

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
026 BOARD OF PESTICIDES CONTROL
Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

SUMMARY: These regulations describe the requirements for certification and licensing of commercial applicators.

1. Individual Certification and Company/Agency Licensing Requirements

- A. Any commercial applicator must be either:
 - I. licensed as a commercial applicator/master; or
 - II. licensed as a commercial applicator/operator; or
 - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator. Applicators must also follow the standards outlined in 40 CFR 171.201 (2023).
- B. All commercial applicators responsible for the supervision of noncertified applicators of restricted use pesticides must ensure compliance with training, record keeping, and all other requirements as indicated in 40 CFR 171.201(c) "Supervision of Noncertified Applicators" (2017).
- C. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- D. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.
- E. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state

pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

F. Exemptions

- I. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- II. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – *Rules Relating to Public Swimming Pools and Spas*, administered by the Maine Department of Health and Human Services, Division of Environmental Health..
- III. Certified or licensed Wastewater or Drinking Water Operators applying registered disinfectants to waste or drinking water as part of their employment.
- VI. Adults applying repellents to children with the consent of parents/guardians.
- VII. Persons installing antimicrobial metal hardware.

2. Categories of Commercial Applicators

- A. All commercial applicators shall be categorized according to the type of work performed as outlined below:
 - I. **Agricultural Animal and Plant Pest Control**
 - a. **Agricultural Animal** - This subcategory includes commercial applicators using or supervising the use of pesticides on animals and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire as pesticide applicators are included in this subcategory; however, those persons applying pesticides as drugs or medication during the course of their normal practice are not included.
 - b. **Agricultural Plant** - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of crops including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops.

Option I - Limited Commercial Blueberry - This option includes commercial applicators using or supervising the use of pesticides in the production of blueberries only.

Option II - Chemigation - This option includes commercial applicators using or supervising the use of pesticides applied through irrigation equipment in the production of crops.

Option III - Agricultural Soil Fumigation - This option includes commercial applicators using or supervising the use of soil fumigant pesticides in the production of crops.

Option IV - Post Harvest Treatment - This option includes commercial applicators using or supervising the use of pesticides in the post harvest treatment of food crops.

II. **Forest Pest Management**

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, Christmas trees, and forest seed producing areas.

III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of outdoor ornamental trees, shrubs and flowers.
- b. **Turf** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of turf, such as at turf farms, golf courses, parks, cemeteries, athletic fields and lawns.
- c. **Indoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of live plants in shopping malls, businesses, residences and institutions.

IV. **Seed Treatment**

This category includes commercial applicators using or supervising the use of pesticides on seeds.

V. **Aquatic Pest Control**

- a. **General Aquatic** - This subcategory includes commercial applicators using or supervising the use of pesticides applied directly to surface water, including but not limited to outdoor application to public drinking water supplies, golf course ponds, rivers, streams and wetlands.

Excluding applicators engaged in public health related activities included in categories VII(e) and VIII below.

- b. **Sewer Root Control** - This subcategory includes commercial applicators using or supervising the use of pesticides applied to sewers to control root growth in sewer pipes.

VI. **Vegetation Management**

- a. **Rights-of-Way Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside, maintenance of public roads, and railroad rights-of-way.
- b. **General Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation (including invasive plants) on sites not included in category VI a including, but not limited to, municipal and other publicly owned properties, maintenance of public roads, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots, sidewalks, and trails.

VII. **Industrial, Institutional, Structural and Health Related Pest Control**

- a. **General** - This subcategory includes commercial applicators using or supervising the use of pesticides in, on or around human dwellings, office buildings, institutions such as schools and hospitals, stores, restaurants, industrial establishments (other than in Category 6) including factories, warehouses, food processing plants, food or feed transportation facilities and other structures, vehicles, railroad cars, ships, aircraft and adjacent areas; and for the protection of stored, processed or manufactured products. This subcategory also includes commercial applicators using or supervising the use of pesticides to control rodents on refuse areas and to control other pests, including but not limited to birds and mammals.
- b. **Fumigation** - This subcategory includes commercial applicators using or supervising the use of fumigants or fumigation techniques in any type of structure or transportation device.
- c. **Disinfectant and Biocide** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat mold or microbial growth problems, to treat water in manufacturing, industrial cooling towers, public drinking water treatment plants, sewers, air conditioning systems, and in swimming pools and spas.
- d. **Wood Preserving** - This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to treat lumber, poles, railroad ties and other types of wooden structures including bridges, shops and homes. It also includes commercial applicators applying general use pesticides for remedial treatment to utility poles.

- e. **Biting Fly & other Arthropod Vectors** - This subcategory includes commercial applicators and non-public health governmental officials using or supervising the use of pesticides in management and control of biting flies & other arthropod vectors of public health and public nuisance importance including, but not limited to, ticks, mosquitoes, black flies, midges, and members of the horsefly family.
- f. **Termite Pests** - This subcategory includes commercial applicators using or supervising the use of pesticides to control termites.

VIII. **Public Health Pest Control**

- a. **Biting Fly Pests** - This subcategory includes governmental officials using pesticides in management and control of potential disease vectors or other pests having medical and public health importance including, but not limited to, mosquitoes, black flies, midges, and members of the horsefly family.
- b. **Other Pests** - This subcategory includes governmental officials using pesticides in programs for controlling other pests of concern to public health including, but not limited to, ticks and birds and mammal vectors of human disease.

IX. **Regulatory Pest Control**

This category includes governmental employees using pesticides in the control of pests regulated by the U.S. Animal and Plant Health Inspection Service or some other governmental agency.

X. **Demonstration and Research Pest Control**

This category includes all individuals who (1) demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration, (2) conduct field research with pesticides, and in doing so, use or supervise the use of pesticides. Individuals who conduct only laboratory-type research are not included. Applicants seeking certification in this category must also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

XI. **Aerial Pest Control**

This category includes commercial applicators, including pilots and co-pilots, applying or supervising the application of pesticides by means of any aircraft. Applicants seeking certification in this category must also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

3. Competency Standards for Certification of Commercial Applicators

- A. Applicants seeking commercial certification must establish competency in the general principles of safe pest control by demonstrating knowledge of basic subjects including, but not limited to, pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques and applicable laws and regulations. (Core Exam).
- B. Applicants seeking commercial certification must demonstrate competency in each applicable category or subcategory. (Category Exam). Competency in the applicable category or subcategory shall be established as follows:

I. Agricultural Animal and Plant Pest Control

- a. **Agricultural Animals.** Applicants seeking certification in the subcategory of Animal Pest Control as described in Section 2(A)(I)(a) must demonstrate knowledge of animals, their associated pests, and methods of pest control. Areas of practical knowledge shall include specific toxicity, residue potential, relative hazards of different formulations, application techniques, and hazards associated with age of animals, stress, and extent of treatment.

