

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

District of Columbia Pesticide Operation Regulations

The Director of the District Department of the Environment (DDOE or Department), pursuant to the authority set forth in Section 12(a) of the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-411(a) (2012 Repl.); Section 11(a) of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191; D.C. Official Code § 8-440(a)); Section 103(b)(1)(B)(ii)(II) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03(b)(1)(B)(ii)(II) (2012 Repl.)); the Brownfields Revitalization Amendment Act of 2010 (Brownfields Act), effective April 8, 2011 (D.C. Law 18-369; D.C. Official Code § 8-631.01 *et seq.* (2012 Repl.)); and Mayor's Order 98-47, dated April 15, 1998, as amended by Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to repeal Chapters 22 through 25 of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), Pesticide Operation Regulations, in their entirety, and to adopt the following new provisions in Chapters 22 through 25, in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Summary of the Proposed Rulemaking

The Department's Pesticide Operation Regulations, Chapters 22 through 25 of Title 20 of the DCMR, aim to protect the health of District residents, workers, and the environment from risks resulting from pesticide production, registration, distribution, use and disposal, while allowing the benefits that pesticides offer.

The purpose of this rulemaking is to implement the provisions of the Pesticide Education and Control Amendment Act of 2012 and to amend and reorganize the District's existing pesticide regulations. The Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*) sets the requirements for labeling, distributing, disposing of, storing, transporting, using, or applying pesticides in the District. The original implementing regulations, promulgated in 1978, have only been updated once, to incorporate several provisions of the Loretta Carter Hanes Pesticide Consumer Notification Amendment Act of 2008, effective June 5, 2008 (D.C. Law 17-168; D.C. Official Code §§ 8-403.01-403.04 (2012 Repl.)) (Loretta Carter Act).

Subsequently, the Pesticide Education and Control Amendment Act of 2012 (PECA) became effective on October 23, 2012, requiring DDOE, among other things, to maintain a list of pesticides classified as "District restricted-use" or "non-essential," restrict certain pesticide applications, provide exemptions for certain applications, prescribe annual reporting requirements, and set pesticide registration fees. Like the existing rules, the proposed rules must comply with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*, but are permitted to be more stringent, broader in scope, or otherwise different than the FIFRA regulations, with the exception of labeling requirements. 7 U.S.C. § 136v.

I. Control of Pesticides

The proposed rules amend and reorganize Chapter 22 to include requirements for pesticide registration, classification, usage, notification, storage, disposal, and transportation. The proposed rules move the section on the registration of pesticide dealers to Chapter 24, which governs pesticide operators, and move the sections on pesticide technicians (previously called "employees") and public applicators to Chapter 23, with related applicator sections.

The general requirements in § 2201 retain most of the existing provisions but are amended to require a person applying pesticides to have a copy of the label available for inspection at the time and place of application (20 DCMR § 2201.11). The pesticide registration requirements in §§ 2202 through 2204 have been reorganized for clarity and amended to include requirements for requesting a hearing at the Office of Administrative Hearings for any proposed denial, suspension, or revocation of a pesticide registration.

Sections 2205 through 2209 implement provisions of PECA that require the Department to create and maintain a list of pesticides classified as "District restricted-use" or "non-essential." The proposed regulations adopt the FIFRA definition of "pesticide," but for the purpose of classifying pesticides registered in the District, §§ 2205 through 2209 exclude certain substances from classification as restricted-use or non-essential. These exclusions, for classification purposes only, do not alter the existing definition of "pesticides" in § 2299, or the District's regulation of substances defined as pesticides. Pursuant to PECA, the Department proposes to classify as District restricted-use all pesticides identified by the U.S. Environmental Protection Agency as restricted use. The Department will provide notice and a 30-day public notice and comment period when classifying additional pesticides as District restricted-use or as non-essential, and will publish the list of classified pesticides on the Department's website and via amendment of §§ 2206 and 2007.

Sections 2208 and 2209 establish the prohibited and restricted uses and exemptions for pesticides classified by § 2205, pursuant to PECA § 3. Section 2211 implements the notification provisions pursuant to the Loretta Carter Act and requires applicators licensed under the Act to provide a written notification, as specified, prior to a pesticide application. Section 2213 establishes specific standards for storage, disposal, and transportation. Section 2215 requires District agencies to utilize an integrated pest management policy to reduce pesticide application on public rights-of-way, parks, District-occupied buildings, and other District property, as required by the District's Municipal Separate Storm Sewer System Permit. Section 2215 also subjects child-occupied facilities to the same integrated management requirements to reduce the risks associated with pesticide application. Section 2217 requires persons performing pest control by heat treatment to maintain certain records. Finally, Section 2218 establishes standards for canine pest detection, which are based on Maryland's recently adopted standards.

II. Pesticide Applicators

The sections in Chapter 23 retain the majority of the existing provisions. Sections 2310 (Government Agencies and Public Applicators) and 2311 (Registration of Technicians), previously in Chapter 22, are moved to Chapter 23 with the related applicator requirements and

the existing requirements governing the supervision of registered technicians. The existing regulations refer to "registered employees," but the proposed rules change this term to "registered technicians," pursuant to PECA § 12.

Additionally, the proposed rules amend provisions in Chapter 23 to accommodate the migration of licensing from the District Department of Consumer and Regulatory Affairs (DCRA) to DDOE. Currently, applicants are required to receive a certification from DDOE, apply for a license at DCRA, and then return to DDOE to receive the required credentials. Beginning on January 1, 2016, applicants will apply for both certification and license from DDOE. Regulated applicators will benefit from a streamlined application process provided by one District agency.

III. Pesticide Operators and Dealers

As proposed, Chapter 24 remains largely the same as the existing regulations, but includes the dealer licensing provisions previously in Chapter 22. Currently, there are no licensed pesticide dealers in the District.

IV. Pesticide-Use Enforcement and Administration

The proposed rules in Chapter 25 amend the Pesticide Operation Regulations to include reporting requirements pursuant to PECA and to clarify the enforcement authority of the Department. The proposed rules establish the notice and entry requirements for inspection, sampling, and observation, in addition to entry, for responsive or corrective action pursuant to the Brownfields Act. The proposed rules also set forth the various administrative enforcement actions that the Department may take and procedures before the Office of Administrative Hearings. Specifically, Chapter 25 establishes the penalties and injunctive relief available for failure to comply with administrative orders (§ 2509); civil infraction fines, penalties, and fees (§ 2510); judicial actions available (§ 2511); and settlement agreement requirements (§ 2512).

Pursuant to PECA § 7, Chapter 25 implements the pesticide education reporting requirements applicable to the University of the District of Columbia and the recordkeeping and reporting requirements affecting regulated applicators. The proposed reporting requirements, added pursuant to PECA § 8, require regulated applicators to maintain and submit records annually to the Department containing detailed information about the application and pesticides applied.

Finally, the proposed rules set the terms and fees governing pesticide registration (§ 2518), examination (§ 2519), and certification (§ 2510). Previously, licenses were valid for three years, and certifications were valid for one year. Beginning on January 1, 2016, certifications and licenses for commercial applicators are valid for one year and must be renewed each year; certifications and licenses for private applicators are valid for two years and must be renewed every two years; and registration for registered technicians is valid for three years.

Title 20 (Environment) of the DCMR, Chapters 22 through 25 are repealed in their entirety and hereby replaced with new Chapters 22 through 25, to read as follows:

CHAPTER 22 CONTROL OF PESTICIDES

2200	General Provisions
2201	General Requirements for Pesticides
2202	Pesticide Registration
2203	Procedures for Pesticide Registration
2204	Denial, Suspension, and Revocation of Pesticide Registration
2205	Classification of Pesticides
2206	District Restricted-Use Pesticides
2207	Non-Essential Pesticides
2208	Prohibited and Restricted Uses
2209	Prohibited and Restricted Uses: Exemptions
2210	Reduced-Risk Pesticides and Methods of Pest Control
2211	Notification
2212	Posting
2213	Storage, Disposal, and Transportation of Pesticides
2214	Misbranded Pesticides and Devices
2215	Integrated Pest Management
2216	Pest Control by Fumigation
2217	Pest Control by Heat Treatment
2218	Canine Pest Detection
2219	Unlawful Acts
2299	Definitions

CHAPTER 23 PESTICIDE APPLICATORS

2300	General Provisions
2301	Categories of Pesticide Applicators
2302	Commercial Applicators: Eligibility for Certification
2303	Commercial Applicators: Determination of Competency
2304	Commercial Applicators: Standards for Determination of Competency
2305	Commercial Applicators: Certification and Licensing
2306	Commercial Applicators: Certification and Licensing Renewal
2307	Private Applicators: Certification and Licensing
2308	Private Applicators: Determination of Competency
2309	Private Applicators: Standards for Determination of Competency
2310	Government Agencies and Public Applicators
2311	Registration of Technicians
2312	Supervision of Registered Technicians
2313	Protection of Pesticide Handlers and Applicators
2314	Reciprocity of Certification
2399	Definitions

CHAPTER 24 PESTICIDE OPERATORS AND DEALERS

2400	General Provisions
2401	Pesticide Operators: Certification and Licensing
2402	Pesticide Operators: Liability Insurance
2403	Pesticide Dealers: Licensing
2499	Definitions

CHAPTER 25 PESTICIDE USE ENFORCEMENT AND ADMINISTRATION

2500	General Administrative and Enforcement Authority
2501	Right of Entry, Inspection, Sampling, and Observation
2502	Entry for Inspection, Sampling, and Observation
2503	Entry for Responsive or Corrective Action
2504	Administrative Appeals and Judicial Review
2505	Warning Notices; Field Notices or Directive Letters; Stop Sale, Use, or Removal Orders; Notices of Violation
2506	Compliance Order
2507	Denial, Suspension, Modification, and Revocation of Certification and License
2508	Condemnation Proceedings
2509	Penalties and Injunctive Relief for Failure to Comply with Final Administrative Order
2510	Civil Infraction Fines, Penalties, and Fees Pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act
2511	Judicial Action in Lieu of Administrative Enforcement
2512	Settlement Agreements and Consent Compliance Orders
2513	Computation of Time
2514	License Renewal
2515	Pesticide Education Reporting
2516	Recordkeeping and Reporting Requirements
2517	Records of Restricted-Use Pesticides
2518	Pesticide Registration Fees and Terms
2519	Certification Examination Fees
2520	Pesticide Certification and Licensing Fees and Terms
2599	Definitions

CHAPTER 22 CONTROL OF PESTICIDES

2200 GENERAL PROVISIONS

2200.1	The purpose of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, is to conform the laws of the District of Columbia with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136 <i>et seq.</i>), as amended, and the implementing regulations, and to establish a regulatory process in the District of Columbia as provided for in the Pesticide Operations Act of
--------	--

1977, effective April 18, 1978 (D.C. Official Code §§ 8-401 *et seq.*), as amended.

- 2200.2 The Pesticide Operation Regulations, Chapters 22 through 25 of this title, apply to all pesticide operations in the District, including federal pesticide operations, to the full extent permitted by FIFRA.

2201 GENERAL REQUIREMENTS FOR PESTICIDES

- 2201.1 Pesticides shall be used in strict accordance with the manufacturer's labeling directions, and in compliance with District and federal laws and regulations.
- 2201.2 A pesticide operator shall maintain pesticide equipment or application apparatus in sound mechanical condition and a condition capable of satisfactory operation.
- 2201.3 A pesticide distributed in the District shall be distributed in the registrant's or the manufacturer's unbroken immediate container.
- 2201.4 Pesticide containers shall have a label containing the information required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) securely affixed to the outside.
- 2201.5 Unless the pesticide label indicates otherwise, no person shall use pesticide containers for any purposes other than containing the original labeled pesticide product.
- 2201.6 Each pesticide operator shall make available, and each pesticide applicator shall use, effective anti-siphon devices or back-flow preventers on all hoses to protect the water supply from pesticide contamination when drawing water from a water source during pesticide application.
- 2201.7 No person shall use pesticides in a manner that is harmful to human health, non-target organisms, or the environment.
- 2201.8 No person shall apply pesticides by air or ground equipment when the wind velocity is reasonably likely to cause the pesticide to drift beyond the target area.
- 2201.9 No person shall display or offer for sale pesticides in leaking, broken, corroded, or otherwise damaged containers, or with damaged or obscure labels.
- 2201.10 No person shall detach, alter, deface, or destroy, wholly or in part, any label or labeling prescribed by FIFRA.
- 2201.11 No person shall apply pesticides without a copy of the label available for inspection at the time and place of application.

2201.12 The inspection of premises for the purpose of issuing wood infestation certificates or determining the presence of other pests shall only be performed by licensed pesticide applicators certified in the category of “Industrial, Institutional, Structural, and Health Related Pest Control,” as described in § 2301.5.

2201.13 Nothing in these regulations shall be construed to relieve any person from liability for any damages to the person or property of another, caused by the use of pesticides even though the use conforms to regulations prescribed by the District Department of the Environment.

2202 PESTICIDE REGISTRATION

2202.1 Except as provided in § 2202.2, any pesticide used, manufactured, distributed, sold, shipped, or applied in the District, shall be registered with the District Department of the Environment (Department), including, but not limited to, the following:

- (a) Pesticides that are registered with the United States Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- (b) Pesticides that are exempt from registration with the EPA under FIFRA; and
- (c) Any pesticide that the Department determines should be registered to protect public health, safety, or welfare, or the environment.

2202.2 Registration of a pesticide under § 2202.1 shall not be required if:

- (a) A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide that is registered under the provisions of this chapter; or
- (b) A pesticide is distributed, used, or applied under the provisions of an experimental use permit issued by the EPA, provided that written notification and a copy of the experimental use permit is provided to the Department.

2202.3 If an emergency condition so dictates, the Director of the District Department of the Environment may petition the EPA Administrator for an exemption from any provisions of FIFRA.

2203 PROCEDURES FOR PESTICIDE REGISTRATION

- 2203.1 An applicant for registration of a pesticide in the District shall file with the District Department of the Environment (Department), on a form prescribed by the Department, a statement that includes the following information:
- (a) The name and address of the applicant and any other person whose name will appear on the label;
 - (b) The name of the pesticide;
 - (c) A complete copy of the labeling accompanying the pesticide, a statement of all claims to be made for it, and any directions for use;
 - (d) The use classification of the pesticide, as established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
 - (e) If an agent is acting on behalf of the company registering a pesticide for distribution, sale, or use in the District, a letter of authorization designating the authorized agent;
 - (f) A copy of the Notice of Supplemental Distribution of a Registered Pesticide Product (Environmental Protection Agency (EPA) Form 8750-5), along with the distributor's label of the EPA-registered product that is being distributed in the District; and
 - (g) Any other necessary information required for completion of the application form for registration, as specified by the Department.
- 2203.2 If requested by the Department, the applicant shall submit a full description of every test conducted with respect to the pesticide, and the results of the tests upon which any claim is based.
- 2203.3 If the Department determines it necessary for approval of a pesticide registration, the Department may require the submission of the complete formula for any pesticide, including the active and inert ingredients.
- 2203.4 No person shall use or reveal for that person's own advantage any information relating to the formula of pesticides acquired by the authority of this section, except that this provision shall not be deemed to prohibit the disclosure of information to the Department, to the proper officials or employees of the District, to courts of competent jurisdiction in response to a subpoena, to physicians or pharmacists or other qualified persons for use in the preparation of antidotes, or to any other person when the Department determines that disclosure is necessary to protect the public health, safety, or welfare, or the environment.
- 2203.5 An applicant shall pay an annual registration fee for each pesticide registered by the applicant, as specified in § 2518.

