

SUMMARY OF COMMENTS—CHAPTERS 31, 34, 35—AUGUST 2015

PUBLIC HEARING, JULY 10, 2015

END OF COMMENT PERIOD, JULY 24, 2015

| TESTIMONY AND WRITTEN COMMENTS RECEIVED | | | |
|--|---|------------------------|--|
| Person/Affiliation | Summary of Testimony | Type of Comment | Board Response |
| Erik Grove | “Less is always more. You have my support.” | Written | Board agrees that simplification and consistency is preferable. |
| Robert P. Gagnon, MSAD#1 | It is difficult to get credits within the six-year window; three years will be more difficult. (for commercial applicators, Chapter 31) | Written | The number of credits will also be reduced, so the number of credits per year stays the same. The Board reasoned the benefits of a standard license and certification period outweigh other considerations. |
| Gary Fish, BPC | The proposed change of the requirement for passing both the core and category exams from within one year to within five years should be amended to within three years to coincide with the new licensing period. (for commercial applicators, Chapter 31) | Written | The Board agreed that aligning the time frame for becoming certified with the standard certification period was logical. Consequently, the Board determined it was appropriate to adopt the change to the proposed amendments. |

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

Basis Statement

Four amendments to Chapter 31 were proposed by the Board:

1. Change the license period from two years to three; change the certification period from six years to three and align the licensing and certification periods.
2. Amend the description of Category 6B to clarify what types of applications are included.
3. Change the requirement for passing both the core and at least one category exam within one year of each other to within five years.
4. Clarify that certified or licensed wastewater or drinking water operators are exempt from licensing only while applying pesticides to the wastewater or drinking water and not while performing other duties such as weed management.

Three comments were received. One person was in favor of the changes. One person suggested that getting recertification credits in three years instead of six would be a challenge. The Board reasoned that since the number of credits per year did not change it should not cause a hardship. Furthermore, the Board contended that the shorter certification period aligned with the license period is less confusing, discourages procrastination and promotes participation in seminars where current issues are reviewed.

The third comment was from the Board staff suggesting that the time period requirement for passing both the core and at least one category exam be changed to three years to align with the licensing and certification period. The Board agreed that made sense because it simplifies record management for the staff and consistency with the certification is logical.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 31—Certification and Licensing Provisions/Commercial Applicators

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

Currently there are about 1,800 licensed commercial pesticide applicators in Maine. They will all be affected by this amendment:

1. recertification credits will now have to be accrued during a three-year period rather than a six-year period, however the actual number of credits per year remains the same, so there is no added cost; and
2. license periods will change from two to three years, reducing the paperwork. The cost per year remains the same.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

The amendments will result in a slight decrease in paperwork.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

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 applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- C. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.
- D. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability

to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

E. Exemptions

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

2. Categories of Commercial Applicators

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

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

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

Option III - Agricultural Fumigation - This option includes commercial applicators using or supervising the use of fumigant pesticides in the production of crops.

Option IV - Post Harvest Treatment - This option includes commercial applicators using or supervising the use of pesticides in the post harvest treatment of food crops.

II. **Forest Pest Control**

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

III. **Ornamental and Turf Pest Control**

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

IV. **Seed Treatment**

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

V. **Aquatic Pest Control**

- a. **General Aquatic** - This subcategory includes commercial applicators using or supervising the use of pesticides applied directly to surface water, including but not limited to outdoor application to public drinking

water supplies, golf course ponds, rivers, streams and wetlands. Excluding applicators engaged in public health related activities included in categories VII(e) and VIII below.

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

VI. ~~Right-Of-Way~~ **Vegetation Management**

- a. **Rights-of-Way Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside and railroad rights-of-way.
- b. **~~Industrial/Commercial/Municipal~~ 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 ~~industrial, commercial, municipal or publicly owned areas~~ 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, ~~and~~ 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 Treatments** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in manufacturing, swimming pools, spas, industrial cooling towers, public drinking water treatment plants, sewers and air conditioning systems.
- d. **Wood Preserving** - This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to treat lumber,

poles, railroad ties and other types of wooden structures including bridges, shops and homes. It also includes commercial applicators applying general use pesticides for remedial treatment to utility poles.

- e. **Biting Fly & other Arthropod Vectors** - This subcategory includes commercial applicators and non-public health governmental officials using or supervising the use of pesticides in management and control of biting flies & other arthropod vectors of public health and public nuisance importance including, but not limited to, ticks, mosquitoes, black flies, midges, and members of the horsefly family.
- f. **Termite Pests** - This subcategory includes commercial applicators using or supervising the use of pesticides to control termites.