- b. ~~**Agricultural Plant.** Applicants seeking certification in the subcategory of Plant Pest Control as described in Section 2(A)(I)(b) Options I–IV must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. For option III, applicants must demonstrate practical knowledge of agricultural soil fumigation as outlined in 40 CFR 171.103(d)(13) and 40 CFR 171.103(e)(1 through 10) (2023).~~

- 1. Option I - Limited Commercial Blueberry - Applicants seeking certification in Limited Commercial Blueberry must demonstrate practical knowledge of blueberries. This option includes commercial applicators using or supervising the use of pesticides in producing blueberries only. Areas of such practical knowledge shall include IPM, soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the

potential adverse effect of pesticides on plants, animals, or humans.

2. Option II - Chemigation - This option includes commercial applicators using or supervising the use of pesticides applied through irrigation equipment in the production of crops. Areas of such practical knowledge shall include IPM, soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. The proper meteorological conditions for applying pesticides and the potential adverse effect of pesticides on plants, animals, or humans.
3. Option III - Agricultural Soil Fumigation - This option includes commercial applicators using or supervising the use of fumigant pesticides in the production of crops. Applicants seeking certification must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include IPM, soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. Applicants must demonstrate practical knowledge of agricultural soil fumigation as outlined in 40 CFR 171.103(d)(13) and 40 CFR 171.103(c)(1)-(10) (2023).
4. Option IV - Post-Harvest Treatment - This option includes commercial applicators using or supervising the use of pesticides in the post-harvest treatment of food crops. Applicators must demonstrate practical knowledge of the crops being treated, the specific pests of those crops on which they may be using pesticides, and the potential adverse effect of pesticides on animals or humans.

II. **Forest Pest Management**

Applicants seeking certification in the category of Forest Pest Management as described in Section 2(A)(II) must demonstrate practical knowledge of forest vegetation management, forest tree biology and associated pests. Such required knowledge shall include population dynamics of pest species, pesticide-organism interactions, integration of pesticide use with other pest control methods, environmental contamination, pesticide effects on non-target organisms, and use of specialized equipment. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals.** Applicants seeking certification in the Outdoor Ornamental subcategory as defined in Section 2(A)(III)(a) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of trees, shrubs and floral plantings. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Turf.** Applicants seeking certification in the Turf subcategory as described in Section 2(A)(III)(b) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of turf. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- c. **Indoor Ornamentals.** Applicants seeking certification in the Indoor Ornamental subcategory described in Section 2(A)(III)(c) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of indoor ornamental plantings. Such knowledge shall include pest recognition, proper pesticide selection, undue pesticide persistence, and application methods with particular reference to techniques used in proximity to human presence.

IV. **Seed Treatment**

Applicants seeking certification in the category of Seed Treatment as described in Section 2(A)(IV) must demonstrate practical knowledge of seed types and problems requiring chemical treatment. Such knowledge shall include seed coloring agents, carriers and binders which may affect germination, hazards associated with handling, sorting, and mixing in the treatment process, hazards of introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.

V. **Aquatic Pest Control**

- a. **General Aquatic** - Applicants seeking certification in the subcategory of General Aquatic as described in Section 2(A)(V)(a) must demonstrate practical knowledge of proper methods of aquatic pesticide application, application to limited area, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include basic factors contributing to the development of nuisance aquatic plant growth such as algal blooms, understanding of various water use situations and potential downstream effects from pesticide use, and potential effects of various aquatic pesticides on plants, fish, birds, insects and other organisms associated with the aquatic environment. Also required shall be an understanding of the Department of Environmental Protection laws and regulations pertaining to aquatic discharges and aquatic weed control and a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Sewer Root Control** - Applicants seeking certification in the subcategory of Sewer Root Control as described in Section 2(A)(V)(b) must demonstrate practical knowledge of proper methods of sewer root control pesticide application, application to pipes, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include potential effects on water treatment plants, movement of pesticides into off target pipes or buildings and the hazards of sewer gases.

VI. **Vegetation Management**

~~Applicants seeking certification in the subcategories under Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of pesticide use on a wide variety of environments. Such knowledge shall include an ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup and aesthetic considerations associated with excessive foliage destruction and "brown-out", and an understanding of the mode of action of herbicides, and reasons for the choice of particular chemicals for particular problems, importance of the assessment of potential impact of spraying on adjacent public and private properties and activities, and effects of spraying on fish and wildlife species and~~

their habitat. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

a. **Rights-of-Way Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside, and railroad rights-of-way. Applicants seeking certification must demonstrate practical knowledge of the impact of pesticide use on a wide variety of environments. Such knowledge shall include maintenance of public roads to Maine vegetation management rights of ways vegetation management. The ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup, and aesthetic considerations associated with excessive foliage destruction and "brown-out," and an understanding of the mode of action of herbicides and reasons for the choice of particular chemicals for particular problems, the importance of the assessment of the potential impact of spraying on adjacent public and private properties and activities, and effects of spraying on fish and wildlife species and their habitat. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals, or humans.

b. **General Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in managing vegetation (including invasive plants). Applicants seeking certification must demonstrate practical knowledge of the impact of pesticide use on a wide variety of environments. Such knowledge shall include the ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup, and aesthetic considerations associated with excessive foliage destruction and "brown-out," and an understanding of the mode of action of herbicides and reasons for the choice of particular chemicals for particular problems, and effects of spraying on fish and wildlife species and their habitat. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals, or humans.

