

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 20: SPECIAL PROVISIONS

SUMMARY: These provisions regulate the use, storage and disposal of pesticides with specific emphasis on registered pesticides, right of way and aquatic applications and employer/employee requirements.

Section 1. Registered Pesticides

A. Definitions

“Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS” means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

- B.** The use of any pesticide not registered by the Maine Board of Pesticides Control in accordance with Title 7 M.R.S.A. §601 is prohibited except as otherwise provided in this chapter or by FIFRA, Section 2(ee).
- C.** The use of registered pesticides for other than registered uses, or at greater than registered dosages, or at more frequent than registered intervals is prohibited, provided that application or use of unregistered pesticides and unregistered applications or uses of registered pesticides may be made for experimental purposes if in accordance with requirements of the Maine Board of Pesticides Control, and the U.S. Environmental Protection Agency.
- D.** Retailers and end users of pesticides no longer registered in Maine may continue to sell and use those items provided they were properly registered when obtained and such distribution and use is not prohibited by FIFRA or other Federal law.
- E.** In conducting review of registration or re-registration pursuant to 7 M.R.S.A. §607-A, the Board may consider the potential for environmental damage by the pesticide through direct application on or off-target or by reason of drift. If the Board finds that the use of the pesticide is anticipated to result in significant adverse impacts on the environment, whether on or off-target, which cannot be avoided or adequately mitigated, registration or re-registration will not be granted unless the Board finds that anticipated benefits of registration clearly outweigh the risks. In any case where the Board may request data in connection with registration or re-registration of any pesticide, such data may include that concerning pesticide residues, propensity for drift and testing therefor. Such data, if requested, shall provide information regarding residues and residue effects on plant tissues, soil and water and other potential deposition sites, and shall take into consideration differences in plants, soils, climatic conditions at the time of application and application techniques.

- F. In conducting review of registration or reregistration pursuant to 7 M.R.S.A §607-A, the Board shall require submission of the confidential statement of formula as defined in 7 M.R.S.A. §607 (5-A) and the following affidavits:
1. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide has or has never been stored, distributed, or packaged in a fluorinated container; and
 2. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide formulation does or does not contain perfluoroalkyl or polyfluoroalkyl substances as defined by the Board for this purpose of this section.

Section 2. Right-of-Way

Deciduous growth over six feet in height and evergreen growth over three feet in height shall not be sprayed with a herbicide within the right-of-way of any public way except that deciduous growth which has been cut to the ground and which has grown more than six feet during the growing season following the cutting, may be sprayed that following season. In addition, chemical pruning of single limbs of trees over the prescribed heights may be performed.

Section 3. Pesticide Storage and Disposal

- A. Unused pesticides, whether in sealed or open containers, must be kept in a secure enclosure and otherwise maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
- B. Obsolete, expired, illegal, physically or chemically altered or unusable pesticides, except household pesticide products, shall be either:
1. stored in a secure, safe place under conditions that will prevent deterioration of containers or any contamination of the environment or risk to public health, or
 2. returned to the manufacturer or formulator for recycling, destruction, or disposal as appropriate, or
 3. disposed of in a licensed hazardous waste facility or other approved disposal site that meets or exceeds all current requirements of the Maine Department of Environmental Protection and the U.S. Environmental Protection Agency for facilities receiving such waste.

Section 4. Aquatic Applications

No person, firm, corporation or other legal entity shall, for the purpose of controlling aquatic pests, apply any pesticide to or in any waters of the state as defined in 38 M.R.S.A. §361-A(7) without approval of the Maine Department of Environmental Protection.

Section 5. Employer/Employee Requirements

- A. Any person applying pesticide shall instruct their employees and those working under their direction about the hazards involved in the handling of pesticides to be employed as set forth on the pesticide label and shall instruct such persons as to the proper steps to be taken to avoid such hazards.
- B. Any person applying pesticides shall provide and maintain, for the protection of their employees and persons working under their direction, the necessary safety equipment as set forth on the label of the pesticide to be used.

Section 6. Authorization for Pesticide Applications

- A. Authorization to apply pesticides to private property is not required when a pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of establishing or maintaining such easement or right of way.
- B. When the Maine Center for Disease Control and Prevention (CDC) has identified that an organism is a vector of human disease and the vector and disease are present in an area, a government entity shall obtain authorization for ground-based applications by:
 - 1. Sending a written notice to the person(s) owning property or using residential rental, commercial or institutional buildings within the intended target site at least three days but not more than 60 days before the commencement of the intended spray applications. For absentee property owners who are difficult to locate, mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice; and
 - 2. Implementing an “opt out” option whereby residents and property owners may request that their property be excluded from the application by submitting written notice to the government entity at least 24 hours before spraying is scheduled to commence. Authorization is considered given for any property for which written notice was submitted and no “opt out” request was received by the sponsoring government entity.
- C. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government entities are not required to receive prior authorization to apply pesticides to private property, provided that the government entity sponsoring the vector control program:
 - 1. Provides advance notice to residents about vector control programs using multiple forms of publicity which may include, but is not limited to, signs, newspaper, television or radio notices, direct mailings, electronic communication or other effective methods; and
 - 2. Implements an “opt out” option whereby residents and property owners may request that their property be excluded from any ground based control program and the government entity makes a reasonable effort to honor such requests; and

3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.
- D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provision apply:
1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.
 2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.
 3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
 - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

Section 7. Positive Identification of Proper Treatment Site

- A. Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. After December 31, 2023, the master applicator responsible for the supervision of certified and noncertified applicators at each branch location must ensure that all applicators under their supervision are trained, annually, on positive identification of proper treatment sites. This master applicator must maintain records of the method of positive identification of proper treatment sites as adopted by the branch location. Appropriate positive identification methods that must be employed include at least one of the following:
1. Obtain the customer’s electric meter number in advance of the treatment, list it on the work order or invoice, and require the applicator to check for that number before initiating the treatment.

2. Visit the customer in advance of the treatment, and using a global positioning system (GPS), identify the coordinates of each property to be treated. Include the coordinates on the work order or invoice, equip the applicator with a GPS unit, and require that employee to check for those coordinates before initiating any treatment.
 3. Visit the customer in advance of the treatment and take a digital time/date stamped photo of the home and any distinctive features of the property. Include the photo on the work order or invoice and require the applicator to carefully check the photo before initiating any treatment.
 4. Visit the customer in advance of the treatment and attach a company logo or other unique identifying tag on the property. Include the location of the logo/tag on the work order or invoice and require the applicator to carefully check for its presence before initiating any treatment.
 5. Any methods that were submitted in writing to the Board prior to March 1, 2024. Any methods submitted after this date may be subject to approval by staff.
- B. Violations of Chapter 20, Section 7 is grounds for the suspension of certification or licensure under 22 M.R.S.A §1471-D(7).
1. For a first violation the applicators license/certification may be suspended;
 2. For a second violation under the same master applicator and within the same company within a 5-year period the applicator's and master's licensure/certification may be suspended; and
 3. For a third violation violation under the same master applicator and within the same company within a five-year period the applicator's, master's, and firm's licensure/certification may be suspended.

Penalties may also be imposed pursuant to 7 M.R.S.A. § 616-A (2) for violations of Chapter 20, Section 7 in addition to any suspensions imposed under Chapter 20, Section 7 (B)(1), (2) or (3). Nothing in this subsection may be construed as prohibiting the Board from seeking license or certification revocation pursuant to 22 M.R.S.A. §§ 1471-D(6) and 1471-J where the Board determines revocation is warranted under the circumstances.

STATUTORY AUTHORITY:

Title 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

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AMENDMENT EFFECTIVE:

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January 1, 1988
May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

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May 7, 1997 - Section 5

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AMENDED:

January 1, 2008 – new Sections 6 and 7, filing 2007-65
September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)
December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version
September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)
December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version
June 12, 2013 – Emergency major substantive filing 2013-134

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

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AMENDED:

January 30, 2024 – filing 2024-015

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 22: STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION

SUMMARY: These regulations establish procedures and standards for the outdoor application of pesticides by powered equipment in order to minimize spray drift and other unconsented exposure to pesticides. The primary purpose of these regulations is to implement the legislative mandate of the Board, as expressed by 7 M.R.S.A. §606(2)(G), to design rules which “minimize pesticide drift to the maximum extent practicable under currently available technology.”

SECTION 1. EXEMPTIONS

The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

- A. Applications of pesticides confined entirely to the interior of a building;
- B. Applications of pesticides by non-powered equipment;
- C. Applications of pesticides exclusively in granular or pelletized form;
- D. Applications of pesticides injected underground or otherwise injected directly into the target medium. Such applications must involve no spraying of pesticides whatsoever.

SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS

All pesticide applications subject to these regulations shall be undertaken in compliance with the following standards of conduct:

- A. **Equipment**
 - I. Pesticide spray equipment shall be used in accordance with its manufacturer’s recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
 - II. Pesticide spray equipment shall be properly calibrated consistent with Board or University published guidance. Sufficient records to demonstrate proper calibration must be maintained and made available to representatives of the Board upon request.
 - III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and

minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.

B. Weather Conditions

- I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto Sensitive Areas or otherwise prevent proper deposition of pesticides on target.
- II. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.
- III. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

C. Identifying and Recording Sensitive Areas

- I. Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area. Applicators shall prepare a site map or other record, depicting the target area and adjacent Sensitive Areas. The map or other record shall be updated annually. The site map or other record shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- II. This requirement shall not apply to commercial applications conducted under categories 3A (outdoor ornamental), 3B (turf), 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management), 7A (structural general pest control applications), or 7E (biting fly & other arthropod vectors [ticks]).

D. Presence of Humans, Animals

Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals.

The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.

E. Other Requirements

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in order to avoid adverse impacts on off-target areas and to protect public health and the environment.

SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES

A. Positive Identification of the Target Site

The person contracting for an aerial pesticide application shall ensure that the application site (i.e., target area) is positively identified prior to application, using a unique and verifiable method, including;

- I. An onboard, geo-referenced electronic mapping and navigation system (e.g., GPS); or
- II. Effective site markings visible to the applicator; or
- III. Other method(s) approved by the Board.

B. Site Plans Required

Prior to spraying by aerial application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the person contracting for the application shall provide to the applicator a site plan that includes:

- I. a site map drawn to scale that:
 - (i) delineates the boundaries of the target area and the property lines;
 - (ii) depicts significant landmarks and flight hazards;
 - (iii) depicts the type and location of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area; and
 - (iv) depicts other Sensitive Areas within 500 feet of the target area.
- II. If applicable, a school bus schedule shall accompany the site map.
- III. The site plan and site map with identified sensitive areas required under Section 3(B) shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- IV. Compliance with this section satisfies the requirements of Section 2(C).

C. Site-Specific Application Checklist

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

- I. The date, time, description of the target site and name of the applicator;

- II. Confirmation that the notification requirements contained in CMR 01-026, Chapters 28 and 51, have been carried out;
- III. Confirmation that the target site has been positively identified;
- IV. The location of where weather conditions are measured and a description of the equipment used to measure the wind speed and direction;
- V. Confirmation that conditions are acceptable to treat the proposed target site, considering the location of any Sensitive Area Likely to Be Occupied and current weather conditions;
- VI. Wind speed and direction;
- VII. The measures used to protect all Sensitive Areas;
- VIII. Confirmation that there are no humans visible in or near the target area.

D. Buffer Zones for any Sensitive Area Likely to Be Occupied

Aerial applicators shall employ site-specific buffer zones adjacent to any Sensitive Area Likely to Be Occupied sufficient to prevent unlawful pesticide drift, unless consent has been granted by the landowner, lessee and occupant (when applicable), consistent with the provisions of Section 4(C) of this rule.

E. Wind Speeds for Aerial Applications

Unless otherwise specified by the product label, an applicator may not conduct an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied unless the wind speed is between 2 and 10 miles per hour.

SECTION 4. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE

A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides

Pesticide applications shall be undertaken in a manner which does not result in off-target direct discharge of pesticides, unless prior authorization and consent is obtained from the owner or lessee of the land onto which such discharge may occur in a manner consistent with the pesticide label.

B. Standards for Unconsented, Off-Target Drift of Pesticides

- I. **General Standard.** Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.

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- II. **Prima Facie Evidence.** Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.
- III. **Standard of Harm.** An applicator may not apply a pesticide in a manner that results in:
- (i) Off-target pesticide residue detected in or on any nearby crop which violates EPA tolerances for that crop, as established under 40 CFR, Part 180.
 - (ii) Off-target pesticide residue detected in or on any nearby organic farm or garden which causes the agricultural products thereof to be excluded from organic sale in accordance with 7 CFR, Part 205, Section 205.671.
 - (iii) Off-target pesticide residue detected on any nearby persons or vehicles using public roads.
 - (iv) Documented human illness. For this standard to be met, the Board must receive verification from two physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.
 - (v) Off-target damage or injury to any organism.
- IV. **Enforcement Considerations.** The Board shall consider the particular circumstances of violations arising from Subsections 4(B)(I) and (III) in determining an appropriate response, including, but not limited to:
- (i) The standard of care exercised by the applicator;
 - (ii) The degree of harm or potential harm that resulted from or could have resulted from off-target drift from the application;
 - (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

C. **Consent**

- I. **Consent, How Given.** Authorization and consent by the owner or lessee and occupant (when applicable) of land receiving a pesticide discharge or drift in a manner consistent with the pesticide label may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. The residue and harm standards in Sections 4(B)(II) and (III) for off-target drift do not apply where the owner, lessee and occupant (when applicable) of the off-target area receiving the pesticide drift have given authorization and consent as prescribed in Section 4(C).
- III. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in CMR 01-026, Chapter 10, "Definitions; Sensitive Area."

SECTION 5. **VARIANCES FROM STANDARDS**

A. **Variance Permit Application**

An applicator may vary from any of the standards imposed under this chapter by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address, and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;
- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;
- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;
- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the

application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.

B. Board Review; Legal Effect of Permit, Delegation of Authority to Staff

- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct spray activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in the application and all other applicable legal standards. Permits 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.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B) I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemptions."

SECTION 6. EMERGENCIES

- A. In the event that severe pest or weather conditions threaten to cause a significant natural resource and/or economic loss, as determined by the Commissioner of the Maine Department of Agriculture, Conservation and Forestry, the requirements contained in Section 3 of this Chapter shall be waived, subject to the following conditions:
 - I. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.
 - II. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 3 of this Chapter,
 - III. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of aerial application in the affected regions and the approximate dates that the emergency may continue.
 - IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
 - V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.

- B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

June 12, 2009 amendments become effective on January 1, 2010.

