

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

<b>TESTIMONY AND WRITTEN COMMENTS RECEIVED</b>			
<b>Person/Affiliation</b>	<b>Summary of Testimony</b>	<b>Type of Comment</b>	<b>Board Response</b>
Ted Quaday Maine Organic Farmers and Gardeners Association	Ch. 20 – Supports the proposal to require positive identification of the application site. Questions what the Board policy will require. Supports use of at least two means of identification. Suggests periodic review and updating of the policy.	Written	20—Requirements are in the policy, which has been in effect for several years; can be changed fairly easily since it is in policy.
Chuck Cotton Lucas Tree Experts	Ch. 20, 31, 32, 33 and 41 – Supports changes as proposed.	Written	
Christian Bulleman III Commercial Applicator	Ch. 31 – Questions the exemption for antimicrobial hardware. Unclear whether it applies to UV and IR mechanical systems as written, and believes that it should not.	Written	31—Board believes the rule as written is clear that it refers only to metal hardware and that there is no intention to include UV and IR mechanical systems. Did not change the proposed amendments.
Dennis Shellabarger	Ch. 41 – Opposes deregulation of hexazinone as proposed which would no longer prohibit application by air assisted equipment.	Written	41—Board does not believe there is much likelihood of growers using air assisted equipment for hexazinone applications because it would result in uneven distribution. Board does not believe its role is to regulate how a grower applies pesticides unless there is an issue of drift or water contamination. Did not change the proposed amendments.

**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026, CHAPTER 20—SPECIAL PROVISIONS**

**Basis Statement**

Every year, the Board receives complaints of commercial applicators making applications to the incorrect site. In 2005 the Board adopted a policy requiring applicators to positively identify the proper treatment site using a method detailed in the policy. The Board would like the requirement to be in rule in order to be enforceable. Details regarding methods and procedures will continue to be in policy so as to easily adapt to changing technologies.

The only comments received during the comment period were in favor of the amendment; no changes were made.

**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 20—Special Provisions

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

There are approximately 450 small businesses that make pesticide applications to residential properties in Maine.

### **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**

There are no additional costs to businesses since businesses have already been implementing this requirement for over nine years. Also, this is a commonsense business practice that helps companies avoid potentially costly mistakes.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

There will be no impact on businesses because they have already been required to do this by policy. Even if not in rule, failing to properly identify the application site could be a costly mistake for a 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.

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 20: SPECIAL PROVISIONS**

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

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**Section 1. Registered Pesticides**

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

**Section 2. Right-of-Way**

Deciduous growth over six feet in height and evergreen growth over three feet in height shall not be sprayed with a herbicide within the right-of-way of any public way except that deciduous

growth which has been cut to the ground and which has grown more than six feet during the growing season following the cutting, may be sprayed that following season. In addition, chemical pruning of single limbs of trees over the prescribed heights may be performed.

### **Section 3. Pesticide Storage and Disposal**

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

### **Section 4. Aquatic Applications**

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

### **Section 5. Employer/Employee Requirements**

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

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**Section 6. Authorization for Pesticide Applications**

- A. Authorization to apply pesticides to private property is not required when a pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of establishing or maintaining such easement or right of way.
- B. When the Maine Center for Disease Control and Prevention (CDC) has identified that an organism is a vector of human disease and the vector and disease are present in an area, a government entity shall obtain authorization for ground-based applications by:
1. Sending a written notice to the person(s) owning property or using residential rental, commercial or institutional buildings within the intended target site at least three days but not more than 60 days before the commencement of the intended spray applications. For absentee property owners who are difficult to locate, mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice; and
  2. Implementing an “opt out” option whereby residents and property owners may request that their property be excluded from the application by submitting written notice to the government entity at least 24 hours before spraying is scheduled to commence. Authorization is considered given for any property for which written notice was submitted and no “opt out” request was received by the sponsoring government entity.
- C. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government entities are not required to receive prior authorization to apply pesticides to private property, provided that the government entity sponsoring the vector control program:
1. Provides advance notice to residents about vector control programs using multiple forms of publicity which may include, but is not limited to, signs, newspaper, television or radio notices, direct mailings, electronic communication or other effective methods; and
  2. Implements an “opt out” option whereby residents and property owners may request that their property be excluded from any ground based control program and the government entity makes a reasonable effort to honor such requests; and
  3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.
- D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provisions apply:
1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal

occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.