VII. Industrial, Institutional, Structural and Health Related Pest

- a. **General.** Applicants seeking certification in the subcategory of General Pest Control as described in Section 2(A)(VII)(a) must demonstrate a practical knowledge of a wide variety of pests and methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans,

domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

- b. **Fumigation.** Applicants seeking certification in the subcategory Fumigation as described in Section 2(A)(VII)(b) must demonstrate a practical knowledge of wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees and customers. Applicants must also demonstrate practical knowledge of topics indicated in 40 CFR 171.103(d)(14) and 40 CFR 171.103(c)(1)-(10) (2023).
- c. **Disinfectant and Biocide.** Applicants seeking certification in the subcategory of Disinfectant and Biocide as described in Section 2(A)(VII)(c) must demonstrate practical knowledge of water organisms and their life cycles, pool and spa design systems, drinking water treatment plant designs, cooling water system designs, mold and problematic microbial organisms, labels, hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
- d. **Wood Preserving.** Applicants seeking certification in the Wood Preserving Subcategory described in Section 2(A)(VII)(d) must demonstrate practical knowledge in wood destroying organisms and their life cycles, nonchemical control methods, pesticides appropriate for wood preservation, hazards associated with their use, proper handling of the finished product, proper disposal of waste preservatives, and proper application techniques to assure adequate control while minimizing exposure to humans, livestock and the environment.
- e. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest control as described in Section 2(A)(VII)(e) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- f. **Termite Pests.** Applicants seeking certification in this subcategory must demonstrate a practical knowledge of Termite pests and methods for their control. Such knowledge shall include identification of termites and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans,

domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

VIII. **Public Health Pest Control**

- a. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest Control as described in Section 2(A)(VIII)(a) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Other Pests.** Applicants seeking certification in the subcategory of Other Pest Control as described in Section 2(A)(VIII)(b) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

IX. **Regulatory Pest Control**

Applicants seeking certification in the category of Regulatory Pest Control as described in Section 2(A)(IX) must demonstrate practical knowledge of regulated pests and applicable laws relating to quarantine and other regulations of pests. Such knowledge shall also include environmental impact of pesticide use in eradication and suppression programs, and factors influencing introduction, spread, and population dynamics of relevant pests. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

X. **Demonstration and Research Pest Control**

Applicants seeking certification in the category of Demonstration and Research Pest Control as described in Section 2(A)(X) must demonstrate practical knowledge in the broad spectrum of activities involved in advising other applicators and the public as to the safe and effective use of pesticides. Persons

involved specifically in demonstration activities will be required to demonstrate knowledge of pesticide-organism interactions, the importance of integrating chemical and non-chemical control methods, and a grasp of the pests, life cycles and problems appropriate to the particular demonstration situation. Field researchers will be required to demonstrate general knowledge of pesticides and pesticide safety, as well as a familiarity with the specific standards of this Section which apply to their particular areas of experimentation. All individuals certified in this category must also be certified in one or more of the previous categories or subcategories which represent at least 80% of their practice. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

XI. **Aerial Pest Control**

Applicants seeking certification in the category of Aerial Pest Control as described in Section 2(A)(XI) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Applicants must also demonstrate competency in the specific category or subcategory in which applications will be made, as described in paragraphs I, II, VI and VIII herein. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. Applicants must also demonstrate practical knowledge of topics indicated in 40 CFR 171.103(d)(15) and 40 CFR 171.103(c)(1)-(10) (2023).

4. **Competency Standards for Certification of Commercial Applicator/Master**

- A. **Regulations Exam.** An applicant seeking certification as a commercial applicator/master must successfully complete a closed book exam on the appropriate chapters of the Board's regulations. The passing grade shall be 80%. An applicant must successfully complete the regulations exam before being allowed to proceed to the master exam. The staff may waive the requirements for the closed book regulation exam if it determines that a pest management emergency exists necessitating the issuance of a nonresident license pursuant to Section 6 B. of this chapter, provided that the staff verbally reviews the pertinent regulations with the applicant prior to issuing a nonresident license.
- B. **Master Exam.** An applicant seeking certification as a commercial applicator/master must also demonstrate practical knowledge in ecological and environmental concerns, pesticide container and rinsate disposal, spill and accident mitigation, pesticide storage and on site security, employee safety and training, potential chronic effects of exposure to pesticides, pesticide registration and special review, the potential for groundwater contamination, principles of pesticide drift and measures to reduce drift, protection of public health, minimizing public exposure and use of non pesticide control methods. In addition, applicant must demonstrate the ability to interact with a concerned public.

5. Certification Procedures for Commercial Applicators

A. **Initial Certification.** Individuals attempting to certify as a commercial applicator must be at least 18 years of age.

I. **Application for Exams.** Individuals applying to take exams must submit a completed application and associated fees. All fees are waived for governmental employees.

- a. Information shall include name, home address, company address, name and telephone number of supervisor and categories for which certification is desired.
- b. A non-refundable fee of \$10.00 for each core, category or subcategory exam shall accompany the application.
- c. Study materials for other than the regulations exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
- d. A non-refundable fee of \$10.00 for the regulations exam and \$40.00 for the Master exam shall accompany the application for Master exams. Study material for the regulations exam will be sent to the applicant upon receipt of their application and the required fees.

II. Appointment for Exams

- a. Exams will be scheduled by Board staff. It is the responsibility of the applicant to reschedule if necessary.
- b. All exam fees shall be forfeited if an applicant fails to notify the Board that he/she cannot sit for the exams on the scheduled date at least 24 hours in advance of the scheduled exam. Applicants who cancel their exam appointment two times in a row shall also forfeit their exam fees. Re-application shall require an additional \$15.00 fee.
- c. Exams will be available year-round on an appointment basis at the Board's office in Augusta.
- d. Exams may also be offered at other locations designated by the Board staff. Appointments for these exams should be arranged by application with the Board's office in Augusta.

III. Exams

- a. Applicants shall take a closed book core exam plus a closed book category technical exam on each applicable category or subcategory for which they anticipate making pesticide applications.

- b. In addition to the exams described above in sections (a), applicants for commercial applicator/master certification must complete a closed book written regulations exam as well as a master exam. Applicants for commercial applicator/master must successfully complete the core and at least one category exam or the combined exam before being eligible to take the master exams. Applicants must also successfully complete the regulations exam before being allowed to commence on the master exam.

IV. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.

- a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.
- b. Applicants should be present and ready to take the exams at the appointed time.
- c. Applicants shall not talk during the examination period.
- d. Applicants shall not be allowed to bring any books, papers, cellular telephones, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
- e. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

V. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.

- a. An applicant who fails the core exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- b. An applicant who fails a category exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- c. An applicant who passes the core and one category exam shall be considered eligible for operator level licensing in that particular category so long as that person will be working under the supervision of a Master applicator. If at a later date the applicant wishes to add another category, only the appropriate category exam shall be required.
- d. An applicant who fails a master exam must re-apply and pay all required fees and may not retake the examination prior to 6 days after the date of such failed examination.

