



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BOARD OF PESTICIDES CONTROL
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6

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COMMISSIONER

To: Board Members

From: Megan Patterson, Director

Subject: Interpretation of Chapter 26, Section 3(B)

Date: January 11, 2021

On December 31, 2020, the Governor's Office issued Executive Order 7-A FY 20/21. This Executive Order (EO) amended EO 7 FY 20/21 (pertaining to K-12 schools) and expanded the exemption from commercial licensure for powered application of general use antimicrobial pesticides to the following institutional settings:

- hospitals,
- municipal and county government facilities and vehicles, and
- universities and colleges.

All other relevant regulations remain in effect, including posting and notification requirements detailed in CMR 012-026, Chapter 26, Standards For Indoor Pesticide Applications And Notification For All Occupied Buildings Except K - 12 Schools, Section 3(B) (see excerpt below). Current regulations require advanced posting at least 24 hours and no more than seven days prior to each indoor application at institutions. **Staff are asking the Board to interpret the applicability of existing posting requirements for facilities making multiple powered applications of general use disinfectants for routine cleaning, to multiple locations, daily/weekly.**

Excerpts from CMR 012-026, Chapter 26:

Section 2. Exemptions

- A. The following pesticide uses are exempt from the requirements of this Chapter:

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2. application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures;

Section 3. Notification

B. Notice to Employees of Agencies, Businesses and Institutions

At least 24 hours and no more than seven days in advance of a pesticide application in a building housing an agency, business or institution that is not exempted under Section 2, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) in a conspicuous place or places where notices to employees are customarily posted. The notice must inform employees of the planned application and about their right to ask for and receive more specific information, as described in Section 3(D). The Board approved written notice must remain posted for at least 48 hours following the application. If an employee asks for further information specified in Section 3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(B) by providing the Board approved notice and instructing the building manager, the person requesting the application or another responsible individual to post the notice as described in this subsection. The applicator must confirm with the building manager, the person requesting the application or another responsible individual that the requirements of this section have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 26: STANDARDS FOR INDOOR PESTICIDE APPLICATIONS AND NOTIFICATION FOR ALL OCCUPIED BUILDINGS EXCEPT K - 12 SCHOOLS

SUMMARY: These regulations establish procedures and standards for applicators applying pesticides inside occupied private and public buildings other than K - 12 schools that are covered by Chapter 27. This chapter also sets forth the requirements for notification about pending pesticide applications to residents of rented space, employees of agencies, businesses and institutions, and parents or guardians of children in licensed child care facilities and nursery schools.

Section 1. Definitions

- A. **Applicator.** For the purposes of this regulation, Applicator means a commercial applicator or other persons who apply pesticides to occupied buildings.
- B. **Client.** For the purposes of this regulation, Client is the person who either owns or manages the Occupied Building and who contracts with a commercial applicator to monitor and/or control pests.
- C. **Crack and Crevice Treatment.** For the purposes of this regulation, Crack and Crevice Treatment means using an injector tip and placing the tip inside an opening to apply small amounts of pesticides into cracks and crevices in which pests hide or through which they may enter a building. Such openings commonly occur at expansion joints, between elements of construction, and between equipment and floors. These openings may lead to voids such as hollow walls, equipment legs and bases, conduits, motor housings, and junction or switch boxes. This does not include spraying a band covering the baseboards or mopboards or spraying above the baseboards or mopboards.
- D. **Integrated Pest Management.** For the purposes of this regulation, Integrated Pest Management (IPM) is a process that utilizes regular monitoring to determine if and when a treatment is needed. It employs physical, mechanical, cultural, chemical, biological and educational programs to keep pest populations low enough to prevent intolerable damage or annoyance. Pesticides should be only one of many options considered for solving a pest problem, and when required, target-specific, low impact pesticides and application techniques should be employed. Furthermore, pesticide applications are not made according to a pre-determined schedule but are only made when and where monitoring, or a previous history of pest incidence has indicated that the pest will cause unacceptable economic, medical or aesthetic damage. The IPM program must as a result be environmentally, socially, and economically compatible to meet current public expectations.
- E. **Occupied Building.** For the purposes of this regulation, Occupied Building means any public, private, commercial or institutional structure used or occupied by persons on a regular, long-term basis as a residence or for occupations. These include but are not

limited to rented residential buildings, condominiums, licensed childcare facilities and nursery schools, and governmental, commercial and institutional buildings.

