

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 22: STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION

SUMMARY: These regulations establish procedures and standards for the outdoor application of pesticides by powered equipment in order to minimize spray drift and other unconsented exposure to pesticides. The primary purpose of these regulations is to implement the legislative mandate of the Board, as expressed by 7 M.R.S.A. §606(2)(G), to design rules which “minimize pesticide drift to the maximum extent practicable under currently available technology.”

SECTION 1. EXEMPTIONS

The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

- A. Applications of pesticides confined entirely to the interior of a building;
- B. Applications of pesticides by non-powered equipment;
- C. Applications of pesticides exclusively in granular or pelletized form;
- D. Applications of pesticides injected underground or otherwise injected directly into the target medium. Such applications must involve no spraying of pesticides whatsoever.

SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS

All pesticide applications subject to these regulations shall be undertaken in compliance with the following standards of conduct:

- A. **Equipment**
 - I. Pesticide spray equipment shall be used in accordance with its manufacturer’s recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
 - II. Pesticide spray equipment shall be properly calibrated consistent with Board or University published guidance. Sufficient records to demonstrate proper calibration must be maintained and made available to representatives of the Board upon request.

- III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.

B. Weather Conditions

- I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto Sensitive Areas or otherwise prevent proper deposition of pesticides on target.
- II. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.
- III. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

C. Identifying and Recording Sensitive Areas

- I. Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area. Applicators shall prepare a site map or other record, depicting the target area and adjacent Sensitive Areas. The map or other record shall be updated annually. The site map or other record shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- II. This requirement shall not apply to commercial applications conducted under categories 3A (outdoor ornamental tree and plant), 3B (turf), 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management), ~~or 7A (structural general pest control applications)~~, or 7E (biting fly & other arthropod vectors [ticks]).

D. Presence of Humans, Animals

Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals.

The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.

E. Other Requirements

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in

order to avoid adverse impacts on off-target areas and to protect public health and the environment.

SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES

A. Positive Identification of the Target Site

The person contracting for an aerial pesticide application shall ensure that the application site (i.e., target area) is positively identified prior to application, using a unique and verifiable method, including:

- I. An onboard, geo-referenced electronic mapping and navigation system (e.g., GPS); or
- II. Effective site markings visible to the applicator; or
- III. Other method(s) approved by the Board.

B. Site Plans Required

Prior to spraying by aerial application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the person contracting for the application shall provide to the applicator a site plan that includes:

- I. a site map drawn to scale that:
 - (i) delineates the boundaries of the target area and the property lines;
 - (ii) depicts significant landmarks and flight hazards;
 - (iii) depicts the type and location of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area; and
 - (iv) depicts other Sensitive Areas within 500 feet of the target area.
- II. If applicable, a school bus schedule shall accompany the site map.
- III. The site plan and site map with identified sensitive areas required under Section 3(B) shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- IV. Compliance with this section satisfies the requirements of Section 2(C).

C. Site-Specific Application Checklist

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application

checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

- I. The date, time, description of the target site and name of the applicator;
- II. Confirmation that the notification requirements contained in CMR 01-026, Chapters 28 and 51, have been carried out;
- III. Confirmation that the target site has been positively identified;
- IV. The location of where weather conditions are measured and a description of the equipment used to measure the wind speed and direction;
- V. Confirmation that conditions are acceptable to treat the proposed target site, considering the location of any Sensitive Area Likely to Be Occupied and current weather conditions;
- VI. Wind speed and direction;
- VII. The measures used to protect all Sensitive Areas;
- VIII. Confirmation that there are no humans visible in or near the target area.

D. Buffer Zones for any Sensitive Area Likely to Be Occupied

Aerial applicators shall employ site-specific buffer zones adjacent to any Sensitive Area Likely to Be Occupied sufficient to prevent unlawful pesticide drift, unless consent has been granted by the landowner, lessee and occupant (when applicable), consistent with the provisions of Section 4(C) of this rule.

E. Wind Speeds for Aerial Applications

Unless otherwise specified by the product label, an applicator may not conduct an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied unless the wind speed is between 2 and 10 miles per hour.

SECTION 4. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE

A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides

Pesticide applications shall be undertaken in a manner which does not result in off-target direct discharge of pesticides, unless prior authorization and consent is obtained from the owner or lessee of the land onto which such discharge may occur in a manner consistent with the pesticide label.