- e. Any applicant must pass both the core and at least one category exam by December 31 of the third year from the date on which the first exam was passed.
- f. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retaking.

VI. **Expiration.** Certification under this Section will expire on December 31st of the third year after the date of successful completion of required exams and on December 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

VII. An applicant's original certification period shall not be extended due to the applicant qualifying for another category or upgrading to the master level.

B. **Recertification of Applicators**

I. Persons with current valid certification may renew that certification by either providing documentation from a substantially equivalent professional certification program approved by the board or by accumulating recertification credits during the certification period described in Section 5(A)VI according to the following schedule:

- a. **Master level** - 9 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.
- b. **Operator level** - 6 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.

II. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.

- a. Board staff will review program agendas and monitor programs as time permits.

III. Credit will be allowed for topics including, but not limited to:

- a. Applicable laws and regulations.
- b. Environmental hazards.
- c. Calibration and new application techniques.
- d. Label review.
- e. Applicator safety.
- f. Storage and disposal.

- g. Pest identification and control.
 - h. Integrated pest management.
- IV. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting with details of the agenda. Board staff will review program agendas and assign credit values.
- a. One credit will be assigned for each 1 hour of presentation on appropriate topics.
 - b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
 - c. An individual who organizes a meeting shall be required to maintain a sign up sheet and supervise the signing of the sheet by all applicators attending the program. That individual shall submit the signup sheet to the Board at the same time the verification attendance forms are collected and submitted to the Board.
- V. For in state programs, applicants must submit verification of attendance at approved programs to the Board. For out of state programs, applicators must submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
- VI. A person who fails to accumulate the necessary credits during their first three year certification period will have to retake and pass all exam(s) required for initial certification. If a person fails to accumulate the necessary credits again that person must retake and pass all exam(s) required for initial certification and within one year thereafter, obtain the balance of the recertification credits which that person failed to accumulate during the previous certification period. If that person does not obtain the balance of credits needed, the Board will not renew their license until the make- up credits are accrued.
- VII. Applicants must attend the entire approved program(s) for which recertification credit is sought. No other person may complete or sign a verification form on another applicator's behalf. Any form that is completed or signed by a person other than the applicator will be deemed a fraudulent report and will not be approved by the Board for recertification credit(s). Any credit(s) approved by the Board pursuant to an attendance verification form which is subsequently determined by the Board to have been completed or signed by a person other than the applicator shall be void and may not be counted towards the applicator's recertification requirements; and any recertification issued on the basis of such credits shall be void.

6. Licensing

- A. All Commercial Applicators required to be certified under this chapter and state pesticide law shall be licensed before using or supervising the use of pesticides as described in Section 1(A).
- B. **Nonresident licenses.** When the staff determines that a pest management emergency exists which necessitates the use of aerial application and for which there are not sufficient qualified Maine licensees, it may issue a license without examination to nonresidents who are licensed or certified by another state or the Federal Government substantially in accordance with the provisions of this chapter. Nonresident licenses issued pursuant to this section are effective until December 31 of the year in which they are issued.
- C. **Application.** Application for a commercial applicator license shall be on forms provided by the Board.
- I. The completed application must include the name of the company or agency employing the applicant.
- II. Unless the applicant is the owner of a company, the completed application must be signed by both the applicant and that person's supervisor to verify the applicant is an employee of the company/agency.
- D. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
- I. For a commercial applicator license - \$105.00 per person.
- E. Commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, *Certification & Licensing Provisions/Spray Contracting Firms* which requires an additional Spray Contracting Firm License.
- F. **Insurance.** Commercial applicators who spray for hire (custom applicators) shall be required to have liability insurance in force at any time they make a pesticide application.
- I. Applicators shall submit a completed and signed form provided by the Board at the time they apply for their license which attests that they will have the required amounts of insurance coverage in effect when they make pesticide treatments. The information submitted on the form must be true and correct.
- II. Insurance coverage must meet or exceed the following minimum levels of liability:
- a. **Ground applicators**
- | | |
|------------------|--|
| Public liability | \$100,000 each person
\$300,000 each occurrence |
| Property damage | \$100,000 each occurrence |
- b. **Aircraft applicators**
- | | |
|------------------|--|
| Public liability | \$100,000 each person
\$300,000 each occurrence |
|------------------|--|

Property damage

\$100,000 each occurrence

- G. **Reports.** Annual Summary Reports described in Chapter 50, Section 2(A) must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license is temporarily suspended until the proper report is received or until a decision is rendered at a formal hearing as described in 22 MRSA §1471-D (7).
- H. **Expiration**
- I. All licenses will expire at the end of the certification period as determined in Section 5(A)VI or when an individual licensee terminates employment with the company/agency with which the individual's license is affiliated.
 - II. The licensee or a company/agency representative shall notify the Board in writing within 10 days after a licensee is terminated from employment.
 - III. Also, all licenses within a company/agency are suspended if the licensed Master is terminated from employment or dies.
- I. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*
- J. **Credentials Contact.** Licenses issued under this rule will include the following information:
- I. Full name of applicator
 - II. License number
 - III. Categories
 - IV. Expiration date
 - V. Maine statute under which license is issued.
-

STATUTORY AUTHORITY: 22 M.R.S.A., Section 1471-D

EFFECTIVE DATE:

January 1, 1983 (filed with Secretary of State August 13, 1982)

AMENDED:

December 29, 1982

January 1, 1984

January 1, 1984 - Section 7

May 20, 1984 - Section 6

May 13, 1985 - Section 5

Emergency amendment effective April 18, 1986 - Section 6

August 3, 1986 - Section 6

November 30, 1986 - Section 3

May 23, 1987 - Section 1

April 27, 1988

April 29, 1990

January 1, 1996 (adopted by Board October 7, 1994 - see Section 8 for transition dates)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999 -- also converted to MS Word

March 5, 2003

July 3, 2005 – filing 2005-267

March 4, 2007 – filing 2007-69

July 2, 2009 – filing 2009-318 (EMERGENCY, later reverted to pre-emergency status)

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – filing 2014-280

September 23, 2015 – filing 2015-168

July 23, 2019 – filing 2019-131

BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 31

Basis Statement

Chapter 31 – Seven amendments are proposed:

1. Incorporation by reference of 40 CFR 171.201, which adds federal standards for direct supervision of non-certified applicators supervised by commercial applicators.
2. Addition of the word “soil” to option III of the 1B “Agricultural Plant” category, this clarifies that this category is for soil fumigation and aligns it with the federal category “Agricultural Crop Pest Control”.
3. Addition of “maintenance of public roads” to the description for category 6A and B “Vegetation Management”.
4. Incorporation by reference of 40 CFR 171.103(d)(13) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for option III of 1B “Agricultural Plant” category related to soil fumigation.
5. Incorporation by reference of 40 CFR 171.103(d)(14) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for the 7B category, “Industrial, Institutional, Structural and Health Related Pest – Fumigation” category related to non-soil fumigation.
6. Incorporation by reference of 40 CFR 171.103(d)(15) and 40 CFR 171.103(c)(1)-(10) (2023), which adds federal competency standards for the 11 category, “Aerial Pest Control” related to aerial application of pesticides.
7. Additional breakouts of competency standard subcategories for 1B “Agricultural Plant” and 6A and B “Vegetation Management” to clarify the competency standards for each subcategory.