2203.6 Each registration approved by the Department and in effect on December 31st, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until the Department notifies the applicant that the registration has been renewed or denied.

2203.7 In renewing a registration, the Department shall only require each applicant to provide information that is different from the information furnished when the pesticide was originally registered or last reregistered in the District.

2204 DENIAL, SUSPENSION, AND REVOCATION OF PESTICIDE REGISTRATION

2204.1 If the District Department of the Environment (Department) determines that a pesticide registered under the Department's authority does not warrant the proposed claims for it, or if the pesticide and its labeling and other supporting material do not comply with the pesticide provisions of this title, the Department shall notify the applicant of the manner in which the pesticide, labeling, or other supporting material fail to comply with the provisions of this title so as to afford the applicant an opportunity to make the necessary corrections.

2204.2 If, upon receipt of the notice required by § 2204.1, the applicant does not make the required changes within thirty (30) days, the Department may deny the application for registration of the pesticide.

2204.3 The Department may deny, suspend, or revoke the registration of any pesticide if the Department determines any of the following conditions exist:

- (a) The pesticide, its labeling, or other material required to be submitted do not comply with the Pesticide Operation Regulations, Chapters 22 through 25 of this title; or
- (b) The denial, suspension, or revocation is necessary to prevent unreasonable adverse effects on public health, safety, or welfare, or the environment.

2204.4 If the Department determines that there is an imminent hazard, the Department may immediately suspend a pesticide registration in the District without prior compliance with §§ 2204.5 or 2204.6.

2204.5 The Department shall notify the registrant in writing with the reasons for any proposed denial, suspension, or revocation of a pesticide registration in the District.

2204.6 Pursuant to § 2504, the registrant shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, or revoke registration to request a hearing with the Office of Administrative Hearings (OAH) to show cause why registration should not be denied, suspended, or revoked.

2204.7 An appeal to OAH pursuant to this section shall be subject to the requirements of § 2504.

2205 CLASSIFICATION OF PESTICIDES

2205.1 For the purposes of classifying pesticides as District restricted-use or non-essential in this section, the term “pesticide” means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, but does not including the following:

- (a) Fertilizers and other plant supplements whose primary purpose is to provide nutrition to plant-life and not to repel, treat, or control pests;
- (b) Pesticides exempt under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations, specifically those pesticides exempted under Section 25(b) of FIFRA and 40 C.F.R. § 152.25(f), subject to reclassification as set forth in Section 3 of FIFRA;
- (c) Individual repellents, personalized devices, and other agents not necessarily classified under FIFRA but employed by individuals for protection from pests;
- (d) Sanitizers, disinfectants, and antimicrobial agents; and
- (e) Other chemicals, devices, or substances excluded by the District Department of the Environment (Department) in regulations.

2205.2 For the purposes of classifying pesticides as District restricted-use or non-essential in this section, the term “pest management” means the control of plants, insects, herbs, or rodents with chemical agents deployed as pesticides.

2205.3 The Department shall create and maintain lists of pesticides classified as District restricted-use or non-essential.

2205.4 The Department shall publish on the Department’s website the lists of pesticides classified as District restricted-use or non-essential.

2205.5 The Department shall designate as District restricted-use any pesticide that:

- (a) When used as directed or in accordance with commonly recognized practice requires additional restrictions for that use to prevent a hazard to human health, the environment, or property; or

- (b) The Department determines presents a significant, scientifically sound basis justifying that reclassification; and
- (c) For purposes of this subsection, “scientifically sound basis” shall include conclusions of published, peer-reviewed studies conducted by experts in their respective fields, EPA guidance documents, and other similar materials.

2205.6 The Department shall designate as non-essential any pesticide that is not used as part of critical pest management in the District, as follows:

- (a) Critical pest management shall include controlling:
 - (1) Plants that are poisonous to touch or are likely to cause damage to a structure or infrastructure; or
 - (2) Insects that bite or sting, are venomous or disease-carrying, or are likely to cause damage to a structure or infrastructure.
- (b) The Department shall presume that a pesticide should be classified as essential if it is intended primarily for use on or for:
 - (1) Agriculture;
 - (2) Forests;
 - (3) Promotion of public health or safety;
 - (4) Protection of structures or infrastructure;
 - (5) Protection of endangered, threatened or other similarly situated plant and animal species;
 - (6) Management of invasive plant species; or
 - (7) Management of invasive insect species.

2205.7 The Department shall offer an opportunity for public comment before classifying as District restricted-use any pesticide that is not designated as restricted-use under 40 C.F.R. § 152.175 or adding restrictions to a restricted-use pesticide designated under 40 C.F.R. § 152.175.

2205.8 The Department shall publish notice in the *D.C. Register* regarding the proposed reclassification of a particular pesticide and provide a comment period of at least thirty (30) days.

2205.9 The Department shall hold a public hearing if significant public interest is expressed during the comment period specified in § 2205.8.

2206 DISTRICT RESTRICTED-USE PESTICIDES

2206.1 The following pesticides are classified by the District Department of the Environment as District restricted-use:

- (a) Products classified by the United States Environmental Protection Agency (EPA) as restricted-use pesticides under Section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. § 136a(d)), as enumerated in 40 C.F.R. § 152.175; and
- (b) [Reserved].

2207 NON-ESSENTIAL PESTICIDES

2207.1 The following pesticides are classified by the District Department of the Environment as non-essential:

- (a) [Reserved].

2208 PROHIBITED AND RESTRICTED USES

2208.1 No person shall apply District restricted-use pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in § 2209.

2208.2 No person shall apply non-essential pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in § 2209.

2209 PROHIBITED AND RESTRICTED USES: EXEMPTIONS

2209.1 The provisions of § 2208 shall not apply to the use of a pesticide for the purpose of improving or maintaining water quality at:

- (a) Drinking water treatment plants;
- (b) Wastewater treatment plants;
- (c) Reservoirs and swimming pools; and
- (d) Related collection, distribution, and treatment facilities.

2209.2 A person may apply to the District Department of the Environment (Department) for an exemption from § 2208.1 for a District restricted-use pesticide. The

Department may grant an exemption to apply a District restricted-use pesticide on property prohibited under § 2208.1 if the applicant demonstrates:

- (a) That integrated pest management practices have been utilized prior to application for an exemption;
- (b) That the applicant has made a good-faith effort to seek effective and economical alternatives to the District restricted-use pesticides, and they are unavailable;
- (c) That providing a waiver will not violate District or federal law; and
- (d) That use of the District restricted-use pesticide on the property prohibited under § 2208.1 is linked to a need to protect health, the environment, or property.

2209.3 An application for exemption under § 2209.2 shall be made in writing to the Department and signed by the person requesting the exemption under penalty of perjury.

2209.4 A person may apply to the Department for an exemption from § 2208.2 for a non-essential pesticide. The Department may grant an exemption to apply a non-essential pesticide on property prohibited under § 2208.2, if the applicant demonstrates:

- (a) That integrated pest management practices have been utilized prior to application for an exemption;
- (b) That effective alternatives are unavailable;
- (c) That providing a waiver will not violate District or federal law; and
- (d) That use of the non-essential pesticide is critical and necessary to protect human health or prevent imminent and significant economic damage.

2209.5 An application for exemption under § 2209.4 shall be made in writing to the Department and signed by the person requesting the exemption under penalty of perjury.

2209.6 A person may apply to the Department for an emergency exemption in the event that an emergency pest outbreak poses an immediate threat to public health or would result in significant economic damage because of failure to use a pesticide prohibited or restricted by § 2208. The Department may grant an emergency exemption to apply pesticides prohibited under § 2208, after the application, if the applicant demonstrates:

- (a) An urgent, non-routine situation that requires the use of pesticides where:
 - (1) No effective pesticides are available that are registered for use to control the pest under the conditions of the emergency;
 - (2) No economically or environmentally feasible practices which provide adequate control are available; and
 - (3) The situation:
 - (i) Involves the introduction or dissemination of a new pest;
 - (ii) Will cause significant economic loss due to an outbreak or an expected outbreak of a pest; or
 - (iii) Presents significant risks to human health, endangered or threatened species, beneficial organisms, or the environment.

2209.7 If a person makes an emergency application of pesticides under this section under a condition not qualifying as an emergency under § 2209.6(a), as determined by the Department, then the Department may initiate an action to suspend, modify, or revoke the certification of the person in accordance with § 2507.

2209.8 The Department may require a person who applies for an exemption under this section for the same property on more than one (1) occasion to attend a District-approved integrated pest management course.

2209.9 Upon receiving notice from the Department that a person is required to take a District-approved integrated pest management course as provided in § 2209.8, the person shall complete the required course and submit proof of completion to the Department within one (1) year.

2210 REDUCED-RISK PESTICIDES AND METHODS OF PEST CONTROL

2210.1 For the purposes of customer notification required by § 2211, the following pesticides are identified by the District Department of the Environment (Department) as reduced-risk:

- (a) Products classified by the United States Environmental Protection Agency (EPA) as exempt from regulation under Section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. § 136w(b)), when used according to District-approved label instructions, because the products meet all of the criteria set forth in 40 C.F.R. § 152.25, contain only the active ingredients listed in 40 C.F.R. § 152.25(f)(I), as amended,

and include only the inert ingredients described in 40 C.F.R. § 152.25(f)(2) and listed in the most current List 4A (4A Inerts List).

- (b) Biopesticide active ingredients in products registered by EPA under FIFRA and components of plant-incorporated protectants (PIPs) registered by EPA under FIFRA, when used according to EPA-approved label directions;
- (c) The following compounds, when used according to EPA label directions: boric acid, disodium octaborate tetrahydrate, silica gels, and diatomaceous earth; and
- (d) Non-volatile pesticides in tamper resistant containers.

2210.2 For the purposes of customer notification required by § 2211, the following methods for applying pesticides, when the pesticides are used according to EPA-approved label directions, are identified by the Department as reduced-risk:

- (a) Pesticides used for the purpose of rodent control that are placed directly into rodent burrows or placed in areas inaccessible to children or pets; and
- (b) Pesticides in the form of a non-liquid gel used for the purpose of insect control that are placed in areas inaccessible to children or pets.

2211 NOTIFICATION

2211.1 When a customer enters into a contract for pesticide application services with a pesticide operator, the person applying the pesticide shall provide the customer with the following written information prior to applying treatment:

- (a) The name of the pesticide operator;
- (b) The name of the pesticide applicator if different from that of the operator;
- (c) The District of Columbia pesticide operator license number;
- (d) The telephone number of the pesticide operator;
- (e) The National Capital Poison Control Center hotline number;
- (f) The re-entry period specified on the pesticide label, if applicable;
- (g) The common name of the pest to be controlled;
- (h) The common name of pesticide or active ingredient to be applied;

- (i) At the request of the customer, both or either:
 - (1) An original or legible copy of the current pesticide product label;
or
 - (2) A Material Safety Data Sheet; and
- (j) The following statement: “District of Columbia law requires that you be given the following information:

Notice of Pesticide Application:

CAUTION -- PESTICIDES MAY CONTAIN TOXIC CHEMICALS. Companies that apply pesticides are licensed and regulated by the District Department of the Environment (DDOE). The United States Environmental Protection Agency and DDOE approve pesticides for use. At your request, the company conducting your pest control will provide you with either or both of the Material Safety Data Sheet(s) or the pesticide label(s), both of which provide further information about the approved uses of and recommended precautions for the pesticide being applied on your property. Neither of these documents is guaranteed to list every danger associated with a pesticide. DDOE maintains a list of pesticides that present a reduced risk to humans and the environment, and encourages the use of such pesticides whenever possible. The pesticide company:

☐ HAS

☐ HAS NOT

chosen to apply reduced-risk pesticide(s). The District of Columbia government encourages the use of non-chemical and reduced-risk methods of pest control by residents and commercial pest control companies. Even when using reduced-risk pesticides, residents should familiarize themselves with safety information for pesticide products, and should avoid exposure to pesticides.”

2211.2 In addition to the information required in § 2211.1, the person applying the pesticide may provide the customer with additional product information, such as a United States Environmental Protection Agency fact sheet on the product, or additional labeling information provided by the product manufacturer (registrant).

2211.3 Upon a customer's request at least forty-eight (48) hours prior to an application, the person applying the pesticide shall provide the customer with advance notice of a pesticide application, including the information required under § 2211.1, no less than twenty-four (24) hours prior to the application.

- 2211.4 When pesticide is to be applied on a multi-unit property, the pesticide operator shall provide the information listed in § 2211.1 to the customer at least forty-eight (48) hours before the pesticide is to be applied.
- 2211.5 At least twenty-four (24) hours, and not more than seven (7) days, before the application of pesticides on a multi-unit property, the owner of the property shall provide each resident and tenant of the property that will be treated with the information listed in § 2211.1 by:
- (a) Delivering the information to each resident's door or mailbox, or to each resident through electronic mail or facsimile; and
 - (b) Posting the information conspicuously in common spaces on the property, in reasonably close proximity to the locations where pesticide will be applied.
- 2211.6 In the event that there is no clearly defined customer or business entity as identified in § 2211.1, the applicator shall post the documentation required in § 2211.1 in an accessible location at the site of the application for public inspection.
- 2211.7 When applying a restricted-use pesticide outside the confines of an enclosed structure, the person applying the pesticide shall provide notice of the date and approximate time of any such pesticide application to any property that abuts the property to be treated.

2212 POSTING

- 2212.1 Any person applying pesticides to a lawn or to exterior landscape plants shall post a sign which meets the following requirements:
- (a) The information on the front of the sign shall be the same words and symbols and in the sizes specified in Figure A shown in § 2299.1 at the end of this chapter; and
 - (b) The information on the back of the sign shall be at least eighteen (18) point type (5/32 inch) in size and indicate the following:
 - (1) Date pesticide was applied;
 - (2) Name of applicator;
 - (3) Telephone number of applicator; and
 - (c) The sign shall be:
 - (1) Four (4) inches in height and five (5) inches in width or larger;

- (2) Constructed of a sturdy, weather-resistant material;
- (3) Constructed of a rigid material, as opposed to a flag;
- (4) Printed on a yellow background with black, bold-faced lettering; and
- (5) Posted so that the bottom of the sign shall be at least twelve (12) inches but not more than sixteen (16) inches above the surface of the soil; and

(d) The sign shall be clearly visible:

- (1) From the principal places of access to the property; and
- (2) On the portion of the property where the pesticide is applied.

