

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 10: DEFINITIONS AND TERMS

SUMMARY: These definitions and terms are defined as they specifically relate to the use of pesticides, the certification and licensing of pesticide applicators and dealers, and other areas as regulated by the Board in succeeding chapters.

Section 1. Consistent with Statute

All terms used in these Chapters shall be defined as indicated in Title 22 M.R.S.A., Chapter 258-A unless specifically provided herein.

Section 2. Definitions

- A. "Aerial applicator" means all persons who dispense pesticides by means of any machine or device used or designed for navigation of or flight in the air. ~~All aerial applicators shall be considered commercial applicators and shall be individually certified.~~
- B. "Agricultural pesticide application" means any application of a pesticide upon an agricultural commodity which is performed by or for a commercial agricultural producer.
- C. "Air-carrier application equipment" means any application equipment that utilizes a mechanically generated airstream to propel the spray droplets.
- D. "Applicant" means a person or persons who apply for a certification, license or permit authorized in 22 M.R.S.A. §1471-D or §1471-N.
- E. "Branch office" means:
 - 1. any home, store or other business location where an employee of a spray contracting firm directly accepts requests for pest control services from clients through mail, telephone or walk-in inquiries, and
 - 2. any government or university office where employees receive regular direction to apply pesticides in connection with their duties.
 - 3. It does not include the home of an employee who receives work assignments and directions from a branch office with a master applicator.
- F. "Calibration of equipment" means measurement of dispersal or output of application equipment and adjustment of such equipment to control the rate of dispersal, and droplet or particle size of a pesticide dispersed by the equipment.

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- G. "Certification" means the recognition by the Board that an applicant has successfully fulfilled all the appropriate competency criteria as set forth in these Chapters.
- H. "Commercial agricultural producer" means, for the purposes of Chapter 50, any person who produces an agricultural commodity for commercial purposes.
- I. "Commercial applicator" means any person, unless exempted in I(4) hereunder, whether or not the person is a private applicator with respect to some uses, who:
1. Uses or supervises the use of any limited or restricted use pesticide other than as a private applicator; or
 2. Makes or supervises a custom application of a general use pesticide; or
 3. Applies a pesticide in connection with their duties as an official or an employee of federal, state, county, university or local government.
 4. The following classes of applicators are exempt from commercial certification/licensing requirements. Applications not listed below must be performed under the direct on-site supervision of a licensed commercial applicator Master and/or Operator.
 - a. Persons applying ready-to-use general use pesticides by hand or with non-powered equipment:
 - i. to control stinging insects when there is an urgent need to mitigate or eliminate a pest that is a threat to health or safety; or
 - ii. to repel biting insects on patients and other persons under their care or supervision who are unable to apply the material to themselves; or
 - iii. to repel biting insects on minors, such as students and campers, provided that a parent or legal guardian has authorized the application of insect repellents.
 - b. Persons applying general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings of buildings during the course of routine cleaning procedures.
 - c. Persons applying general use paints, stains or wood preservatives, except for the treatment of standing utility poles.
 - d. Persons installing hardware such as doorknobs and pushplates.
- J. "Commercial applicator/Master" means a commercial applicator who, unless exempted in Chapter 31, Section 1(Company/Agency Licensing Requirements), is responsible for the major pest control decisions including, but not limited to, identifying unusual pests and choosing the appropriate pest control strategies and techniques. This person is also

responsible for establishing policies relating to the operating practices of others applying pesticides within the company or agency. Such practices may include equipment maintenance and calibration, employee training, safety and hygiene, pesticide and container disposal, accident mitigation and ensuring that applications are conducted in compliance with all state and federal laws and regulations.

- K. "Commercial applicator/Operator" means a commercial applicator who:
1. applies or directs the application of a pesticide according to the instructions of the master when a master is required according to Chapter 31, Section 1 (Company /Agency Licensing Requirements); or
 2. applies or directs the application of a pesticide and performs the function of the master applicator when a separate master is not required according to Chapter 31, Section 1(Company/Agency Licensing Requirements).
- L. "Compact urban line" means that delineation made by the Maine Department of Transportation which denotes a section of the highway where structures are nearer than 200 feet apart for a distance of one-quarter of a mile.
- M. "Compatibility" means that property of a pesticide that permits its use with other chemicals without undesirable results being caused by the combination.
- N. "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.
- O. "Common exposure route" means a likely way (oral, dermal, respiratory) by which a pesticide may reach and/or enter an organism.
- P. "Custom application" means an application of a pesticide:
1. Under contract or for which compensation is received;
 - a. For the purposes of this definition, "under contract" includes: verbal or written agreements to provide services which include the use of any pesticide; i.e., private or commercial rental agreements, pest control service agreements, landscape maintenance agreements, etc.
 - b. For purposes of this definition, compensation is deemed to have been received for a pesticide application where any form of remuneration has been or will be exchanged, including payment of cash, rent, or other financial consideration, or by the exchange of goods and/or services. This also includes any agreements where crops grown on rented land will be sold to the landowner or are otherwise grown for the benefit of the land owner.

