (14) for an application of a pesticide by aircraft or helicopter, a current copy of the Federal Aviation Administration’s operations certificate for the aircraft or helicopter, as appropriate;
- (15) if requested by the department, proof on land ownership or permission from the landowner to apply the pesticide on the treatment area;
- (16) information that demonstrates to the department’s satisfaction that the pesticide to be applied does not cause an unreasonable adverse effect; and
- (17) other information that the department requests and that the department considers pertinent to compliance by the applicant with this chapter.
- (18) any federally listed species referenced in 50 C.F.R. 17.11 – 17.12 with potential to occur in the area affected by pesticide treatment. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

18 AAC 90.520. Public notice requirements; public hearings. (a) A person required to have a permit under this chapter must publish a public notice in accordance with the requirements of 18 AAC 15.050.

(b) If a public hearing is required under 18 AAC 15.060,

(1) the applicant must publish the notice of public hearing in accordance with 18 AAC 15.060;

(2) the department will conduct the public hearing in accordance with 18 AAC 15.060; and

(3) the applicant must provide a transcript of the hearing to the department no more than 15 days after the hearing.

(c) Upon receipt of a permit application, the department may send a copy of the permit application and the public notice of application to appropriate local, state, and federal agencies requesting that any comments on the application be submitted in writing to the department no more than 21 days after the department mails out the copy.

(d) If an applicant submits a permit application under 18 AAC 90.505 for forestry vegetation management where a pesticide is to be applied by aircraft or helicopter, the applicant may not publish a public notice until the department sends the applicant the copy of comments or notification described in this subsection. Upon receipt of the application, the department will immediately send a copy of the permit application to the Department of Natural Resources for review and comment, requesting that any comments on the permit application be submitted in writing to the department no more than 21 days after the department mails out the copy. Upon receipt of those comments or the expiration of the 21-day period without receipt of comments, the department will send the applicant a copy of those comments or a notification that comments were not received. The applicant may make changes to the permit application to address any comments and must submit those changes, in writing, to the department within 10 days after the applicant receives the comments. After submitting any changes to the department, the applicant must publish public notice under (a) of this section.

(e) An applicant for a permit for forestry vegetation management where a pesticide is to be applied by aircraft or helicopter shall make available for public review, during the period for filing written public comments with the department,

(1) comments from the Department of Natural Resources or a statement that comments from that department were not received before public notice was published; and

(2) a description of any changes to the permit application in response to comments from the Department of Natural Resources. (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 4/10/2010, Register 194)

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 90.525. Permit issuance or denial. (a) The department will issue or deny a

permit after reviewing the information contained in an application, the public record that results from public notice and any public hearing under 18 AAC 90.520, and comments received from local, state, or federal agencies. The department's decision will be in writing and, if denying a permit, will state the reasons for that denial.

(b) The department will, in its discretion, deny a permit if

(1) the applicant fails to supply information or evidence required by this chapter;

(2) the department determines that the special precautions referred to in 18 AAC 90.515(12) are inadequate to prevent unreasonable adverse effects;

(3) the applicant or a person under the applicant's direct supervision has failed to abide by a condition of a previous permit;

(4) a proposed action is unlawful; or

(5) the department finds that the application of the pesticide will result in an unreasonable adverse effect.

(c) The department will, in its discretion, include conditions in a permit to protect human health, safety, or welfare, animals, or the environment. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

18 AAC 90.530. Permit term. (a) The department will send a copy of the department's decision to issue or deny a permit to the applicant and to each person who commented on the application as provided in 18 AAC 15.080.

(b) A permit takes effect no sooner than 40 days after the department issues a permit.

(c) A permit is not valid for more than five years after its effective date. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 2007; am 4/10/2010, Register 194)

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

18 AAC 90.535. Summary of treatment results. (a) Within 90 days after a permit issued under 18 AAC 90.500 - 18 AAC 90.540 expires, the permittee shall submit to the department a summary of the treatment results, including

(1) the dates of the treatment;

(2) the total amount of each pesticide used;

(3) an assessment of the success or failure of the treatment;

(4) any observed effect on human health, safety, or welfare, animals, or the environment;

(5) monitoring results, if under this chapter, the department required the permittee to conduct monitoring; and

(6) records required to be kept under 18 AAC 90.400 – 18 AAC 90.420.

