

Byron Mallott
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
L.T.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

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

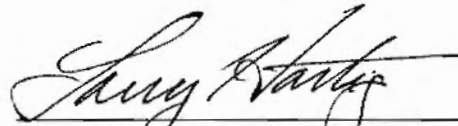
The attached 17 pages of regulations, dealing with 18 AAC 90 Pesticide Control regulations, are adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 44.46.025; AS 46.03.020; AS 46.03.320; and AS 46.03.330 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 Hartig, 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

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

Register 224, January 2018 ENVIRONMENTAL CONSERVATION

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

Register 224, January 2018 ENVIRONMENTAL CONSERVATION

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)

Register 224, January 2018 ENVIRONMENTAL CONSERVATION

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,

Register 224, January 2018 ENVIRONMENTAL CONSERVATION

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

Register 224, January 2018 ENVIRONMENTAL CONSERVATION

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	

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