2. To a property open to use by the public;
 - a. For purposes of this definition, property is deemed to be open to use by the public where its owner, lessee or other lawful occupant operates, maintains or holds the property open or allows access for routine use by members of the public. Persons are considered to be members of the public even though they may pay a fee or other compensation in order to make use of the property or may visit the property for a commercial purpose.
 - b. Property open to use by the public includes but is not limited to: shopping centers, office and store space routinely open to the public (i.e. rest rooms, self-service areas and display aisles), common areas of apartment buildings, occupied apartments, public pools and water parks, schools and other institutional buildings, public roads, organized recreational facilities, golf courses, campgrounds, parks, parking lots, ornamental and turf areas around condominiums, apartment buildings, stores malls and retail areas of greenhouses and nurseries if the public is allowed access before the pesticide restricted-entry or re-entry interval elapses.
 - c. Examples of property not open to use by the public include without limitation: farms, forest lands, and private residential or commercial property which is not routinely operated or maintained for use by the public or otherwise held open to public use.
 - d. Notwithstanding this definition, property shall not be deemed to be open for use by the public in the following cases:
 - i. where the property is devoted primarily to agricultural, forest, ornamental tree or plant production, but this exception shall not apply to campgrounds, leased inholdings or roads within such property which are open for use by the public;
 - ii. where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application;
 - iii. forestry rights of way where the property has been closed during the time of spraying or during the label restricted entry interval or re-entry period, whichever is greater;
 - iv. where the public has not been permitted on the treated portion of privately held recreational land within seven days of a pesticide application for vegetation management.
3. In a food establishment licensed under M.R.S. 22, Chapter 551, or an eating establishment licensed under M.R.S. 22, Chapter 562, except that “custom application” does not include a pesticide application at a licensed food or eating establishment when:

- a. The establishment is ancillary to the production of an agricultural commodity;
 - b. The owner or an employee of that establishment is certified as a private applicator under section 1471-C, subsection 2; and
 - c. The property is not open to the public.
4. A pesticide application shall not be deemed a custom application where it is undertaken by a licensed private applicator on property owned or rented by him or his employer or in trade for personal agricultural services between producers of agricultural commodities.
- Q. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver pesticides in this state. This also means giving free samples of unregistered products to any person. Sales of hardware, such as doorknobs and pushplates, shall not be considered distribution for the purposes of this definition.
- R. "Environment" means water, air, land, and all plants and man and other animals living therein, and the interrelationships that exist among them.
- S. "Forest" means a concentration of trees and related vegetation managed primarily for the production of forest agricultural commodities such as timber, fiber or other wood products, including other similar areas managed for recreation or resource conservation.
- T. For the purposes of 22 M.R.S. §1471-D (9), "Government Employee" means a person who is employed full- or part-time as a regular employee of any governmental or quasi-governmental organization including federal, state, county and municipal governments and public universities.
- U. "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.
- V. "Host" means any plant or animal on or in which another lives for nourishment, development, or protection.
- W. "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.

- X. "Integrated Pest Management Coordinator" means the lead person in a school system or school who is knowledgeable about integrated pest management and is designated by each school to implement the school pest management policy.
- Y. "License" means a commercial applicator license, a private applicator certification, a dealer license, a permit to chemically control vertebrate animals, or a permit to apply limited use pesticides.
- Z. "Licensing" means the issuance by the Board of a document signifying that the applicant has been certified and has met all applicable employee, fee, insurance and reporting requirements.
- AA. "Major application project" means any pesticide application contract that requires the applicator to apply pesticides to more than 1000 acres in the aggregate within a given year. This does not include repeat applications to the same site.
- BB. "Major pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building owned and/or operated by a pesticide distributor where pesticides are held in storage and which meets one of the following criteria:
1. contains at any one time an amount greater than or equal to 6,000 pounds of dry pesticide product, other than dry formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 2. contains at any one time an amount greater than or equal to 600 gallons of liquid pesticide product, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 3. contains liquid pesticides in containers that are thirty (30) gallons or greater in size, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products."
- CC. "Minor pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building owned and/or operated by a pesticide distributor where pesticides are held in storage and which meets one of the following criteria:
1. contains at any one time an amount greater than 100 pounds but less than 6,000 pounds of dry pesticide product, other than dry formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 2. contains at any one time an amount greater than 50 gallons but less than 600 gallons of liquid pesticide, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 3. contains liquid pesticides in containers greater than three (3) gallons but less than thirty (30) gallons in size, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products."
- DD. "Non-agricultural pesticide application" means any application of a pesticide that is not an agricultural pesticide application.