(b) In addition to other sanctions provided by law, failure to submit a summary requested under (a) of this section is a basis for denial of a subsequent permit. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

18 AAC 90.540. Permit modification, suspension, or revocation. (a) The department will, in its discretion, modify, suspend, or revoke a permit if

(1) the department finds that a violation of this chapter or of the permit has occurred; or

(2) an activity that occurs under the permit has an unanticipated effect on human health, safety, or welfare, animals, or the environment.

(b) The department will provide written notice to the permittee of the department's action under (a) of this section within 10 working days after the department decides to modify, suspend, or revoke a permit. A person authorized under 18 AAC 15.195 – 18 AAC 15.340 who disagrees with the department's decision may

(1) appeal the decision under 18 AAC 90.900; and

(2) request an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340. (Eff. 2/15/98, Register 145; am 7/11/2002, Register 163; am 9/30/2007, Register 183)

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

Article 6. Pesticide Handling Requirements.

Section

- 600. Operating requirements for applicators
- 605. Ground and aircraft spray apparatus
- 610. Drift control and dispersion restrictions
- 615. Storage and disposal of pesticides and pesticide containers
- 620. Insurance required
- 625. School use and notification

18 AAC 90.600. Operating requirements for applicators. When using pesticides, an applicator shall

- (1) adhere to requirements specified by the labeling;
- (2) when measuring concentrated materials, use only apparatus accurately calibrated to the smallest unit in which the material is being weighed or measured;
- (3) when the active ingredient is in suspension, or when using a mixture of materials, maintain a uniform mixture; and
- (4) thoroughly clean pesticide-contaminated apparatus after use. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

18 AAC 90.605. Ground and aircraft spray apparatus. (a) The department will, in its discretion,

- (1) inspect ground or air apparatus used to apply pesticides; and
 - (2) require repairs of ground or air apparatus or other changes before further use.
- (b) A person applying pesticides while using an aircraft or helicopter shall ensure that aircraft apparatus used to apply a pesticide

- (1) meets the following requirements:
 - (A) the flow of liquid to aircraft nozzles must be controlled by a positive shutoff system, and each nozzle must be equipped with
 - (i) a check valve, with the flow controlled by a check-valve device or a boom pressure release device that puts a negative pressure on the system; or
 - (ii) a positive action valve system; and
 - (B) fixed-wing aircraft and helicopters must be equipped so that the

orifice of each nozzle can be directed backward, parallel to the horizontal axis of the aircraft in flight; and

(2) is calibrated to apply the pesticide at the concentration and rate of application specified by the pesticide labeling. (Eff. 2/15/98, Register 145)

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. 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 by 18 AAC 90.040. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168)

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. Storage and disposal of pesticides and pesticide containers. (a) A person who applies a pesticide shall properly dispose of each empty container. A person may burn an empty pesticide container only if

(1) the container's labeling allows the container to be burned; and

(2) burning is done in compliance with 18 AAC 50.

(b) Custom, commercial, or contract applicators, and school administrators shall store all pesticides, including general-use and restricted-use pesticides, as required by (d) – (h) of this section.

(c) Private agricultural applicators and dealers shall store restricted-use pesticides as required by (d) – (h) of this section.

(d) The storage requirements of this section apply to empty, full, or partially full pesticide containers that are the responsibility of the persons identified in (b) and (c) of this section. These containers must be stored in one of the following enclosures that, when unattended, is locked to prevent unauthorized persons, or livestock or other animals from gaining

entry:

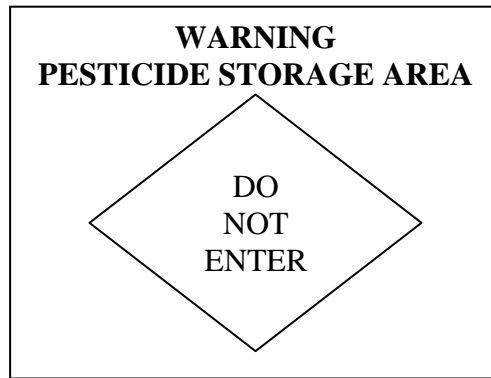
- (1) a closed vehicle;
- (2) a closed trailer;
- (3) a closed building or room;
- (4) a fenced area with a fence at least six feet high; or
- (5) a truck or trailer with solid side racks and secured tailgate at least six feet above the ground.

