

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 128]

Pesticides; Third Party Transactions

The Department of Agriculture (Department) proposes to amend § 128.3 (relating to fees) to allow for the administration of and payment for examination of certified applicators and pesticide dealer managers conducted by other agencies or private contractors, or both, under agreements with the Department.

Authority

The rulemaking is proposed under the authority in sections 34(4) and 37.1 of the Pennsylvania Pesticide Control Act of 1973 (act) (3 P. S. §§ 111.54(4) and 111.57a), which allow: (1) the Department to cooperate and enter into agreements with other agencies, private or public, and to contract for training with other agencies for the purpose of training certified applicators; and (2) the Secretary to change fees through regulation.

Need for the Proposed Rulemaking

The Department, at this time, only has the resources available to offer examination opportunities for certifying pesticide applicators and dealer managers on a monthly basis at the seven regional offices and some additional examination locations during normal business hours. The regulated community has been requesting that the Department provide examination opportunities on a more frequent basis and at expanded locations across this Commonwealth. In an effort to address the needs of the regulated community and expand the examination opportunities, the Department has reached out to other agencies of the Commonwealth, including the State Civil Service Commission and the Department of Transportation, and contacted private industry to assess whether they may have the resources, physical facilities, technology and capability to offer certification examinations in manner that is consistent with the act and regulations. The State Civil Service Commission, the Department of Transportation and private industry have the resources and capabilities to address the needs and concerns expressed herein and to thereby enable the Department to better attend to the needs of the regulated community.

Contracted private and public agencies would incur costs in providing the services and facilities necessary for administration of certification examinations. The contracted agencies may charge for the cost of services they provide. The charge would be in addition to the examination fee in the regulations. The additional costs of service would be charged only to those members of the regulated community that decide to utilize this optional service being offered for the industry's convenience.

The current regulations do not expressly permit the Department to collect or process a service charge levied by a third party. Therefore, the Department proposes to add § 128.3(f)(6) to allow the Department to pass on to the person taking the examination any additional costs charged by a contracted agency or vendor. The Department will be required to continue to offer examination on at least a monthly basis at Department sites where additional will not be assessed.

Summary of Major Features of the Proposed Rulemaking

The proposed rulemaking would add § 128.3(f)(6), which would allow the Department to bill or pass through costs or service charges levied by a contracted vendor offering pesticide examinations. The costs would only be assessed when a person chooses to take a pesticide examination offered by an agency or vendor that is under contract with the Department. The Department will be required to continue to offer examinations on at least a monthly basis at Department sites where additional charges would not be assessed.

Persons Likely to be Affected

The proposed rulemaking promotes the efficient State-wide administration of the act and meets a need expressed by the regulated community. Only the regulated community will be affected and even then only those members of the regulated community who choose to avail themselves of the convenience offered by the additional locations and hours of operation associated with the contractor locations will be affected by any additional charges levied by the contracted vendor. Pesticide applicators and pesticide dealer managers may continue to utilize Department testing sites where additional charges are not assessed.

The proposed rulemaking is not expected to have a significant adverse impact on any group or entity. The proposed rulemaking will provide the flexibility requested by the regulated community and allow for a more timely approach to pesticide certification. At the same time, those persons not wishing to or able to pay for services provided by a contracted vendor may continue to avail themselves of the certification courses offered at Department sites.

Fiscal Impact

Commonwealth

The proposed rulemaking would impose minimal additional fiscal impacts upon the Department's Bureau of Plant Industry (Bureau). The Bureau already invoices persons for pesticide examinations. The outside vendor charge would only require an additional line item be added to the invoice. The fund transfers would not cost additional money, changes to the computer program to administer the outside vendor programs and charges would be minimal and would be done internally. The Department would not incur additional costs for the use of the contracted facilities and the convenience offered to the regulated community.

Political subdivisions

The proposed rulemaking will not impose additional fiscal impacts upon political subdivisions. There is no role enforcement or otherwise for political subdivisions with regard to this proposed rulemaking.

Private sector

The proposed rulemaking will impose additional costs only on those persons that chose to utilize the outside vendor locations to take pesticide certification examinations. The Department will continue to offer all certification at Department locations on at least a monthly basis and additional costs will not be incurred by the regulated community.

General public

The proposed rulemaking will not impose additional costs on the general public.

Paperwork Requirements

The Department will not have to develop new application forms or review procedures. It will need to amend billing statements to include any additional charges by a contracted vendor and will need to interface with the vendor's payment systems. Transfers of information between the Bureau and the outside vendors will be done by computer means with no new computer systems and only minor programming modification will have to be developed to effectuate exchanges.

Effective Date

The proposed rulemaking will be effective 30 days after final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

There is not a sunset date for the regulation. The Department will review the efficacy of this regulation on an ongoing basis.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments may be mailed to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110, Attention: Dave Scott. These comments are public documents that will be posted on the Independent Regulatory Review Commission (IRRC) web site.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 21, 2014, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory

Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

GEORGE D. GREIG,
Secretary

Fiscal Note: 2-179. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 128. PESTICIDES

Subchapter A. GENERAL PROVISIONS

§ 128.3. Fees.

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(f) *Examination fees.* Examination fees are nonrefundable. The following examination fees, with payment made in advance, will be charged:

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(5) Pest management consultant's examination—no charge except that a fee of \$5 will be charged if an examination is requested on other than a regularly scheduled examination date.

(6) In addition to the examination fees in this subsection, when a person chooses to take a pesticide examination offered by an agency or vendor that is under contract with the Department, any additional costs charged by the contracted agency or vendor will be assessed to the person taking the examination. The Department will continue to offer pesticide certification examinations on at least a monthly basis at Department sites where additional charges will not be assessed. The Department will post on its web site the addresses of the contracted examinations, the dates and times examinations are offered at those locations, and the additional costs charged by the contracted agency or vendor and assessed by the Department.

(g) *Registration fee for a pesticide application technician.*

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