



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

February 24, 2023

9:00 AM Board Meeting

Join the meeting in person in Room 101, Deering Building, 90 Blossom Lane, Augusta

Or

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 278 567 297 182

Passcode: qiNnJR

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[+1 207-209-4724, 729270331#](tel:+12072094724729270331) United States, Portland

Phone Conference ID: 729 270 331#

AGENDA

1. Introductions of Board and Staff
2. Minutes of the December 2, 2022 and January 11, 2023 Regular Board Meetings, and the January 20, 2023 Emergency Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

3. Report on 2022 Work Accomplished and Request for Funds for Mosquito Monitoring from the Integrated Pest Management Program

The Integrated Pest Management Program is reporting work accomplished in 2022 and requesting funds to assist with ongoing efforts for mosquito surveillance, identification, and continued outreach around vector-borne diseases.

Presentation By: Hillary Peterson, DACF IPM Specialist

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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Action Needed: Discussion and determination if the Board wishes to fund this request

4. Staff Memo: Status of Commercial Category 7C in Chapter 31

Demand has recently increased for commercial applicator certification in category 7C and the related subcategories. As a result of this increased demand, staff have reviewed the subcategories and the types of applications conducted under this certification—primarily powered application of disinfectants for the management of human disease. Staff have identified ways by which the category 7C and the related subcategories may be reorganized to better address current approaches to pesticide application.

Presentation By: John Pietroski, Manager of Pesticide Programs

Action Needed: Discuss and determine next steps

5. Staff Memo: Residential Property

At its February 25, 2022 meeting, the Board discussed further defining the term “Residential Landscapes” in the context of Chapter 41, Section 6. Currently in rule, the term “sensitive areas likely to be occupied” includes residential properties, but residential is not defined. The Board requested information on all potential rulemaking concepts at its January 11, 2023 meeting. To aid in facilitating continued discussion of rulemaking concepts, staff have prepared a summary of definitions that could be used for “residential landscapes”.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Discuss and determine next steps

6. Review and Discussion of Potential Rulemaking Topics

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. Since rulemaking is expensive and time consuming the Board generally tries to group rulemaking initiatives. The staff will present a timetable of possible hearing dates and a list of rulemaking ideas which the Board or staff has previously identified.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Determine whether to initiate rulemaking and schedule a hearing

7. Discussion of Staff Report Describing the Nature of Herbicide Applications on School Grounds in Maine

In 2021 and 2022, the Board of Pesticides Control collected records from all applicators who applied herbicides on school grounds for 2020 and 2021. The provided report is a continuation of work completed to support the Board’s Medical Advisory Committee and it further summarizes the data collected. Staff will present the report.

Presentation By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/discuss provided information, provide guidance

8. Staff Memo: Clarify the Definition of Adjuvants to Include/Exclude Colorants

In 2022, the Board's authority was expanded to include the regulation of spray adjuvants. Staff recently received a request for clarification of the definition of spray adjuvant and the inclusion or exclusion of colorants in that definition.

Presentation By: Megan Patterson, Director

Action Needed: Review/discuss provided information, provide guidance

9. Other Old and New Business

a. BPC Letter re LD 2019 and Container Rulemaking

b. Update on 2023 pesticide product registration renewal progress

c. Update on LD 8—An Act to Increase Support for the Modernization of the Board of Pesticides Control by Increasing the Annual Pesticide Registration Fee

d. Report from the University of Maine to BPC and ACF Committee on Pesticide Safety Education and Training in 2022

e. Other items?

10. Schedule of Future Meetings

April 7, 2023 is the next tentative Board meeting date. The Board will decide whether to change and/or add dates.

The Board will also decide if future meetings will be remote, in-person or hybrid.

Adjustments and/or Additional Dates?

11. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the Board's office or pesticides@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the

Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.

- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.



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AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

December 2, 2022

9:00 a.m. Board Meeting—Hybrid

MINUTES

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

2. Minutes of the October 21, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Lajoie/Carlton: Moved and seconded to approve the minutes**
- **In Favor: Unanimous**

3. Request to Extend Special Local Need [24(c)] Registration for Callisto Herbicide (Syngenta Crop Protection, Inc.) for Broadleaf Weeds in Lowbush Blueberries in the Bearing and Nonbearing Years

Syngenta Crop Protection, Inc. is requesting extension of a Special Local Need [24(c)] Application to allow use of Callisto® herbicide for broadleaf weed control on low bush blueberries in the bearing and non-bearing years. This request is supported by Lily Calderwood, Maine Cooperative Extension Wild Blueberry Specialist. The expiring 24(c) for Callisto is for use in lowbush blueberries during the crop-bearing year. Because the additional applications will be made in the non-bearing year, residues are expected to be below the established tolerance.

Presentations By: Mary Tomlinson, Pesticides Registrar and Water Quality Specialist

Action Needed: Approve/Disapprove 24(c) Registration Request

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- Tomlinson stated that this was a request to extend the Special Local Need (SLN) registration for use on lowbush blueberries during the crop-bearing year.
- Calderwood explained that Callisto is labeled for use in the prune year and this 24(c) request was to extend the use to the crop year as well. She added that allowing growers to use this in the crop year would help reduce the use of glyphosate. Calderwood stated that during the crop year Callisto was applied to approximately 20 acres. She added that there are approximately 42,000 wild blueberry acres, most of which have Calisto applied in the prune year. Calderwood stated that growers had expressed the request to use the product in the crop year, but it was not a very common practice.
- There was a discussion about how and if to collect data on the applications.
- Calderwood stated that in a crop year it would be a wipe application and in a prune year it would be a boom spray application.
- Bohlen asked about these requests always coming back to the Board and if the uses would be added to the label.
- Tomlinson replied that anytime one of these comes up she asks the company when they will add it to the label. She stated that in this case the company has said that they will not be adding it to the label because of phytotoxicity concerns. They do not want growers to misapply and have to compensate growers for crop damage.
- The Board discussed the modes of action and costs of mesotrione and glyphosate. The topic of pesticide tolerances was raised.
- Bryer responded that anytime a pesticide was going to be used on a commodity it must be approved by the EPA. She stated that she could start including links to tolerances in the risk assessments. Wild blueberry growers export a large amount of crop, and the onus is on the grower to make sure the tolerance is under the level required by EPA.
- Tomlinson noted that the EPA would not approve an SLN if use of the pesticide in the manner describes would cause exceedance of crop tolerances.
- Ianni asked if growers were using alternative methods of weed management and if those alternative methods and IPM could be encouraged.
- Calderwood talked about the use of sulfur to control weeds and stated she could look up any percent increase in use of sulfur as a cultural management tool for this. She explained that sulfur creates a more acidic environment that wild blueberries do well in but the weeds do not so a lot of grass and broadleaf weed pressure is reduced. Calderwood stated that she had been talking about it and encouraging people to do that. She added that they had also done some research on mechanical weeding, specifically tine weeding. She also discussed a proposal with the robotics team at UMaine where robots could cut weeds that were growing above the canopy in an effort to reduce product use.
- Lajoie asked if Calderwood had seen instances where this chemistry had to be used as a rescue tool, and if glyphosate was the only other option.
- She replied that glyphosate was the only other option in the crop year.

- **Carlton/LaJoie: Moved and seconded to approve the 24(c) registration request**
- **In Favor: Unanimous**

4. Request to Extend Special Local Need [24(c)] Registration for Milestone Herbicide (Corteva Agrisciences) for Herbaceous Broadleaf Weeds and Woody Plants for Forest Site Preparation

The extension of this SLN has been requested on behalf of the Maine forest industry. Milestone Herbicide reduces competition by controlling herbaceous broadleaf weeds and woody plants, including native conifers. The industry is seeking to replace the use of glyphosate with aminopyralid.

Presentations By: Mary Tomlinson, Pesticides Registrar and Water Quality Specialist

Action Needed: Approve/Disapprove 24(c) Registration Request

- Tomlinson stated that the company had plans to add this to the label, but she did not know how long that would take.
- Carlton asked if this was about economics.
- Lemin responded that need to seek alternative chemistries was more related to social factors.

- **Lajoie/Carlton: Moved and seconded to approve the 24(c) registration request**
- **In Favor: Unanimous**

5. Discussion of Progress on the Risk Assessment of Herbicide Use On School Grounds And Human Health Impacts As Proposed by the Medical Advisory Committee and Directed by the Board

At the July 16, 2021, meeting, the Board reviewed LD 519—An Act to Protect Children from Exposure to Toxic Chemicals, which directed the Board to convene the Medical Advisory Committee (MAC) to assess the human health impacts of herbicide use on school grounds. The Board agreed that the MAC should take up the LD 519 directive to evaluate the potential impact of herbicides used on school grounds on human health. The MAC met and staff prepared an interim report incorporating commentary from MAC members. This report was presented to the Board and the Legislature’s Agriculture, Conservation and Forestry Committee. Staff will provide an update on progress on and challenges to completing the MAC proposed projects.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Bryer explained staff found gaps in data that was collected from the first call-in, so they went back and revised the call-in to make it more specific so that all data needed was submitted. There were about 640 records. Data improved quite a bit, but it all had to be re-entered. Bryer stated that some trends had been found but staff had not dug too deep into it at this time. She explained that she planned to submit the information to the Board at some time in the future. Bryer said the memo covered the risk assessment that was

asked for, and she would work on the exposure assessment. She explained that this involved data mining multiple sources to come up with an assessment of how much children are being exposed to herbicides. Staff had hoped to outsource the work for the literature review because there are thousands of documents to go through, but ultimately were not able to.

- Patterson told the Board they had attempted to hire Lebel Hicks but were unable to work through contract issues with the Department. She added that she did think it was necessary to contract for this work because the BPC does not have staff to keep up with the amount of work being asked. Patterson said Massachusetts was currently looking to do a similar study as a directive from their legislature and they have created a commission. The Massachusetts study will be public information and it serve as an alternative source of some of the desired information given that there are similar concerns between the two states. The Massachusetts commission is already working on this contract.
- Bohlen noted that Bryer's memo mentioned the issue of applying some of the exposure information to children because of the difference in body sizes. He asked if the general review coming from Massachusetts would assist with that and if there would be missing pieces to be filled in.
- Bryer said she would want to see the up-to-date literature review from Massachusetts and would be looking for any new standards that were found or any new level where the concentration of concern has been lowered. She added that she would still complete the exposure assessment after the literature review was completed.
- There was discussion about whether BPC staff should proceed with an RFP.
- The Board discussed the MAC, how it works and that there was not currently a medical professional on the Board to serve as the Chair.
- Patterson stated that the policy was revised last year because the state toxicologist, a standing member of the MAC, could not serve on the MAC due to other obligations. If the Board did choose to engage the MAC they may need to revise the policy. Patterson noted that one medical professional had submitted an application to the Governor's office. She had no further updates on potential Board appointments.
- Adams stated that he did not feel good about engaging a MAC without a medical professional on the Board. He added that he was leaning toward letting Massachusetts conduct their study and then reviewing it.
- Randlett said that a MAC without a medical representative would require a policy change.
- Bohlen asked if we knew how long Massachusetts would take to publish their results.
- Patterson said we did not know at this point.
- Bryer stated that the BPC had a temporary worker through January and one of the hopes was that this person would be able to get through some of the exposure data.

- There was discussion about whether to submit a formal RFP, but it was decided to get the information from Massachusetts. Bohlen commented that would reduce the workload on everyone involved.
- Patterson said it seemed that the MAC report showed there was a desire to have the BPC do something quite comprehensive that would reflect all pesticides used on school grounds. There was discussion about conducting this work or doing a more general risk assessment on herbicide use on school grounds.
- Patterson asked Bryer how long it would take to complete this work if the Board were to contract with someone to do a literature review.
- Bryer responded that it would be similar to the Massachusetts timeline, about 18 months.
- Adams commented that they had a huge responsibility to look out for the wellbeing of children in our schools and are learning how complex and expensive that can be. He mentioned discussing the nature and level of risk, such as the toxicity of insecticides for cockroaches in school versus killing weeds on the football field. There was discussion of the public's perception of risk and how there should not be a myopic focus on one type of use.
- Adams asked if the Massachusetts study was limited to herbicides.
- Patterson responded that it was.
- Bryer stated that staff would gather the Massachusetts plan to present in January, both what they had completed and what their future goals are.

6. Discussion of Progress on Water Quality Monitoring Related to Aerially Applied Herbicides in Forestry

Executive Order 41 FY 20/21 directed the Board to develop a surface water quality monitoring effort to focus on the aerial application of herbicides in forestry to be conducted in 2022. In an effort to be responsive to this request and to accommodate what was a changing timeline for the completion of the EO request, staff conducted a small preliminary surface water quality monitoring pilot study in 2021. Staff proposed an expanded monitoring project for completion in 2022, but in the absence of additional funding chose to develop standard operating procedures and scout potential sampling sites. Staff will provide an update on the progress on and challenges to completing the EO 41 proposed water quality monitoring project.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Bryer explained that EO 41 directed the BPC to do several things, including conducting a water quality project in this past year, which did not occur because it was a large, expensive project. In the meantime, staff detailed what would be needed to do the study, got the testing equipment operating correctly and wrote a standard operating procedure that will need to be submitted to EPA so the BPC can conduct the testing ourselves. Bryer mentioned she recently went to Aroostook County and looked at sites and proximity to water. She stated that it was difficult to find an area where proximity from a clear cut to a water body was close enough to make sense to sample a stream if that stream was over 1000 feet away. Bryer stated that they did map proposed sites and

proximity to streams, and about 16,000 acres has been mapped. She noted that she would like to get more information on the average stream distance from forestry vegetation management applications.

- Carlton stated that most forest managers today are doing a much better job at planning and mitigating issues regarding proximity to water.
- Bryer stated that this request for testing came about due to BPC rules limiting broadcast applications in proximity to water. The next steps were to find out if these current laws were protective enough and if products were reaching waterways. She added that the BPC has money for a project in the upcoming year that should be sufficient.
- There was discussion about the difficulty of detects versus non-detects in the samples about how to write up the report with, for example, a detect way down stream versus non-detects nearer to application sites. Bohlen noted that there would be very different types of risk statements to glean from that.
- Ron Lemin asked if it would be acceptable to send a GIS file rather than a paper file to make process easier for staff, or if rules would need to be changed.
- Patterson said it would work well for staff, but the general public would need to be able to review it if requested.
- Randlett said it would be hard to say whether the requirements could be altered without looking at the rule first.
- Lemin stated he thought the forest industry would be willing to supply that data as GIS and as paper in the next years.
- There was a discussion about the size and number of sites being looked at for drift, and that there was likely only enough money for an in-depth review of approximately five sites. The Board also talked about logistics regarding sampling to catch runoff during heavy rain events.
- Adams suggested possibly drafting a letter from staff to forest landowners to ask for GIS data.
- Patterson said they had been in close contact with all of the landowners and they were aware of the legislative ask but staff could certainly send something out.

7. Discussion of Sales and Use Reporting

In 2019, the Board approved funding to develop functionality in MePERLS for the submission of annual use and sales reports. In 2020, staff worked with contractors to develop this functionality. In 2021, staff contracted a temporary employee to begin entering sales and use data from previously submitted records. Also in 2021, LD 524 (collection of pesticide sales and use information) was signed into law. The resolve directed the Board to research workable methods to collect pesticide sales and use records for the purpose of providing information to the public. Staff completed this work and provided a report and presentation to the Legislature's Agriculture, Conservation and Forestry Committee. In 2022, a similar bill was introduced but failed. Also in 2022, staff have spent additional time working with digitized sales and use data. Staff will now provide an update on the work accomplished and challenges encountered while attempting to provide meaningful analysis of sales and use information.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Bryer stated that this had been a frequent topic in the legislature. She said that last year a temporary worker entered use and sales information so we now have a couple years' worth of data entered into MePERLS and were beginning to generate reports based on that. Bryer pointed out part of the information provided for the meeting, which showed a list of active ingredients and the total weight used in the state per year, accounting for both liquid and dry product. It will also show areas that were reported for use with each active ingredient. The goal was to get this information on the Board's website.
- Bryer explained the process for use reporting.
- Patterson explained that the use site was simply a hand-typed field in the received reports and figuring out what was applied by site had continued to be a burden on standardizing the information and compiling the data.
- Bohlen commented that despite all of the challenges there was some great information provided. He added that if this kind of report was completed for multiple years, we could really learn something from it. Bohlen pointed out that some of the things that were the largest uses were items that people did not generally recognize as pesticides. He stated that there was some interesting data there and congratulated staff involved for wrestling through this and answering some of the questions people have been asking.
- Bryer stated that part of the point was to ask how much effort staff should put into this. She noted that because of reporting inconsistencies, it would continue to be impossible for a scientist to come in and find data standardized enough to be used for a legitimate scientific study to show any sort of cause and effect because there were too many inaccuracies and variables on how the data was reported
- Bohlen responded that it was better than no data and it was brought forward as more of a policy need than a scientific need, which made different levels of uncertainty acceptable.
- Patterson said that staff continue to receive these asks but would like the Board to tell them how to prioritize these efforts because staff resources are limited.
- Ianni asked about shifting to an electronic database to enter this data into the system.
- Patterson stated that in 2019 the Board voted to approve funding to create the capacity for electronic records submission via MEPERLS and it was created, but there was no requirement that applicators submit their information through this system.
- Ianni suggested changing the rule regarding this would save a lot of time.
- Bryer stated that in New York they receive about 90% electronically and pay about \$100,000 to have the last 10% entered by hand. She noted that this year there had been a bill submitted requiring that electronic entry be mandatory.
- Patterson added that in New York managing the electronic records and affiliated database requires six full time staff members—three at Cornell and three with the state.
- Adams asked that the topic of electronic reporting be included as part of the planning session.

8. Discussion of a Possible Board Planning Session

Prior to 2014 the Board periodically held planning sessions with the entire staff to review Board concerns, issues and priorities. In the past few years, staff have received numerous requests and directives to pursue projects and policy efforts—typically without the allocation of funds and/or staff. Staff would like to discuss the possibility of reviving planning sessions.

Presentations By: Megan Patterson, Director

Action Needed: Review/Discuss Provided Information, Determine Next Steps

- Patterson explained the process of Board planning sessions and stated that these were previously held, but there had not been any in several years. She stated that staff are currently managing a number of directives and it would be helpful to get direction from the Board on how to best allocate staff time.
- Bohlen commented that he felt like over the last few years there had been a lot of back and forth from the legislature. He added that he would have a hard time answering where to put staff time without knowing the external forces working on that. It would be very helpful to bring in some conversation about that.
- Patterson stated that staff could give a digestion of the last few years and the trends, as well as what our counterparts were doing nationally.
- Randlett stated that the public needed to have the ability to attend a planning session, but the Board did not have to allow for public input into the process.
- Adams asked if a hybrid process would satisfy that.
- Randlett responded that it would but there was the requirement to also have a location for the public to gather.

9. Discussion of Pesticide Product Affidavit Submission and By Request Limited Duration Extensions

In 2021 and 2022, the Board conducted rulemaking in response to LD 264—Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State. This resolve directed the Board to amend its rules addressing product registration and require the submission of specific affidavits. The Board finally adopted these rules on April 1, 2022. Staff communicated these regulatory changes to pesticide product registrants. Staff also worked with contracted developers to create functionality to collect affidavits in the pesticide product registration and renewal process. This work was completed prior to the November 1 start of registration renewal season. However, some registrants have indicated that they need additional time to address confidential business and trade secret information. Staff are proposing a short extension of no greater than two months, to end on February 28, 2023. Staff will present the proposed requirements for registrants seeking an extension.

Presentations By: Megan Patterson, Director

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Patterson explained LD-264, confidential statements of formula and the affidavit questions required for registration. She stated that industry had asked for an extension for registrations and that staff had agreed to allow a two-month extension. Patterson noted

that there had been a request to suspend answering the affidavits and supplying the confidential statements of formula for one year. She told the Board that DEP was allowing a six-month extension, but she was not sure about the basis for approving those extensions.

- Tomlinson stated that she had received four requests for extension so far. She explained to the Board that the information that would be required was made available to registrants in August when the functionality went into production, another notice was sent in September and another in the last week of October with instructions about submitting confidential statements of formula information and affidavits. There have been some issues with some registrants entering information due to computer glitches and she has assured folks that if a problem was on our end that would not be held against them. Tomlinson stated that any delay beyond February would be problematic, and they were already behind in registration as it was. She explained that in March an aquatic herbicide and a neonicotinoid list need to be created and posted on the website. Tomlinson said another challenge was that it would be difficult for inspectors to know what products were registered in the marketplace.
- Randlett stated that this was a matter of enforcement discretion for Board and staff. He added that a couple of months was reasonable, but letting it go for a year made it start to look like the Board was not upholding its responsibility in accordance with the rule. The Board already had the ability to withhold any confidential information from the public.
- Tomlinson noted that February 28, 2023, would be the two-month deadline.
- Lajoie asked for an update at the next meeting about what percent of registrations had come through.

10. Discussion of Reciprocal Certification of Applicators Based On Certification Issued by Another State

Since 1974, the Maine Department of Agriculture has been receiving funds from EPA in the form of a program partnership grant. This money supports the regulation of pesticide use in the state. Upon the origination of this partnership, a “Plan for Certification of Pesticide Applicators” was developed. Since 2018, staff have worked to revise the State Plan and incorporate federal changes to the section of FIFRA pertaining to certification and training rules. EPA has reviewed drafts of the Plan and requested additional clarification of the circumstances under which the Board will issue reciprocal certification. While the Board has broad authority to permit reciprocity, the rules describing the application of this authority are narrow in scope—pertaining primarily to aerial application in emergency situations. Staff will provide a description of the current circumstances under which reciprocity may be permitted and existing and proposed requirements applicators must meet to receive a temporary reciprocal license.

Presentations By: John Pietroski, Manager of Pesticide Programs

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Pietroski stated that the purpose of this was for the state plan to be submitted to EPA. He explained that the State of Maine had the authority to grant reciprocity if the Board deemed there was an emergency. In that case, an individual could be granted a reciprocal license that would expire December 31 of the year it was granted.

- Patterson told the Board that this emergency exemption to the licensing process was for aerial application.
- Adams asked what would be considered an emergency and gave an example of beetles in stored food and using ProFume, and if a person from Virginia could request reciprocity.
- Ianni pointed out that the wording pertained only to aerial applications. She asked if anyone knew the legislative history on why only ‘aerial’ was inserted into the language.
- Patterson responded that it was possibly related to spruce budworm or mosquito management. She added that the Board could pursue rulemaking and revisit the language. Patterson stated another tool would be to hold a public listening session to ask if the public had information to provide on this topic.
- Bohlen stated that aerial was in there because there was a lack of available aerial response in Maine. He added that this would be a good first topic for the planning session. Bohlen said additions make sense and the Board could approve this as written and then have a conversation about possible emergency situations in which this may be needed.
- Pietroski stated that if the Board agreed then this could go into the state plan to submit to EPA. He added that if rule changes were made down the road the state plan could be revised at that time.
- The Board agreed.

11. Discussion of Guidelines for In-person, Virtual, Taped Video, and On-line Recertification Courses

As a part of the State Plan review process, EPA has requested additional information on the Board’s standards for recertification courses. Staff have compiled existing standards described in rule and previously approved by the Board. Additionally, in response to the increased interest in virtual trainings, staff have developed standards for these meetings that reflect the current practices in neighboring states as well as the practices of existing Maine-based training collaborators. Staff will present the proposed recertification meeting guidelines.

Presentations By: John Pietroski, Manager of Pesticide Programs

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Pietroski stated that recertification programs had greatly changed since Covid. He stated that staff were hosting a lot more virtual programs and that Maine currently had reciprocity among the other EPA Region 1 states for recertification credit courses. The presented draft guidance was reviewed by all other states in the region and met their requirements.
- Bohlen asked if there was anything new about the guidance.
- Pietroski stated that this was basically to fulfill the requirement to have a set process for certification course completion. He added that the purpose was to make sure people were paying attention to recertification programs and getting value out of them, and other states want to make sure Maine approved programs are at the level of their recertification programs and vice versa.