(e) A warning notice must be posted on the outside of an enclosure listed in (d)(2) – (4) of this section. The notice must

- (1) include the name and telephone number of a person to contact in an emergency;
- (2) be a minimum size of 8 by 10 inches; and
- (3) use lettering at least three-fourths inch high
- (4) be a sign as follows, if the stored pesticide has an EPA-approved label containing a skull and crossbones and the signal word “danger”; and



(5) be a sign containing the signal word of the most hazardous pesticide being stored, either “warning” or “caution”, as follows, if none of the stored pesticides has an EPA-approved label containing a skull and crossbones and “danger” signal word:



(f) The notice described in (e) of this section must be repeated in an appropriate language other than English if it is probable that persons who do not understand English will come to the enclosure.

(g) The posting of a warning notice other than as specified in (e) of this section must be approved by the department.

(h) The words “POISON” or “CHEMICAL” may be substituted for the word “PESTICIDE” in a warning notice required under (e) of this section. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

Editor’s note: The warning notices required in 18 AAC 90.615(e) are available at the department’s pesticide program offices in Wasilla or Anchorage or on the Internet at <http://www.dec.state.ak.us/eh/pest/index.htm> .

18 AAC 90.620. Insurance required. (a) Except as provided in (c) of this section, a person may not 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.

(b) The department will modify or suspend certification under this chapter if insurance required under (a) of this section is not provided or is reduced below the minimum amounts required.

(c) The requirements of this section do not apply to a local, state, or federal agency employee who engages in the custom, commercial, or contract use of a pesticide as part of the employee’s employment activities. (Eff. 2/15/98, Register 145)

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

18 AAC 90.625. School use and notification. (a) The administrator of a school shall,

whenever practical, ensure the use of nonchemical methods to control pests, including proper sanitation practices, structural repair, and window screens.

(b) Except as provided in (h) of this section, at least 24 hours before the application of a pesticide to an area of the school that is used by or is accessible to children, the administrator of the school shall notify parents or guardians of children of the application; a notice under this subsection must include

- (1) a description of the area where the pesticide will be applied;
- (2) the date and approximate time of application; if the application will be outdoors, the notification must include three dates in chronological order in case the preceding date is cancelled due to weather;
- (3) the common or brand name of each pesticide to be used;
- (4) the targeted pests to be controlled by the pesticide;
- (5) each active ingredient in the pesticide;
- (6) the EPA registration number;
- (7) the contact telephone number, if any, on the label of the pesticide for additional information about each pesticide; and
- (8) a contact name and telephone number at the school.

(c) During the school term the notification required in this section must be made by individual notice delivered by phone, face to face oral communication, electronic mail, postal mail, or facsimile. A school or school district may also develop a registration system to provide this notification only to those parents who wish to receive the notification. If the school or school district develops a registration system, the administrator of each school shall provide written notice to the parents or guardians of the children at the beginning of the school year or upon a child's enrollment that pesticides may be used in or around the school, and shall explain to each parent or guardian how to register to be notified at least 24 hours before a pesticide treatment.

(d) If given in writing, the notice required in (c) of this section may not be included with any other notice being provided to parents or guardians on another matter.

(e) If pesticides are used outside the school term and the school is open to or accessible by the public, the notification required under this section must be prominently posted in a conspicuous location on the school premises at least 24 hours before the pesticide treatment is scheduled to begin.