The amendments to the proposed rules are in response to the provisional adoption of Maine’s Pesticide Certification and Training Program (C&T) by the Environmental Protection Agency. These changes were identified to add requirements to categories through federal incorporation by reference, adding key words to descriptions, and adding subcategory competency standards. Maine’s C&T Plan was accepted on August 18, 2023, and Maine identified a timeline for implementation of changes to Chapter 31 as the end of 2024.

Zero comments were received during the public hearing and comment period.

Impact on Small Business

In accordance with 5 M.R.S. § 8052(5-A), a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.

Rulemaking Statement of Impact on Small Business

5 M.R.S. § 8052(5-A)

Agency

Department of Agriculture, Conservation and Forestry—Maine Board of Pesticides Control

Chapter Number and Title of Rule

CMR 01-026, Chapter 31—Certification and Licensing Provisions/Commercial Applicators

Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule

Currently, there are 1,480 commercial applicators that would be impacted by this rule. This is based on the number of active licenses that BPC currently has in its registration system (MEPERLS).

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

The changes to this rule incorporate federal rule by reference, adds additional information for category descriptions, aligns Maine's categories with EPA's, and adds description and competency information for several subcategories. These changes may have some administrative costs for commercial applicators that must study additional competency information for affected categories. BPC does not anticipate any reporting or recordkeeping costs with the proposed amendments.

Brief Statement of the Probable Impact on Affected Small Businesses

Prospective applicators that work for companies may have additional information to study and train for during the licensing process, which could impact their ability to work for a spray contracting firm. Otherwise, no fiscal impact is expected.

Description of Any Less Intrusive or Less Costly, Reasonable Alternative Methods of Achieving the Purposes of the Proposed Rule

The Board cannot use a less intrusive or less costly alternative method to achieve this rule. All of the changes proposed were identified during the review of Maine's Certification and Training Plan by EPA, and these changes are required as a part of the plan's conditional approval. If this rulemaking is rejected, the Board is at risk of losing its federal grants with EPA, as these changes align Maine's pesticide categories with federal requirements.

SUMMARY: These regulations describe the requirements for certification and licensing of private applicators.

1. Competency Standards for Certification - Private Applicator

- A. No person shall be certified as a private applicator unless he has fulfilled requirements demonstrating his knowledge of basic subjects including pesticide label comprehension, ability to read and understand pesticide labeling, safety, environmental concerns, stewardship, pest organisms, pesticides, equipment, application techniques, responsibilities for supervisors of non-certified applicators, and applicable laws and regulations. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans (core exam). Applicators must also follow the standards outlined in 40 CFR 171.201 and 40 CFR 171.105(a) (1)-(11) (2023).
- B. No person shall be certified as a private applicator unless he has demonstrated knowledge of the general principles of pest control for his major commodity, including specific pests of the crop, their life cycle, and proper timing of control measures to be efficacious (Commodity Exam).

2. Certification Procedures for Private Applicators

A. Initial Certification

- 1. Any person attempting to certify as a private applicator must be at least 18 years of age.
- 2. Any person seeking to be certified as a private applicator must pass a written core exam and a written exam in the area of his primary commodity. Both exams shall be closed book.
- 3. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board.
- 4. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.

- a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.
 - b. Applicants should be present and ready to take the exams at the appointed time.
 - c. Applicants shall not talk during the examination period.
 - d. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
 - e. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.
5. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.
- a. An applicant who fails the core exam may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
 - b. An applicant who fails the exam in the area of his primary commodity may not retake the that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
 - c. Any applicant must pass both the core and at least one commodity exam within 12 months before qualifying for certification.
 - d. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
6. Certification under this section will expire on October 31st of the third year after the date of successful completion of the exams and on October 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.
- B. **Supplemental Certification.** Private applicators who are certified as described in Section 2(A), and intend to conduct soil fumigation, non-soil fumigation or aerial applications must be certified in the appropriate supplemental category. Certification is obtained by passing a written exam with a minimum score of 80.
1. Supplemental category exams shall be closed book.
 2. Supplemental category exams will be available year-round on an appointment basis at the Board's office in Augusta.

3. Examination and qualification requirements described in Section 2(A)(4-6) pertain to supplemental certification.
4. **Categories for Supplemental Certification of Private Applicators**
 - a. **Soil Fumigation.** This category includes private applicators using or supervising the use of pesticides to fumigate crops in production including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops as outlined in 40 CFR 171.105(d) (2023).
 - b. **Non-soil Fumigation.** This category includes private applicators using or supervising the use of fumigant pesticides or fumigation techniques in any type of structure or transportation device as outlined in 40 CFR 171.105(e) (2023).
 - c. **Aerial.** This category includes private applicators, including pilots and co-pilots, applying pesticides by means of any aircraft as outlined in 40 CFR 171.105(f) (2023).
5. **Competency Standards for Supplemental Certification of Private Applicators**

Applicants seeking supplemental private certification must demonstrate competency in each applicable category (Category Exam). Competency in the applicable category shall be established as follows:

- a. **Soil Fumigation.** Applicants seeking supplemental certification in the category of Soil Fumigation as described in Section 2(B)(4)(a) must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (d) (~~2017~~2023).
- b. **Non-soil Fumigation.** Applicants seeking supplemental certification in the category of Structural Fumigation as described in Section 2(B)(4)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees. In addition to the above competencies, private applicators obtaining

supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (e) (~~2017~~2023).

- c. **Aerial Pest Control.** Applicants seeking supplemental certification in the category of Aerial Pest Control as described in Section 2(B)(4)(c) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (f) (~~2017~~2023).

