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BOARD OF PESTICIDES CONTROL
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DATE: May 3, 2012
TO: Board Members
FROM: Henry Jennings—Director
Anne Bills—Pesticide Education Specialist
SUBJECT: Rulemaking in 2012

The passage of Public Law 2011, Chapter 510, eliminated the statutory mandate for a restricted use pesticide container deposit system. As a result, Chapter 21 of the Board's rules needs to be repealed in order to implement the legislative intent. The Joint Standing Committee on Agriculture, Conservation and Forestry also supported the recommended amendments to Chapter 27 made in the Report on School IPM. The Board has already decided to pursue rulemaking to these two chapters.

At the March 30, 2012, meeting the Board discussed possible changes to Chapters 31 and 32 regarding examinations. At other meetings, suggestions have been made about changes to other chapters, including incorporating some Board policies into rule to ensure enforceability. Additionally, all the Board's rules were reviewed in 2011, at the request of the Administration, to identify areas which could be improved from a regulatory standpoint. Below is a table summarizing all of these potential amendments.

Board members and staff generally agree that combining rulemaking efforts is efficient. It especially makes sense to consider all changes to Chapter 27 at the same time. However, the staff would also like to caution against trying to consider too many rules at once, as rulemaking, by nature, is exceedingly complicated and hearings covering a large number of topics tend to be confusing for all parties.

Please provide guidance to the staff about which rules you wish to include in an upcoming rulemaking initiative.

Chapter	Potential Changes	Reason
10	Update the definition of “spray contracting firm”	Clarify definition and requirements for spray contracting firms and eliminate two current policies ^{1,2}
10/New	Define “low risk” pesticides that may be distributed by a landlord to a tenant for use in the tenant’s apartment and develop an exemption from the general use pesticide dealer requirement in a new rule chapter	Put into rule what currently exists as a policy ³
10 or 31	Add to the definition of “custom application” to exclude the use of antimicrobial copper hardware	Put into rule what currently exists as a policy ⁴
10	Add the definition of “government employee”	Provide clarity as it relates to rules and eliminate current policy ⁵
10 or 31	Detail under what circumstances adults, not parents or guardians, may apply insect repellents to children without being considered commercial applicators	Clarify rule and put into rule what currently exists as a policy ⁹
21	Repeal	Legislature repealed the mandate with the intent of repeal the requirement
24	Deregulate minor pesticide storages for distributors	Reduce regulatory burdens around minor pesticide storage facilities and posting of signs
26	Define “occupied buildings” for the purpose of Chapter 26	Clarify that the intent in Chapter 26 is to regulate the use of pesticides in completely enclosed buildings and eliminate the need for a policy to clarify ⁶
27	Incorporate recommendations that the Board supports in Report on School IPM	Update chapter consistent with Resolve 2011, Chapter 59
27	Add exemptions for high school agricultural and horticultural educational programs from certain requirements of Chapter 27 and put in place alternate requirements to protect students	Improve chapter and put into rule what currently exists as a policy ⁷
27	Align outdoor sign requirement with Chapter 28, and adjust some typos and ambiguity	Clarify ambiguous language, add flexibility and align the sign requirements with other chapters
28	Make sign requirement consistent for all residential applications	Consistency and reduced regulatory burden
29	Add definition of “broadcast pesticide application” for the purpose of Chapter 29	Clarify rule and put into rule what currently exists as a policy ⁸
31	Repeal outdated licensing categories	Housekeeping
31	Increase the fee for taking the core and category exams	Encourage people to study so they don’t have to retake exams so many times
32	Reduce the exam retake waiting period for private applicators	Two week wait period can create hardships
40	Remove products that are no longer used	Housekeeping
41	Add to the rule that refuge-in-the-bag does not constitute a refuge for the purposes of the default buffer requirements for Chapter 41	Clarify rule and put into rule what currently exists as a policy ¹⁰
50	Remove requirements related to container deposit records	Housekeeping
New	<ul style="list-style-type: none"> Exempt certain pesticides from the general use pesticide dealer licensing requirement thereby exempting certain retail establishments from the licensing requirement Clarify the definition of household pesticides 	<ul style="list-style-type: none"> Many small convenience stores are required to obtain a general use dealers license because they carry a small selection of household rodenticides. The term “household use pesticide product” is not defined and excessively vague¹¹

- ¹ Policy Relating to Spray Contracting Firm License Requirements, March 28, 2008
- ² Email from Mark Randlett to Bob Batteese, Re: Spray Contracting Firm, July 22, 2004 and letter to constituent from Bob Batteese, July 23, 2004
- ³ Interim Enforcement Policy to Clarify What Pesticide Products may be Distributed by a Landlord to a Tenant for Use in the Tenant's Own Apartment, August 28, 2009
- ⁴ Interim Enforcement Policy to Allow Unlicensed Distribution and Installation of Antimicrobial Copper Hardware, November 18, 2011
- ⁵ Memo from Jeffrey Pidot to Bob Batteese, December 6, 1983, and letter to Bob Batteese from Clifford, Clifford, Samp & Stone Attorneys, November 28, 1983, Re: Lewiston Housing Authority
- ⁶ Interim Interpretative Policy on the Applicability of CMR-01-026 Chapter 26, August 27, 2010
- ⁷ Interim Enforcement Policy to Exempt High School Agricultural and Horticultural Education Programs from Certain Requirements in CMR 01-026, Chapter 27, August 228, 2009
- ⁸ Policy on Determining Allowable Pesticide Applications Pursuant to CMR 01-026, Chapter 29, Section 6, March 5, 2010
- ⁹ Interim Enforcement Policy to Exempt Employees and Volunteers who Supervise Children from Certain Requirements in CMR 01-026 Chapter 31
- ¹⁰ Interim Enforcement Policy Regarding Refuge-in-the-Bag for Genetically Modified Seed, February 24, 2012
- ¹¹ Letter from Bob Batteese to Rep. Robert Tardy, September 24, 1991