12. Other Old and New Business

a. EPA Federal Register Proposal—Proposed Removal of PFAS Chemicals from Approved Inert Ingredient List for Pesticide Products

b. Civil Eats article

c. Chlorpyrifos permit

- This was the only request received. No further requests are permitted after December 31, 2022.

d. Other items?

- Maine citizens Jim and Lega Metcalf attended the meeting and spoke to the Board. They stated they believed their elderly dog had passed due to liver damage caused by secondary poisoning from rodent bait. They said they had seen several small dead animals on their property and found their dog chewing on a dead grey squirrel. They later found out that a neighbor had hired a commercial pesticide applicator to put rodent bait boxes around their property. They told the Board they felt that anytime rodenticides were put out on that scale that abutters should be notified. They also stated that they felt the product Tomcat had misleading labeling that implied it was safe for children and pets. They explained that they were not aware before this that secondary poisoning was a concern when using rodenticides. They would like the displays in stores and the labels to prominently state that secondhand poisoning is a concern when using these products.
- Ianni asked about a possible requirement of traps that did not allow the release of the poisoned animal.
- Adams asked about the about notification registry and if this type of application would apply.
- Patterson stated that it would not, but potentially self-initiated notification would have applied.
- Ianni suggested this was maybe a case where rule could be changed to include bait boxes.
- Bryer explained the steps the EPA was taking regarding eleven active ingredients and offered to give the couple more information so they could provide public comment.

13. Schedule of Future Meetings

January 11, 2023, February 24, 2023, and April 7, 2023 are the next tentative Board meeting dates.

14. Adjourn

- **Lajoie/Bohlen: Moved and seconded to adjourn meeting at 12:15 AM**
- **In Favor: Unanimous**



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

2

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

January 11, 2023

1:00-2:00 PM Board Meeting—Hybrid
2:00-3:00 PM Public Forum
3:00-4:00 PM Board Meeting Continued as Necessary

MINUTES

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Board: Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

2. Consideration of a Request for Financial Support from Maine Mobile Health

Since 1995 the Board has supported the Migrant and Seasonal Farmworker Safety Education program. The Maine Mobile Health Program (MMHP) provided training to 100 farmworkers during the 2022 season. Funding to support the effort in 2023 is being requested in the amount of \$6,432, which is the same funding amount provided by the Board in 2022. The funding has been accounted for in the Board's FY23 budget.

Presentations By: Hannah Miller, Director of Outreach, Maine Mobile Health

Action Needed: Discussion and determination if the Board wishes to fund this request

- Miller thanked the Board and said Maine Mobile Health had expanded the WPS training to include Spanish Creole and Portuguese.
- Jemison said it looked like the numbers were down from previous years and asked how they planned to get more people trained.
- Miller replied that one very large farm did not want trainers coming in for the last couple years due to Covid, but MMH was hoping to get back in there. They also planned to participate in different outreach meetings to make sure farms were aware MMH could do

this training. Miller added that some farms did not have the need and a couple farms canceled on short notice. She said they were hopeful to get their numbers up this year.

- **Lajoie/Jemison: Moved and seconded to fund the request from the Maine Mobile Health Program**
- **In Favor: Unanimous**

3. Consideration of a Request to Extend Special Local Need [24(c)] Registration for Sandea Herbicide (Canyon Group and Gowan Company) to Manage Perennial Broadleaf Weeds in Lowbush Blueberries in the Nonbearing Year

In 2016 and again in 2020, the Board approved two Section 24(c) registrations for Sandea Herbicide (EPA Reg. Nos. 81880-18 and 81880-18-10163). The existing 24(c) registrations will expire December 31, 2022. The University of Maine Cooperative Extension submitted this renewal request for a 24(c) registration. This product is one of two Herbicide Resistance Action Committee (HRAC) Group 2 herbicides reviewed and supported by Extension for use in rotation on lowbush blueberries.

Presentations By: Mary Tomlinson, Pesticides Registrar and Water Quality Specialist

Action Needed: Approve/disapprove 24(c) registration request

- Patterson told the Board that there were two Section 24(c) registrations that expired December 2022. UMaine Extension submitted the request to renew these registrations for use on lowbush blueberries in the non-bearing year. There was intention to put the language on the label, but it had not occurred yet.
- Calderwood stated that this was really for broadleaf weeds and grasses and they were still trying to figure out where it would be most useful. She added that cool season weeds had been a problem and this product allowed for applications at cooler temperatures.
- There was discussion about whether this product was efficacious on both grasses and broadleaf species of weeds.
- Calderwood stated that the product is efficacious for weeds one to three inches tall and applications would be made after mowing had occurred.
- Bruce Hall, from Wyman's Blueberry, stated that observations had been made that it assisted in controlling grasses, brambles, and sheep laurel that result from growers disturbing the seed bank when going in every ten to twelve years with an excavator to remove rocks that have come to the surface.
- Jemison stated that he had experience using this on nutsedge in corn and asked how bad sedges were in wild blueberry.
- Calderwood replied that there was a lot of sedge to manage.
- Jemison said he recalled it not being exceptional on quack grass but it was good at controlling sedge. He stated that he was supportive of the SLN and had not seen it found in groundwater. Jemison said he was not as concerned of approving it as wondering how effective it would be. He told Calderwood that he was curious what they would find and would like to see a report after the season.

- Bryer stated that the active ingredient fit the profile of modern herbicides with low mammalian toxicity and a shorter half-life.
- Ianni asked if they anticipated using a control section and/or mechanical weed pulling, to see how well this product would work.
- Calderwood stated that mechanical could be tricky because any disturbance would bring up the weed seed bank. They see this when removing rocks from the fields. She added that she would be talking about multiple modes of weed management at the Agricultural Trades Show tomorrow, including mowing and burning.
- Ianni asked if they could try no control in one area and spray in the other.
- Calderwood stated that they could do a strip of Sandea and a strip with no Sandea to monitor the difference.
- Lajoie asked at what temperature the applications were being made.
- Calderwood stated that the product was most effective under 55 degrees Fahrenheit.
- Calderwood stated that she hoped the company would add this use to the label, and the reason it had not been added was because some chlorosis had been observed and the company did not want to be liable for that.
- Bohlen stated that as a planning session topic he would like to talk about the suite of SLNs that are currently out there.
- Patterson agreed and said she would suggest they invite Calderwood and at least one other extension employee for that discussion.
 - **Jemison/Lajoie: Moved and seconded to approve the SLN request through 2027 and review again at that time**
 - **In Favor: Unanimous**

4. Discussion of Work Completed and Proposed by the Massachusetts Glyphosate Commission

At the July 16, 2021, meeting, the Board reviewed LD 519—An Act to Protect Children from Exposure to Toxic Chemicals, which directed the Board to convene the Medical Advisory Committee (MAC) to assess the human health impacts of herbicide use on school grounds. The MAC met and staff prepared an interim report incorporating commentary from MAC members. This report was presented to the Board and the Legislature’s Agriculture, Conservation and Forestry Committee. At the December 2, 2022 meeting, staff discussed similar work underway in Massachusetts and the possibility of building upon the Massachusetts effort. Staff will now provide an update on the status and proposed direction of the Massachusetts glyphosate review.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/discuss provided information, provide guidance

- Bryer stated that the Massachusetts Glyphosate commission had a deadline of December 21, 2023 to come up with their review on the dangers of glyphosate and available alternatives, but they were still working on it. She added that glyphosate was unique as the

most studied pesticide in the world so there was a tremendous amount of literature and paying someone to find it all was a large task. Bryer stated that anything they found about glyphosate would be a little irrelevant since it was already banned on Maine school grounds. The Massachusetts Glyphosate Commission had eighteen to twenty-four compounds on their list of alternatives and BPC staff had tallied up forty-four during research for the MAC interim report. She added that the Massachusetts review would still be a helpful document to review.

- Adams stated that he was disappointed when he read this because he did not see it as just a school playground issue. He was hoping more to see the metabolite that occurs after application, after the plant absorbs it and converts it into another compound. Adams said this was where we should start looking and it seemed like Massachusetts was a long way from that. He added that this issue, however, was not going away.
- Patterson stated that if the Board had an interest in that it might be time to pivot how to pursue that. She mentioned that at the last meeting there was a discussion about a possible RFP. Patterson said that Massachusetts had a hard time securing a contractor to do the work comprehensively and only after they had tailored the scope a little bit.
- Bohlen said he was struck by the amount of time they plan to spend looking at the official reports of previous reports and does not know if that is particularly productive. He added that there was also some question about what they were really trying to answer. Bohlen suggested that if we were to move forward with a request for information we would need to be very clear about exactly what we want or need to look at. He stated that moving forward with an RFP seemed premature at this time.
- Jemison spoke about determining how much glyphosate was used on school grounds. He stated there might be some value to look at what Massachusetts finds for alternatives to glyphosate.
- Bohlen stated that it seemed we would need to know what people are using and what they want to use it on. He added that there are different uses and right now he had no sense of what was being used in these situations. Bohlen stated that of the 44 alternative compounds there might only need to be three alternatives we need to focus on. If we do not know what people are using, we do not know which products to focus on.
- Bryer volunteered to bring forward information at the next Board meeting from the two years' worth of records that were obtained.
- Jemison stated that he would like to see that data.
- Patterson said that it required significant staff time to make sure the data was complete and accurate and something staff could work with.
- Adams stated that the Board needed more information on the risk and that needed to include the potential for exposure. He added that none of the alternative products would work well for managing grasses on something like a tennis or basketball court. Adams said the alternatives would work to keep brush out of the powerlines but those were completely different uses. He added that if staff could bring information on that next time that would be great. He said that the Board was asked to determine what the risk was, and they needed that knowledge to make a determination.

- Ianni stated that using cultural and mechanical means should still be looked at because society tended to prioritize convenience.
- Bryer talked about the difference between a decorative lawn and athletic fields and the difference between those uses and the reasons for them.
- Patterson asked if it would be useful to hear from School IPM coordinators. She offered that staff could send out a general invite.
- Jemison stated they could certainly do that in a future meeting
- Adams asked that an invitation be sent out.

5. Consideration of a Consent Agreement with Avesta Housing, Portland, Maine

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involved failure to postpone an application as requested by a tenant.

Presentations By: Alex Peacock, Manager of Compliance

Action Needed: Review and/or approve

- Peacock told the Board that an application was made on November 1, 2021, to an apartment in Portland. The tenant's apartment abutted the trash room for the building, and cockroaches had become a problem. The tenants went through the normal channels to request treatment, but then felt they did not have the ability to do the pre-treatment preparation in time and asked for the application to be postponed. This was not communicated to the applicator and their apartment was treated without their consent. The tenants came home to find that the treatment had been made. Peacock told the Board that a consent agreement was sent to Avesta Housing.
 - **Carlton/Jemison: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

The Board meeting paused for a Public Forum

6. Consideration of a Consent Agreement with Green Thumb Lawn Services, Brewer, Maine

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involved a self-reported unauthorized application and failure to positively identify the application site.

Presentations By: Alex Peacock, Manager of Compliance

Action Needed: Review and/or approve

- Peacock stated that this was a self-reported application to the incorrect property.
- Carlton commented that the Board seemed to be seeing more of these misapplications to an incorrect address.
- Jemison agreed that this had been occurring for years. In this case he thought \$1,000 was acceptable because the company self-reported.
- Ianni asked what property identification was required to make an application.
- Patterson explained that positive identification of the application site was detailed in policy, but the Board could place it in rule if they would like.
- Peacock explained the Board policy and appropriate ways to identify the correct location.
- Randlett stated that it was not legally enforceable as a policy, but it could be moved into rule to increase the enforcement capability of staff, which may double the violation.
- There was discussion about revocation of licenses.
- Randlett stated there needed to be sufficient grounds to revoke a license and the process was similar to a mini-trial and much more intensive than a consent agreement.
- Patterson responded that staff have sometimes included required training as a component of consent agreements and that remains an option.
- Carlton favored increasing the amount of consent agreements to be more of a deterrent rather than just the cost of doing business.
- Randlett stated that a first-time violation has a \$1400 limit and sometime the Board may want to consider approaching the legislature about increasing those penalties. If the address identification policy was in rule the penalty could have been up to \$2800.
- Ianni stated that there seemed to be a much higher potential for error in these residential settings and some applicators have a goal to meet and they are chasing that. She asked if anyone had requested restitution and if there was any means of requiring the company to pay restitution to the injured party.
- Randlett stated that that would be a private civil action.
- Adams stated that the Board needed to make a priority of placing that positive identification policy into rule.
- Lajoie suggested putting rules in place stating that the applicator should visit the site before an application is made or scheduled. He also proposed not allowing any applications to be made unless the homeowner was at the residence. Lajoie agreed that this policy needed to be moved into rule.
- Carlton suggested mandating the applicator to provide a safety data sheet and label.

- Adams and Jemison stated that it made sense to go to rulemaking.
- Patterson stated that staff could summarize all suggestions of rule change the Board had discussed and they could choose which ones they would like to change.
- Boyd reviewed previous rulemaking topics that had been discussed, including the definition of human dwellings or residential properties in Chapter 10 or in Chapter 41. She added that there had been talk about aligning some of the Chapter 32 language with Chapter 31. Boyd stated there was also the topic of seed treatment and how it was described in rule.
- Jemison reiterated that section 5 of Chapter 41 was dated.
- The Board agreed to address rulemaking concepts at the next meeting.
 - **Carlton/Jemison: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

7. Other Old and New Business

a. Letter from Jody Spear and article from Biological Conservation

b. Overview of 2022 certification trainings

- Pietroski stated that for 2022 there were 2129 agricultural basic and private licenses. Of the 807 agricultural basic license 293 were for medical marijuana and the rest were spread among all other commodities. There were 3717 commercial applicators, of which about 2100 were at the master level and around 1700 were at the operator level. He added that last year the BPC gave 1607 exams. In 2022, 43% of the applicators who took their exams at the BPC office or at an extension office passed, but 58% of those who took the new computer-based exams from Metro passed.

c. Overview of 2023 pesticide product registration renewal progress

- Patterson detailed the extension on the registration renewal process. The BPC has approximately 12,000 products registered in 2022, but about half have submitted for registration renewal in 2023. Staff are anticipating that the remainder of renewals will come in closer to the end of February due to the extension.
- Adams asked if there was any indication that companies may not renew.
- Ianni asked about possibly publishing a list of products that have not been renewed after the February deadline.

d. LD 8—An Act to Increase Support for the Modernization of the Board of Pesticides Control by Increasing the Annual Pesticide Registration Fee

- There was discussion about whether this amount of increase was enough. This bill was scheduled for January 25, 2023. The ACF committee would be meeting on Mondays and Wednesdays.

e. Recent EPA complaint pertaining to container fluorination

- Patterson told the Board that this court filing came to staff's attention due to the popular press.

f. Other items?

8. Schedule of Future Meetings

February 24, 2023, and April 7, 2023 are the next tentative Board meeting dates.

9. Adjourn

- **Carlton/Lajoie: Moved and seconded to adjourn at 4:03 PM**
- **In Favor: Unanimous**



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

2

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

Emergency Meeting

January 20, 2023

11:00 a.m. Board Meeting

MEETING

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Board: Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

2. Consideration of Possible Board Member Participation at the Hearing and Work Session for LD 8—An Act to Increase Support for the Modernization of the Board of Pesticides Control by Increasing the Annual Pesticide Registration Fee

During the January 11, 2023 meeting of the Board, member participation at the public hearing for LD 8 was discussed. Given the importance of LD 8 for the long-term viability of the Board of Pesticides Control, some members of the Board would like to reconsider possible hearing and work session attendance.

Presentations By: Megan Patterson, Director

Action Needed: Discuss and determine if Board members wish to attend and provide testimony

- Patterson explained the budgetary constraints and the details of the Department bill. There were overhead, salary and software costs that had significantly increased. The MePERLS software had historically been subsidized by Maine IT and now BPC was responsible to pay the full amount. She said they were not sure if the legislature would entertain an additional increase, but what was asked for would only allow the BPC to temporarily operate as they had been. As the bill was written currently it would not allow the BPC to hire additional staff, but it would allow the program to support current staff and services.

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
WWW.THINKFIRSTSPRAYLAST.ORG

- Patterson stated that the last registration fee increase was in 2013 for ten dollars to offset money earmarked for the University of Maine Cooperative Extension. She added that the last ask for an increase before that occurred in 2003.
- Jemison suggested increasing the amount asked for to get the budget where it needed to be.
- Patterson suggested that for the long term it would make sense to convene a committee to look at all fees and expenses. It would be good to come up with a budgetary plan for the next 10 years. Patterson stated it might be meaningful to hear from plant health and extension staff that also would benefit from this.
- There was further discussion about ways to increase revenue.
- Adams said he could be at the hearing for L.D. 8. Ianni said she could attend both the hearing and work session.
 - **Carlton/Jemison: Moved and seconded to authorize attendance and testimony at L.D. 8 hearing and work session**
 - **In Favor: Unanimous**

 - **Jemison/Carlton: Moved and seconded to adjourn at 12:00 PM**
 - **In Favor: Unanimous**



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
PLANT HEALTH PROGRAM
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

To: Board of Pesticides Control
From: Hillary Peterson, Integrated Pest Management Specialist
Re: Request for Funding
Date: February 24, 2023

The Department of Agriculture, Conservation and Forestry (DACF) based in Augusta, Maine and the Maine Medical Center Research Institute (MMCRI) based in Portland, Maine are two of the major mosquito surveillance agencies in Maine. Adult and larval mosquito surveillance data from all over the state has been collected for almost twenty years. Mosquito surveillance is important for early detection of vector borne diseases such as Eastern equine encephalitis, West Nile virus, Jamestown Canyon virus, and more. The DACF IPM Program monitors mosquitos at approximately six sites per summer (early July through the end of September) in Kennebec and Waldo counties, including in Farmingdale, Augusta, Palermo, and Unity Twp. Mosquitoes are collected, sorted, identified, and submitted for disease testing at State of Maine Health and Environmental Testing Laboratory (HETL) weekly, and data is entered into a secure database online for further analysis. In 2015, a mapping project was initiated by the Department of Agriculture, Conservation and Forestry to optimize the efficiency and effectiveness of surveillance of *Culiseta melanura*, the primary vector of Eastern equine encephalitis (EEE). In 2019, the habitat map was revised to include new site coordinates and updated geospatial data.

The Integrated Pest Management Program is requesting funds to assist with ongoing efforts for mosquito surveillance and identification, and continued outreach around vector-borne diseases. Assistant will **not** be available to perform additional tasks for BPC (as in previous years) if mosquito activity is low due to weather or other unforeseen factors, as the temporary hire will also be hired jointly with 20hr/week responsibilities with an already funded invasive plant grant with the DACF Horticulture program.

The IPM program is requesting a total budget of \$10,310.40 for the 2023 program. Please see the following page for a breakdown of costs.

GARY FISH, STATE HORTICULTURIST
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-7545
WEB: WWW.MAINE.GOV/HORT

Budget Request:

Item	Rate / hr	Salary plus temp staffing fee	Hours / Week	# Weeks	Total Hours	Total \$
Summer field and lab assistant	\$15.00	\$18.57	20	21	420	\$7,799.40
Item	Cost / mile	Distance (miles)	# Trips	Total Miles		
Mileage	\$0.20	145	15	2175		\$435.00
Item	Cost / month	Number of Months*				
Car Payment	\$411.00	4				\$1,644.00
Item	Number	Cost / item	Total			
New stockings for trapping mosquitos (80)	40	\$10.00				\$400.00
Zip ties (multi-pack)	1	\$10.00				\$10.00
Flagging tape (12-pack)	1	\$22.00				\$22.00
					Total	\$10,310.40

**Four months based on June setup time and October take down time, will pay for the month of June for the extra four weeks*

Breakdown of Summer Temp Position:

Project Responsibility	Hrs / Wk	Start Date	End Date	# Weeks	Pay / Hr	Temp Fee / Hr	Total Pay / Hr	Total Budget for Position	State of Funding
Mosquito	20	5/22/2023	10/10/2023	21	\$15.00	\$3.57	\$18.57	\$7,799.40	Need to request from BPC
Invasive Plant (summer part-time)	20	5/22/2023	10/10/2023	21	\$15.00	\$3.57	\$18.57	\$7,799.40	Already available
Invasive Plant (fall/winter fulltime)	40	10/17/2023	1/23/2024	15	\$15.00	\$3.57	\$18.57	\$11,142.00	Already available

Sincerely,



Hillary Peterson,
 IPM Entomologist
 Maine Department of Agriculture, Conservation and Forestry

2022 Mosquito Monitoring Report

Results of Mosquito Trapping Conducted in the Field Season of 2022



Genus Aedes or Ochlerotatus

State of Maine
Department of Agriculture, Conservation, and Forestry
Division of Animal and Plant Health IPM Program

Results of Mosquito Monitoring Conducted by Maine Department of Agriculture, Conservation and Forestry IPM Program - 2022

Mosquitoes were collected at 6 sites. 10 resting boxes (RB) were used at each site.

Site Name	Town	County	State	Trap Type
Jamie's Pond	Farmingdale	Kennebec	Maine	RB
Viles Arboretum	Augusta	Kennebec	Maine	RB
Garcelon WMA	Augusta	Kennebec	Maine	RB
Iron Ore Point	Palermo	Waldo	Maine	RB
Beech Pond	Palermo	Waldo	Maine	RB
Unity Plantation	Unity Twp	Waldo	Maine	RB

- Mosquitoes were collected, sorted, identified, and submitted for disease testing at State of Maine Health and Environmental Testing Laboratory (HETL) weekly from 7/05/22 through 9/20/22. None of the samples were found to be positive for West Nile Virus, Eastern equine encephalitis (EEE) virus or Zika virus in 2022.
- Labor: summer temporary staff member (Michael Galli): 15 weeks (@ \$15.00/hr) to deploy traps and service sites weekly for the entire season.
- Resting boxes are used to collect primarily *Culiseta spp.* mosquitoes, which are important vectors of EEE. *Culiseta spp.* were found at all six sites with the highest numbers at Iron Ore Pt. and Viles Arboretum.

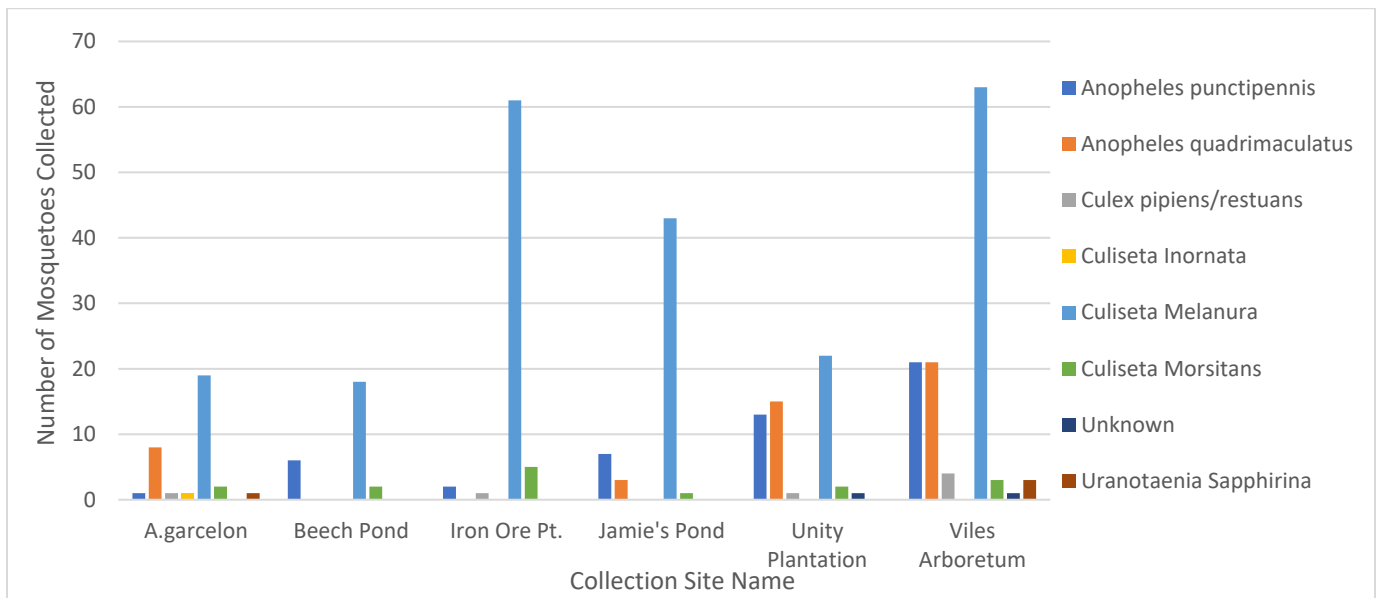


Figure 1: Sum of mosquitos from each species found at each sample site.