- C. **Requirements for Noncertified Applicators.** A certified applicator directly supervising a noncertified applicator to use restricted use pesticides must follow the provisions in 40 CFR 171.201 (2023).

D. **Recertification**

1. Any person with current valid certification may renew that certification by accumulating 6 recertification credits during the certification period described in Section 2(A)6.
2. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
3. Credit will be allowed for topics including, but not limited to:
 - a. Applicable laws and regulations.
 - b. Environmental hazards.
 - c. Calibration and new application techniques.
 - d. Label review.
 - e. Applicator safety.
 - f. Storage and disposal.
 - g. Pest identification and control.
 - h. Integrated pest management.

4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.
 - a. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
 - b. An individual conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
5. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
6. A person who fails to accumulate the necessary credits will have to re-apply to take the exams required for initial certification.

3. Licensing

- A. **Application.** Application for a private applicator license, shall be on forms provided by the Board. Information shall include name; Social Security number; mailing address; farm name, location and telephone number; and major crop(s).
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
 1. For a private applicator license - \$15.00 per person.
 2. For replacement or alteration - \$5.00.
- C. **Expiration.** Private applicator licenses are issued on a three-year period and will expire on October 31st of the third year. Any person who has accumulated the required number of recertification credits must apply for license renewal within one year of the expiration date of the license or the recertification credits are forfeited and that person must retake and pass both the core and commodity exams to again be eligible for licensing.
- D. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*

- E. **License Issued.** Licenses issued under this rule will include the following information:
- I. Full name of applicator
 - II. License number
 - III. Commodities and categories
 - IV. Expiration date
 - V. Maine statute under which license is issued
-

STATUTORY AUTHORITY: 22 M.R.S. §1471-D

EFFECTIVE DATE:
January 1, 1983

AMENDMENT EFFECTIVE:
December 6, 1987
August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

AMENDED:
August 25, 1997 – fees
January 4, 2005 – filing 2004-605, Section 3.C.

CORRECTIONS:
February, 2014 – agency names, formatting

AMENDED:
December 9, 2014 – Section 2(A)(4)(a, b), filing 2014-281
July 23, 2019 – filing 2019-132

BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 32

Basis Statement

Chapter 32 – Five amendments are proposed:

1. Incorporation by reference of 40 CFR 171.201 and 40 CFR 171.105(a) (1)-(11) (2023), which adds federal standards for direct supervision of non-certified applicators supervised by private applicators.
2. Incorporation by reference of 40 CFR 171.105(d) (2023) to (a) Soil Fumigation, which adds federal standards for private applicators under the soil fumigation category.
3. Incorporation by reference of 40 CFR 171.105(e) (2023) to (b) Non-Soil Fumigation, which adds federal standards for private applicators under the non-soil fumigation category.
4. Incorporation by reference of 40 CFR 171.105(f) (2023) to (c) Aerial, which adds federal standards for private applicators under the aerial category.
5. Updating the date for federal standards referenced from 2017 to 2023 under Chapter 32 (5)(a)-(c).

The amendments to the proposed rules are in response to the provisional adoption of Maine's Pesticide Certification and Training Program (C&T) by the Environmental Protection Agency. These changes were identified to add requirements to categories through federal incorporation by reference for non-certified applicators supervised by private applicators, soil fumigation category holders, non-soil fumigation category holders, and aerial category holders. Maine's C&T Plan was accepted on August 18, 2023, and Maine identified a timeline for implementation of changes to Chapter 32 as the end of 2024.

Zero comments were received during the public hearing and comment period.

Impact on Small Business

In accordance with 5 M.R.S. § 8052(5-A), a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.

Rulemaking Statement of Impact on Small Business

5 M.R.S. § 8052(5-A)

Agency

Department of Agriculture, Conservation and Forestry—Maine Board of Pesticides Control

Chapter Number and Title of Rule

CMR 01-026, Chapter 32—Certification and Licensing Provisions/Private Applicator

Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule

Currently, there are 1,142 private applicators that would be impacted by this rule. This is based on the number of active licenses that BPC currently has in its registration system (MEPERLS).

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

The changes to this rule incorporate federal rule by reference for several categories. These changes may have some administrative costs for private applicators that must study additional competency information for affected categories. BPC does not anticipate any reporting or recordkeeping costs with the proposed amendments.

Brief Statement of the Probable Impact on Affected Small Businesses

Prospective applicators may have additional information to study and train for during the licensing process. Otherwise, no fiscal impact is expected.

Description of Any Less Intrusive or Less Costly, Reasonable Alternative Methods of Achieving the Purposes of the Proposed Rule

The Board cannot use a less intrusive or less costly alternative method to achieve this rule. All of the changes proposed were identified during the review of Maine's Certification and Training Plan by EPA, and these changes are required as a part of the plan's conditional approval. If this rulemaking is rejected, the Board is at risk of losing its federal grants with EPA, as these changes align Maine's pesticide categories with federal requirements.

SUMMARY: These regulations describe the types of records and reports which commercial applicators, commercial agricultural producers, limited/restricted use pesticide dealers, spray contracting firms and monitors must maintain and submit to the Board.

Section 1. Records

A. Pesticide Application Records

- I. Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request.
- II. Pesticide application records shall include, at a minimum:
 - a. Site information including town and location, crop or site treated, target organism, customer and customer address_(where applicable); and
 - i. for broadcast applications, size of treated area (when completed);
 - ii. for volumetric applications as described on the label, the volume treated;
 - iii. for non-broadcast applications (such as spot treatments, crack and crevice or stump treatments) a practical description of the scope or extent of the application (such as number of trees, stumps or rooms treated).
 - b. **Application information.** For each distinct site, records must include date and time of application(s), brand name of pesticide(s) applied, EPA registration number(s), active ingredient(s), restricted entry interval(s) and/or ventilation period(s) (where applicable), method of application (type of equipment), dilution agent(s) (other than water), the licensed applicator's name and certification number, the name of any noncertified applicator that made the application (where applicable), and spray contracting firm (where applicable).

