

## Rulemaking Cover Sheet

MAPA-1

**TO: Secretary of State**  
**ATTN: Administrative Procedure Officer,**  
**State House Station 101, Augusta, Maine 04333.**

1. **Agency:** Agriculture, Conservation and Forestry, Board of Pesticides Control
2. **Agency umbrella and unit number:**  
 (2 digit umbrella # and 3 digit unit #)
3. **Title of rule:** Special Restrictions on Pesticide Use
4. **Chapter number assigned to the rule:** 41  
 (must be 3 digits or less)
5. **Date(s)/method(s) of notice:**  
 Initial newspaper notice: August 9, 2023  
 Notice of extension of public comment period following Board amendments ([5 MRS sec. 8052 sub-sec. 5\(B\)](#)): October 25, 2023
6. **Date(s)/place(s) of hearing(s):** September 1, 2023
7. **Type:**  new rule  partial amendment(s) of existing rule  
 suspension of existing rule  repeal of rule  emergency rule  
 repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.
8. **Name/phone of agency contact person:**  
 Karla Boyd  
 28 SHS  
 Augusta, ME 04333  
 (207) 287-2731
9. **If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following**  
 **Provisional adoption**  **Final adoption**  
 (prior to Legislative review)  
 **emergency adoption of major-substantive rule**

**10. Certification Statement:** I, \_\_\_\_\_ hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by

\_\_\_\_\_ on \_\_\_\_\_.  
(name of agency) (date)

I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

**Signature:** \_\_\_\_\_  
(original signature, personally signed by the head of agency)

**Printed name & title:** \_\_\_\_\_.

**11. Approved as to form and legality by the Attorney General on** \_\_\_\_\_.  
(date)

**Signature** \_\_\_\_\_  
(original signature, personally signed by an Assistant Attorney General)

**Printed Name:** \_\_\_\_\_.

# **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**

Currently, there are 71 applicators that maintain certificates for Bt corn. These applicators would be affected, as they would not need to renew their trainings to receive certificates every three years.

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

The changes to this rule reduce the burdens associated with reporting and recordkeeping. Applicators would only need trainings and would obtain a certificate once instead of renewing the certificate every three years.

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

The amendments to this chapter will modernize language to reflect planting practices currently in place. It will reduce the burden and cost for applicators to renew certificates by changing the requirement from every three years to one time. It changes the language from Bt corn to all plant-incorporated protectants, which will include more varieties of crops.

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

The Board could keep its current rules. However, the current version requires applicators to seek new certificates every three years. The Board could also choose to remove the plant-incorporated protectant portion and keep this section of the rule only to include corn crops, not all plant-incorporated protectants. Alternatively, the Board could strike this section of rule as was suggested by commenters.

## **BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 41**

### **Basis Statement**

Chapter 41 – One amendment is proposed:

1. Amend grower requirements and product-specific requirements to broaden the scope from Bt corn to all plant-incorporated protectants and delete language regarding refuges that is not relevant to current plant-incorporated protectant growing practices.

The amendments to the proposed rule are in response to several needs BPC has identified in its rules. Amendments to Chapter 41 are in response to the need to modernize the language regarding Bt Corn in the current rule. The Board changed the language to reflect all plant-incorporated protectants (PIPs) that may be included in this chapter. Given that the training modules for PIPs do not significantly change over the three-year certificate period, the Board changed the requirements for training certificates, removing the requirement for new trainings every three years. After reviewing comments at the October 13, 2023 Board meeting, the Board removed section 5(E)(II) which requires dealers to sell in quantities of one acre or more. Since refuge-in-a-bag sells non-PIP refuge seeds mixed with PIP seeds, there is less need for larger plantings of PIP crops as the risk of resistance is reduced when planted together with refuge seeds.

Four comments were received during the initial comment period. Comments received for Chapter 41 included a detailed history of how Maine was the last state to allow the use of plant-incorporated protectants. Additionally, commenters agreed with the new amendments that only require training and a certificate issuance once for continued licensure. There were concerns regarding the requirement for dealers to sell at least one acre of product, as this could be difficult for small, diverse farms to adopt. X comments were received during the extended comment period.

