



AGENCY OF AGRICULTURE, FOOD & MARKETS

Public Health & Agricultural Resource Management Division

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November 23, 2022

Hon. Mark MacDonald, Chair
Legislative Committee on
Administrative Rules
Vermont State House
Montpelier, Vermont 05602

Amendments to Final Proposed Rule

Dear Chairperson MacDonald and Members:

After the close of the deadline for comment and submitting the final proposal to LCAR, the Agency of Agriculture, Food and Markets received comments from Mike O’Grady and Anthea Dexter-Cooper regarding inconsistencies within the filing. This Agency has corrected the inconsistencies in making the following amendments. The changes are provided below with language alterations underlined.

General Grammar/Usage Corrections

The rule has been amended to correctly replace the word “which” with “that” throughout the rule for clarity.

The rule has been amended to replace references to State “regulation” or “regulations” to “rule” or “rules”.

The rule has been amended to use consistent title case capitalization of Section headings.

The rule has been amended to correctly capitalize the word “State” when referencing the state of Vermont.

Table of Contents

The table of contents have been edited and updated to remove a repetition of Section 8.

Section 1. Definitions

Section 1.05 has been amended to read “Anti-Syphon Device means any equipment designed and constructed to prevent the accidental backflow or siphoning of a pesticide into any potable water supply or public water system or to prevent contamination by a pesticide of another material being injected at the same time, such as a fertilizer or other pesticide

Section 1.10 has been amended to add a comma after “min-bulk pesticide” and before “or other similarly”.

Section 1.18 has been amended to read “Commercial Applicator means a person who is not certified in accordance with the requirements of this rule and uses a pesticide on the land or home of another whether

for remuneration or gratis under the direct supervision of a certified commercial applicator.

Section 1.29 has been amended to change a comma before “or any substance” to a semicolon to match the language in 6 V.S.A. § 911(5).

Section 1.30 has been amended to provide the following definition “*EPA means the United States Environmental Protection Agency.*” Subsequent sections have been renumbered in accordance with this change.

Section 1.31 has been amended to remove the word “which” at the introduction of the subsequent list and add the following language to subsection (c) “contain endangered or threatened species as defined in 10 V.S.A. Chapter 123 or critical habitat as designated under 10 V.S.A. Chapter 123.”

Section 1.33 has been amended to include periods in “C.F.R.”

Section 1.36 has been amended to read “Ground Water means water below the land surface that occurs in a zone of saturation.”

Section 1.40(c) has been amended to add the word “the” and commas before and after “printed”.

Section 1.51 has been amended to add the following definition “Potable Water Supply means the same as defined 10 V.S.A. Chapter 064.” Subsequent sections have been renumbered in accordance with this change.

Section 1.55 has been amended to read “Public Water System means the same as it is defined in 10 V.S.A. Chapter 056.” Subsequent sections have been renumbered in accordance with this change.

Section 1.65 has been amended to capitalize the word “State”.

The definition of “Water Supply” (formerly Section 1.70) has been removed due to the addition of the definition of “Potable Water Supply” in accompaniment with the definition of “Public Water Source”.

Section 3. Licenses, Certificates, and Permits Issued by the Secretary

Section 3.02(f) has been removed as it merely referred to Section 3.04(d) and was redundant.

Section 3.04(a)(1) has been amended to read “A person who uses or supervises the use of a pesticide to the lands and homes of others whether for remuneration or gratis, except those who work under the direct supervision of a certified applicator, shall obtain certification as a commercial applicator.”

Section 3.04(a)(2) has been amended to read “A person who uses or supervises the use of a Class A or Class B pesticide in the course of their employment on their employer’s property, except those who work under the direct supervision of a certified applicator, shall obtain certification as a noncommercial applicator.”

Section 3.10(a)(1)-(3) have been amended to remove the unnecessary conjunction “or” from the end of each subdivision.

Section 4. Classification of Pesticides and Limitations on Sale

Section 4.02(b)(1) has been amended to add a comma after “subchronic” and before “chronic”.

Section 4.02(b)(3) has been amended to add a comma after “explosion” and before “and reactivity”.

Section 4.02(d)(2) has been amended to add a comma after “cakes” and before “and nuggets”.

Section 4.02(d)(2)(J) has been amended to add a comma after “sterilants” and before “and industrial preservatives”.

Section 4.02(d)(2)(K) has been amended to add a comma between “bacillus lentimorbus” and “or potassium fatty acid”.

Section 4.03 has been amended to read as follows:

4.03 State Prohibited Pesticides

- (a) The distribution, sale, or use of pesticides cancelled or suspended by the EPA or the Agency, shall not be allowed in the state of Vermont, except as provided for the disposition of existing stocks in the cancellation or suspension order published in the Federal Register by the EPA or by order of the Agency.
- (b) The Agency may add additional restrictions to the conditions of distribution, sale, or use of pesticides provided for the disposition of existing stocks in the cancellation or suspension order published in the Federal Register by the EPA or by order of the Agency in order to protect human health or environmental quality.

Section 4.04(c)(1) has been amended to add a comma between “Class B” and “or Class C”.

Section 5. General Standards for Pesticide Use

Section 5.02(j)(4) has been amended to add a semi-colon at the end of the subdivision.

Section 5.03(a) has been amended to remove “or a State restricted” as it is inconsistent with other sections of the rule and the certification and training plan approved by the EPA.

Section 5.03(d) has been amended to add a comma after “be free of leaks” and before “and have a label”.

Section 5.03(d)(1) has been amended to add a comma after “address” and before “and telephone”.

Section 5.03(c)(4) has been amended to add the word “and” is after “and/or complaints;” and before “a notice”.

Section 5.04(c)(1) has been amended to add an “and” after “mph;”.