B. Standards for Unconsented, Off-Target Drift of Pesticides

- I. **General Standard.** Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.
- II. **Prima Facie Evidence.** Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.
- III. **Standard of Harm.** An applicator may not apply a pesticide in a manner that results in:
 - (i) Off-target pesticide residue detected in or on any nearby crop which violates EPA tolerances for that crop, as established under 40 CFR, Part 180.
 - (ii) Off-target pesticide residue detected in or on any nearby organic farm or garden which causes the agricultural products thereof to be excluded from organic sale in accordance with 7 CFR, Part 205, Section 205.671.
 - (iii) Off-target pesticide residue detected on any nearby persons or vehicles using public roads.
 - (iv) Documented human illness. For this standard to be met, the Board must receive verification from two physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.
 - (v) Off-target damage or injury to any organism.
- IV. **Enforcement Considerations.** The Board shall consider the particular circumstances of violations arising from Subsections 4(B)(I) and (III) in determining an appropriate response, including, but not limited to:
 - (i) The standard of care exercised by the applicator;
 - (ii) The degree of harm or potential harm that resulted from or could have resulted from off-target drift from the application;

- (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

C. **Consent**

- I. **Consent, How Given.** Authorization and consent by the owner or lessee and occupant (when applicable) of land receiving a pesticide discharge or drift in a manner consistent with the pesticide label may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. The residue and harm standards in Sections 4(B)(II) and (III) for off-target drift do not apply where the owner, lessee and occupant (when applicable) of the off-target area receiving the pesticide drift have given authorization and consent as prescribed in Section 4(C).
- III. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in CMR 01-026, Chapter 10, "Definitions; Sensitive Area."

SECTION 5. **VARIANCES FROM STANDARDS**

A. **Variance Permit Application**

An applicator may vary from any of the standards imposed under this chapter by obtaining a permit to do so from the Board. 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;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;
- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;

- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;
- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.

B. Board Review; Legal Effect of Permit, Delegation of Authority to Staff

- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct spray activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in the application 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.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B) I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 MRSA §1471-T, "Exemptions."

SECTION 6. EMERGENCIES

- A. In the event that severe pest or weather conditions threaten to cause a significant natural resource and/or economic loss, as determined by the Commissioner of the Maine Department of Agriculture, Conservation and Forestry, the requirements contained in Section 3 of this Chapter shall be waived, subject to the following conditions:
 - I. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.
 - II. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 3 of this Chapter,
 - III. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of

aerial application in the affected regions and the approximate dates that the emergency may continue.

- IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
 - V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.
- B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

June 12, 2009 amendments become effective on January 1, 2010

STATUTORY AUTHORITY: 7 M.R.S.A. §606(2)(G):
22 M.R.S.A. §1471-M(2)(D)

EFFECTIVE DATE:
January 1, 1988

AMENDED:
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

AMENDED:
September 22, 1998 - also converted to MS Word
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)
January 1, 2010 by request of agency in filing 2009-252
June 12, 2013 – filing 2013-135 (Emergency major substantive)

CORRECTIONS:
February, 2014 - formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 22—STANDARDS FOR OUTDOOR APPLICATION OF
PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET
DEPOSITION**

Basis Statement

The requirement to identify and map sensitive areas (which include areas likely to be occupied) serves little purpose in a residential area. Consequently the Board exempted common residential ornamental, turf, and outdoor structural general pest control applications when the rule was originally promulgated in 1987. Instead, the Board required applicators to post treated areas under Chapter 28. In recent years, the Board observed that there are now a couple of other types of common residential pesticide applications: biting fly and tick applications and certain types of application made under the industrial/commercial/municipal vegetation management category. Consequently, the Board proposed exempting these applications from the requirement to identify sensitive areas under Chapter 22 in exchange for a posting or notification requirement in Chapter 28. Applicators treating vegetation on trails and sidewalks would need to also implement a drift management plan

In addition, the Board saw little value in identifying sensitive areas for common right-of way (category 6A) spraying and proposed exempting this category from the requirement to identify sensitive areas in exchange for implementing a drift management plan and publishing notice of the application in the newspaper under Chapter 28.

Comments received during the comment period were mostly positive, however some questioned the need for a “drift management plan” since the entirety of Chapter 22 is intended to control drift. The Board agreed with these comments and determined the public interest is best served by adopting the amendments as proposed except for the requirement to implement drift management plans for vegetation control programs (category 6A and sidewalks and trails in category 6B).

Impact on Small Business

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

Provisional Adoption

At its October 24, 2014 meeting, the Board provisionally adopted the major substantive amendments to Chapter 22.

Legislative Approval

On February 24, 2015 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held a public hearing on LD 202, the resolve authorizing final adoption of the amendments. Subsequently the ACF reported the resolve out as ought-to-pass. The Legislature enacted the resolve and it became law as emergency legislation without the Governor’s signature on March 29, 2015 (Resolve 2015, Chapter 5).

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 22—Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition

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

There may be as many as 200 small businesses making residential and right-of-way pesticide applications that will be affected by the proposed amendments to Chapter 22.