- c. **Rate information.** For each distinct site, application rate information must be maintained as follows:
- i. **Restricted Use Pesticides.** For restricted use pesticides, applicators shall record the total amount of pesticide applied (undiluted).
 - ii. **General Use Pesticides.** For general use pesticides, applicators shall record:
 - (1) rate information as described in (i.) above; or
 - (2) the mix ratio and the total mix applied; or
 - (3) the mix ratio and the mix per unit area applied.
- d. For outdoor applications, except those listed below, weather conditions including wind speed and direction, air temperature and sky conditions recorded such as sunny, partly cloudy, overcast, foggy or rainy. No weather condition records need be kept for outdoor applications involving:
- i. pesticides placed in bait stations;
 - ii. pesticide-impregnated devices placed on animals, such as ear tags; or
 - iii. pesticides injected into trees or utility poles.
- e. For TBT applications to marine vessels, applicators must also record the vessel identification and size, and the disposition of TBT wastes including chips/dust removed prior to application and empty containers.

B. Limited Use/Restricted Use Pesticide Sales Records

- I. Licensed pesticide dealers shall maintain records of each sale of a restricted/limited use pesticide on their sales slips and the customer's name, and license number must be recorded on every invoice or electronic record involving that individual. Licensed pesticide dealers must also maintain records to verify that sales of restricted/limited use pesticides to unlicensed purchasers are only made where a licensed applicator is employed to supervise the use of the restricted/limited use products. These records must include the name, address, license number, issuing agency, expiration date, and categories of certification (if applicable) of each person to whom the restricted use pesticide was distributed or sold. These records are to be available for inspection by representatives of the Board at reasonable times, upon request, and are to be maintained for two calendar years from the date of sale.
- II. Pesticide dealer records shall also include the signature of purchaser or his/her agent, the product name, the EPA registration number, state special local need registration (SLN) number (if applicable), the quantity and size of containers purchased, and the date of purchase.

- III. Any pesticide dealer who discontinues the sales of restricted/limited use pesticides shall notify the Board in writing and shall provide the Board, upon request, with all required records including a final sales report up to the date of discontinuance.

Section 2. Reports

- A. **Annual Summary Reports by Commercial Applicators.** Annual summary reports must be electronically submitted for each calendar year by January 31 of the following year through a board-approved software solution. In the event a required report is not received by the due date, the person's license may be temporarily suspended until the proper report is received or until a decision is tendered at a formal hearing as described in 22 M.R.S.A. §1471-D(7). The report filed with the Board by or on behalf of commercial applicators shall contain the following information for each site or crop treated: quantity of each pesticide used, EPA registration number and total area treated (where applicable) for each pesticide.
- B. **Annual Pesticide Sales Reports.** Pesticide dealers licensed to sell limited and restricted use pesticides must provide the Board with a calendar year-end report of total sales of all limited, restricted and general use pesticides electronically through a board-approved software solution before their pesticide dealer license can be renewed. The Board will furnish report forms.
- C. **Transition to Electronic Submission of Sales and Use Reports.**
- I. The 2024 amendments to Section 2 shall not affect the licensing status of applicators or dealers until reports for 2025 are due on January 31, 2026. At that time, reports will be required to be submitted in an electronic format through a board-approved software solution unless the submitter has received an electronic reporting waiver.
- II. The 2024 amendments to this chapter which will transition annual summary reports by commercial applicators and annual pesticide sales reports to an electronic format shall be phased in over two years. Phase one shall include promotion of the electronic portal and education for commercial applicators and dealers on how to utilize the electronic submission portal for reporting year 2024. Phase two shall include requiring commercial applicators and dealers to use the electronic submission portal for reporting year 2025, unless the submitter has received an electronic reporting waiver.
- D. **Waivers**
- I. If commercial applicators or dealers do not have access to an electronic device capable of submitting electronic reports, they may seek an electronic reporting waiver. Waiver applications must include the following:
- a. The name, address and telephone number of the applicant;

- b. The license number of the applicant;
- c. The intended format for submitting reports; and
- c. Testimonial or proof that the submitter is unable to complete the electronic submission process outlined in Section 1.

II. Within 30 days after a complete application is submitted, the Board or its staff shall issue a waiver if:

- a. The waiver application is received prior to December 31 of the reporting year;
- b. The applicant possesses a valid pesticide applicator or dealer license issued by the State; and
- c. The applicant agrees to submit physical copies of the annual reports required in Section 1 no later than January 31 of the following year.

The Board may place conditions on any such waiver, and the applicant shall comply with such conditions. Except as required by the waiver, the applicant shall undertake the reporting in accordance with all of the conditions described in their request and all other applicable legal standards. Waivers issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

The contents of this section will be effective for the reporting year 2024.

€E. Spray Incident Reports

- I. Commercial agricultural producers, commercial applicators, spray contracting firms and licensed pesticide dealers shall be responsible for telephoning a spray incident report to the Board as soon as practicable after emergency health care has been obtained for injured parties and efforts have been initiated to contain any spills.
- II. A reportable spray incident is any significant misapplication or accidental discharge of a pesticide. Such incidents shall include: fires involving pesticides; vehicle and aircraft accidents resulting in a spill or human contamination; failure to turn off spray booms or other spray equipment resulting in application to sensitive areas (such as water bodies, accidentally applying pesticides to the wrong site or places of human habitation) when such application is a violation of label instructions or other law; overfilling of spray equipment resulting in risk of contamination of water; and any other equipment breakage or malfunction or pesticide handling activity which causes a pesticide release which may result in a threat to human health or the environment.

STATUTORY AUTHORITY: Title 22 M.R.S. Chapter 258-A §1471-G, M and R

EFFECTIVE DATE:

July 6, 1979 - as "Reporting Requirements," filing 79-338

AMENDED:

August 12, 1985 - filing 85-275

REPEALED AND REPLACED:

April 5, 1995 - as "Record Keeping and Reporting Requirements," filing 95-149

AMENDED:

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

November 11, 2001 - filing 2001-483

March 5, 2003 - filing 2003-61

January 4, 2005 – filing 2004-606 affecting Section 1.A.I.

December 23, 2012 – filing 2012-348 affecting Section 1.B.II.

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

July 23, 2019 – filing 2019-133

BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 50

Basis Statement

Chapter 50 – Three amendments are proposed:

1. Require electronic reporting for commercial applicators' annual use reports and dealers' annual sales reports. This requires these parties to electronically report to a Board-approved software solution.
2. Outlines a transition period in 2024 and 2025 with reports required to be submitted electronically by 2026 (reporting year 2025) or seek an exemption waiver.
3. Describes a waiver process for those who do not have access to an electronic device capable of submitting electronic reports.

The 131st Legislature passed LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data, which directed the BPC to transition annual sales and annual use reports to an electronic format. In order to comply with this resolution, the BPC has upgraded its MEPELRS system, which can accept these reports electronically. The proposed rule would impact commercial applicators and pesticide dealers that are already required to submit these reports to the Board annually. The content of the reports would not change, only the process by which they are submitted.