2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.
3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
  - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
  - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

**Section 7. Positive Identification of Proper Treatment Site**

- A. Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

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

EFFECTIVE DATE:  
July 6, 1979

AMENDMENT EFFECTIVE:  
April 1, 1985  
January 1, 1988  
May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

AMENDED:  
May 7, 1997 - Section 5

CONVERTED TO MS WORD:

March 11, 2003

CORRECTED HEADER CHAPTER NUMBER:

January 10, 2005

AMENDED:

January 1, 2008 – new Sections 6 and 7, filing 2007-65

September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

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June 12, 2013 – Emergency major substantive filing 2013-134

CORRECTIONS:

February, 2014 – agency names, formatting



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

**Basis Statement**

Three sections of Chapter 31 were the subject of amendments proposed by the Board:

- 1) Certain types of pesticide applications that fell under the requirements for an applicators license under Chapter 31 didn't make sense from a public benefit perspective and have been exempted by Board policy: adults applying repellents to children and persons installing antimicrobial metal hardware. Consequently, the Board determined it made sense to incorporate these exemptions into rule.
- 2) The process of certifying and licensing an applicator is a lengthy process. In an emergency situation, such as a mosquito-borne disease epidemic, time is of the essence. The Board felt it made sense to offer reciprocal licenses for aerial applicators in an emergency situation, as long as the staff reviewed pertinent laws prior to initial applications.
- 3) Based on suggestions from constituents, the Board proposed to shorten the time period a person must wait before re-taking an exam they had failed.

The only comments received by the Board supported the proposed changes. Consequently, the Board found it appropriate to adopt the amendments as originally proposed.

**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**

Currently there are about 1,800 licensed commercial pesticide applicators in Maine. Anyone attempting to become a commercial applicator, people attempting to recertify via examination or anyone attempting to add a licensing category will be affected by this amendment. It will reduce the time it takes for someone to complete licensing requirements if they fail to pass exams and need to retake them.

### **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 proposed amendment would make it a quicker and easier for businesses attempted to add licensees or categories.

### **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.

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS**

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

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**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 applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- C. 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. 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. 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. 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. Certified or licensed Wastewater or Drinking Water Operators
- V. Adults applying repellents to children with the written consent of parents/guardians.
- VI. Persons installing antimicrobial metal hardware.

#### 2. Categories of Commercial Applicators

- A. All commercial applicators shall be categorized according to the type of work performed as outlined below:

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

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

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

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

**Option III - Agricultural 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**

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. **Right-Of-Way 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. **Industrial/Commercial/Municipal Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on industrial, commercial, municipal or publicly owned areas including, but not limited to, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots and sidewalks.

#### 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.
- 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**

Applicants seeking certification in the category of Forest Pest control 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. **Right-of-Way Vegetation Management**

Applicants seeking certification in the subcategories under Right-of-Way Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of right-of-way 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 right-of-way herbicides, and reasons for the choice of particular chemicals for particular problems, importance of the assessment of potential impact of right-of-way spraying on adjacent public and private properties and activities, and effects of right-of-way 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.
- 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

I. **Application for Exams.** All persons desiring to take exams must request an application from the Board's office and submit all required information and 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 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. Upon receipt of an application the staff shall schedule an exam date and notify the applicant. If the scheduled date is not convenient for the applicant, it shall be the responsibility of the applicant to contact the Board's office to arrange a more convenient time to take the exams.
- 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.
- c. 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. Applicants should be present and ready to take the exams at the appointed time.
- b. Applicants shall not talk during the examination period.
- c. Applicants shall not be allowed to bring any books, papers, 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.
- d. 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 ~~14~~ 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 ~~30~~ 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 ~~14~~ 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 ~~30~~ 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 ~~14~~ 6 days after the date of such failed examination.
- e. Any applicant must pass both the core and at least one category exam within 12 months before qualifying for certification.
- 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 31<sup>st</sup> of the sixth year after the date of successful completion of the exams and on December 31st of every sixth 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** - 18 credit hours, including at least 3 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.
- b. **Operator level** - 12 credit hours, including at least 3 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.



