

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 128]

Pesticides; Third Party Transactions

The Department of Agriculture (Department) amends § 128.3 (relating to fees) to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is adopted under the authority in sections 34(3) and (4) and 37.1 of the Pennsylvania Pesticide Control Act of 1973 (act) (3 P.S. §§ 111.54(3) and (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.

This final-form rulemaking amends § 128.3 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.

Purpose of the Final-Form Rulemaking

This final-form rulemaking is necessary to meet the demands of the regulated community for the Department to provide additional locations where and a broader spectrum of times when pesticide certification examinations are available. 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 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 a manner that is consistent with the act and regulations. Both of the agencies mentioned 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.

Former § 128.3 did not expressly permit the Department to contract with other agencies or private vendors to administer pesticide examinations or to collect or process a service charge levied by a third party. Therefore, the Department adds § 128.3(f)(6) to allow the Department to contract with public agencies and private vendors to administer pesticide examinations. This paragraph also provides for the ability of contracted vendors to charge and collect or be reimbursed for the services provided, including the cost of the utilization of their testing facilities. Section 128.3(f)(6) authorizes a contracted private vendor to levy and collect additional fees for use of its facilities and services provided. In addition, it allows

the Department to pass along fees that would be charged by a contracted public agency to the person taking the test and then reimburse the contracted public agency. The reason for the difference in the collection of fees is that contracted public agencies are unable to charge the individual test participants directly and must instead enter into a contract with the Department setting forth the amount of the fees to be charged and reimbursed for the services provided. The Department will add the public agencies' fees to the cost of the test and then repay the contracted public agencies for the utilization of their testing facilities and services provided. The Department is required to continue to offer examination on at least a monthly basis at Department sites where additional charges are not assessed.

In summary, the Department is satisfied there is a need for the final-form rulemaking, and that the regulation is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Comment and Response Document

The Department received one comment on the proposed rulemaking from the Independent Regulatory Review Commission (IRRC) concerning implementation procedures and clarity.

Comment—Implementation procedures; clarity

IRRC stated that the proposed amendment would allow the Department to collect and pass on any additional service charges or costs levied by a contracted State agency or private vendor that provides additional testing opportunities for certified applicator or pesticide dealer manager applicants. Based on conversations with the Department, it is IRRC's understanding that the Department will not collect additional service charges or costs associated with the administration of an examination administered by a private vendor. Under this circumstance, the applicant would register to take the examination with the Department and pay the Department the required fees in § 128.3(f)(6). The applicant would then pay any additional service charges or costs directly to the private vendor. This understanding conflicts with the proposed language in subsection (f)(6) and language in the Regulatory Analysis Form (RAF) and preamble to the proposed rulemaking that indicates the Department will collect and pass on the additional service charges or costs to contracted State agencies and vendors. IRRC asked the Department to provide further clarification on how the proposed amendment will be implemented and how an applicant will pay the additional service charges or costs associated with taking a test at the site of a private vendor.

Response

The Department agrees that the proposed amendment did not provide clarity with regard to the difference in collection of fees and costs charged by a contracted private vendor and those fees and costs charged by a contracted State agency. The intent of the regulation is to allow contracted private vendors to charge any fees and costs associated with providing the test site and administration of an examination directly to the person taking the test. Contracted State agencies cannot directly charge fees and costs associated with providing a test site and administration of an examination directly to the person taking the test. Therefore, one of the goals of the final-form rulemaking is to establish those two separate

procedures for collection of fees and costs. The Department agrees that proposed § 128.3(f)(6) did not address this procedural issue with enough clarity and that the proposed paragraph conflicted with the preamble to the proposed rulemaking and the RAF. Therefore, the Department made the following changes in this final-form rulemaking to ensure it has addressed the procedural and clarity issues detected by IRRC.

In this final-form rulemaking, the Department added sentences to subsection (f)(6) that specifically enumerate the separate procedures that will be utilized to collect fees charged by a contracted agency and fees charged by a private vendor for costs such as use of facilities, administration of the test and services provided. In addition, the Department deleted the final proposed phrase of the last sentence of subsection (f)(6) which read “. . . and assessed by the Department.” That phrase was deleted to ensure consistency and clarification that not all fees will be “assessed by the Department.”

The Department added language to the “purpose of the final-form rulemaking” and “summary of major features” sections of this preamble to more clearly distinguish between private vendors and public agencies and to clarify the difference in the fee collection process.

To ensure complete clarity and consistency between this final-form rulemaking and the RAF, the Department made slight changes to the responses to paragraphs (7), (10), (15), (17), (18) and (26) of the RAF.

Summary of Overall Changes

The major features of and changes to the final-form rulemaking are summarized as follows.

The Department agrees that the proposed rulemaking did not provide clarity with regard to the difference in collection of fees and costs charged by a contracted private vendor and those fees and costs charged by a contracted State agency. The intent of § 128.3(f)(6) is to allow contracted private vendors to charge any fees and costs associated with providing the test site and administration of an examination directly to the person taking the test. Contracted State agencies cannot directly charge fees and costs associated with providing a test site and administration of an examination directly to the person taking the test. Therefore, one of the goals of this final-form rulemaking is to establish those two separate procedures for collection of fees and costs. The Department agrees that the proposed rulemaking did not address this procedural issue with enough clarity and that the proposed amendment to § 128.3 conflicted with the preamble and the RAF. Therefore, the Department made the following changes to the final-form rulemaking to ensure it has addressed the procedural and clarity issues detected by IRRC.