2212.2 The sign shall remain in place for forty-eight (48) hours following the pesticide application, after which time the property owner is responsible for removal of the sign.

2212.3 Subject to the penalties provided in the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), no person, acting alone or in concert with others, may alter or deface the sign, or remove the sign within forty-eight (48) hours of its posting.

2213 STORAGE, DISPOSAL, AND TRANSPORTATION OF PESTICIDES

2213.1 Any person required to obtain a license or certification under the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), for storing pesticides shall ensure that the pesticides under storage and the pesticide storage areas shall meet the following requirements, unless otherwise directed by the pesticide label:

- (a) The storage area shall be secured or locked to prevent unauthorized access;
- (b) Pesticides shall be stored in a separate building or under cover on a paved surface, separated by a physical barrier from living and working areas and from food, feed, fertilizer, seed, and safety equipment;
- (c) Pesticides shall be stored in a dry, clean, and well-ventilated area;
- (d) A supply of absorbent material, sufficient to absorb a spill equivalent to the capacity of the largest container in storage, shall be kept in the storage area;

- (e) All pesticide containers in the storage area shall be properly labeled, free of leaks, and in sound condition;
- (f) The storage area shall have a fire extinguisher available of a type and capacity sufficient to extinguish fires originating in the storage area;
- (g) Pesticides shall be stored in an area located at least fifty (50) feet from any waterbody, storm sewer, or well, or stored in secondary containment approved by the District Department of the Environment; and
- (h) Personal protective equipment shall be stored in an area separated by a physical barrier from the storage area or in a chemical-resistant container.

2213.2 In addition to the requirements in § 2213.1, any person storing restricted-use pesticides shall post on the exterior of the storage area and at each entrance or exit to the storage area, a sign which meets the following requirements:

- (a) The sign shall be twelve (12) inches by twelve (12) inches or larger; and
- (b) The information on the sign shall include the same words specified in Figure B shown in § 2299.1 at the end of this chapter.

2213.3 Disposal of any pesticides shall be in accordance with Subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), and in accordance with label directions on each pesticide product.

2213.4 Unless otherwise provided for in United States Department of Transportation regulations, pesticide operators shall ensure that:

- (a) During transport, pesticide containers and application equipment shall be secured to prevent shifting or release of pesticides; and
- (b) Pesticides shall not be placed or carried in the same compartment as the driver, food, or feed, unless placed or carried in a manner that provides adequate protection for the health of the driver and passengers, and the safety of the food or feed from the pesticide.

2213.5 The pesticide business name and certification number shall appear on each motor vehicle transporting in the District pesticides or devices used in pest control. The pesticide operator certification number shall be preceded by “DC Cert. No.” and the business name shall be:

- (a) In bold print not less than 2 inches high; and
- (b) Displayed on both sides of the vehicle.

2214**MISBRANDED PESTICIDES AND DEVICES**

- 2214.1 It shall be unlawful for any person to distribute any pesticide or device that is misbranded.
- 2214.2 A pesticide is misbranded if its labeling and packaging fail to comply with the provisions of this section.
- 2214.3 No pesticide label shall have any statement, design, or graphic representation relative to the pesticide or its ingredients that is false or misleading.
- 2214.4 No pesticide shall be contained in a package or other container or wrapping that does not conform to the standards established by the Environmental Protection Agency (EPA) Administrator pursuant to § 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136w(c)(3)).
- 2214.5 No pesticide shall be an imitation of, or offered for sale under the name of, another pesticide.
- 2214.6 The label of a pesticide shall bear the registration number assigned under § 7 of FIFRA (7 U.S.C. § 136e) to each establishment in which it is produced.
- 2214.7 Any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling shall be prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and stated in terms that will render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- 2214.8 The labeling accompanying a pesticide shall contain directions for use that are necessary for effecting the purpose for which the product is intended that, if complied with, together with any requirements imposed under § 3(d) of FIFRA (7 U.S.C. § 136a(d)), are adequate to protect health and the environment.
- 2214.9 The label shall bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except as provided in § 2214.10.
- 2214.10 The label need not bear an ingredient statement as required by § 2214.9 if the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase. In this case, the ingredient statement shall appear prominently on another part of the

immediate container, or on the outside container or wrapper, as permitted by the EPA Administrator.

2214.11 Each label shall contain a statement of the use classification established by the EPA Administrator under which the pesticide is registered.

2214.12 Each label shall contain a warning or cautionary statement that may be necessary and, if complied with, together with any requirements imposed under § 3(d) of FIFRA (7 U.S.C. § 136a(d)), is adequate to protect health and the environment.

2214.13 Each pesticide shall have affixed to its container, and to the outside container or wrapper of its retail package, if there is one, through which the required information on the immediate container can be clearly read, a label bearing the following information:

- (a) The name and address of the producer, registrant, or person for whom the pesticide was produced;
- (b) The name, brand, or trademark under which the pesticide is sold;
- (c) The net weight or measure of the content, provided that the EPA Administrator may permit reasonable variations; and
- (d) When required by regulation of the EPA Administrator to effectuate the purposes of FIFRA, the registration number assigned to the pesticide under FIFRA, and the use classification established by the EPA Administrator.

2214.14 No pesticide shall contain any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by FIFRA, the following information:

- (a) The skull and crossbones symbol;
- (b) The word "poison" prominently displayed in red on a background of distinctly contrasting color; and
- (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

2215 INTEGRATED PEST MANAGEMENT

2215.1 A District agency shall utilize an IPM program to reduce application of pesticides applied by District employees or contractors to public rights-of-way, parks, District-occupied buildings, and other District property to ensure that:

- (a) Pesticides are used only if monitoring indicates they are needed according to established IPM guidelines;
- (b) Pesticides are used only as a last resort after all alternative pest management strategies have been exhausted; and
- (c) Pesticide application is made with the purpose of removing only the target organism.

2215.2 A child-occupied facility shall utilize an IPM program to reduce application of pesticides.

2215.3 A District agency and a child-occupied facility shall have an IPM program approved by the District Department of the Environment (Department) that meets the following requirements:

- (a) Has a written IPM policy;
- (b) Has a written policy on pest management roles and responsibilities of decision makers, including the name, address, and telephone number of the contact person;
- (c) Has procedures for conducting the pest control program, including pest management objectives;
- (d) Has procedures for regular inspection and monitoring activities to determine the presence and distribution of pests;
- (e) Has standards to determine the:
 - (1) Severity of pest infestation;
 - (2) Need for alternative pest management strategies; and
 - (3) Need for pesticide application only as a last resort after all alternative pest management strategies have been exhausted;
- (f) Has recordkeeping procedures for documenting:
 - (1) Pest sightings;
 - (2) Pest control procedures; and
 - (3) Any communications to potentially affected individuals regarding IPM or pesticide use; and

- (g) Has a range of alternative pest management strategies, including sanitation, structural repair, physical, cultural, and biological control, and other non-chemical methods.

2215.4 If a District agency employs a contractor to perform pesticide management or application, the District agency's IPM policy shall be incorporated into the specifications or statement of work for the pest management or application contract.

2215.5 No person required to obtain a license or certification under the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*) shall apply any pesticide to public rights-of-way, parks, District-occupied buildings, other District property, or child-occupied facilities if the location does not have an IPM program approved by the Department.

2216 PEST CONTROL BY FUMIGATION

2216.1 Notwithstanding any other provisions of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, each fumigation operation shall be performed or supervised only by a licensed applicator certified to perform fumigation.

2216.2 Each member of the fumigation crew shall be trained in those aspects of the fumigation process in which the member participates, have adequate knowledge of the fumigant, and be provided with all the safety equipment necessary for the member's protection.

2216.3 Before performing fumigation, the licensed applicator shall notify the fire station nearest the site of the fumigation.

2216.4 The notice to the nearest fire station required by § 2216.3 shall be in writing and shall include the following information:

- (a) The name and address of the pesticide operator;
- (b) The name of the fumigant;
- (c) The name of the licensed certified applicator and the applicator's day and night telephone numbers;
- (d) The location and type of structure; and
- (e) The date and approximate time of fumigation, and the estimated length of the fumigation period.

2216.5 The structure, vault, vehicle, commodity, or area to be treated shall be conspicuously posted with warning signs on all sides.

- 2216.6 Warning signs required by § 2216.5 shall carry the following information:
- (a) The skull and crossbones symbol;
 - (b) The name of the fumigant;
 - (c) A warning statement that reads: "DANGER POISON KEEP OUT";
 - (d) The name of the company performing fumigation; and
 - (e) The name and telephone number of the licensed certified applicator in charge.
- 2216.7 A guard shall be on the site during the entire fumigation period.
- 2216.8 A guard shall be capable, awake, alert, and remain on duty at the site at all times to prevent unauthorized persons from gaining entrance into the structure.
- 2216.9 The licensed certified applicator shall:
- (a) Ensure that all persons are out of the structure before fumigation;
 - (b) Ensure that the structure is secure; and
 - (c) Ensure that the structure is safe for re-occupancy.
- 2216.10 Only a licensed applicator certified to perform fumigation shall perform the introduction of the fumigant.
- 2217 PEST CONTROL BY HEAT TREATMENT**
- 2217.1 No person shall perform pest control by heat treatment unless the person is a licensed and certified pesticide operator, in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.
- 2217.2 A person performing pest control by heat treatment shall maintain records containing the following information:
- (a) Name or identification of the person performing heat treatment;
 - (b) Address of treated property;
 - (c) Date of heat treatment, including the month, day, and year;
 - (d) Duration of heat treatment;

- (e) Procedure for performing heat treatment; and
- (f) Brand and model of the heat treatment equipment used.

2218 CANINE PEST DETECTION

2218.1 No person shall use a canine scent pest detection team to detect any pest for compensation, unless:

- (a) The person is a licensed and certified pesticide operator, in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title; and
- (b) The team, consisting of a handler and dog, is certified according to the requirements of this section.

2218.2 Each team shall be certified as satisfactorily trained for pest detection for each target pest by two (2) persons meeting the requirements of § 2218.14.

2218.3 Each team shall be certified as satisfactorily trained for pest detection for each target pest for which the team intends to offer pest detection services.

2218.4 Only a team may be certified as trained for pest detection and not individual dogs or handlers who are not part of a team.

2218.5 A team shall renew its certification each year for pest detection for each target pest for which the team offers pest detection services.

2218.6 A person that trains or certifies a team for pest detection may use pseudo-scents and extracts for training purposes but shall not use them for a canine scent detection test.

2218.7 A pesticide operator that uses a team to detect any pest shall maintain accurate records of the training of each team and its certification, which shall include the following:

- (a) The name of the handler and the dog;
- (b) The name, address, and telephone number of the individual or organization that provided initial training, maintenance training, or certification of the team;
- (c) The date when initial training, maintenance training, or certification was completed; and

- (d) Proof that the team has been certified as required by this section.
- 2218.8 A pesticide operator shall maintain the records specified in § 2218.7 for three (3) years and shall make the records immediately available, on request, to the District Department of the Environment (Department).
- 2218.9 A canine scent detection test shall be designed by a person to accurately evaluate the ability of a team to satisfactorily perform pest detection for each target pest and shall meet the following requirements:
- (a) A canine scent detection test shall take place under conditions that are similar to conditions where target pests may be found;
 - (b) A canine scent detection test shall consist at a minimum of four (4) areas or spaces designed to restrict odors from moving between areas or spaces;
 - (c) A canine scent detection test shall contain at least two (2) distractors and three (3) hides as follows:
 - (1) The persons performing a canine scent detection test shall place hides in the testing room or space at least thirty (30) minutes before testing begins;
 - (2) A distractor shall represent the type encountered under field conditions by a team in the region the team operates; and
 - (3) If a dead target pest is used as a distractor, the target pest shall have been dead for at least forty-eight (48) hours; and
 - (d) The time limit for completing the search of all rooms, spaces or areas for a pest by a team shall be twenty (20) minutes, excluding the time spent by the team travelling between rooms or spaces. The qualified persons conducting the canine scent detection test may adjust the time limit of the test to account for varying size rooms and spaces.
- 2218.10 The persons conducting a canine scent detection test shall pass or fail the team.
- 2218.11 The team may make one false alert during a canine scent detection test, but it cannot be on a placed distractor.
- 2218.12 If the team passes a canine scent detection test, the persons conducting the test shall certify the team as satisfactorily trained for pest detection for the target pest.
- 2218.13 If the dog is treated cruelly during the canine scent detection test, the persons conducting the canine scent detection test shall fail the team.

- 2218.14 A person conducting a canine scent detection test shall have a minimum of five (5) years of documented experience, recognized by the Department, in dog scent handling, training, and evaluation in at least one of the following areas:
- (a) Law enforcement;
 - (b) Other government agency;
 - (c) Military; or
 - (d) Other comparable experience verifiable by the Department in dog scent detection training or evaluation.
- 2218.15 At least two (2) persons meeting the requirements of § 2218.14 shall conduct each canine scent detection test.
- 2218.16 The persons conducting a canine scent detection test may not be the dog's current or former trainer and may not have any business or financial interest in the team's business.
- 2218.17 The persons conducting a canine scent detection test may have standards that are stricter than the standards provided in this section.