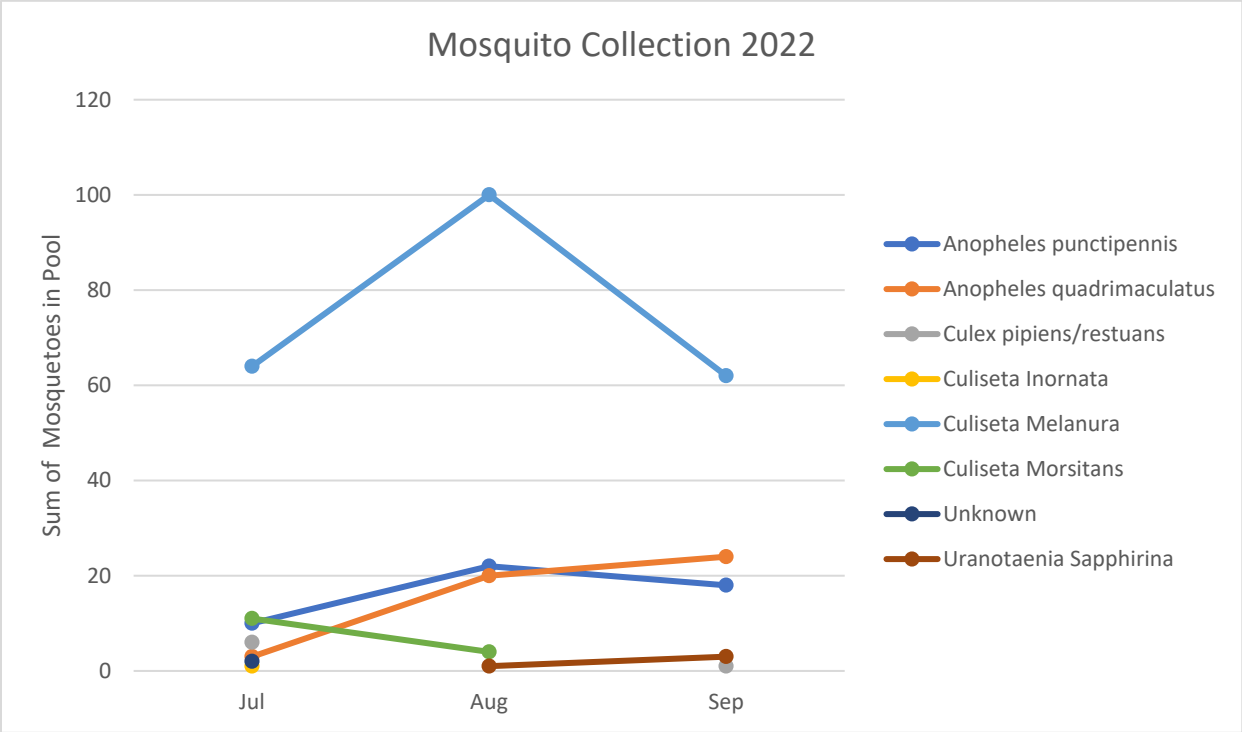


Figure 2: The total number of each mosquito species collected from resting boxes in 2022.

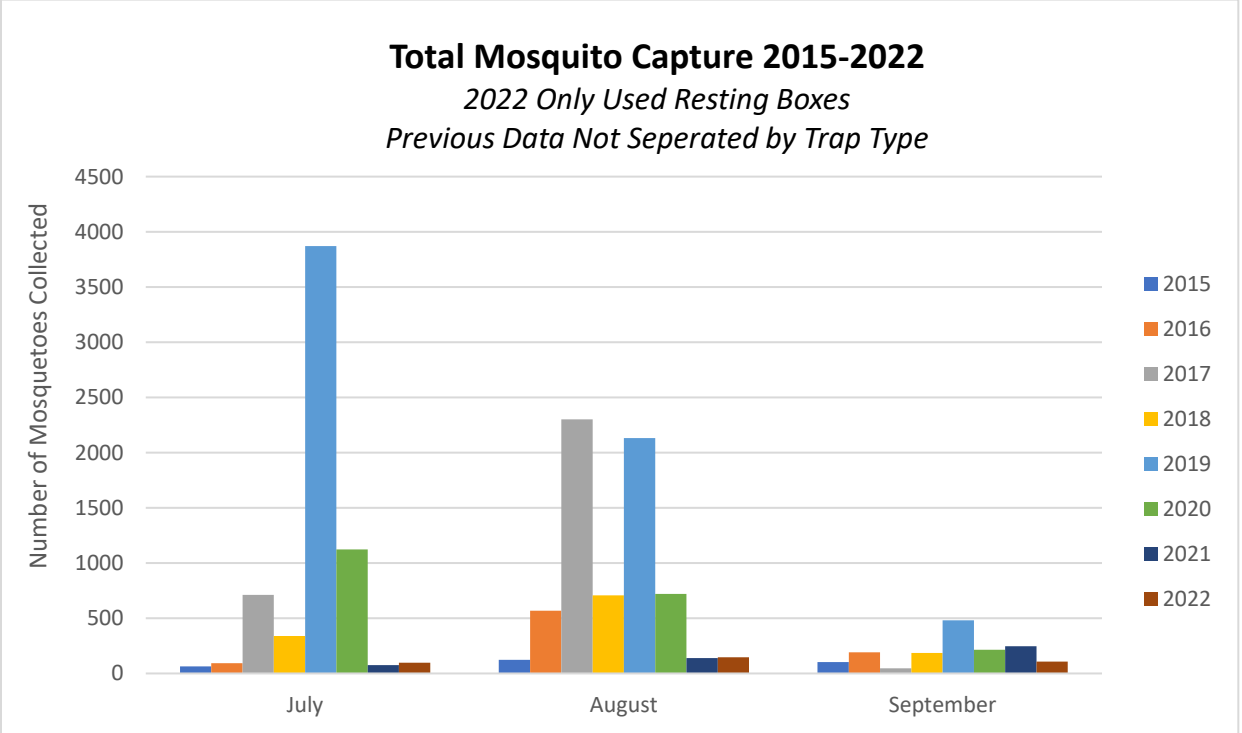


Figure 3: Total mosquitoes collected by month each year. 2022 data only contains resting boxes while previous years contain multiple trap types.

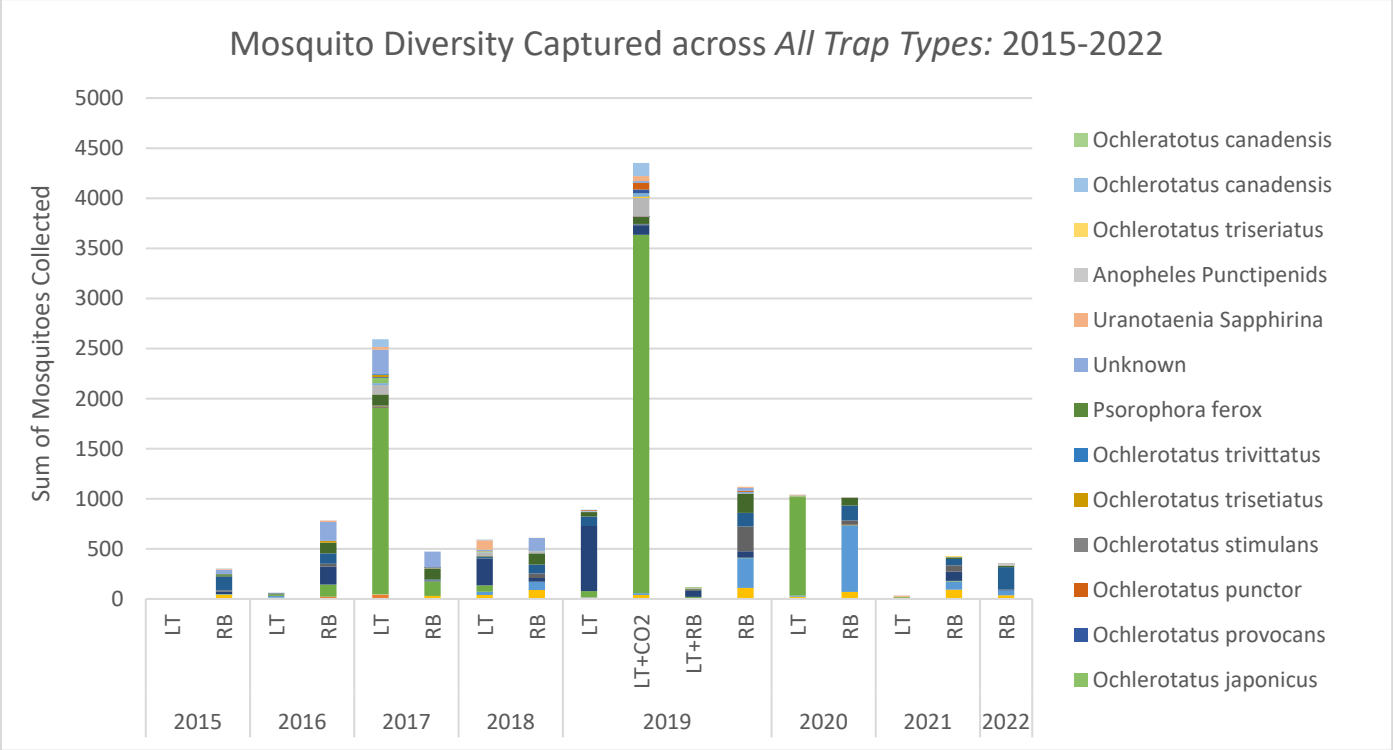


Figure 4: The diversity of mosquito species captured across all trap types from 2015-2022.

Table 1: Sum of each species collected during the 2022 season.

Row Labels	Sum of number in pool
2022	
<i>Anopheles punctipennis</i>	37
<i>Anopheles quadrimaculatus</i>	47
<i>Culex pipiens/restuans</i>	7
<i>Culiseta inornata</i>	1
<i>Culiseta melanura</i>	226
<i>Culiseta morsitans</i>	15
<i>Uranotaenia sapphirina</i>	4
<i>Anopheles punctipennis</i>	13
Unknown	2
Grand Total	352

Table 2: Sum of collected mosquitoes by species between 2015-2022

Row Labels	2015	2016	2017	2018	2019	2020	2021	2022	Grand Total
<i>Aedes cinereus</i>	0	0	0	0	2	0	0	0	2
<i>Aedes vexans</i>	6	23	44	1	1	7	12	0	94
<i>Anopheles barberi</i>	0	0	1	1	0	0	0	0	2
<i>Anopheles punctipennis</i>	34	13	31	139	165	86	86	33	587
<i>Anopheles quadrimaculatus</i>	4	18	2	133	317	671	84	25	1254
<i>Coquillettidia perturbans</i>	6	132	2003	64	3660	988	16	0	6869
<i>Culex pipiens/restuans</i>	24	181	3	305	876	7	94	7	1497
<i>Culex salinarius</i>	0	0	1	0	0	5	2	0	8
<i>Culex territans</i>	10	30	17	46	255	37	59	0	454
<i>Culiseta inornata</i>	0	0	10	0	0	0	0	1	11
<i>Culiseta melanura</i>	147	103	14	103	237	149	64	180	997
<i>Culiseta morsitans</i>	13	118	220	122	319	77	15	15	899
<i>Ochlerotatus canadensis</i>	2	3	76	6	140	2	1	0	230
<i>Ochlerotatus triseriatus</i>	0	0	0	0	0	0	1	0	1
<i>Ochlerotatus aurifer</i>	0	0	0	0	1	0	0	0	1
<i>Ochlerotatus cantator</i>	0	0	3	1	8	0	0	0	12
<i>Ochlerotatus excrucians</i>	0	0	98	56	202	5	1	0	362
<i>Ochlerotatus hendersoni</i>	0	0	0	0	13	0	0	0	13
<i>Ochlerotatus intrudens</i>	0	0	20	6	53	2	2	0	83
<i>Ochlerotatus japonicus</i>	0	0	54	9	2	9	4	0	78
<i>Ochlerotatus provocans</i>	0	0	8	0	36	0	0	0	44
<i>Ochlerotatus punctor</i>	0	0	1	1	86	1	8	0	97
<i>Ochlerotatus stimulans</i>	0	0	1	0	0	0	0	0	1
<i>Ochlerotatus trisetiatus</i>	0	17	24	2	0	0	0	0	43
<i>Ochlerotatus trivittatus</i>	0	0	1	0	0	0	0	0	1
<i>Psorophora ferox</i>	10	0	0	0	0	1	0	0	11
<i>Uranotaenia sapphirina</i>	9	13	28	96	61	9	12	4	232
Unknown	45	197	405	143	50	2	1	2	845
Grand Total	310	848	3065	1234	6484	2058	462	267	14728

Table 3: Sum of species collected in each type of trap between 2022-2015.

Row Labels	Light Trap (N=433)	Light Trap + CO2 (N=181)	Resting Box (N=1602)
<i>Aedes cinereus</i>	2	0	0
<i>Aedes vexans</i>	55	0	39
<i>Anopheles barberi</i>	1	0	1
<i>Anopheles punctipennis</i>	84	40	450
<i>Anopheles quadrimaculatus</i>	69	17	1149
<i>Coquillettidia perturbans</i>	2985	3578	288
<i>Culex pipiens/restuans</i>	919	96	416
<i>Culex salinarius</i>	2	0	6
<i>Culex territans</i>	17	8	429
<i>Culiseta inornata</i>	6	0	5
<i>Culiseta melanura</i>	119	5	873
<i>Culiseta morsitans</i>	173	70	642
<i>Ochleratatus canadensis</i>	88	131	6
<i>Ochleratatus triseriatus</i>	0	0	1
<i>Ochlerotatus aurifer</i>	0	1	0
<i>Ochlerotatus cantator</i>	3	5	1
<i>Ochlerotatus excrucians</i>	137	183	31
<i>Ochlerotatus hendersoni</i>	0	13	0
<i>Ochlerotatus intrudens</i>	29	34	19
<i>Ochlerotatus japonicus</i>	71	1	6
<i>Ochlerotatus provocans</i>	8	36	0
<i>Ochlerotatus punctor</i>	15	65	15
<i>Ochlerotatus stimulans</i>	0	0	1
<i>Ochlerotatus trisetiatus</i>	26	0	17
<i>Ochlerotatus trivittatus</i>	1	0	0
<i>Psorophora ferox</i>	1	0	10
<i>Uranotaenia sapphirina</i>	139	50	43
Unknown	270	20	555
Grand Total	5220	4353	5003



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DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BOARD OF PESTICIDES CONTROL
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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control

From: John Pietroski | Manager of Pesticide Programs | Maine Board of Pesticides Control

Subject: Status of Commercial Category 7 in Chapter 31

Date: February 16, 2023

Staff are asking the Board to consider the following options for categories, 7C1, 7C2, and 7C3 described in this memo.

The Code of Federal Regulations (CFR) Title 40, § 171.103 Standards for Certification of Commercial Applicators lists the federal categories and specific standards of competency for each category of commercial applicators. Certification Category 7 - *Industrial, Institutional, and Structural Pest Control* requires applicators to demonstrate a practical knowledge of industrial, institutional, and structural pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators must also demonstrate practical knowledge of types of formulations appropriate for control of industrial, institutional and structural pests, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts of outdoor applications.

The BPC has divided category 7 into the following subcategories:

- 7A Structural General Pest Control
- 7B Structural Fumigation
- 7C1 Disinfectant and Biocide Treatments
- 7C2 Swimming Pool & Spa

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- 7C3 Mold Remediation & Water Damage Restoration
- 7D Wood Preserving
- 7E Biting Fly & Other Arthropod Vectors
- 7F Termite Pests

The original category, 7C “Disinfectant and Biocide” was divided into three options. The division was due to the diverse subject matter. The pulp and paper/water treatment/sewer treatment industries, swimming pool companies, and mold remediation companies were each given their own subcategory.

Here is the definition from Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

7C. Disinfectant and Biocide

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

Covid 19 resulted in companies doing disinfectant work with powered application equipment. Staff identified 7C3 - Mold Remediation & Water Damage Restoration as the closest, but imperfect fit for obtaining certification and licensure to conduct this work.

In addition, restaurants, schools, and other facilities that are closed by the Department of Health and Human Services’ Health Inspection Program due to infestations from pests such as rodents and coach roaches, must be disinfected before being allowed to reopen. The category needed to conduct this work is 7C3. When the public and business owners are seeking a company to do this work, the sub-category descriptions are a hinderance.

To better address the diversity of potential applications and to alleviate confusion, staff would like the Board to consider the following reorganizations of category 7C.

1. Change the titles for the three sub-categories to:
 - a. 7C1 – Biocide and water treatments
 - b. 7C2 – Swimming Pool and Spa (NO CHANGE)

- c. 7C3 – Disinfectant, mold remediation, and water damage restoration
- d. Eliminate the subcategories and create one certification category titled 7C-Biocide, disinfectant and mold

The manual used for all three sub-categories is “Microbial Pest Control”. Kerry Bernard edited this manual in 2022. The manual was written to cover all three sub-categories. One 50 question exam which would address all of the prior sub-categories.

In 2022 we had the following certified applicators:

7C1 Disinfectant and Biocide	36
7C2 Swimming Pool and Spa	4
7C3 Mold Remediation	66

Also, in 2022 we gave the following number of exams:

Disinfect and Microbial-7C1	Fail	2
Disinfect and Microbial-7C1	Pass	2
Mold & Water Damage Remediation-7C3	Fail	7
Mold & Water Damage Remediation-7C3	Pass	4

The work required would be to re-write the description and competency standards from the prior sub-categories in Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS. The new documentation will need to pay particular attention to the competency standards in (CFR) Title 40, § 171.103. Depending on the decision by the board, a new exam may have to be written.



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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control
From: Karla Boyd | Policy and Regulations Specialist | Maine Board of Pesticides Control
Re: Summary of potential “residential landscapes” rulemaking concepts for CMR 01-26
Chapter 10: Definitions
Date: February 24, 2023

Introduction

At its February 25, 2022 meeting, the Board discussed further defining the term “Residential Landscapes” in the context of Chapter 41, Section 6. Currently in rule, the term “sensitive areas likely to be occupied” includes residential properties, but residential is not defined. The Board requested information on all potential rulemaking concepts at its January 11, 2023 meeting. To aid in facilitating continued discussion of rulemaking concepts, staff have prepared a summary of definitions that could be used for “residential landscapes”.

Defining Boundaries

Additionally, staff have identified inquiries relating to Chapter 41, Section 6 regarding the boundaries of what would be considered “residential landscapes”. An inquiry came in on January 26, 2023 regarding a land manager that operates a private estate in Maine. The property consists of formal gardens as well as significant forested areas. This person hires a commercial applicator to do tree injections. They were interested in applying a dinotefuran product as a trunk spray to control HWA, bronze birch borer, and potentially spruce adelgid. Staff discussed best management practices and integrated pest management that could be used in this situation. In accordance with Chapter 41, section 6 and policy, only trees that are identified to be infested with HWA could be treated on the property, but questions arose about if the forested sector of this land would be considered “residential”. The Board may want to provide additional guidance regarding defining boundaries of “residential landscapes”.

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Table of Potential Definitions

Below is a summary of potential definitions from three sources.

	Source and Definition		
Term	Merriam-Webster	Cambridge Dictionary	The Britannica Dictionary
Residential	restricted to or occupied by residences	relating to where you live or have lived	of or relating to the places where people live
Landscape	the landforms of a region in the aggregate	a large area of land, especially in relation to its appearance	an area of land that has a particular quality or appearance



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JANET T. MILLS
 GOVERNOR

AMANDA E. BEAL
 COMMISSIONER

To: Board Members
 From: Staff
 Re: Review of Potential Rulemaking Concepts
 Date: February 24, 2023

At the December 2022 and January 2023 Board meetings, The Board indicated interest in revising parts of rule that needed updating or clarification. Staff have proposed potential responses to these rulemaking inquiries. The potential rulemaking are categorized by the following criteria:

<p>Required C&T Housekeeping Incorporate Policy</p>	<p>Required by federal rule change Fairly minor and should require very little discussion. Will require some discussion on whether and how to incorporate the policy in rule but the objective is already written in policy.</p>
<p>Requires Discussion</p>	<p>Questions have been raised and a decision needs to made on whether the rule needs to be amended. These will probably take the most time.</p>

The fourth column designates type of rulemaking (see Title 7 Section 610(6)):

<p>RT MS</p>	<p>Routine Technical Major Substantive</p>
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The first column corresponds to the attached reference documents.
 The second column details the actionable item.
 The third column provides a purpose for the rulemaking.
 The fourth column provides a detailed description of the potential rulemaking concept.

A complete list of possible rulemaking chapters to include 10, 20, 28, 31, 32, 41, 50, 51.