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- 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, 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.
- VI. A person who fails to accumulate the necessary credits during their first six 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. Attendance verification forms must verify attendance by the applicator of the entire approved program(s) for which recertification credit is sought, and must be completed, signed and submitted to the program organizer or Board representative by the applicator seeking recertification credit(s). No other person may complete or sign the form on the 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.
- ~~B.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.
- ~~C.D.~~ **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
- I. For a commercial applicator license - \$70.00 per person.
- II. For replacement, upgrade to master or to add categories \$5.00.
- ~~D.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.

~~E.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
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Property damage	\$100,000 each occurrence
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b. Aircraft applicators:

Public liability	\$100,000 each person \$300,000 each occurrence
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Property damage	\$100,000 each occurrence
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~~E.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).

~~G.H.~~ **Expiration**

I. All licenses will expire at the end of the second calendar year after issuance 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.

~~H.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.*

## 7. ~~Grandfathering and Transitions~~

- ~~A. The amendments to Section 1 shall not affect the licensing status of municipal applicators or residential lawn herbicide applicators. Those licensees with restricted operator licenses shall be allowed to operate without a master level license until January 1, 1997. At that time they must successfully complete the master regulation and oral exams and upgrade to the master level to be eligible for license renewal.~~
- ~~B. Applicators licensed prior to January 1, 1996 in category VII(a), General Pest Control shall be automatically licensed in category VII (g) Termite Pest control.~~
- ~~C. The three category or subcategory specific recertification credits and one credit in environmental science, ecology or toxicology required by Section 5(B)(I)(a) and (b) must be accumulated by any applicator recertifying after December 31, 1998.~~
- ~~D. The 1999 amendments to this chapter which extend license and certification periods shall be phased in over two years. Phase one shall include licensees renewing licenses after December 31, 2000 whose last name begins with the letters A through J. Phase two shall include licensees renewing licenses after December 31, 2001 whose last name begins with the letters K through Z. All new licenses issued after December 31, 2000 shall be issued according to these amendments.~~

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

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

**Basis Statement**

Based on suggestions from constituents, the Board proposed to shorten the time period a person must wait before re-taking an exam they had failed.

The only comments received by the Board supported the proposed change. Consequently, the Board found it was appropriate to adopt the amendment as proposed.

**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/Private Applicator

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

There are almost 1,200 licensed private applicators in Maine. Anyone attempting to become a private applicator or to recertify via examinations will be affected by this amendment. It will reduce the time it takes for someone to complete licensing requirements if they fail to pass exams and need to retake them.

### **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 proposed amendments will reduce the time required to obtain a private applicators license for small businesses if an applicant fails an exam.

### **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.

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 32: CERTIFICATION & LICENSING PROVISIONS/PRIVATE APPLICATORS**

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

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**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, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques, 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 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.
- 2. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board,
- 3. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
  - a. Applicants should be present and ready to take the exams at the appointed time.
  - b. Applicants shall not talk during the examination period.
  - c. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work



sheets will be provided and all papers shall be collected at the end of the period.

- d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

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

- a. An applicant who fails the core exam may not retake that examination prior to ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must wait ~~30~~ 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 ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must wait ~~30~~ 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. 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.*
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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

**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026, CHAPTER 33—CERTIFICATION & LICENSING  
PROVISIONS/PRIVATE APPLICATORS OF GENERAL USE PESTICIDES  
(AGRICULTURAL BASIC LICENSE)**

**Basis Statement**

Based on suggestions from constituents, the Board proposed to shorten the time period a person must wait before re-taking an exam they had failed.

The only comments received by the Board supported the proposed change. Consequently, the Board found it appropriate to adopt the amendment as proposed.

**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 33—Certification & Licensing Provisions/Private Applicators of General Use Pesticides (Agricultural Basic License)

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

About two hundred growers currently have a license under Chapter 33. As many as 2,000 more small businesses may need to obtain a license by April of 2015. Anyone attempting to become a private applicator of general use pesticides will be affected by this amendment. It will reduce the time it takes for someone to complete licensing requirements if they fail to pass the exam and need to retake them.

### **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 proposed amendment will reduce the amount of time required to obtain a license under Chapter 33 if an applicant fails the exam.

### **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.

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

**026 BOARD OF PESTICIDES CONTROL**

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

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

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

- A. No person shall be certified as a private applicator of general-use pesticides unless the person has fulfilled requirements demonstrating knowledge of pest problems and pest-control practices, including, as a minimum, the ability to recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings.
- B. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides and the potential adverse effect of pesticides on plants, animals or humans.