2219 UNLAWFUL ACTS

- 2219.1 Pursuant to the provisions in § 2500, the District Department of the Environment (Department) may pursue an enforcement action against any person who violates the Pesticide Operation Regulations, Chapters 22 through 25 of this title, including, but not limited to any person who:
- (a) Fails to register a pesticide in accordance with the pesticide registration provisions of this title;
 - (b) Uses a pesticide in a manner that is inconsistent with the labeling of the pesticide or that is in violation of the restrictions imposed on the use of the pesticide by the Environmental Protection Act (EPA) Administrator or the Department;
 - (c) Makes a pesticide recommendation that is inconsistent with the labeling of the pesticide, or that is in violation of the restrictions imposed on the use of the pesticide by EPA Administrator or the Department;
 - (d) Falsifies, refuses, or neglects to maintain or make available records required to be kept under the provisions of this title;

- (e) Uses fraud or misrepresentation in applying for certification, registration, or a license;
- (f) Refuses or neglects to comply with any limitations or restrictions on his or her certification, registration, or license;
- (g) Makes false or fraudulent claims through any media that misrepresent the effect of a pesticide or the method to be utilized in the application of a pesticide;
- (h) Applies any known ineffective or improper pesticide, or operates faulty or unsafe equipment;
- (i) Uses or supervises the use of a pesticide in a faulty, careless, or negligent manner;
- (j) Makes false or fraudulent records, invoices, or reports;
- (k) Acts in the capacity of, advertises as, or assumes to act as a pesticide dealer in the District at any time unless he or she is licensed by the District in accordance with the provisions of this title;
- (l) Aids, abets, or conspires with any other person to evade the provisions of this title;
- (m) Makes fraudulent or misleading statements during or after an inspection of a pest infestation, or during or after an inspection pursuant to the provisions in Chapter 25 (Pesticide Use Enforcement and Administration) of this title;
- (n) Impersonates any federal, state, or District inspector or official;
- (o) Fails to immediately notify the Department by telephone, or in writing, of any pesticide accident, incident, fire, flood, or spill, or to report to the Department the full details of the event, including any remediation taken;
- (p) Distributes any pesticide that is adulterated;
- (q) Fails to maintain a record required pursuant to § 2517.1 for a transaction involving a restricted-use pesticide; or
- (r) Violates any other requirement or provision of the Pesticide Operations Act of 1977, as amended, or the rules promulgated to carry out the provisions of the Act, set forth in Chapters 22 through 25 of this title.

2219.2

Each unlawful act shall constitute a separate violation of the Pesticide Operation Regulations, Chapters 22 through 25 of this title. In the event of any violation of

or failure to comply with the Pesticide Operation Regulations, each and every day of the violation or failure shall constitute a separate offense.

2299

DEFINITIONS

2299.1 When used in this chapter, the following terms shall have the meanings ascribed (definitions that are codified in the relevant Acts are indicated as [Statutory], and are reprinted below for regulatory efficiency):

Accident - an unexpected, undesirable event, caused by the use or presence of a pesticide that adversely affects humans or the environment.

Active ingredient - shall be as follows:

- (a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, or mitigate any pest;
- (b) In the case of a plant regulator, an ingredient that, through physiological action, will accelerate or retard the rate of growth or maturation, or otherwise alter the behavior of ornamental or crop plants or the product of the plants;
- (c) In the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant; and
- (d) In the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue. [Statutory]

Adulteration - a pesticide the strength or purity of which falls below the professed standard or quality as expressed in its labeling or under which it is sold, or the total or partial substitution of any substance for the pesticide, or the total or partial abstraction of any valuable constituent of the pesticide. [Statutory]

Agriculture - land whose primary purpose and use is to raise crops. [Statutory]

Agricultural commodity - any plant or part of a plant, or an animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by humans or animals.

Alert - a characteristic change in a dog's behavior in response to the odor of a pest as interpreted by the dog's handler.

Animal - all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish, and shellfish. [Statutory]

Biopesticide - a chemical derived from plants, fungi, bacteria, or other non-man-made synthesis that is effective in controlling target pests; or certain microorganisms, including bacteria, fungi, viruses, and protozoa that are effective in controlling target pests. These agents usually do not have toxic effects on animals and people and do not leave toxic or persistent chemical residues in the environment.

Canine scent pest detection team - a unit consisting of a human and a dog that train and work together to detect a target pest.

Certification - the recognition by a certifying agency that a person is competent and is authorized to use or supervise the use of restricted-use pesticides or authorized to perform pest detection for a target pest.

Certified applicator - any individual who is certified by the Department as being competent to use or supervise the use of any restricted-use pesticide or class of restricted-use pesticides covered by his or her certification. [Statutory]

Child-occupied facility - a building or portion of a building which, as part of its function, receives children under the age of 6 years on a regular basis and is required to obtain a certificate of occupancy as a precondition to performing that function, including day care centers, nurseries, pre-school centers, kindergarten classrooms, child development centers, child development homes, child development facilities, child-placing agencies, infant care centers, and similar entities. [Statutory]

Commercial applicator - an individual, whether or not he or she is a private applicator with respect to some uses, who uses or supervises the use of any pesticide that is classified for restricted use for any purpose or on any property other than as provided by the definition of "private applicator." [Statutory]

Competent - properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

DCRA - the District of Columbia Department of Consumer and Regulatory Affairs.

Defoliant - any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission. [Statutory]

Department - the District Department of the Environment.

Desiccant - any substance or mixture of substances intended for artificially accelerating the drying of plant tissue. [Statutory]

Device - any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than human and other than bacteria, virus, or other microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately from the pesticides. [Statutory]

Director - the Director of the District Department of the Environment or the Director's designated agent.

Distractor - a non-target odor source placed within a pest scent-detecting dog's search area.

Distribute - to offer for sale, hold for sale, sell, barter, or trade a commodity. [Statutory]

District - the District of Columbia. [Statutory]

District agency - any District office, department, or agency, including independent agencies, the District of Columbia Water and Sewer Authority, and the Washington Metropolitan Area Transit Authority.

District property - buildings or land owned, leased, or otherwise occupied by the District government. [Statutory]

District restricted-use - a pesticide identified by the Department as requiring additional restrictions for use to prevent a hazard to human health, the environment, or property as set forth in § 2205 of Chapter 22 of this title. [Statutory]

Environment - includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these. [Statutory]

EPA - the United States Environmental Protection Agency.

EPA Administrator - the Administrator of the United States Environmental Protection Agency. [Statutory]

Equipment - any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power, and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land. This term shall not include any pressurized hand-sized household apparatus used to apply a pesticide. [Statutory]

Extract - an odor extracted from a target pest for a pest scent-detecting dog to detect.

FIFRA - the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 *et seq.*), as amended.

Forestry - trees on land that is at least one acre in size and at least 10% occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use. [Statutory]

Fumigation - the act of releasing or dispensing a toxic chemical agent in such a way that it reaches the organism wholly or primarily in the gaseous state.

Fungus - any non-chlorophyll-bearing thallophyte (any non-chlorophyll-bearing plant of a lower order than mosses and liverworts); for example: rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other animals and those on or in processed food, beverages, or pharmaceuticals. [Statutory]

Hazard - a probability that a given pesticide will have an adverse effect on humans or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

Hide - a container that allows free movement of air containing between five (5) and twenty (20) live target pests or viable eggs.

Inert ingredient - an ingredient that is not active.

Ingredient statement - a statement that contains:

- (a) The name and percentage of each active ingredient, and the total percentage of all inert ingredients in the pesticide; and
- (b) If the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

Insect - any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class

insecta, comprising six- (6) legged, usually winged forms (for example, beetles, bugs, bees, and flies). For purposes of Chapters 22 through 25 of this title, the term "insect" also applies to allied classes of arthropods whose members are wingless and usually have more than six (6) legs (for example, spiders, mites, ticks, centipedes, and wood lice). [Statutory]

Integrated pest management or IPM - an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage economically, and with a strong preference for examining a range of cultural, mechanical, biological, and chemical practices and selecting a method presenting the least possible hazard to people, property, and the environment. [Statutory]

Label - the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its container or wrappers. [Statutory]

Labeling - all labels and all other written, printed, or graphic matter:

- (a) Accompanying the pesticide or device at any time, or
- (b) Accompanying or referring to the pesticide or device except when accurate non-misleading references are made to current official publications of Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides. [Statutory]

Land - all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation. [Statutory]

Licensed certified applicator - a pesticide applicator who has completed the requirements for certification and holds a valid District license.

Mayor - the Mayor of the District of Columbia or the Mayor's designee.

Minimum-risk pesticide - a pesticide registered with the Department, but exempt from federal registration under Section 25(b) of FIFRA. [Statutory]

Misbranded - a pesticide is misbranded if its labeling and packaging fail to comply with the provisions of § 2214 of Title 20 of the District of Columbia Municipal Regulations.

Nematode - invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms. [Statutory]

Non-essential - a pesticide that is not critical to managing pests that threaten health, property, or the environment in the District as set forth in § 3 of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191). [Statutory]

Ornamental - trees, shrubs, and other plantings in and around habitations, generally, but not necessarily, located in urban and suburban areas, including residences, parks, streets, retail outlets, and industrial and institutional buildings.

Person - any individual, partnership, association, corporation, company, joint stock association, or any organized group of people whether incorporated or not, and includes any trustee, receiver, or assignee. [Statutory]

Pest - any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living humans or other living animals) which commonly is considered to be detrimental to humans or their interests or which the Department may declare to be detrimental. [Statutory]

Pesticide - any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. [Statutory]

Pesticide applicator or **applicator** - an individual who is a commercial applicator, private applicator, public applicator, or registered technician. [Statutory]

Pesticide dealer - any person who distributes to the ultimate user restricted-use pesticides or any pesticide whose use or distribution are further restricted by the Department. [Statutory]

Pesticide operator - shall be:

- (a) Any person who owns or manages a pesticide application business in which pesticides are applied upon the lands of another for hire or compensation; or
- (b) Except as otherwise provided under the definition of "private applicator," the owner or manager of any commercial firm, business, corporation, or

private institution, who directly or through employees uses restricted-use pesticides on property owned, managed, or leased by the commercial firm, business, corporation, or private institution; or

- (c) Any District or other governmental agency whose officials or employees apply pesticides as part of their normal duties. [Statutory]

Pesticide registration fee - the fee set for product registration by § 2518 of Title 20 of the District of Columbia Municipal Regulations. [Statutory]

Plant incorporated protectant - pesticidal substances that are intended to be produced and used in a living plant or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. Plant incorporated protectant also includes any inert ingredient contained in the plant, or produce thereof.

Plant regulator - any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, it shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration. [Statutory]

Private applicator - any individual who uses any restricted-use pesticide for purposes of producing any agricultural commodity on property owned or rented by the individual or his or her employer, or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. [Statutory]

Protective equipment - clothing or any other materials or devices that shield against unintended exposure to pesticides.

Pseudo-scent - a human-made compound that mimics a target pest odor.

Public applicator - a commercial applicator who is authorized to use or supervise the use of pesticides and who is an employee of the District or of a governmental agency. [Statutory]

RCRA - the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as amended.

Reduced-risk pesticides - any pesticide identified in § 2210 of Title 20 of the District of Columbia Municipal Regulations. [Statutory]

Registered technician - an individual who is registered with the Department, under § 2311 of Title 20, and who works under the direct supervision of a licensed commercial or public applicator, as set forth in § 12(c) of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191).

Registrant - any person who registers any pesticide pursuant to the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*).

Restricted-use pesticides - any pesticides or pesticide use classified by the EPA Administrator for restricted use; or any pesticide, which when used as directed or in accordance with a commonly recognized practice, the Department determines, subsequent to a hearing, that additional restrictions for that use are necessary in order to prevent a hazard to the applicator or other persons, or to prevent unreasonable adverse effects upon the environment. [Statutory]

School - a public or private facility whose primary purpose is to provide K-12 educational services and includes adjacent or contiguous recreation centers or athletic fields owned or maintained by the educational facility. [Statutory]

Space treatment - the dispersal of insecticides into the air by foggers, misters, aerosol devices, ultra-low volume equipment, or vapor dispensers for the control of flying insects and exposed crawling insects.

Storm sewer - a system of pipes or other conduits which carries or stores intercepted surface runoff, street water, and other wash waters, or drainage, but excludes domestic sewage and industrial wastes.

Under the direct supervision of - unless otherwise prescribed by its labeling or other restrictions imposed by the Department, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent registered technician acting under the instruction and control of a certified applicator who is available if and when needed, even though the certified applicator may not be physically present at the time and place the pesticide is applied. [Statutory]

University - the University of the District of Columbia.

Waterbody - those portions, sections, or segments of waters located within the District that are:

- (a) Subject to the ebb and flow of the tide; or
- (b) Free flowing, unconfined, and aboveground rivers, streams, or creeks.
[Statutory]

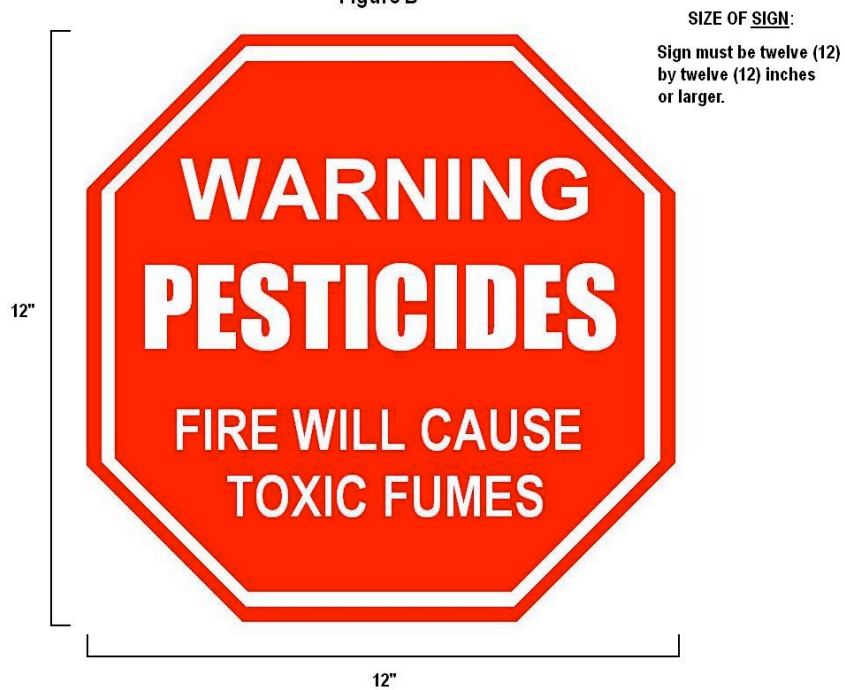
Waterbody-contingent property - property within 25 feet of a waterbody.
[Statutory]

Weed - any plant that grows where it is not wanted. [Statutory]

Figure A



Figure B



CHAPTER 23 PESTICIDE APPLICATORS

2300 GENERAL PROVISIONS

- 2300.1 The following regulations shall apply to all persons required to obtain an applicator certification and license under § 3 of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code § 8-403).
- 2300.2 No person shall purchase, use, or supervise the use of any restricted-use pesticide unless he or she is certified and licensed in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title, except as provided in §§ 2300.6 and 2300.7.
- 2300.3 No person shall apply for a pesticide applicator license unless the applicant is certified as a pesticide applicator.
- 2300.4 Application for a pesticide applicator's license shall be made in writing on a form prescribed by the Department.
- 2300.5 If the Department does not certify or license an applicant as provided in this chapter, the Department shall inform the applicant in writing of the reasons for the denial of the license or certification.
- 2300.6 A registered technician shall purchase and use restricted-use pesticides under the direct supervision of a licensed commercial or public applicator in accordance with §§ 2311 and 2312.
- 2300.7 The certification and licensing requirements of this chapter shall not apply to the following individuals:
- (a) A person conducting laboratory-type research involving restricted-use pesticides;
 - (b) A doctor of medicine or doctor of veterinary medicine applying pesticides as drugs or medication during the course of normal practice;
 - (c) A registered technician while working under the direct supervision of a licensed certified applicator; or
 - (d) A person applying any pesticide that is not a restricted-use pesticide on his or her own premises, or an employee of that person who applies any pesticide that is not a restricted-use pesticide on the person's premises.
- 2300.8 All certifications and licenses granted pursuant to this chapter shall be posted conspicuously on the premises of the licensee.