STATUTORY AUTHORITY: 7 M.R.S.A. §606(2)(G):
22 M.R.S.A. §1471-M(2)(D)

EFFECTIVE DATE:
January 1, 1988

AMENDED:
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

AMENDED:
September 22, 1998 - also converted to MS Word
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)
January 1, 2010 by request of agency in filing 2009-252
June 12, 2013 – filing 2013-135 (Emergency major substantive)

CORRECTIONS:
February, 2014 - formatting

AMENDED:
September 11, 2014 – Section 6, filing 2014-164
May 24, 2015 – filing 2015-075 (Final adoption, major substantive)

SUMMARY: These regulations provide minimum criteria for the siting, construction and operation of facilities and businesses which store pesticides for wholesale or retail purposes. They are intended to protect the public health of employees and persons who live near these facilities and to minimize adverse environmental impacts that might result from emergencies caused by fires or spills. This chapter divides storage facilities into three groups and imposes requirements commensurate with their potential threat to public health and the environment. These regulations also describe display requirements for retail businesses which offer pesticides for sale in self-service areas.

Section 1. Applicability of this Chapter

- A. Pesticide storage facilities owned and/or operated by distributors who are not required to hold either a general use or restricted use pesticide dealer license are exempt from this chapter.
- B. All pesticides held for storage by pesticide distributors to whom this regulation applies must be stored in pesticide storage facilities as set forth in this chapter.

Section 2. Exempted Products

For the purpose of calculating the total amount of pesticide in storage in a pesticide storage facility, the following products shall be exempt from consideration.

- A. Pesticide products with solely household uses and with no more than 3% active ingredients;
- B. Dichlorvos (DDVP) impregnated strips with concentrations not more than 25% in resin strips and pet collars;
- C. Pet supplies such as shampoos, tick and flea collars and dusts;
- D. Disinfectants, germicides, bactericides and virucides;
- E. Insect repellents;
- F. Indoor and outdoor animal repellents;
- G. Moth flakes, crystals, cakes and nuggets;
- H. Indoor aquarium supplies;

- I. Swimming pool supplies;
- J. Pediculocides and mange cure on man;
- K. Aerosol products;
- L. General use paints, stains, and wood preservatives and sealants; and
- M. Dry pesticides with percent active ingredient less than or equal to 5% .

Section 3. Siting and Structural Requirements for New Major Pesticide Storage Facilities

A. Applicability

All major pesticide storage facilities that become operational after the effective date of this chapter must conform with the provisions of this section.

B. Siting Requirements for New Major Pesticide Storage Facilities

- I. No new major pesticide storage facility may be located:
 - a. in a 100 year flood plain;
 - b. overlying any aquifer which has been identified by a municipal as a current or future source of public drinking water; or
 - c. overlying any sand and gravel aquifer with a yield greater than 10 gallons per minute which has been mapped by the Department of Conservation, Maine Geological Survey.
- II. No new major pesticide storage facility may be sited closer than 1,000 feet from any:
 - a. school, hospital, nursing home, correctional facility, or other similar institutional building;
 - b. densely populated area as defined by the Maine Department of Transportation Compact Urban Line, unless the storage facility is located next to an office building or retail store which meets the criteria in Section 3(B)III(b) below;
 - c. pesticide critical control area as defined by 22 M.R.S.A. §1471-F, "Critical areas" and 01-026 CMR Chapter 60, "Designation of Critical Pesticide Control Areas;" and
 - d. water body or well which serves any public water supply.

- III. No new major pesticide storage facility may be sited closer than 250 feet from any:
- a. residential building;
 - b. office building or retail store, unless it meets one of the following exceptions:
 - i. the office building or retail store is owned and/or operated by the licensed pesticide dealer;
 - ii. the office building or retail store is located in an area zoned or identified by a municipality for industrial use; or
 - iii. the office building or retail store is located in an area zoned by a municipality for business or commercial use and the construction of that pesticide storage facility has been approved by the municipal planning or zoning board;
 - c. state water body;
 - d. wetlands of special significance;
 - e. private domestic well unless it solely serves the building owned and/or operated by the licensed pesticide dealer; and
 - f. area used for livestock.

C. Structural Requirements for New Major Pesticide Storage Facilities

I. Basement

All new major pesticide storage facilities shall be constructed without a basement.

II. Walls and Ceiling

The exterior walls and ceiling of a new major pesticide storage facility shall be constructed to have a fire resistance rating of two hours.

III. Doors

- a. All doors shall have a fire resistance rating of 1 hour.
- b. All new major pesticide storage facilities shall have, at least:
 - i. two means of egress, one of which must be a standard door on which panic hardware is installed. The standard door must latch shut when closed and open outward from where products are stored when a person depresses the horizontal bar on the panic hardware. If there is a smaller room or partitioned area within the facility, it too must have an outward opening standard door with panic hardware as previously described in this sub-section.

- ii. one outside door at ground level with a minimum opening of 10' by 12'. This door shall not qualify as a means of egress as described in Section 3(C)III(b)i unless it is equipped with a device which allows it to be easily and quickly opened in an emergency.

Section 4. Structural Requirements for All New and Existing Major Pesticide Storage Facilities

A. Applicability

- I. All new major pesticide storage facilities that become operational after the effective date of this chapter must conform with the provisions of this section.
- II. All existing major pesticide storage facilities must be upgraded to conform with the provisions of this section by no later than January 1, 1997.

B. Walls

All major pesticide storage facilities shall be structurally separated by a wall with a fire resistance rating of two hours from office, retail or residential spaces, livestock quarters, water supply sources, and food, feed, fertilizer or seed storages. This does not preclude having a small area for warehouse employees to maintain inventory and shipping records.

C. Doors

Any partitioned area within a major pesticide storage facility must be equipped with a standard door on which panic hardware is installed.

D. Floors

- I. All floors shall be made impervious to liquid and dry pesticide spills.
- II. The outside edges of floors shall have at least a four-inch, sealed concrete berm.
- III. Any floor drains must be sealed or connected to a waste storage tank of sufficient size to hold 25% of liquid volume stored.

E. Lighting

All major pesticide storage facilities shall have:

- I. lighting installed so that labels may be easily read and any leaks quickly detected;
- II. a battery powered emergency lighting system that automatically activates during power outages and illuminates all exits; and
- III. exterior lighting that provides coverage around the perimeter of the building.

F. Heating

- I. All pesticides must be stored at temperatures that conform to label directions.
- II. When and where applicable, heat sources must be provided by one of the following:
 - a. an outside furnace room with hot water fixtures in the pesticide storage area; or
 - b. permanent oil or gas furnaces inside the storage, with sealed flames and an explosion proof thermostat; or
 - c. roof installed heat exchangers; or
 - d. any other heating source which would meet applicable fire safety and electrical codes.

G. Ventilation

All major pesticide storage facilities shall have one of the following:

- I. gravity ventilation to the outside with a capacity of one cubic foot per minute per square foot of floor space; or
- II. mechanical ventilation with on/off switches at points of ingress that is capable of exhausting to the outside at a rate of not less than 150 cubic feet per minute.

H. Security

All major pesticide storage facilities shall have:

- I. locked doors and windows which prohibit unauthorized access; and
- II. an automatic alarm system that is connected to a supervised central station. This system shall have a backup power system so it will operate during power outages.

I. Fire Protection

- I. All major pesticide storage facilities shall be equipped with an automatic heat and smoke detector alarm system connected to a supervised central station. The system shall have both audible and visible devices and shall have a backup power system so it will operate during power outages.
- II. Water sprinkler systems shall not be allowed in any portion of a major pesticide storage facility.

J. Emergency Showers

All major pesticide storage facilities shall have emergency showers available. These emergency showers must be located either in the facility or in an adjacent building on the premises within 200 feet of the major pesticide storage facility. There must also be a plan for collecting any water used in emergency showers.

K. Design Certification

I. New Major Pesticide Storage Facilities

- a. Anyone constructing a new building which is intended to serve as a new major pesticide storage facility shall obtain a certification from a licensed architect or professional engineer that the plans for the facility meet all the requirements of this chapter. Copies of the certified plans shall be included in the building permit application to the municipality and shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.
- b. Anyone converting an existing building or portion of an existing building to a new major pesticide storage facility shall obtain a certification from a licensed architect or professional engineer that the plans for the facility meet all the requirements of this chapter. Copies of the certified plans shall be included in the building permit application to the municipality and shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.

II. Existing Major Pesticide Storage Facilities

- a. A general contractor renovating an existing major pesticide storage facility shall obtain certification from a licensed architect or professional engineer that the plans for the facility meet all the requirements of this chapter. Copies of the certified plans shall be included in the building permit application to the municipality and shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.
- b. A licensed pesticide dealer who undertakes renovations to an existing major pesticide storage facility without the services of a general contractor, licensed architect or professional engineer shall provide written self-certification that the pesticide storage facility meets all requirements of this chapter. This self-certification shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.

Section 5. Structural Requirements for All New and Existing Minor Pesticide Storage Facilities**A. Applicability**

- I. All new minor pesticide storage facilities that become operational after the effective date of this chapter must conform with the provisions of this section.
- II. All existing minor pesticide storage facilities must be upgraded to conform with the provisions of this section by no later than January 1, 1997.

B. Walls

Minor pesticide storage facilities shall be structurally separated from and sealed to prevent air movement to other occupied spaces and livestock quarters. This does not preclude having a small area for employees to maintain inventory and shipping records.

C. Doors

Any interior room or otherwise partitioned area in which pesticides are stored within a minor pesticide storage facility must be equipped with a standard door on which panic hardware is installed. The standard door must latch shut when closed and open outward from where the products are stored when a person depresses the horizontal bar on the panic hardware. If there is a smaller room or partitioned area within the facility, it too must have an outward opening standard door with panic hardware as previously described in this sub-section.

D. Floors

All floors shall be made impervious to liquid and dry pesticide spills.

E. Lighting

Minor pesticide storage facilities shall have lighting installed so that labels may be easily read and any leaks quickly detected.

F. Ventilation

Minor pesticide storage facilities shall have one of the following:

- I. gravity ventilation to the outside with a capacity of one cubic foot per minute per square foot of floor space; or
- II. mechanical ventilation with on/off switches at points of ingress that is capable of exhausting to the outside at a rate of not less than 150 cubic feet per minute.

G. Security

Minor pesticide storage facilities shall have doors and windows capable of being locked to prohibit unauthorized access.

Section 6. Operational and Emergency Equipment Requirements for All Major and Minor Pesticide Storage Facilities

- A. All pesticide storage facilities shall be kept securely locked at all times, except when authorized personnel are present.
- B. Each entrance to the pesticide storage facility shall be prominently posted with the words, "Danger - Pesticide Storage - Keep Out."
- C. No smoking shall be allowed in any pesticide storage area. All entrances to the pesticide storage facility shall be posted with signs indicating smoking is not allowed.
- D. All pesticide containers shall be stored in a manner that prevents damage and allows inspection for rusting, bulging or leaking. All containers held in storage shall be in good condition and have full labeling intact. Pesticide distributors must conduct periodic inspection of containers for rust and/or leaks.
- E. Emergency Equipment
 - I. All pesticide storage facilities shall be equipped with at least one eye wash station capable of flushing eyes for a minimum of fifteen minutes.
 - II. All pesticide storage facilities shall be equipped with fire extinguishers that are capable of extinguishing all types of fires that may occur in the pesticide storage facility. These fire extinguishers must be clearly marked as to their fire suppression capabilities. The number and placements of fire extinguishers shall conform with the National Fire Protection Association Standard No. 10.
 - III. All pesticide storage facilities shall be equipped with spill response and clean-up equipment, including, but not limited to, absorbents, empty containers, brooms and shovels and personal protective equipment for employees.
 - a. Compatible absorbents for water and oil-based products shall be present in sufficient quantity to clean up two-times the volume of the largest container stored in the facility.
 - b. Proper personal protective clothing and equipment, as well as training to use that equipment, shall be provided to employees and emergency responders.
 - c. Pesticide distributors may coordinate the provision of spill response equipment with other facilities in the locality as well as with appropriate municipal safety agencies.
- F. Pesticides shall not be stored within 10 feet from products intended for human or animal consumption.

Section 7. Special Requirements for Pesticide Distributor Self-Service Sales Areas

- A. All pesticides, unless they are exempted products under 22 M.R.S.A. §1471-W(5), shall be displayed in a separate area that is identified by a Board approved sign informing the public where to obtain additional information. The signs must be positioned between four and seven feet above the floor and prominently posted in all areas where non-exempt pesticides are displayed.
- B. All pesticide containers in the self-service sales area shall be in good condition and have full labeling intact. It is prohibited to have torn, punctured, rusted or leaking pesticide containers in the self-service sales area.
- C. All pesticide products not exempted under 22 M.R.S.A. §1471-W(5) shall not be displayed within 10 feet of food or animal feed products unless they are stored in adjoining aisles separated by a solid barrier. Pesticides shall not be on display above food or animal feed products.
- D. Any outdoor pesticide display area must be securely fenced and must have a roof to protect the material from the elements.
- E. Each retail or wholesale establishment must be equipped with spill cleanup materials sufficient to absorb 2 times the volume of the largest container stored. These cleanup materials must be readily available and easily accessible.

Section 8. Local Ordinances

These regulations are minimum standards and are not meant to preempt any local ordinances which may be more stringent.

Section 9. 40 CFR, Part 165, *Federal Pesticide Management and Disposal Rule* Adopted by Reference

The Federal Pesticide Management and Disposal Rule, 40 CFR, Part 165 (July 1, 2008), is incorporated herein by reference

STATUTORY AUTHORITY: 22 M.R.S.A. §1471-O and 7 M.R.S.A. §610(2)(B)

EFFECTIVE DATE:

May 12, 1992

AMENDED:

June 30, 1996

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

March 5, 2003 - filing 2003-59

January 4, 2005 – filing 2004-6704 affecting Sections 3.C.III.b.i., 5.C., 7.A

April 12, 2009 – filing 2009-153

CORRECTIONS:

February, 2014 – agency names, formatting

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 26: STANDARDS FOR INDOOR PESTICIDE APPLICATIONS AND NOTIFICATION FOR ALL OCCUPIED BUILDINGS EXCEPT K - 12 SCHOOLS

SUMMARY: These regulations establish procedures and standards for applicators applying pesticides inside occupied private and public buildings other than K - 12 schools that are covered by Chapter 27. This chapter also sets forth the requirements for notification about pending pesticide applications to residents of rented space, employees of agencies, businesses and institutions, and parents or guardians of children in licensed child care facilities and nursery schools.