- EE. "Non-powered equipment" means pesticide spray equipment which pumps and disperses pesticides without utilization of an electric, gasoline, wind-driven or other motorized power source. By way of example, non-powered equipment includes manual pump spray equipment and self-contained aerosol spray cans or bottles but does not include equipment which employs a motor, except one powered only by hand.
- FF. "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.
- GG. "Off-target direct discharge of pesticides" means the direct application of pesticides onto property beyond the boundaries of the target area intended to be treated. Presence of off-target direct discharge of pesticides may be determined by any evidence, through observation, residue samples or other techniques, that an off-target area has received substantially the same dose of pesticide as a target area.
- HH. "Off-target drift of pesticides" means the drifting of pesticides by air currents or diffusion with resulting deposition of pesticides onto property beyond the boundaries of the target area intended to be treated. The detection of pesticides beyond the boundaries of the target area intended to be treated shall be presumed to be as a result of off-target drift unless there is evidence of off-target direct discharge of pesticides.
- II. "Ornamental plant" means shrubs, trees and related vegetation in and around habitation generally, but not necessarily, located in urban and suburban areas, including residences, parks, streets, retail outlets, and industrial and institutional buildings.
- JJ. "Other forest pests" means forest pests, other than insects and include, but are not limited to, weeds, mites, nematodes, fungi, bacteria, and viruses.
- KK. "Owner" means sole proprietor, partner or stockholder.
- LL. "Person" means any individual, partnership, fiduciary, corporation, governmental entity, association or public or private organization of any character, other than the Board.
- MM. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency.
- NN. "Pesticide dealer" means any person who distributes limited or restricted-use pesticides, including but not limited to sales personnel in an outlet, field salesmen, and manufacturers' representatives selling pesticides directly to the consumer or who accept orders for pesticides.
- OO. "Pesticide distributor" means any person required to be licensed to distribute general, restricted or limited use pesticides.

- PP. "Pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building where pesticides are held for storage.
- QQ. "Practical knowledge" means the possession of pertinent facts and comprehension together with the ability to use them in dealing with specific problems and situations.
- RR. "Principal place of business" means the principal location, either residence or office, in the State in which an individual, partnership, or corporation applies pesticides.
- SS. "Private Applicator" means any person who uses or supervises the use of any pesticide which is classified for restricted or limited use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than the trading of personal services between producers of agricultural commodities, on the property of another person. In situations where the applicator is applying pesticides to crops on rented land, there must be a written contract showing that the grower/applicator retains control over the property as well as the disposition or sale of the harvested crop.
- TT. "Private domestic well" means any well used for drinking water other than one which serves a public water system.
- UU. "Project" means, for the purposes of Chapter 51, the aerial application of pesticides to control an individual forest insect pest complex provided by:
1. Any number of applicator businesses for a single person, or
 2. One applicator business on contiguous parcels of land.
- VV. "Public precautions" means those statements which appear on the pesticide label directed towards the non-applicator public. Public precautions may include, but are not limited to, re-entry intervals.
- WW. "Public water system" means any water supply system that provides water to at least 15 service connections or serves water to at least 25 individuals daily for at least 30 days a year.
- XX. "Regulated pest" means a specific organism considered by a State or Federal agency to be a pest requiring regulatory restrictions, regulations, or control procedures in order to protect the host, man and/or his environment.
- YY. "School" means any public or private elementary or secondary school, kindergarten or nursery school that is part of an elementary or secondary school or a tribally funded school.
- ZZ. "School Building" means any structure used or occupied by students or staff of any school.
- AAA. "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 that is under the control of a school.

- BBB. "Self-service sales area" means any area within or immediately outside a retail or wholesale business in which members of the public have direct access to pesticide products. For the purposes of this chapter, self-service sales areas shall be limited to those pesticide products which require a pesticide dealer to be licensed under 22 M.R.S.A. §1471-W, "General Use Pesticide Dealers."
- CCC. "Sensitive area" means any of the following, except where the area involved is the intended target of the pesticide application:
1. Apiaries, the location of which is registered with the Department of Agriculture, Conservation and Forestry pursuant to 7 M.R.S.A. §2701;
 2. Critical areas designated by the Board pursuant to 22 M.R.S.A. §1471-M(2);
 3. Public wells, drinking water springs used by the public, and public water supply intake points, provided the location of the same is known or should reasonably be known to the pesticide applicator;
 4. Private sources of drinking water, where the owner or legal user thereof has given prior notice of the location of such source to the landowner or lessee of the area which will be subject to a pesticide application;
 5. Water bodies, including streams, brooks, rivers, ponds, lakes, estuaries and marine waters, provided that any such water body contains water at the time of the pesticide application and is known to the spray applicator or is reasonably detectable from visual observation, reasonably available maps or reasonable inquiry. This term shall not include: (a) in the case of forest aerial spray programs, streams and brooks that are neither shown on reasonably available maps nor visible from an aircraft operating at 1000 feet in elevation above ground level; and (b) waters that are confined and retained completely upon the property of the person conducting or contracting for spray services, and that do not drain into or connect with any other water body;
 6. Wetlands of Special Significance.
 7. Cleared areas where livestock are contained or pastured, cultivated land, cropland or gardens.
 8. A "Sensitive Area Likely to Be Occupied" is an area where humans are likely to be present including the following:
 - a. Residential buildings, together with any associated maintained areas likely to be occupied by humans, such as lawns, gardens, recreational areas and livestock management and housing areas;
 - b. School buildings, together with any associated maintained areas that are areas likely to be occupied by humans, such as playgrounds, athletic fields or courts;