2301 CATEGORIES OF PESTICIDE APPLICATORS

- 2301.1 Individuals shall apply for certification on a form prescribed by the District Department of the Environment in one (1) of the categories or subcategories of pest control outlined in this section (subject categories are classified in accordance with 40 C.F.R. § 171.3).
- 2301.2 Ornamental and Turf Pest Control - this category includes applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf. This category contains the following subcategories:
- (a) Exterior Ornamental Plants;
 - (b) Lawns and Turf; and
 - (c) Interior Ornamental Plants.
- 2301.3 Aquatic Pest Control - this category includes applicators using or supervising the use of pesticides purposefully applied to standing or running water, wetland areas, or within tidal basins, excluding applicators engaged in public health-related activities included in § 2301.6.
- 2301.4 Right of Way Pest Control - this category includes applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway right-of-way, or other similar areas.
- 2301.5 Industrial, Institutional, Structural, and Health Related Pest Control - this category includes applicators using or supervising the use of pesticides in, on, or around food handling establishments; human dwellings; industrial establishments, including warehouses and grain elevators; institutions, such as schools and hospitals; and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. This category contains the following subcategories:
- (a) General Pest Control - preventing, repelling, or controlling insects, fungi, or other pests within or adjacent to structures of any kind, or the adjacent grounds, or where people may assemble or congregate. This subcategory does not include work otherwise defined in §§ 2301.5(b) through (f);
 - (b) Wood Destroying Organism - preventing, repelling, or controlling termites, powder post beetles, fungi, or wood destroying organisms in or on structures of any kind of pre-treating areas or the surrounding grounds where the structures are to be constructed;

- (c) Wildlife Control - preventing, repelling, or controlling nuisance birds, mammals, reptiles, and other wildlife not covered by the Rodent Control category;
 - (d) Fumigation - the use of a fumigant within an enclosed space for the destruction of a pest, not including space treatment;
 - (e) Rodent Control - preventing, repelling, or controlling rodents; and
 - (f) Industrial Weed Control - preventing, repelling, or controlling weeds on industrial or commercial sites.
- 2301.6 Public Health Pest Control - this category includes District and other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.
- 2301.7 Regulatory Pest Control - this category includes District and other governmental employees who use or supervise the use of pesticides in the control of regulated pests.
- 2301.8 Demonstration and Research Pest Control - this category includes the following:
- (a) Individuals who demonstrate to the public the proper use and techniques of application of restricted-use pesticides, or who supervise the public demonstration. Included in this group is any person who is an extension specialist, or a commercial representative demonstrating restricted-use pesticide products, and anyone demonstrating methods used in public programs; or
 - (b) Persons conducting field research with restricted-use pesticides and, in doing so, use or supervise the use of restricted-use pesticides.
- 2301.9 Miscellaneous Pest Control - this category includes commercial applicators using or supervising the use of a pesticide(s) for the management and control of pests that are not related to or described in §§ 2301.2 through 2301.8.
- 2302 COMMERCIAL APPLICATORS: ELIGIBILITY FOR CERTIFICATION**
- 2302.1 Each applicant for certification as a commercial applicator shall demonstrate to the District Department of the Environment (Department) that he or she has at least one (1) of the following:
- (a) One (1) year of experience acceptable to the Department as a full-time registered technician engaged in those categories in which the applicant seeks to be certified. Proof of this experience may include affidavits from

former employers, certification or licensing from other states or the federal government, or other measures acceptable to the Department;

- (b) A degree or certification from an accredited college or university with specialized training acceptable to the Department in the categories in which the applicant seeks to be certified. One (1) year of this specialized training may be considered equivalent to one (1) year of practical experience; or
- (c) A combination of training and experience acceptable to the Department. This combination shall total not less than one (1) year.

2303 COMMERCIAL APPLICATORS: DETERMINATION OF COMPETENCY

- 2303.1 To be certified as competent in the use and handling of pesticides, each applicant shall meet the requirements of this section.
- 2303.2 An applicant for certification shall pass a written examination (and, where appropriate, a practical examination) administered by the District Department of the Environment (Department) in each category or subcategory for which the applicant seeks to be certified.
- 2303.3 The required examinations and testing shall be based upon the standards set forth in § 2304.
- 2303.4 The required examinations and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory, if any, in which an applicator is to be certified.
- 2303.5 Examinations shall be administered as requested; examinations shall be administered at least two (2) times a year at locations and times designated and announced by the Department.
- 2303.6 To become certified in any category or subcategory, each applicant shall be required to pass the following separate written examinations:
 - (a) A general, core examination; and
 - (b) A category examination which shall be specific to the category(ies) or subcategory(ies) described in § 2301 of this chapter, and which, when applicable, may include a practical examination.
- 2303.7 A passing score for any examination shall consist of a total correct score equal to or exceeding seventy percent (70%) of the total points on the examination as graded by the Department.

- 2303.8 The Department shall notify in writing each applicant who takes an examination of the results of the examination on a pass-fail basis.
- 2303.9 An applicant who fails the general core or category examination, or, when applicable, the practical examination, may not reapply to take that examination until thirty (30) days after the date of the last failed examination.
- 2303.10 An applicant who fails the general core or category examination, or, when applicable, the practical examination, three (3) consecutive times, shall wait one hundred and eighty (180) days after the date of the last failed examination before re-applying to take the examination.
- 2303.11 The Department shall notify in writing each applicant who has successfully completed the requirements for certification, stating the category(ies) or subcategory(ies) in which competency has been demonstrated.
- 2303.12 A certified applicator who elects to add one (1) or more category(ies) or subcategory(ies) to an existing certification shall be required to take only the examination for the new category(ies) or subcategory(ies) for which certification is desired.
- 2303.13 An applicator who has any part of his or her certification revoked shall retake the examination in the category(ies) or subcategory(ies) for which the applicator seeks to be recertified.
- 2304 COMMERCIAL APPLICATORS: STANDARDS FOR DETERMINATION OF COMPETENCY**
- 2304.1 The standards prescribed in this section shall be used to determine the competency of each commercial applicator prior to his or her certification.
- 2304.2 A commercial applicator shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides.
- 2304.3 A commercial applicator shall demonstrate mastery of the principles of integrated pest management.
- 2304.4 Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification, as well as the following areas of competency:
- (a) Label and labeling comprehension, including the following factors:
 - (1) The general format and terminology of pesticide labels and labeling;

- (2) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
 - (3) Classification of the product; and
 - (4) Necessity for use consistent with the label;
- (b) Pests, including factors such as the following:
 - (1) Common features of pest organisms and characteristics of damage needed for pest recognition;
 - (2) Recognition of relevant pests; and
 - (3) Pest development and biology as it may be relevant to problem identification and control;
- (c) Safety, including the following factors:
 - (1) Pesticide toxicity, common exposure routes, and hazard to humans;
 - (2) Common types and causes of pesticide accidents;
 - (3) Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
 - (4) Need for and use of protective clothing and equipment;
 - (5) Symptoms of pesticide poisoning;
 - (6) First aid and other procedures to be followed in case of a pesticide accident; and
 - (7) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers;
- (d) Environment, including the potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as the following:
 - (1) Weather and other climatic conditions;
 - (2) Types of terrain, soil, or other substrate;

- (3) Presence of fish, wildlife, and other non-target organisms; and
 - (4) Drainage patterns;
- (e) Pesticides, including factors such as the following:
 - (1) Types of pesticides;
 - (2) Types of formulations;
 - (3) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations;
 - (4) Hazards and residues associated with use;
 - (5) Factors that influence effectiveness or that lead to problems such as a resistance to pesticides; and
 - (6) Dilution procedures;
- (f) Equipment, including the following factors:
 - (1) Types of equipment and advantages and limitations of each type; and
 - (2) Uses, maintenance, and calibration;
- (g) Application techniques, including the following factors:
 - (1) Methods and procedures used to apply various formulations of pesticides, solutions and gases, together with a knowledge of which technique of application to use in a given situation;
 - (2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - (3) Prevention of drift and pesticide loss into the environment; and
- (h) All applicable District and federal laws and regulations.

2304.5 In order to be certified in a particular category(ies) or subcategory(ies), commercial applicators shall demonstrate qualification in their respective category(ies) or subcategory(ies) according to the practical knowledge standards specified in §§ 2304.6 through 2304.13.

- 2304.6 Ornamental and Turf Pest Control - applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, plantings, shrubs, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators shall be knowledgeable about the various application methods that will minimize or prevent hazards to humans, pets, and other domestic animals.
- 2304.7 Aquatic Pest Control - applicators shall demonstrate practical knowledge of the secondary effects that can be caused by improper application rates, incorrect formulations, and faulty application of restricted-use pesticides used in this category. Applicators shall demonstrate practical knowledge of various water use situations and the potential of down-stream effects. Further, applicators shall have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.
- 2304.8 Right-of-Way Pest Control - applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-ways can traverse many different terrains, including waterways. These applicators shall demonstrate practical knowledge of problems of runoff, drift, and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the rights-of-way area, and the impact of their application activities in the adjacent areas and communities.
- 2304.9 Industrial, Institutional, Structural, and Health Related Pest Control - applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat, and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators shall demonstrate a practical knowledge of the specific factors that may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applications, applicators shall also demonstrate practical knowledge of environmental conditions that are particularly related to this activity.
- 2304.10 Public Health Pest Control - applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that these be known and recognized, and that appropriate life cycles and habitats be understood as a basis for a control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in

buildings. They also should have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal, and drainage.

2304.11 Regulatory Pest Control - applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

2304.12 Demonstration and Research Pest Control - persons demonstrating the safe and effective use of pesticides to other applicators and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration; and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, applicators shall demonstrate an understanding of pesticide-organism interactions, and the importance of integrating pesticide use with other control methods. In general, it shall be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in § 2304.4 of this section. In addition, applicators shall meet the specific standards required for the categories listed as §§ 2304.6 through 2304.9 as may be applicable to their particular activity.

2304.13 Miscellaneous Pest Control - applicators shall demonstrate a practical knowledge of the type of pest(s) and pesticide(s) problems as it relates to a particular type of pest control activity. If appropriate, the applicator may be required to demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application, potential effects on the environment, and principles of limited area application. The District Department of the Environment shall specify a specific subcategory pertaining to the applicant's request for certification.

2305 COMMERCIAL APPLICATORS: CERTIFICATION AND LICENSING

2305.1 The District Department of the Environment (Department) shall issue an applicant a certification and the appropriate credentials, after an applicant performs the following actions:

- (a) Submits proof of competency; and
- (b) Submits a completed application for an applicator's license.

- 2305.2 A license shall be valid only when accompanied by a current pesticide applicator's certification issued by the Department.
- 2305.3 Each certification and license shall contain the names of both the applicant and the employing pesticide operator and shall specify the category(ies) or subcategory(ies) of pest control activity in which the applicant has demonstrated and maintained competency.
- 2305.4 No applicator shall be employed by more than one (1) pesticide operator unless the applicator has a separate certification for each employer.
- 2305.5 A licensed certified applicator terminating employment within a licensing period shall submit his or her certification and credentials to the employing pesticide operator.
- 2305.6 Within ten (10) working days after a licensed certified applicator terminating employment within a licensing period submits his or her certification and credentials to the employing pesticide operator, the pesticide operator shall:
- (a) Notify the Department in writing of the termination of the licensed certified applicator's employment; and
 - (b) Return the certification and credentials of the employee to the Department for cancellation.
- 2305.7 A licensed certified applicator whose employment has terminated within a licensing period may, after becoming employed by another pesticide operator and after new application and payment of the appropriate certification fees, be issued a new certification and appropriate credentials.
- 2305.8 Any applicant who has successfully completed the requirements for certification, but who does not complete the licensing requirement within one (1) year from the date of certification, shall lose certification and may re-qualify for certification only by passing the relevant qualifying examinations for the category(ies) or subcategory(ies) in which the applicant seeks certification.
- 2305.9 Any licensed certified applicator who has not renewed his or her certification within one (1) year from the date certification expires shall be considered as a new applicant.
- 2305.10 Any applicator whose license has been revoked, or whose license has lapsed, shall re-qualify for certification and licensing only by passing the relevant qualifying examinations for the category(ies) or subcategory(ies) in which they seek certification.

2305.11 An applicator may maintain his or her certification by putting it on inactive status. To maintain a certification in inactive status, the applicator shall notify the Department of the change in status and maintain recertification credits in accordance with the provisions of this chapter.

2306 COMMERCIAL APPLICATORS: CERTIFICATION AND LICENSING RENEWAL

2306.1 Beginning January 1, 2016, a licensed certified applicator shall renew his or her certification and license every year.

2306.2 Beginning January 1, 2016, an applicant for certification renewal shall be required to present documentation indicating satisfactory completion within the year of a minimum of one (1) refresher training course approved by the District Department of the Environment (Department) and pertinent to the applicator's competency, including training on integrated pest management principles or other least-toxic pest management practices.

2306.3 Refresher courses meeting the requirements of § 2306.2 may be in the form of educational courses, programs, seminars, or workshops.

2306.4 To renew certification, the refresher course shall be combined with a history of satisfactory performance as a certified applicator.

2306.5 If the Department determines after consultation with the EPA or other qualified professionals in the field of pest control that a significant change in technology has occurred and that additional training is vital for the protection of the environment, the Department may require that an applicator take an examination prior to the issuance of the renewed certification.

2307 PRIVATE APPLICATORS: CERTIFICATION AND LICENSING

2307.1 Each applicant shall notify the District Department of the Environment (Department), in writing, of reasons for requesting private applicator certification.

2307.2 An applicant's written notification shall include the following information:

- (a) The name of the restricted pesticide;
- (b) The intended use of the pesticide; and
- (c) The address of the site where the pesticide will be applied.

2307.3 If the notification is accepted by the Department, the applicant may then apply for certification pursuant to § 2308 of this chapter.

2307.4 The Department shall issue an applicant a certification and the appropriate credentials, after the applicant performs the following actions:

- (a) Submits proof of competency; and
- (b) Submits a completed application for an applicator's license.

