



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

PAUL R. LEPAGE
 GOVERNOR

WALTER E. WHITCOMB
 COMMISSIONER

To: Board of Pesticides Control Members
 From: Megan Patterson, Manager of Pesticide Programs
 RE: Licensing and certification interpretation/policy for training of WPS workers/handlers by Agricultural Basic applicators
 Date: May 3, 2017

In 2015, EPA published significant revisions of the Worker Protection Standard (WPS) rules. These revisions restricted the qualification to serve as a trainer of WPS defined workers and handlers to certified applicators. EPA reserves the term “certified” for only those applicators qualified to purchase and apply restricted use pesticides. This reasoning would only allow Maine Private Applicators of Restricted Use Pesticides, Commercial Master Applicators and Commercial Master Operators to train WPS workers and handlers.

In Maine, Private Applicators of General Use Pesticides (agricultural basic applicators) are not allowed to purchase or apply restricted use pesticides. However, completion of the necessary licensing examination—the agricultural core—would, by federal standards, qualify agricultural basic applicators to be considered “certified” and thus able to purchase and apply restricted use pesticides.

In June 2016, Board staff submitted a WPS equivalency request to EPA Headquarters in an attempt to rectify this inadvertent penalty on agricultural basic applicators. The request assessed Maine’s exam content and examination procedure required for agricultural basic applicators and argued that given federal requirements for certification, Maine’s agricultural basic applicators should be considered certified and thus able to train WPS defined workers and handlers. After consideration of the equivalency request, EPA Headquarters communicated via EPA Region I that an equivalency was not necessary and Maine could determine how to proceed with allowing agricultural basic applicators to train WPS workers and handlers.

We request that the Board provide approval or disapproval of the staff proposal to consider Private Applicators of General Use Pesticides (agricultural basic applicators) as equivalent to Private Applicators of Restricted Use Pesticides for the purpose of training WPS defined workers and handlers.

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Subject: State of Maine Worker Protection Standard Equivalency Request
40 Code of Federal Regulations Chapter I §170.609 *Equivalency requests.*

Dear Ms. Fitz, Messrs. Keaney and Pont:

The Maine Department of Agriculture, Conservation & Forestry, Board of Pesticides Control is the State Lead Agency that regulates pesticides and is responsible for implementation and enforcement of the Worker Protection Standard.

Maine requests an equivalency determination for authority to recognize the Maine Private Applicator of General Use Pesticides in lieu of the United States Environmental Protection Agency regulation 40 CFR 170.401(c)(4) and 40 CFR 170.501(c)(4).

Introduction

Maine has similar requirements for both Private Applicators of General Use Pesticides and Private Applicators of Restricted Use Pesticides. Maine Private Applicators of Restricted Use Pesticides are required to complete closed book core and commodity exams. Private Applicators of General Use Pesticides are required to complete the same closed book core exam, but no commodity exam. Even with this lesser requirement, the Maine Private Applicator of General Use Pesticides licensing and certification procedure exceeds the federal standards for certification of private applicators as detailed in 40 CFR 171.5(a). The ways in which Maine certification exceeds the requirements listed in 40 CFR 171.5(a) are outlined below and provided in detail in section (2) of this document:

- Core exam
 - Is closed book
 - Requires a minimum score of 80
 - Contains 100 questions which cover all of the competency categories listed in 40 CFR 171.5(a)
 - Contains 10 questions related to the restricted use pesticide label for Gramoxone Max, EPA Registration No. 100-1074.
 - Addresses the difference between Restricted Use Pesticides and General Use Pesticides
- Recertification credits
 - 3 credits must be obtained over the 3 year certification period

For these reasons, Maine is requesting an equivalency determination to recognize Maine Private Applicators of General Use Pesticides as equivalent to Private applicators of Restricted Use Pesticides (40 CFR 171.5(a)) in their qualification to provide Worker Protection Standard Training for Workers (§170.401(c)(4)) and Handlers (§170.501(c)(4)) without additional training as stipulated under (§170.401(c)(4)(ii)) and (§170.501(c)(4)(ii)) respectively.

A comparison table comparing the federal regulation with the state rule is included with this correspondence.

The following is a response to the specific items listed in §170.609 *Equivalency requests*:

(1) Identification of the provision(s) of this part for which the State or Tribe is requesting regulatory equivalency:

§170.401(c)(4) *Training Requirements for Workers*

§170.501(c)(4) *Training Requirements for Handlers*

(2) Appropriate documentation establishing that the pertinent State or Tribal worker protection provision(s) provides environmental and human health protection that meets or exceeds the protections provided by the identified provision(s) in this part.

