

CHILDREN'S AND FAMILIES PROTECTION ACT REGULATIONS FINAL COPY

333 CMR 14.00 Protection of Children and Families from Harmful Pesticides

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14.01: Purpose:

The purpose of 333 CMR 14.00 is to promote the implementation of Integrated Pest Management (IPM) Techniques and to establish those standards, requirements and procedures necessary to minimize the risk of unreasonable adverse effects on human health and the environment regarding the use of pesticides within a school, daycare center or school age child care program facility.

14.02: Definitions:

For the purposes of 333 CMR 14.00, the definitions set forth in M.G.L. c. 132 B § 2 and 333 CMR 2.00, 333 CMR 10.00, and 333 CMR 13.00 apply, unless otherwise provided.

Daycare Center: any public or private facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center or preschool, or known under any other name which receives children not of common parentage who are not more than six years of age, or who are not more than 21 years of age if such children have special needs, for non-residential custody and care during part of all of the day separate from their parents. Daycare center shall not include: any part of a public school system; any part of a private, organized education system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family daycare home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

Emergency Waiver: notwithstanding the provisions of 333 CMR 14.10, a written single use exemption from the following provisions:

(a) That standard written notification shall be provided to employees, pupils, or supervised children and their parents or guardians at least two working days before pesticides are to be sprayed, released, deposited or applied outdoors at a school, day care center or school age child care program; or

(b) That only those pesticides allowed for use in schools, day care centers or school age child care programs under M.G.L. c. 132B are permitted for use.

Integrated Pest Management (IPM): a comprehensive strategy of pest control whose major objective is to achieve desired levels of pest control in an environmentally responsible manner by combining multiple pest control measures to reduce the need for reliance on chemical pesticides; more specifically, a combination of pest controls which addresses conditions that support pests and may include, but not be limited to, the use of monitoring techniques to determine immediate and ongoing need for pest control, increased sanitation, physical barrier methods, the use of natural pest enemies and a judicious use of lowest risk pesticides when necessary.

Integrated Pest Management Committee: the individuals or persons who share interests or concerns related to pest control activities and whose purpose is to develop a school IPM Policy and help make pest management decisions for the school, day care center and school age child care program. Whereas, the IPM Committee of a small day care center may be composed of the IPM Coordinator alone, the IPM Committee for a large school, day care center and school age child care program may include representation across the wide array of respective services and activities. It is recommended that any indoor and outdoor pest management, landscaping, or turf management contractors hired by the school be included on the IPM Committee.

Integrated Pest Management Coordinator: the individual within the school, day care center and school age child care program who, with the authority and support of the school administration or management, is generally in charge of pest control activities for the school, day care center, and school age child care program. This individual ensures that the IPM plan is carried out and coordinates and communicates with parties involved with custodial service, building maintenance, food service, outside vending, pest control, grounds maintenance; and other parties including students, parents, and teachers.

Integrated Pest Management Policy: the written statements that describe the overall pest management philosophy and environmental health goals for the school, day care center and school age child care program. Such statements shall describe how the school, day care center and school age child care program will advance existing pest control practices, improve environmental health conditions, and reduce the amount of pesticides used by the school for the purpose of protecting children and others within the school, day care center and school age child care program.

Integrated Pest Management (IPM) Plan: a written pest management plan that covers both indoor and outdoor areas and that is implemented and adopted by each school, day care center and school age child care program. One copy of the plan adopted by the school, day care center or school age child care program shall be filed with the Department, and at least one additional copy shall be kept on site and made available to the public upon request pursuant to M.G.L. c. 66 § 10.

Indoor Pesticide Application: an indoor pesticide application is one where the applicator is standing inside of the facility making a pesticide application or one where the applicator is standing outside of the facility and making the pesticide application towards the interior of the building.

School: Unless the context otherwise requires, the term “School” shall mean any public or private kindergarten through 12th grade, school age child care program and daycare center.