- c. Commercial, institutional, or other structures likely to be occupied by humans, together with any associated maintained areas such as lawns, gardens, parking and recreational areas;
 - d. Maintained recreational areas likely to be occupied by humans including campgrounds, picnic areas, marked roadside rest areas, marked hiking trails, park and recreation facilities, athletic fields, and other areas for organized sports or recreation. This definition does not include trails located on privately owned lands which are used by permission of the landowner.
- DDD. "Spray application" means, for the purposes of Chapter 51, the dispensing of pesticides in any manner from an aircraft.
- EEE. "Spray contracting firm" means any person, including a corporation, employed or contracted to conduct a public or private custom application of one or more pesticides. This term does not include:
- 1. the owner or lessee of land to be sprayed and employees of that landowner or lessee,
 - 2. the Division of Forestry and the employees of the Division of Forestry,
 - 3. individuals who are certified as commercial applicators providing that individual does not have in his/her employment one or more others to undertake pesticide applications; or
 - 4. persons who perform custom applications of pesticides solely on or within a premises which they own or lease.
 - 5. persons and corporations that subcontract for pesticide applications, but do not maintain any control over the pesticide application including which pesticides are applied, when they are applied or how they are applied.
- FFF. "Spray period report" means a written description of the spray activity certifying the date and time, the area usually sprayed, the pesticide used, and including a description of the weather conditions during spray activity. The report must also include a map showing where spray booms were turned on and off, with notation of any non-target areas that were sprayed.
- GGG. "Standard" means the measure of knowledge and ability that must be demonstrated as a requirement for certification.
- HHH. "Storage" means holding pesticides for distribution in locations other than self-service sales areas.
- III. "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.
- JJJ. "Toxicity" means the property of a pesticide to cause any adverse physiological effects.

- KKK. "Uncertified person" means any person who is not holding a currently valid certification document indicating that he is certified under section 4 of FIFRA in the category of the restricted use pesticide made available for use.
- LLL. "Wetlands of Special Significance" means all coastal wetlands and great ponds. In addition, certain freshwater wetlands are considered wetlands of special significance if they have one or more of the following characteristics.
1. **Critically imperiled or imperiled community.** The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the Natural Areas Program.
 2. **Significant wildlife habitat.** The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. §480-B(10).
 3. **Location near coastal wetland.** The freshwater wetland area is located within 250 feet of a coastal wetland.
 4. **Location near GPA great pond.** The freshwater wetland area is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A. §465-A.
 5. **Aquatic vegetation, emergent marsh vegetation or open water.** The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial ponds or impoundment.
 6. **Wetlands subject to flooding.** The freshwater wetland area is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.
 7. **Peatlands.** The freshwater wetland is or contains peatlands, except that the Department of Environmental Protection may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.
 8. **River, stream or brook.** The freshwater wetland area is located within 25 feet of a river, stream or brook.
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STATUTORY AUTHORITY: 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

July 6, 1979

AMENDED:

April 27, 1988

May 21, 1996

August 17, 1996

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998 - inserted definitions for "Agricultural pesticide application" and "Non-agricultural pesticide application"; renumbered; converted to MS Word.

March 5, 2003

NON-SUBSTANTIVE CORRECTION:

February 17, 2004 - cross reference in Section 2.H

AMENDED:

January 4, 2005 – filing 2004-602

March 4, 2007 – Section 2(I)(4)(c), filing 2007-64

July 16, 2009 – filing 2009-251 (major substantive final adoption)

January 29, 2013 – filing 2013-014

CORRECTIONS:

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 10—DEFINITIONS AND TERMS**

Basis Statement

Two amendments to Chapter 10 were proposed by the Board:

- Amend the definition of “Aerial Applicator” to allow certification as a private applicator. Currently the rule requires applicators to hold a commercial license which prevents an individual from making applications on their own property. This is required by the new EPA C&T rules, and is in anticipation of potential applications by unmanned aircraft systems.
- Clarify the definition of property not deemed to be open to use by the public to also include where the public has not been permitted on the treated portion of privately held recreational land within seven days of a pesticide application for vegetation management.

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business 5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 10— Definitions and Terms

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

Amending the definition of aerial applicator will allow the ~1,500 individuals with private licenses to apply pesticides via UAS (unmanned aircraft systems) if they desire.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

The amendment will potentially result in increased use of new technology, which is a positive thing for small businesses.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			

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 fully enclosed 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. Structures which are roofed but are otherwise open to the outdoors are not considered occupied buildings for the purpose of this rule.

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



**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 26—STANDARDS FOR INDOOR APPLICATION OF
PESTICIDES**

Basis Statement

One amendment to Chapter 26 was proposed by the Board:

- Clarify the definition of “occupied buildings” to mean fully enclosed indoor spaces inside buildings and that roofed structures which are otherwise not enclosed are not buildings for the purpose of the rule.