(f) Immediately before starting the application of a pesticide, the certified applicator shall post an 8 ½ x 11 inch sign in the area where pesticides are being applied. The school administrator shall ensure the sign remains posted and children are kept out of the treated area until the reentry interval on the label, if any, has expired, or, if the label does not specify a reentry interval, for at least 24 hours. The sign must contain the following message, along with

the name of the pesticide, the pesticide's EPA registration number, the name and telephone number of a contact for the school, and the date and time of application:



**PESTICIDE TREATED
AREA
KEEP OUT until dry (or other
time required by the label)**

Pesticide Product _____

EPA Registration Number _____

School Contact Name/Telephone Number _____

Date and Time of Application _____

(g) A school administrator may authorize an immediate pesticide treatment without prior notification if the administrator determines an emergency exists. An emergency includes an immediate and unanticipated threat to the health and safety of the individuals at the school. An emergency does not exempt the school from the requirements of (f) of this section.

(h) The following pesticide applications are not subject to the notification or posting requirements of this section:

- (1) applications of antimicrobial pesticides;
- (2) an application where the school remains unoccupied for a continuous 72 hour period following the application of the pesticide;
- (3) applications of rodenticides in tamper resistant bait stations or in areas inaccessible to children;
- (4) applications of silica gels and other ready-to-use pastes, foams, or gels that will be used in areas inaccessible to children.

(i) A school administrator shall keep records of pesticide applications subject to the notification and posting requirements of this section. Records must be kept for two years and include

- (1) a copy of each notice issued under this section; if a school administrator authorizes a pesticide application under (g) of this section, all the information that is required in a notice under (b) of this section must be included in the record;
- (2) the date of application;
- (3) the name and employer of the individual who applied the pesticide, including the individual's certification number;
- (4) the rate of application;
- (5) the concentration of the pesticide applied; and
- (6) the total amount of pesticide product used.

(j) Records required to be kept under this section must be made available to the department and to the public for review. (Eff. 3/31/2002, Register 161; am 9/30/2007, Register 183)

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

Editor's note: The sign required in 18 AAC 90.625(f) is available at the department's pesticide program offices in Wasilla and Anchorage and on the Internet at <http://www.dec.state.ak.us/eh/pest/index.htm> .

As of Register 178 (July 2006), the regulations attorney made a technical revision under

AS 44.62.125(b)(6), to 18 AAC 90.625(c).

18 AAC 90.630. Public notification and posting of pesticide applications to public places. (a) A person may not apply a pesticide in a public place without first posting a written notice on the application site. The notice

(1) must be conspicuously posted at each point of customary access to each public place or each portion of each public place requiring a written notice;

(2) must be at least 8 1/2 x 11 inches and be reasonably designed to remain legible for the longest of the following time periods:

(A) at least 24 hours after the application;

(B) the period until, according to the product label, entering the application site will be safe;

(3) if posted outdoors and not on a structure, must be posted at least 12 inches above ground level:

(4) if posted indoors or on a structure, must be

(A) posted no less than three and no more than four feet above floor level; and

(B) attached so as to remain in place;

(5) must be posted immediately before the pesticide application begins and remain in place for the longest period of time set out in (2)(A) and (B) of this subsection; and

(6) must contain the following wording, in substantially the following format, along with the date and time of application, the name, address, and telephone number of the contact person, and the time at which the pesticide will be dry, or if entering the application site is not yet safe when the pesticide is dry, the time when, according to the label, entering the site will be safe:

ATTENTION!
Pesticide Application
Date _____ & Time _____ of application
Details available from (Name) at (<u>address</u>) or (<u>phone number</u>)
KEEP OUT UNTIL _____ (until dry or other time req'd by label)

(b) Before beginning application, the applicator shall make

available to the contact person a written statement containing

(1) the name, address, and telephone number of the applicator, or of the applicator's employer;

(2) the common or trade name, EPA registration number, amount used, and target pests for each pesticide applied;

(3) adjuvants used, if any; and

(4) any post-application re-entry precautions, including at a minimum those contained on the label.

(c) The contact person shall make the statement required under (b) of this section available to a person upon request.

(d) The following pesticide applications are not subject to the notification or posting requirements of this section:

(1) applications of antimicrobial pesticides;

(2) applications of rodenticides in tamper resistant bait stations;

(3) applications of silica gels and other ready-to-use pastes, foams, or gels.