2307.5 Beginning January 1, 2016, a private applicator shall renew his or her certification every two (2) years by presenting documentation indicating satisfactory completion of a minimum of one (1) refresher training course meeting the requirements of §§ 2306.2 or 2306.3, combined with a history of satisfactory performance.

2307.6 A license shall be valid only when accompanied by a current pesticide applicator's certification issued by the Department.

2308 PRIVATE APPLICATORS: DETERMINATION OF COMPETENCY

2308.1 Each applicant shall demonstrate proof of practical and scientific knowledge of pest control by:

- (a) Passing an examination that meets the requirements outlined in § 2309; and
- (b) Performing a labeling exercise pertinent to the restricted use product or products for which certification is requested.

2308.2 A passing score for any examination shall consist of a total correct score equal to or exceeding seventy percent (70%) of the total points on the examination as graded by the District Department of the Environment (Department).

2308.3 The Department shall notify in writing each applicant who takes an examination of the results of the examination on a pass-fail basis.

2308.4 The Department shall notify in writing each applicant who successfully completes the requirements for certification for the product or products for which competency has been demonstrated.

2308.5 Certification of private applicators shall be limited to specified uses of a single product or related products having the same active ingredient formulation and uses.

2308.6 Each applicator shall be authorized to use only the pesticide or pesticides for which competency has been demonstrated.

2308.7 The Department may amend a certification to include additional products if the private applicator fulfills the testing requirement of § 2309 for the additional products.

2308.8 Any applicator who has any part of his or her certification revoked shall re-qualify for certification only by fulfilling the testing requirement of § 2309.

2309 PRIVATE APPLICATORS: STANDARDS FOR DETERMINATION OF COMPETENCY

2309.1 The District Department of the Environment (Department) shall determine competency in the use and handling of pesticides by a private applicator by procedures set forth in this section.

2309.2 As a minimum requirement for certification, a private applicator shall show that he or she possesses a practical knowledge of the following:

- (a) The pest problems and pest control practices associated with the agricultural operations, proper storage, use, handling, and disposal of the pesticides and containers with which the applicator will be involved;
- (b) The principles of integrated pest management; and
- (c) The legal responsibilities related to the applicator's job.

2309.3 An applicator's practical knowledge shall be evaluated according to his or her ability to:

- (a) Recognize common pests to be controlled and the damage caused by these pests;
- (b) Read and understand the label and labeling information, including the common name of pesticides the applicator applies, the pest or pests to be controlled, the timing and methods of applications, the safety precautions, the pre-harvest or reentry restrictions, and any specific disposal procedures;
- (c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as the area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;
- (d) Recognize local environmental situations that must be considered during an application in order to avoid contamination; and
- (e) Recognize poisoning symptoms and know procedures to follow in case of a pesticide accident.

2309.4 The Department may verify the competence of each private applicator through the administration of a private applicator certification system that ensures that the

private applicator is competent, based upon the standards set forth in this section, to use the restricted-use pesticides under limitations of applicable District and federal laws and regulations.

- 2309.5 The certification system specified in § 2309.4 shall employ a written demonstration of competence or any other equivalent system as may be adopted by the Department subject to the approval of the Environmental Protection Agency.

2310 GOVERNMENT AGENCIES AND PUBLIC APPLICATORS

- 2310.1 Except as otherwise provided, all District and other governmental agencies shall be subject to the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Official Code §§ 8-401 *et seq.*), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

- 2310.2 The District Department of the Environment shall issue a certification to each qualified public applicator pursuant to the standards for certification of commercial applicators set forth in this chapter.

- 2310.3 No fee shall be charged for the issuance of a public applicator certification or license to an employee of the District or any federal governmental agency.

- 2310.4 A public applicator license shall be valid only when the licensee is engaged by his or her employing agency as an applicator to use or supervise the use of pesticides on land or other property owned or rented by the agency, or is acting within the scope of his or her employment.

- 2310.5 A District and federal governmental agency employing pesticide applicators shall not be subject to the requirements of § 2402.

2311 REGISTRATION OF TECHNICIANS

- 2311.1 Except for persons who are exempt from certification requirements under § 2300.7, only those persons certified under the Pesticide Operation Regulations, Chapters 22 through 25 of this title, may apply pesticides in the District of Columbia unless they are registered with the District Department of the Environment (Department) pursuant to this section and acting under the direct supervision of a licensed certified commercial or public applicator.

- 2311.2 No pesticide operator required to be licensed in the District of Columbia pursuant to the Pesticide Operation Regulations, Chapters 22 through 25 of this title, shall permit the use of any pesticide by any technician unless that technician is registered with the Department pursuant to this section and under the direct supervision of a licensed certified commercial or public applicator pursuant to the requirements in § 2312.

- 2311.3 Application for registration of each technician shall be made within thirty (30) days after the first date of employment.
- 2311.4 Application for registration shall be made in writing on a form prescribed by the Department.
- 2311.5 Prior to approval by the Department as a registered technician, an individual shall receive a passing score on the general core examination as provided for in §§ 2303.6(a) and 2303.7.
- 2311.6 Upon approval, the Department shall issue an identification card to each registered technician.
- 2311.7 A registered technician shall carry, or have reasonably available nearby, his or her identification card during all working hours and shall display it upon request.
- 2311.8 Registration under this section shall be valid for three (3) years from the date of issuance of the registration card.
- 2311.9 In order to renew his or her registration, a registered technician shall be required to:
- (a) Present documentation indicating satisfactory completion within the year of a minimum of one (1) refresher training course approved by the Department and pertinent to the employee's competency;
 - (b) Demonstrate a history of satisfactory performance; and
 - (c) If the Department determines after consultation with the EPA and other qualified professionals in the field of pest control that a significant change in technology has occurred and that additional training is vital for the protection of the environment, the Department may require that the registered technician take an examination prior to the issuance of the renewed registration.
- 2311.10 Upon completion of any three (3) year term as a registered technician, the individual shall apply for certification in a category pursuant to § 2303 of this chapter. The individual shall sit for a category examination. If a passing score is achieved, the individual shall be certified as an applicator in that category. If a passing score is not achieved, the individual may remain a registered technician for an additional three (3) year term.
- 2311.11 A registered technician can only renew his or her registration for one additional three (3) year term. If at the end of this additional term the registered technician does not apply for and achieve certification in a category pursuant to § 2303 of these regulations, the technician may no longer remain a registered technician.

2311.12 The pesticide operator shall pay an annual fee for each registered technician in the amount specified in § 2520.

2311.13 The pesticide operator shall give the Department written notice of the termination of the employment of a registered technician within thirty (30) days of the termination and shall return the employee's identification card to the Department with the written notice of termination.

2312 SUPERVISION OF REGISTERED TECHNICIANS

2312.1 A registered technician shall apply pesticides under the direct supervision of a licensed certified applicator whose certification permits the application.

2312.2 A registered technician working under direct supervision shall meet the following requirements:

- (a) Be able to read and comprehend written instructions, including the text of pesticide labeling;
- (b) Be capable of properly handling and applying a given pesticide to the satisfaction of the supervising licensed certified applicator; and
- (c) Be able to carry out assignments and instructions in a responsible manner.

2312.3 Direct supervision shall include, but is not necessarily limited to, the requirements set forth in §§ 2312.4 and 2312.5.

2312.4 If the label of the pesticide being applied so stipulates, direct supervision shall be defined as the physical presence of a supervising licensed certified applicator.

2312.5 Unless the pesticide label indicates otherwise, in the absence of the supervising licensed certified applicator, direct supervision may be provided by clearly legible written or electronic verifiable instructions or directions at a location at which pesticides are handled, mixed, stored, disposed, applied, or used. The instructions shall specify the following information:

- (a) How to handle and apply the pesticide;
- (b) The precautions to be taken to prevent injury to the applicator, other persons, and the environment; and
- (c) How to contact the supervising licensed certified applicator under whose supervision the registered technician is working. The technician shall have direct voice contact with the supervising licensed certified applicator if needed.

- 2312.6 The pesticide label shall be a part of the instructions required by § 2312.5, and may suffice in those matters that it addresses.
- 2312.7 Ultimate responsibility for the application of pesticides by registered technicians shall remain with the supervising licensed certified applicator.
- 2312.8 The supervising licensed certified applicator shall instruct the registered technician in all directions for use and of cautions necessary for the safe use and application of any pesticide the technician may be directed to use.
- 2312.9 The supervising licensed certified applicator is responsible for understanding and complying with the provisions of this section.
- 2312.10 The availability of the supervising licensed certified applicator shall be directly related to the hazard of the situation, and as provided in §§ 2312.4 and 2312.5.

2313 PROTECTION OF PESTICIDE HANDLERS AND APPLICATORS

- 2313.1 Each applicator required to be licensed under this chapter shall acquaint those working under his or her direct supervision with the hazards involved in the use of pesticides generally and specific hazards set forth on the labeling of the pesticides to be used, and instruct the employees on the proper steps to avoid these hazards.
- 2313.2 Each applicator required to be licensed under this chapter shall provide the necessary safety equipment and protective clothing for the protection of all employees under his or her supervision as set forth on the pesticide labeling.
- 2313.3 Each applicator required to be licensed under this chapter shall inform those working under his or her direct supervision of any appropriate reentry requirements, and to provide the necessary protective clothing or apparatus if premature reentry is necessary.
- 2313.4 If the applicator is not the owner or manager, the pesticide operator shall have ultimate responsibility for providing safety equipment and protective clothing.

2314 RECIPROCITY OF CERTIFICATION

- 2314.1 The District Department of the Environment (Department) may certify a nonresident of the District of Columbia who is certified by a state under a certification plan that has been approved by the Environmental Protection Agency Administrator and that is substantially in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title, provided that the state has a reciprocity provision granting similar accommodation to applicators certified by the District.

- 2314.2 The Department may waive all or part of any applicator certification examination required by the Pesticide Operation Regulations, Chapters 22 through 25 of this title. Grounds for waiver include when a commercial applicator or registered technician is certified under the state plan of another state granting similar accommodations to applicators licensed and certified by the District of Columbia, and the certifying state's plan has been approved by the Environmental Protection Agency Administrator and is substantially in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.
- 2314.3 The Department shall suspend or revoke certifications issued pursuant to this section in the same manner and on the same grounds as other certifications issued pursuant to the provisions of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, or upon suspension or revocation of the applicator's or registered technician's certification by the state issuing the applicator's original certification.
- 2314.4 An applicant for a waiver of all or part of any certification shall furnish to the Department a copy of the applicant's credentials at the time of application. The applicant shall comply with all other requirements of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2399 DEFINITIONS

- 2399.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

CHAPTER 24 PESTICIDE OPERATORS AND DEALERS

2400 GENERAL PROVISIONS

- 2400.1 No person shall act in the capacity of a pesticide operator, or advertise as, or assume to act as a pesticide operator, at any time unless the person is certified and licensed by the District Department of the Environment (Department) in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.
- 2400.2 No person shall apply for a pesticide operator license unless the applicant is certified as a pesticide operator.
- 2400.3 Application for a pesticide operator's license shall be made in writing on a form prescribed by the Department.

- 2400.4 No licensed certified pesticide operator shall permit the use of any pesticide, including any restricted-use pesticide, by any person who is not:
- (a) A licensed certified applicator in the category in which the application is made; or
 - (b) A registered technician of the pesticide operator acting under the direct supervision of a pesticide applicator certified and licensed in that category.
- 2400.5 A pesticide operator shall apply to the Department for a separate certification and license for each place of business providing services involving the use of pesticides or devices or performing other pest control activities in the District for the control, eradication, mitigation, or prevention of pests either entirely or as part of the business, in accordance with the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.
- 2400.6 The certification and license issued to a pesticide operator is not transferable and shall remain with the person to whom it is issued.
- 2400.7 Within ten (10) days of termination of business, the operator shall submit the operator's certification and license to the Department for cancellation.
- 2400.8 A pesticide operator shall notify the Department in writing of any change of address within thirty (30) days of the change.
- 2400.9 The following types of persons shall not be required to obtain a pesticide operator's certification or license:
- (a) A person conducting laboratory-type research involving restricted-use pesticides;
 - (b) A doctor of medicine or doctor of veterinary medicine applying pesticides as drugs during the course of normal practice;
 - (c) A registered technician while working under the direct supervision of a licensed certified applicator; or
 - (d) A person applying any pesticide that is not a restricted-use pesticide on his or her own premises, or an employee of that person who applies any pesticide that is not a restricted-use pesticide on the person's premises.
- 2400.10 All certifications and licenses granted pursuant to this chapter shall be posted conspicuously on the premises of the pesticide operator.

2401 PESTICIDE OPERATORS: CERTIFICATION AND LICENSING

- 2401.1 Application for a pesticide operator's certification shall be made in writing on a form prescribed by the District Department of the Environment (Department).
- 2401.2 Each application for a pesticide operator's certification shall contain the following information:
- (a) Data about the applicant's proposed operations;
 - (b) The certification category or categories applied for;
 - (c) The full name of the person applying for the certification;
 - (d) The full name of each principle member of the entity, if the applicant is a person other than an individual;
 - (e) The address of the person applying for a pesticide operator certification;
 - (f) A certificate of liability insurance as required by § 2402 of this chapter;
 - (g) Designation of those individuals who are certified in each category in which the operator will engage; and
 - (h) Any other information as the Department may prescribe.
- 2401.3 Each pesticide operator's certification shall specify the category(ies) or subcategory(ies) of pest control activity in which the business may lawfully engage.
- 2401.4 The Department shall issue an applicant a pesticide operator certification and the appropriate credentials, after the applicant performs the following actions:
- (a) Submits proof of certification; and
 - (b) Submits a completed application for a pesticide operator's license.
- 2401.5 The pesticide operator's license shall be valid only when accompanied by a current pesticide operator's certification issued by the Department.
- 2401.6 A licensed certified operator that elects to add or delete one (1) or more categories or subcategories from an existing certification shall notify the Department in writing of the proposed changes to the current certification.
- 2401.7 A pesticide operator shall immediately notify the Department when the operator no longer employs a licensed certified applicator in any of the categories for which the

operator is certified.

- (a) The certification shall not be affected for ten (10) days after such notification, during which time the operator shall designate another licensed certified applicator;
- (b) In response to a written request from the operator, the Department may extend the ten (10) day grace period to up to thirty (30) days; and
- (c) During the grace period, restricted-use pesticides may not be used without an applicator certified and licensed in the appropriate category.