Section 1. Definitions

- A. **Applicator.** For the purposes of this regulation, Applicator means a commercial applicator or other persons who apply pesticides to occupied buildings.
- B. **Client.** For the purposes of this regulation, Client is the person who either owns or manages the Occupied Building and who contracts with a commercial applicator to monitor and/or control pests.
- C. **Crack and Crevice Treatment.** For the purposes of this regulation, Crack and Crevice Treatment means using an injector tip and placing the tip inside an opening to apply small amounts of pesticides into cracks and crevices in which pests hide or through which they may enter a building. Such openings commonly occur at expansion joints, between elements of construction, and between equipment and floors. These openings may lead to voids such as hollow walls, equipment legs and bases, conduits, motor housings, and junction or switch boxes. This does not include spraying a band covering the baseboards or mopboards or spraying above the baseboards or mopboards.
- D. **Integrated Pest Management.** For the purposes of this regulation, Integrated Pest Management (IPM) is a process that utilizes regular monitoring to determine if and when a treatment is needed. It employs physical, mechanical, cultural, chemical, biological and educational programs to keep pest populations low enough to prevent intolerable damage or annoyance. Pesticides should be only one of many options considered for solving a pest problem, and when required, target-specific, low impact pesticides and application techniques should be employed. Furthermore, pesticide applications are not made according to a pre-determined schedule but are only made when and where monitoring, or a previous history of pest incidence has indicated that the pest will cause unacceptable economic, medical or aesthetic damage. The IPM program must as a result be environmentally, socially, and economically compatible to meet current public expectations.
- E. **Occupied Building.** For the purposes of this regulation, Occupied Building means any public, private, commercial or institutional structure used or occupied by persons on a regular, long-term basis as a residence or for occupations. These include but are not

limited to rented residential buildings, condominiums, licensed childcare facilities and nursery schools, and governmental, commercial and institutional buildings.

Section 2. Exemptions

- A. The following pesticide uses are exempt from the requirements of this Chapter:
1. application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of any person;
 2. application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures;
 3. application of paints, stains or wood preservatives that are classified as general use pesticides;
 4. application of pesticides by a resident to his or her own residential unit;
 5. commercial application of pesticides where the resident has contracted for application to his or her own personal residential unit; and
 6. indoor applications of pesticides injected into closed systems for control of nuisance microbial organisms.
- B. The use of baits, gels, pastes, dusts and granular materials placed in areas not readily accessible to residents, employees or children is exempt from the requirements of Sections 3(A), 3(B) and 3(C) of this Chapter.
- C. The use of crack and crevice treatments placed in areas not readily accessible to residents, employees or children and done in a manner that minimizes exposure to vapors and/or aerosolized materials is exempt from the requirements in Sections 3(A), 3(B) and 3(C) of this Chapter.

Section 3. Notification

A. Notice to Residents

1. At least 24 hours and no more than seven days in advance of a pesticide application not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice (see Appendix A) to the resident or residents of an apartment unit, condominium unit or other rented residential unit to be treated, where the residents of that unit did not request the impending pesticide application. The notice may be mailed or provided directly to the residents and shall explain that pesticides may be used in their residential unit and that they have the right to ask for and receive more specific information

described in Section 3(D) of this regulation. If the resident asks for further information specified in Section 3(D), the applicator must provide it.

2. If an application not exempted by Section 2 will be made to common areas of these rental residential buildings, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) at least 24 hours in advance and no more than seven days in advance of the planned application informing the residents of that building that pesticides will be used in the common areas and that they have the right to ask for and receive more specific information as described in Section 3(D). The Board approved written notice must remain posted for at least 48 hours following the application.
3. The applicator may fulfill the requirements of subsections 3(A)(1) and 3(A)(2) by providing the Board approved notice and instructing the landlord or building manager to distribute the notice to the residents as described in subsection 3(A)(1) or to post the notice as described in subsection 3(A)(2) as appropriate. The applicator must confirm with the landlord or building manager that the requirements of subsections 3(A)(1) and 3(A)(2) have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

B. Notice to Employees of Agencies, Businesses and Institutions

At least 24 hours and no more than seven days in advance of a pesticide application in a building housing an agency, business or institution that is not exempted under Section 2, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) in a conspicuous place or places where notices to employees are customarily posted. The notice must inform employees of the planned application and about their right to ask for and receive more specific information, as described in Section 3(D). The Board approved written notice must remain posted for at least 48 hours following the application. If an employee asks for further information specified in Section 3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(B) by providing the Board approved notice and instructing the building manager, the person requesting the application or another responsible individual to post the notice as described in this subsection. The applicator must confirm with the building manager, the person requesting the application or another responsible individual that the requirements of this section have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

C. Notice to Parents and Guardians of Children in Licensed Childcare Facilities or Nursery Schools

At least 24 hours and no more than seven days in advance of a pesticide application in a licensed child care facility or nursery school that is not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice of the planned application (see Appendix A) to parents or guardians of currently enrolled children. The notice must inform parents or guardians that pesticides will be used in the building and that they have the right to ask for and receive more specific information, as described in Section 3D. If a parent or guardian asks for information specified in Section

3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(C) by providing the Board approved notice and instructing the manager of the daycare or nursery or another responsible individual to distribute the notice to parents or guardians as described in this subsection. The applicator must confirm with the manager or responsible individual of the daycare or nursery that the requirements of this subsection have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

- D. If residents, employees, parents or guardians ask for information about a pesticide application, the applicator shall provide the information requested, including as applicable: (a) the trade name and EPA Registration number of the pesticide(s) intended to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the re-entry interval listed on the product label; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. If requested, the applicator shall also provide a copy of the pesticide product label and Material Safety Data Sheet, and shall make reasonable efforts to fulfill any other requests for pesticide information. However, such requests for additional information will not delay nor prohibit the applicator from performing the pesticide application as scheduled.

Section 4. Integrated Pest Management Techniques

- A. Applicators must undertake pest management activities using appropriate elements of integrated pest management. In all cases, any application shall be conducted in a manner to minimize exposure and human risk to the maximum extent practicable using currently available technology.
- B. Applicators must identify conditions conducive to the development of pest problems. Commercial applicators must provide to the client a written evaluation of pest conducive conditions and must provide specific recommendations for practical non-pesticide control measures.
- C. Prior to any pesticide application, applicators must identify the pest specifically and evaluate the infestation severity and any associated damage except as provided in Section 4(C)(1) and (2) below.
1. Where there is a history of pest infestation and conditions are conducive to pest infestations, baits, gels, pastes or granular materials placed in areas not readily accessible to residents, employees, patients, or children and crack and crevice treatments designed to control commonly occurring pests in these areas may be used without specific evidence that a significant population is currently present.
 2. For specific public health pests designated by Board policy, baits, gels, pastes, granular materials or crack and crevice treatments placed in areas not readily accessible to residents, employees or customers may be used without specific evidence of an infestation.

Section 5. Risk Minimization

- A. Prior to pesticide application, applicators must take into account the toxicity of recommended product(s) and choose low risk product(s) based on efficacy, volatility, the potential for exposure, the signal word on the pesticide label, the material safety data sheet and any label language imposing a ventilation requirement.
- B. Unless prohibited by the label, only baits, gels, pastes or granular materials and crack and crevice treatments may be used when residents, patients, children, customers and unconsenting employees are in the same room.
- C. Prior to making an application, applicators must also consider the following:
 - 1. The principal uses for the room to be treated including if it is primarily occupied by sensitive individuals such as children, older adults or persons with chronic illnesses.
 - 2. The type of treatment being made and the likelihood that people or pets will come into contact with the treated area following the application.
 - 3. The volatility of the product being applied and the practical need to ventilate the treated room(s) prior to re-entry. In all cases, label statements relative to ventilation or re-entry shall be minimum requirements.
 - 4. The type of ventilation system, if present, including whether it serves only the treated room(s) or the entire building, and whether it can and should be shut off while the treatment is performed.

Section 6. Tenant's Consent

Except in cases where a public health or code enforcement official with jurisdiction has determined a need for immediate pest management, application to a tenant's residential unit is prohibited if the tenant is opposed to such treatment. A pesticide application may not be made until such time as alternative control measures have been tried and documented as to their failure to control a pest problem, which poses health risks, threatens significant property damage or threatens to infest other parts of the building.

Section 7. Other Requirements

These regulations do not affect pesticide label instructions, which may be more restrictive in certain cases. Under federal and state law, wherever particular label instructions impose standards that are more restrictive than these regulations, such label instructions must be followed. Similarly, these regulations do not affect more restrictive regulations or guidelines applicable to particular types of pesticide applications.

Section 8. Transition

This regulation will become effective on January 1, 2007.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

January 1, 2007 – filing 2006-204

AMENDED:

May 1, 2008 – filing 2008-153 (Final Adoption, major substantive)

CORRECTIONS:

February, 2014 – agency names, formatting

Notice of Pesticide Application

Pesticides May Be Applied in this Building as Part of an Integrated Pest Management Program on (date) _____

To request information about the use of pesticides in this building contact:

Company: _____

Phone/E-mail: _____

This sign must remain posted for at least 48 hours after the application is completed.

Date Posted or Provided: _____
Person Providing Notice: _____
Date/Time Completed: _____
Remove sign on: _____

For general information on pesticides and regulations contact:

Maine Board of Pesticides Control
287-2731, or visit
www.thinkfirstspraylast.org



01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 27: STANDARDS FOR PESTICIDE APPLICATIONS AND PUBLIC NOTIFICATION IN SCHOOLS

SUMMARY: This rule establishes procedures and standards for applying pesticides in school buildings and on school grounds. This rule also sets forth the requirements for notifying school staff, students, visitors, parents and guardians about pending pesticide applications.

Section 1. Definitions

- A. **Integrated Pest Management.** For the purposes of this rule, Integrated Pest Management (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:
- (1) understanding the system in which the pest exists,
 - (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control,
 - (3) monitoring pests and natural enemies,
 - (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and
 - (5) systematically evaluating the pest management approaches utilized.
- B. **School.** For the purposes of this rule, School means any public, private or tribally funded:
- (1) elementary school,
 - (2) secondary school,
 - (3) kindergarten or
 - (4) nursery school that is part of an elementary or secondary school.
- C. **School Building.** For the purposes of this rule, School Building means any structure used or occupied by students or staff of any school.

- D. **School Grounds.** For the purposes of this rule, School Grounds means:
- (1) land associated with a school building including playgrounds, athletic fields and agricultural fields used by students or staff of a school, and
 - (2) any other outdoor area used by students or staff including property owned by a municipality or a private entity that is regularly utilized for school activities by students and staff. School grounds do not include land utilized primarily for non-school activities, such as golf courses and museums.
- E. **Integrated Pest Management Coordinator.** An employee of the school system or school who is knowledgeable about integrated pest management and is designated by each school to implement the school pest management policy.
- F. **School Session.** For the purposes of this rule, school is considered to be in session during the school year including weekends. School is not considered to be in session during any vacation of at least one week.

Section 2. Requirements for All Schools

- A. All public and private schools in the State of Maine shall adopt and implement a written policy for the application of Integrated Pest Management techniques in school buildings and on school grounds.
- B. Each school shall appoint an IPM Coordinator who shall act as the lead person in implementing the school's Integrated Pest Management policy. The IPM Coordinator shall be responsible for coordinating pest monitoring and pesticide applications, and making sure all notice requirements as set forth in this rule are met. In addition, the IPM Coordinator shall:
- (1) complete Board-approved IPM Coordinator overview training within one month of his/her first appointment as an IPM Coordinator and obtain Board documentation thereof;
 - (2) complete Board-approved IPM Coordinator comprehensive training within one year of his/her first appointment as an IPM Coordinator and obtain Board documentation thereof;
 - (3) obtain at least one hour of Board-approved continuing education annually;
 - (4) maintain and make available to parents, guardians and staff upon request:
 - a. the school's IPM Policy,
 - b. a copy of this rule (CMR 01-026 Chapter 27),
 - c. a "Pest Management Activity Log," which must be kept current. Pest management information must be kept for a minimum of two years from date of entry, and must include:

- i. the specific name of the pest and the IPM steps taken, as described under Section 5C of this rule; and
 - ii. a list of pesticide applications conducted on school grounds, including the date, time, location, trade name of the product applied, EPA Registration number, company name (if applicable) and the name and license number of the applicator. If the product has no EPA Registration number, then a copy of the label must be included.
- (5) authorize any pesticide application not exempted under Sections 3A(2), 3A(3), 3B, 3C, or 3D made in school buildings or on school grounds and so indicate by completing and signing an entry on the Pest Management Activity Log prior to, or on the date on which the minimum notification requirements must be implemented; and
- (6) ensure that any applicable notification provisions required under this rule are implemented as specified.
- C. By September 1, every school shall inform the Board of the identity and the contact information for the IPM Coordinator. This requirement can be fulfilled through a Board approved reporting system.

Section 3. Exemptions

- A. The following pesticide uses are exempt from the requirements of Sections 4 and 5 of this rule:
 - (1) application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor,
 - (2) application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures, and
 - (3) application of paints, stains or wood preservatives that are classified as general use pesticides.
- B. The following pesticide uses are exempt from the requirements of Section 4 of this rule:
 - (1) pesticides injected into cracks, crevices or wall voids,
 - (2) bait blocks, gels, pastes, granular and pelletized materials placed in areas inaccessible to students,
 - (3) indoor application of a pesticide with no re-entry or restricted entry interval specified on its label but entry to the treated area is restricted for at least 24 hours.

- C. When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt from Section 4B(1) and 5C. Applicators should post the treated area as soon as practical, in a manner consistent with Section 4B(2).
- D. School education facilities utilized for agricultural or horticultural education, and not normally used by the general school population, such as, but not limited to, greenhouses, nursery plots or agricultural fields, are exempt from the application limitations contained in Section 5E and notification provisions contained in Section 4B(1) provided that parents, staff and students are informed about the potential for pesticide applications in such areas. The posting requirements contained in Section 4B(2) must be complied with. In addition, students entering treated areas must be trained as agricultural workers, as defined by the federal Worker Protection Standard.

Section 4. Notification

- A. A notice shall be included in the school's policy manual or handbook describing the school's IPM program including that a school integrated pest management policy exists and where it may be reviewed, that pesticides may periodically be applied in school buildings and on school grounds and that applications will be noticed in accordance with Section 4B hereof. This notice shall describe how to contact the IPM Coordinator and shall also state that the school's IPM Policy, a copy of the *Standards for Pesticide Applications and Public Notification in Schools* rule (CMR 01-026 Chapter 27), and the Pest Management Activity Log, are available for review.
- B. When school is in session, schools shall provide notice of pesticide applications in accordance with Sections 4B(1) and 4B(2). When school is not in session, notice shall be accomplished by posting of signs as described in Section 4B(2) of this rule.
 - (1) The school shall provide notification of each application not exempted by Section 3 performed inside a school building or on school grounds to all school staff and parents or guardians of students. Notices given shall state, at a minimum: (a) the trade name and EPA Registration number of the pesticide to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the reasons for the application; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. These notices must be sent at least five days prior to the planned application.
 - (2) In addition to the notice provisions above, whenever pesticide applications not exempted by Section 3 are performed in a school building or on school grounds, a sign shall be posted at each point of access to the treated area and in a common area of the school at least two working days prior to the application and for at least forty-eight hours following the application. Posting of the notification signs as required by this rule satisfies the posting requirements of Chapter 28 of the Board's rules (CMR 01-026 Chapter 28).