Section 2. Exemptions

- A. The following pesticide uses are exempt from the requirements of this Chapter:
1. application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of any person;
 2. application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures;
 3. application of paints, stains or wood preservatives that are classified as general use pesticides;
 4. application of pesticides by a resident to his or her own residential unit;
 5. commercial application of pesticides where the resident has contracted for application to his or her own personal residential unit; and
 6. indoor applications of pesticides injected into closed systems for control of nuisance microbial organisms.
- B. The use of baits, gels, pastes, dusts and granular materials placed in areas not readily accessible to residents, employees or children is exempt from the requirements of Sections 3(A), 3(B) and 3(C) of this Chapter.
- C. The use of crack and crevice treatments placed in areas not readily accessible to residents, employees or children and done in a manner that minimizes exposure to vapors and/or aerosolized materials is exempt from the requirements in Sections 3(A), 3(B) and 3(C) of this Chapter.

Section 3. Notification

A. Notice to Residents

1. At least 24 hours and no more than seven days in advance of a pesticide application not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice (see Appendix A) to the resident or residents of an apartment unit, condominium unit or other rented residential unit to be treated, where the residents of that unit did not request the impending pesticide application. The notice may be mailed or provided directly to the residents and shall explain that pesticides may be used in their residential unit and that they have the right to ask for and receive more specific information

described in Section 3(D) of this regulation. If the resident asks for further information specified in Section 3(D), the applicator must provide it.

2. If an application not exempted by Section 2 will be made to common areas of these rental residential buildings, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) at least 24 hours in advance and no more than seven days in advance of the planned application informing the residents of that building that pesticides will be used in the common areas and that they have the right to ask for and receive more specific information as described in Section 3(D). The Board approved written notice must remain posted for at least 48 hours following the application.
3. The applicator may fulfill the requirements of subsections 3(A)(1) and 3(A)(2) by providing the Board approved notice and instructing the landlord or building manager to distribute the notice to the residents as described in subsection 3(A)(1) or to post the notice as described in subsection 3(A)(2) as appropriate. The applicator must confirm with the landlord or building manager that the requirements of subsections 3(A)(1) and 3(A)(2) have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

B. Notice to Employees of Agencies, Businesses and Institutions

At least 24 hours and no more than seven days in advance of a pesticide application in a building housing an agency, business or institution that is not exempted under Section 2, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) in a conspicuous place or places where notices to employees are customarily posted. The notice must inform employees of the planned application and about their right to ask for and receive more specific information, as described in Section 3(D). The Board approved written notice must remain posted for at least 48 hours following the application. If an employee asks for further information specified in Section 3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(B) by providing the Board approved notice and instructing the building manager, the person requesting the application or another responsible individual to post the notice as described in this subsection. The applicator must confirm with the building manager, the person requesting the application or another responsible individual that the requirements of this section have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

C. Notice to Parents and Guardians of Children in Licensed Childcare Facilities or Nursery Schools

At least 24 hours and no more than seven days in advance of a pesticide application in a licensed child care facility or nursery school that is not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice of the planned application (see Appendix A) to parents or guardians of currently enrolled children. The notice must inform parents or guardians that pesticides will be used in the building and that they have the right to ask for and receive more specific information, as described in Section 3D. If a parent or guardian asks for information specified in Section

3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(C) by providing the Board approved notice and instructing the manager of the daycare or nursery or another responsible individual to distribute the notice to parents or guardians as described in this subsection. The applicator must confirm with the manager or responsible individual of the daycare or nursery that the requirements of this subsection have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

- D. If residents, employees, parents or guardians ask for information about a pesticide application, the applicator shall provide the information requested, including as applicable: (a) the trade name and EPA Registration number of the pesticide(s) intended to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the re-entry interval listed on the product label; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. If requested, the applicator shall also provide a copy of the pesticide product label and Material Safety Data Sheet, and shall make reasonable efforts to fulfill any other requests for pesticide information. However, such requests for additional information will not delay nor prohibit the applicator from performing the pesticide application as scheduled.