The current Maine Department of Agriculture, Conservation and Forestry Board of Pesticides Control Certification and Licensing Provisions Private Applicators of General Use Pesticides meets 40 CFR Part 170.401(c)(4) and 40 CFR 171.5(a)

Detailed below, are the depth and breadth of Maine's exam procedure, the exam topics, and the associated recertification criteria.

Competency Standards for Certification—Private Applicator of General Use Pesticides

No person shall be certified as a private applicator of general-use pesticides unless the person has fulfilled requirements demonstrating knowledge of pest problems and pest-control practices, including, as a minimum, the ability to recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings.

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, animal or humans.

Any person seeking to be certified as a private applicator of general-use pesticides must pass a written core exam. The exam shall be closed book. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the exam period.

An applicant must achieve a passing score of 80 percent on the core exam.

An applicant who fails the core exam may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.

Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.

Standards for Recertification—Private Applicator of General Use Pesticides

A valid certification may be recertified by accumulating recertification credits.

Any person with a current valid certification may renew that certification by accumulating three recertification credits during the 3 year certification period.

Recertification credits will be available through Board-approved meetings including, but not limited to, University or industry and trade organization seminars or workshops and approved home study courses where pest management topics are included.

Recertification topics include but are not limited to:

- Applicable laws and regulations;
- Environmental hazards;
- Calibration and new application techniques;
- Label review;
- Pesticide risk and applicator safety;
- Pesticide storage and disposal;
- Pest identification, biology and management;
- Integrated Pest Management;
- Pesticide fate and drift management;
- Risk communication; and
- Public relations.

One credit shall be assigned for each one hour of presentation on appropriate topics.

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.

For in-state programs, each participant will complete an on-site process to verify attendance at each program for which credit is allowed. For electronic, correspondence or out-of-state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of completion or attendance and a copy of the agenda or syllabus of the training provided. The agenda or syllabus must show the length of each presentation and describe what was covered.

A person who fails to accumulate the necessary credits will have to take the most current exam required for initial certification.

Maine Worker Protection Standard Equivalency Request

Attached, are the Maine regulations that apply to this request.

(3) Identification of any additional modifications to existing State or Tribal regulations that would be necessary in order to provide environmental and human health protection that meets or exceeds the similar provisions of this part, and an estimated timetable for the State or Tribe to effect these changes.

None

(4) The expected economic impact of requiring compliance with the requirement(s) of this part in comparison with compliance with the State or Tribal requirement(s), and an explanation of why it is important that employers subject to the State or Tribal authority comply with the State or Tribal requirement(s) in lieu of similar provision(s) in this part.

The State of Maine developed the “Ag Basic” license to provide increased awareness of pesticide safety. Chapter 33 of the Maine Board of Pesticides Control. Chapter 33 is summarized as:

“These regulations describe the requirements for certification and licensing of private applicators using general-use pesticides to produce plants or plant products intended for human consumption as food, where the person applying the pesticides or the employer of the person applying the pesticides derives \$1,000 or more in annual gross income from the sale of those commodities.”

The effective date was December 26, 2011. The Board developed a time table to ensure there was sufficient notice and time for those impacted to obtain the study materials and to take the closed book exam. To date 511 applicators have taken the exam and have obtained their license. The Maine Board of Pesticides Control has provided approximately 15 educational training sessions across the state.

The Ag Basic license was developed based on the profile of the Maine agricultural community.

Based on USDA NASS Maine data, the number of farms has increased, from 8,136 in 2007; to 8,173 in 2012; to 8,200 in 2015. USDA NASS data reports in 2012, some 5,214 farms used 1 or more pesticides to control: insects, weeds, nematodes, or diseases in addition to growth regulators, which is counted separately. The number of registered RUPs continues to decrease, however, the biopesticides in addition to conventional-- yet more selective-- chemicals are increasing.

In 2012, there were 457 USDA Certified Organic farms in Maine and 154 USDA Organic Certified Exempt. However, “organic” does not mean there are no pesticides used—and label directions do not apply. The State of Maine registers 25B products, so there is a need to ensure these products are used properly. The Ag Basic License has raised pesticide safety awareness for organic producers—who typically participate in zero to few sessions about pesticide application, pesticide safety, worker protection, use and care of PPE, etc.