(e) The contact person may authorize an immediate pesticide treatment without prior posting or notification if the contact person determines that an emergency exists. An emergency is an immediate and unanticipated threat to the health and safety of humans or the environment at the public place. An emergency does not exempt the applicator or the applicator's agent from the requirements of (b) of this section or the contact person from the requirements of (c) and (f) of this section.

(f) The contact person shall keep accurate written records of all pesticide applications that are subject to the posting and notification requirements of this section. Those written records must

(1) contain all the information required under (b) of this section;

(2) be kept for at least two years; and

(3) be made available to the department or any person directly affected by the application upon request during the two-year period. (Eff. 9/30/2007, Register 183; am 9/30/2007, Register 183)

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

Article 7. Inspection and Enforcement.

Section

700. Inspection

705. Stop sale, use, or removal orders

18 AAC 90.700. Inspection. (a) A department employee or designated agent may enter upon public or private premises at reasonable times and with the owner's or occupier's consent to

(1) inspect containers, equipment, and supplies used to store, mix, load, transport, or apply pesticides;

(2) inspect, investigate, or take samples in response to a complaint or investigation involving pesticides or their use, sale, distribution, storage and disposal;

(3) inspect display, storage, retail, distribution, mixing, loading, or disposal areas;

(4) take samples of pesticides;

(5) observe the use of a pesticide;

(6) inspect records required by this chapter; or

(7) gather evidence, including the taking of sworn or unsworn statements, for use in evaluating or conducting proceedings to enforce this chapter.

(b) If access is denied to a department employee or agent attempting to conduct an inspection under (a) of this section, or if circumstances warrant access without prior notice, the department will, in its discretion, apply to a court for a search warrant under AS 46.03.860 or other law. (Eff. 2/15/98, Register 145; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

18 AAC 90.705. Stop sale, use, or removal orders. If the department has reasonable cause to believe that a pesticide or device is being distributed, stored, transported, offered for sale, or used in violation of this chapter, the department will, in its discretion, serve a written stop sale, use, or removal order to the owner or custodian of the pesticide or device. If the owner or custodian cannot be timely served, the department will, if possible, attach the order to the pesticide or device and attempt to notify the owner or custodian or the person who has registered the pesticide under 18 AAC 90.200 - 18 AAC 90.235. The order remains in effect until released in writing by the department or vacated or terminated by a court. Issuance of a stop sale, use, or removal order does not preclude other enforcement actions authorized by law. (Eff. 2/15/98, Register 145; am 9/30/2007, Register 183)

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

Article 8. Forestry Vegetation Management.

Section

800. Protective area

18 AAC 90.800. Protective area. An applicator who applies a pesticide as part of a forestry vegetation management project

(1) may not apply a pesticide within a protective area

(A) of 200 feet, measured horizontally, from a surface water source that is used for a public water system; for purposes of this subparagraph, “public water system” has the meaning given “public water system” in 18 AAC 80.1990; and

(B) sufficient in size to ensure that a pesticide applied by the applicator does not enter a pesticide-free zone composed of

(i) a surface water or marine water body; and

(ii) land within 35 feet of that surface water, measured horizontally from the ordinary high water mark, or that marine water body, measured horizontally from the mean higher high water mark; and

(2) if the department determines that it is necessary to protect against an unreasonable adverse effect, may be required by the department to

(A) conduct monitoring; or

(B) modify the protective area described in (1) of this section.

(Eff. 11/30/2003, Register 168)

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

Article 9. General Provisions.

Section

- 850. Registration fee requirements
- 860. Certified applicator fee requirements
- 870. Fee appeal and waiver procedures
- 900. Right to appeal department’s decision
- 990. Definitions

18 AAC 90.850. Registration fee requirements. (a) An initial or subsequent application for registration submitted under 18 AAC 90.205 must be accompanied by a fee of

(1) \$90 for each product for which the 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.

(b) If a producer has more than one product, the fee will be waived for the second or any subsequent product if that product has the same

- (1) EPA registration number; and
- (2) product label name.