VIII. **Public Health Pest Control**

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

IX. **Regulatory Pest Control**

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

X. **Demonstration and Research Pest Control**

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

XI. **Aerial Pest Control**

This category includes commercial applicators, including pilots and co-pilots, applying or supervising the application of pesticides by means of any aircraft. Applicants seeking certification in this category must also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

3. **Competency Standards for Certification of Commercial Applicators**

- A. Applicants seeking commercial certification must establish competency in the general principles of safe pest control by demonstrating knowledge of basic subjects including, but not limited to, pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques and applicable laws and regulations. (Core Exam).
- B. Applicants seeking commercial certification must demonstrate competency in each applicable category or subcategory. (Category Exam). Competency in the applicable category or subcategory shall be established as follows:

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

- a. **Agricultural Animals.** Applicants seeking certification in the subcategory of Animal Pest Control as described in Section 2(A)(I)(a) must demonstrate knowledge of animals, their associated pests, and methods of pest control. Areas of practical knowledge shall include specific toxicity, residue potential, relative hazards of different formulations, application techniques, and hazards associated with age of animals, stress, and extent of treatment.
- b. **Agricultural Plant.** Applicants seeking certification in the subcategory of Plant Pest Control as described in Section 2(A)(I)(b) Options I - IV must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

II. **Forest Pest Control**

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

III. **Ornamental and Turf Pest Control**

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

IV. **Seed Treatment**

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

V. **Aquatic Pest Control**

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

VI. **~~Right-of-Way~~ Vegetation Management**

Applicants seeking certification in the subcategories under ~~Right-of-Way~~ Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of ~~right-of-way~~ pesticide use on a wide variety of environments. Such knowledge shall include an ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup and aesthetic considerations associated with excessive foliage destruction and "brown-out", and an understanding of the mode of action of ~~right-of-way~~ herbicides, and reasons for

the choice of particular chemicals for particular problems, importance of the assessment of potential impact of ~~right-of-way~~ spraying on adjacent public and private properties and activities, and effects of ~~right-of-way~~ spraying on fish and wildlife species and their habitat. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

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

- a. **General.** Applicants seeking certification in the subcategory of General Pest Control as described in Section 2(A)(VII)(a) must demonstrate a practical knowledge of a wide variety of pests and methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.
- b. **Fumigation.** Applicants seeking certification in the subcategory Fumigation as described in Section 2(A)(VII)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees and customers.
- c. **Disinfectant and Biocide Treatments.** Applicants seeking certification in the Disinfectant and Biocide Treatments subcategory described in Section 2(A)(VII)(c) must demonstrate practical knowledge of water organisms and their life cycles, drinking water treatment plant, cooling water and pool or spa system designs, labels and hazards of disinfectants and biocides and proper application techniques to assure adequate control while minimizing exposure to humans and the environment.
- d. **Wood Preserving.** Applicants seeking certification in the Wood Preserving Subcategory described in Section 2(A)(VII)(d) must demonstrate practical knowledge in wood destroying organisms and their life cycles, nonchemical control methods, pesticides appropriate for wood preservation, hazards associated with their use, proper handling of the finished product, proper disposal of waste preservatives, and proper application techniques to assure adequate control while minimizing exposure to humans, livestock and the environment.
- e. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest control as described in Section 2(A)(VII)(e) must demonstrate a practical knowledge of the species involved, their

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

- f. **Termite Pests.** Applicants seeking certification in this subcategory must demonstrate a practical knowledge of Termite pests and methods for their control. Such knowledge shall include identification of termites and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

VIII. **Public Health Pest Control**

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

IX. **Regulatory Pest Control**

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

X. Demonstration and Research Pest Control

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

XI. Aerial Pest Control

Applicants seeking certification in the category of Aerial Pest Control as described in Section 2(A)(XI) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Applicants must also demonstrate competency in the specific category or subcategory in which applications will be made, as described in paragraphs I, II, VI and VIII herein. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

4. Competency Standards for Certification of Commercial Applicator/Master

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

5. Certification Procedures for Commercial Applicators

A. Initial Certification

- I. **Application for Exams.** ~~All persons desiring to take exams must request an application from the Board's office and submit all required information and fees.~~ 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, Social security number, home address, company address, name and telephone number of supervisor and categories for which certification is desired.
- b. A non-refundable fee of \$10.00 for each core, category or subcategory exam shall accompany the application.
- c. Study materials for other than the regulations exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
- d. A non-refundable fee of \$50.00 for the regulations and master exams shall accompany the application for Master exams. Study material for the regulations exam will be sent to the applicant upon receipt of their application and the required fees.
- II. **Appointment for Exams**
- a. ~~Upon receipt of an application the staff shall schedule an exam date and notify the applicant. If the scheduled date is not convenient for the~~