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1	Chapter 10	<p>The Board expressed interest in defining “residential landscapes”. See memo: Summary of potential “residential landscapes” rulemaking concepts for CMR 01-26 Chapter 10: Definitions</p> <ul style="list-style-type: none"> • Define “Residential Landscapes” 	Housekeeping	RT
2	Chapter 20, Section 7(A)	<p>The Board expressed interest in incorporating policy into rule.</p> <ul style="list-style-type: none"> • See “Chapter 20: Positive Identification of Proper Treatment Site by Commercial Applicators” Policy. <p>The Board may want to consider also adding additional methods for proper site identification while reviewing this policy.</p>	Incorporating Policy	RT
3	Chapter 28, section 2(E)(2)(d)and (f)	<p>A Board member expressed interest in amending rules regarding notification of rodenticidal baits. Potential actions include:</p> <ul style="list-style-type: none"> • Excluding sections for exemptions under structural (7A) applications and pesticidal baits for the notification registry. Note: Bait stations are used indoors, but rodents may move between indoor and outdoor spaces creating a potential secondary poisoning risk from indoor bait stations. • The Board may want to consider that although there are exemptions for the Maine Notification Registry, there are no exemptions in place for self-initiated notification (see Chapter 28, Section 1). 	Requires Discussion	RT
4	Chapter 31(2)(VII)(c)(1)(2)(3) and Chapter 31(3)(VII)(c)(1)(2)(3)	<p>Staff have identified issues with 7C category licensure. See memo “Revisions of 7C categories to reflect licensure”. The Board may want to consider changing these categories by:</p> <ul style="list-style-type: none"> • Combining all categories to 7C: Biocide, Disinfectant, Pools and Spas, Mold Remediation, and Water Damage Restoration OR • Amending category 7C1 to remove disinfectants to “Biocide Treatments” • Amending category 7C3 to include disinfectants to “Mold Remediation, Water Damage Restoration, and Disinfectants” 	Housekeeping	RT

		<p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Adding new category: 7C4 Disinfectants <p>Currently, there is confusion regarding which certification category is needed for commercial application of disinfectants. If these sections are changed, competency standards should also change to reflect categories.</p>		
5	Chapter 31 Section 6 (B)	<p>The Board expressed interest in revisiting reciprocity for emergency or other situations.</p> <ul style="list-style-type: none"> • Potentially add categories to Chapter 31, Section 6 if more certification categories than aerial are considered for emergency certification reciprocity <p>If Chapter 51 (VII) is expanded to include more emergency certification reciprocity exemptions than the listed reasons for aerial applications, this section will need to be updated to reflect changes (see #12).</p>	Requires Discussion	MS
6	Chapter 31 section 2 (XI) and section 3 (XI) Chapter 32 section 2 (B)(5)(c)	<p>Staff have identified questions about UAVs that apply pesticides. The board may want to add rules for drones that apply pesticides and requiring FAA certification for both commercial (chapter 31) and private (chapter 32) applicators.</p>	Requires Discussion	RT
7	Chapter 32, section 2 (A)(1)	<p>This was identified when staff revised the state plan. Excerpt from state plan:</p> <p>To address 40 CFR § 171.201 (see reference document), the State of Maine, Board of Pesticides Control will, at the earliest opportunity, initiate rulemaking to address the minimum age requirements for noncertified applicators who are a minimum of 16 years old and who may apply restricted use pesticides under the direct supervision of a private applicator who is an immediate family member. The State of Maine Board of Pesticides Control will also, at the earliest</p>	Required C&T	RT

		<p>opportunity, initiate rulemaking to address the minimum age requirements for noncertified applicators who are a minimum of 18 years old and who may apply restricted use pesticides under the direct supervision of a private applicator. Until rulemaking occurs, the Board of Pesticides Control will continue to enforce the above-listed minimum age requirements under their delegated authority to enforce FIFRA.</p> <p>These amendments may require creation of a new section to address noncertified applicators.</p>		
8	Chapter 31 5(B)(IV)(c) and Chapter 32 2(B)(5)(4)	<p>While revising the state plan, staff identified inconsistencies in language from Chapter 31 with Chapter 32, requiring persons hosting private recertification meetings to submit attendance rosters. The Board may be interested in considering these changes.</p> <ul style="list-style-type: none"> • Require rosters for private applicator recertification meetings 	Housekeeping	RT
9	Chapter 41, Section 5	<p>A Board member expressed interest in updating and modernizing Chapter 41, Section 5, which addresses plant incorporated protectants. Staff need additional guidance on concepts the Board might want addressed in this section.</p>	Requires Discussion	MS
10	Chapter 41, Section 8 (new)	<p>A Board member proposed adding requirements when using rodenticidal baits to include traps or ways to reduce non-target poisonings.</p> <ul style="list-style-type: none"> • Possibly adding Section 8, Rodenticidal Baits and including language to require applicators to use ‘repeating’ traps with baits to contain poisoned animals. 	Requires Discussion	MS
11	Chapter 50, Section 2(A)	<p>A Board member expressed interest in requiring electronic submission of pesticide annual use reports. The Board could add a clause to require submission of records electronically and may want to include a clause about software.</p>	Requires Discussion	RT
12	Chapter 51 Section	<p>Staff need additional guidance as to what the Board is interested in</p>	Requires	MS

	VII (A) and (B)	expanding reciprocity for; the current language allows for reciprocity in emergency situations outlined in Chapter 51, Section VII (B). If other categories are to be considered this may need to be moved or completed in Chapter 31 or 32 for commercial and private applicators.	Discussion	
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01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 10: DEFINITIONS AND TERMS

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

Section 1. Consistent with Statute

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

Section 2. Definitions

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

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

pesticides within the company or agency. Such practices may include equipment maintenance and calibration, employee training, safety and hygiene, pesticide and container disposal, accident mitigation and ensuring that applications are conducted in compliance with all state and federal laws and regulations.

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

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

- b. The owner or an employee of that establishment is certified as a private applicator under section 1471-C, subsection 2; and
 - c. The property is not open to the public.
- 4. A pesticide application shall not be deemed a custom application where it is undertaken by a licensed private applicator on property owned or rented by him or his employer or in trade for personal agricultural services between producers of agricultural commodities.
- Q. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver pesticides in this state. This also means giving free samples of unregistered products to any person. Sales of hardware, such as doorknobs and pushplates, shall not be considered distribution for the purposes of this definition.
- R. "Environment" means water, air, land, and all plants and man and other animals living therein, and the interrelationships that exist among them.
- S. "Forest" means a concentration of trees and related vegetation managed primarily for the production of forest agricultural commodities such as timber, fiber or other wood products, including other similar areas managed for recreation or resource conservation.
- T. For the purposes of 22 M.R.S. §1471-D (9), "Government Employee" means a person who is employed full- or part-time as a regular employee of any governmental or quasi-governmental organization including federal, state, county and municipal governments and public universities.
- U. "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.
- V. "Host" means any plant or animal on or in which another lives for nourishment, development, or protection.
- W. "Integrated Pest Management" (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including: (1) understanding the system in which the pest exists, (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control, (3) monitoring pests and natural enemies, (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and (5) systematically evaluating the pest management approaches utilized.
- X. "Integrated Pest Management Coordinator" means the lead person in a school system or school who is knowledgeable about integrated pest management and is designated by each school to implement the school pest management policy.

- Y. "License" means a commercial applicator license, a private applicator certification, a dealer license, a permit to chemically control vertebrate animals, or a permit to apply limited use pesticides.
- Z. "Licensing" means the issuance by the Board of a document signifying that the applicant has been certified and has met all applicable employee, fee, insurance and reporting requirements.
- AA. "Major application project" means any pesticide application contract that requires the applicator to apply pesticides to more than 1000 acres in the aggregate within a given year. This does not include repeat applications to the same site.
- BB. "Major pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building owned and/or operated by a pesticide distributor where pesticides are held in storage and which meets one of the following criteria:
1. contains at any one time an amount greater than or equal to 6,000 pounds of dry pesticide product, other than dry formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 2. contains at any one time an amount greater than or equal to 600 gallons of liquid pesticide product, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 3. contains liquid pesticides in containers that are thirty (30) gallons or greater in size, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products."
- CC. "Minor pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building owned and/or operated by a pesticide distributor where pesticides are held in storage and which meets one of the following criteria:
1. contains at any one time an amount greater than 100 pounds but less than 6,000 pounds of dry pesticide product, other than dry formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 2. contains at any one time an amount greater than 50 gallons but less than 600 gallons of liquid pesticide, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 3. contains liquid pesticides in containers greater than three (3) gallons but less than thirty (30) gallons in size, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products."
- DD. "Non-agricultural pesticide application" means any application of a pesticide that is not an agricultural pesticide application.
- EE. "Non-powered equipment" means pesticide spray equipment which pumps and disperses pesticides without utilization of an electric, gasoline, wind-driven or other motorized power source. By way of example, non-powered equipment includes manual pump spray

equipment and self-contained aerosol spray cans or bottles but does not include equipment which employs a motor, except one powered only by hand.

- FF. "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.
- GG. "Off-target direct discharge of pesticides" means the direct application of pesticides onto property beyond the boundaries of the target area intended to be treated. Presence of off-target direct discharge of pesticides may be determined by any evidence, through observation, residue samples or other techniques, that an off-target area has received substantially the same dose of pesticide as a target area.
- HH. "Off-target drift of pesticides" means the drifting of pesticides by air currents or diffusion with resulting deposition of pesticides onto property beyond the boundaries of the target area intended to be treated. The detection of pesticides beyond the boundaries of the target area intended to be treated shall be presumed to be as a result of off-target drift unless there is evidence of off-target direct discharge of pesticides.
- II. "Ornamental plant" means shrubs, trees and related vegetation in and around habitation generally, but not necessarily, located in urban and suburban areas, including residences, parks, streets, retail outlets, and industrial and institutional buildings.
- JJ. "Other forest pests" means forest pests, other than insects and include, but are not limited to, weeds, mites, nematodes, fungi, bacteria, and viruses.
- KK. "Owner" means sole proprietor, partner or stockholder.
- LL. "Person" means any individual, partnership, fiduciary, corporation, governmental entity, association or public or private organization of any character, other than the Board.
- MM. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency.
- NN. "Pesticide dealer" means any person who distributes limited or restricted-use pesticides, including but not limited to sales personnel in an outlet, field salesmen, and manufacturers' representatives selling pesticides directly to the consumer or who accept orders for pesticides.
- OO. "Pesticide distributor" means any person required to be licensed to distribute general, restricted or limited use pesticides.
- PP. "Pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building where pesticides are held for storage.
- QQ. "Practical knowledge" means the possession of pertinent facts and comprehension together with the ability to use them in dealing with specific problems and situations.

- RR. "Principal place of business" means the principal location, either residence or office, in the State in which an individual, partnership, or corporation applies pesticides.
- SS. "Private Applicator" means any person who uses or supervises the use of any pesticide which is classified for restricted or limited use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than the trading of personal services between producers of agricultural commodities, on the property of another person. In situations where the applicator is applying pesticides to crops on rented land, there must be a written contract showing that the grower/applicator retains control over the property as well as the disposition or sale of the harvested crop.
- TT. "Private domestic well" means any well used for drinking water other than one which serves a public water system.
- UU. "Project" means, for the purposes of Chapter 51, the aerial application of pesticides to control an individual forest insect pest complex provided by:
1. Any number of applicator businesses for a single person, or
 2. One applicator business on contiguous parcels of land.
- VV. "Public precautions" means those statements which appear on the pesticide label directed towards the non-applicator public. Public precautions may include, but are not limited to, re-entry intervals.
- WW. "Public water system" means any water supply system that provides water to at least 15 service connections or serves water to at least 25 individuals daily for at least 30 days a year.
- XX. "Regulated pest" means a specific organism considered by a State or Federal agency to be a pest requiring regulatory restrictions, regulations, or control procedures in order to protect the host, man and/or his environment.
- YY. "School" means any public or private elementary or secondary school, kindergarten or nursery school that is part of an elementary or secondary school or a tribally funded school.
- ZZ. "School Building" means any structure used or occupied by students or staff of any school.
- AAA. "School Grounds" means:
1. land associated with a school building including playgrounds, athletic fields and agricultural fields used by students or staff of a school, and
 2. any other outdoor area used by students or staff that is under the control of a school.
- BBB. "Self-service sales area" means any area within or immediately outside a retail or wholesale business in which members of the public have direct access to pesticide products. For the purposes of this chapter, self-service sales areas shall be limited to those pesticide products which require a pesticide dealer to be licensed under 22 M.R.S.A. §1471-W, "General Use Pesticide Dealers."

1 (New Definition)

CCC. "Sensitive area" means any of the following, except where the area involved is the intended target of the pesticide application:

1. Apiaries, the location of which is registered with the Department of Agriculture, Conservation and Forestry pursuant to 7 M.R.S.A. §2701;
2. Critical areas designated by the Board pursuant to 22 M.R.S.A. §1471-M(2);
3. Public wells, drinking water springs used by the public, and public water supply intake points, provided the location of the same is known or should reasonably be known to the pesticide applicator;
4. Private sources of drinking water, where the owner or legal user thereof has given prior notice of the location of such source to the landowner or lessee of the area which will be subject to a pesticide application;
5. Water bodies, including streams, brooks, rivers, ponds, lakes, estuaries and marine waters, provided that any such water body contains water at the time of the pesticide application and is known to the spray applicator or is reasonably detectable from visual observation, reasonably available maps or reasonable inquiry. This term shall not include: (a) in the case of forest aerial spray programs, streams and brooks that are neither shown on reasonably available maps nor visible from an aircraft operating at 1000 feet in elevation above ground level; and (b) waters that are confined and retained completely upon the property of the person conducting or contracting for spray services, and that do not drain into or connect with any other water body;
6. Wetlands of Special Significance.
7. Cleared areas where livestock are contained or pastured, cultivated land, cropland or gardens.
8. A "Sensitive Area Likely to Be Occupied" is an area where humans are likely to be present including the following:
 - a. Residential buildings, together with any associated maintained areas likely to be occupied by humans, such as lawns, gardens, recreational areas and livestock management and housing areas;
 - b. School buildings, together with any associated maintained areas that are areas likely to be occupied by humans, such as playgrounds, athletic fields or courts;
 - c. Commercial, institutional, or other structures likely to be occupied by humans, together with any associated maintained areas such as lawns, gardens, parking and recreational areas;
 - d. Maintained recreational areas likely to be occupied by humans including campgrounds, picnic areas, marked roadside rest areas, marked hiking trails, park and recreation facilities, athletic fields, and other areas for organized sports or recreation. This definition does not include trails

located on privately owned lands which are used by permission of the landowner.

- DDD. "Spray application" means, for the purposes of Chapter 51, the dispensing of pesticides in any manner from an aircraft.
- EEE. "Spray contracting firm" means any person, including a corporation, employed or contracted to conduct a public or private custom application of one or more pesticides. This term does not include:
1. the owner or lessee of land to be sprayed and employees of that landowner or lessee,
 2. the Division of Forestry and the employees of the Division of Forestry,
 3. individuals who are certified as commercial applicators providing that individual does not have in his/her employment one or more others to undertake pesticide applications; or
 4. persons who perform custom applications of pesticides solely on or within a premises which they own or lease.
 5. persons and corporations that subcontract for pesticide applications, but do not maintain any control over the pesticide application including which pesticides are applied, when they are applied or how they are applied.
- FFF. "Spray period report" means a written description of the spray activity certifying the date and time, the area usually sprayed, the pesticide used, and including a description of the weather conditions during spray activity. The report must also include a map showing where spray booms were turned on and off, with notation of any non-target areas that were sprayed.
- GGG. "Standard" means the measure of knowledge and ability that must be demonstrated as a requirement for certification.
- HHH. "Storage" means holding pesticides for distribution in locations other than self-service sales areas.
- III. "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.
- JJJ. "Toxicity" means the property of a pesticide to cause any adverse physiological effects.
- KKK. "Uncertified person" means any person who is not holding a currently valid certification document indicating that he is certified under section 4 of FIFRA in the category of the restricted use pesticide made available for use.
- LLL. "Wetlands of Special Significance" means all coastal wetlands and great ponds. In addition, certain freshwater wetlands are considered wetlands of special significance if they have one or more of the following characteristics.

1. **Critically imperiled or imperiled community.** The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the Natural Areas Program.
 2. **Significant wildlife habitat.** The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. §480-B(10).
 3. **Location near coastal wetland.** The freshwater wetland area is located within 250 feet of a coastal wetland.
 4. **Location near GPA great pond.** The freshwater wetland area is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A. §465-A.
 5. **Aquatic vegetation, emergent marsh vegetation or open water.** The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial ponds or impoundment.
 6. **Wetlands subject to flooding.** The freshwater wetland area is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.
 7. **Peatlands.** The freshwater wetland is or contains peatlands, except that the Department of Environmental Protection may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.
 8. **River, stream or brook.** The freshwater wetland area is located within 25 feet of a river, stream or brook.
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STATUTORY AUTHORITY: 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

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August 17, 1996

October 2, 1996

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AMENDED:

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

March 5, 2003

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AMENDED:

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

January 29, 2013 – filing 2013-014

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

July 23, 2019 – Section 2(A), (P)(2)(d), filing 2019-130

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 20: SPECIAL PROVISIONS

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

Section 1. Registered Pesticides

A. Definitions

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

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

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

Section 2. Right-of-Way

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

Section 3. Pesticide Storage and Disposal

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

Section 4. Aquatic Applications

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

Section 5. Employer/Employee Requirements

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

Section 6. Authorization for Pesticide Applications

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

3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.

D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provision apply:

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

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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

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

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

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

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May 16, 2022 – filing 2022-085

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

Section 1. Requesting Notification About Outdoor Pesticide Applications

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

A. Requests for Notification; How Made

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

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

B. Procedure of Notification

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

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

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

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

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

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

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

A. *Individuals to be Included on the Registry*

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

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

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

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

C. Registry Provided to Commercial Applicators

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

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

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

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

E. Exceptions

1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
2. The following types of pesticide applications do not require notification under this section:

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

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

F. Exemption from this section

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

G. Fee

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

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

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

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

A. Sidewalks and Trails

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

B. Posting

1. Categories Requiring Posting

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

2. Posting Requirements

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

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

C. **Exemption from this section**

1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
 2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

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

1. Individual Certification and Company/Agency Licensing Requirements

- A. Any commercial applicator must be either:
 - I. licensed as a commercial applicator/master; or
 - II. licensed as a commercial applicator/operator; or
 - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
- B. All commercial applicators responsible for the supervision of noncertified applicators of restricted use pesticides must ensure compliance with training, record keeping, and all other requirements as indicated in 40 CFR 171.201(c) "Supervision of Noncertified Applicators" (2017).
- C. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- D. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.
- E. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master

must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

F. Exemptions

- I. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- II. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – *Rules Relating to Public Swimming Pools and Spas*, administered by the Maine Department of Health and Human Services, Division of Environmental Health..
- III. Certified or licensed Wastewater or Drinking Water Operators applying registered disinfectants to waste or drinking water as part of their employment.
- VI. Adults applying repellents to children with the consent of parents/guardians.
- VII. Persons installing antimicrobial metal hardware.

2. Categories of Commercial Applicators

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

I. Agricultural Animal and Plant Pest Control

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

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

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

Option III - Agricultural 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 Management**

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, Christmas trees, and forest seed producing areas.

III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of outdoor ornamental trees, shrubs and flowers.
- b. **Turf** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of turf, such as at turf farms, golf courses, parks, cemeteries, athletic fields and lawns.
- c. **Indoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of live plants in shopping malls, businesses, residences and institutions.

IV. **Seed Treatment**

This category includes commercial applicators using or supervising the use of pesticides on seeds.

V. **Aquatic Pest Control**

- a. **General Aquatic** - This subcategory includes commercial applicators using or supervising the use of pesticides applied directly to surface water, including but not limited to outdoor application to public drinking water supplies, golf course ponds, rivers, streams and wetlands. Excluding applicators engaged in public health related activities included in categories VII(e) and VIII below.

- b. **Sewer Root Control** - This subcategory includes commercial applicators using or supervising the use of pesticides applied to sewers to control root growth in sewer pipes.

VI. **Vegetation Management**

- a. **Rights-of-Way Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside and railroad rights-of-way.
- b. **General Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation (including invasive plants) on sites not included in category VI a including, but not limited to, municipal and other publicly owned properties, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots, sidewalks, and trails.

VII. **Industrial, Institutional, Structural and Health Related Pest Control**

- a. **General** - This subcategory includes commercial applicators using or supervising the use of pesticides in, on or around human dwellings, office buildings, institutions such as schools and hospitals, stores, restaurants, industrial establishments (other than in Category 6) including factories, warehouses, food processing plants, food or feed transportation facilities and other structures, vehicles, railroad cars, ships, aircraft and adjacent areas; and for the protection of stored, processed or manufactured products. This subcategory also includes commercial applicators using or supervising the use of pesticides to control rodents on refuse areas and to control other pests, including but not limited to birds and mammals.
- b. **Fumigation** - This subcategory includes commercial applicators using or supervising the use of fumigants or fumigation techniques in any type of structure or transportation device.
- c. **Disinfectant and Biocide**

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

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

VIII. **Public Health Pest Control**

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

IX. **Regulatory Pest Control**

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

X. **Demonstration and Research Pest Control**

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

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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 Management**

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

III. **Ornamental and Turf Pest Control**

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

IV. **Seed Treatment**

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

V. **Aquatic Pest Control**

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

VI. **Vegetation Management**

Applicants seeking certification in the subcategories under Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of pesticide use on a wide variety of environments. Such knowledge shall include an ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup and aesthetic considerations associated with excessive foliage destruction and "brown-out", and an understanding of the mode of action of herbicides, and reasons for the choice of particular chemicals for particular problems, importance of the assessment of potential impact of spraying on adjacent public and private properties and activities, and effects of spraying on fish and wildlife species and

their habitat. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

VII. **Industrial, Institutional, Structural and Health Related Pest**

- a. **General.** Applicants seeking certification in the subcategory of General Pest Control as described in Section 2(A)(VII)(a) must demonstrate a practical knowledge of a wide variety of pests and methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.
- b. **Fumigation.** Applicants seeking certification in the subcategory Fumigation as described in Section 2(A)(VII)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees and customers.
- c. **Disinfectant and Biocide Treatments.**
 1. **Disinfectant and Biocide Treatments.** Applicants seeking certification in the subcategory of Disinfectant and Biocide Treatments as described in Section 2(A)(VII)(c)(1) must demonstrate practical knowledge of water organisms and their life cycles, drinking water treatment plant designs, cooling water system designs, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
 2. **Swimming Pool & Spa.** Applicants seeking certification in the subcategory of Swimming Pool & Spa as described in Section 2(A)(VII)(c)(2) must demonstrate practical knowledge of water organisms and their life cycles, pool and spa design systems, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
 3. **Mold Remediation.** Applicants seeking certification in the subcategory of Mold Remediation as described in Section 2(A)(VII)(c)(3) must demonstrate practical knowledge of mold and problematic microbial organisms, their life cycles, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.

- d. **Wood Preserving.** Applicants seeking certification in the Wood Preserving Subcategory described in Section 2(A)(VII)(d) must demonstrate practical knowledge in wood destroying organisms and their life cycles, nonchemical control methods, pesticides appropriate for wood preservation, hazards associated with their use, proper handling of the finished product, proper disposal of waste preservatives, and proper application techniques to assure adequate control while minimizing exposure to humans, livestock and the environment.
- e. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest control as described in Section 2(A)(VII)(e) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- f. **Termite Pests.** Applicants seeking certification in this subcategory must demonstrate a practical knowledge of Termite pests and methods for their control. Such knowledge shall include identification of termites and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

VIII. **Public Health Pest Control**

- a. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest Control as described in Section 2(A)(VIII)(a) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Other Pests.** Applicants seeking certification in the subcategory of Other Pest Control as described in Section 2(A)(VIII)(b) must demonstrate a

practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

IX. Regulatory Pest Control

Applicants seeking certification in the category of Regulatory Pest Control as described in Section 2(A)(IX) must demonstrate practical knowledge of regulated pests and applicable laws relating to quarantine and other regulations of pests. Such knowledge shall also include environmental impact of pesticide use in eradication and suppression programs, and factors influencing introduction, spread, and population dynamics of relevant pests. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

X. Demonstration and Research Pest Control

Applicants seeking certification in the category of Demonstration and Research Pest Control as described in Section 2(A)(X) must demonstrate practical knowledge in the broad spectrum of activities involved in advising other applicators and the public as to the safe and effective use of pesticides. Persons involved specifically in demonstration activities will be required to demonstrate knowledge of pesticide-organism interactions, the importance of integrating chemical and non-chemical control methods, and a grasp of the pests, life cycles and problems appropriate to the particular demonstration situation. Field researchers will be required to demonstrate general knowledge of pesticides and pesticide safety, as well as a familiarity with the specific standards of this Section which apply to their particular areas of experimentation. All individuals certified in this category must also be certified in one or more of the previous categories or subcategories which represent at least 80% of their practice. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

XI. Aerial Pest Control

Applicants seeking certification in the category of Aerial Pest Control as described in Section 2(A)(XI) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight

patterns; droplet size considerations; flagging methods; and loading procedures. Applicants must also demonstrate competency in the specific category or subcategory in which applications will be made, as described in paragraphs I, II, VI and VIII herein. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

4. Competency Standards for Certification of Commercial Applicator/Master

- A. **Regulations Exam.** An applicant seeking certification as a commercial applicator/master must successfully complete a closed book exam on the appropriate chapters of the Board's regulations. The passing grade shall be 80%. An applicant must successfully complete the regulations exam before being allowed to proceed to the master exam. The staff may waive the requirements for the closed book regulation exam if it determines that a pest management emergency exists necessitating the issuance of a nonresident license pursuant to Section 6 B. of this chapter, provided that the staff verbally reviews the pertinent regulations with the applicant prior to issuing a nonresident license.
- B. **Master Exam.** An applicant seeking certification as a commercial applicator/master must also demonstrate practical knowledge in ecological and environmental concerns, pesticide container and rinsate disposal, spill and accident mitigation, pesticide storage and on site security, employee safety and training, potential chronic effects of exposure to pesticides, pesticide registration and special review, the potential for groundwater contamination, principles of pesticide drift and measures to reduce drift, protection of public health, minimizing public exposure and use of non pesticide control methods. In addition, applicant must demonstrate the ability to interact with a concerned public.