Section 6. Permitting Requirements

Section 6.01(d) has been amended to read “The application form shall be accompanied by a digital or electronic map of the area of proposed application indicating the right-of-way boundaries, surface waters, public water sources and potable water supplies, threatened or endangered species, and a copy of the notice of intent to use an herbicide that shall be published.”

Section 6.01(e)(4) has been amended to read “a notice to residents along the right-of-way that potable water supplies should be buffered and that it is the resident’s responsibility to notify the permit applicant of the existence of a potable water supply near the right-of-way.”

Section 6.01(g)(5)(A)-(D) have been amended to replace the semicolons with commas.

Section 6.05(d)(3)(C) has been removed and amended to read “all public water sources or potable water supplies on or within 200 feet of an abutting property line”. Subsequent subsections have been amended to reflect the removal.

Section 6.05(d)(3)(G) has been amended to read “surface acreage and average depth of ponded surface waters and identification of primary sources of potable water supply”.

Section 6.05(e)(3)(A) has been amended to read “be 100 feet from all potable water supplies and public transient non-community drinking water systems”.

Section 6.05(e)(3)(B) has been amended to read “be 200 feet from all public, non-transient non-community drinking water systems”.

Section 6.05(f)(5)(A) has been amended to reference Section 7.01(c)(1)-(6) instead of Section 7.01(d)(1)-(6).

Section 6.05(g)(2)(A) has been amended to read “total amount of nitrogen and phosphorus”.

Section 6.05(g)(2)(B) has been amended to add a comma after “fairways” and before “and roughs”.

Section 6.06(c) has been amended to read “The application form shall be accompanied by a map of the area of proposed potential application indicating the town boundaries, surface waters, potable water supplies and public water sources, threatened or endangered species habitat, and a copy of the notice of intent to use a larvicide that shall be published.”

Section 6.06(d)(5) has been amended to read “set forth a provision for an opportunity for individuals to refuse treatment of their property or request a buffer around their potable water supply.”

Section 6.06(f)(2) has been amended to remove the word “fourteen” and the parentheses surrounding the number so that it now reads as just “14”.

Section 6.07(c) has been amended to read “The application form shall be accompanied by a map of the area of proposed application indicating boundaries, surface waters, potable water supplies and public water sources, threatened or endangered species habitat, and a copy of the notice of intent to use a mosquito adulticide that shall be published.”

Section 7. Notification and Posting of Pesticide Applications

Section 7.01(b)(4) has been amended to read “contain the date and time of application on the back panel”.

Section 7.01(c)(4) has been amended to read “safety precautions”

Section 7.02(a) has been amended to add the word “application” between the words “any” and “under”.

Section 7.02(a)(2)(B) has been amended to replace the semicolon after “ingredients” and before “and general” with a comma.

Section 7.02(b) and (c) have been amended to add a comma between “days” and “before” and remove the number “7”.

Section 7.03(d)(3) has been amended to add a comma after “stain” and before “wood preservative”.

Section 8. Maintenance of Records by Certified Applicators, Licensed Companies, Licensed Pesticide Dealers, and Pesticide Producing Establishments

Section 8.05(c)(1) has been amended to read “or, if applicable,” instead of “, or if applicable,”.

Section 8.06 has been amended to remove a comma after “FIFRA” and before “and make”.

Subchapter 3 Heading has been amended to read “Subchapter 3 – Certification Standards for Commercial Applicators and Non-commercial Applicators Using Other Than Class C Pesticides; Certification Standards for Private Applicators”.

Section 9. Certification Standards for Commercial Applicators and Non-commercial Applicators Using Other Than Class C Pesticides

Section 9.01(a) has been amended to read “Any non-commercial applicator who uses a pesticide other than Class C and any commercial applicator, except those who work under the direct supervision of a certified applicator, shall be certified according to categories that reflect the types of pesticide use that they have been examined for and found competent.”

Sections 9.02 and 9.05–9.18 have been amended to remove any colon or period after “Category #” throughout.

Section 9.03(a) has been amended to remove “commercial or”.

Sections 9.03(c) and 9.04 have been amended so that the internal citation section ranges go up to 9.18 instead of 9.17.

Section 9.05 has been amended to include “Category 1” in the beginning of the heading.

Section 9.05(a)(1) has been amended to remove an extra period in the middle of the subdivision.

Section 9.10(a) has been amended to replace a period with a semi-colon.

Section 10. Certification Standards for Private Applicators

Section 10.01 has been amended to read “General Requirements”.

Section 10.02 has been amended to read “Core Standards of Competency for Private Applicators”.

Section 10.03(a)(4) has been amended to add a period at the end.

Section 10.04 has been amended to read “Sub-category: Soil Fumigation”.

Section 10.06 has been amended to read “Certification and Renewal”.

A new subchapter 4 has been added which reads “Subchapter 4 – Transportation and Storage of Pesticides; Bulk Pesticide Storage; Disposal of Pesticides and Containers”.

Section 11. Transportation and Storage of Pesticides

Section 11.02(d) has been amended to remove a comma after “inside” and before “and protected”.

Section 11.02(r) has been amended to replace a hyphen in one of the section ranges with an N-dash.

Section 12. Bulk Pesticide Storage

Section 12.02(a)(1) has been amended to add a comma after “installed” and before “and maintained”.

Section 12.02(a)(4) has been amended to add a comma after “discharge” and before “or create”.

Section 12.02(a)(5) has been amended to remove a comma after “appurtenances” and “or create”.

Section 12.07(c) has been amended to replace “Community Right-to-Know and Accident Reporting” with “Emergency Planning and Community Right-to-Know Act, 42 U.S.C. cha. 116, including the requirements for accident reporting under that Act”.

A new Subchapter 5 has been added which reads “Subchapter 5 – Severability; Effective Date”.