(c) If an application for 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)

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. Certified applicator fee requirements. An applicator certified under 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)

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 90.870. Fee appeal and waiver procedures. A person who disputes the assessment of fees under 18 AAC 90.850 – 18 AAC 90.860 may request a review under 18 AAC 15.190. (Eff. 2/15/2006, Register 177)

Authority:	AS 44.46.025	AS 46.03.320	AS 46.03.730
	AS 46.03.020	AS 46.03.330	

18 AAC 90.900. Right to appeal department's decision. (a) A person subject to this chapter who is aggrieved by a decision of the department under this chapter may request an informal review of the decision under 18 AAC 15.185.

(b) This section does not affect the right of a person to request an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340. (Eff. 2/15/98, Register 145; am 7/11/2002, Register 163)

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

18 AAC 90.990. Definitions. Unless the context indicates otherwise, in this chapter

(1) "active ingredient" means, in the case of a

(A) pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, or mitigate a pest;

(B) plant regulator, an ingredient that, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or a product of those plants;

(C) defoliant, an ingredient that will cause leaves or foliage to drop from a plant; and

(D) desiccant, an ingredient that will artificially accelerate the drying of plant tissue;

(2) "adjuvant" means a substance

(A) with or without toxic properties of its own, intended to be used with or added to a pesticide as an aid to application, safety, or effect; and

(B) sold in a package or container separate from that of the pesticide with which it is to be used;

(3) "adulterated" means a pesticide

(A) the strength or purity of which falls below the professed standard of quality expressed on the label under which it is sold;

(B) for which a substance has been substituted wholly or in part; or

(C) from which a valuable constituent has been abstracted wholly or in part;

(4) "agricultural commodity" means a plant or part of a plant, livestock, or an animal product that is produced by a farmer, rancher, plant propagator, Christmas tree grower, aquaculturist, floriculturist, orchardist, forester, or similar person and that is produced primarily

for sale, consumption, propagation, or other use by humans or animals;

(5) "antimicrobial pesticide" means a pesticide that is intended to

(A) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or

(B) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime;

(6) "apparatus" means a type of ground, water, or aerial equipment, or contrivance using motorized, mechanical, or pressurized power to apply a pesticide; "apparatus" does not include

(A) a pressurized, hand-held household appliance used to apply a pesticide; or

(B) an appliance, equipment, or contrivance if the person who is applying the pesticide is the source of power or energy in applying the pesticide;

(7) "certified applicator" means a person certified under 18 AAC 90.300 - 18 AAC 90.315;

(8) "custom, commercial, or contract applicator" means an applicator who uses or supervises the use of a pesticide on property other than the applicator's, whether or not the use is for profit or hire;

(9) "custom, commercial, or contract use" means to apply, or offer to apply, pesticides on property other than the applicator's, whether or not the use is for profit or hire;

(10) "defoliant" means a substance or mixture of substances intended to cause leaves or foliage to drop from a plant;

(11) "department" means the Department of Environmental Conservation;

(12) "desiccant" means a substance or mixture of substances intended to artificially accelerate the drying of plant tissues;

(13) "device" means an instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, but does not include equipment used to apply pesticides if that equipment is sold separately from the pesticide;

(14) "direct supervision" means

(A) for a custom, commercial, or contract applicator, direct on-the-job supervision; or

(B) for all other applicators, that the pesticide is applied by a competent person acting under the instructions and control of a certified applicator who is available

if and when needed, even though the certified applicator is not physically present when the pesticide is applied;

(15) "distribute or sell" means to distribute, sell, offer for sale, display, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and, having so received, deliver or offer to deliver;

(16) "drift" means the physical airborne movement, at the time and as a result of pesticide use, from the target site to a nontarget site in an amount sufficient to cause injury at the nontarget site, made in a manner inconsistent with product label directions or the requirements of this chapter or from treatment made in a careless, faulty, or negligent manner; "drift" does not include the off-target movement by erosion, volatility, or windblown soil particles after treatment; for purposes of this paragraph, "amount sufficient to cause injury" means an amount of pesticide that could cause

(A) pesticide residue in excess of the established tolerance for the pesticide on an affected agricultural commodity at a nontarget site;