- a. The signs shall:
 - i. be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue, red or green).
 - ii. bear the word CAUTION in 72 point type,
 - iii. bear the words PESTICIDE APPLICATION NOTICE in 30 point type or larger,
 - iv. state any reentry precautions from the pesticide labeling in at least 12 point type,
 - v. state the approximate date and time of the application in at least 12 point type, and
 - vi. state the name of the company or licensed applicator making the pesticide application and a contact telephone number in at least 12 point type,
- b. The signs for indoor applications must:
 - i. be at least 8.5 inches wide by 11 inches tall,
 - ii. state the trade name and EPA Registration number(s) of the pesticide(s) to be applied in at least 12 point type,
 - iii. state the location of the application in at least 12 point type, and
 - iv. state the reason(s) for the application in at least 12 point type.
- c. The signs for outdoor applications must:
 - i. be at least 5 inches wide by 4 inches tall,
 - ii. be made of rigid, weather-resistant material that will last at least ninety-six (96) hours when placed outdoors,
 - iii. bear the Board designated symbol (see appendix A), and
 - iv. state a date and/or time to remove the sign.

Section 5. Integrated Pest Management Techniques

- A. All pest management activities shall be undertaken with the recognition that it is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application. In all cases, applications should be conducted in a manner to minimize human risk to the maximum extent practicable using currently available technology.

- B. All pest management activities should be conducted using appropriate elements of integrated pest management as described in the latest Cooperative Extension or Department of Agriculture training manuals for pest management in and/or on school property. Pest management activities should also be conducted in accordance with the Best Management Practices for Athletic Fields & School Grounds, or other applicable Best Management Practices approved by the Board.
- C. Prior to any pesticide application the following steps must be taken and recorded:
- (1) monitor for pest presence or conditions conducive to a pest outbreak,
 - (2) identify the pest specifically,
 - (3) determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels, and
 - (4) utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.
- D. When a pesticide application is deemed necessary, the applicator must comply with all the requirements of CMR 01-026 Chapter 31–Certification and Licensing Provisions/Commercial Applicator. The applicator must also take into account the toxicity of recommended products and choose lowest risk products based on efficacy, the potential for exposure, the signal word on the pesticide label, the material safety data sheet, other toxicology data and any other label language indicating special problems such as toxicity to wildlife or likelihood of contaminating surface or ground water.
- E. Indoor pesticide use must be limited to placement of baits and wall void or crack and crevice and pool and spa disinfectant treatments unless the pest threatens the health and safety of persons in the buildings as determined by the school's integrated pest management coordinator.
- F. Pesticide applications must not be conducted when people are in the same room to be treated except that applicators may set out bait blocks, pastes or gels when only informed staff members are present. When space, spot, surface or fumigation applications are conducted the ventilation and air conditioning systems in the area must be shut off or the entire building must be evacuated. Applications should be planned to occur on weekends or vacations to allow maximum time for sprays to dry and vapors to dissipate.
- G. Outdoor applications should be scheduled so as to allow the maximum time for sprays to dry and vapors to dissipate and shall not occur when unprotected persons are in the target area or in such proximity as to likely result in unconsenting exposure to pesticides. Applications must also be conducted in accordance with all other applicable Board rules designed for minimizing pesticide drift and posting of treated sites. Spot treatments should be considered in lieu of broadcast applications.

Section 6. Requirements for Commercial Pesticide Applicators Making Applications in School Buildings or on School Grounds

- A. Prior to conducting a pesticide application not exempted in Section 3 in a school building or on school grounds, commercial pesticide applicators shall obtain written authorization from the IPM Coordinator. Authorization must be specific to each application and given no more than 10 days prior to the planned application.
 - B. Commercial pesticide applicators shall, within one business day of each pesticide application, provide the IPM Coordinator with a written record of the application including the date, time, location, trade name of the product applied, EPA Registration number and the name of the licensed applicator. If the product has no EPA Registration number then the applicator will provide a copy of the label.
 - C. Commercial pesticide applicators shall inform the IPM Coordinator about any pest monitoring activity and results. If it is acceptable to the IPM Coordinator, this may be achieved by recording them in the Pest Management Activity Log.
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STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X

EFFECTIVE DATE:

August 30, 2003, filing 2002-408 accepted October 24, 2002.

AMENDED:

July 5, 2005 – filing 2005-266

March 4, 2007 – Section 3(C), filing 2007-67

August 29, 2013 – filing 2013-188 (Final adoption, major substantive)

Appendix A

Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds



SUMMARY: These regulations establish procedures and standards for informing interested members of the public about outdoor pesticide applications in their vicinity. This chapter sets forth the requirements for requesting notification about pesticide applications, for posting property on which certain commercial pesticide applications have occurred and also establishes the *Maine Pesticide Notification Registry* structure and fees.

Section 1. Requesting Notification About Outdoor Pesticide Applications

The purpose of the following notification requirement is to enable individuals an opportunity to obtain information regarding outdoor pesticide application activities in their vicinity.

A. Requests for Notification; How Made

The owner, lessee or other legal occupant of a sensitive area may make a request to be notified about any outdoor pesticide application(s) which may occur within 500 feet of that sensitive area and any aerial application(s) which may occur within 1,000 feet of the sensitive area.

1. The request may be made in any fashion, so long as it is effective in informing the person receiving the request of the name, address, telephone number, and interest in receiving notification of the person making the request.
2. The request for notification should be made to the person responsible for management of the land on which the pesticide application will take place. If the person making the request for notification is uncertain as to the identity of the person to whom the request should be made, he/she may make the request for notification to the person who owns the land involved, as such ownership is ascertainable from the tax records of the municipality. That landowner shall then be responsible for assuring compliance with provisions of this section.

B. Procedure of Notification

Once a request for notification has been made as provided in Section 1(A), the person receiving the request shall cause notification to be given as follows:

1. General notification of intent to apply pesticides out-of-doors shall be given to the person making the request for notification. Such general notification may be given in any fashion, provided that it is effective in informing the person receiving the notice of the following:
 - a. the approximate date(s) when pesticide(s) may be applied;

- b. the pesticide(s) which may be applied;
- c. in general terms, the manner of application; and
- d. the name, address and telephone number of a person responsible for the pesticide application from whom additional information may be obtained.
- e. If requested, the person responsible for managing the land shall make reasonable efforts to supply a copy of the MSDS(s) and/or the pesticide label(s). However such requests for additional information will not delay nor prohibit the intended pesticide application.

Where feasible, such general notification shall be given within one week after the request for notification is received and at least one day before any pesticide application is to occur. Such notification may cover outdoor pesticide applications which are planned over a period of up to one growing season.

2. If, following receipt of the general notification as provided by Section 1(B)(1) above, the person seeking notification believes there is a need for additional or updated information regarding impending pesticide application activities, he/she may make a further request for additional information from the person identified in the general notification. This request for additional information must specify the type of information needed, including, for example, more specific information regarding the date or dates on which pesticides will be applied when known. The person responsible for the notification shall make reasonable efforts to comply with such request for additional information.
3. If any person is dissatisfied with the efforts made by any other person at complying with these notification provisions, a complaint may be filed with the Board. The Board shall then make efforts to attempt to reach a reasonable and fair resolution between the parties.

Section 2. *Maine Pesticide Notification Registry for Non-Agricultural Pesticide Applications*

The Board shall maintain a list of individuals who must be notified of outdoor, non-agricultural pesticide applications in their vicinity. This list shall be referred to as the *Maine Pesticide Notification Registry*.

A. *Individuals to be Included on the Registry*

1. Individuals requesting to be listed on the *Maine Pesticide Notification Registry* shall pay all appropriate fees and provide the following information on forms supplied by the Board:

- a. Name;
 - b. Mailing address;
 - c. Listed registry residence, including street or road address and city;
 - d. Daytime and evening telephone number(s), one of which is designated as the primary contact number; and
 - e. The names and addresses of all landowners or lessees within 250 feet of the boundary of the listed registry residence.
2. Individuals may register more than one residence by completing additional forms and paying all appropriate fees.
 3. The effective period of the registry will be from March 1 to February 28 of the following year. Individuals must submit their request for inclusion on the next effective registry by December 31. All submissions received after that date will be included on the following registry. Individuals may notify the Board at any time of changes in their listed registry residence, however, changes will not take effect until the following registry. An individual will not be considered officially included on the *Maine Pesticide Notification Registry* unless their name appears on the current effective registry.
 4. The Board shall mail renewal notices to individuals listed on the *Maine Pesticide Notification Registry* on or before November 1 of each year. An individual must re-apply and pay all appropriate fees annually to remain on the registry for the next twelve month period.

B. Alerting Neighbors to the Presence of an Individual on the Registry

1. All individuals on the *Maine Pesticide Notification Registry* shall annually provide a letter to all landowners and lessees within 250 feet of their property boundary from whom they want to receive notification.
2. This letter, approved and supplied by the Board, must inform neighbors of the existence of the *Maine Pesticide Notification Registry*, the individual's request to be notified in the event of an outdoor pesticide application, the distance from the property boundary which shall cause notification to be given for non-agricultural pesticide applications, and the notification requirements of this chapter.
3. The individual on the registry requesting notification bears the burden of proof for demonstrating that this provision has been met.
4. Failure to distribute the letter will not prohibit an individual from being added to or remaining on the registry.

C. Registry Provided to Commercial Applicators

The *Maine Pesticide Notification Registry* shall be printed and distributed annually to affected licensed Commercial Master Applicators on or before its effective date of March 1. Newly licensed Commercial Master Applicators will be provided a copy of the current effective registry upon licensing.

D. Notification to Individuals on the *Maine Pesticide Notification Registry*

1. Commercial applicators shall notify an individual listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet of the property boundary of the listed registry residence.
2. A person who receives a letter in accordance with Section 2(B) and who performs any outdoor, non-agricultural pesticide application within 250 feet to the property boundary of the listed registry residence shall notify the individual from whom the letter was given or sent.
3. Notification must consist of providing the following information to the individual on the registry:
 - a. The location of the outdoor pesticide application;
 - b. The date and approximate start time of the pesticide application (within a 24 hour time period) and, in the event of inclement weather, an alternative date or dates on which the application may occur;
 - c. The brand name and EPA registration number of the pesticide product(s) which will be used; and
 - d. The name and telephone number of the person or company making the pesticide application.
4. An individual on the registry who receives notification may request a copy of the pesticide product label or Material Safety Data Sheet. The person or company performing the pesticide application shall make reasonable efforts to comply with such request for additional information. However, such requests for additional information will not delay nor prohibit the person or company from performing the pesticide application as scheduled.
5. Notification must be received between 6 hours and 14 days prior to the pesticide application.
6. Notification must be made by telephone, personal contact or mail.
 - a. In cases where personal contact with the individual listed on the registry is not achieved, notification requirements are met via telephone if:
 - i. the information is placed on a telephone answering device activated by calling the individual's primary contact telephone number; or

- ii. the information is given to a member of the household or workplace contacted by dialing the primary contact telephone number.
 - b. If notification cannot be made after at least two telephone contact attempts and personal contact is not feasible, notification may be made by securely affixing the notification information in written form on the principal entry of the listed registry location.
7. The person or company performing the pesticide application bears the burden of proof for demonstrating that they have complied with this section.

E. Exceptions

- 1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
- 2. The following types of pesticide applications do not require notification under this section:
 - a. The application of pesticides indoors;
 - b. Agricultural pesticide applications;
 - c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing category 6A (rights-of-way vegetation management);
 - d. The outdoor commercial application of pesticides in certification and licensing category 7A (structural general pest control) within five (5) feet of a human dwelling, office building, institution such as a school or hospital, store, restaurant or other occupied industrial, commercial or residential structure which is the intended target site;
 - e. The application of general use pesticides by hand or with non-powered equipment to control stinging insects;
 - f. The placement of pesticidal baits;
 - g. The injection of pesticides into trees or utility poles;
 - h. The placement of pesticide-impregnated devices on animals, such as ear tags and flea collars;
 - i. The application of pesticidal pet supplies, such as shampoos and dusts;
 - j. The application of disinfectants, germicides, bactericides and virucides, such as bleach. The use of disinfectants in the pressure-washing of the exterior of buildings is not exempt under this section;

- k. The application of insect repellents to the human body;
- l. The application of swimming pool products;
- m. The application of general use paints, stains, and wood preservatives and sealants applied with non-powered equipment or by hand or within an enclosure which effectively prevents the escape of spray droplets of the product being applied; and
- n. The injection of pesticides into wall voids.

F. Exemption from this section

If an individual on the current effective registry and a person or company performing pesticide applications subject to this rule can reach an agreement on notification provisions acceptable to both parties other than those described herein, then the requirements as described in this section may be waived. For such an exemption to be in effect, the details of the notification agreement must be placed in writing and signed by both parties. Either party may terminate the notification agreement with a 14-day, written notice.

G. Fee

The annual application fee for an individual requesting to be on the registry will be \$20.00. The Board may waive the fee for individuals who demonstrate an inability to pay, or where other extenuating circumstances exist which justify granting a waiver. Evidence of an individual's inability to pay shall include, but not be limited to, the individual's participation in any of the following programs:

- 1. Food Stamps
- 2. Temporary Assistance for Needy Families (TANF)
- 3. Supplemental Security Income (SSI)
- 4. Social Security Disability (SSD)
- 5. Maine Care (Medicaid)

Requests for a fee waiver must be in writing and be made by the individual at the time of application for listing on the registry. The written request must contain sufficient information for the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

Section 3. Public Notice and Posting Requirements for Certain Pesticide Applications

A. Sidewalks and Trails

Public notice must be provided consistent with Board policy for the outdoor commercial application of pesticides within category 6B to sidewalks and trails.

B. Posting**1. Categories Requiring Posting**

- a. 3A (outdoor ornamentals)
- b. 3B (turf)
- c. 6B (industrial/commercial/municipal vegetation management), except applications to sidewalks, trails, railroad sidings, and power substations
- d. 7A (general pest control)
- e. 7E (biting fly & other arthropod vectors)

2. Posting Requirements

Areas treated under the categories listed in Section 3B(1) shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice. Such notice shall be posted before application activities commence and shall remain in place at least two days following the completion of the application. The sign shall be sufficient if it meets the following minimum specifications:

- a. The sign must be at least five (5) inches wide and four (4) inches high;
- b. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- c. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- d. The sign must bear:
 - i. the word CAUTION in 72 point type;
 - ii. the words PESTICIDE APPLICATION in 30 point type or larger;
 - iii. the Board designated symbol;
 - iv. any reentry precautions from the pesticide labeling;
 - v. the name of the company making the pesticide application and its telephone number;
 - vi. the date and time of the application; and
 - vii. a date and/or time to remove the sign.