5. Certification Procedures for Commercial Applicators

- A. **Initial Certification.** Individuals attempting to certify as a commercial applicator must be at least 18 years of age.
 - I. **Application for Exams.** Individuals applying to take exams must submit a completed application and associated fees. All fees are waived for governmental employees.
 - a. Information shall include name, home address, company address, name and telephone number of supervisor and categories for which certification is desired.
 - b. A non-refundable fee of \$10.00 for each core, category or subcategory exam shall accompany the application.
 - c. Study materials for other than the regulations exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.

- d. A non-refundable fee of \$10.00 for the regulations exam and \$40.00 for the Master exam shall accompany the application for Master exams. Study material for the regulations exam will be sent to the applicant upon receipt of their application and the required fees.

II. **Appointment for Exams**

- a. Exams will be scheduled by Board staff. It is the responsibility of the applicant to reschedule if necessary.
- b. All exam fees shall be forfeited if an applicant fails to notify the Board that he/she cannot sit for the exams on the scheduled date at least 24 hours in advance of the scheduled exam. Applicants who cancel their exam appointment two times in a row shall also forfeit their exam fees. Re-application shall require an additional \$15.00 fee.
- c. Exams will be available year-round on an appointment basis at the Board's office in Augusta.
- d. Exams may also be offered at other locations designated by the Board staff. Appointments for these exams should be arranged by application with the Board's office in Augusta.

III. **Exams**

- a. Applicants shall take a closed book core exam plus a closed book category technical exam on each applicable category or subcategory for which they anticipate making pesticide applications.
- b. In addition to the exams described above in sections (a), applicants for commercial applicator/master certification must complete a closed book written regulations exam as well as a master exam. Applicants for commercial applicator/master must successfully complete the core and at least one category exam or the combined exam before being eligible to take the master exams. Applicants must also successfully complete the regulations exam before being allowed to commence on the master exam.

IV. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.

- a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.
- b. Applicants should be present and ready to take the exams at the appointed time.
- c. Applicants shall not talk during the examination period.
- d. Applicants shall not be allowed to bring any books, papers, cellular telephones, calculators or electronically stored data into the examining

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

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

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

- a. An applicant who fails the core exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- b. An applicant who fails a category exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- c. An applicant who passes the core and one category exam shall be considered eligible for operator level licensing in that particular category so long as that person will be working under the supervision of a Master applicator. If at a later date the applicant wishes to add another category, only the appropriate category exam shall be required.
- d. An applicant who fails a master exam must re-apply and pay all required fees and may not retake the examination prior to 6 days after the date of such failed examination.
- e. Any applicant must pass both the core and at least one category exam by December 31 of the third year from the date on which the first exam was passed.
- f. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retaking.

VI. **Expiration.** Certification under this Section will expire on December 31st of the third year after the date of successful completion of required exams and on December 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

VII. An applicant's original certification period shall not be extended due to the applicant qualifying for another category or upgrading to the master level.

B. **Recertification of Applicators**

- I. Persons with current valid certification may renew that certification by either providing documentation from a substantially equivalent professional

certification program approved by the board or by accumulating recertification credits during the certification period described in Section 5(A)VI according to the following schedule:

- a. **Master level** - 9 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.
- b. **Operator level** - 6 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.

II. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.

- a. Board staff will review program agendas and monitor programs as time permits.

III. Credit will be allowed for topics including, but not limited to:

- a. Applicable laws and regulations.
- b. Environmental hazards.
- c. Calibration and new application techniques.
- d. Label review.
- e. Applicator safety.
- f. Storage and disposal.
- g. Pest identification and control.
- h. Integrated pest management.

IV. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting with details of the agenda. Board staff will review program agendas and assign credit values.

- a. One credit will be assigned for each 1 hour of presentation on appropriate topics.
- b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.

- c. An individual who organizes a meeting shall be required to maintain a sign up sheet and supervise the signing of the sheet by all applicators attending the program. That individual shall submit the sign up sheet to the Board at the same time the verification attendance forms are collected and submitted to the Board.

- V. For in state programs, applicants must submit verification of attendance at approved programs to the Board. For out of state programs, applicators must submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
- VI. A person who fails to accumulate the necessary credits during their first three year certification period will have to retake and pass all exam(s) required for initial certification. If a person fails to accumulate the necessary credits again that person must retake and pass all exam(s) required for initial certification and within one year thereafter, obtain the balance of the recertification credits which that person failed to accumulate during the previous certification period. If that person does not obtain the balance of credits needed, the Board will not renew their license until the make- up credits are accrued.
- VII. Applicants must attend the entire approved program(s) for which recertification credit is sought. No other person may complete or sign a verification form on another applicator's behalf. Any form that is completed or signed by a person other than the applicator will be deemed a fraudulent report and will not be approved by the Board for recertification credit(s). Any credit(s) approved by the Board pursuant to an attendance verification form which is subsequently determined by the Board to have been completed or signed by a person other than the applicator shall be void and may not be counted towards the applicator's recertification requirements; and any recertification issued on the basis of such credits shall be void.

6. Licensing

A. All Commercial Applicators required to be certified under this chapter and state pesticide law shall be licensed before using or supervising the use of pesticides as described in Section 1(A).

B. Nonresident licenses. When the staff determines that a pest management emergency exists which necessitates the use of aerial application and for which there are not sufficient qualified Maine licensees, it may issue a license without examination to nonresidents who are licensed or certified by another state or the Federal Government substantially in accordance with the provisions of this chapter. Nonresident licenses issued pursuant to this section are effective until December 31 of the year in which they are issued.

C. **Application.** Application for a commercial applicator license shall be on forms provided by the Board.

I. The completed application must include the name of the company or agency employing the applicant.

II. Unless the applicant is the owner of a company, the completed application must be signed by both the applicant and that person's supervisor to verify the applicant is an employee of the company/agency.

D. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:

- I. For a commercial applicator license - \$105.00 per person.
- E. Commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, *Certification & Licensing Provisions/Spray Contracting Firms* which requires an additional Spray Contracting Firm License.
- F. **Insurance.** Commercial applicators who spray for hire (custom applicators) shall be required to have liability insurance in force at any time they make a pesticide application.
 - I. Applicators shall submit a completed and signed form provided by the Board at the time they apply for their license which attests that they will have the required amounts of insurance coverage in effect when they make pesticide treatments. The information submitted on the form must be true and correct.
 - II. Insurance coverage must meet or exceed the following minimum levels of liability:
 - a. **Ground applicators**

Public liability	\$100,000 each person	\$300,000 each occurrence
Property damage	\$100,000 each occurrence	
 - b. **Aircraft applicators**

Public liability	\$100,000 each person	\$300,000 each occurrence
Property damage	\$100,000 each occurrence	
- G. **Reports.** Annual Summary Reports described in Chapter 50, Section 2(A) must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license is temporarily suspended until the proper report is received or until a decision is rendered at a formal hearing as described in 22 MRSA §1471-D (7).
- H. **Expiration**
 - I. All licenses will expire at the end of the certification period as determined in Section 5(A)VI or when an individual licensee terminates employment with the company/agency with which the individual's license is affiliated.
 - II. The licensee or a company/agency representative shall notify the Board in writing within 10 days after a licensee is terminated from employment.
 - III. Also, all licenses within a company/agency are suspended if the licensed Master is terminated from employment or dies.

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

 - J. **Credentials Contact.** Licenses issued under this rule will include the following information:
 - I. Full name of applicator
 - II. License number
 - III. Categories
 - IV. Expiration date
 - V. Maine statute under which license is issued.
-

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

EFFECTIVE DATE:

January 1, 1983 (filed with Secretary of State August 13, 1982)

AMENDED:

December 29, 1982

January 1, 1984

January 1, 1984 - Section 7

May 20, 1984 - Section 6

May 13, 1985 - Section 5

Emergency amendment effective April 18, 1986 - Section 6

August 3, 1986 - Section 6

November 30, 1986 - Section 3

May 23, 1987 - Section 1

April 27, 1988

April 29, 1990

January 1, 1996 (adopted by Board October 7, 1994 - see Section 8 for transition dates)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999 -- also converted to MS Word

March 5, 2003

July 3, 2005 – filing 2005-267

March 4, 2007 – filing 2007-69

July 2, 2009 – filing 2009-318 (EMERGENCY, later reverted to pre-emergency status)

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – filing 2014-280

September 23, 2015 – filing 2015-168

July 23, 2019 – filing 2019-131

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

1. Competency Standards for Certification - Private Applicator

- A. No person shall be certified as a private applicator unless he has fulfilled requirements demonstrating his knowledge of basic subjects including pesticide label comprehension, ability to read and understand pesticide labeling, safety, environmental concerns, stewardship, pest organisms, pesticides, equipment, application techniques, responsibilities for supervisors of non-certified applicators, and applicable laws and regulations. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans (core exam).
- B. No person shall be certified as a private applicator unless he has demonstrated knowledge of the general principles of pest control for his major commodity, including specific pests of the crop, their life cycle, and proper timing of control measures to be efficacious (Commodity Exam).

2. Certification Procedures for Private Applicators

A. Initial Certification

- 1. Any person attempting to certify as a private applicator must be at least 18 years of age.
- 2. Any person seeking to be certified as a private applicator must pass a written core exam and a written exam in the area of his primary commodity. Both exams shall be closed book.
- 3. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board.
- 4. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
 - a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.

- b. Applicants should be present and ready to take the exams at the appointed time.
- c. Applicants shall not talk during the examination period.
- d. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
- e. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

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

- a. An applicant who fails the core exam may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
- b. An applicant who fails the exam in the area of his primary commodity may not retake the that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
- c. Any applicant must pass both the core and at least one commodity exam within 12 months before qualifying for certification.
- d. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.

6. Certification under this section will expire on October 31st of the third year after the date of successful completion of the exams and on October 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

B. **Supplemental Certification.** Private applicators who are certified as described in Section 2(A), and intend to conduct soil fumigation, non-soil fumigation or aerial applications must be certified in the appropriate supplemental category. Certification is obtained by passing a written exam with a minimum score of 80.

- 1. Supplemental category exams shall be closed book.
- 2. Supplemental category exams will be available year-round on an appointment basis at the Board's office in Augusta.
- 3. Examination and qualification requirements described in Section 2(A)(4-6) pertain to supplemental certification.

4. **Categories for Supplemental Certification of Private Applicators**

- a. **Soil Fumigation.** This category includes private applicators using or supervising the use of pesticides to fumigate crops in production including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops.
- b. **Non-soil Fumigation.** This category includes private applicators using or supervising the use of fumigant pesticides or fumigation techniques in any type of structure or transportation device.
- c. **Aerial.** This category includes private applicators, including pilots and co-pilots, applying pesticides by means of any aircraft.

5. **Competency Standards for Supplemental Certification of Private Applicators**

Applicants seeking supplemental private certification must demonstrate competency in each applicable category (Category Exam). Competency in the applicable category shall be established as follows:

- a. **Soil Fumigation.** Applicants seeking supplemental certification in the category of Soil Fumigation as described in Section 2(B)(4)(a) must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (d) (2017).
- b. **Non-soil Fumigation.** Applicants seeking supplemental certification in the category of Structural Fumigation as described in Section 2(B)(4)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (e) (2017).
- c. **Aerial Pest Control.** Applicants seeking supplemental certification in the category of Aerial Pest Control as described in Section 2(B)(4)(c) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical

dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (f) (2017).

B. Recertification

1. Any person with current valid certification may renew that certification by accumulating 6 recertification credits during the certification period described in Section 2(A)6.
2. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
3. Credit will be allowed for topics including, but not limited to:
 - a. Applicable laws and regulations.
 - b. Environmental hazards.
 - c. Calibration and new application techniques.
 - d. Label review.
 - e. Applicator safety.
 - f. Storage and disposal.
 - g. Pest identification and control.
 - h. Integrated pest management.
4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.
 - a. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
 - 8** **b.** An individual conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.

5. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
6. A person who fails to accumulate the necessary credits will have to re-apply to take the exams required for initial certification.

3. **Licensing**

- A. **Application.** Application for a private applicator license, shall be on forms provided by the Board. Information shall include name; Social Security number; mailing address; farm name, location and telephone number; and major crop(s).
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
 1. For a private applicator license - \$15.00 per person.
 2. For replacement or alteration - \$5.00.
- C. **Expiration.** Private applicator licenses are issued on a three-year period and will expire on October 31st of the third year. Any person who has accumulated the required number of recertification credits must apply for license renewal within one year of the expiration date of the license or the recertification credits are forfeited and that person must retake and pass both the core and commodity exams to again be eligible for licensing.
- D. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*

- E. **License Issued.** Licenses issued under this rule will include the following information:
- I. Full name of applicator
 - II. License number
 - III. Commodities and categories
 - IV. Expiration date
 - V. Maine statute under which license is issued
-

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

EFFECTIVE DATE:

January 1, 1983

AMENDMENT EFFECTIVE:

December 6, 1987

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

August 25, 1997 – fees

January 4, 2005 – filing 2004-605, Section 3.C.

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – Section 2(A)(4)(a, b), filing 2014-281

July 23, 2019 – filing 2019-132

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE

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

Section 1. ALDICARB (TEMIK®)

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

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

Section 2. TRICHLORFON (DYLOX, PROXOL)

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

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

Section 3. HEXAZINONE (VELPAR, PRONONE)

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

A. Licenses Required

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

Section 4. AQUATIC HERBICIDES

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

A. Board Publication of List

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

B. Licenses Required

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

C. **Disclosure**

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

D. **Records and Reporting**

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

E. **Use of Best Management Practices**

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

Section 5. PLANT-INCORPORATED PROTECTANTS

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

A. **Definitions**

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

B. **License Required**

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

C. **Dealer Requirements**

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

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

D. Grower Requirements

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

E. Product-Specific Requirements

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

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

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

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

F. Confidentiality

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

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

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

A. Definitions

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

B. Board Publication of Product List

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

C. Licenses Required

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

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

D. Records and Reporting

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

E. Emergencies

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

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

F. Emergency Use Permits

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

- I. The name, address and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- 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

10 (New Section)

other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

STATUTORY AUTHORITY:

5 M.R.S.A. §§ 8051 *et seq.*

7 M.R.S.A. §§ 601-610

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

EFFECTIVE DATE:

March 8, 1981 (Captan)

AMENDED:

May 7, 1981 (Trichlorfon)

January 2, 1984 (Aldicarb)

May 8, 1988 (Trichlorfon)

August 5, 1990 (Captan)

August 17, 1996 (Hexazinone)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

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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:

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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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 50: RECORD KEEPING & REPORTING REQUIREMENTS

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

Section 1. Records

A. Pesticide Application Records

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

- c. **Rate information.** For each distinct site, application rate information must be maintained as follows:
 - i. **Restricted Use Pesticides.** For restricted use pesticides, applicators shall record the total amount of pesticide applied (undiluted).
 - ii. **General Use Pesticides.** For general use pesticides, applicators shall record:
 - (1) rate information as described in (i.) above; or
 - (2) the mix ratio and the total mix applied; or
 - (3) the mix ratio and the mix per unit area applied.
- d. For outdoor applications, except those listed below, weather conditions including wind speed and direction, air temperature and sky conditions recorded such as sunny, partly cloudy, overcast, foggy or rainy. No weather condition records need be kept for outdoor applications involving:
 - i. pesticides placed in bait stations;
 - ii. pesticide-impregnated devices placed on animals, such as ear tags; or
 - iii. pesticides injected into trees or utility poles.
- e. For TBT applications to marine vessels, applicators must also record the vessel identification and size, and the disposition of TBT wastes including chips/dust removed prior to application and empty containers.

B. Limited Use/Restricted Use Pesticide Sales Records

- I. Licensed pesticide dealers shall maintain records of each sale of a restricted/limited use pesticide on their sales slips and the customer's name, and license number must be recorded on every invoice or electronic record involving that individual. Licensed pesticide dealers must also maintain records to verify that sales of restricted/limited use pesticides to unlicensed purchasers are only made where a licensed applicator is employed to supervise the use of the restricted/limited use products. These records must include the name, address, license number, issuing agency, expiration date, and categories of certification (if applicable) of each person to whom the restricted use pesticide was distributed or sold. These records are to be available for inspection by representatives of the Board at reasonable times, upon request, and are to be maintained for two calendar years from the date of sale.
- II. Pesticide dealer records shall also include the signature of purchaser or his/her agent, the product name, the EPA registration number, state special local need registration (SLN) number (if applicable), the quantity and size of containers purchased, and the date of purchase.

- III. Any pesticide dealer who discontinues the sales of restricted/limited use pesticides shall notify the Board in writing and shall provide the Board, upon request, with all required records including a final sales report up to the date of discontinuance.

Section 2. Reports

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- A. **Annual Summary Reports by Commercial Applicators.** Annual summary reports must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license may be temporarily suspended until the proper report is received or until a decision is tendered at a formal hearing as described in 22 M.R.S.A. §1471-D(7). The report filed with the Board by or on behalf of commercial applicators shall contain the following information for each site or crop treated: quantity of each pesticide used, EPA registration number and total area treated (where applicable) for each pesticide.
- B. **Annual Pesticide Sales Reports.** Pesticide dealers licensed to sell limited and restricted use pesticides must provide the Board with a calendar year-end report of total sales of all limited, restricted and general use pesticides before their pesticide dealer license can be renewed. The Board will furnish report forms.
- C. **Spray Incident Reports**
- I. Commercial agricultural producers, commercial applicators, spray contracting firms and licensed pesticide dealers shall be responsible for telephoning a spray incident report to the Board as soon as practicable after emergency health care has been obtained for injured parties and efforts have been initiated to contain any spills.
- II. A reportable spray incident is any significant misapplication or accidental discharge of a pesticide. Such incidents shall include: fires involving pesticides; vehicle and aircraft accidents resulting in a spill or human contamination; failure to turn off spray booms or other spray equipment resulting in application to sensitive areas (such as water bodies, accidentally applying pesticides to the wrong site or places of human habitation) when such application is a violation of label instructions or other law; overfilling of spray equipment resulting in risk of contamination of water; and any other equipment breakage or malfunction or pesticide handling activity which causes a pesticide release which may result in a threat to human health or the environment.
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STATUTORY AUTHORITY: Title 22 M.R.S. Chapter 258-A §1471-G, M and R

EFFECTIVE DATE:

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

AMENDED:

August 12, 1985 - filing 85-275

REPEALED AND REPLACED:

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

AMENDED:

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

November 11, 2001 - filing 2001-483

March 5, 2003 - filing 2003-61

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

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

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

July 23, 2019 – filing 2019-133

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS

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

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

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

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

Section II. Forest Insect Applications

A. Responsible Parties

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

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

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

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

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

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

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

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

Section III. Ornamental Plant Applications

A. Responsible Parties

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

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

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

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

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

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

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

A. Responsible Parties

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

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

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

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

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

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

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

Section V. Biting Fly and Public Health Pest Applications

A. Responsible Parties

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

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

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

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

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

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

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

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

1. **Written notice to the Board**

- a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
- b. The date or dates on which spraying is proposed to take place.
- c. A description of the delivery mechanism which shall include the name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
- d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
- e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice or the notice given to person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site.
- f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.

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

- a. A description of the general area the proposed application activity will take place.
- b. The date or dates on which spraying is proposed to take place.
- c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.

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

Section VII. Emergencies

A. Disease Vectors

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

B. Other Emergencies

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

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

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

EFFECTIVE DATE:

August 12, 1985

AMENDED:

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

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

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

CORRECTIONS:

February, 2014 - agency names, formatting

AMENDED:

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

§ 171.201 Requirements for direct supervision of noncertified applicators by certified applicators.

(a) Applicability. This section applies to any certified applicator who allows or relies on a noncertified applicator to use a restricted use pesticide under the certified applicator's direct supervision.

(b) General requirements.

(1) Requirements for the certified applicator.

(i) The certified applicator must have a practical knowledge of applicable Federal, State and Tribal supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by noncertified applicators.

(ii) The certified applicator must be certified in each category as set forth in §§ 171.101 and 171.105(a) through (f) applicable to the supervised pesticide use.

(2) Requirements for the noncertified applicator. The certified applicator must ensure that each noncertified applicator using a restricted use pesticide under his or her direct supervision meets all of the following requirements before using a restricted use pesticide:

(i) The noncertified applicator has satisfied the qualification requirements under paragraph (c) of this section.

(ii) The noncertified applicator has been instructed within the last 12 months in the safe operation of any equipment he or she will use for mixing, loading, transferring, or applying pesticides.

(iii) The noncertified applicator has met the minimum age required to use restricted use pesticides under the supervision of a certified applicator.

A noncertified applicator must be at least 18 years old, except that a noncertified applicator must be at least 16 years old if all of the following requirements are met:

(A) The noncertified applicator is using the restricted use pesticide under the direct supervision of a private applicator who is an immediate family member.

(B) The restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate.

(C) The noncertified applicator is not applying the restricted use pesticide aerially.

(3) Use-specific conditions that must be met in order for a noncertified applicator to use a restricted use pesticide. The certified applicator must ensure that all of the following requirements are met before allowing a noncertified applicator to use a restricted use pesticide under his or her direct supervision:

(i) The certified applicator must ensure that the noncertified applicator has access to the applicable product labeling at all times during its use.

(ii) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the certified applicator must ensure that any noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.

(iii) The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The certified applicator must provide this information in a manner that the noncertified applicator can understand.

(iv) The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.

(v) The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.

(vi) The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

(vii) If the certified applicator is a commercial applicator, the certified applicator must create or verify the existence of the records required by paragraph (e) of this section.

(c) *Noncertified applicator qualifications.* Before any noncertified applicator uses a restricted use pesticide under the direct supervision of the certified applicator, the supervising certified applicator must ensure that the noncertified applicator has met at least one of the following qualifications:

- (1) The noncertified applicator has been trained in accordance with paragraph (d) of this section within the last 12 months.
- (2) The noncertified applicator has met the training requirements for an agricultural handler under 40 CFR 170.501 of this title within the last 12 months.
- (3) The noncertified applicator has met the requirements established by a certifying authority that meet or exceed the standards in § 171.201(c)(1).
- (4) The noncertified applicator is currently a certified applicator but is not certified to perform the type of application being conducted or is not certified in the jurisdiction where the use will take place.