(B) death, stunting, deformation, or another effect that is detrimental to the environment, including humans, domestic animals or wildlife, or desirable plants at the nontarget site; or

(C) movement to a nontarget site of a measurable amount of pesticide that is objectionable to the owner of or resident at the nontarget site;

(17) "EPA" means the United States Environmental Protection Agency;

(18) "FIFRA" means the provisions of 7 U.S.C. 136 - 7 U.S.C. 136y (Federal Insecticide, Fungicide and Rodenticide Act);

(19) "food" means a liquid or solid substance consumed by humans, including water or another beverage, a confection, condiment, food ingredient, food additive, or ice, or a substance that enters into the composition of these things, whether simple, blended, mixed, or compounded;

(20) "forestry vegetation management" means the application of a pesticide for afforestation or reforestation, including conifer release; "forestry vegetation management" does not include the application of a pesticide for control of nonindigenous species or pests that may present a risk to human health or the environment; for purposes of this paragraph,

(A) "afforestation" means the establishment of a forest or a stand in an area where the preceding vegetation or land use was not a forest;

(B) "conifer release" means a project to clear weedy vegetation from the area around young conifer seedlings;

(C) "reforestation" means the natural or artificial restocking of an area with forest trees;

(21) "fungi" or "fungus" means any of the numerous plants of the division or

kingdom *Thallophyta*, lacking chlorophyll, ranging in form from a single cell to a body mass of branched filamentous hyphae that often produce specialized fruiting bodies, and including yeasts, molds, smuts, and mushrooms;

(22) "fungicide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate fungi, except fungi on or in

(A) living humans or other animals; or

(B) processed food, beverages, or pharmaceuticals;

(23) "general-use pesticide" means a pesticide that may be legally purchased and used by a person other than a certified applicator;

(24) "herbicide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate vegetation;

(25) "inert ingredient" means any part of a pesticide product that is not an active ingredient;

(26) "insect" means any of the small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class *Insecta*, comprising

(A) six-legged, usually winged forms, including beetles, bugs, bees, and flies; and

(B) other allied classes of arthropods whose members are wingless and usually have more than six legs, including spiders, mites, ticks, centipedes, and wood lice;

(27) "insecticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate insects;

(28) "label" means the written, printed, or graphic matter on, or attached to, a pesticide or device, or its containers or wrappers;

(29) "labeling" means the label affixed to a pesticide container and all other written, printed, or graphic matter to which reference is made on the label or in literature accompanying the pesticide or device, except current official publications of federal and state government agencies or institutions;

(30) "land" means land and water areas, including airspace above those areas, and everything growing or built on those areas;

(31) "mean higher high water mark" means the average of all the higher high water heights over a specified period of time; for purposes of this paragraph, "higher high water" means the higher of the high water of a specified day;

(32) "misbranded" means a pesticide bearing a label

(A) on which any word, statement, or other information required by or under authority of federal law is not prominently placed or is missing;

(B) that has been obscured, destroyed, or defaced wholly or in part; or

(C) that contains a false or misleading statement, design, or graphic representation about the ingredients or functions of the pesticide;

(D) other than the manufacturer's approved label, or that does not contain a label;

(33) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the tidal or nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics;

(34) "pass" or "passing" means to receive at least 70 percent of the highest possible grade;

(35) "person" means a corporation, company, partnership, firm, association, organization, business trust, society, government agency, and an individual;

(36) "pest" includes an insect, rodent, nematode, fungus, weed, and other forms of terrestrial or aquatic plant or animal life, bacterium, virus, or other microorganism, except a virus, bacterium, or other microorganism on or in a living human or other animal;

(37) "pesticide" means a chemical or biological agent intended to prevent, destroy, repel, or mitigate plant or animal life and any substance intended for use as a plant regulator, defoliant, or desiccant, including insecticides, fungicides, rodenticides, herbicides, nematocides, and biocides; "pesticide" does not include a new animal drug, as defined in 21 U.S.C. 321, that

(A) has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use; or

(B) is animal feed as defined in 21 U.S.C. 321;

(38) "pesticide-free zone" means a strip of land where pesticides may not be directly applied or allowed to reach through natural transport; for purposes of this paragraph, natural transport includes wind, runoff, and leaching;