C. Exemption from this section

1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
 2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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STATUTORY AUTHORITY: 22 M.R.S.A. §1471-M(2)D

EFFECTIVE DATE:

September 22, 1998

AMENDED:

April 27, 1999

June 26, 2000

March 4, 2007 – Section 1(B)(e), filing 2007-68

December 26, 2011 – filing 2011-473

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

May 24, 2015 – filing 2015-076 (Final adoption, major substantive)

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 29: STANDARDS FOR WATER QUALITY PROTECTION

SUMMARY: These regulations establish standards for protecting surface water. This chapter establishes a fifty-foot setback from surface water for mixing and loading of pesticides, sets forth requirements for securing containers on sprayers and cleaning up spills occurring within the setback zone, establishes restrictions on pesticide applications to control browntail moths near marine waters and requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near waters of the State.

Section 1. Protecting Waters of the State during Pesticide Mixing and Loading Operations

- A. No person shall mix or load any pesticides or fill a sprayer or mix tank within fifty (50) feet from the high water mark of any surface waters of the State as defined in 38 M.R.S.A. §361-A(7).
- B. No person shall use a pump that pumps pesticide concentrate or formulation or any hose that has been in contact with pesticide solution to draw liquid from any surface waters.
- C. All pesticide pumping systems that come in contact with any surface waters shall be equipped with an anti-siphoning device.

Section 2. Securing Pesticide Product Containers and Mix Tanks on Sprayers, Nurse Vehicles and Other Support Vehicles during Transportation

No person shall transport any pesticide unless it is secured so as to prevent release of pesticides onto the vehicle or from the vehicle. All tanks, liquid containers, cartons and bags must be securely held so they may not shift and become punctured or spilled.

Section 3. Cleaning up Pesticide Spills within Setback Zone in Section 1

Any person who spills a pesticide within fifty (50) feet from the high water mark of any surface water shall take immediate steps to recover the pesticide by the most efficient means available and remove all contaminated soil to prevent water contamination.

Section 4. Exemptions

The following persons are exempt from Section 1(A) regarding mixing and loading within fifty (50) feet of the high water mark of any surface water:

- A. Applicators with a variance approved by staff for an impervious mixing/loading pad with containment features. Applications for a variance must be submitted to the Board on or before December 31, 1999;
- B. Applicators using chemigation equipment specified on labels to draw water from their tail-water ponds;
- C. Commercial applicators using small individually packaged concentrates to mix no more than five (5) gallons for use in non powered equipment; and
- D. Commercial applicators making aquatic applications from boats and barges.

Section 5. Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters

Pesticide applications for control of browntail moths within 250 feet of the mean high tide mark adjacent to coastal waters and extending upriver or upstream to the first bridge are subject to the requirements of this section:

A. Exemptions

The prohibitions and restrictions in Section 5 do not apply to biological pesticides, to the injection of pesticides directly into the soil or shade and ornamental trees or to the application of pesticides by licensed commercial pesticide applicators using non-powered equipment.

B. Prohibitions and Restrictions

- I. A person may not apply a pesticide to control browntail moths on shade or ornamental trees within 50 feet of the mean high water mark.
- II. A person may not apply a pesticide to control browntail moths on shade or ornamental trees in coastal areas located between 50 and 250 feet from the mean high water mark except in accordance with this subsection.
 - a. Only products with active ingredients specifically approved by the Board for this purpose may be applied.
 - b. Applications may be performed only with a hydraulic hand-held spray gun or air-assisted sprayers.
 - c. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.
 - d. Applications may not be made when the wind is blowing toward marine waters.
 - e. Applications may be performed only when the wind is equal to or greater than 2 miles per hour and blowing away from marine waters.

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:
- I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;
 - II. Rivers
 - III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15-minute series topographic map;
 - IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
- I. The name, address and telephone number of the applicant;
 - II. The area(s) where pesticides will be applied;
 - III. The type(s) of pesticides to be applied;
 - IV. The purpose for which the pesticide application(s) will be made;
 - V. The approximate application date(s);
 - VI. The type(s) of application equipment to be employed; and
 - VII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of the water body will be obtained.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the applicant will:

- I. Achieve a substantially equivalent degree of protection as adherence to the requirements of this section would provide; or
- II. Demonstrate an appropriate balance of risk and benefit; and
- III. Will conduct the application in a manner which protects surface waters as defined in Chapter 29, section 6 (A).

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the procedures described in his variance request and all other applicable legal standards. Permits 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.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

April 14, 1999

AMENDED:

February 3, 2008 – filing 2008-35 (except that the major substantive language of Section 6, which was undergoing legislative review)

May 1, 2008 - filing 2008-154, including Section 6's final adoption

CORRECTIONS:

February, 2014 – agency names, formatting

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

- 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. Applicants 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**

- 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.

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- 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

October 21, 2024 – filing 2024-237

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) (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) (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) (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
October 21, 2024 – filing 2024-238

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 33: CERTIFICATION & LICENSING PROVISIONS/PRIVATE APPLICATORS OF GENERAL USE PESTICIDES

SUMMARY: These regulations describe the requirements for certification and licensing of private applicators using general-use pesticides to produce plants or plant products intended for human consumption as food, where the person applying the pesticides or the employer of the person applying the pesticides derives \$1,000 or more in annual gross income from the sale of those commodities.

SECTION 1. Competency Standards for Certification—Private Applicator of General Use Pesticides (Core exam)

- A. No person shall be certified as a private applicator of general-use pesticides unless the person has fulfilled requirements demonstrating knowledge of pest problems and pest-control practices, including, as a minimum, the ability to recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings.
- B. 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.

SECTION 2. Certification Procedures for Private Applicators

A. Initial Certification

- 1. Any person seeking to be certified as a private applicator of general-use pesticides must pass a written core exam. The exam shall be closed book.
- 2. 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.
- 3. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
 - a. Applicants should be present and ready to take the exams at the appointed time.
 - b. Applicants shall not talk during the examination period.

- c. 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.
 - d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.
4. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on the core 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. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
5. Certification under this section will expire on October 31 of the third year after the date of successful completion of the exams and on October 31 of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

B. **Recertification**

1. Any person with a current valid certification may renew that certification by accumulating three recertification credits during the certification period described in Section 2(A)(5).
2. Recertification credits will be available through Board-approved meetings including, but not limited to, University or industry and trade organization seminars or workshops and approved home study courses where pest management topics are included.
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. Pesticide risk and applicator safety;
 - f. Pesticide storage and disposal;
 - g. Pest identification, biology and management;

- h. Integrated pest management;
 - i. Pesticide fate and drift management;
 - j. Risk communication; and
 - k. Public relations.
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 of one credit shall be assigned for each one 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 one hour of presentation on appropriate topics.
5. For in-state programs, each participant will complete an on-site process to verify attendance at each program for which credit is allowed. For electronic, correspondence or out-of-state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of completion or attendance and a copy of the agenda or syllabus of the training provided. The agenda or syllabus 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 take the most current exam required for initial certification.

SECTION 3. Licensing

- A. **Application.** Application for a private applicator of general-use pesticides license shall be on forms provided by the Board. Information shall include name, Social Security number, mailing address, farm name, location, 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 of general-use pesticides license—\$15.00 per person.
 - 2. For replacement or alteration—\$5.00.
- C. **Expiration.** Private applicator of general-use pesticides licenses are issued on a three-year basis and will expire on October 31 of the third year.
- 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.*

STATUTORY AUTHORITY: 22 M.R.S. §1471-D(2-D), 22 M.R.S. §1471-M(1)(C-1)

EFFECTIVE DATE:

December 26, 2011 – filing 2011-474

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – Section 2(A)(4)(a), filing 2014-282

01 **DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

026 **BOARD OF PESTICIDES CONTROL**

Chapter 34: CERTIFICATION AND LICENSING PROVISIONS/PESTICIDE DEALERS

SUMMARY: These regulations describe the requirements for certification and licensing of pesticide dealers.

Section 1. Competency Standards for Certification

No person shall be certified as a pesticide dealer unless that person has demonstrated knowledge of pesticide classifications, formulations, labeling, safety, storage 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.

Section 2. Certification Procedures for Pesticide Dealers

A. Initial Certification

1. **Application for Exam.** All persons desiring to take the exam must request an application from the Board's office and submit all required information and fees.
 - a. Information shall include name, home address, Social Security number, name and telephone number of company and company address.
 - b. A fee of \$10.00 for the exam shall accompany the application.
2. **Appointment for Exam**
 - 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 exam on the scheduled date at least 24 hours in advance of the scheduled exam. 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.

3. Study materials for the dealer exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
4. **Examinations.** All applicants shall complete the closed book dealer exam covering subjects specified in Section 1.
5. **Examination Procedure.** All applicants shall comply with these rules or forfeit their opportunity to complete the exam at a specified appointment.
 - a. Applicants should be present and ready to take the exam at the appointed time.
 - b. Applicants shall not talk during the examination period.
 - c. Applicants shall not be allowed to bring any books or papers into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
 - d. Applicants shall not make notes of the exam and shall not leave the table during an exam unless authorized by the staff.
6. **Qualification.** An applicant desiring to qualify for dealer certification must achieve a passing score of 80 percent.
 - a. An applicant who fails the exam may not re-apply to take the examination prior to 6 days after the date of such examination. If an applicant fails again the applicant must wait 6 days before retesting.
 - b. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
7. **Expiration.** Certification under this section will expire on December 31st of the third year after the date of successful completion of the exam and on December 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

B. Recertification

1. Any person with current valid certification may renew that certification by accumulating 9 recertification credits during the certification period described in Section 2(A)7.
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. Label review,
 - c. Pesticide formulations,
 - d. Applicator safety,
 - e. Storage and disposal,
 - f. Pest identification control,
 - g. 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.
 5. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
 6. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each one hour of presentation on appropriate topics.
 7. For in state programs, applicants must submit verification of attendance at approved programs to the Board. For out of state programs, applicants must submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
 8. A person who fails to accumulate the necessary credits will have to re-apply to re-take and pass the exam required for initial certification.

Section 4. Licensing

- A. **Application.** Application for a pesticide dealer license shall be on forms provided by the Board.
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
 1. For a pesticide dealer license - \$60.00 per person.
 2. For replacement or alteration - \$5.00.
- C. **Reports.** All required reports described in Chapter 50 must have been submitted in proper form before a license will be processed.
- D. **Expiration.** All licenses will expire at the end of the certification period as determined in Section 2 A 7.

Section 5. Special Dealer Requirements

- A. Each dealer shall be responsible for the acts of those people in his/her employ and the dealer's license shall be subject to denial, suspension or revocation for any violation of the statute or regulations, whether committed by the dealer, his/her office, agent, employee, or other person acting in concert or participation with him/her.
- B. A licensed dealer must be present in the outlet at the time of sale of a restricted use pesticide so that she/he may supervise the transaction.
- C. Restricted-use and limited-use pesticides shall be stored separately in an area not accessible for self service.
- D. No dealer shall sell any restricted-use pesticides to any person who does not have in his/her possession a valid license.
- E. No dealer shall sell any limited-use pesticides to any person who does not have in his/her possession a valid license and limited-use permit.
- F. Dealers shall either maintain a record of restricted sales pursuant to Chapter 50, "Record Keeping and Reporting Requirements".

Section 6. Transition

For the purposes of converting from one year licenses and five year certification periods to three year licenses with concurrent three year certification periods, and to ensure that license expirations are evenly distributed across any three year period, the Board may initially issue one, two, or three year licenses with corresponding certification periods. Licensees must obtain a proportional number of recertification credits per year during the transition period. License fees will also be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when an existing license is renewed, based on the applicant's last name.

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

EFFECTIVE DATE:

January 1, 1983

AMENDMENT EFFECTIVE:

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

MINOR CORRECTION:

April 25, 2013 – grammar in first paragraph

February, 2014 – agency names, formatting

AMENDED:

September 23, 2015 – filing 2015-169

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 35: CERTIFICATION AND LICENSING PROVISIONS / SPRAY CONTRACTING FIRMS

SUMMARY: These regulations describe the requirements for certification and licensing of spray contracting firms.

1. Competency Standards for Certification

No person shall be certified as a spray contracting firm unless it demonstrates that the firm will have in its employment a sufficient number of licensed Master and Operator applicators to actively supervise and conduct the program in accordance with all applicable laws and regulations, and that such firm will otherwise be competent to responsibly make a pesticide application. A responsible official of the contracting firm will sign a statement attesting that he/she is familiar with and that the contracting firm will comply with all statutes, rules, and guidelines of the Board.

2. Certification Procedures

All applicants must complete and submit an application provided by the Board which details the organizational structure of the spray contracting firm.

- A. Information shall include the firm name, chief officer, telephone number and location of the company headquarters, and business mailing address.
- B. Information shall also include a listing of all Master applicators who shall have responsibility for spray programs conducted in Maine along with their business locations and telephone numbers.
- C. Information shall also be included, as required on the application form, which demonstrates whether the firm has the necessary competence to responsibly apply pesticides in Maine.

3. Licensing

- A. **Application.** Application for a spray contracting firm license shall be on the same form provided by the Board for certification information.
- B. **Fee.** At the time of application, the applicant must submit a fee of \$300.00.
 - 1. For replacement or alteration - \$5.00.
- C. **Insurance.** An applicant must submit a completed and signed form, provided by the Board, which attests that the spray contracting firm will have the required amounts of

insurance specified in Chapter 31 in effect when any employee or agent makes a pesticide application.

- D. **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).
- E. **Decision.** Within 15 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.*
- F. **Refusal to Renew.** The Board may refuse to renew a license if it is not in accordance with any of the requirements hereof or if the Board makes, as to the licensee, any of the findings set forth in 22 M.R.S.A. §1471-D (8), which describe the bases for a decision by the Administrative Court to suspend or revoke a license. If the Board determines that there is evidence sufficient to refuse to renew a license, it shall give notice and an opportunity for a hearing before the Board prior to making that determination final.
- G. **Expiration.** All spray contracting firm licenses will expire at the end of the third calendar year after issuance.

4. Special Spray Contracting Firm Requirements

- A. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the Board.
- B. Each spray contracting firm shall be responsible for the acts of those people in its employ and its license shall be subject to denial, refusal to renew, suspension, or revocation, and such firm shall otherwise be punishable under the law, for any violation of the statutes or regulations, whether committed by the owner, chief officer, agent, employee or other person acting in concert or participation with it.
- C. No spray contracting firm shall make a forest insect aerial spray application until it ascertains that legally required notification has been given to the public and the Board, and there has been compliance with all other requirements for such an application, including any required licensing of its employees, agents and independent contractors and their employees.
- D. A spray contracting firm shall cause employees and agents to prepare reports pursuant to Chapter 50, "Record Keeping and Reporting".

5. Transitions

For the purposes of converting from two year licenses to three year licenses to ensure that license expirations are evenly distributed across any three year period, the Board may initially issue one, two, or three year licenses. License fees will be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when an existing license is renewed, based on company name.