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 26—Standards for Indoor Application of Pesticides

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

Clarifying the definition of “occupied buildings” as it pertains to pesticide applications means that fewer businesses might be subject to the rule than a different interpretation, however, there is no change from how the Board has been interpreting the rule. Since the Board has not been regulating these anyway, there is no way to estimate how many businesses might have been impacted by a different interpretation.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

Clarifying the definition of “occupied buildings” as it pertains to pesticide applications means that fewer businesses might be subject to the rule than a different interpretation, however, there is no change from how the Board has been interpreting the rule.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			

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 in school buildings, to school buildings, and 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, to 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.
 - (4) application of personal insect repellents.
- 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.
-

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



**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 27—STANDARDS FOR PESTICIDE APPLICATIONS AND
PUBLIC NOTIFICATION IN SCHOOLS**

Basis Statement

Three amendments to Chapter 27 were proposed by the Board:

- Change wording to clarify that all pesticide applications, inside and outside, must be included in the pest management activity log.
- Change wording to clarify that applications made to the exterior of buildings are included in the rule.
- Add personal insect repellents to the list of products which do not require licensure.

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business 5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 27—Standards for Pesticide Applications and Public Notification in Schools

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

This rule applies only to schools and therefore will not affect any small businesses.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

This rule applies only to schools and therefore will not affect any small businesses.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			

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 individuals 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 ~~it's~~ a telephone number at which an individual knowledgeable about the application can be reached during normal business hours;
- 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)

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 28—NOTIFICATION PROVISIONS FOR OUTDOOR
PESTICIDE APPLICATIONS**

Basis Statement

One amendment to Chapter 28 was proposed by the Board:

- Clarify that the telephone number required on signs must be a working number.

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business 5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 28—Notification Provisions for Outdoor Pesticide Applications

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

There are approximately 220 small businesses that would be subject to this rule. These are primarily companies doing lawncare and/or mosquito and tick control.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

The amendment is to require that the phone number displayed on a required sign is a working number. This should have little to no impact on the business.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			

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.
- 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).
- ~~B-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.
- ~~C-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.
- ~~D-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.

E.F. Exemptions

- ~~I.~~ ~~Employing entities only performing post harvest treatments to agricultural commodities are exempt from master licensing requirements.~~
- ~~II.~~ Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- ~~III.~~ 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 Bureau of Health.
- ~~IV.~~ III. Certified or licensed Wastewater or Drinking Water Operators applying registered disinfectants to waste or drinking water as part of their employment.
- ~~V.~~ VI. Adults applying repellents to children with the consent of parents/guardians.
- ~~VI.~~ VII. Persons installing antimicrobial metal hardware.

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 Fumigation - This option includes commercial applicators using or supervising the use of 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 ~~Control~~ 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 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, 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 Treatments** —This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in manufacturing, swimming pools, spas, industrial cooling towers, public drinking water treatment plants, sewers and air conditioning systems.

1. **Disinfectant and Biocide Treatments** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in manufacturing, industrial cooling towers, public drinking water treatment plants, sewers, and air conditioning systems.
2. **Swimming Pool & Spa** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in swimming pools and spas.
3. **Mold Remediation** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat mold or microbial growth problems.

- d. **Wood Preserving** - This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to treat lumber, poles, railroad ties and other types of wooden structures including bridges, shops and homes. It also includes commercial applicators applying general use pesticides for remedial treatment to utility poles.
- e. **Biting Fly & other Arthropod Vectors** - This subcategory includes commercial applicators and non-public health governmental officials using or supervising the use of pesticides in management and control of biting flies & other arthropod vectors of public health and public nuisance importance including, but not limited to, ticks, mosquitoes, black flies, midges, and members of the horsefly family.
- f. **Termite Pests** - This subcategory includes commercial applicators using or supervising the use of pesticides to control termites.

VIII. **Public Health Pest Control**

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

IX. **Regulatory Pest Control**

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

X. **Demonstration and Research Pest Control**

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

XI. **Aerial Pest Control**

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

3. **Competency Standards for Certification of Commercial Applicators**

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

I. **Agricultural Animal and Plant Pest Control**

- a. **Agricultural Animals.** Applicants seeking certification in the subcategory of Animal Pest Control as described in Section 2(A)(I)(a) must demonstrate knowledge of animals, their associated pests, and methods of pest control. Areas of practical knowledge shall include specific toxicity, residue potential, relative hazards of different formulations, application techniques, and hazards associated with age of animals, stress, and extent of treatment.
- b. **Agricultural Plant.** Applicants seeking certification in the subcategory of Plant Pest Control as described in Section 2(A)(I)(b) Options I - IV must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions

for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

II. **Forest Pest ~~Control~~ Management**

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

III. **Ornamental and Turf Pest Control**

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

IV. **Seed Treatment**

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

V. **Aquatic Pest Control**

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

VI. **Vegetation Management**

Applicants seeking certification in the subcategories under Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of pesticide use on a wide variety of environments. Such knowledge shall include an ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup and aesthetic considerations associated with excessive foliage destruction and "brown-out", and an understanding of the mode of action of herbicides, and

reasons for the choice of particular chemicals for particular problems, importance of the assessment of potential impact of spraying on adjacent public and private properties and activities, and effects of spraying on fish and wildlife species and their habitat. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