(d) *Noncertified applicator training program.*

- (1) General noncertified applicator training must be presented to noncertified applicators either orally from written materials or audiovisually. The information must be presented in a manner that the noncertified applicators can understand, such as through a translator. The person conducting the training must be present during the entire training program and must respond to the noncertified applicators' questions.
- (2) The person who conducts the training must meet one of the following criteria:
 - (i) Be currently certified as an applicator of restricted use pesticides under this part.
 - (ii) Be currently designated as a trainer of certified applicators or pesticide handlers by EPA, the certifying authority, or a State, Tribal, or Federal agency having jurisdiction.
 - (iii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers under 40 CFR part 170.
- (3) The noncertified applicator training materials must include the information that noncertified applicators need in order to protect themselves, other people, and the environment before, during, and after making a restricted use

pesticide application. The noncertified applicator training materials must include, at a minimum, the following:

- (i)** Potential hazards from toxicity and exposure that pesticides present to noncertified applicators and their families, including acute and chronic effects, delayed effects, and sensitization.
- (ii)** Routes through which pesticides can enter the body.
- (iii)** Signs and symptoms of common types of pesticide poisoning.
- (iv)** Emergency first aid for pesticide injuries or poisonings.
- (v)** Routine and emergency decontamination procedures, including emergency eye flushing techniques. Noncertified applicators must be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water. Noncertified applicators must also be instructed to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible.
- (vi)** How and when to obtain emergency medical care.
- (vii)** After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
- (viii)** Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides.
- (ix)** Potential hazards from pesticide residues on clothing.
- (x)** Wash work clothes before wearing them again and wash them separately from other clothes.
- (xi)** Do not take pesticides or pesticide containers used at work to your home.
- (xii)** Potential hazards to children and pregnant women from pesticide exposure.
- (xiii)** After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.
- (xiv)** How to report suspected pesticide use violations to the appropriate State or Tribal agency responsible for pesticide enforcement.
- (xv)** Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and

meaning of the restricted use **product** statement, how to identify when the labeling requires the certified **applicator** to be physically present during the use of the **pesticide**, and information on **personal protective equipment**.

(xvi) Need for, and appropriate use and removal of, **personal protective equipment**.

(xvii) How to recognize, prevent, and provide first aid **treatment** for heat-related illness.

(xviii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xix) Environmental concerns such as drift, runoff, and wildlife hazards.

(xx) **Restricted use pesticides** may be used only by a certified **applicator** or by a **noncertified applicator** working under the direct supervision of a certified **applicator**.

(xxi) The certified **applicator's** responsibility to provide to each **noncertified applicator** instructions specific to the site and **pesticide** used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and **ground water**, endangered species, local population, and risks) and the conditions of application (e.g., equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The certified **applicator** must provide these instructions in a manner the **noncertified applicator** can understand.

(xxii) The certified **applicator's** responsibility to ensure that each **noncertified applicator** has access to the applicable **product** labeling at all times during its use.

(xxiii) The certified **applicator's** responsibility to ensure that where the labeling of a **pesticide product** requires that **personal protective equipment** be worn for mixing, loading, application, or any other use activities, each **noncertified applicator** has clean, labeling-required **personal protective equipment** in proper operating condition and that the **personal protective equipment** is worn and use correctly for its intended purpose.

(xxiv) The certified **applicator's** responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying **pesticides** is in proper operating condition as intended by the **manufacturer**, and can be

used without risk of reasonably foreseeable adverse effects to the **noncertified applicator**, other persons, or the environment.

(xxv) The certified **applicator's** responsibility to ensure that a means to immediately communicate with the certified **applicator** is available to each **noncertified applicator** using **restricted use pesticides** under his or her direct supervision.

(e) Recordkeeping.

(1) **Commercial applicators** must create or verify the existence of records documenting that each **noncertified applicator** has the qualifications required in **paragraph (c)** of this section. For each **noncertified applicator**, the records must contain the information appropriate to the method of qualification as provided in paragraphs (e)(1)(i) through (e)(1)(iv).

(i) If the **noncertified applicator** was trained in accordance with **paragraph (c)(1)** of this section, the record must contain all of the following information:

(A) The **noncertified applicator's** printed name and signature.

(B) The date the training requirement in **paragraph (c)** of this section was met.

(C) The name of the **person** who provided the training.

(D) The title or a description of the training provided.

(ii) If the **noncertified applicator** was trained as an agricultural handler under **40 CFR 170.501** in accordance with **paragraph (c)(2)** of this section, the record must contain all of the information required at **40 CFR 170.501(d)(1)**.

(iii) If the **noncertified applicator** qualified by satisfying the requirements established by the **certifying authority**, as described in **paragraph (c)(3)** of this section, the record must contain the information required by the **certifying authority**.

(iv) If the **noncertified applicator** is a certified **applicator** who is not certified to perform the type of application being conducted or not certified in the jurisdiction where the use will take place, as described in **paragraph (c)(4)** of this section, the record must include all of the following information:

(A) The **noncertified applicator's** name.

(B) The **noncertified applicator's** certification number.

(C) The expiration date of the **noncertified applicator's** certification.

(D) The certifying authority that issued the certification.

(2) The commercial applicator must create or verify the existence of the record containing the information in paragraph (e)(1) of this section before allowing the noncertified applicator to use restricted use pesticides under his or her direct supervision.

(3) The commercial applicator supervising any noncertified applicator must have access to records documenting the information required in paragraph (e)(1) of this section at the commercial applicator's principal place of business for two years from the date the noncertified applicator used the restricted use pesticide.

(f) **Exceptions.** The requirements in § 171.201(a) through (e) of this part do not apply to the following persons:

(1) Persons conducting laboratory research involving restricted use pesticides.

(2) Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

**DEPARTMENT OF ATTORNEY GENERAL
CONTINUING LEGAL EDUCATION COMMITTEE**

***THE ADMINISTRATIVE PROCEDURE ACT:
AGENCY RULEMAKING***

**January 26, 2001
University of Maine at Augusta
Augusta, Maine**

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I. DEVELOPMENT OF DRAFT RULE BY THE AGENCY

A. "Rule" v. "Policy" or "Guideline" §§ 8002(9), 8057(1)

general applicability
intended to be judicially enforceable (same legal force as a statute), and
implements or interprets a law or describes the agency's procedures or
practices

An agency is not required to use the formal rulemaking procedures every time it makes a decision interpreting an existing rule. Fryeburg Health Care Center v. DHS, 734 A.2d 1141, 1144 (Me. 1999); Mitchell v. Maine Harness Racing Comm'n, 662 A.2d 924, 927 (Me. 1995).

Courts have found agency policies or methodologies to be invalid because they constituted rules that were not adopted pursuant to the MAPA. Fulkerson v. Comm'r, Dept. of Human Services, 628 A.2d 661 (Me. 1993) (DHS copayment provisions constitute "rules" subject to MAPA); New England Whitewater Center, Inc. v. Department of Inland Fisheries and Wildlife, 550 A.2d 56 (Me. 1988) (changes in process for allocating minimum daily number of passengers to whitewater rafting outfitters constituted rulemaking, thus allocations were invalid for failure of IFW to comply with MAPA).

B. Consensus-based Rule Development Process §§ 8002(3-C), 8051-B, 8060(1)(A)

This is a collaborative process where the draft rule is developed by the agency and a representative group of participants with an interest in the subject of the rulemaking. § 8002(3-C) Under this process, a draft rule is developed jointly by the agency and a group of interested persons. The agency retains sole discretion:

- over whether to submit the rule as a proposed rule, and
- as to the final language of the proposed rule. § 8051-B

The procedures for establishing the representative group of participants and keeping records of their meetings and decisions are found at §§ 8051-B(2) & (3).

An agency action to engage in or terminate a consensus-based rule development process is not subject to judicial review. § 8051-B(4)

C. Factors to Consider During Rule Development

1. Statutory Authority

Statutory Authority to Adopt Rule: Identify the state law that gives the agency specific rulemaking authority. § 8057-A(1)

The MAPA provisions do not relieve any agency of the responsibility to comply with any statute requiring that its rules be filed with or approved by any designated persons before they become effective. § 8057(3)

Consistency With Underlying State or Federal Law or Regulations § 8052(8)

If there is an inconsistency between a rule and the enabling law under which it was adopted, the law controls. *Therault v. Brennan*, 488 F. Supp. 286 (D.Me. 1980)

Most rules function to implement and interpret the statute administered by the agency. If a dispute were to arise in court over the agency's interpretation of the statute it administers or its regulations, the agency's interpretation will be given great deference. *National Industrial Constructors, Inc. v. Superintendent of Insurance*, 655A.2d 342, 345 (Me. 1995); *Abbott v. Comm'r in Inland Fisheries and Wildlife*, 623 A.2d 1273, 1275 (Me. 1993). However, the plain meaning of the statute always controls over an inconsistent administrative interpretation. *National Industrial Constructors, Inc.* at 345.

Delegation Doctrine Me. Const. Art. III, § 2 & Art. I § 6-A

A Legislative delegation of rulemaking authority must be accompanied by adequate standards and safeguards to assure that the delegation is not abused.

Adequate standards exist where "the legislation clearly reveals the purpose to be served by the regulations, explicitly defines what can be regulated for that purpose, and suggests the appropriate degree of regulation." *Lewis v. State Department of Human Services*, 433 A.2d 743, 748 (Me. 1981)

2. Agency Regulatory Agenda §§ 8053-A(2) & (3), 8060, 8064

Except for emergency rules, an agency may not adopt any rule unless the agency has listed the rule on its regulatory agenda. §§ 8060(6), 8064

When an agency proposed a rule not in its current regulatory agenda, the agency must file an amendment to its agenda with the Legislature and Secretary of State under section 8053-A at the time of rule proposal.
§ 8064

Contents: rules agency expects to propose prior to the next regulatory agenda due date (including amended, repealed, suspended rules - 8002(9)), whether the agency anticipates engaging in any consensus-based rule development process, and list of all emergency rules adopted since the previous regulatory agenda due date. § 8060(1)

3. Specific MAPA Rulemaking Requirements Regarding Fiscal Impact, Etc.

Goals and Objectives of the Rule §§ 8057-A(1)

All Relevant Information Regarding Economic, Environmental, Fiscal and Social Impact of the Rule §§ 8052(4), 8057-A

Economic Burden on Small Businesses §§ 8052(5-A), 8057-A(1)(D)

The agency must seek to reduce any economic burdens through flexible or simplified reporting requirements.

Fiscal Impact on Municipalities and Counties § 8063

The agency must estimate the cost to municipalities and counties for implementing or complying with the proposed rule, if any. A fiscal note describing this fiscal impact must be attached to the proposed rule before formal rulemaking is initiated.

Fiscal note requirement not applicable to emergency rules.
Unfunded mandate?

Plain English § 8061

Performance Standards § 8062

4. Incorporation of Other Standards by Reference § 8056(1)(B)

The reference in the rules must fully identify the incorporated rules by exact title, edition or version and the date of publication. § 8056(B)(2)

Cannot incorporate standards as they may be updated by the outside agency or organization in the future. An agency may only adopt the outside material as it exists at the time of adoption. If the agency wants to be able to enforce the incorporated standard when IT is updated, then it must initiate rulemaking at that time to amend its own rule to refer to updated standard.

If an agency refers to or requires compliance with another of its own rules in the proposed rule, the agency need not incorporate that other agency rule by reference

A rule may incorporate by reference a fact or event that has independent significance, such as: (these 2 cases deal with statutory provisions)

Commission of Pharmacy's requirement that pharmacists have a degree from a pharmacy school accredited by the American Council on Pharmaceutical Education even though list of accredited schools subject to change. Lucas v. Maine Commission of Pharmacy, 472 A.2d 904, 909 (Me. 1984)

Use by State Tax Assessor of the national Consumer Price Index published by the U.S. Department of Labor in assessing state tax even through CPI to be determined in the future. Opinion of the Justices, 460 A.2d 1341, 1348 (Me. 1982)

5. Effective Date §§ 8002(3-A), 8052(6), 8072(8)

Routine technical rules: Unless the agency otherwise specifies, the effective date is 5 days after the adopted rule is filed with the Secretary of State. Emergency rules are effective on the date the rule is filed with the Secretary of State. §§ 8002(3-A), 8052(6)

Major substantive rules are effective 30 days after the agency has finally adopted the rule, after the Legislative has reviewed the rule and given its approval for the agency to proceed with final adoption. § 8072(8)

"Sunset" Date: Usually rules go into effect and stay in effect until they are repealed in a separate rulemaking process. However, a rule can be adopted with a "sunset" provision, i.e. the rule will be automatically repealed on a specific date.

Both effective and "sunset" dates can be dependent upon the occurrence or nonoccurrence of an event. In the latter case, notice must be provided to the Secretary of State that the triggering event has occurred.

6. Unfunded State Mandates Me. Const. Art.19, §21, 30-A M.R.S.A. § 5658

Article 19, Section 21 of the Maine Constitution prevents the State from imposing any new mandate on municipalities, counties and other local units of government unless the Legislature provides 90% of the funds required on an annual basis or unless the Legislature approves such action by 2/3 vote. The legislation implementing the constitutional amendment is found at 30-A M.R.S.A. § 5658.

That statute defines “mandate” as “any law, rule or executive order of this State enacted, adopted or issued after November 23, 1992 that requires a local unit of government to expand or modify that unit’s activity so as to necessitate additional expenditures from that units local revenues.”
30-A M.R.S.A. § 5658(1)(C)

7. Takings Me. Const. Art. I, § 21, § 8056(6)

The MAPA specifically states that “[t]he Attorney General may not approve a rule if it is reasonably expected to result in an taking of private property under the Constitution of Maine unless such a result is directly by law or sufficient procedures exist in law or in the proposed rule to allow for a variance designed to avoid such a taking.” § 8056(6)

A regulatory taking occurs when property is regulated to such an extent that it deprives the landowner of all economic use of the property, taking into account the reasonable expectations of the property owner and preexisting principles of nuisance and real estate law prior to the onset of the regulations.

Lucas v. South Carolina Coastal Council, 113 S.Ct. 2264 (1993); Hall v. Board of Environmental Protection, 528 A.2d 453 (Me. 1987).

8. Enforceability/Unconstitutionally Vague Provisions

The rule must be written clearly enough that it gives regulated entities and individuals specific advance notice of the criteria they must meet and gives agencies sufficient guidance to assure that essential determinations are not left to personal whim or arbitrary discretion.

For a good discussion of caselaw, see Kosalka v. Town of Georgetown, 752 A.2d 183 (Me. 2000) (shoreland zoning ordinance requirement that all development must “conserve natural beauty” is unconstitutionally vague).

9. Nonregulatory Material in the Rule

Summary statements, “notes” added to rule text, and the basis statement/response to comments not part of the rule and need not be formally adopted. Nor are they enforceable.

10. Proper Format § 8056(1)(B)

The MAPA provides that all adopted rules must be filed with the Secretary of State in a specific format prescribed by the Secretary of State. See the Guide to Rulemaking.

D. Agency Recordkeeping During Rule Development §§ 8052(5)(B), 8057-A

Maintain a file of all information relevant to the rule that is being considered by the agency in developing the rule. § 8052(5)(B)

If consensus-based rule development process was used, keep records of all meetings and information shared in accordance with § 8051-B.

Gather information required to prepare the Fact Sheet to be provided to the Legislature at the time formal rulemaking is initiated (or, for emergency rules, within 10 days following adoption). §§ 8053-A, 8057-A

II. FORMAL RULEMAKING – PROPOSED AGENCY RULE

A. Definition of “Proposed Rule” §§ 8002(8-A), 8053(5), 8056

Means a rule that an agency has formally proposed for adoption by filing it with the Secretary of State. 8002(8-A) Once a draft rule has been filed with the SOS as a proposed rule, it becomes a “proposed agency rule” subject to all of the procedural requirements of the MAPA concerning public input.

B. Strict Adherence to Formal Rulemaking Process § 8052(1)

1. “Ex Parte” Contacts

Agency decisionmakers: While the ex parte provisions of MAPA § 9055 do not strictly apply to rulemaking proceedings, the MAPA process for receiving public input during rulemaking may not be ignored. All comments must be presented to the agency in the manner outlined in the MAPA.

Agency staff: Because agency staff are not decisionmakers, there is no bar on outside discussion of the proposed rule between staff and interested persons. But if the comments relayed to staff are to be considered by the agency decisionmaker(s) with authority to adopt the rule, they must be timely submitted in writing to be included in the rulemaking record.

2. "Meeting" v. "Hearing" § 8052(1)

"A public meeting or other public forum held by an agency for any purpose that includes receiving public comments on a proposed agency rule is a public hearing and is subject to all the provisions of this subchapter regarding public hearings." § 8052(1)

C. Notice of Proposed Rulemaking to Secretary of State, Public and Legislature §§ 8053, 8053-A(1) & (3)

See Secretary of State's Guide to Rulemaking

The Secretary of State's weekly consolidated rulemaking ad published in newspapers around the state each Wednesday § 8053(3)

Providing notice of a proposed rule is the one of three times the MAPA requires the agency to submit a notice for publication in the Secretary of State's consolidated rulemaking ad:

- Notice of proposed rule
- Notice of an extension of the written comment period for a proposed rule
- Notice of an adopted rule

Date of publication is important because the written comment period and the date of any hearing held on the proposed rule is based on this date.

At the time of rule proposal, the agency must file with the Legislature a fact sheet and, if the rule is not in the agency's current regulatory agenda, an amendment to the agency's regulatory agenda. §§ 8053-A(1) & (3), 8064

D. Public Proceedings – How Comments Received

1. Rulemaking With Hearing §§ 8052(1) & (2)

The MAPA itself does not require a hearing. A hearing will be held on a proposed rule whenever the agency chooses to schedule a hearing, a statute requires a hearing, or 5 or more people request a hearing after a proposed rule has been filed with a written comment period only. The MAPA requirements for hearings in adjudicatory proceedings do not apply to rulemaking hearings. § 8052(2)

The MAPA does require that, where a board or commission has rulemaking authority, at least 1/3 of the board or commission members be present at the rulemaking hearing. The MAPA also specifies who may conduct the hearing. § 8052(2)

The Guide to Rulemaking also contains specific suggestions for the conduct of rulemaking hearings..

Notice and Written Comment Period §§ 8053(1), (2) & (5)

Continuing or postponing a hearing – more notice required

The MAPA requires that the written comment period following a hearing be a minimum of 10 days. § 8052(3) It may be advisable to make this a longer period, perhaps as much as 30 days, if the agency thinks it may want to reopen the record for further written comments.

2. Rulemaking Without Hearing § 8053(1)

Notice and Written Comment Period §§ 8053(1), 8053(5)(A)

E. Reviewing Public Testimony and Comments

1. Agency Recordkeeping

The MAPA imposes strict recordkeeping requirements on the agency at this juncture -- the rulemaking file must contain all testimony and comments, the names of persons who commented and the organizations they represent. § 8052(5)(B)

2. Response to Comments

The agency must evaluate each comment and decide whether to make changes to the proposed rule based on the specific concerns expressed. § 8052(5) In its Response to Comments, the agency must address the specific comments and concerns expressed about any proposed rule and state its rationale for:

adopting any changes from the proposed rule,
failing to adopt the suggested changes, or
drawing findings and recommendations that differ from those
expressed about the proposed rule.

The MAPA § 8052(5)(B) provides that a rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that

the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule.

Deliberations By Multi-member Agencies: Be careful this does not turn into a public hearing.

F. Reopening Record for Further Written Comments if Rule to be Adopted “Substantially Different” from Proposed Rule §§ 8052(5)(B) & (7)

The MAPA requires that the agency reopen the rulemaking record and allow further written comment concerning the changes from the proposed rule if the agency determines that the rule to be adopted is “substantially different” from the proposed rule. § 8052(5)(B)

“Substantially different”: Would the affected public understand the change to be one within the broad scope of the original rulemaking proposal, or would it feel that it had not had an opportunity to comment on a significant change to its detriment?

Notice that written comment period extended (or reopened) for a period of 30 days § 8052(5)(B)

The notice must be published within 14 days after the most recently published written comment deadline. § 8052(7) Given the 8 day lead time required by the Secretary of State for the consolidated rulemaking ad, which occurs only on Wednesdays, this does not give the agency much time to review all the testimony and comments, conclude that substantial changes are needed, and reopen the record. Therefore, in a matter where the agency wants to reserve as much flexibility as possible, it is advisable to have a written comment period lasting more than the 10 day statutory minimum following a hearing. With a longer comment period following a hearing, say 30 days, the agency has more time to review the comments as they come in and to make a determination regarding the changes to the proposed rule that may be needed.

G. Preparation of Basis Statement and Response to Comments

1. Basis Statement § 8052(5)

Explain the factual and policy basis for the rule. § 8052(5)

Identify the underlying federal or state law or regulation which serves as the basis of the rule. § 8052(8)

Describe the information developed by the agency during the comment period concerning the purpose and operation of the rule, its fiscal impact, etc. §§ 8057-A(3) & (4)

2. Response to Comments § 8052(5)

List names of persons whose comments were received, including through testimony at hearings, the organizations they represent and summaries of their comments.

If the same or similar comments or concerns about a specific issue were expressed by different persons or organizations, the agency may synthesize these comments and concerns to be addressed by the agency, listing the names of the persons who commented and the organizations they represent.

The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

III. ADOPTION AND AG APPROVAL OF ROUTINE TECHNICAL RULE

A. Deadlines for Adoption and AG approval §§ 8052(7)(A) & (B)

Adoption within 120 days of the last written comment deadline

AG approval within 150 days of the last written comment deadline

The 120 and 150 day deadlines start again when the agency reopens the rulemaking record for further written comments.

For a major substantive rule, the 120 day and 150 day deadlines apply to the provisional adoption of the rule, not final adoption. § 8072

B. Adoption by Agency Decisionmakers §§ 8002(1-A) & (3-B)

Final adoption of a routine technical rule occurs when the rule is signed by an agency head or voted on by a board or commission at a public meeting. 8002(1-A) & (3-B)

Record of vote: The agency must keep and make available for inspection a record of the vote of each member of the agency taken in the rulemaking proceedings. 8056(5)

C. Approval by AAG as to Form and Legality 8052(7)(B), 8056(1)(A), 8056(6)

AG review and approval of an adopted rule may not be performed by any person involved in the formulation or drafting of the proposed rule. 8056(6) Ask a colleague to review the rule.

D. Notice of Adopted Rule to Secretary of State, Public and Legislature

The agency submits to the Secretary of State a package consisting of the adopted rule, basis statement, response to comments, checklist, a copy of the fact sheet and a copy of any matter incorporated by reference 8053(5), 8053-A(4), 8056(1)(B), 8056-A, 8057-A(4)

This is the package that is sent to the AAG for review as to form and legality. If this is the first time the AAG has seen the rule, it is important for the AAG to consider each of the factors discussed earlier and all of the procedural requirements of the MAPA.

Minor errors may be corrected at this point if the 120 day deadline for adoption has not yet passed. The agency can re-adopt the rule as corrected and the AG can approve.

E. Post-adoption

Secretary of State correction of minor errors (nonsubstantive typographical, errors in numbering) 8056(10)

Electronic filing with Secretary of State 8056(7) & (8); 29 CMR 800

Publication of rules: Adopted rules must be published and made available to the public by the agency and the Secretary of State. 8056(1)(C), (2), (3), (7) & (9)

Note: agency must also publish forms, instructions and guidelines 8056(4)

IV. EMERGENCY RULEMAKING FOR ROUTINE TECHNICAL RULES
§§ 8002(3-A), 8053-A, 8054, 8060(1)(F) & (6), 8064

This is a fast track procedure for rulemaking that is limited to situations where the agency determines that adherence to the time-consuming notice and comment requirements might result in dangerous delay, preventing rules from having the necessary effect. § 8054

Agency may vary from the normal rulemaking procedures to the minimum extent necessary. § 8054

Effective date: date the adopted emergency rule is filed with the Secretary of State. § 8002(3-A)

Fact Sheet to be provided to the Legislature within 10 days following adoption of emergency rules. § 8053-A

Need not list in regulatory agenda §§ 8060(6), 8064; but regulatory agenda must list all emergency rules adopted since the previous regulatory agenda due date. § 8060(1)(F)

Limited period of effectiveness: An emergency rule is in effect only for 90 days, after which the rule must be adopted through the regular rulemaking process. § 8054(3)

Existence of an emergency: The emergency rule shall include, with specificity, agency findings with respect to:

the existence of an emergency (immediate threat to public health, safety or general welfare)

no emergency when the primary cause of the emergency is delay caused by the agency involved

the extent to which the MAPA provisions governing notice and the acceptance of public comment must be modified in order to mitigate or alleviate the threat found

The agency's findings are subject to judicial review. § 8054(2)

V. RULEMAKING INITIATED BY CITIZEN PETITION § 8055

Any person may petition an agency for the adoption or modification of any rule, on a form designated by the agency for this purpose. §§ 8055(1) & (2)

The Secretary of State has a form agencies can use.