Section 4. Integrated Pest Management Techniques

- A. Applicators must undertake pest management activities using appropriate elements of integrated pest management. In all cases, any application shall be conducted in a manner to minimize exposure and human risk to the maximum extent practicable using currently available technology.
- B. Applicators must identify conditions conducive to the development of pest problems. Commercial applicators must provide to the client a written evaluation of pest conducive conditions and must provide specific recommendations for practical non-pesticide control measures.
- C. Prior to any pesticide application, applicators must identify the pest specifically and evaluate the infestation severity and any associated damage except as provided in Section 4(C)(1) and (2) below.
1. Where there is a history of pest infestation and conditions are conducive to pest infestations, baits, gels, pastes or granular materials placed in areas not readily accessible to residents, employees, patients, or children and crack and crevice treatments designed to control commonly occurring pests in these areas may be used without specific evidence that a significant population is currently present.
 2. For specific public health pests designated by Board policy, baits, gels, pastes, granular materials or crack and crevice treatments placed in areas not readily accessible to residents, employees or customers may be used without specific evidence of an infestation.

Section 5. Risk Minimization

- A. Prior to pesticide application, applicators must take into account the toxicity of recommended product(s) and choose low risk product(s) based on efficacy, volatility, the potential for exposure, the signal word on the pesticide label, the material safety data sheet and any label language imposing a ventilation requirement.
- B. Unless prohibited by the label, only baits, gels, pastes or granular materials and crack and crevice treatments may be used when residents, patients, children, customers and unconsenting employees are in the same room.
- C. Prior to making an application, applicators must also consider the following:
 - 1. The principal uses for the room to be treated including if it is primarily occupied by sensitive individuals such as children, older adults or persons with chronic illnesses.
 - 2. The type of treatment being made and the likelihood that people or pets will come into contact with the treated area following the application.
 - 3. The volatility of the product being applied and the practical need to ventilate the treated room(s) prior to re-entry. In all cases, label statements relative to ventilation or re-entry shall be minimum requirements.
 - 4. The type of ventilation system, if present, including whether it serves only the treated room(s) or the entire building, and whether it can and should be shut off while the treatment is performed.

Section 6. Tenant's Consent

Except in cases where a public health or code enforcement official with jurisdiction has determined a need for immediate pest management, application to a tenant's residential unit is prohibited if the tenant is opposed to such treatment. A pesticide application may not be made until such time as alternative control measures have been tried and documented as to their failure to control a pest problem, which poses health risks, threatens significant property damage or threatens to infest other parts of the building.

Section 7. Other Requirements

These regulations do not affect pesticide label instructions, which may be more restrictive in certain cases. Under federal and state law, wherever particular label instructions impose standards that are more restrictive than these regulations, such label instructions must be followed. Similarly, these regulations do not affect more restrictive regulations or guidelines applicable to particular types of pesticide applications.

Section 8. Transition

This regulation will become effective on January 1, 2007.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

January 1, 2007 – filing 2006-204

AMENDED:

May 1, 2008 – filing 2008-153 (Final Adoption, major substantive)

CORRECTIONS:

February, 2014 – agency names, formatting

Notice of Pesticide Application

Pesticides May Be Applied in this Building as Part of an Integrated Pest Management Program on (date) _____

To request information about the use of pesticides in this building contact:

Company: _____

Phone/E-mail: _____

This sign must remain posted for at least 48 hours after the application is completed.

Date Posted or Provided: _____

Person Providing Notice: _____

Date/Time Completed: _____

Remove sign on: _____

For general information on pesticides and regulations contact:

Maine Board of Pesticides Control

287-2731, or visit

www.thinkfirstspraylast.org