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 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 and customers.
- c. **Disinfectant and Biocide Treatments.** Applicants seeking certification ~~in the Disinfectant and Biocide Treatments subcategory described in Section 2(A)(VII)(c) must demonstrate practical knowledge of water organisms and their life cycles, drinking water treatment plant, cooling water and pool or spa system designs, labels and hazards of disinfectants and biocides and proper application techniques to assure adequate control while minimizing exposure to humans and the environment.~~
 1. **Disinfectant and Biocide Treatments.** Applicants seeking certification in the subcategory of Disinfectant and Biocide Treatments as described in Section 2(A)(VII)(c)(1) must demonstrate practical knowledge of water organisms and their life cycles, drinking water treatment plant designs, cooling water system designs, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
 2. **Swimming Pool & Spa.** Applicants seeking certification in the subcategory of Swimming Pool & Spa as described in Section 2(A)(VII)(c)(2) must demonstrate practical knowledge of water organisms and their life cycles, pool and spa design systems, labels, and hazards of disinfectants and biocides and proper application

techniques to ensure adequate control while minimizing exposure to humans and the environment.

3. **Mold Remediation.** Applicants seeking certification in the subcategory of Mold Remediation as described in Section 2(A)(VII)(c)(3) must demonstrate practical knowledge of mold and problematic microbial organisms, their life cycles, labels, and 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.

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, ~~Social security number~~, 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 ~~\$50.00 for the regulations and master exams~~ \$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 ~~in all areas except category I(b)IV, Post Harvest Treatment~~ 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 ~~in all areas except category I(b)IV, Post Harvest Treatment~~ 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.
- e. Applicants in subcategory I(b)IV ~~Post Harvest Treatment shall take one closed book exam which combines the core exam and the category 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.
- bc. Applicants shall not talk during the examination period.
- ed. 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.
- de. 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., ~~including at least 2 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.~~
 - b. **Operator level** - 6 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified., ~~including at least 2 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.~~

-
- 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.
- II. ~~For replacement, upgrade to master or to add categories \$5.00.~~

- 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

7. Transition

~~For the purposes of converting from two year licenses and six 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. During the transition 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 a license is renewed, based on applicant's last name.~~

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

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 31—CERTIFICATION AND LICENSING
PROVISIONS/COMMERCIAL APPLICATORS**

Basis Statement

Eleven amendments to Chapter 31 were proposed by the Board. Many of these are required as part of the state cooperative agreement with the EPA.

- Add requirement for a government-issued photo id for all exams (required by EPA C&T).
- Establish annual training requirements for noncertified applicators of restricted use pesticides (required by EPA C&T).
- Establish minimum age for individuals certified as commercial or private applicators (required by EPA C&T).
- Describe the credentials which will be issued to each applicator verifying certification (required by EPA C&T).
- Remove section on transitioning to revised licensing and certification requirements since the time frame has passed.
- Update the names of certain categories to align with current exams.
- Remove requirement to collect social security number.
- Change cost of master exams from \$50 for both to \$10 for Master Regulations exam and \$40 for Master Oral exam.
- Remove exemption for those certifying in the Post Harvest Treatment category from having to take the core exam.
- Remove requirements for applicators to receive continuing education credits in specific categories as the Board doesn't categorize courses this way.
- Remove fee for replacement and upgraded licenses as the Board no longer charges for these due to improved software.

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business 5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

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

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

There are approximately 350 small businesses doing for hire pesticide applications in Maine. They will all be affected by these amendments. Many of the amendments are required to by the Environmental Protection Agency as part of the state cooperative agreement.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

Most of the amendments will have no effect on companies. Amendments likely to have an effect (requiring government-issued photo id for exams; annual training requirements for noncertified applicators and records thereof; and minimum age for licensure) are required by federal rule and the Board is codifying the requirements as part of the state cooperative agreement.

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

These amendments are codifying federal requirements, there are no alternative methods.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 32: CERTIFICATION & LICENSING PROVISIONS/PRIVATE APPLICATORS

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 labeling ~~ing~~ 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).
- 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.
- 23. 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.
- 34. **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.
 - bc. Applicants shall not talk during the examination period.
 - cd. 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.
 - de. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.
45. **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.
5. ~~At its discretion, the Board may, in special circumstances, offer the option of an oral core and commodity exam to a person with recognized difficulty in reading.~~
- a. ~~The person requesting this option must identify another qualified individual from whom he can seek advice and guidance necessary for the safe and proper use of pesticides related to his certification.~~
 - b. ~~The person identified as reader and advisor to applicant must be present at time of oral exam and acknowledge his willingness to assist the private applicator.~~
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.
 - 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.
 - c. **Aerial.** This category includes private applicators, including pilots and co-pilots, applying pesticides by means of any aircraft.
 5. Competency Standards for Supplemental Certification of Private Applicators—Applicants seeking supplemental private certification must demonstrate competency in each applicable category (Category Exam). Competency in the applicable category shall be established as follows:
 - a. **Soil Fumigation.** Applicants seeking supplemental certification in the category of Soil Fumigation as described in Section 2(B)(4)(a) must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (d) (2017).