School, Day Care Center and School Age Child Care Program Property:

The indoor and outdoor areas, lands or other real properties of a school, day care center and school age child care program shall include the following:

- (a) The area on which there is a school, daycare center or school age child care program buildings;
- (b) The area on which there is a school, daycare center or school age child care program managed athletic field; and
- (c) The area which that has been delineated for school, daycare center or school age child care program activities through an agreement with the school, daycare center or school age child care program and local government.

School Age Child Care Program: any public or private program or facility operated on a regular basis which provides supervised group care for children not of common parentage who are enrolled in kindergarten and are of sufficient age to enter first grade the following year, or an older child who is no more than 14 years of age, or not more than 21 years of age if such child has special needs. Such a program may operate before and after school and may also operate during school, vacation and holidays. A school age child care program shall not include: any part of a public school system; daycare center or school age child care program system; any part of a private, organized educational system, unless the services of such system are primarily limited to a school age daycare program; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family daycare home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

Standard Written Notification: a written notice that includes the following information relative to an application of pesticides on the outdoor property of a school, day care center and school age child care program property:

- (a) A description of the purpose of the pesticide application;
- (b) The approximate dates on which the spraying, release, deposit or application of a pesticide shall commence and conclude;
- (c) The specific location of the anticipated application;
- (d) The name, type, and U.S. EPA Registration Number for every pesticide product to be used;
- (e) A Department-approved fact sheet; and
- (f) A written statement approved by the Department describing any precautions to be taken and ways to minimize pesticide exposure, especially for sensitive individuals such as children, the elderly, pregnant women and those with health problems.

14.03: Exemptions

- (1) Pesticides classified by the United States Environmental Protection Agency as exempt materials under 40 CFR Part 152.25 in the Federal Insecticide Fungicide Rodenticide Act are exempt from all of 333CMR 14.00.
- (2) Child care facilities licensed by the Massachusetts Office of Early Education and Child Care with the designation of Family Child Care Services, Family Child Care Plus Services, or Large Family Child Care Services shall be exempt from the provisions of 333 CMR 14.00.
- (3) State-aided and approved vocational-technical or agricultural school claiming exemption from the Act as per M.G.L. c. 132B § 6J shall be exempt only if the pesticide application is a documented function of a training program. Such State-aided and approved vocational-technical or agricultural school shall maintain records demonstrating the pesticide application is a function of a supervised training curriculum.
- (4) Mosquito control larvicides that are classified as category IV pesticides by the United States Environmental Protection Agency, as applied by mosquito control projects and districts under M.G.L. c. 252 or other state law, are exempt from the Standard Written Notification Requirements.
- (5) Standard Written Notification is not required when classes or activities are not taking place at the school, property for five or more consecutive days after the application takes place, provided that the pest management professional or his/her employer obtain a written statement from the school operator stating so. This statement shall be included in the pesticide application record for that application and in the school Integrated Pest Management Plan.

14.04: General Provisions

- (1) No person shall use a pesticide on the indoor or outdoor property of a School unless an Integrated Pest Management Plan has been written and maintained in accord with 333 CMR 14.05 thru 14.06 was submitted to the Department.
- (2) No person shall use a pesticide unless licensed or certified by the Department.
- (3) Pesticides shall not be applied to School property unless presence of a pest is documented or there is biological evidence of the presence of a pest.
- (4) Pesticides permitted for use on the indoor property of a School are limited to the following:
 - (a) Anti-microbial pesticides.
 - (b) Rodenticides placed in tamper resistant bait stations or placed in areas inaccessible to children and the general public.
 - (c) Ready to use dust, powder or gel formulations of insecticide applied in areas inaccessible to children and the general public.
 - (d) Insecticidal baits placed in tamper resistant bait stations or in areas inaccessible to children and the general public.

(e) Termiticides used only in presence of an active termite infestation and when non-chemical pesticide alternatives have been determined to be ineffective.

(5) Pesticides permitted for use on the outdoor property of a School are limited to the following:

(a) Pesticides used in accordance with the facilities Outdoor Integrated Pest Management Plan.

(b) Pesticides other than those classified as known, likely or probable human carcinogens by the United States Protection Agency, or equivalently categorized by the Department.

(c) Pesticide products that do not contain inert ingredients categorized as "List 1: Inerts of Toxicological Concern" or any equivalent categorization by the United States Environmental Protection Agency.