### **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.

**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; (5) plant-incorporated protectants; (6) neonicotinoids (dinotefuran, clothianidin, imidacloprid, thiamethoxam); and (7) chlorpyrifos (Dursban, Lorsban).

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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.      Licenses Required**

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

**Section 4.      AQUATIC HERBICIDES**

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

**A.      Board Publication of List**

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

**B.      Licenses Required**

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

**C. Disclosure**

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

**D. Records and Reporting**

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

**E. Use of Best Management Practices**

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

**Section 5. PLANT-INCORPORATED PROTECTANTS**

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

**A. Definitions**

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

**B. License Required**

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

**C. Dealer Requirements**

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

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

**D. Grower Requirements**

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

**E. Product-Specific Requirements**

- I. Requirements for plant-incorporated protectants ~~corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.~~
  - a. Prior to planting plant-incorporated protectants ~~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 available on-line, pass an exam, and acquire an appropriate 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.~~
- eb. ~~Non-Bt corn plant-incorporated protectant~~ growers whose crops are or will be located within 500 feet of a prospective ~~Bt corn plant-incorporated protectant~~ planting site can request that the ~~Bt corn plant-incorporated protectant~~ grower protect the non-~~Bt corn plant-incorporated protectant~~ crop from pollen drift.
  - i. the request must be made prior to planting of the ~~Bt corn plant-incorporated protectant~~ crop;
  - ii. the request must identify the non-~~Bt corn plant-incorporated protectant~~ crop to be protected; and
  - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
    - 1. If a refuge is required, the Bt corn plant-incorporated protectant grower must plant any refuge required by the - Bt corn plant-incorporated protectant grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt corn plant-incorporated protectant crop; or
    - 2. if no refuge is required, the Bt corn plant-incorporated protectant grower shall maintain at least a 300-foot Bt plant-incorporated protectant-free buffer to non-Bt corn plant-incorporated protectant crops.
- dc. ~~Bt corn~~ Plant-incorporated protectant growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.
- H. ~~Dealers distributing Bt plant-incorporated protectant sweet corn shall only sell the seed in quantities large enough to plant one acre or more.~~

## F. Confidentiality

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

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

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

**A. Definitions**

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

**B. Board Publication of Product List**

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

**C. Licenses Required**

- I. No person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. Unless exempted under Chapter 41, Section 6 (C) (IV) no person shall purchase, use or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam in outdoor residential landscapes to include ornamental plants and turf.

- III. No person shall distribute any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board.
- IV. Registered pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam and identified on the Board's annual listing are exempt from the prohibition of use described in Chapter 41, Section 6 (C) (II) where by:
  - a. The applicator obtains an emergency permit from the Board; or
  - b. The use of these products is for management of emerging invasive invertebrate pests on ornamental plants in outdoor residential landscapes.
- V. No person shall use any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing for the purposes of managing turf and lawn in outdoor residential landscapes.

**D. Records and Reporting**

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

**E. Emergencies**

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

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

**F. Emergency Use Permits**

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

- I. The name, address and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate application date(s);

- VI. The type(s) of application equipment to be employed;
- VII. The approved pest species for which the application is being made as defined in policy or by the board; and
- VIII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of surrounding nontarget vegetation will be obtained.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of Section 6 (E). The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

**Section 7. CHLORPYRIFOS (DURSBAN, LORSBAN)**

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

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

- II. The applicant possesses a valid pesticide applicator license issued by the State;
- III. The pesticides proposed for use were purchased prior to January 1, 2022;

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

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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):**

March 1, 1997

**AMENDED:**

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

**CONVERTED TO MS WORD:**

March 11, 2003

**AMENDED:**

May 12, 2003 - Section 4 added

**NON-SUBSTANTIVE CORRECTIONS:**

June 24, 2003 - summary only

**AMENDED:**

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

April 30, 2007 – filing 2007-154

February 3, 2008 – filing 2008-36

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

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

**CORRECTIONS:**

February, 2014 – agency names, formatting

**AMENDED:**

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

September 20, 2022 – filing 2022-181