**SECTION 2. Certification Procedures for Private Applicators**

**A. Initial Certification**

- 1. Any person seeking to be certified as a private applicator of general-use pesticides must pass a written core exam. The exam shall be closed book.
- 2. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board.
- 3. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
  - a. Applicants should be present and ready to take the exams at the appointed time.
  - b. Applicants shall not talk during the examination period.

- c. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
  - d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.
4. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on the core exam.
- a. An applicant who fails the core exam may not retake that examination prior to ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must wait ~~30~~ 6 more days before retaking the exam again.
  - b. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
5. Certification under this section will expire on October 31 of the third year after the date of successful completion of the exams and on October 31 of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

**B. Recertification**

1. Any person with a current valid certification may renew that certification by accumulating three recertification credits during the certification period described in Section 2(A)(5).
2. Recertification credits will be available through Board-approved meetings including, but not limited to, University or industry and trade organization seminars or workshops and approved home study courses where pest management topics are included.
3. Credit will be allowed for topics including, but not limited to:
  - a. Applicable laws and regulations;
  - b. Environmental hazards;
  - c. Calibration and new application techniques;
  - d. Label review;
  - e. Pesticide risk and applicator safety;
  - f. Pesticide storage and disposal;

- g. Pest identification, biology and management;
  - h. Integrated pest management;
  - i. Pesticide fate and drift management;
  - j. Risk communication; and
  - k. Public relations.
4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.
    - a. A minimum of one credit shall be assigned for each one hour of presentation on appropriate topics.
    - b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each one hour of presentation on appropriate topics.
  5. For in-state programs, each participant will complete an on-site process to verify attendance at each program for which credit is allowed. For electronic, correspondence or out-of-state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of completion or attendance and a copy of the agenda or syllabus of the training provided. The agenda or syllabus must show the length of each presentation and describe what was covered.
  6. A person who fails to accumulate the necessary credits will have to take the most current exam required for initial certification.

### SECTION 3. Licensing

- A. **Application.** Application for a private applicator of general-use pesticides license shall be on forms provided by the Board. Information shall include name, Social Security number, mailing address, farm name, location, telephone number and major crop(s).
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
  1. For a private applicator of general-use pesticides license—\$15.00 per person.
  2. For replacement or alteration—\$5.00.
- C. **Expiration.** Private applicator of general-use pesticides licenses are issued on a three-year basis and will expire on October 31 of the third year.



- D. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*
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STATUTORY AUTHORITY: 22 M.R.S. §1471-D(2-D), 22 M.R.S. §1471-M(1)(C-1)

EFFECTIVE DATE:

December 26, 2011 – filing 2011-474

CORRECTIONS:

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026, CHAPTER 41—SPECIAL RESTRICTIONS ON PESTICIDE USE**

**Basis Statement**

Restrictions to hexazinone were originally put into place because of concern for its tendency to leach into water. The rule required that products containing hexazinone be sold only by licensed distributors and used only by licensed applicators. In addition, the rule prohibited application of hexazinone by air-assisted application equipment.

A constituent requested that the requirements for hexazinone be repealed because the new Agricultural Basic License requirement would ensure that anyone using the product would be licensed anyway and the requirement to check licenses was a hardship on distributors. The Board agreed, and proposed repealing most of the restrictions for hexazinone from Chapter 41, except that it proposed retaining the requirement that the product only be applied by licensed applicators.

One comment was received in opposition; the person did not think the Board should remove the restrictions on air-assisted application equipment. After much discussion, the Board determined it was appropriate to adopt the amendments as proposed, feeling that it is not the Board's role to regulate how a grower applies a pesticide unless there is an issue of drift or water contamination.

**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 41—Special Restrictions on Pesticide Use

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

There are approximately 510 wild blueberry growers in Maine, of which possibly 500 are small businesses that may potentially be impacted by this amendment. There are four in-state agricultural chemical suppliers that may be impacted by this amendment, but it's unlikely that any are 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**

The amendments will reduce (slightly) the recordkeeping burden on distributors.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

Minimal, since agricultural chemical distributors generally maintain detailed sales records for their own purposes.

