

CHAPTER 28

APPLICATION OF PESTICIDES — RESTRICTIONS — PRIVATE APPLICATOR PEER REVIEW

S.F. 482

AN ACT regulating the application of pesticides, including by providing for the certification of applicators, and certain actions taken by the department of agriculture and land stewardship against private applicators, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. [Section 206.5, subsection 6](#), Code 2021, is amended to read as follows:

6. An employee of a food processing and distribution establishment is exempt from the certification requirements of [this section](#) provided that at least one person holding a supervisory position is certified and provided that the employer provides a program, approved by the department, for training, testing, and certification of personnel who apply, as an incidental part of their duties, any pesticide on property owned or rented by the employer. However, an employee exempt from the certification requirements of [this section](#) shall not apply restricted use pesticides. The secretary shall adopt rules to administer the provisions of [this paragraph subsection](#).

Sec. 2. [Section 206.19, subsection 5](#), Code 2021, is amended to read as follows:

5. *a.* Establish, assess, and collect civil penalties for ~~violations~~ a violation of a provision in [this chapter](#) or a rule adopted pursuant to [this chapter](#) by a commercial applicators applicator or private applicator. In determining the amount of the a civil penalty to be assessed for a violation, the department shall consider all of the following factors:

(1) The willfulness of the violation.

(2) The actual or potential danger of injury to the public health or safety, or damage to the environment caused by the violation.

(3) The actual or potential cost of the injury or damage caused by the violation to the public health or safety, or to the environment.

(4) The actual or potential cost incurred by the department in enforcing [this chapter](#) and rules adopted pursuant to [this chapter](#) against the violator.

(5) The remedial action required of the violator.

(6) The violator's previous history of complying with orders or decisions of the department.

b. The amount of the civil penalty that may be assessed for each violation committed by a commercial applicator or private applicator shall not exceed five hundred dollars for each offense.

Sec. 3. **NEW SECTION. 206.23B Private pesticide applicator peer review panel.**

1. The department shall establish a private pesticide applicator peer review panel to assist the department in assessing or collecting a civil penalty pursuant to [section 206.19](#). The secretary shall appoint five members, including three certified private applicators and two members of the public who have not been licensed or certified under [this chapter](#). The appointments shall be made on a geographically balanced basis.

2. *a.* The members appointed pursuant to [this section](#) shall serve four-year terms beginning and ending as provided in [section 69.19](#). However, the secretary shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. Three voting members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of

interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding [section 7E.6](#), the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by the department.

3. The panel shall make recommendations to the department regarding the establishment of civil penalties and procedures to assess and collect penalties, as provided in [section 206.19](#). The panel may propose a schedule of penalties for minor and serious violations. The department may adopt rules based on the recommendations of the panel as approved by the secretary.

4. The panel shall review cases of persons required to be certified as private applicators who are subject to civil penalties as provided in [section 206.19](#) according to rules adopted by the department. A review shall be performed upon request by the secretary or the person subject to the civil penalty. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The rules may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the certification of a private applicator.

5. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under [chapter 17A](#). A hearing shall not be delayed after the required period for review and response, except as provided in [chapter 17A](#).

6. [This section](#) does not apply to a certification revocation proceeding under [section 206.11](#). [This section](#) does not require the department to delay the prosecution of a case if immediate action is necessary to reduce the risk of harm to the environment or public health or safety. [This section](#) also does not require a review or response if the department refers a violation of [this chapter](#) for criminal prosecution, or for an action involving a “stop sale, use, or removal” order issued pursuant to [section 206.16](#). The department shall consider any available response by the panel, but is not required to change findings of an investigation, a penalty sought to be assessed, or a manner of collection.

7. An available response by the panel may be used as evidence in an administrative hearing, or a civil or criminal case, except to the extent that information is considered confidential including as provided in [section 22.7](#).

Approved March 22, 2021