Within 60 days of receiving a citizen rulemaking petition, the agency must either deny the petition in writing, stating the reasons for the denial, or initiate rulemaking proceedings. § 8056(3)

The agency is required to initiate rulemaking proceedings within 60 days if:

Petition is submitted by 150 or more registered voters of the state; petition must be verified and certified by the Secretary of State prior to its presentation to the agency. § 8056(3)

A citizen rulemaking petition is defective unless it is accompanied by an actual rule text. The Secretary of State's form for citizen rulemaking petitions requires that the rule text be attached. This requirement is necessary in order to prevent citizens from asking agencies to initiate rulemaking on some broad subject which would then require the agency to begin the sometimes lengthy process of drafting a rule.

VI. REQUIREMENT THAT AGENCIES ADOPT RULES OF PRACTICE
§ 8051

The MAPA requires each agency to adopt rules of practice governing:

Conduct of adjudicatory proceedings
Licensing proceedings
Rendering of advisory rulings – see § 9001 for required elements of rules regarding advisory rulings

... unless these types of rules are already provided by law. § 8051

If a rule of practice imposes a time limit or deadline for the filing of any papers on the agency or a party, the MAPA sets out standard provisions governing when the filing is complete. § 8051(1) & (2)

ADR: The first time after October 1, 1995 that an agency proposes to adopt or amend existing rules of practice, it shall also propose any rules reasonably necessary to promote the use of alternative dispute resolution techniques. § 8051

If the agency determines that it is unnecessary or inappropriate to propose ADR techniques into its rules of practice, it must state so in the notice of proposed rulemaking provided to the public and the Secretary of State, and again in the basis statement filed with the adopted rule. § 8051

VII. JUDICIAL REVIEW OF RULES

A. Collateral Attack in 80C appeals § 11007

Most court challenges to rules occur in the context of an 80C appeal of final agency action, in which an aggrieved party argues that the agency rule applied to him/her in an adjudicatory action is void or inapplicable.

“Rules” are generally open to collateral attack in an 80C appeal of final agency action. Gross v. Secretary of State, 562 A.2d 667 (Me. 1989); Fisher v. Dame, 433A.2d 366, 372 & n.8 (Me. 1981)

B. Direct Challenge to Rule § 8058

Under section 8058 a plaintiff may bring a declaratory judgment action to seek review of an agency rule per se, absent a specific adjudicatory action. This is a direct challenge to the validity of the rule.

Under section 8058(1), an adopted rule may be declared invalid when:

1. The rule exceeds rulemaking authority of agency.
2. Agency has failed to comply with certain procedural requirements involving public participation (notice, hearing, comment requirements) § 8057(1) or (2)

Failure to adhere to the provisions of sections 8052(1),(2),(3),(4) & (7), 8053 and 8054 renders the rule void, except that insubstantial deviations from the requirements of section 8053 (involving notice) shall not invalidate the rule. § 8057(1)

Rules not approved by the AG and filed with the Secretary of State as required by sections 8056(1)(A) & (B) are void. § 8057(2)

3. Agency has failed to comply with any other procedural error if the error rises to the level that, if the error had not occurred, the rule would have likely been significantly different.
4. The rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

Remember the court’s deference to agency interpretation of both law it administers and own rules.

Under section 8058, a person may also bring a declaratory judgment action to seek review of the agency's refusal or failure to adopt a rule where the adoption of a rule is required by law. If the court finds that an agency has failed to adopt a rule as required by law, the court may issue such orders as are necessary and appropriate to remedy such failure. § 8058(1)

No exhaustion of administrative remedies required: Need not bring an action under 8058 in order to bring an 80C appeal of final agency action under section 11007. The failure to seek judicial review under section 8058 does not preclude judicial review of rules in any other civil or criminal proceedings. § 8058(2)

VIII. MAJOR SUBSTANTIVE RULEMAKING §§ 8052(5)(C), 8071-8074

Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 103: PRODUCTS CONTROLLED

**§610. DETERMINATIONS; RULES; RESTRICTED USE PESTICIDES;
UNIFORMITY**

1. Determinations. The board may by rule:

A. Declare as a pest any form of plant or animal life, except viruses, bacteria or other microorganisms on or in living human beings or other living animals, that is injurious to health or the environment;

[2005, c. 2, §8 (COR).]

B. Determine whether pesticides registered under the authority of FIFRA, Section 24(c) are highly toxic to human beings. [2005, c. 620, §10 (AMD).]

C. Determine whether pesticides or quantities of substances contained in pesticides are injurious to the environment. The board must be guided by EPA regulations in this determination; and [2005, c. 620, §10 (AMD).]

D. Require any pesticide to be colored or discolored if it determines that such a requirement is feasible and is necessary for the protection of health and the environment. [2005, c. 620, §10 (AMD).]

[2005, c. 2, §8 (COR) .]

2. Rule-making powers. The board may adopt other rules that it determines necessary to carry out the provisions of this subchapter. The board's rule-making authority includes, but is not limited to, rules:

A. Providing for the collection, examination and reporting of samples of pesticides or devices; [2005, c. 620, §10 (AMD).]

B. Providing for the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; [2005, c. 620, §10 (AMD).]

C. Establishing requirements of all pesticides required to be registered under provisions of this subchapter, provided that such rules do not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA; [2005, c. 620, §10 (AMD).]

D. Specifying classes of devices that are subject to the provisions of section 605, subsection 1; [2005, c. 620, §10 (AMD).]

E. Governing pesticide application, including, but not limited to, rules:

(1) Designed to minimize pesticide drift to the maximum extent practicable under currently available technology;

(2) Prescribing procedures to be used for the application of pesticides, including the time, place, manner and method of that application;

(3) Restricting or prohibiting the use of pesticides in designated areas or during specified periods of time; and

(4) Prescribing tolerance levels for pesticide residues in off-target areas; [2005, c. 620, §10 (NEW).]

F. Prescribing the submission of information necessary for the board to undertake its responsibilities under this subchapter; [2005, c. 620, §10 (NEW).]

G. Prescribing requirements as necessary to carry out the provisions of section 607; [2005 , c . 620 , §10 (NEW) .]

H. Governing the registration and the cancellation and suspension of registration of pesticides pursuant to section 609; and [2005 , c . 620 , §10 (NEW) .]

I. For the purpose of achieving uniformity of requirements between the states and the Federal Government, provided the rules are in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and criteria for classifying pesticides for restricted use, as established by EPA or other federal or state agencies. [2005 , c . 620 , §10 (NEW) .]

[2005 , c . 620 , §10 (AMD) .]

3. Uniformity of requirements; restricted uses.

[2005 , c . 620 , §10 (RP) .]

4. Designation of rules. Rules adopted under this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless otherwise specified or designated in accordance with subsection 5.

[2005 , c . 620 , §10 (NEW) .]

5. Review of regulatory agenda; designation as major substantive rules. Notwithstanding Title 5, section 8060, subsection 2, the due date for the submission of a regulatory agenda by the board under section 8060 is January 15th. The board shall annually submit a regulatory agenda complying with Title 5, section 8060, subsection 1 to the joint standing committee of the Legislature having jurisdiction over pesticides regulation. The legislative committee of jurisdiction shall complete its review of the board's regulatory agenda no later than February 15th of each year. The committee may report out legislation no later than February 20th to designate any rule on the board's regulatory agenda as a major substantive rule subject to legislative review under Title 5, chapter 375, subchapter 2-A.

[2005 , c . 620 , §10 (NEW) .]

6. Major substantive rules. Rules proposed for adoption by the board after July 1, 2007 that pertain to topics specified in paragraphs A to E are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules in effect on July 1, 2007 that pertain to topics specified in paragraphs A to E continue in effect, except that proposed amendments to those rules are major substantive rules and must be reviewed and approved prior to final adoption in accordance with Title 5, section 8072. Rules proposed for adoption by the board after March 1, 2008 that pertain to topics specified in paragraphs F and G are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules in effect on March 1, 2008 that pertain to topics specified in paragraph G continue in effect, except that proposed amendments to those rules are major substantive rules and must be reviewed and approved prior to final adoption in accordance with Title 5, section 8072. Topics governed by this subsection are:

A. Drift from outside spraying; [2007 , c . 145 , §1 (NEW) .]

B. Notification requirements for outside spraying; [2007 , c . 145 , §1 (NEW) .]

C. Pesticides applications in occupied buildings; [2007 , c . 145 , §1 (NEW) .]

D. A notification registry for indoor applications of pesticides; [2007 , c . 484 , §2 (AMD) .]

E. Buffers from shorelines for broadcast applications of pesticides; [2007 , c . 484 , §2 (AMD) .]

F. Use of organophosphate pesticides adjacent to occupied areas; and [2007 , c . 484 , §2 (NEW) .]

G. Distribution and use of plant-incorporated protectants. [2007, c. 484, §2 (NEW).]

[2007, c. 484, §2 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §§62,63 (AMD). 1989, c. 878, §E9 (AMD). RR 2005, c. 2, §8 (COR). 2005, c. 620, §10 (AMD). 2007, c. 145, §1 (AMD). 2007, c. 484, §2 (AMD).

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Describing the nature of herbicide applications on school grounds in Maine.

Synopsis: BPC collected records from all applicators conducting herbicidal pesticide treatments on school grounds for 2020 and 2021. This document presents the data that were collected.

This document presents information on:

Application locations.....	2
Number of applications	3
Complete list of brand names of products used.....	3
Seasonality patterns	4
Time of day patterns.....	5
Size of area treated.....	6
Treated area types (sites) and target pests	9
Active ingredient names used.....	10
Total amount of active ingredients used	11
Methods of application.....	13
Products used but not registered in Maine	13

Methods: BPC identified applicators making herbicide applications to school grounds via a combination of email solicitation and reviewing school IPM records. Applicators were contacted via email and phone to collect their complete records sets for all applications made to school grounds in 2020 and 2021. Given that the initial call for records occurred in fall 2021, BPC returned to applicators in spring of 2022 to collect the remainder of the records through all of 2021. Additionally, the spring 2022 effort sought to clarify missing and erroneous data. Data presented here are simple summaries, no data has been removed as outliers and no statistics have been performed.

Application locations

There are 323 towns in Maine, and approximately five percent of them utilize herbicides as part of their weed management IPM strategy. Pesticide records were tallied by town, not school or school district (a town with three schools treated once in a year generated three records). All pesticide applications are included in this dataset, applications made under land management strategies that align with organic agricultural standards are included.

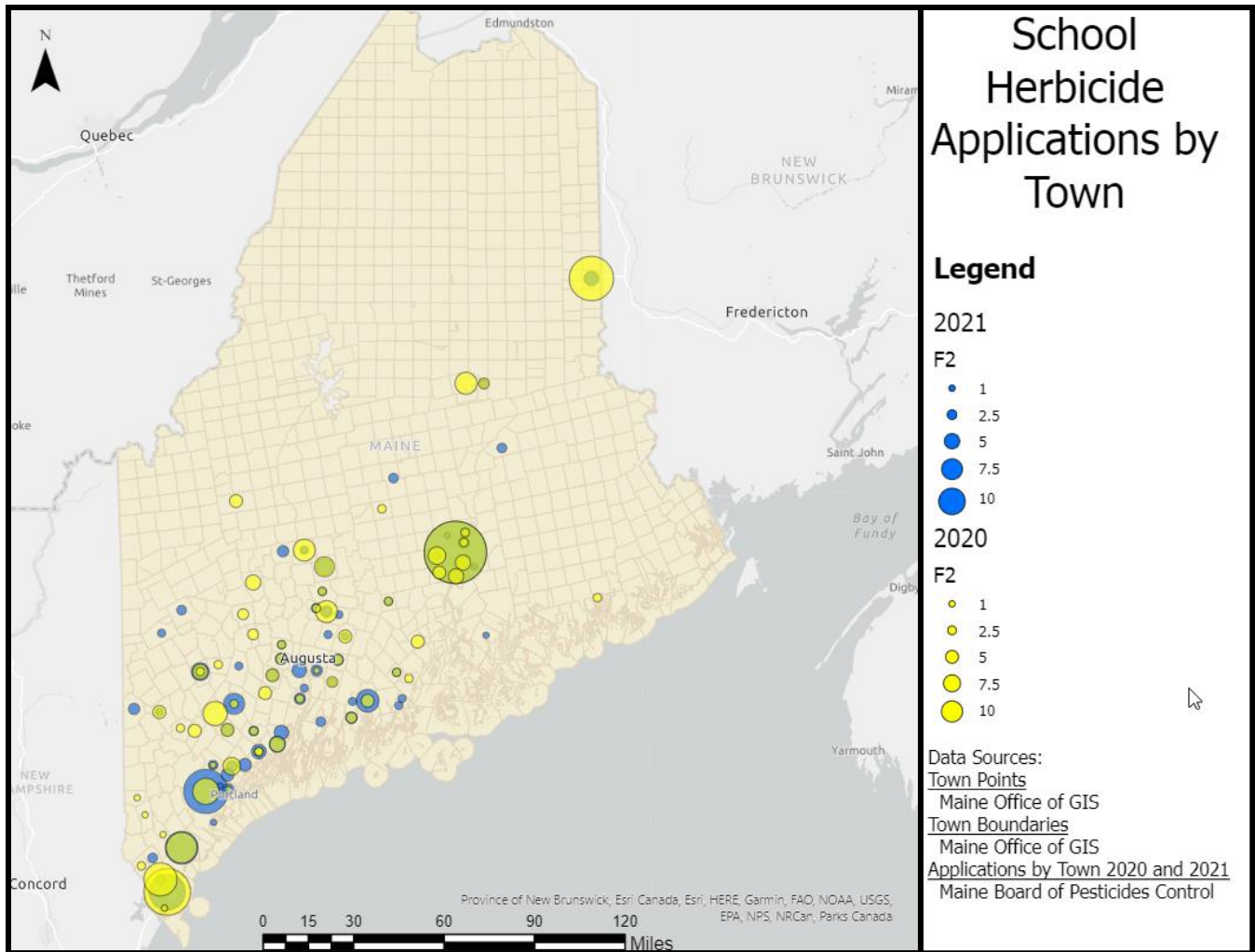


Figure 1. Location of Herbicide Applications By Town & Year. Yellow circles indicate applications made in 2020, blue circles indicate applications made in 2021, and green indicate when applications occurred in both years. Larger circles indicate more applications were made in that town.

Number of applications

This data set stems from 577 application records collected from 15 applicator companies for the years 2020 and 2021. In Maine, school herbicide treatments are performed by generalized turf companies, the schools themselves, as well as companies focused on school grounds. The different entities varied greatly in the number of products used, with a range of one product over two years up to 27 products. Likewise, the total pounds of product used by each company varied from 14 pounds over the two years up to 45,720 pounds.

Complete list of brand names of products used

Table 1. List of unique brand name products used over the 2020 and 2021 years by licensed applicators on school grounds.

12-24-12 Siduron	Dimension 19-0-06	Miramichi Pro Weed
13-0-5 Dimension + Acelepryn	Dimension 2EW	On Deck
17-0-5 w/Acelepryn and Dimension	Drive XLR8	Pendelton Aqua Cap
19-0-6 Dimension	Drive XLR8 herbicide	Pendulum Aqua Cap
19-0-6 w/Acelepryn and Dimension	Farmworks / Trimec 992	Q Ball
19-0-8 Dimension	Fiesta Organic	Q4
20-0-10 Gallery	Finale	Q4 Plus
22-0-6 w/ Dimension	Glyphosate	Quinway Plus
24-0-5 w/ Trimec	Homeplate	Round up Pro Max
28-0-3 Dimension + Acelepryn	Kleenup Pro	Roundup Pro
3 Way Select	Lesco 3-way	Roundup Pro / Trimec 992
4 Speed XT	Mad Dog	Speed Zone BRDLF Herb
4-Score	Mad Dog +	Speed Zone EW
Bandit 2F	Makaze	Sure Guard
Brushmaster	Makaze + Cide-Kick II	Surge
Chaser	Martin's Total Vegetation Control	Tenacity
Chaser 2	Mec Amine D	Trimec
Chaser 2 Amine	MEC AMINE-D	Trimec Classic Broadleaf Herbicide
Cheetah Pro	Mesotrione 21-22-4	Tri-Pac Select
Cornerstone Plus	Millennium Ultra2	Xonerate

Seasonality patterns

August is the month with the greatest number of herbicide applications being made to school grounds. Early spring and spring, while school is still in session, is the other primary timing of herbicide applications.

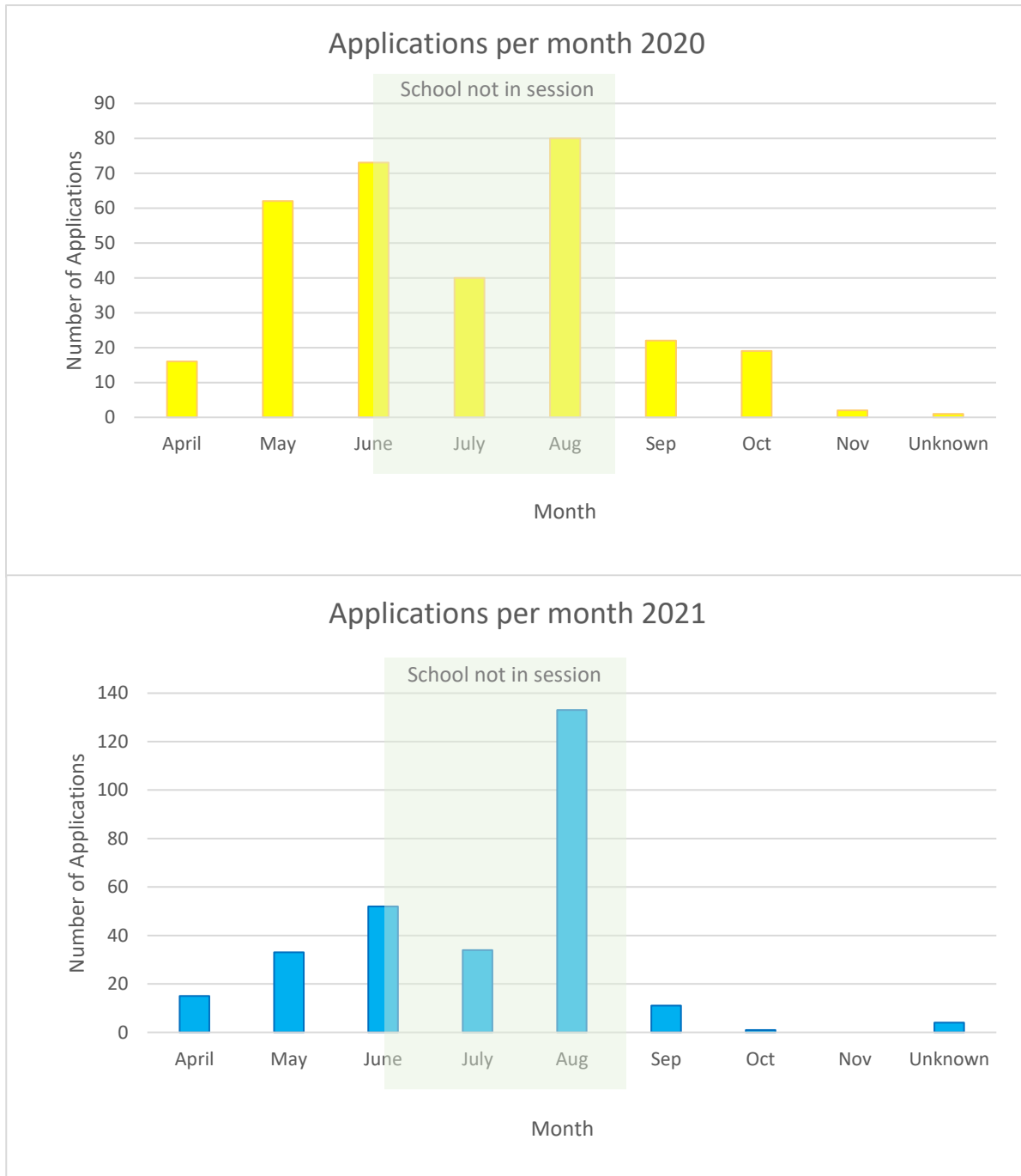


Figure 2. Herbicide applications made on school grounds by month of application in 2020 and 2021.

Time of day patterns

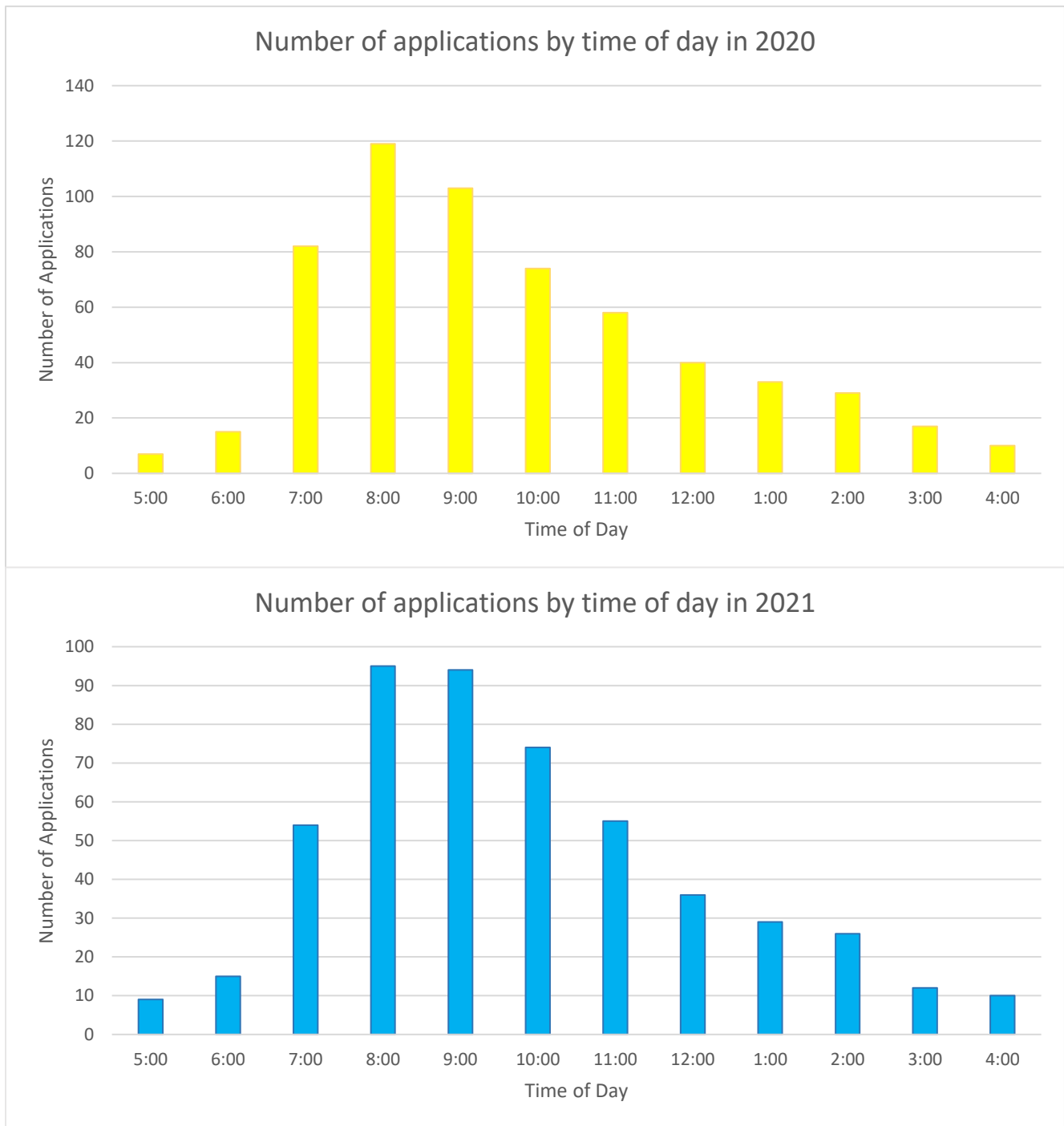


Figure 3. Herbicide applications made on school grounds by application time of day in 2020 and 2021.