~~applicant, it shall be the responsibility of the applicant to contact the Board's office to arrange a more convenient time to take the exams. 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 in all areas except category I(b)IV, Post Harvest Treatment shall take a closed book core exam plus a closed book category technical exam on each applicable category or subcategory for which they anticipate making pesticide applications.
- b. In addition to the exams described above in sections (a), applicants for commercial applicator/master certification in all areas except category I(b)IV, Post Harvest Treatment must complete a closed book written regulations exam as well as a master exam. Applicants for commercial applicator/master must successfully complete the core and at least one category exam or the combined exam before being eligible to take the master exams. Applicants must also successfully complete the regulations exam before being allowed to commence on the master exam.
- c. Applicants in subcategory I(b)IV Post Harvest Treatment shall take one closed book exam which combines the core exam and the category exam.

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

- a. Applicants should be present and ready to take the exams at the appointed time.
- b. Applicants shall not talk during the examination period.
- c. Applicants shall not be allowed to bring any books, papers, cellular telephones, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.

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

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

- a. An applicant who fails the core exam must re-apply and pay all required fees and may not retake that examination prior to 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 ~~within 12 months before qualifying for certification.~~
- f. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retaking.

VI. **Expiration.** Certification under this Section will expire on December 31st of the ~~sixth~~ third year after the date of successful completion of ~~the~~ required exams and on December 31st of every ~~sixth~~ 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** - ~~18~~ 9 credit hours, including at least ~~3~~ 2 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.
- b. **Operator level** - ~~12~~ 6 credit hours, including at least ~~3~~ 2 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.

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

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

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 one hour of presentation on appropriate topics.
- b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each one hour of presentation on appropriate topics.
- 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, ~~each participant will complete a form to verify attendance at each program for which credit is allowed at the site~~ applicants must submit verification of attendance at approved programs to the Board. 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.~~ 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 ~~six~~ 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. ~~Attendance verification forms must verify attendance by the applicator of the entire approved program(s) for which recertification credit is sought, and must be completed, signed and submitted to the program organizer or Board representative by the applicator seeking recertification credit(s).~~ Applicants must attend the entire approved program(s) for which recertification credit is sought. No other person may complete or sign ~~the~~ a verification form on ~~the~~ 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 - ~~\$70.00~~ \$105.00 per person.
 - II. For replacement, upgrade to master or to add categories \$5.00.
- 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 ~~second calendar year after issuance~~ 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.*

7. **Transition**

For the purposes of converting from two year licenses and six year certification periods to three year licenses with concurrent three year certification periods, and to ensure that license expirations are evenly distributed across any three year period. During the transition period, the Board may initially issue one, two, or three year licenses with corresponding certification periods. Licensees must obtain a proportional number of recertification credits per year during the transition period. License fees will also be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when a license is renewed, based on applicant's last name.

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

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 34—CERTIFICATION AND LICENSING
PROVISIONS/PESTICIDE DEALERS**

Basis Statement

Two amendments to Chapter 34 were proposed by the Board:

1. Shorten the time period a person must wait before re-taking an exam they have failed. This change would align Chapter 34 with other Board licensing rules.
2. Change the license period from one year to three; change the certification period from five years to three and align the licensing and certification periods to be consistent with other Board licenses.

One comment was received that was not specific to any particular chapter but was supportive of the proposed amendments. Consequently, the Board concluded that the proposed amendments better serve the public interest and determined it was appropriate to adopt the amendment as proposed.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

Chapter 34—Certification and Licensing Provisions/Pesticide Dealers

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

Currently there are about sixty licensed Restricted Use Pesticide Dealers in Maine. They will all be affected in that the license period will increase from one year to three, and the time frame in which they need to receive recertification credits decreases from five years to three years. The cost per year remains the same.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

The amendments will result in a slight decrease in paperwork.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 34: CERTIFICATION AND LICENSING PROVISIONS/PESTICIDE DEALERS

SUMMARY: These regulations describe the requirements for certification and licensing of pesticide dealers.

Section 1. Competency Standards for Certification

No person shall be certified as a pesticide dealer unless that person has demonstrated knowledge of pesticide classifications, formulations, labeling, safety, storage 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.