2402 PESTICIDE OPERATORS: LIABILITY INSURANCE

- 2402.1 The District Department of the Environment (Department) shall only issue a pesticide operator's license when the applicant has provided proof of liability insurance for the protection of persons who may suffer damages as a result of the operations of the applicant. Proof of liability insurance shall be provided on a form prescribed by the Department.
- 2402.2 The insurer of a pesticide operator shall notify the Department in writing at least ten (10) days before the effective date of cancellation, if a certified operator's policy is to be canceled.
- 2402.3 Each pesticide operator shall inform its insurer of the requirement to notify the Department of policy cancellation as provided by § 2402.2.
- 2402.4 Each pesticide operator shall keep its liability insurance in full force and effect as long as pesticide operations continue.
- 2402.5 Pesticide operators shall maintain liability insurance against bodily injury and property damage in amounts not less than the following:
 - (a) For bodily injury: \$100,000 each person, \$300,000 each occurrence; and
 - (b) For property damage: \$15,000 each occurrence, \$30,000 annual aggregate provision.

2403 PESTICIDE DEALERS: LICENSING

- 2403.1 Except as provided in § 2403.8, any person who distributes restricted-use pesticides to the ultimate user in the District of Columbia shall obtain a pesticide dealer's license from the District Department of the Environment (Department).
- 2403.2 Each manufacturer, registrant, or distributor whose restricted-use pesticide products are distributed or who distributes restricted-use pesticide products in the District

and who has no pesticide dealer outlet licensed within the District, shall obtain a pesticide dealer's license from the Department for the manufacturer, registrant, or distributor's principal out-of-state location or outlet.

- 2403.3 Each applicant for a pesticide dealer's license shall apply in writing on a form prescribed by the Department.
- 2403.4 The Department shall not issue a pesticide dealer's license unless an applicant has submitted a completed application as specified in § 2403.3 and paid the fee set forth in § 2520.
- 2403.5 Each applicant for a pesticide dealer's license shall pay an annual fee to the Department in the amount specified in § 2520.
- 2403.6 A pesticide dealer shall be liable for the acts of each of the dealer's employees in the marketing and sale of restricted-use pesticides and for all claims and recommendations for the use of restricted-use pesticides.
- 2403.7 A pesticide dealer shall not sell or transfer any restricted-use pesticide to any person other than a certified and licensed applicator or the certified and licensed applicator's authorized representative presenting the applicator's proof of certification.
- 2403.8 The provisions of this section shall not apply to a certified and licensed pesticide operator who sells restricted-use pesticides only as an integral part of the pesticide operator's pesticide application service or to any District or other governmental agency that provides pesticides only for its own programs.

2499 DEFINITIONS

- 2499.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

CHAPTER 25 PESTICIDE USE ENFORCEMENT AND ADMINISTRATION

2500 GENERAL ADMINISTRATIVE AND ENFORCEMENT AUTHORITY

- 2500.1 This chapter applies to the administration and enforcement of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), and of the rules promulgated to carry out the provisions of the Act, set forth in Title 20, Chapters 22 through 25 of the District of Columbia Municipal Regulations.
- 2500.2 The District Department of the Environment may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government or the District, or with any agency of a state, to obtain assistance in the implementation

of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*); the Pesticide Operation Regulations, Chapters 22 through 25 of this title; or in the enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2501 RIGHT OF ENTRY, INSPECTION, SAMPLING, AND OBSERVATION

2501.1 For the purposes of carrying out and enforcing the law and rules described in § 2500.1, the District Department of the Environment (Department) shall have the right, upon presentation of appropriate credentials, to enter, inspect, sample, and observe, without delay, subject to § 2501.3, any place or vehicle where:

- (a) There is present any pesticide, or any pesticide device, container, product, apparatus, or equipment that is stored, disposed of, used or intended for use in pest control activity, pesticide manufacture, or pesticide storage;
- (b) The Department has reason to believe that pest control activity is being conducted, has been conducted, or will be conducted; or
- (c) In the case of a vehicle, if:
 - (1) If it is marked as a pesticide application vehicle; or
 - (2) The Department has other reason to believe that the vehicle is involved in pest control activity.

2501.2 Appropriate credentials for making an inspection shall include:

- (a) A duly issued photo identification card or badge showing the name of the inspector and proof of employment with the Department; or
- (b) A notice of inspection issued by the Department.

2501.3 Entry by the Department may be made, with or without prior notice, as follows:

- (a) At any time, in emergency situations, or where there is a potential immediate threat to public health, safety, or welfare, or the environment; and
- (b) At any reasonable time in non-emergency situations. The following times shall be deemed reasonable for purposes of entry:
 - (1) Between the hours of 7:30 a.m. and 6:00 p.m. on weekdays;
 - (2) Any hours during which the place is open for business or operation; or

- (3) In the case of a vehicle, any time the vehicle is being used in the course of business or operations, or any time the Department has reason to believe the vehicle is, has been, or will be involved in pest control activity.

2501.4 If a person denies access to any place or vehicle to the Department acting pursuant to the authority in the law and rules described in § 2500.1, the Department may apply for a search warrant in a court of competent jurisdiction, in addition to other actions authorized by law and regulations.

2502 ENTRY FOR INSPECTION, SAMPLING, AND OBSERVATION

2502.1 Upon entry, the District Department of the Environment (Department) may do any of the following:

- (a) Inspect the place or vehicle where the pesticide, pesticide equipment, or device is located, or will be located; any areas involved in pesticide control activity; and any surrounding areas that may be impacted;
- (b) Inspect and obtain samples of any pesticide or pesticide equipment or device used in handling, transporting, applying, storing, or disposing of the pesticide, pesticide equipment or device;
- (c) Inspect and copy or print out any record, including electronic records, reports, tapes, test results, or other documents or information relating to the purpose of the laws and rules described in § 2500.1; or
- (d) Conduct interviews and obtain photographs, recordings, videos, or electronic documentation relating to the purpose of the law and regulations described in § 2500.1.

2502.2 If the Department obtains any samples from the premises or the vehicle, the Department shall give the owner, applicator, dealer, operator, supervisor, or agent in charge a receipt that describes the samples obtained, and if requested, a portion of each sample equal in volume or weight to the portion obtained.

2502.3 In addition to the information required to be produced during an inspection pursuant to § 2502.1, the Department may require in writing that an owner, applicator, dealer, operator, supervisor, technician, employee, or any other person involved in the activity being investigated, respond to specific questions or provide other information with respect to any of the pesticides, pesticide equipment or devices, or pesticide control activity as may be necessary to determine compliance with the law and rules described in § 2500.1.

- 2502.4 When the Department makes a written request for any document, response to specific questions, or other information pursuant to § 2502.3, the documents, responses, or other information shall be submitted to the Department within ten (10) days of receipt of the request, unless the Department specifies a different time period.
- 2502.5 The Department may require an owner, applicator, dealer, supervisor, operator, technician, employee, or any other person involved in an activity being investigated pursuant to § 2502.1 to take any necessary action to determine or facilitate compliance with the law and rules described in § 2500.1 or to protect public health, safety, or welfare, or the environment.
- 2502.6 When requiring action under § 2502.5, the Department may issue a field notice or directive letter that shall advise the recipient of the action the person is required to take and state the time period within which the action must be performed.
- 2502.7 Notwithstanding § 2502.6, the Department may give an oral directive to take immediate action to mitigate any hazard from any application, spill, release, or other pesticide control activity where there is potential serious danger to public health, safety, or welfare, or the environment; provided, that the Department shall, as soon thereafter as practicable, issue a written directive incorporating the contents of the oral directive.
- 2502.8 When a pesticide, pesticide device, equipment, or pesticide control activity poses an imminent threat to public health, safety, welfare, or the environment, the Department may post notice of the threat on the property and restrict access. The posting shall provide the public with notice that a dangerous condition exists and restrict entry, and the Department may prohibit the owner, applicator, dealer, operator, supervisor, technician, or employee from removing or handling the pesticide, pesticide device, or equipment, or from continuing the pesticide control activity until the Department has determined that the threat no longer exists.

2503 ENTRY FOR RESPONSIVE OR CORRECTIVE ACTION

- 2503.1 Pursuant to the Brownfields Revitalization Amendment Act of 2000, effective April 8, 2011 (D.C. Law 18-369; D.C. Official Code §§ 8-631 *et seq.*), in the event of an application, spill, or release of a pesticide, or an alleged or threatened violation of the law and rules described in § 2500.1, the District Department of the Environment (Department) may, under the following circumstances, enter any place or vehicle to perform, or cause to be performed, any responsive or corrective action necessary to protect public health, safety, or welfare, or the environment:
- (a) In a situation that requires immediate action by the Department to protect public health, safety, welfare, or the environment; or

- (b) Where the person responsible for the application, spill, release or alleged violation has failed or refused to comply with an administrative or court order requiring responsive or corrective action.

2503.2 Except as provided in § 2503.3, the Department shall provide notice in writing of the Department's intent to enter the premises or vehicle to take responsive or corrective action to the owner, applicator, dealer, operator, supervisor, employee, or agent in charge at least seven (7) days before commencing work, and shall serve the notice personally or by first class mail, or where such service cannot be accomplished, by publication or posting.

2503.3 When an application, spill, or release of a pesticide, or an alleged or threatened violation of the law and rules described in § 2500.1, creates an imminent threat to public health, safety, or welfare, or the environment necessitating response or corrective action, and the emergency nature of the situation makes it impractical to give prior notice as described in § 2503.2, the Department may provide notice by conspicuously posting the notice on the property at the earliest time feasible, before commencing work.

2504 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

2504.1 With respect to a matter governed by the Pesticide Operation Regulations, Chapters 22 through 25 of this title, a person adversely affected or aggrieved by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*), or OAH's successor.

2504.2 The Department may pursue administrative enforcement actions through:

- (a) Warning notices;
- (b) Field notices or directive letters;
- (c) Stop sale, use, or removal orders;
- (d) Notices of violation;
- (e) Compliance orders;
- (f) Notices of violation combined with an immediate compliance order or stop sale, use, or removal order;
- (g) Denial, suspension, or revocation of pesticide registration;

- (h) Denial, modification, suspension, or revocation of a license;
- (i) Notices of infraction;
- (j) DDOE internal notices of violation or notices of infraction; or
- (k) Any other order necessary to protect public health, safety, or welfare, or the environment.

2504.3 For the purposes of this chapter, a DDOE internal notice of violation or notice of infraction:

- (a) Shall not be an action of the Department that a person may appeal to OAH, except as stated in § 2504.4(b);
- (b) Shall be responded to within fifteen (15) calendar days of service of the notice, including a written statement containing the grounds, if any, for opposition; and
- (c) Shall not waive compliance or toll any period of fine or penalty.

2504.4 If a person fails to agree to or settle an internal notice of infraction or otherwise denies a claim stated in an internal notice of infraction:

- (a) The Department may cancel the internal notice of infraction and file a notice of infraction for adjudication with OAH; or
- (b) The person may request adjudication by OAH.

2504.5 A person aggrieved by an action of the Department shall file a written appeal with OAH within the following time period:

- (a) Within fifteen (15) calendar days of service of the notice of the action; or
- (b) Another period of time stated specifically in the section for an identified Department action.

2504.6 Notwithstanding another provision of this section, the Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

2504.7 OAH shall:

- (a) Resolve an appeal or a notice of infraction by:

- (1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;
 - (2) Remanding for Department action or further proceedings, consistent with OAH's order; or
 - (3) Providing such other relief as the governing statutes, regulations and rules support;
- (b) Act with the same jurisdiction, power, and authority as the Department may have for the matter currently before OAH; and
 - (c) By its final decision render a final agency action which will be subject to judicial review.

2504.8 The filing of an administrative appeal shall not in itself stay enforcement of an action; except that a person may request a stay according to the rules of OAH.

2504.9 The burden of proof in an appeal of an action of the Department shall be allocated to the person who appeals the action, except the Department shall bear the ultimate burden of proof for any action it takes that denies a personal, property, or other right.

2504.10 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

- (a) To the Department when a party challenges the Department's denial, suspension, modification, or revocation of a:
 - (1) Pesticide registration;
 - (2) Certification or license; or
 - (3) Other right;
- (b) To the party who asserts an affirmative defense; and
- (c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

2504.11 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

- 2504.12 Judicial review of a final OAH decision shall not be *de novo*, but shall be a review of the administrative record alone and shall not duplicate agency proceedings or consider additional evidence.
- 2504.13 Nothing in this chapter shall be interpreted to:
- (a) Provide that a filing of a petition for judicial review stays enforcement of an action; or
 - (b) Prohibit a person from requesting a stay according to the rules of the court.
- 2505 WARNING NOTICES; FIELD NOTICES OR DIRECTIVE LETTERS; STOP SALE, USE, OR REMOVAL ORDERS; NOTICES OF VIOLATION**
- 2505.1 A warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation shall identify the alleged violation or threatened violation and may require the respondent to conduct monitoring or testing, or to take any responsive or corrective measures the District Department of the Environment (Department) determines reasonable and necessary.
- 2505.2 A warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation shall make clear the basis for the notice and that the respondent's failure to take the measures directed will constitute an additional violation of the pertinent statute or regulation.
- 2505.3 The Department shall serve a warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation on the respondent or the respondent's authorized representative in person or in a manner likely to insure receipt, including first class mail, fax with return receipt, email with return read receipt, or hand-delivery with certification of service.
- (a) The Department shall send the notice to the last known address listed on the person's application for certification or other official correspondence submitted to the Department; and
 - (b) The Department shall verify the accuracy of the address.
- 2505.4 After receipt of a stop sale, use, or removal order issued by the Department, no person shall sell, use, or remove the pesticide or device described in the order, except in accordance with the provisions of the order.
- 2505.5 When any pesticide, pesticide application, or pest control activity poses a threat to public health, safety, welfare, or the environment, and the responsible person, or the address of the responsible person, is unknown or cannot be located, the Department may serve written notice by conspicuously posting the notice on the property where

the threat exists and sending a copy to the owner of the property at the owner's last known address.

2506 COMPLIANCE ORDER

2506.1 The District Department of the Environment may issue a compliance order if the respondent upon whom a warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation has been served fails to comply with any actions required in the notice, pursuant to the Brownfields Revitalization Amendment Act of 2000, effective April 8, 2011, as amended (D.C. Law 18-369; D.C. Official Code §§ 8-631 *et seq.*)).

2506.2 A compliance order shall:

- (a) Include a statement of the facts and nature of the alleged violation;
- (b) Allow a reasonable time for compliance with the order, consistent with the likelihood of any harm and the need to protect public health, safety, or welfare, or the environment;
- (c) Advise the respondent that the respondent has the right to request an administrative hearing and, at the respondent's expense, the right to legal representation at the hearing;
- (d) Inform the respondent of any scheduled hearing date, or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the compliance order or failure to request a hearing;
- (e) State the action that the respondent is required to take, or the activity or activities that the respondent is required to cease to comply with the order; and
- (f) State that civil infraction fines, penalties, or costs may be assessed for failure to comply with the order.

2506.3 A compliance order shall state that the respondent is required to file a written answer to the compliance order, the time within which to respond, and the form of responses required.

