

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 20—Special Provisions

CMR 01-026, Chapter 31

CMR 01-026, Chapter 32

CMR 01-026, Chapter 41

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

Chapter 20:

Currently, 306 active spray contracting firms have pesticide applicator licensure in Maine. They will all be affected by this amendment:

1. Spray contracting firms will be required to submit their methods of proper site identification that they use to the Board by March 1, 2024
2. Applicators may be subject to additional penalties if they are found to violate the new amendments to the rule. If the Board wishes, they may suspend the commercial operator licensure for the first offense, the commercial operator and the master operator licensure for the second offense, and the commercial operator, master operator, and firm licensure for the third offense over a five-year period. Firms cannot operate if the master-level and firm-level licensure is suspended until the suspension period is concluded.

Chapter 31:

Currently, there are 92 applicators in the 7C categories. They will be unaffected by this amendment, other than their licensure would change to 7C. Additionally, new applicators seeking this licensure would all receive one manual.

Chapter 32:

Currently, there are 1,476 private applicators. This rule would apply to private applicators that are supervising non-certified applicators 16 and older who are immediate family members.

Chapter 41:

Currently, there are between 75 - 100 applicators that maintain certificates for Bt corn. These applicators would be affected, as they would not need to renew their training to receive certificates every three years.

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

Chapter 20:

No additional skills will be necessary for the reporting and recordkeeping required by this new rule, these will be additional steps that spray contracting firms should already have on record and be following according to Board policy. Required reporting includes:

1. Maintaining records of methods of proper identification of treatment sites on file and available for the Board or inspectors to review, and
2. Submitting methods of proper identification of treatment sites to the Board by March 1, 2024

Chapter 31:

No additional skills will be needed for this rule. This changes the category that licensure would be held under.

Chapter 32:

No additional skills will be needed for this rule. These changes incorporate the new federal standards.

Chapter 41:

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

Brief Statement of the Probable Impact on Affected Small Businesses

Chapter 20:

The amendments will result in companies keeping methods of identifying their treatment sites on record and submitting those to the Board. If companies violate this rule, there will be an additional violation of improper identification of a treatment site. If the Board wishes, they may extend a suspension as outlined in Chapter 20 to businesses, which could result in licensure suspension at the operator, master operator, or firm level. Licensure suspension would have a financial impact on small businesses, where they would not be able to apply pesticides commercially for up to 45 days, resulting in lost profit during that period.

Chapter 31:

The amendments to this chapter will have minimum impact on small businesses. It changes the title of categories, but competency standards have not changed.

Chapter 32:

The amendments to this chapter will impact small farms with applicators who hold private licensure. Applicators can now employ immediate family members to use restricted-use pesticides under their direct supervision. These changes were made at the federal level and are incorporated by reference.

Chapter 41:

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

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

Chapter 20:

The penalties for these amendments could be removed, which would make this rule less intrusive to businesses. In this instance, the policy incorporated into Section 7 would be enforceable but would not have additional licensure suspension penalties. It would follow the same requirements as 7 M.R.S.A. §616-A.

Chapter 31:

Alternatively, these categories could remain separate, which means that staff have different categories that all require the same manual and test. Combining these categories is for administrative purposes and to reduce confusing for test takers.

Chapter 32:

There are no alternative methods for achieving this rule. These changes must be made as they were a part of the conditional approval of the Maine State Certification and Training Plan as mandated by the Environmental Protection Agency. These changes are required for Maine to keep its primacy over pesticide regulation.

Chapter 41:

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