



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BOARD OF PESTICIDES CONTROL
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AUGUSTA, MAINE 04333

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Memorandum

To: Board of Pesticides Control
From: Megan Patterson
Subject: Proposed Limited Duration Exemption from Commercial Certification/Licensure Requirements for School Custodial Staff Applying General Use Antimicrobials with Powered Application Equipment for the Purposes of Routine Cleaning in Schools

August 15, 2020

Under Title 1471 C(5); Title 1471 D(1) and 01-026 CMR Chapter 10 Section 2(I) certification and licensure by the board is required for application of antimicrobial pesticides in the course of routine cleaning using powered application equipment. Board staff have received indication that some school districts want to use powered application equipment to make applications of antimicrobial pesticides for the purpose of managing COVID-19. Some schools have already reopened and others will soon reopen. Given the immediate need for schools currently or soon implementing reopening to be able to make antimicrobial pesticide applications to protect public health, certification and licensure cannot be accomplished in a timely manner.

Should the Board choose to support the provision of a temporary exemption from certification and licensure requirements it is proposed that the following limitations and requirements be considered:

1. Exempt only custodial staff employed by the school. Chapter 10.02(YY) defines "school" as any public or private elementary or secondary school, kindergarten or nursery school that is part of an elementary or secondary school or a tribally funded school.
2. Limit the exemption to the use of powered application equipment used for the application of general use antimicrobial pesticides in the course of routine cleaning related to the management of COVID-19.
3. Limit the exemption to pesticides currently registered by the Maine Board of Pesticides Control.

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4. Limit the exemption to pesticides with EPA approved labeling for use with label specified powered application equipment.
5. Limit the exemption to a specified duration.
6. Require all exempted custodial staff to complete Board of Pesticides Control approved and verified training pertaining to the use of powered application equipment and antimicrobial pesticides.

Additionally, staff have identified that powered applications of general use antimicrobial pesticides require compliance with 01-026 Chapter 27 Sections 4 and 5. Under these sections of rule schools using powered application equipment to apply antimicrobial pesticides must:

1. Provide notification to staff, parents or guardians of students at least 5 days prior to the planned application.
2. Post signs (as required in rule) at each point of access to the treated area and in a common area of the school at least two working days prior to the application and for at least forty-eight hours following the application
3. Comply with Integrated Pest Management techniques detailed in Chapter 27.05, specifically the completion and documentation of monitoring for the pest, identification of the pest, determination of treatment threshold exceedance, and utilized non-pesticide control measures.

It is suggested that the Board consider an exemption from some or all of these requirements or modification of the requirements.

There are limited ways by which the Board may enact an exemption from rule with the expedience necessary to immediately address the current situation. Approaches may include:

- emergency rulemaking, which has a limited duration of 90 days; or
- proposing a Governor's executive order

Should the Board choose to proceed with proposing an exemption, it is suggested that an Executive Order could contain some or all of the following language:

Pursuant to 37-B M.R.S. Ch. 13, including but not limited to 37-B M.R.S. §742(1)(C)(1), (12), (13)(a) and §834, order as follows:

- A. Commercial certification and licensing requirements for the application of general use antimicrobial pesticides with powered application equipment by custodial staff in schools, as defined in 01-026 Chapter 10 Section 2 (YY), to control Covid-19, is suspended until (DATE); provided the pesticides used are Maine registered, EPA approved for use with label specified powered equipment, and each exempted custodial staff member completes Board required training.

- B. The requirement in Department Rule Chapter 27.04(B)(1) that the application by school custodial staff of general use antimicrobial pesticides with powered equipment in schools to control Covid-19 be preceded by advanced notification at least five days in advance of the application is suspended until (DATE).

- C. The requirement in Department Rule Chapter 27.04(B)(2) that notice of the application by school custodial staff of general use antimicrobial pesticides with powered equipment in schools to control Covid-19 be posted 48 hours prior to and following the application is suspended until (DATE).

- D. The requirement in Department Rule chapter 27.05(C) that school custodial staff applying general use antimicrobial pesticides with powered equipment to control Covid-19 in schools complete and document monitoring for the pest, identification of the pest, determination of treatment threshold exceedance, and utilized non-pesticide control measures is suspended until (DATE).