At minimum, the 511 applicators licensed as Private Applicators of General Use Pesticides will need to attend two—one for 2017 and another for the 2018 changes—Worker Protection Standard Train-the-Trainer courses resulting in lost work time of at least 4088 hours. Based on Bureau of Labor Statics estimates of mean hourly wage for farming, fishing, and forestry occupations—this is a loss of more than \$51,000 in wages.

(5) The signature of the designated representative of the State or Tribal agency responsible for pesticide enforcement.

If you have questions in regard to this correspondence and attachments please do not hesitate to contact me at:

Megan L. Patterson

6/29/16

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You may also contact, Henry Jennings, the Director of this office, at:

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Table: Federal/State Regulation Comparison			
Topic	Federal Regulation	State Rule	Comment
Training	<p>§170.401(c)(4) <i>Training Programs Workers</i></p> <p><i>The person who conducts the training must meet one of the following criteria:</i></p> <ul style="list-style-type: none"> (i) <i>Be designated as a trainer of certified applicators, handlers or workers by EPA or the State or Tribal agency responsible for pesticide enforcement.</i> (ii) <i>Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers.</i> (iii) <i>Be currently certified as an applicator of restricted use pesticides under part 171 of this chapter.</i> <p>§170.501(c)(4) <i>Training Programs Handlers</i></p> <p><i>The person who conducts the training must have one of the following qualifications:</i></p> <ul style="list-style-type: none"> (i) <i>Be designated as a trainer of certified applicators or pesticide handlers by EPA or the State or Tribal agency responsible for pesticide enforcement.</i> (ii) <i>Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers.</i> (iii) <i>Be currently certified as an applicator of restricted use pesticides under part 171 of this chapter.</i> 	Intentionally blank.	Maine has no rules pertaining to the Worker Protection Standard or training for workers and handlers. See below for certification and licensing rules that pertain to certification criteria for private applicators of general use pesticides.

Table: Federal/State Regulation Comparison continued			
Topic	Federal Regulation	State Rule	Comment
Certification	<p>§171.5 Standards for certification of private applicators</p> <p>(a) Competence in the use and handling of pesticides by a private applicator will be determined by procedures set forth below. State standards must conform and be at least equal to those prescribed herein. As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of the pest problems and pest control practices associated with his agricultural operations; proper storage, use, handling and disposal of the pesticides and containers; and his related legal responsibility. This practical knowledge includes ability to:</p> <p>(1) Recognize common pests to be controlled and damage caused by them.</p> <p>(2) Read and understand the label and labeling information—including the common name of pesticides he applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and any specific disposal procedures.</p> <p>(3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity</p>	<p>Title 22, Section 1471-D</p> <p>2. Certification required, private applicators. No private applicator shall use or supervise the use of any limited or restricted use pesticide without prior certification from the board, provided, that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.</p> <p>2-D. Certification required; private applicator of general use pesticides for food production. A private applicator of general use pesticides may not use or supervise the use of general use pesticides for food production without prior certification from the board, except that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator. Additional certification under this section is not required for a person certified as a commercial applicator or a private applicator under subsection 1 or 2, respectively.</p> <p>BPC Chapter 33, Section 1</p> <p>Competency Standards for Certification—Private Applicator of General Use Pesticides (Core exam)</p> <p>A. No person shall be certified as a private applicator of general-use pesticides unless the person has fulfilled requirements demonstrating knowledge of pest problems and pest-control practices, including, as a minimum, the ability to</p>	<p>Maine certification competency requirements for private applicators of general use pesticides are equivalent to federal competency requirements for private applicators.</p>

	<p><i>dispersed in a given period of operation.</i></p> <p><i>(4) Recognize local environmental situations that must be considered during application to avoid contamination.</i></p> <p><i>(5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.</i></p> <p><i>(b) Such competence of each private applicator shall be verified by the responsible State agency through the administration of a private applicator certification system which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticides under limitations of applicable State and Federal laws and regulations. A certification system shall employ a written or oral testing procedure, or such other equivalent system as may be approved as part of a State plan.</i></p>	<p><i>recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings.</i></p> <p><i>B. 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.</i></p> <p><i>ME Complete Pesticide Rules Webpage: http://www.maine.gov/dacf/php/pesticides/laws.shtml</i></p>	
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