Section 2. Certification Procedures for Pesticide Dealers

A. Initial Certification

1. **Application for Exam.** All persons desiring to take the exam must request an application from the Board's office and submit all required information and fees.
 - a. Information shall include name, home address, Social Security number, name and telephone number of company and company address.
 - b. A fee of \$10.00 for the exam shall accompany the application.
2. **Appointment for Exam**
 - a. ~~Upon receipt of an application the staff shall schedule an exam date and notify the applicant. If the scheduled date is not convenient for the applicant, it shall be the responsibility of the applicant to contact the Board's office to arrange a more convenient time to take the exams. 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 exam on the scheduled date at least 24 hours in advance of the scheduled exam. 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.
3. Study materials for the dealer exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
 4. **Examinations.** All applicants shall complete the closed book dealer exam covering subjects specified in Section 1.
 5. **Examination Procedure.** All applicants shall comply with these rules or forfeit their opportunity to complete the exam at a specified appointment.
 - a. Applicants should be present and ready to take the exam at the appointed time.
 - b. Applicants shall not talk during the examination period.
 - c. Applicants shall not be allowed to bring any books or papers into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
 - d. Applicants shall not make notes of the exam and shall not leave the table during an exam unless authorized by the staff.
 6. **Qualification.** An applicant desiring to qualify for dealer certification must achieve a passing score of 80 percent.
 - a. An applicant who fails the exam may not re-apply to take the examination prior to ~~14~~ 6 days after the date of such examination. If an applicant fails again the applicant must wait ~~30~~ 6 days before retesting.
 - b. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
 7. **Expiration.** Certification under this section will expire on December 31st of the ~~fifth~~ third year after the date of successful completion of the exam and on December 31st of every ~~fifth~~ third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

B. **Recertification**

1. Any person with current valid certification may renew that certification by accumulating ~~15~~ 9 recertification credits during the certification period described in Section 2(A)7.

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. Label review,
 - c. Pesticide formulations,
 - d. Applicator safety,
 - e. Storage and disposal,
 - f. Pest identification control,
 - g. 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.
5. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
6. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each one hour of presentation on appropriate topics.
7. For in state programs, ~~each participant will complete a form to verify attendance at each program for which credit is allowed at the site. applicants must submit verification of attendance at approved programs to the Board.~~ For out of state programs, applicants must notify the Board about attendance and send a registration receipt or other proof of attendance 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. submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
8. A person who fails to accumulate the necessary credits will have to re-apply to ~~take~~ re-take and pass the exam required for initial certification.

Section 4. Licensing

- A. **Application.** Application for a pesticide dealer license shall be on forms provided by the Board.
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
 - 1. For a pesticide dealer license - ~~\$20.00~~ \$60.00 per person.
 - 2. For replacement or alteration - \$5.00.
- C. **Reports.** All required reports described in Chapter 50 must have been submitted in proper form before a license will be processed.
- D. **Expiration.** All licenses will expire at the end of the certification period as determined in Section 2 A 7. ~~at the end of each calendar year.~~

Section 5. Special Dealer Requirements

- A. Each dealer shall be responsible for the acts of those people in his/her employ and the dealer's license shall be subject to denial, suspension or revocation for any violation of the statute or regulations, whether committed by the dealer, his/her office, agent, employee, or other person acting in concert or participation with him/her.
- B. A licensed dealer must be present in the outlet at the time of sale of a restricted use pesticide so that she/he may supervise the transaction.
- C. Restricted-use and limited-use pesticides shall be stored separately in an area not accessible for self service.
- D. No dealer shall sell any restricted-use pesticides to any person who does not have in his/her possession a valid license.
- E. No dealer shall sell any limited-use pesticides to any person who does not have in his/her possession a valid license and limited-use permit.
- F. Dealers shall either maintain a record of restricted sales pursuant to Chapter 50, "Record Keeping and Reporting Requirements".

Section 6. Transition

For the purposes of converting from one year licenses and five year certification periods to three year licenses with concurrent three year certification periods, and to ensure that license expirations are evenly distributed across any three year period, the Board may initially issue one, two, or three year licenses with corresponding certification periods. Licensees must obtain a proportional number of recertification credits per year during the transition period. License fees will also be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when an existing license is renewed, based on the applicant's last name.

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

EFFECTIVE DATE:

January 1, 1983.

AMENDMENT EFFECTIVE:

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

MINOR CORRECTION:

April 25, 2013 – grammar in first paragraph

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 35— CERTIFICATION AND LICENSING
PROVISIONS/SPRAY CONTRACTING FIRMS**

Basis Statement

Two amendments to Chapter 35 were proposed by the Board:

1. Remove the requirements for spotters and monitors for forest insect aerial spray programs.
2. Change the license period from two years to three.