- b. **Non-soil Fumigation.** Applicants seeking supplemental certification in the category of Structural Fumigation as described in Section 2(B)(4)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (e) (2017).
- c. **Aerial Pest Control.** Applicants seeking supplemental certification in the category of Aerial Pest Control as described in Section 2(B)(4)(c) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (f) (2017).

B. 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.A. § 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

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 32—CERTIFICATION AND LICENSING PROVISIONS FOR
PRIVATE APPLICATORS**

Basis Statement

Six amendments to Chapter 32 were proposed by the Board. All of these are required as part of the state cooperative agreement with EPA.

- Amend competency standards to include those required by EPA C&T: label comprehension; responsibilities for supervisors of noncertified applicators; stewardship; ability to read and understand pesticide labeling.
- Remove option to provide oral examination as EPA C&T no longer allows non-reader accommodations.
- Add supplemental private categories which can be obtained in addition to certification for private licensure: aerial application; soil fumigation; non-soil fumigation (required by EPA C&T).
- Establish minimum age for individuals certified as commercial or private applicators (required by EPA C&T).
- Describe the credentials which will be issued to each applicator verifying certification (required by EPA C&T).
- Add requirement for a government-issued photo id for all exams (required by EPA C&T amendments).

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business 5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 32—Certification and Licensing Provisions for Private Applicators

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

There are currently 1003 licensed private applicators in Maine. This rule affects them all, as well as anyone wishing to certify as a private applicator in the future. All of these amendments are required by the Environmental Protection Agency as part of the state cooperative agreement.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

All of the amendments are required by federal rule and the Board is codifying the requirements as part of the state cooperative agreement. The impact would be the same whether the Board amended the rule or not.

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

These amendments are codifying federal requirements, there are no alternative methods.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			

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

~~026 BOARD OF PESTICIDES CONTROL~~

~~Chapter 36: CERTIFICATION AND LICENSING PROVISIONS/MONITORS AND SPOTTERS FOR MAJOR FOREST INSECT AERIAL SPRAY PROGRAMS~~

~~SUMMARY: These regulations describe the requirements for certification and licensing of monitors and spotters for major forest insect aerial spray programs.~~

~~Section 1. Competency Standards for Certification – Monitor and Spotter~~

- ~~A. No person shall be certified as a monitor or spotter unless he/she has demonstrated, by written exam, knowledge of pertinent subjects including pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques, Board regulations, guidelines, map reading, radio procedures, aerial navigation and orientation, meteorological conditions affecting spray deposition, and aerial spray patterns. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non target areas and the potential adverse effect of pesticides on plants, animals or humans.~~
- ~~B. No person shall be certified as a monitor or spotter unless he/she has 20/20 corrected vision.~~

~~Section 2. Certification Procedures for Monitors and Spotters~~

~~A. Initial Certification~~

- ~~1. Any person seeking to be certified as a monitor or spotter must pass a written monitor/spotter exam. The exam shall be closed book.~~
- ~~2. 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, company address and name and telephone number of supervisor.~~
 - ~~b. A fee of \$10.00 shall accompany the application unless prior arrangements for payment are made with the Board.~~

3. **Appointment for Exams**

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- a. Exams will be available year round on an appointment basis at the Board's office in Augusta. Appointments should be arranged at least 24 hours in advance of the desired date.
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- b. Exams will also be offered at the completion of organized training programs. The sponsors of such courses should contact the Board at least 15 days in advance of the desired date so that staff will be able to offer the exams.
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- c. 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.

4. Study materials for the monitor and spotter exam are available from the Board's office in Augusta.

5. **Examinations.** All applicants shall complete the closed book monitor and spotter exam covering subjects specified in Section 1.

6. **Examination Procedure.** All applicants shall comply with these rules or forfeit their opportunity to complete the exam at a specified appointment.

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- a. Applicants should be present and ready to take the exam at the appointed time.
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- b. Applicants shall not talk during the examination period.
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- 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.
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- d. Applicants shall not make notes of the exam and shall not leave the table during an exam unless authorized by the staff.

7. **Qualification.** An applicant desiring to qualify for monitor and spotter certification must achieve a passing score of 80 percent on the exam.

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- a. An applicant who fails an exam must wait at least 48 hours before retaking that exam. If an applicant fails the exam a second time, he/she must wait seven days before retaking the exam.
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- b. An applicant who violates any of the rules pertaining to examinations shall wait a minimum of 14 days before retesting.