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

EFFECTIVE DATE:

February 6, 1985

AMENDED:

January 12, 1986

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999; also converted to MS Word

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

September 23, 2015 – filing 2015-170

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDE CONTROL

Chapter 40: MAINE RESTRICTED AND LIMITED USE PESTICIDES

SUMMARY: These regulations list the pesticides classified by the Board as restricted use or limited use and describe procedures governing their sale and use:

Section 1. RESTRICTED USE PESTICIDES

The products described under Section A and B below shall be classified as restricted use pesticides for the purposes of this chapter.

- A. All products classified for restricted use by the U.S. Environmental Protection Agency shall automatically be restricted use pesticides under this chapter.
- B. In addition, all products containing the following active ingredients and meeting the listed criteria shall be classified as restricted use pesticides in Maine:

arsenic compounds (above 2%)	fenthion (Baytex)
azinphos-methyl (Guthion)	fonophos (Dyfonate, above 15%)
chlorfenvinphos (4072)	formetanate hydrochloride (Carzol)
daminozide	mercury compounds
dichlorvos (Vapona, DDVP, above 25%)	methomyl (Lannate-all uses except
**disulfoton (Disyston, above 1%)	bait fomulations less than 2%
DNOC (Sinox, above 2%)	methomyl)
***EBDC fungicides (Maneb, Mancozeb	nicotine alkaloid
Dithane, Polyram, Metiram, etc)	nicotine salts (above 40% expressed
except dry flowable and liquid	as alkaloid)
formulations	oxamyl (Vydate)
endosulfan (Thiodan, above 10%)	paraquat (above 0.2%)
endothall	phosphorus (white and yellow)
ethion (above 40%)	strychnine
	trichlorfon

**Granular formulations of 10% and above are restricted.

***All dusts and wettable powder formulations restricted, regardless of concentration.

- C. Restricted use pesticides may be sold only by restricted use pesticide dealers licensed by the Board as provided in Chapter 34.
- D. Restricted use pesticides may be purchased and used only by applicators licensed by the Board as provided in Chapters 31 and 32.

Section 2. PROHIBITED AND LIMITED USE PESTICIDES

-
- A. All products containing the following active ingredients shall be classified as limited use pesticides in Maine:
- | | |
|------------|--|
| Aldrin | Methyl Parathion (Microencapsulated |
| Chlordane | forms only) |
| Heptachlor | Sodium monofluoroacetate (Compound 1080) |
| Lindane | Toxaphene |
- B. Limited use pesticides may be sold only by restricted use pesticide dealers licensed by the Board as provided in Chapter 34.
- C. Limited use pesticides may be purchased and used only by applicators licensed by the Board as provided in Chapters 31 and 32 and holding a permit from the Board as provided in subsections E and F below.
- D. An application to use any limited use pesticides shall be made to the Board in writing on such forms as may be provided by the Board. Applications shall include, at a minimum, the chemical to be used, the pest or pests which are the target of such chemical application, the vegetation to which it will be applied, the location and detailed description of the application site, and the amount of land to be covered by such application. When, in the opinion of the Board, any bona fide emergency prevents a written application to the Board, such application may be made orally to any member or employee of the Board. Failure of any applicator to exercise due diligence or to reasonably anticipate any situation which would create the need for the use of any limited use pesticide shall not be considered an emergency within the scope of this section.
- E. The Board may grant such applicant permission to use or apply any limited use pesticide if the Board determines that (1) the pesticide applicator is appropriately licensed, (2) an unusually heavy infestation of insects or other pests creates the prospect of a significant economic loss to the applicant or any other person or creates a public health hazard, (3) no suitable chemical, biological or other method is available to prevent or reduce the impact of such infestation to an acceptable level, (4) the use of such limited use pesticide will not create an undue risk to human life nor cause significant detrimental effects upon the environment, and (5) such use is in compliance with FIFRA and the rules and regulations promulgated thereunder. Permission to use such limited use pesticide may be granted upon such reasonable terms and conditions as the Board deems necessary to protect the health, safety and general welfare of the environment and the people of the State of Maine and to achieve the purpose of the statute. Permission to use any limited use pesticide during any bona fide emergency situation may be granted upon the oral consent of a majority of the Board given to the director or chairman of the Board or such other member of the Board who received the oral application. Such oral consent shall thereafter be confirmed in writing by such members to the director within ten (10) days.
- F. The outdoor use or application of benzene hexachloride (including lindane) for the purpose of controlling mosquitoes and other biting flies is hereby prohibited in the State of Maine on or after September 1, 1970.
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EFFECTIVE DATE:

July 6, 1979

AMENDED:

December 8, 1985

June 22, 1986

May 8, 1988

June 14, 1989

June 20, 1989

December 24, 1991

March 28, 1992

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

AMENDED:

April 30, 2007 – filing 2007-153

Corrections:

February, 2014 - agency names, formatting

SUMMARY: This chapter describes special limitations placed upon the use of (1) aldicarb (Temik 15G) in proximity to potable water bodies; (2) trichlorfon (Dylox, Proxol); (3) hexazinone (Velpar, Pronone), (4) aquatic herbicides in the State of Maine; (5) plant-incorporated protectants; (6) neonicotinoids (dinotefuran, clothianidin, imidacloprid, thiamethoxam); and (7) chlorpyrifos (Dursban, Lorsban).

Section 1. ALDICARB (TEMIK®)

The registration of aldicarb (Temik 15G) is subject to the following buffer zone requirements:

- A. Aldicarb (Temik 15G) shall not be applied within 50 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in the range of one to ten parts per billion (ppb). The 50 foot buffer would be mandatory for one year with a required retesting of the water at the end of the period.
- B. Aldicarb (Temik 15G) shall not be applied within 100 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in excess of 10 ppb. The 100 foot buffer would be mandatory for one year with a required retesting of the water at the end of this period.

Section 2. TRICHLORFON (DYLOX, PROXOL)

The registration of trichlorfon (Dylox, Proxol) is subject to the following requirements:

- A. Trichlorfon shall only be used for control of subsurface insects on turf.
- B. Prior to application the target pest must be identified and the severity of the infestation must be determined, including the extent of the damage.
- C. Only infested areas shall be treated with trichlorfon. Broadcast treatments of the entire turf area are prohibited.
- D. Following application, the trichlorfon must be watered into the soil with at least ½ inch of water and according to the label directions. The applicator must assure that the appropriate watering will take place prior to re-entry by any unprotected person.

Section 3. HEXAZINONE (VELPAR, PRONONE)

The registration of hexazinone is subject to the following limitations and conditions.

A. Licenses Required

No person shall use or supervise the use of any pesticide containing the active ingredient hexazinone unless they have obtained an applicators license in accordance with 22 M.R.S. §1471-D.

Section 4. AQUATIC HERBICIDES

The registration of pesticides for which there is an aquatic herbicide use on the product label shall be subject to the following limitations and conditions.

A. Board Publication of List

The Board of Pesticides Control will publish by May 23, 2003 and by March 15th of each year thereafter a list of herbicide products registered in Maine for which the manufacturer has verified that there is an aquatic use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of aquatic vegetation. Pesticides labeled solely for use in aquariums and antifouling paints, are specifically exempt from this list.

B. Licenses Required

- I. Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. No person shall:
 - a. Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or
 - b. Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.
- III. Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

C. **Disclosure**

The Board will make a disclosure form available to dealers distributing any aquatic herbicides identified on the Board's annual listing. The Board requests that dealers present to customers the disclosure form that advises purchasers that, (1) an aquatic discharge license must be obtained from the Maine Department of Environmental Protection before any application may be made to any surface waters of the State as defined in 38 M.R.S.A. Section 361-A(7) including any private ponds that may flow into such a body of water at any time of year, (2) that Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection on the use of aquatic herbicides are available.

D. **Records and Reporting**

Dealers distributing any aquatic herbicides identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."

E. **Use of Best Management Practices**

Aquatic herbicides applied to private ponds and not subject to an aquatic discharge permit may only be applied consistent with Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection.

Section 5. PLANT-INCORPORATED PROTECTANTS

The registration, distribution and use of plant-incorporated protectants are subject to the following limitations and conditions:

A. **Definitions**

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.

B. **License Required**

No person shall distribute any plant-incorporated protectant without either a general use pesticide dealer license or a (restricted or limited use) pesticide dealer license from the Board.

C. **Dealer Requirements**

Dealers distributing plant-incorporated protectants are subject to the following requirements:

- I. General use and (restricted or limited use) pesticide dealers shall notify the Board of their intent to distribute plant-incorporated protectants on all initial license and license renewal application forms provided by the Board.
- II. General use and (restricted or limited use) pesticide dealers shall maintain sales records showing the list of the names and addresses of all purchasers of plants, plant parts or seeds containing plant-incorporated protectants. These records must be made available to representatives of the Board for inspection at reasonable times, upon request, and must be maintained for two calendar years from the date of sale.
- III. Any general use and (restricted or limited use) pesticide dealer who discontinues the sale of plant-incorporated protectants shall notify the Board in writing and shall provide the Board, upon request, with all records required by Section 5(C)II of this chapter.

D. Grower Requirements

- I. All users of plant-incorporated protectants shall maintain the records listed below for a period of two years from the date of planting. Such records shall be kept current by recording all the required information on the same day the crop is planted. These records shall be maintained at the primary place of business and shall be available for inspection by representatives of the Board at reasonable times, upon request.
 - a. Site and planting information, including town and field location, a map showing crop location and refuge configuration in relation to adjacent crops within 500 feet that may be susceptible to cross-pollination;
 - b. Total acres planted with the plant-incorporated protectant and seeding rate;
 - c. Total acres planted as refuge and seeding rate;
 - d. Detailed application information on any pesticide applied to the refuge as described in Section 1(A) of Chapter 50, "Record Keeping and Reporting Requirements"; and
 - e. Planting information for each distinct site including:
 - i. date and time of planting; and
 - ii. brand name of the plant-incorporated protectant used.
- II. There are no annual reporting requirements for growers.

E. Product-Specific Requirements

- I. Requirements for plant-incorporated protectant corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.
 - a. Prior to planting plant-incorporated protectant corn containing any *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for

its production, the grower must have completed a Board-approved training course and possess a valid product-specific training certificate.

- b. Product-specific training certificates shall be issued following each Board-approved session. The certificates will remain valid until December 31 of the third year after issuance.
- c. Non-Bt-corn growers whose crops are or will be located within 500 feet of a prospective Bt-corn planting site can request that the Bt-corn grower protect the non-Bt-corn crop from pollen drift.
 - i. the request must be made prior to planting of the Bt-corn crop;
 - ii. the request must identify the non-Bt-corn crop to be protected; and
 - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
 - 1. the Bt-corn grower must plant any refuge required by the Bt-corn grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt-corn crop; or
 - 2. if no refuge is required, the Bt-corn grower shall maintain at least a 300-foot Bt-corn-free buffer to non-Bt-corn crops.
- d. Bt-corn growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.

- II. Dealers distributing Bt-sweet corn shall only sell the seed in quantities large enough to plant one acre or more.

F. Confidentiality

Any person providing information to the Board in connection with the record-keeping and reporting requirements of Section 5 of this chapter may designate that information as confidential in accordance with 7 M.R.S.A. §20.

Section 6. NEONICOTINOIDS (DINOTEFURAN, CLOTHIANIDIN, IMIDACLOPRID, OR THIAMETHOXAM)

The registration of pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam for which there is an outdoor ornamental plant or turf use on the product label shall be subject to the following limitations and conditions.

A. Definitions

- I. “Emerging Invasive Invertebrate Pests” means any invertebrate, including its eggs or other biological material capable of propagating that species that occurs outside of its eco-region and its introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health, to include:
 - a. Species both known now and unknown now but showing up at a later date;
 - b. Species that occur outside of their eco-region (level III) as defined by EPA; and
 - c. Species on a Board approved list.
- II. “Ornamental Plants” means shrubs, trees and related vegetation excluding turf and lawn, in and around residences.

B. Board Publication of Product List

The Board of Pesticides Control will publish within 30 days of adoption and by March 15th of each year thereafter a list of insecticide products containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam registered in Maine for which the manufacturer has verified that there is an outdoor ornamental plant or turf use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of invertebrate pests on outdoor ornamental plants or turf. Pesticides labeled solely for use in preserving wood, managing indoor pests, managing structural pests within five (5) feet of a human dwelling, and treating pets are specifically exempt from this list.

C. Licenses Required

- I. No person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. Unless exempted under Chapter 41, Section 6 (C) (IV) no person shall purchase, use or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam in outdoor residential landscapes to include ornamental plants and turf.
- III. No person shall distribute any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board.
- IV. Registered pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam and identified on the Board's annual listing are exempt from the prohibition of use described in Chapter 41, Section 6 (C) (II) where by:

- a. The applicator obtains an emergency permit from the Board; or
 - b. The use of these products is for management of emerging invasive invertebrate pests on ornamental plants in outdoor residential landscapes.
- V. No person shall use any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing for the purposes of managing turf and lawn in outdoor residential landscapes.

D. Records and Reporting

Dealers distributing any pesticides containing dinotefuran, clothianidin, imidacloprid or thiamethoxam identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."

E. Emergencies

The Board's staff may grant an emergency permit authorizing neonicotinoid use in compliance with Sections 6(C) of this chapter if the restrictions in this chapter prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists as outlined in Chapter 51(VII)(B)(1).

- I. No variance may be granted if the emergency is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
- II. If the staff does not grant the variance, the applicator or the person requesting the pesticide application may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemption".

F. Emergency Use Permits

Emergency use permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- III. The purpose for which the pesticide application(s) will be made;
- IV. The approximate application date(s);
- V. The type(s) of application equipment to be employed;
- VI. The approved pest species for which the application is being made as defined in policy or by the board; and
- VII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed

to assure that a reasonably equivalent degree of protection of surrounding nontarget vegetation will be obtained.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of Section 6 (E). The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits 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.

Section 7. CHLORPYRIFOS (DURSBAN, LORSBAN)

The registration of chlorpyrifos (Dursban, Lorsban) is subject to the following limitations and conditions.

- A. No person shall use or supervise the use of any pesticide containing the active ingredient chlorpyrifos unless they have obtained a private or commercial applicator's license from the Board, possess the pesticide in the State before January 1, 2022, and obtain a temporary use authorization permit from the Board.
- B. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
 - I. The name, address and telephone number of the applicant;
 - II. The brand name of the pesticides to be applied;
 - III. The date on which the pesticides were purchased;
 - IV. The approximate quantity of the pesticides possessed;
 - V. The purpose for which the pesticide application(s) will be made; and
 - VI. The duration for which the applications will take place or until the product is gone.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if:
 - I. The permit application is received prior to December 31, 2022;
 - II. The applicant possesses a valid pesticide applicator license issued by the State;
 - III. The pesticides proposed for use were purchased prior to January 1, 2022;

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all

other applicable legal standards. Permits 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.

