

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

Department of Agriculture, Food and Rural Resources—Maine Board of Pesticides Control

Chapter Number and Title of Rule

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

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

The proposed amendments to Chapter 28 were necessitated by the Maine Legislature's enactment of Public Law 2009, Chapter 378, which established new requirements for land managers planning to apply pesticides using aircraft or air-carrier equipment. Small businesses likely to be affected by the new requirements would include most of Maine's 575 blueberry farms (all business numbers are approximated), most of the 70 apple orchards, about 15 mixed-vegetable growers who operate airblast sprayers and about 5 arborist companies that do tree spraying with airblast sprayers.

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

Small businesses that use aerial or air-carrier equipment to make pesticide applications within 1,320 feet of occupied buildings will need to mail a notice to building occupants on abutting properties 90 days prior to the first application. This notice is required once every three years. The amount of work involved in accomplishing this task will vary immensely based on the number of different properties being managed and the number of municipalities involved. Farmers operating on one contiguous property will need to travel to the town office and review the tax maps to ascertain the names and addresses of abutting property owners. This would likely require no more than 3 hours' time, with another hour required to process a mailing to the abutters. The total costs in this circumstance would be approximately \$165 (4 hours @ \$40/hour, plus the cost of the mailing). Additionally, small farmers who plan to make pesticide applications using aircraft or air-carrier equipment will need to review the registry annually to determine if there are individuals adjacent to the application site that wish to be notified. Any individuals identified in the process will need to be contacted prior to each aerial application. It should require no more than 1 hour annually to review the registry at a cost of about \$40. In the event there are nearby individuals on the registry who wish to be notified, then small farmers utilizing aircraft or air-carrier equipment would need to contact those individuals prior to each application, by telephone, e-mail or US mail. For blueberry and Christmas tree growers, this might amount to as many as four applications per year requiring about an hour each time, for a total of an additional \$160 (@ \$40/hour) per year for a total of about \$365 for the first year for a blueberry grower with one contiguous piece of property. The following two years would only require notification of registry participants at a cost of \$160/year.

Organic orchardists, on the other hand, can make as many as 35 air-carrier applications per year and may operate on 15 or more parcels across 10 municipalities. For large organic orchardists, it may require as many as 40 hours to research the municipal tax maps and another 5 hours to conduct the mailing the first year for a total of close to \$1,900 for the first year in the three-year cycle. Additionally, notifying registry participants may require 2 hours per application or

another 70 hours per year, for an ongoing cost of up to \$2,800. So the first year costs for a large organic orchardist could be as high as \$4,700.

Moderate to large-sized blueberry growers who manage a larger number of fields spread across several municipalities will have a similar burden to that of a large orchardist in implementing the mandatory disclosure mailing in the first year of the three-year process—up to \$2,000 in research and mailing costs. However, blueberry growers make only about four applications per year on their bearing fields. Non-bearing fields generally receive only one or two applications, and those are normally made with equipment not subject to these requirements. So moderate- to large-sized blueberry farms might be expected to spend 2 hours notifying registry participants up to 4 times a year, for a total cost of \$320/year. Therefore, the total for the first year of implementing these requirements may run as high as \$2,300 for moderate- to large-sized blueberry growers and then about \$300/year for the next two years in the three-year cycle.

Large vegetable-growing operations that utilize air-carrier equipment generally don't involve quite as many fields or towns as blueberry growers. Their first-year cost for implementing the mandatory disclosure requirements could go as high as \$1,500. However, they may make a few more applications than a blueberry grower, so a reasonable estimate might be 6 applications/year, requiring up to 2 hours to notify registry participants, for an annual cost of \$480. Therefore the first year cost might be as high as \$2,000, with second and third year costs of about \$480.

Arborist companies making air-carrier pesticide applications will find the requirements of this rule difficult to comply with and may switch to high-pressure hydraulic spraying to avoid the requirements entirely. If they continue with air-carrier applications, they most likely will attempt to develop an alternative notification plan for Board consideration, since they normally don't even know their customers 90 days in advance. Developing, writing and submitting a plan to the Board might take 25 hours to complete, for a cost of \$1,000. Implementing an alternative plan would likely require some combination of posting signs and/or placing ads in local papers. The Board estimates the approximate cost for implementing an alternative plan could be as high as \$1,200/year to place an ad in two weekly papers and print 500 cardboard signs. In addition, arborist companies would need to notify registry participants within 1,320 feet. This could take up to 2 hours for every day of spraying. Figuring small business might spray as often 45 days a year, this could cost as much as \$3,600/year. Consequently, first-year costs may run as high as \$5,800, and ongoing costs may be as high as \$4,800.

Brief Statement of the Probable Impact on Affected Small Businesses

The requirements of this rule will not have a significant cost impact on small farms that operate on one contiguous piece of property. However, it will add substantial administrative costs to larger farms that operate on numerous properties spread out over several municipalities. Tree care companies that utilize air-carrier spray equipment will also have substantial costs in implementing this rule.

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

This rule was developed to implement the requirements of Public Law 2009, Chapter 378. Consequently, the Board did not have the authority to consider less intrusive and less costly options. In previous rulemaking efforts, the Board discussed similar approaches that did not include a mandatory disclosure requirement.