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

The proposed amendments will significantly reduce the administrative costs for businesses that treat for ticks and biting flies and/or do certain types of vegetation management applications.

Brief Statement of the Probable Impact on Affected Small Businesses

Record keeping for small businesses that make treatments as described above should be significantly reduced.

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

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

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

Section 1. Requesting Notification About Outdoor Pesticide Applications

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

A. Requests for Notification; How Made

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

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

B. Procedure of Notification

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

1. General notification of intent to apply pesticides out-of-doors shall be given to the person making the request for notification. Such general notification may be given in any fashion, provided that it is effective in informing the person receiving the notice of the following:

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

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

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

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

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

A. *Individuals to be Included on the Registry*

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

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

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

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

C. Registry Provided to Commercial Applicators

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

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

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

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

E. Exceptions

1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
2. The following types of pesticide applications do not require notification under this section:
 - a. The application of pesticides indoors;
 - b. Agricultural pesticide applications;
 - c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing category 6A (rights-of-way vegetation management) ~~categories VI(A) (utility rights of way), VI(B) (roadside vegetation management), and VI(C) (railroad vegetation management)~~;
 - d. The outdoor commercial application of pesticides in certification and licensing category ~~VII(a)~~ 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 in ~~Certain Commercial Licensing Categories~~

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

~~Where outdoor commercial pesticide applications in certification and licensing categories III(a) Outdoor Ornamentals, III(b) Turf, and VII(a) Structural General will take place, the area~~ 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.~~a. The sign must be at least five (5) inches wide and four (4) inches high;
- ~~B.~~b. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- ~~C.~~c. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- ~~D.~~d. The sign must bear:
 - ~~1.~~i. the word CAUTION in 72 point type;
 - ~~2.~~ii. the words PESTICIDE APPLICATION in 30 point type or larger;
 - ~~3.~~iii. the Board designated symbol;

- ~~4~~.iv. any reentry precautions from the pesticide labeling;
- ~~5~~.v. the name of the company making the pesticide application and its telephone number;
- ~~6~~.vi. the date and time of the application; and
- ~~7~~.vii. a date and/or time to remove the sign.

E.C. **Exemption from this section**

1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
 2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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STATUTORY AUTHORITY: 22 MRSA §1471-M(2)D

EFFECTIVE DATE:

September 22, 1998

AMENDED:

April 27, 1999

June 26, 2000

March 4, 2007 – Section 1(B)(e), filing 2007-68

December 26, 2011 – filing 2011-473

CORRECTIONS:

February, 2014 – agency names, formatting

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

Basis Statement

Chapter 28 requires applicators to post certain types of treatments commonly made in residential areas instead of identifying sensitive areas under Chapter 22. In recent years, the Board observed that there are now a couple of other types of common residential applications: ticks and mosquitoes (licensing category 7E) and certain types of vegetation management applications made under licensing category 6B (except trails and sidewalks). Consequently, the Board proposed adding these types of applications to the list of licensing categories that require posting.

Applications for rights-of-way vegetation management are routinely given variances from the Chapter 22 requirement to map sensitive areas provided the applicator publishes notice in a newspaper and implements a drift management plan. The Board felt it made sense to put these requirements in rule, thus eliminating the necessity of applying for a variance every year. Consequently, the Board proposed adding to Chapter 28 the requirement for a newspaper notice for right-of-way spraying, including trails and sidewalks.

Comments received during the comment period observed that the proposal as written would now require newspaper notice for applications that have always been exempted from Chapter 22 (applications made with non-powered equipment) and therefore never had to identify sensitive areas. In addition, posting would now be required for certain types of vegetation management applications that are not residential in nature (power substations, which are fenced, and railroad sidings, which are not open to the public), which raised questions about the public benefit of the proposal.

The Board found that newspaper notices are expensive and of questionable value and determined that the public interest is best served by eliminating this requirement from the rule. However, the Board observed that there is often public interest in pesticide applications made to trails and sidewalks open to use by the public. The Board determined that the public interest is best served by requiring applicators to implement effective public notice method(s) based on a policy the Board would develop that allows various options tailored to specific circumstances.

Finally, the Board agreed that posting of power line substations and railroad sidings provided little public benefit. Consequently, in the final rule, the Board exempted applications to these sites from the requirement. After incorporating the changes outlined herein, based on the rulemaking record, the Board found the revised proposal is consistent with the public interest and voted to adopt the amendments.

Impact on Small Business

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

Provisional Adoption

At its October 24, 2014 meeting, the Board provisionally adopted the major substantive amendments to Chapter 28.