(39) "pesticide consultant" means a person who is

(A) an independent agricultural commodity adviser who makes recommendations on the use of pesticides; or

(B) a pesticide manufacturer's representative, distributor's representative, or field representative of a company or organization that deals in pesticide commodities, and who advises, demonstrates, supervises, or makes recommendations on the use of a

pesticide, except a pesticide labeled and intended only for home and garden use;

(40) "pesticide dealer" means a person who distributes or sells a pesticide;

(41) "plant regulator" means a substance, or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants or produce; "plant regulator" does not include a substance intended for use as a plant nutrient, trace element, nutritional chemical, plant inoculant or soil amendment;

(42) "premises" means land and improvements or attachments, or a part of the improvements or attachments;

(43) "private agricultural applicator" means a certified applicator who applies restricted-use pesticides to

(A) agricultural commodities and property, including greenhouses and nurseries;

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

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

(44) "producer" means the person who manufactures, prepares, compounds, propagates, or processes a pesticide or device, or an active ingredient used to produce a pesticide;

(45) "protective area" means an area of land

(A) between the treatment area and either a pesticide-free zone or another area that requires protection; and

(B) where pesticides are not directly applied but some pesticides may enter through natural transport; for purposes of this subparagraph, natural transport includes wind, runoff, and leaching;

(46) "public pesticide program or project" means a program or project involving the use of a pesticide that

(A) is directed, carried out, or participated in by the state or a borough or city of any class; or

(B) involves funds, materials, or equipment of the state, borough, or city;

(47) "rate of application" means the amount of pesticide applied to

(A) a plant or animal;

(B) an area or surface, usually measured as per acre or per 1,000 square feet; or

(C) a volume, usually measured as per cubic foot;

(48) “restricted-use pesticide” means a pesticide that may be legally purchased only by a certified applicator and that may be used only by a certified applicator or a person under the direct supervision of a certified applicator because it has been designated for restricted use under FIFRA or this chapter;

(49) "rodenticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents;

(50) “school” means a facility used for educational instruction from kindergarten through 12th grade; “school” includes associated playgrounds, playing fields, gardens, lawns, or other real property devoted to the functions of the facility; “school” does not include a private home or teacher residential area;

(51) "special local need" means an existing or imminent pest problem within the state for which the department, based upon satisfactory supporting information, has found that an appropriate federally-registered pesticide is not available;

(52) "supplemental labeling" means the written, printed, or graphic material that

(A) is on or attached to, or that accompanies, a pesticide container; and

(B) provides supplemental information for a special local need under 18 AAC 90.230;

(53) “surface water” means any of the following water bodies, the designated uses of which are protected under 18 AAC 70:

(A) a fresh water lake or pond with a surface outlet; for purposes of this subparagraph, “fresh water lake or pond” means a confined fresh water body with perennial water and defined shorelines;

(B) a fresh water spring with a surface outlet; for purposes of this subparagraph, “fresh water spring” means a place where subterranean fresh water naturally flows from a rock or soil upon the land or into a body of surface water; and

(C) a fresh water stream; for purposes of this subparagraph, “fresh water stream” means a perennial flow of fresh water along a defined channel, or an intermittent flow of fresh water along a defined channel that is significant for protection of downstream water quality.

(54) "unreasonable adverse effect" means an unreasonable risk to humans, animals, or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide, as determined by the department;

(55) “waters” has the meaning given that term in AS 46.03.900;

(56) “working day” means a day other than Saturday, Sunday, or a state holiday;

(57) “contact person” means the person who hires the applicator to apply pesticides in a public place;

(58) “public place” has the meaning given in AS 46.03.320(c). (Eff. 2/15/98, Register 145; am 3/31/2002, Register 161; am 11/30/2003, Register 168; am 9/30/2007, Register 183)

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

Editor's note: Other definitions applicable to this chapter are found in AS 46.03.900. As of Register 162 (July 2002), and as of Register 168 (January 2004), the definitions in 18 AAC 90.990 were reorganized to put them in alphabetical order, regardless of when each of them was adopted.