2507 DENIAL, SUSPENSION, MODIFICATION, AND REVOCATION OF CERTIFICATION AND LICENSE

2507.1 The District Department of the Environment (Department) shall initiate an action denying, suspending, modifying, or revoking a certification or license by issuing a notice of denial, suspension, modification, or revocation.

- 2507.2 Except as provided in § 2507.5, the notice of proposed denial, suspension, modification, or revocation shall be in writing, and shall include the following:
- (a) The name and address of the holder of the license;
 - (b) A statement of the action or proposed action and the effective or proposed effective date and duration of the denial, suspension, modification, or revocation;
 - (c) The grounds upon which the Department is proposing to deny, suspend, modify, or revoke the certification or license;
 - (d) Notice that the respondent has a right to request an administrative hearing before the District of Columbia Office of Administrative Hearings (OAH), in accordance with Rules of Practice and Procedure of OAH set forth in Chapter 28 of Title 1 of the District of Columbia Municipal Regulations;
 - (e) A statement that the respondent has the right, at the respondent's expense, to legal representation at the hearing; and
 - (f) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.
- 2507.3 The Department may issue a notice of denial, suspension, modification, or revocation:
- (a) To protect the public health, safety, welfare, or the environment;
 - (b) If the applicant or license holder is in violation or threatened violation of the law and rules described in § 2500.1;
 - (c) If the applicant or license holder violates the provisions of § 2208 more than once in a calendar year in a manner that endangers human health or the environment, pursuant to D.C. Official Code § 8-418(b);
 - (d) If the applicant or license holder has been convicted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or is subject to a final order imposing a civil penalty under FIFRA; or
 - (e) To correct an error in the terms and conditions of the certification or license.
- 2507.4 Pursuant to § 2504, the applicant or license holder shall have fifteen (15) calendar days from the date of service of the notice of denial, suspension, modification, or revocation to request a hearing with OAH to show cause why the certification or license should not be denied, revoked, modified, or suspended.

- 2507.5 The Department may immediately suspend a certification or license to protect the public health, safety, or welfare, or the environment. The suspension shall be immediately effective pending further investigation.
- 2507.6 The Department may serve a notice of modification, suspension, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.
- 2507.7 The Department shall not reissue a certification or license to any person whose certification and license has been revoked until after at least one hundred eighty (180) days following the revocation.
- 2507.8 The Department shall not reissue a certification or license to any person whose license has been revoked until the applicant has been recertified in accordance with the recertification provisions contained in Chapter 23 (Pesticide Applicators).
- 2507.9 An appeal to OAH pursuant to this section shall be subject to the requirements of § 2504.

2508 CONDEMNATION PROCEEDINGS

- 2508.1 In addition to the enforcement actions set forth in this chapter, the District Department of the Environment may seize for confiscation by a process *in rem* for condemnation, any pesticide, pesticide device or equipment that is being transported or, having been transported, remains unsold or in original unbroken packages, is being sold or offered for sale in the District of Columbia, or that is imported from a foreign country.
- 2508.2 Any pesticide device or equipment may be proceeded against as provided in this section if it is misbranded.
- 2508.3 A pesticide may be proceeded against as provided in this section under the following circumstances:
- (a) If it is adulterated or misbranded;
 - (b) If it is not registered pursuant to the provisions of the law and rules described in § 2500.1;
 - (c) If its labeling fails to bear the information required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
 - (d) If it is not colored or discolored, and the coloring or discoloring is required under FIFRA; or

- (e) If any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration.

2508.4 Any pesticide, pesticide device or equipment may be proceeded against as provided in this section even when used in accordance with the requirements imposed under the law and rules described in § 2500.1 and as directed by the labeling, if the pesticide, pesticide device or equipment causes unreasonable adverse effects on the environment.

2508.5 In the case of a plant regulator, defoliant, or desiccant that is used in accordance with the label claim and recommendations, physical or physiological effects on plants or parts of the plants shall not be deemed to be unreasonable adverse effects on the environment when the effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

2508.6 If the pesticide, pesticide device or equipment is condemned pursuant to this section, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct; and the proceeds, if sold, less the court costs, shall be paid into the District Treasury and credited to the general fund. A pesticide, pesticide device or equipment sold pursuant to this subsection shall not be sold in violation of the provisions of the law and rules described in § 2500.1, FIFRA, or the laws of the jurisdiction in which it is sold.

2508.7 Upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned upon assurances that the pesticide shall not be sold or otherwise disposed of contrary to the provisions of the law and rules described in § 2500.1, FIFRA, or the laws of any jurisdiction in which it is sold, the court may direct the pesticide, pesticide device or equipment to be delivered to the owner.

2508.8 The proceedings of condemnation cases shall conform, as nearly as possible, to the proceedings used for the condemnation of insanitary buildings under An Act to create a board for the condemnation of insanitary buildings in the District, and for other purposes, approved May 1, 1906, as amended, D.C. Official Code Title 6, Chapter 9.

2508.9 When a decree of condemnation is entered against the pesticide, pesticide device or equipment, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide, pesticide device or equipment.

2509 PENALTIES AND INJUNCTIVE RELIEF FOR FAILURE TO COMPLY WITH FINAL ADMINISTRATIVE ORDER

2509.1 The District Department of the Environment may seek a temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief in

any court of competent jurisdiction, or any administrative, civil, or criminal penalty, or other remedy authorized by the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*) or other legal authority, including for failure to comply with a final compliance order; stop sale, use, or removal order; or final modification, suspension, or revocation issued pursuant to this chapter.

2510 CIVIL INFRACTION FINES, PENALTIES, AND FEES PURSUANT TO THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS CIVIL INFRACTIONS ACT

2510.1 A person violating a provision of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), as amended, or the Pesticide Operation Regulations, Chapters 22 through 25 of this title, shall be fined according to the schedule set forth in Title 16 of the District of Columbia Municipal Regulations, or be imprisoned for not more than ninety (90) days, or both.

2510.2 Where civil infraction fines are the only penalties pursued in a particular case, the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*), and the regulations adopted thereunder govern the proceedings in lieu of this chapter, and where there is a violation, a notice of infraction may be issued without first issuing a notice of violation or threatened violation.

2511 JUDICIAL ACTION IN LIEU OF ADMINISTRATIVE ENFORCEMENT

2511.1 The District Department of the Environment may bring an action in Superior Court of the District of Columbia to enjoin the violation or threatened violation of any provision of the law or rules described in § 2500.1.

2512 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

2512.1 At any time after the issuance of a notice or order listed in § 2504.2, the parties to the proceeding may enter into a settlement agreement or consent compliance order.

2512.2 A settlement agreement or consent compliance order, including a consent compliance decree, shall set forth each of the agreements made, actions to be taken by the parties to the agreement, the dates by which any required actions must be undertaken or completed, and any agreed-upon fines, penalties, cost recovery, damages, attorney's fees, costs and expenses, interest, supplemental environmental project, or any other sanction or remedy authorized by law.

2512.3 A settlement agreement shall be effective when signed by the parties and shall not require the signature of an administrative law judge of the District of Columbia

Office of Administrative Hearings or a judge of a court of competent jurisdiction to become effective or to be filed in the case.

2512.4 A settlement agreement may be submitted to a court of competent jurisdiction for approval.

2512.5 The parties may enter into a consent compliance order with the approval of a court of competent jurisdiction.

2512.6 A consent compliance order shall be signed by the parties to the case and by the judge and shall have the force and effect of any judicial order.

2512.7 Unless the consent compliance order states otherwise, there shall be no right of appeal from a consent compliance order.

2513 COMPUTATION OF TIME

2513.1 Except as provided in § 2219.2, this section applies to all periods of time prescribed or allowed by the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2513.2 In computing any period of time measured in days or calendar days, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

2513.3 For any period of time that is measured in days or calendar days, the last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation, unless the period of time is measured in calendar days.

2513.4 Whenever a person has the right or the obligation to do some act within a prescribed period after the service of an order or other paper upon the person, and the order or other paper is served by United States mail or third party commercial carrier, five (5) days shall be added to the prescribed period, unless a statute provides otherwise.

2514 LICENSE RENEWAL

2514.1 The District Department of the Environment will mail each license holder an application for renewal of a license not less than thirty (30) days before the expiration of the current license period.

2514.2 Failure to receive an application to renew a license shall not relieve the license holder of his or her responsibility to renew any license and pay the appropriate fee.

2514.3 A person who fails to file a renewal application on or before the first day of any licensure period shall be subject to the late fee specified in § 2520.

2515 PESTICIDE EDUCATION REPORTING

2515.1 The University of the District of Columbia (University) shall prepare and submit a report to the Council on or before January, 1, 2015, assessing the effectiveness of the District's pesticide programs. The University shall prepare and submit a new report by January 1 of each subsequent calendar year assessing the effectiveness of the District's pesticide programs. The report shall include:

- (a) An assessment of attitudinal changes of District residents toward pesticide use;
- (b) An assessment of changes in the cost of pest management in the District; and
- (c) An assessment of changes in the number of pesticides registered and used in the District.

2516 RECORDKEEPING AND REPORTING REQUIREMENTS

2516.1 Any person applying pesticides, other than those excluded in § 2300.7(a), (b), or (d), shall maintain records containing the following information:

- (a) Name or identification of applicator;
- (b) Name of supervising certified applicator;
- (c) Address of treated property;
- (d) Date of application, including the month, day, and year;
- (e) Time of application;
- (f) Type of plant, animal, or structure treated and target pest;
- (g) Acreage, or number of plants or animals, or a description of or square or cubic footage of the structure treated;
- (h) Wind direction, estimated velocity, and weather conditions;
- (i) Pesticide applied (the name brand) and the type of formulation;
- (j) Classification of pesticide used, whether restricted-use, District restricted-use, or non-essential;

- (j) Dilution rate of the product as applied (the percent of active ingredient);
- (k) The amount of diluted material applied;
- (l) The type of equipment used; and
- (m) Environmental Protection Agency registration number of product used.

- 2516.2 Except as provided in § 2516.4, any person applying pesticides, other than those excluded in § 2300.7(a), (b), or (d) shall submit to the District Department of the Environment (Department) the records of pesticide applications to property in the District specified in § 2516.1.
- 2516.3 Each year, on or before February 1, an applicator or operator shall submit for each application performed during the previous year the records required to be maintained under § 2516.1 to the Department in a form prescribed by the Department.
- 2516.4 Applications of minimum-risk and reduced-risk pesticides are exempt from the reporting requirements of § 2516.2.
- 2516.5 Each person shall, upon written request from the Department, furnish the Department with copies of any requested records within 24 hours of the request.
- 2516.6 The records required in this chapter shall be subject to inspection by the Department in accordance with § 2501.3.
- 2516.7 Each licensee, permit holder, or certified applicator, shall immediately notify the Department in writing if there is any change in business ownership, name, address, or phone number.
- 2516.8 If an applicator or operator goes out of business, he or she shall immediately transfer all the pesticide application records in his or her possession to the Department.
- 2516.9 The pesticide operator shall file and maintain sales invoices provided to customers separately from the records required in § 2516.1, for a minimum of three (3) years.
- 2516.10 The applicator or operator shall provide the Department with written notification of any significant pesticide accidents or incidents within 24 hours of occurrence.
- 2516.11 The Department shall preserve the required records for not less than ten (10) years.
- 2517 RECORDS OF RESTRICTED-USE PESTICIDES**

- 2517.1 Dealers of restricted-use pesticides shall keep and maintain for a period of three (3) years records of each transaction involving restricted-use pesticides and shall then transfer the records to the District Department of the Environment.
- 2517.2 For each restricted-use pesticide transaction, the dealer is required to record the following information:
- (a) Name and address of purchaser or receiver, including name and license number of the licensed certified applicator;
 - (b) Pesticide product sold (the brand name), the Environmental Protection Agency registration number, and the type of formulation;
 - (c) Quantity; and
 - (d) The date of sale.

2518 PESTICIDE REGISTRATION FEES AND TERMS

- 2518.1 The registration for each pesticide registered pursuant to §§ 2202 and 2203 shall be issued for a period of one (1) year, beginning on January 1 and expiring on December 31.
- 2518.2 The annual registration fee for each pesticide shall be two hundred and fifty dollars (\$250), payable to the District Department of the Environment.
- 2518.3 If the renewal of a pesticide registration is not filed before January 31 of any year, an additional fee equal in amount to the registration fee shall be assessed and added to the original fee, and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

2519 CERTIFICATION EXAMINATION FEES

- 2519.1 A thirty-dollar (\$30) fee shall be charged for the core certification and each category examination for registered technicians and pesticide applicators.
- 2519.2 A ten-dollar (\$10) fee shall be charged for each re-examination session.

2520 PESTICIDE CERTIFICATION AND LICENSING FEES AND TERMS

- 2520.1 Except as provided in § 2520.2, pesticide certifications are valid for a period of one (1) year.
- 2520.2 Pesticide certifications issued pursuant to § 2307 are valid for a period of two (2) years.

- 2520.3 Beginning January 1, 2016, the following pesticide licenses shall be valid for a period of one (1) year and shall be subject to the following fee schedule:
- (a) Pesticide Operator:
 - (1) Commercial: \$215
 - (2) Public: No Charge
 - (b) Pesticide Applicator:
 - (1) Commercial: \$135
 - (2) Public: No Charge
 - (c) Pesticide Dealer: \$215
- 2520.4 Beginning January 1, 2016, the following pesticide license shall be valid for a period of two (2) years from the effective date of the license, and shall be subject to the following fee schedule:
- (a) Private Applicator: \$135
- 2520.5 The following registration shall be valid for a period of three (3) years from the effective date, and shall be subject to the following fee schedule:
- (a) Registered technician: \$33
- 2520.6 The late fee for failing to file a renewal application on or before the first day of any licensure period is twenty dollars (\$20) per application.

2599 DEFINITIONS

- 2599.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

Public Participation

The Director gives notice of the start of a thirty- (30) day public comment period for this proposed rulemaking, as required by D.C. Official Code § 8-411(a) (2012 Repl. & 2013 Supp.). Comments on these proposed rules must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to DDOE's Hazardous Materials Branch, 1200 First Street, NE, 5th Floor, Washington, D.C. 20002, Attention: Pesticide Regulations; or sent electronically to ddoe.pesticideregs@dc.gov, with "Pesticide Regulations Proposed Rulemaking" in the subject line. Copies of the proposed rule may be obtained between the hours of 9:00 A.M. and 5:00 P.M. at the address listed above for a small fee to cover the cost of reproduction, or on-line at <http://ddoe.dc.gov>.

All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. The Department will look for the commenter's name and address on the comment. If a comment is sent by email, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties and is unable to contact the commenter for clarification, the Department may be unable to consider the comment. Including the commenter's name and contact information in the comment will avoid this difficulty.