Additionally, for applicators or dealers that are not able to submit these reports electronically, a waiver process is outlined in these proposed rules that would allow for these reports to be physically submitted. A transitional period of electronic reporting is also proposed. Electronic reporting is encouraged and promoted in reporting year 2024 but not required until reporting year 2025 in early 2026.

Two comments were received during the public hearing and comment period. Some comments received asked for the Board to require more information and publish more information related to pesticide sales and use information for the public. BPC responded that it must consider confidentiality and is complying with LD 1770 by requiring reports to be submitted electronically. Another comment asked for clarification for how the Board determines what is confidential and reporting frequency requirements. The BPC responded that report content is not changing and confidential information will not be collected, and that these annual reports will be required annually.

Impact on Small Business

In accordance with 5 M.R.S. § 8052(5-A), a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.

Rulemaking Statement of Impact on Small Business

5 M.R.S. § 8052(5-A)

Agency

Department of Agriculture, Conservation and Forestry—Maine Board of Pesticides Control

Chapter Number and Title of Rule

CMR 01-026, Chapter 50—Record Keeping & Reporting Requirements

Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule

This rule would impact 1,480 commercial applicators, 801 general-use pesticide dealers, and 63 restricted-use pesticide dealers based on the number of active licenses in BPC's registration system (MEPERLS).

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

The 131st Legislature passed LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data. This law requires the Board of Pesticides Control (BPC) to implement an electronic annual sales and use reporting system to collect information from applicators and dealers. These proposed changes are in response to this legislative resolve.

The proposed changes would have several recordkeeping and administrative changes for companies. Instead of physical reports sent to the BPC, companies would now be required to use the Maine Pesticide Enforcement, Registration, and Licensing Software (MEPERLS) to submit their annual use and sales reports electronically. While the system is currently accepting electronic reports, it is voluntary with about 20% of licensed users submitting their information digitally. The proposed changes will require these companies to create an online profile and complete a digital aggregate use and sales report for their company or agency. This would require some computing and administrative skills to know what products were used, how much was used, and the EPA registration number for products (if applicable).

Brief Statement of the Probable Impact on Affected Small Businesses

This new reporting process may have an impact on companies that hire for administrative tasks. There may be more time needed to enter this information electronically versus the physical paper system. Companies will also need to know their login information, license information, and light computer skills to navigate the system. If they are unable to enter information electronically because of a lack of these skills, they can opt to submit a waiver application to submit this information in another way.

Description of Any Less Intrusive or Less Costly, Reasonable Alternative Methods of Achieving the Purposes of the Proposed Rule

The Board cannot use a less intrusive or less costly alternative method to achieve this rule. LD 1770 was a legislative resolve that required the Board to transition to a system of electronic submission of annual reports for applicators and dealers, and it directed the Board to conduct routine technical rulemaking to achieve this. Unless the BPC amends its rule, it cannot enforce the required reporting requirements. The rule does have provisions for a transition to electronic reporting in 2024 to encourage applicators and dealers to use the system prior to 2025, as well as a waiver process for any applicators or dealers that are unable to use the MEPERLS system.

Summary of Comments Received Regarding Proposed Amendments Rules

Board of Pesticides Control CMR 01-026 Chapter 50

#	Name	Summary	Response
1	Heather Spaulding – The Maine Organic Farmers & Gardeners Association	<ul style="list-style-type: none"> • MOFGA is encouraged by the work that BPC staff is doing. MOFGA believes that the timeline for implementation is sufficient. This rulemaking does not encompass all of the amendments that MOFGA would like to see, which would include a comprehensive data analysis and publishing process. MOFGA feels there are data gaps and would like to keep the discussion open and continue to let technology gather information. Without this data, MOFGA feels that BPC cannot answer questions regarding pesticide use in Maine. 	<ul style="list-style-type: none"> • The Board appreciates MOFGA’s input. • The proposed amendments are in response to LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data, which directed the Board to transition to an electronic data collection system. The Board has proposed changes to do this under their electronic portal, the Maine Pesticide Enforcement, Registration, and Licensing Software (MEPERLS). BPC will use the information submitted to create aggregate sales and use data that collects the reports and summarizes, by active ingredient, the number of pesticides that were reported as used in a given calendar year. BPC can only summarize data collected; it cannot publish sensitive or confidential business information.
2	Eric Venturini – Wild Blueberry Commission of Maine	<ul style="list-style-type: none"> • The Wild Blueberry Commission of Maine is concerned that these proposed amendments could harm businesses. The proposed changes could include specific location information and lead to issues with confidential business information as location can give a competitive 	<ul style="list-style-type: none"> • The Board appreciates the Wild Blueberry Commission of Maine’s input. • The rule will only impact commercial applicators and pesticide dealers. Commercial applicators are defined as “any person, whether or not the person is a private applicator with

		<p>advantage. The Commission asked additional questions in their comments:</p> <ol style="list-style-type: none"> 1. How will the board determine what is confidential? 2. What is the frequency that people will need to enter this information online? 	<p>respect to some uses, who uses or supervises the use of any limited or restricted-use pesticides on any property other than as provided by subsection 22, or who uses general-use pesticides in custom application on such property. “Commercial applicator” also includes individuals who apply any pesticides in connection with their duties as officials or employees of federal, state or local governments.” 22 M.R.S. § 1471-C. A “dealer” is defined as “any person who distributes limited or restricted use pesticides.” 22 M.R.S. § 1471-C.</p> <ul style="list-style-type: none"> • There is a confidentiality clause in this section of rule. While commercial applicators and dealers will need to input their information to submit this data, none of the published data/analyses will include applicator details, locations, or other sensitive information. The proposed changes do not change what information is required to be submitted, only that commercial applicators and dealers submit their annual use and annual sales reports electronically on the Board’s portal (MEPERLS). <ol style="list-style-type: none"> 1. The Board determines confidentiality through several means. The only information that may currently be published on the Board’s website is aggregate
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			<p>data on pesticide sales and usage. There will not be any names, locations, businesses, or other sensitive information published on the annual sales and use data analyses.</p> <p>2. The proposed changes only pertain to commercial pesticide applicators and dealers or distributors in Maine. In order for these groups to remain licensed, they must submit annual reports to the Board. The frequency of reports is not changing. The deadline for these reports is January 31th of the following year.</p>
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