In this final-form rulemaking, the Department added sentences to subsection (f)(6) that specifically enumerate the separate procedures that will be utilized to collect fees charged by a contracted agency and fees charged by a private vendor for costs such as use of facilities, administration of the test and services provided. In addition, the Department deleted the final proposed phrase of the last sentence of subsection (f)(6) which read “. . . and assessed by the Department.” That phrase was deleted to ensure consistency and clarification that not all fees will be “assessed by the Department.”

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between private vendors and public agencies and to clarify the difference in the fee collection process.

To ensure complete clarity and consistency between the final-form rulemaking and the RAF, the Department made slight changes to the responses to paragraphs (7), (10), (15), (17), (18) and (26) of the RAF.

Summary of Major Features

Section 128.3(f)(6) allows the Department to contract with another public agency or private vendor to utilize its facility to administer pesticide examinations. The Department is authorized to bill or pass through costs or service charges levied by a contracted public agency offering pesticide examinations. A contracted private vendor would be authorized to levy and collect any additional fees it may charge for use of its testing facilities and services provided. These 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 continue to offer examinations on at least a monthly basis at Department sites where additional charges are not assessed.

Fiscal Impact

Commonwealth

The final-form rulemaking imposes 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 and 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 final-form rulemaking does not impose additional fiscal impacts upon political subdivisions. There is not a role, enforcement or otherwise, for political subdivisions with regard to this final-form rulemaking.

Private sector

The final-form rulemaking imposes 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 certification at Department locations on at least a monthly basis and additional costs will not be incurred by the regulated community.

General public

The final-form rulemaking does impose additional costs on the general public.

Paperwork Requirements

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

Effective Date

The final-form rulemaking will be effective February 17, 2015.

Further Information

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Chief of the Division of Health and Safety, Dave Scott, (717) 772-5214 or Bureau Director, John Breitsman, (717) 772-5200. A copy of the final-form rulemaking, RAF and the comment and response document is available on the Department's web site at www.agriculture.state.pa.us.

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 the notice of proposed rulemaking, published at 44 Pa.B. 2058 (April 5, 2014), to IRRC and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 22, 2014, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 23, 2014, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of intention to adopt this final-form regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments received were considered.

(3) Revisions to this regulation in response to comments received were made within the scope of the original proposed rulemaking. There was not an enlargement of the purpose of the proposed rulemaking published at 44 Pa.B. 2058.

(4) The adoption of the regulation in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

The Department, acting under the act, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 128, are amended by amending § 128.3 to read as set forth in Annex A.

(b) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as required by law.

(c) The Secretary of Agriculture shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect February 17, 2015.

GEORGE D. GREIG,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 7145 (November 8, 2014).)

Fiscal Note: Fiscal Note 2-179 remains valid for the final adoption of the subject regulation.

Annex A**TITLE 7. AGRICULTURE****PART V. BUREAU OF PLANT INDUSTRY****CHAPTER 128. PESTICIDES****Subchapter A. GENERAL PROVISIONS****§ 128.3. Fees.**

(a) *Pesticide dealer's license.* The annual fee for a pesticide dealer's license is \$10 per location. The fee for a duplicate pesticide dealer's license is \$3.

(1) The annual fee for a pesticide dealer manager's certificate is \$15 per individual.

(2) The fee for a duplicate pesticide dealer manager's certificate is \$3.

(b) *Pest management consultant's license.* The annual fee for a pest management consultant's license is \$25. The fee for a duplicate pest management consultant license is \$8.

(c) *Pesticide application business' license.* The annual fee for a pesticide application business' license is \$35. The fee for a duplicate pesticide application business license is \$8.

(d) *Commercial applicator's certificate.* The annual fee for the commercial applicator's certificate is \$40. When the initial certification requires examination, no fee will be charged. The fee for a duplicate commercial applicator's certificate is \$10. If an applicator is employed by more than one pesticide application business, a separate certificate and fee is required.

(e) *Public applicator's certificate.* The triennial fee for a public applicator's certificate is \$10. A fee is not required when the initial certification requires examination. The fee for a duplicate public applicator's certificate is \$3.

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

(1) Commercial/public applicator's core examination—\$50.

(2) Commercial/public applicator's category examination—\$10.

(3) Pesticide dealer manager's examination—\$50.

(4) Private applicator's examination—no charge.

(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 as may be charged by the contracted agency or vendor shall be assessed to the person taking the examination. When a contracted agency assesses an additional fee for costs

such as use of its facilities, administration of the test and services provided, the Department will pass that fee along to the person taking the test. When a private vendor under contract with the Department is utilized, the private vendor shall collect any additional fees it may charge for costs such as use of its facilities, administration of the test and services provided. 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 that will be charged by the contracted agency or vendor.

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

(1) *Commercial pesticide application technician.* An annual registration fee of \$30 will be charged to register a

commercial pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(2) *Public pesticide application technician.* An annual registration fee of \$20 will be charged to register a public pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(h) *Private applicator's permit.* The triennial fee for a private applicator's permit is \$10. The fee for a duplicate private applicator's permit is \$3. A fee will not be charged for a special permit which may be issued in conjunction with the private applicator's permit.

(i) *Product registration.* The annual fee to register a pesticide is \$250.

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