Size of area treated

There were 60 unique herbicide brand name products used on school grounds over the 2020 to 2021 time period; and there were 77,216,030 total sq ft (1,773 acres) treated in that same time. Among herbicide products active ingredient mixtures are common. The top 15 products, by area treated, contain only 11 active ingredients in various mixtures ranging from one to four active ingredients per product. Below is a table of the top 15 brand name products and their respective amount of treated area. These 15 products represent 82% of all school grounds area treated.

Table 2. Top 15 brand name products used on school grounds in Maine, over the 2020 to 2021 period, as categorized by amount of land treated.

Product Brand Name	EPA Registration Number	Treated Area (sq ft)	Treated Area (acres)
Dimension 2EW	62719-542	24,687,008	567
Chaser	34704-928	10,381,847	238
Pendulum Aqua Cap	241-416	3,998,502	92
Speed Zone	2217-833	3,524,004	81
22-0-6 w/ Dimension	62719-504-961	3,502,224	80
13-0-5 w/ Acelepryn + Dimension	961-427	2,872,000	66
Chaser 2 Amine	34704-930	2,232,450	51
Mad Dog +	34704-890	2,136,550	49
Mec Amine D	100-1489	1,887,166	43
Q Ball	34704-239	1,785,960	41
Q4	228-744	1,742,400	40
Lesco 3-way	2217-930	1,437,480	33
Finale	10404-43	1,228,036	28
Roundup Pro	432-1229	1,132,560	26
Speed Zone BRDLF Herb	2217-833	986,634	23

The pesticide labels of the top 15 products were examined to determine what active ingredients were in use. The specific breakdown of each product is in Table 1. Looking at use patterns from the perspective of how many acres received each specific active ingredient is available in Figure 4. This percent breakdown shows that dithiopyr, 2,4-D, and triclopyr are spread widely on school grounds. Dithiopyr is a pre-emergent used for crabgrass control. 2,4-D is a systemic that controls broadleaf weeds. Triclopyr is a systemic that is both for broadleaf and woody weeds. From an area-treated perspective, it makes sense that the compounds found to be widely used are the ones used for applications to the whole field surface vs the smaller volumes used in response to smaller areas like fence lines.

Table 3. Percent active ingredients contained in the top 15 most commonly used brand name products, when ranked by treated area, used on school grounds over the 2020 to 2021 period.

PRODUCT BRAND NAME:	CONTAINS THE FOLLOWING ACTIVE INGREDIENTS:			
DIMENSION 2EW	Dithiopyr (24%)			
CHASER	Triclopyr (16.5%)	2,4-D (34.4%)		
PENDULUM AQUA CAP	Pendimethalin (38.7%)			
SPEEDZONE	2,4-D (28.6%)	Mecoprop-P (5.9%)	Dicamba (1.7%)	Carfentrazone Ethyl (0.6%)
22-0-6 W/ DIMENSION	Dithiopyr (0.2%)			
13-0-5 W/ ACELEPRYN + DIMENSION	{Chlorantraniliprole}* Dithiopyr (0.2%)			
CHASER 2 AMINE	2,4-D (34.2%)	Triclopyr (15.2%)		
MAD DOG +	Glyphosate (41%)			
MEC AMINE D	2,4-D (30.6%)	Mecoprop-P (8.2%)	Dicamba (2.8%)	
Q BALL	Quinclorac (18.9%)			
Q4	Dicamba (1.5%)	2,4-D (11.8%)	Quinclorac (8.4%)	Sulfentrazone (0.7%)
LESCO 3-WAY	2,4,D (30.6%)	Mecoprop-P (8.2%)	Dicamba (2.8%)	
FINALE	Glufosinate (11.3%)			
ROUNDUP PRO	Glyphosate (48.7%)			
SPEED ZONE BRDLF HERB	2,4-D (28.6%)	Mecoprop-P (5.9%)	Dicamba (1.7%)	Carfentrazone Ethyl (0.6%)

***Not an herbicide**

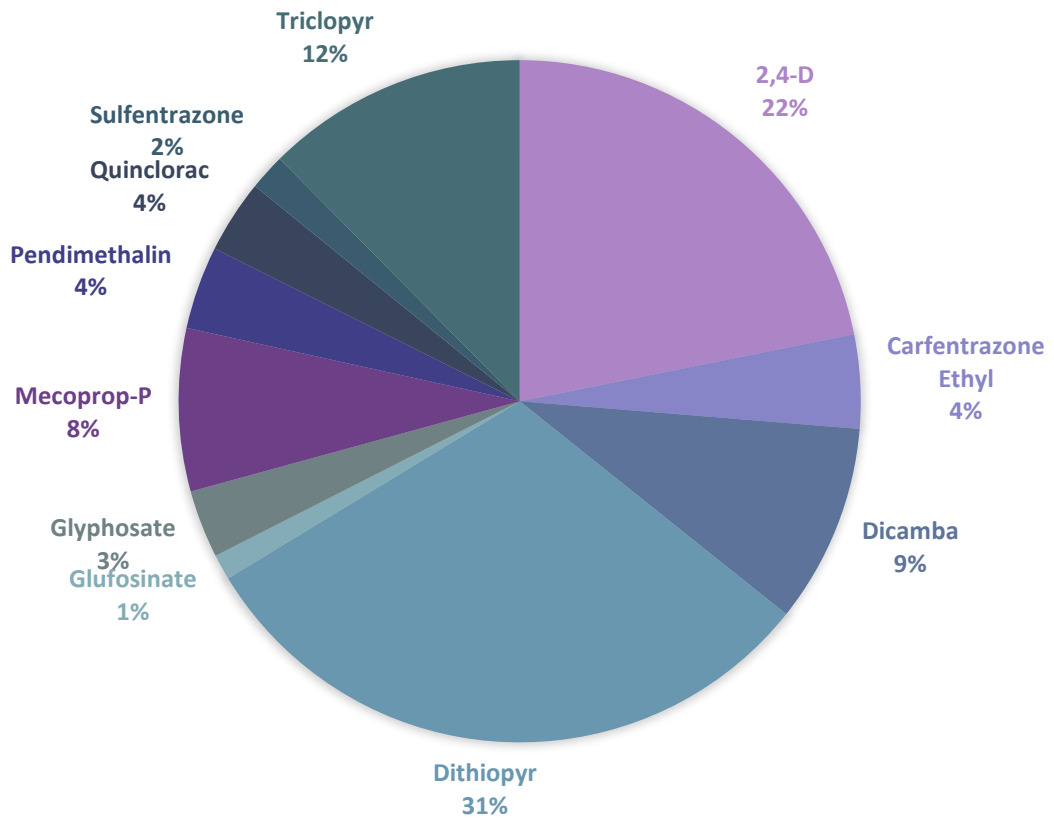


Figure 4. Relative use of active ingredients from the top 15 most commonly used products categorized by amount of school ground land treated over the 2020 to 2021 period.

Treated area types (sites) and target pests

As part of the records required to kept for each application, applicators record the *Site* and *Pest*. Site is jargon in pesticide regulation that indicates the crops on which the pesticide will be used and/or where the product will be used, for example, a building, car, or fence. The records submitted to BPC do not require standardized response language, instead applicators are free to record site and pest as they deem appropriate. The following lists are translations of the records received describing site and pest for school ground applications. To create this list redundancies were removed, specific school names were removed, and abbreviations were spelled out. The two years' worth of data are combined.

Table 4. Listing of all sites recorded by applicators on school grounds in 2020 and 2021.

Athletic fields	Front lawn	Middle School Drip Edges	School fields and lawns
Banking Around Field	High School bullpens, jumping pits	Middle School Field Hockey	School Grounds
Baseball Infields	High School campus, lawns, athletic fields	Middle School Practice Field	School Grounds
Baseball, Softball	High School Football	Middle School Soccer	School Kickball
Bleachers	High School Practice mounds, shot put, discus	Middle School Softball Infields	Shot Put Fence
Brick area in front of school	High School shotput	Parking lot cracks, and curbing	Shotput
Courtyards	High School Softball Infields	Parking lot curbing	Skin portion of baseball field/dirt & turf
Elementary softball infields	High School walking path	Parking lot curbing and cracks	Soccer field
Fencelines	Jumping Pits	Parking lot curbing and cracks	Soccer field turf
Field Hockey	Lawns	Pee Wee football	Softball Infields
Field Hockey Fence	Lightwell Courtyards	Playground	Tennis Court Fence
Field(s)	Little League Field	Playground ballfield	Track
F-lines, bat cage, disc, dugouts	Little League infield dirt/turf area	Playground Edges	Turf
Football	Middle School Athletic Fields	Practice FB	Warning track
Football bleachers and rip-rap	Middle School Baseball Infields	Practice Field	

Table 5. Listing of all pests recorded by applicators on school grounds in 2020 and 2021.

Bare ground	Knotweed
Broadleaf weeds	Monocots
Crabgrass	Poison Ivy
Dicots	Weed grasses
Fertilizer and weed control	Weeds
Grass	

Active ingredient names used

Table 6. List of all active ingredients included in herbicide products used on school grounds by licensed applicators in 2020 and 2021.

2,4-D
2,4-DP
Amicarbazone
Ammonium nonanoate
Caprylic Acid
Carfentrazone Ethyl
Clopyralid
Dicamba
Dithiopyr
Flumioxazin
Glufosinate-Ammonium
Glyphosate
Imazapyr
Iron Fe-Hedta
Isoxaben
Mecoprop
Mesotrione
Pendimethalin
Pyraflufen Ethyl
Quinclorac
Siduron
Sulfentrazone
Triclopyr

Total amount of active ingredients used

Products were ranked by total weight to better understand use patterns. The top 14 products weigh a total of 77,658 lbs. These top products were then further evaluated to tally the weight of each of the active ingredients. Total active ingredient weight used here is a combination of dry weight pounds combined with gallons. Gallons are converted to pounds by using a generic density factor of 10 pounds of product for each gallon used. Eight active ingredients were identified as coming from the 14 products. This subsampling down to 14 products was done to reduce the data processing time taken while still maintaining integrity of the data summary. These top 14 products represent a majority (94%) of the products used over the 2020 and 2021 time periods.

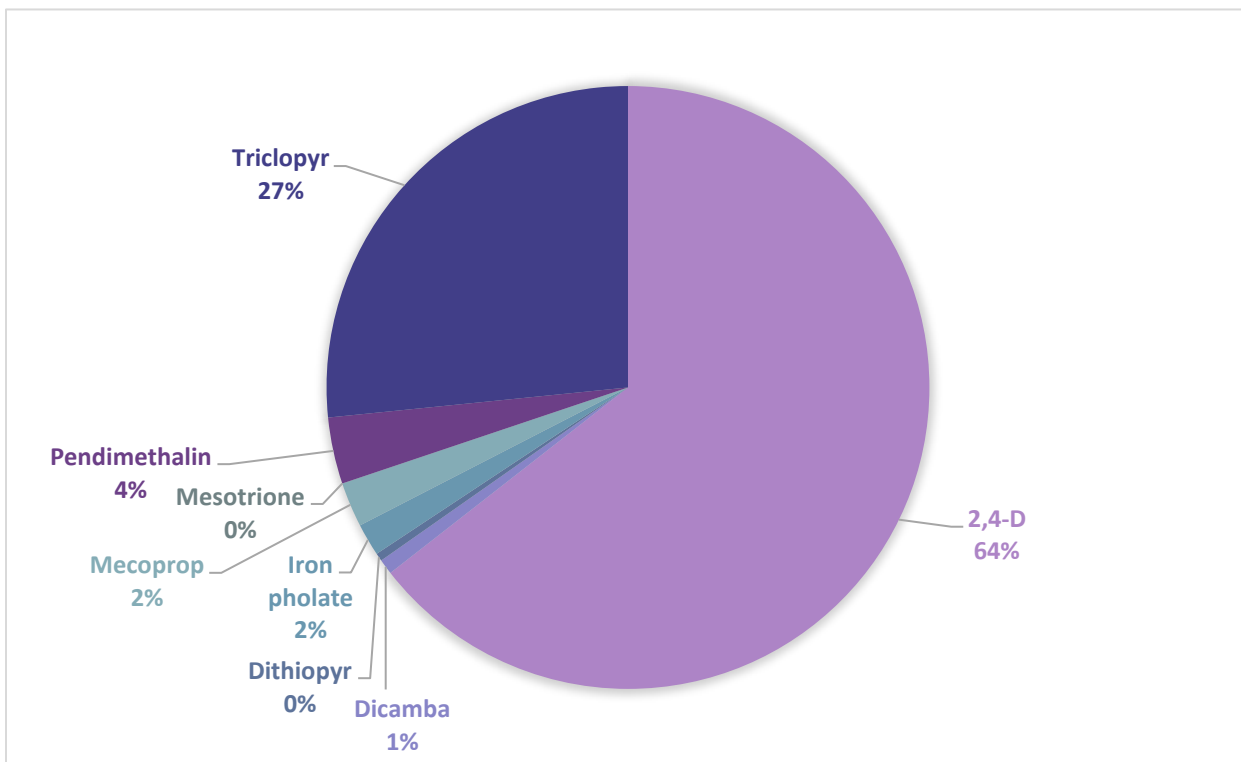


Figure 5. Weight of active ingredients from the most commonly used products reported in 2020 and 2021. These eight active ingredients are frequently used in combinations with one another into 14 unique products.

Table 7. Display of top 14 products used on school grounds as listed by active ingredient, weight, and associated brand name product

ACTIVE INGREDIENT	ACTIVE INGREDIENT WEIGHT (LBS)	ASSOCIATED BRAND NAMES
2,4-D	10,318	Chaser, Speed Zone, Mec Amine D, Q4, 24-0-5 w/Trimec, Lesco 3-Way
DICAMBA	131	Speed Zone, Lesco 3-Way, Q4, Mec Amine D
DITHIOPYR	68	Dimension 2EW, 13-0-5 w/ Acelepryn + Dimension, 17-0-5 w/ Acelepryn + Dimension, 19-0-6 w/ Acelepryn + Dimension, 28-0-3 w/ Acelepryn + Dimension, 19-0-6 w/Dimension, 19-0-8 w/Dimention, 22-0-6 w/ Dimension
IRON PHOLATE	278	Fiesta Organic
MECOPROP	385	Speed Zone, Mec Amine D, Lesco 3-Way
MESOTRIONE	1	Fertilizer with 0.08% Mesotrione
PENDIMETHALIN	571	Pendulum Aqua Cap
TRICLOPYR	4,257	Chaser
TOTAL	16,009	

Methods of application

Table 8. Listed methods of application by applicators applying herbicides on school grounds in 2020 and 2021.

Backpack sprayer
Backpack wand
Battery sprayer
Boom + hand/spot spray
Boom and backpack sprayer
Boom sprayer
Boom sprayer (Spot Treat)
FMC Boom Sprayer
Granular/LELY rotary spreader
Hand spreader
Hand sprayer
Hand tank wand
Hand/spot spray
Hardi-sprayer
Permagreen spray bar
Ride-on sprayer
Ride-on spreader
Tractor/vicon
Vicon spreader
Wand hand tank

Products used but not registered in Maine

During initial review of the submitted records, several labels were forwarded to the pesticides registrar and manager of compliance for review of the labeled sites against the reported application sites.

As follow-up to the discussion on improper use of herbicides on school grounds, two notice of warnings (NOW) were issued by BPC inspection staff.

- An NOW was also issued to RSU 29 IPM Coordinator/Commercial applicator for application of Farmworks 53.8% Glyphosate (EPA Reg. No. 84009-30), not labeled for school grounds. This application was made prior to the glyphosate ban on school grounds.
- A NOW to Mount Desert Island Schools on 4/6/2022 for use of Acclaim Extra (EPA Reg. No. 432-950) and Green Crabgrass Preventer 18-0-6 w/ .29% Cavalcade (Prodiamine) (EPA Reg. No. 60063-41-534), not labeled for school grounds.



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

8

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control
From: Staff
Subject: Are colorants considered to be adjuvants?

February 24, 2023

Staff have received an inquiry from a registrant regarding interpretation of the definition of spray adjuvant. In Maine, does the definition of spray adjuvant pertain to “colorants only (i.e. applied with pesticide only to mark the location where a pesticide is applied)?”

In Title 7, Section 604, 31-A, Spray Adjuvant is defined as:

"Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier or similar agent that is intended to be used with any other pesticide as an aid to the application or the effect of it and that is in a package or container separate from that of the other pesticide.

Staff are seeking the Board’s guidance on the scope and application of the above definition.

MEGAN PATTERNSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
WWW.THINKFIRSTSPRAYLAST.ORG



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

9a

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Joint Standing Committee on Agriculture, Conservation and Forestry
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

January 5, 2022

Dear Senator Ingwersen, Representative Pluecker, and members of the Joint Standing Committee on Agriculture, Conservation and Forestry:

In 2022, the 130th Maine Legislature enacted LD 2019 ([PL 2022 c. 673](#)), *An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances*. This law directed the Board of Pesticides Control (Board) to adopt rules regulating pesticide containers as authorized in the Maine Revised Statutes, Title 7, section 606, subsection 2, paragraph H, no later than January 1, 2023.

The Board first discussed LD 2019 and the associated rulemaking responsibilities at its May 6, 2022 meeting. Staff provided a brief overview of the new authorities and responsibilities assigned by LD 2019 and sought guidance from the Board on the rulemaking directive. Following the initial May discussion, the Board has been making a good-faith effort to complete this directive.

The Board has engaged in meaningful discussion of the request at every subsequent public meeting. These discussions are summarized below and are documented, in detail, in the publicly available [meeting minutes](#):

- At the June 17, 2022, Board meeting, LD 2019 was discussed. For Board consideration, staff prepared a memorandum outlining possible actionable items and rulemaking responsibilities. Staff identified that while the Board was directed to conduct rulemaking, staff sought clear guidance on the types of information required by the Board to proceed with informed rulemaking efforts and conceptual discussions. Staff also shared that both Maine state and federal law indirectly and directly address pesticide contamination and the use of pesticide containers. The Board discussed the challenges of potential

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rulemaking and identified several concerns, including possible federal preemption, limited information to aid in decision-making, and the short rulemaking timeline. The Board requested that the staff provide information on existing regulations relative to pesticide containers and research options relative to defining what “contamination” meant in the context of LD 2019.

- At the August 5, 2022, Board meeting, staff invited State Toxicologist, Andrew Smith, to discuss PFAS; however he was unable to attend the meeting. Board members expressed concern about failing to meet the rulemaking deadline in LD 2019. The Assistant Attorney General identified that it was highly likely that any container regulations passed by the Board would be pre-empted by federal law since the EPA has exclusive authority over the regulation of pesticide containers and labeling. Several alternative approaches were suggested, including:
 - Adopt the federal regulation by reference, which would satisfy the legislative directive and bring the federal rule into state law;
 - Reach out to the Legislature and share that the Board has encountered legal issues with federal preemption;
 - Delay rulemaking while researching federal law in an effort to try to find a space that might be available for state regulation;
 - Require registrants to state whether products are stored in containers that contain PFAS; or
 - Possibly create laws about the handling of containers.

Board members expressed concern about inadvertently sidestepping the legislative intent, about failing to complete the directed rulemaking, and asked about the process for informing the Legislature of the identified challenges.

- At the October 21, 2022, Board meeting, staff provided reviews of relevant policy and technical information discussed at the August meeting, including the possible approaches to container regulation. Staff also shared the recently published studies by Lasee et al. and the EPA assessment of fluorinated container leachates. Following staff presentations and Board discussion, the Board members asked staff to send a memo to the Legislature about the progress made.

As noted, the Board has identified federal preemption as a significant challenge to successfully pursuing rulemaking related to pesticide containers. EPA establishes preemptive authority over the regulation of containers in 7 U.S.C. § 136v(b)—Authority of States:

A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

(b)UNIFORMITY

Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

And EPA further explains that package/packaging is defined in 40 CFR part 152.3 Definitions:

Package or packaging means the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use, or storage. The term does not include any shipping or bulk container used for transporting or delivering the pesticide unless it is the only such package.

The Board respectfully requests the Committee's guidance on the rulemaking impasse and looks forward to working collaboratively with the Committee on this sensitive and difficult issue.

Sincerely,

A handwritten signature in cursive script that reads "Megan L. Patterson". The signature is written in black ink and is positioned above the printed name.

Megan Patterson

Director, Board of Pesticides Control



DATE: January 15, 2023
 TO: Joint Standing Committee on Agriculture, Conservation & Forestry
 Megan Patterson, Director of the Board of Pesticides Control
 FROM: Samantha Warren, UMS Director of Government & Community Relations
samantha.warren@maine.edu / (207) 632-0389
 RE: **Report on Use of Funds Provided for Pesticide Safety Education**

For more than three decades, University of Maine Cooperative Extension has provided science-based pesticides safety education and outreach through a memorandum of understanding with the Board of Pesticides Control (BPC). Maine's pesticides safety program is recognized as a national leader, in part because of this long-standing partnership that BPC underwrites with an annual \$65,000 grant from pesticide registration fees to UMaine Extension.

In 2019, Public Law 2019, Chapter 243 was enacted to clarify this funding arrangement and create flexibility to allow for future expansion of funding and scope of work. As part of our continued commitment to public accountability and transparency, the University of Maine System suggested an annual reporting requirement be included in the new law through which we would overview to for the Committee and BPC the funded activities undertaken in the previous year. This serves as that report for 2022.

Supported by the \$65,000 in BPC funding and also university resources, UMaine Extension employs a Pesticide Safety Expert as part of its comprehensive Pest Management Unit. This professional writes and regularly updates the Maine-specific pesticide application manuals that instruct those seeking to become licensed how to appropriately apply pesticides in a way that minimizes impacts to public and environmental health while preserving the quality and quantity of the crop being treated. In 2022, several applicator training manuals were developed or revised, including those pertaining to outdoor ornamentals, biting flies and other arthropods, and structural general pest control, with revisions and production of other manuals and training videos currently in progress. Additionally, the pesticide applicator logbook was edited and reprinted.

The BPC-supported pesticide safety expert also delivered multiple in-person and virtual trainings, including sessions at the Agricultural Trades Show in Augusta that provided credit opportunities for more than 1,400 attendees and online that in total, had 446 participants. Topics included, but were not limited to, integrated pest management (known as IPM), safety, labeling, forestry and rights-of-way, greenhouse best practices, and worker protection standards.

The Pesticide Safety Expert also maintains the well-trafficked pesticides safety education pages on UMaine Extension's website at extension.umaine.edu/ipm/pesticide-safety, reviews quizzes and reports scores to BPC, attends state and regional meetings, and regularly responds to requests from individuals, businesses and municipalities related to pesticide safety, regulations, licensing and recertification. All of this activity is possible thanks to our ongoing partnership with BPC and the flexibility allowed by P.L. 2019, Chapter 243.

UMS and its land grant, UMaine, are proud of the ways the Pest Management Unit and Cooperative Extension bring university research and technical assistance to tens of thousands of Maine homes, businesses, farms and communities each year. We look forward to continued collaboration with BPC and this Committee in 2023.