STATUTORY AUTHORITY:

5 M.R.S.A. §§ 8051 *et seq.*

7 M.R.S.A. §§ 601-610

22 M.R.S.A. §§ 1471-A, 1471-B, 1471-C, 1471-D, 1471-M

EFFECTIVE DATE:

March 8, 1981 (Captan)

AMENDED:

May 7, 1981 (Trichlorfon)

January 2, 1984 (Aldicarb)

May 8, 1988 (Trichlorfon)

August 5, 1990 (Captan)

August 17, 1996 (Hexazinone)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

May 7, 1997 - Section 3(B)(II)

CONVERTED TO MS WORD:

March 11, 2003

AMENDED:

May 12, 2003 - Section 4 added

NON-SUBSTANTIVE CORRECTIONS:

June 24, 2003 - summary only

AMENDED:

February 2, 2004 - Section 4, 1st paragraph and sub-section A, filing 2004-31

April 30, 2007 – filing 2007-154

February 3, 2008 – filing 2008-36

July 16, 2009 – filing 2009-253 (final adoption, major substantive)

May 3, 2012 – filing 2012-99 (final adoption, major substantive)

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – Section 3, filing 2014-283

September 20, 2022 – filing 2022-181

NONSUBSTANTIVE CORRECTION:
November 5, 2024

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
 - d. Testimony 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.
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STATUTORY AUTHORITY: 22 M.R.S. §§ 1471-G, 1471-M(1)(E); Resolves 2023, ch. 71

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

October 21, 2024 – filing 2024-239

NONSUBSTANTIVE CORRECTIONS:

November 5, 2024

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS

SUMMARY: These regulations describe the notification requirements for persons contracting aerial pesticide applications to control forest, ornamental plant, right-of-way, biting fly and public health pests.

Section I. Content of All Newspaper Articles/Advertisements, Written Notices to Property Owners and Posters

- A. All newspaper articles/advertisements and written notices to property owners required by this chapter shall contain the following:
1. Description of the target area sufficient to inform people who may be in the vicinity.
 2. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
 3. Intended purpose of the pesticide application.
 4. Pesticide(s) to be used.
 5. Date or reasonable range of dates on which application(s) are proposed to take place.
 6. Telephone number of the Maine Board of Pesticides Control.
 7. Telephone number of the Maine Poison Control Center.
 8. Public precautions which appear on the pesticide label.
- B. All newspaper articles/advertisements must be printed in a minimum of 10 point types and at least 2 inches wide.
- C. All posters required by this chapter shall contain the following:
1. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
 2. Intended purpose of the pesticide application.
 3. Pesticide(s) to be used.
 4. Telephone number of the Maine Board of Pesticides Control

5. Telephone number of the Maine Poison Control Center.
6. Public precautions which appear on the pesticide label.

Section II. Forest Insect Applications

A. Responsible Parties

1. In the event of a forest insect spray program administered pursuant to Title 12, Chapter 801, the Maine Department of Conservation, Bureau of Forestry, is responsible for notices.
2. In the case of any other forest insect aerial spray activity, responsibility for notices lies with the landowner, her/his representative or the lessee if the land is leased.

B. Newspaper Articles/Advertisements and Written Notices to Property Owners

1. An article about/advertisement of a major forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 14 days but not more than 30 days prior to commencement of planned spray activity.
2. An article about/advertisement of a minor forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 4 days but not more than 10 days prior to commencement of planned spray activity.
3. An addition of spray areas not specified in the original newspaper article/advertisement and any change from the insecticides specified in the original article/advertisement shall be published in the same newspaper at least 24 hours before the change is effected.
4. A written notice of all forest insect aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. **Posting of Areas Subject to Major and Minor Forest Insect Aerial Spray Applications**

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads; known boat launching sites on rivers leading through spray areas and within the boundaries of the land owned by the person authorizing the spray activity; and marked points of access to foot trails known to be used by the public.
2. Posters shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. They shall contain the information required in Section I(C). The information shall be printed in both English and French.

D. **Written Notice to the Board and the Maine Poison Control Center**

1. A written notice shall be given to the Board and to the Maine Poison Control Center according to the following schedule:
 - a. Written notice of major forest insect aerial spray applications shall be given to the Board and the Maine Poison Control Center at least 15 days but not more than 30 days prior to the commencement of planned spray activity.
 - b. Written notice of minor forest insect spray application shall be given to the Board and the Maine Poison Control Center at least 5 days prior to the commencement of planned spray activity.
 - c. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's office.
2. **Notice to the Board.** These notices shall be prepared on forms provided by the Board and shall consist of:
 - a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
 - b. The date or dates on which spraying is proposed to take place.
 - c. The name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.

- d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice and the poster to be used.
 - f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.
3. **Notice to the Maine Poison Control Center.** These notices shall be prepared on forms provided by the Board and shall consist of:
- a. A description of the general area the proposed application activity will take place.
 - b. The date or dates on which spraying is proposed to take place.
 - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.

Section III. Ornamental Plant Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section III(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements and Written Notices to Property Owners

- 1. An article about/advertisement of ornamental plant aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/ advertisement shall contain the information required in section I(A) and (B) and shall not be limited to a legal notice.
- 2. A written notice of ornamental plant aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days

but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Written Notice to the Board and the Maine Poison Control Center

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

Section IV. Rights-Of-Way, Forest Vegetation Management and Other Forest Pest Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section IV(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements or Written Notices to Property Owners

1. An article about/advertisement of rights-of-way, forest vegetation management or other forest pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice or;
2. In areas where there is no regular newspaper circulation, the person contracting for services may substitute individual notice to all landowners within 500 feet of the target site. This individual notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Posting Requirements for Rights-of-Way, Forest Vegetation Management and Other Forest Pest Aerial Applications

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. The poster shall contain the information required in Section I(C). Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads and any place a maintained public trail enters the application site.
2. Poster shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. The information shall be printed in both English and French.

D. Written Notice to the Board and the Maine Poison Control Center

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

Section V. Biting Fly and Public Health Pest Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section V(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements and Written Notice to Property Owners

1. An article about/advertisement of biting fly and public health pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice.
2. A written notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. **Written Notice to the Board and the Maine Poison Control Center**

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

Section VI. Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications

A. A written notice shall be given to the Board and the Maine Poison Control Center at least 7 days but not more than 30 days prior to the commencement of planned spray activity.

B. These notices shall be prepared on forms provided by the Board and shall consist of:

1. **Written notice to the Board**

a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.

b. The date or dates on which spraying is proposed to take place.

c. A description of the delivery mechanism which shall include the name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.

d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.

e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice or the notice given to person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site.

f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.

2. **Written notice to the Maine Poison Control Center**

a. A description of the general area the proposed application activity will take place.

b. The date or dates on which spraying is proposed to take place.

c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.

- d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.
- C. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's staff.

Section VII. Emergencies

A. Disease Vectors

When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from this chapter provided that the responsible governmental entity submits the written notice to Board and the written notice to the Maine Poison Control Center as described in this chapter.

B. Other Emergencies

The Board's staff may grant an emergency variance from the notice requirements set forth in Sections III, IV, V and VI of this chapter if the notice requirements prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists.

1. An emergency situation:
 - a. Involves the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or
 - b. Will present significant risks to human health; or
 - c. Will present significant risks to threatened or endangered species, beneficial organisms, unique ecosystems or the environment; or
 - d. Will cause significant economic loss due to:
 - i. an outbreak or an expected outbreak of a pest; or
 - ii. a change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).
2. Any emergency variance granted by the staff under this section shall include provisions demonstrating the applicant will furnish substantially equivalent notification as provided by this chapter and shall include:

- a. Documented notification of person(s) owning property or using commercial or institutional buildings within 500 feet of the intended target site prior to the pesticide application and where appropriate;
 - b. Radio or television announcements or,
 - c. Prominently positioned poster.
 3. No variance may be granted if the emergency situation is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
 4. If the staff does not grant the variance, the applicator or the person requesting the pesticide application may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemption".
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STATUTORY AUTHORITY: 22 M.R.S.A. §1471-G, M, R and T

EFFECTIVE DATE:

August 12, 1985

AMENDED:

May 19, 1991
April 8, 1992
April 19, 1994
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998 - inserted "residential rental," in II(B)(4), III(B)(2), IV(B)(2), V(B)(2), VI(B)(1)(e); conversion to MS Word 2.0.
March 5, 2003 - VI(A), filing 2003-62
July 11, 2012 - spelling correction in Section II(B)(3)
February 14, 2013 - spelling correction in Sections II(C)(1) and IV(C)(1)
June 12, 2013 - filing 2013-136 (Emergency major substantive)

CORRECTIONS:

February, 2014 - agency names, formatting

AMENDED:

September 11, 2014 - Section VII, filing 2014-165

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 60: DESIGNATION OF CRITICAL PESTICIDE CONTROL AREAS

SUMMARY: These regulations establish criteria which the Board will use in deciding if an area should be designated as a critical pesticide control area. In addition, these regulations specify the procedures parties must follow in requesting such a designation. These regulations also define the locations that have been designated as critical areas by the Board.

1. Procedure

- A. The Board shall receive, consider and act upon petitions for designation of critical pesticide control areas in accordance with 5 M.R.S.A., Ch. 375, subchapter II. Citizen petitions shall be allowed in accordance with 5 M.R.S.A. §8055. A municipality or county may make such petition in accordance with 22 M.R.S.A. §1471-M, sub-§ 4. In addition, the Board's staff may initiate such a petition.
- B. The Board shall provide public notice and opportunity for public comment on any such petition in accordance with 5 M.R.S.A., Ch. 375, subchapter II.
- C. There shall be opportunity for local participation in Board decisions regarding the designation of critical areas, as provided by 22 M.R.S.A. §1471-V.

2. Information required in Petition

Any person or persons petitioning the Board to designate an area as a critical pesticide control area shall submit the following information in support of the petition:

- A. The name, address and telephone number of the petitioner(s) and a statement of the petitioner's interest in the proposed designation.
- B. The name of the pesticides or group of pesticides for which restrictions are sought. Petitioners may seek restrictions on specific formulations which have enhanced toxicity, rather than on all products containing the active ingredient. For purposes of this regulation, pesticides shall include both active and inert ingredients, and carriers used in any pesticide application.
- C. The name(s) and address(es) of the owner(s) of property within the proposed critical area.
- D. A map of the proposed critical area.
- E. A description of the purposes for which the pesticide(s) is or may be applied within the proposed area (if known).

- F. For petitions for designation under criteria of sections 3(A), 3(B) or 3(C), the name(s) of the species for which protection is sought and a summary of the data establishing adverse effects of pesticides upon the species.
- G. For petitions for designation under criteria of section 3(D), a copy of any applicable town ordinances, a summary of: evidence establishing that the pesticides may enter ground or surface water, hydrogeologic data which adequately defines the proposed critical area, and evidence establishing that the pesticide(s) may have an adverse effect upon the health of current or future users of the ground or surface water.
- H. For petitions for designation under criteria of section 3(E), a summary of medical and/or epidemiological evidence that exposure to the pesticide(s) causes serious and/or longstanding health effects to sensitive individuals or groups of individuals.
- I. For petitions for designation under criteria of sections 3(F) or 3(G), a copy of any management plan for the area or species.
- J. A description of the petitioner's proposed restrictions on the use of pesticide(s) within the proposed critical area.

3. **Criteria for designation**

The Board of Pesticides Control will use the following criteria to determine whether to designate a critical pesticide control area. Where the Board is persuaded by the evidence that any of these criteria are met, it may designate a critical pesticide control area and adopt additional pesticide use restrictions, prohibitions or management plans for that area as necessary to protect health, welfare and the environment.

- A. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of the habitat or range of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or
 - (3) is an invertebrate species ranked G1, G2 or S1 under the Natural Heritage Program of The Nature Conservancy and which is, in the Board's judgment, of natural significance.
- B. Areas where use of pesticide(s), without additional restrictions, is likely to negatively affect the mortality rate and/or reproductive capability of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or
 - (3) is an invertebrate species ranked G1, G2 or S1 under the Maine Natural Areas Program in the Department of Conservation and which is, in the Board's judgment, of natural significance.

- C. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of significant wildlife habitat. "Significant wildlife habitat" is as identified under the Natural Resources Protection Act, 38 M.R.S.A., Ch. 3, subchapter 1, Art. 5-A.
- D. Areas where use of pesticide(s), without additional restrictions, is likely to significantly risk the quality of surface or groundwater supplies used for human consumption.
- E. Areas where use of pesticide(s), without additional restrictions, is likely to cause serious and/or longstanding impairment of the health of sensitive individuals or groups of individuals who normally occupy such areas. The Board contemplates that this designation will require verified medical and/or epidemiological documentation of human sensitivity to one or more pesticides.
- F. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural or other resources owned or managed by a government agency, or is contrary to the duly adopted management plan for an area owned or managed by a government agency.
- G. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural resources within an area which is identified as an exemplary natural community or ecosystem of recognized exceptional qualities and has been designated for long-term ecological research and/or conservation purposes.

4. Designated Critical Pesticide Control Area

A. Dennys River Critical Pesticide Control Area

- (1) The above entitled matter having come up for public hearing on 7 March, 1978, at 2:00 p.m. before the Pesticides Control Board in Room 102 of the Science Building at the University of Maine in Machias; and the Board, having considered the evidence and arguments presented, and with a quorum present, has this day voted to declare a critical area under provisions of Title 22, Chapter 258-A, Sections 1471-F and 1471-M (2)(A), within which critical area no aerial application of pesticide is to be made without prior approval of the Board of Pesticides Control.
- (2) The critical area herein established is described as follows: Commencing at the dam at the foot of Meddybemps Lake and extending down the Dennys River to the Gilman Dam, so-called, the critical area shall include all land within one-half mile of either bank of the Dennys River; commencing at the Gilman Dam, so-called, and extending down the Dennys River to its entrance into Dennys Bay, so-called, the critical area shall include all land within one mile of either bank of the Dennys River.

FISCAL IMPACT: This rule will not impose any fiscal impact on counties or municipalities.

STATUTORY AUTHORITY: 5 M.R.S.A., § 8051 *et seq.* and 22 M.R.S.A., §§ 1471-F and M.

EFFECTIVE DATE:

July 6, 1979

AMENDED:

May 8, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998

July 12, 2000

MINOR CORRECTION:

November 23, 2000 - citation in § 4(C)(4)

AMENDED:

December 24, 2000 - repealed §4(C)

December 26, 2011 – filing 2011-475

CORRECTIONS:

February, 2014 – agency names, formatting

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 70: ADJUDICATORY PROCEEDINGS

SUMMARY: These regulations describe procedures the Board must follow in conducting hearings concerned with pesticide certification, licenses and permits.