8. **Expiration.** Certification under this section will expire on December 31st of the fifth year after the date of successful completion of the exam and on December

~~31st of every fifth year thereafter unless a special restricted certification period is assigned by the Board or Board staff.~~

~~B. **Recertification**~~

- ~~1. All certified monitors and spotters must earn 15 recertification credits during the certification period described in Section 2(A)7 in order to renew certification without having to be re-examined.~~
- ~~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, regulations and guidelines.~~
 - ~~b. Environmental hazards.~~
 - ~~c. Pesticide labeling.~~
 - ~~d. Map reading.~~
 - ~~e. Aerial navigation.~~
 - ~~f. Radio procedures.~~
 - ~~g. Meteorologic conditions affecting aerial spray.~~
 - ~~h. Meteorological data gathering procedures.~~
 - ~~i. Aerial application techniques.~~~~
- ~~4. Persons organizing courses for which they want credits awarded must contact the Board in writing at least 15 days in advance of the course and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review course agendas and assign credit values. Board staff will monitor courses as time permits.~~
- ~~5. A minimum credit of one hour shall be assigned for each one hour of presentations on appropriate topics.~~
- ~~6. An individual conducting courses for which the Board does assign recertification credits will be eligible for two credits for each hour of presentation on appropriate topics.~~
- ~~7. 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, 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.

8. A person who fails to accumulate the necessary credits will have to re-apply to take the exam required for initial certification.

Section 3. Licensing

- A. **Application.** Application for a monitor's or spotter's license shall be on forms provided by the Board.
- B. **Fee.** A fee of \$20.00 shall accompany each application.
- C. **Decision.** Within 1 day 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.*
- D. **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.
- E. **Expiration.** All monitor and spotter licenses will expire at the end of each calendar year.

Section 4. Special Monitor and Spotter Requirements

- A. No person shall act as a monitor or spotter without prior certification and issuance of a currently valid license from the Board for that purpose.
- B. Monitors and spotters shall prepare written spray period reports for each and every spray period according to procedures outlined in Chapter 50.
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STATUTORY AUTHORITY:
22 M.R.S.A. § 1471-D

EFFECTIVE DATE:
February 6, 1985

AMENDED:
August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

CONVERTED TO MS WORD:
March 11, 2003

CORRECTIONS:
February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 36—CERTIFICATION AND LICENSING PROVISIONS FOR
MONITORS AND SPOTTERS FOR FOREST INSECT AERIAL SPRAY PROGRAM**

Basis Statement

Repeal of Ch. 36 is proposed. Associated requirements were previously repealed because they are no longer necessary with the current technology used in aircraft.

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 36—Certification and Licensing Provisions for Monitors and Spotters for Forest Insect Aerial Spray Program

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

There are currently no companies conducting forest insect aerial spray programs. A handful of companies have the necessary licensure to conduct this type of work.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

Repealing this chapter reduces the burden on companies doing forest insect aerial spray programs.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 50: RECORD KEEPING & REPORTING REQUIREMENTS

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

Section 1. Records

A. Pesticide Application Records

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

~~C. **Spray Period Records for Major Forest Insect Aerial Spray Programs**~~

- ~~I. Each monitor employed on a major public or private forest insect aerial spray application program shall prepare written spray period records describing each spray period.~~
- ~~II. The spray period records shall include the following information: Date and time of the spray period; Area actually sprayed; Pesticide used; Weather conditions before, during and immediately after spraying; Spray behavior, including visible drift to nontarget areas; and Notation of any reason why a spray period was terminated prior to completion of area. The records shall also include a map showing any nontarget areas that were sprayed.~~
- ~~III. The spray period records shall be made available for inspection by representatives of the Board as soon as practicable following the close of each spray period and, in any event, before the next spray period and before the end of the day. The spray records shall be maintained on file and available for inspection by representatives of the Board for a period of at least two years.~~

Section 2. Reports

- A. **Annual Summary Reports by Commercial Applicators.** Annual summary reports 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 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 before their pesticide dealer license can be renewed. The Board will furnish report forms.
- C. **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: Title 22 M.R.S.A., Chapter 258-A §1471-G, M and R

EFFECTIVE DATE:

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

AMENDED:

August 12, 1985 - filing 85-275

REPEALED AND REPLACED:

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

AMENDED:

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

November 11, 2001 - filing 2001-483

March 5, 2003 - filing 2003-61

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

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

CORRECTIONS:

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 50—REPORTING REQUIREMENTS FOR APPLICATORS
AND DEALERS**

Basis Statement

One amendment to Chapter 50 was proposed by the Board. It is required as part of the state cooperative agreement with EPA.

- Add requirements to dealer records of sales:
 - customer address
 - issuing authority, certification expiration date, and categories of certification in addition to the applicator's certification number

No comments were received.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 50—Reporting Requirements for Applicators and Dealers

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

There are approximately 350 small businesses that would be subject to this rule. These are all companies doing pesticide applications for hire.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

The amendment requires applicators to record additional information on the application record. Since they already know this information, the impact is minimal. Additionally, these amendments are required by federal rule and the Board is codifying the requirements as part of the state cooperative agreement. The impact would be the same whether the Board amended the rule or not.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives. Additionally, these amendments are codifying federal requirements, there are no alternative methods.

SUMMARY OF COMMENTS—CHAPTERS 10, 26, 27, 28, 31, 32, 36, 50

PUBLIC HEARING, MARCH 8, 2019

END OF COMMENT PERIOD, MARCH 25, 2019

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
No Comments were received			