Legislative Approval

On February 24, 2015 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held a public hearing on LD 202, the resolve authorizing final adoption of the amendments. Subsequently the ACF reported the resolve out as ought-to-pass. The Legislature enacted the resolve and it became law as emergency legislation without the Governor's signature on March 29, 2015 (Resolve 2015, Chapter 6).

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

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

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

The Board estimates that there are approximately 150 small businesses that perform residential and vegetation management applications that are affected by the proposed amendments

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

The proposed amendments will require companies making tick and biting fly applications, and certain vegetation management applications to post those applications. Signs cost about \$1.50 each and would likely take about five minutes to post. So the total cost per customer may be as high as \$4.00. However, many companies are already posting tick and biting fly treatments, and there is some company name recognition value to posting. Moreover, the additional cost of posting under the Chapter 28 amendments will be offset by the reduced administrative costs under Chapter 22 since applicators will no longer be required to identify and record sensitive areas.

In addition to the added posting requirements described above, the proposed amendments will require some form of public notification to treat sidewalks and trails open to use by the public. The method of notification would be based on a menu of options contained in Board policy. Municipalities and land trusts are often making similar efforts already. The Board decided against requiring costly newspaper notices in these circumstances, however, the administrative costs of the new notification methods may run as high as \$100 for pesticide applications to public sidewalks and trails.

Brief Statement of the Probable Impact on Affected Small Businesses

The proposed amendments to Chapter 28 may add nominal new posting and/or notification costs, but in many cases, the new costs will be offset by reduced administrative costs arising from Chapter 22, since the need to identify and record sensitive areas will be eliminated.

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

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

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

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Ted Quaday Maine Organic Farmers and Gardeners Association	Ch. 28 – Supports public notification of pesticide use. Questions the efficacy of newspaper notices. Suggests revisiting the automated web-based notification system discussed previously by the Board.	Written	28—Board agrees that newspapers may not be effective in reaching target audience. Amended rule to require public notice using methods approved in Board policy.
Darin Hammond Jasper Wyman & Son	Ch. 22 – The Board is asking companies to implement drift management plans when spraying under categories 6A and some aspects of 6B. Chapter 22 no longer references a drift management plan. Believes Ch. 22 adequately addresses drift management as it is.	Oral and written	22—Board agreed that the chapter as a whole addresses drift adequately. Amended rule to remove requirement for implementing a drift management plan.
Nicolas Hahn, Gerry Mirabile Central Maine Power Company	Ch. 22 – Support exempting category 6B from the requirement to identify sensitive areas. Ch. 28 – Believe posting of substations is unnecessary and excessive for substations since access is restricted anyway. Propose exempting restricted-access substations. Oppose publication of advance notice of category 6A applications since they are targeted applications made by non-powered equipment. Propose exempting utility ROWs.	Oral and written comments	28—Board agrees that public notification is not necessary for private ROWs; most of the questions arise from trails and sidewalks. Amended rule to require public notice only for 6B applications made to trails and sidewalks open to use by the public. Board agreed there was no value to posting substations and exempted substations in the final rule.
Chris Everest Commercial Applicator	Ch. 22 – Observes there are a lot of sensitive areas to identify for mosquito applications. Ch. 28 – Appreciates that the Board is willing to make changes that alleviate administrative burdens.	Written	Board agrees with comments.

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

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Brian Chateauvert Railroad Weed Control	Ch. 28 – Posting of category 6B areas could be very difficult on the railroad sidings. These are large open areas where the public is normally not allowed.	Oral	28— Board agreed there was no value to posting railroad sidings and exempted railroad sidings in the final rule.
Chuck Cotton Lucas Tree Experts	Ch. 22– Supports changes as proposed. Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Opposes the new requirement mainly because they do a lot of applications on small industrial or residential sites for which newspaper advertising would serve no purpose, might discourage some clients and would therefor damage their business.	Written	28—Board agrees that public notice does not serve a purpose in some instances, especially for 6A applications. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.
Glenn Nadeau Emera Maine	Notes discrepancies in the category names as described in various Board rules. Ch. 28 – Clarifies that the proposal will now require newspaper notices for applications made under category 6A [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).].	Written	28— Board agrees that newspapers may not be effective in reaching target audience. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.

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

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Mark Lamberton Emera Maine	Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Questions the efficacy of newspaper notices. Notes that utility lines are linear and therefor cross through many towns and are often remote, making them difficult to describe in a way that is meaningful to the public. Additional newspaper and posting requirements would be a financial burden. Proposes exempting category 6A from the newspaper notification and suggests that utility companies include vegetation management information on the company website.	Written	28—Board agrees that newspapers may not be effective in reaching target audience. Board agrees that public notification about applications made to private ROWs is unnecessary; most of the questions arise from trails and sidewalks. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.