Section 1. Purpose

These rules are in conformance with the Administrative Procedure Act as promulgated pursuant to 5 M.R.S.A. §8051 and the *Pesticides Control Board Law*, 22 M.R.S.A. §1471-A *et seq.*

Section 2. Applicability

A. These rules apply to proceedings when the Board considers the following:

1. The application of pesticides in a critical area described pursuant to 22 M.R.S.A. §1471-M(2)(A), when a rule establishing the critical area so provides;
2. The application of pesticides to a water body pursuant to 22 M.R.S.A. §1471-E;
3. The renewal of a previously issued certification, license or permit provided for in 22 M.R.S.A. §§ 1471-D, 1471-N, unless the certification, license or permit is renewed by other action of the Board;
4. The amendment or modification of a certification, license or permit provided for in 22 M.R.S.A. §§ 1471-D, 1471-N;
5. The continuation of a temporary suspension of a license, certification or permit pursuant to 22 M.R.S.A. §1471-D(7)(C).

Section 3. Application to Apply Pesticides to a Critical Area or Water Body

- A. A written application for permission to apply a pesticide under 22 M.R.S.A. §§ 1471-M(2)(A) or 1471-E shall be addressed to the Director, Pesticides Control Board, Department of Agriculture, Augusta, Maine, 04333.
- B. Such application shall contain such information as is requested by the Board.

Section 4. Notice of Right to Hearing

- A. Upon receipt of an application or otherwise when the Board's action is covered by these rules, the Board shall give notice to:
1. The person or persons whose legal rights, duties or privileges are at issue, by regular mail, sufficiently in advance of the anticipated time of the decision to afford an adequate opportunity to prepare and submit evidence and argument, and to request a hearing if so desired; and
 2. The general public, in any proceeding deemed by the Board to involve the determination of issues of substantial public interest, such notice to be given sufficiently in advance of the anticipated time of the decision to afford interested persons an adequate opportunity to prepare and submit evidence and argument, and to request a hearing if so desired.
- B. This section is complied with if notice is given as provided in 6 of these regulations.

Section 5. Hearings

- A. **Upon request.** A hearing shall be held upon receipt of a request by a person whose legal rights, duties or privileges are at issue under these rules. Failure by such person to request a hearing within 15 days of receipt of notice as provided in 4 shall be deemed a waiver of the right to a hearing.
- B. **Board's discretion.** A hearing may be held, at the Board's discretion, in any proceedings deemed by the Board to involve issues of substantial public interest.

Section 6. Notice of Public Hearing

- A. When a hearing is to be held, notice shall be given as follows:
1. To the person or persons whose legal rights, duties or privileges are at issue, by regular mail, sufficiently in advance of the hearing date to afford an adequate opportunity to prepare and submit evidence and argument; and
 2. In any proceeding deemed by the agency to involve the determination of issues of substantial public interest, to the public sufficiently in advance of the hearing date to afford interested persons an adequate opportunity to prepare and submit evidence and argument and to petition to intervene.

Section 7. Notice to the Public of a Hearing

- A. **Notice to the public.** Notice to the public shall be given:
1. By publication, at least twice in a newspaper of general circulation in the area of the state affected;
 2. By publication in any other trade, industry, professional or interest group publication which the agency deems effective in reaching persons who would be entitled to intervene as of right under section 12 of these regulations.
 3. In any other manner deemed appropriate by the Board.

Section 8. Notice

Notice shall consist of:

1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
2. A reference to the particular substantive statutory and rule provisions involved;
3. A short and plain statement of the nature and purpose of the proceeding and of the matters asserted;
4. A statement of the time and place of the hearing, or the time within which a hearing may be requested;
5. A statement of the manner and time within which evidence and argument may be submitted to the Board for consideration, whether or not a hearing has been set; and
6. When a hearing has been set, a statement of the manner and time within which applications for intervention may be filed.

Section 9. Presiding Officer

- A. **Presiding officer.** The Board may authorize any agency member, employee or agent to act as presiding officer in any hearing.
- B. **Substitute officer.** Whenever a presiding officer is disqualified or it becomes impracticable for him to continue the hearing, another presiding officer may be assigned to continue with the hearing; provided that, if it is shown that substantial prejudice to any party will thereby result, the substitute officer shall commence the hearing anew.

- C. **Presiding officer; duties.** Presiding officers may:
1. Administer oaths and affirmations;
 2. Rule on the admissibility of evidence;
 3. Regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing of evidence, briefs and other written submissions; and
 4. Take other action authorized by statute or agency rule consistent with 5 M.R.S.A., Chapter 375, subchapter IV.
- D. **Report.** In the event that the presiding officer prepares any report or proposed findings for the Board, the report or findings shall be in writing. A copy of the report or findings shall be provided to each party and an opportunity shall be provided for response or exceptions to be filed by each party.

Section 10. Bias of Presiding Officer or Board Member

- A. **Hearings; impartial.** Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely charge of bias or of personal or financial interest, direct or indirect, of a presiding officer or Board member in the proceeding requesting that that person disqualify himself, that person shall determine the matter as a part of the record.
- B. **Counsel.** Notwithstanding 1, the person involved may consult with private counsel concerning the charge.

Section 11. Disposition without Full Hearing

- A. **Stipulation, settlement, consent order.** The Board may make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement or consent order.
- B. **Default.** The Board may make informal disposition of any adjudicatory proceeding by default, provided that notice has been given that failure to take required action may result in default, and further provided that any such default may be set aside by the Board for good cause shown.
- C. **Issues limited.** The Board may limit the issues to be heard or vary any procedure prescribed by these rules or 5 M.R.S.A. Chapter 375, subchapter IV if the parties and the Board agree to such limitation or variation, or if no prejudice to any party will result.

Section 12. Intervention As of Right

- A. Any person showing that he is or may be a member of a class which is or may be substantially and directly affected by the proceedings, or any other agency of federal, state or local government which is or may be substantially and directly affected, shall be allowed to intervene as a party to the proceedings.
- B. **Intervention; interested person.** The Board may, by order, allow any other interested person to intervene and participate as a full or limited party to the proceeding. This subsection shall not be construed to limit public participation in the proceeding in any other capacity.
- C. **Application.** Application for intervention shall be received by the Director no later than five days before the commencement of the hearing, except for good cause shown. The application shall state the interest of the person or class and the reason it wishes to intervene. A copy of the application shall be sent by regular mail to the person or persons whose legal rights, duties or privileges are at issue.
- D. **Decision.** The Board shall either grant or deny the application at the time of the hearing, unless all parties agree to an earlier decision.
- E. **Participation limited or denied.** When participation of any person is limited or denied, the Board shall include in the record an entry to that effect and the reasons therefor.
- F. **Consolidation of presentations.** Where appropriate, the Board may require consolidation of presentations of evidence and argument by members of a class entitled to intervene under subsection (A) of these regulations, or by persons allowed to intervene under subsection (B).
- G. **Participation.** The Board shall allow any of its staff to appear and participate in any adjudicatory proceeding.

Section 13. Ex Parte Communications; Separation of Functions

- A. **Communication prohibited.** In any adjudicatory proceeding, no Board members authorized to take final action or presiding officers designated by the Board to make findings of fact and conclusions of law shall communicate, directly or indirectly, in connection with any issue of fact, law or procedure, with any person, except upon notice and opportunity for all parties to participate.
- B. **Communication permitted.** This section shall not prohibit any Board member or other presiding officer described in subsection (A) from:
 - 1. Communicating in any respect with other members of the Board or other presiding officers; or
 - 2. Having the aid or advice of those members of his own Board staff, counsel or consultants retained by the Board who have not participated and will not participate in the Board proceeding in an advocate capacity.

Section 14. Opportunity to be Heard

- A. **Opportunity for hearing.** The opportunity for hearing in an adjudicatory proceeding shall be afforded without undue delay.
- B. **Rights.** Unless limited by stipulation under 11(C) or by Board order pursuant to 12(B) or 12(F) or unless otherwise limited by the Board to prevent repetition or unreasonable delay in proceedings, every party shall have the right to present evidence and arguments on all issues, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.

Section 15. Evidence

- A. **Rules of privilege.** The Board need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law.
- B. **Evidence.** Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Board may exclude irrelevant or unduly repetitious evidence.
- C. **Witnesses.** All witnesses shall be sworn.
- D. **Prefiling testimony.** Subject to these requirements, the Board may, for the purposes of expediting adjudicatory proceedings, require procedures for the prefiling of all or part of the testimony of any witness in written form. Every such witness shall be subject to oral cross-examination.
- E. **Written evidence; exception.** No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

Section 16. Official Notice

- A. **Official notice.** The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and non-confidential agency records. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed.
- B. **Facts.** Facts officially noticed shall be included and indicated as such in the record.
- C. **Evaluation of evidence.** Notwithstanding the foregoing, the Board may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

Section 17. Record

- A. **Record.** In an adjudicatory proceeding, the Board shall make a record consisting of:
1. All applications, pleadings, motions, preliminary and interlocutory rulings and orders;
 2. Evidence received or considered;
 3. A statement of facts officially noticed;
 4. Offers of proof, objections and rulings thereon;
 5. Proposed findings and exceptions, if any;
 6. The recommended decision, opinion or report, if any, by the presiding officer;
 7. The decision of the Board; and
 8. All staff memoranda submitted to the members of the Board or other presiding officers by Board staff in connection with their consideration of the case, except memoranda of counsel to the Board.
- B. **Hearings recorded.** The Board shall record all hearings in a form susceptible to transcription. Portions of the record as required and specified in subsection A may be included in the recording. The Board shall transcribe the recording when necessary for the prosecution of an appeal.
- C. **Record; copies.** The Board shall make a copy of the record, including recordings made pursuant to subsection B available at its principal place of operation, for inspection by any person during normal business hours; and shall make copies of the record, copies of recordings or transcriptions of recordings available to any person at actual cost. Notwithstanding the provisions of this subsection, the Board shall withhold, obliterate or otherwise prevent the dissemination of any portions of the record which are made confidential by state or federal statute, but shall do so in the least restrictive manner feasible.
- D. **Decision on the record.** All material, including records, reports and documents in the possession of the Board, of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record and no other factual information or evidence shall be considered in rendering a decision.
- E. **Documentary evidence.** Documentary evidence may be incorporated in the record by reference when the materials so incorporated are made available for examination by the parties before being received in evidence.

Section 18. Subpoena and discovery

- A. Any party may request the issuance of a subpoena by the Board, and the Board may issue the same if it first obtains the approval of the Attorney General or of any deputy attorney

general. Such approval shall be given when the testimony or evidence sought is relevant to any issue of fact in the proceeding.

- B. When properly authorized, subpoenas may be issued by the Board or by any person designated by the Board for that purpose, in accordance with the following provisions:
1. The form shall be similar to that used in civil cases before the courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the courts, unless another territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fees for attendance and travel as in civil cases before the courts. Such fees shall be paid by the party requesting the subpoena.
 2. Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.
 3. Any witness subpoenaed may petition the Board to vacate or modify a subpoena issued in its name. The Board shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Board considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when evidence is requested.
 4. Failure to comply with a subpoena lawfully issued in the name of the Board and not revoked or modified by the Board as provided in this section shall be punishable by a fine of not less than \$500 and not more than \$5,000, or by imprisonment not to exceed 30 days, or both.

19. Decisions: Appeal

- A. Every Board decision made at the conclusion of an adjudicatory proceeding shall be in writing or stated in the record, and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision. The Board shall maintain a record of the vote of each member of the Board with respect to the Board's decision. A copy of the decision shall be delivered or promptly mailed to each party to the proceeding or his representative of record.
- B. The Board shall inform the parties at the time the decision is delivered or mailed that they have the right to have the Superior Court review the decision and that a petition for review of the decision must be filed in the Superior Court within 30 days after receipt of notice of the decision pursuant to 5 M.R.S.A. § 11002.

STATUTORY AUTHORITY: 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

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01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 80: ADVISORY RULINGS

SUMMARY: These regulations describe the procedures any interested person must follow in requesting an advisory ruling to determine if the Board's Statute and rules apply to his situation.

Section 1. Request for Ruling

- A. **Written request.** Upon written request of any interested person, the Board of Pesticides Control may make an advisory ruling with respect to the applicability of any statute or rule administered by the Board of Pesticides Control to him or his property or actual state of facts.
- B. **Address to Director.** All advisory ruling requests shall be addressed to the Director, Board of Pesticides Control, Maine Department of Agriculture, Augusta, Maine 04333.
- C. **Request for more information.** The request shall contain sufficient facts for the Board of Pesticides Control to make a ruling. The Board of Pesticides Control may request information from the party requesting the ruling. Failure to provide such information shall be cause for the Board of Pesticides Control to refuse to issue a ruling.

Section 2. Board Response

- A. **Refusal to issue ruling.** The Board of Pesticides Control may refuse to issue an advisory ruling if it may harm its interest in any litigation wherein it is or may become a party.
 - B. **Ruling in writing within 60 days.** An advisory ruling shall be in writing and issued no more than 60 days from the date when all information necessary for the ruling has been received by the Board of Pesticides Control.
 - C. **Advisory ruling not binding.** An advisory ruling shall not be binding upon the Board of Pesticides Control, provided that in any subsequent enforcement action initiated by the Board of Pesticides Control, any person's justifiable reliance upon the ruling shall be considered in mitigation of any penalty sought to be assessed.
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STATUTORY AUTHORITY: 22 M.R.S.A., Chapter 258-A

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01 **DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

026 **BOARD OF PESTICIDES CONTROL**

Chapter 90: COMPLAINTS

SUMMARY: These regulations describe the procedure a person must follow in bringing a complaint to the Board and outline the steps the Board may take in response.

Section 1. Purpose

The purpose of this section is to provide a formal procedure which assures that the Board of Pesticides Control will consider all complaints regarding uses of pesticides.

Section 2. Complaint

Any person, individual, corporation, unincorporated association, group of individuals or government agency may submit a complaint regarding any person, known or unknown, relative to the use of pesticides.

Section 3. Address to Director

All complaints shall be sent to the Director, Board of Pesticides Control, Department of Agriculture, 28 State House Station, Augusta, Maine 04333-0028. Anyone who cannot submit a complaint in writing to the Director may make arrangements with the Director or staff to record the content of the complaint in a manner and time frame convenient to the Director, staff and complainant. The Director may, at his/her discretion, investigate the complaint prior to Board action.

Section 4. Placed on Board's Agenda

The complaint shall be placed on the Board's agenda, the Board shall give reasonable notice to the complainant, the person who is the subject of the complaint, if known, and any other party the Director believes is interested in the complaint.

Section 5. Considered

The Board shall consider the complaint along with any information which the Director may have available, and take whatever action it deems necessary to protect the public's interest. Action could include taking no action, requesting the Board's staff to investigate the complaint, scheduling an informal hearing between the affected parties or instituting formal adjudicatory proceedings. Any such consideration shall not constitute an adjudicatory proceeding within the meaning of chapter 70 of the Board's regulations.

STATUTORY AUTHORITY: 22 M.R.S.A., Chapter 258-A

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