(6) Standard Written Notification for Rodenticide and Insecticide Baits shall be issued as the following:

(a) The Standard Written Notification is issued for the first application, informing the employees, pupils or supervised children and their parents or guardians that a rodenticide or insecticide application program has begun.

(b) In the event that a rodenticide or insecticide program is a continuing year round program, the notice shall be sent annually on the anniversary of the commencement of the program.

14.05: Written Components of the Integrated Pest Management Plan

Every integrated pest management (IPM) plan shall contain an indoor and outdoor component. These components shall be submitted to the Department and include the following information:

(a) Name, address, and telephone number of School.

(b) Name and contact information of the School IPM Coordinator.

(c) Name and contact information of the School IPM Committee.

(d) Description of the School IPM Policy.

(e) Identification of the School pest problem(s) and a description of the conditions contributing to or causing the problem.

(f) Description of the communication and training program for School staff regarding IPM.

(g) A list of pesticides to be used which shall include:

1. Product Name

2. EPA Registration Number

3. Active Ingredient, Common Name

(h) List of non-pesticide control techniques and preventive methods to be used.

(i) Location in the School where the IPM plans and records are maintained and available for viewing.

(j) Statement identifying the proposed IPM plan annual reviews date.

14.06: Maintenance of the Integrated Pest Management Plan.

A hard copy of the integrated pest management plan shall be maintained on site at the school. In addition to the requirements of 333 CMR 14.05, the following shall be maintained with a hard copy of the integrated pest management plan:

(a) Labels of the pesticide products that may be used or are being used at the School. Product labels shall be reviewed by the school annually to ensure that such products are permitted for use as outlined in 333 CMR 14.04(4) thru (5).

- (b) Copies of all pesticide application records.
- (c) Pest Sighting Log Sheet/Book. This log book shall indicate the presence of a pest problem or the expected presence of a pest problem.
- (d) IPM Plans shall be updated and resubmitted when changes occur. Plans shall be reviewed on an annual basis and noted within the plan.
- (e) Material Safety Data Sheets shall be made available to any person upon reasonable request and such Material Safety Data Sheet shall be provided in a format acceptable to the person making the request.

14.07: Required Components of Standard Written Notification

Every standard written notification shall include the following three Department approved forms and documents:

- (a) The Department approved Pesticide Standard Written Notification Form;
- (b) The Department approved Consumer Information Bulletin for Schools, Daycare Centers and School Age Child Care Programs; and
- (c) The Department approved chemical specific fact sheet(s).

14.08: Requirements of Schools

- (1) Every school shall develop an Integrated Pest Management Plan in accord with 333 CMR § 14.05 thru 14.06. The plan shall be submitted to the Department and maintained on site.
- (2) Every school shall maintain the plan and retain the plan at each site for five years. Schools shall make the plan available to any person upon a reasonable request.
- (3) If a school administrator determines that a human health emergency warrants the use of a pesticide not otherwise allowed under this chapter, or warrants its use sooner than two days after providing the required Standard Written Notification, such official may apply for a single-use Emergency waiver as per section 333 CMR § 14.10.
- (4) No pesticides shall be applied for purely aesthetic purposes on the outdoor grounds of any school unless a determination is made in writing on an annual basis from an authorized official within the municipality, city, town or the Department approved equivalent. The approval shall include at least the following information:
 - (a) Date of approval;
 - (b) Reason for application; and
 - (c) Name of official and title.
- (5) Standard Written Notification shall be issued to parents and employees no less than two working days and no more than seven working days prior to any pesticide application made to outdoor school property or to the inside of a school for a termiticide treatment.
 - (a) Standard Written Notification shall be issued for every outside pesticide application.
 - (b) In the case of a situation where the pesticide application cannot be made on the proposed date, the application may take place during the following 72 hours without issuing a new Standard Written Notification.
- (6) Standard Written Notification shall be issued to parents and employees using one of the following methods:

- (a) Email providing all the components of Standard Written as defined and provided that the school has a permission letter from the parents and employees from the current school year, stating that they would like to be notified via email.
- (b) Website which provides all the components of Standard Written as defined and provided that the school used a notification system, such as but not limited to Reverse 911 or Connect Ed, phone call or one page letter to initially notify that a pesticide application will take place and that directs them to the website or an alternative place to receive the complete notification.
- (c) Hard copy, providing all the components of Standard Written as defined.