One comment was received that was not specific to any particular chapter but was supportive of the proposed amendments. Consequently, the Board concluded that the proposed amendments better serve the public interest and determined it was appropriate to adopt the amendment as proposed.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

Chapter 35—Certification and Licensing Provisions/Spray Contracting Firms

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

Currently there are 253 licensed spray contracting firms in Maine. They will all be affected in that the license period will increase from two years to three; the cost per year remains the same.

Businesses doing aerial spraying for forest insect projects will not be required to hire specific monitors and spotters. This amendment is required by a change in statute.

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

None

Brief Statement of the Probable Impact on Affected Small Businesses

The amendments will result in a slight decrease in paperwork.

Costs will be lower for major forest insect aerial spray projects.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 35: CERTIFICATION AND LICENSING PROVISIONS/SPRAY CONTRACTING FIRMS

SUMMARY: These regulations describe the requirements for certification and licensing of spray contracting firms.

1. Competency Standards for Certification

No person shall be certified as a spray contracting firm unless it demonstrates that the firm will have in its employment a sufficient number of licensed Master and Operator applicators to actively supervise and conduct the program in accordance with all applicable laws and regulations, and that such firm will otherwise be competent to responsibly make a pesticide application. ~~Where a major forest insect aerial spray program is undertaken, the firm must also demonstrate that there will be an adequate number of licensed spotters to accompany each spray team.~~ A responsible official of the contracting firm will sign a statement attesting that he/she is familiar with and that the contracting firm will comply with all statutes, rules, and guidelines of the Board.

2. Certification Procedures

All applicants must complete and submit an application provided by the Board which details the organizational structure of the spray contracting firm.

- A. Information shall include the firm name, chief officer, telephone number and location of the company headquarters, and business mailing address.
- B. Information shall also include a listing of all Master applicators who shall have responsibility for spray programs conducted in Maine along with their business locations and telephone numbers.
- C. Information shall also be included, as required on the application form, which demonstrates whether the firm has the necessary competence to responsibly apply pesticides in Maine.

3. Licensing

- A. **Application.** Application for a spray contracting firm license shall be on the same form provided by the Board for certification information.
- B. **Fee.** At the time of application, the applicant must submit a fee of ~~\$200.00~~ \$300.00.
 - 1. For replacement or alteration - \$5.00.

- C. **Insurance.** An applicant must submit a completed and signed form, provided by the Board, which attests that the spray contracting firm will have the required amounts of insurance specified in Chapter 31 in effect when any employee or agent makes a pesticide application.
- D. **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).
- E. **Decision.** Within 15 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.*
- F. **Refusal to Renew.** The Board may refuse to renew a license if it is not in accordance with any of the requirements hereof or if the Board makes, as to the licensee, any of the findings set forth in 22 M.R.S.A. §1471-D (8), which describe the bases for a decision by the Administrative Court to suspend or revoke a license. If the Board determines that there is evidence sufficient to refuse to renew a license, it shall give notice and an opportunity for a hearing before the Board prior to making that determination final.
- G. **Expiration.** All spray contracting firm licenses will expire at the end of the ~~second~~ third calendar year after issuance.

4. **Special Spray Contracting Firm Requirements**

- A. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the Board.
- B. Each spray contracting firm shall be responsible for the acts of those people in its employ and its license shall be subject to denial, refusal to renew, suspension, or revocation, and such firm shall otherwise be punishable under the law, for any violation of the statutes or regulations, whether committed by the owner, chief officer, agent, employee or other person acting in concert or participation with it.
- C. No spray contracting firm shall make a forest insect aerial spray application until it ascertains that legally required notification has been given to the public and the Board, and there has been compliance with all other requirements for such an application, including any required licensing of its employees, agents and independent contractors and their employees.
- D. ~~No spray contracting firm shall make a major forest insect aerial spray application unless licensed applicators, spotters and monitors are in place to direct or monitor each spray aircraft or each team of spray aircraft during actual applications.~~

~~E.D.~~ A spray contracting firm shall cause its ~~licensed spotters and other~~ employees and agents to prepare reports pursuant to Chapter 50, "Record Keeping and Reporting".

5. Grandfathering and Transitions

~~The 1999 amendments to this chapter which extend the license period shall affect licenses renewed after December 31, 2000.~~

For the purposes of converting from two year licenses to three year licenses to ensure that license expirations are evenly distributed across any three year period, the Board may initially issue one, two, or three year licenses. License fees will be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when an existing license is renewed, based on company name.

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

EFFECTIVE DATE:

February 6, 1985

AMENDED:

January 12, 1986

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999; also converted to MS Word

CORRECTIONS:

February, 2014 – agency names, formatting