### **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.

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE**

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

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**Section 1. ALDICARB (TEMIK®)**

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

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

**Section 2. TRICHLORFON (DYLOX, PROXOL)**

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

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

### Section 3. **HEXAZINONE (VELPAR, PRONONE)**

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

#### A. ~~Prohibition of Certain Air-Carrier Application Equipment~~

~~It shall be unlawful to apply any liquid pesticide mixture containing the active ingredient hexazinone with any application equipment that utilizes a mechanically generated airstream to propel the spray droplets unless the airstream is directed downward.~~

#### B. **Licenses Required**

I. No person shall purchase, use or supervise the use of any pesticide containing the active ingredient hexazinone unless they have obtained a private or commercial pesticide applicator's license from the Board in accordance with 22 M.R.S. 1471-D.

II. No person shall:

a. ~~Distribute any pesticide containing the active ingredient hexazinone without a restricted use pesticide dealer's license from the Board; or~~

b. ~~Distribute any pesticide containing the active ingredient hexazinone to any person who is not licensed as a private or commercial pesticide applicator by the Board.~~

#### C. ~~Records and Reporting~~

~~Dealers distributing pesticides containing the active ingredient hexazinone shall keep records of such sales and provide reports to the Board as described in Chapter 50, "Record Keeping and Reporting Requirements."~~

### Section 4. **AQUATIC HERBICIDES**

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

#### A. **Board Publication of List**

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

#### B. **Licenses Required**

I. Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's

annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.

II. No person shall:

- a. Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or
- b. Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.

III. Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

C. **Disclosure**

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

D. **Records and Reporting**

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

E. **Use of Best Management Practices**

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

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**Section 5. PLANT-INCORPORATED PROTECTANTS**

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

**A. Definitions**

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

**B. License Required**

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

**C. Dealer Requirements**

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

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

**D. Grower Requirements**

- I. All users of plant-incorporated protectants shall maintain the records listed below for a period of two years from the date of planting. Such records shall be kept current by recording all the required information on the same day the crop is planted. These records shall be maintained at the primary place of business and shall be available for inspection by representatives of the Board at reasonable times, upon request.
  - a. Site and planting information, including town and field location, a map showing crop location and refuge configuration in relation to adjacent crops within 500 feet that may be susceptible to cross-pollination;

- b. Total acres planted with the plant-incorporated protectant and seeding rate;
  - c. Total acres planted as refuge and seeding rate;
  - d. Detailed application information on any pesticide applied to the refuge as described in Section 1(A) of Chapter 50, "Record Keeping and Reporting Requirements"; and
  - e. Planting information for each distinct site including:
    - i. date and time of planting; and
    - ii. brand name of the plant-incorporated protectant used.
- II. There are no annual reporting requirements for growers.

**E. Product-Specific Requirements**

- I. Requirements for plant-incorporated protectant corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.
- a. Prior to planting plant-incorporated protectant corn containing any *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production, the grower must have completed a Board-approved training course and possess a valid product-specific training certificate.
  - b. Product-specific training certificates shall be issued following each Board-approved session. The certificates will remain valid until December 31 of the third year after issuance.
  - c. Non-Bt-corn growers whose crops are or will be located within 500 feet of a prospective Bt-corn planting site can request that the Bt-corn grower protect the non-Bt-corn crop from pollen drift.
    - i. the request must be made prior to planting of the Bt-corn crop;
    - ii. the request must identify the non-Bt-corn crop to be protected; and
    - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
      - 1. the Bt-corn grower must plant any refuge required by the Bt-corn grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt-corn crop; or
      - 2. if no refuge is required, the Bt-corn grower shall maintain at least a 300-foot Bt-corn-free buffer to non-Bt-corn crops.



d. Bt-corn growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.

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

**F. Confidentiality**

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

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STATUTORY AUTHORITY: 5 M.R.S.A. §§ 8051 *et seq.*  
7 M.R.S.A. §§ 601-610  
22 M.R.S.A. §§ 1471-A, 1471-B, 1471-C, 1471-D, 1471-M

EFFECTIVE DATE:  
March 8, 1981 (Captan)

AMENDED:  
May 7, 1981 (Trichlorfon)  
January 2, 1984 (Aldicarb)  
May 8, 1988 (Trichlorfon)  
August 5, 1990 (Captan)  
August 17, 1996 (Hexazinone)  
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
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AMENDED:  
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CONVERTED TO MS WORD:  
March 11, 2003

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April 30, 2007 – filing 2007-154  
February 3, 2008 – filing 2008-36  
July 16, 2009 – filing 2009-253 (final adoption, major substantive)  
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CORRECTIONS:  
February, 2014 – agency names, formatting