(7) If a school administrator is aware of any scheduled use of outside property by youth groups, he or she shall inform the organizers of any such group regarding the proposed pesticide application.

(8) If a pesticide application is to take place outdoors while students are present for school sponsored activities, the school shall take effective measures to keep students off treated area(s) for at least eight (8) hours.

14.09: Requirements of Pesticide Applicators

- (1) Prior to making any pesticide applications to the property of a school, the pesticide applicator shall check the IPM plan of the school to ensure that any pesticide application made, will be consistent with the provisions of the plan.
- (2) The pesticide applicator shall not apply a pesticide to the outdoor property of a school while students are present unless the following has taken place:
 - (a) Students are at least 150 feet away from application area;
- (3) The pesticide applicator shall determine if a school is located in a building or on a property to which the pest management professional intends to apply pesticides.
- (4) Prior to making a pesticide application for purely aesthetic purposes on the outdoor grounds of a school, the pesticide applicator or his/her employer shall obtain a copy of the written consent form from the School as indicated in section 333 CMR §14.07(4).
- (5) Prior to making an outdoor pesticide application the pesticide applicator or his/her employer shall furnish the Standard Written Notification to the school administration in a timely manner so as to allow the School administration time to issue the Standard Written Notification in accord with 333 CMR § 14.07(5).
- (6) Prior to making a pesticide application the pesticide applicator or his/her employer shall obtain a copy of the complete signed and dated Standard Written Notification that was sent by the school administration.
- (7) Prior to commencing each outdoor application, the applicator shall post signs approved by the Department. Said signs must be posted at conspicuous points of access to the treated property.

14.10: Emergency Waiver

- (1) The Department, municipal board of health, or the director of public health shall determine if an Emergency Waiver is warranted based on the following criteria:
 - (a) That the pest situation poses an immediate threat to human health; and
 - (b) That there is no viable alternative to the use of a pesticide.
- (2) As a condition of approval, the municipal board of health, director of public health or the Department shall require a commitment from the School administrator that the underlying causes of the pest outbreak will be identified and addressed in the IPM plan.
- (3) In such an emergency situation, the School administrator shall ensure the following:
 - (a) The Department approved Emergency Waiver form is completed and signed by either the municipal board of health or director of public health or the Department.
 - (b) That Department approved signs are posted at the site of the spraying, release, deposit or application prior to, and for at least 72-hours after the spraying, release, deposit or application.
 - (c) That Standard Written Notification is provided to employee's, pupils or supervised children and their parents or guardians immediately prior to or, if necessary, immediately following the emergency spraying, release, deposit or application.
 - (d) That the Department approved emergency waiver form and records of the emergency event that identify the underlying causes of the pest outbreak and the actions taken to address it, shall be maintained as a part of the records for five years as per 333 CMR § 14.07(2).

14.11: Enforcement:

- (1) Upon any violation of 333 CMR 14.00 the Department may assess a civil administrative penalty of up to \$1000 against any person or school administration who violates these requirements. Prior to assessment of the penalty, the Department shall provide written notice and an opportunity to correct the violation within 90 days of the issuance of the notice of violation. This penalty shall be assessed in addition to any other civil penalty otherwise provided for by law. Notice of assessment of a penalty pursuant to this section shall be made by service in hand, or by certified mail, return receipt requested, and shall include the following information:
 - (a) The amount of the administrative penalty;
 - (b) The date the penalty shall be due;
 - (c) A statement of the violators right to an adjudicatory hearing pursuant to M.G.L. c. 30A regarding the assessment;
 - (d) A statement of actions the person may take in order to avoid the assessment of the penalty or to avoid waiving the right to a hearing relative to the penalty; and
 - (e) A statement of the manner of the acceptable form of payment if an election to waive a hearing is made.