



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 Members
From: Staff
Re: Rulemaking
Date: November 7, 2018

Some of the Federal Certification and Training Changes will require amendments to BPC rules. These changes are outlined below, along with other amendments which have been discussed at past meetings. The potential rulemaking are categorized by the following criteria:

Required C&T	Required by federal rule change
Optional C&T	Suggested by federal rule change
Housekeeping	Fairly minor and should require very little discussion.
Incorporate Policy	Will require some discussion on whether and how to incorporate the policy in rule but the objective is already written in policy.
Requires Discussion	Questions have been raised and a decision needs to be made on whether the rule needs to be amended. These will probably take the most time.

The fourth column designates type of rulemaking (see Title 7 Section 610(6)):

RT	Routine Technical
MS	Major Substantive

The chapters that must be amended are 10, 31, 32, and 50, so they are listed first. Complete list of chapters: 10, 31, 32, 50, 26, 27, 28, 36

The first column correspond to the attached reference documents.



1	Chapter 10	Amend definition of “Aerial Applicator” so that it does not automatically require commercial certification	Required C&T Requires Discussion	RT
2	Chapter 10 Section 2(P)(2)b	Incorporate policy regarding application of pesticides to unoccupied hotel rooms and apartments. Currently the rule specifies “occupied apartments” but is silent on “unoccupied apartments.” May want to consider the 7 day exception (section 2(P)(2)(d)ii) because indoors 7 days may not be enough	Incorporate Policy	MS
3	Chapter 10 Section 2(P)(2)(d)ii	Incorporate Policy Concerning Denying Access to the Public for Seven Days to Areas “Open to Use by the Public”	Incorporate Policy	RT
4	Chapter 31 Section 2(A)(II) and (VII); Section 3(B)(II) and (VII)c	Change Forest Pest Control to Forest Pest Management Change Disinfectant and Biocide Treatments to <ul style="list-style-type: none"> • 1 Disinfectant and Biocide Treatments • 2 Swimming Pool & Spa • 3 Mold Remediation & Water Damage Restoration To align with exams	Housekeeping	RT
5	Chapter 31 Section 5(A)(I)(a)	Remove requirement to collect SSN	Housekeeping	RT
6	Chapter 31 Section 5(A)(I)(d)	Amend to charge \$10 for Master Regulations Exam and \$40 for Master Oral exam	Housekeeping	RT
7	Chapter 31 5(A)(III) (a) (b) (c)	Remove exemptions for Post Harvest Treatment from having to take core exam.	Requires Discussion	RT
8	Chapter 31 Section 5(B)(I)	Remove specific categories of credits as we have never enforced this and don’t categorize recertification courses this way	Requires Discussion	RT
9	Chapter 31 Section 6(D)(II)	Remove section as we no longer charge for replacement or upgrade licenses (since it’s mostly digital)	Housekeeping	RT
10	Chapter 32 Section 7	Remove section on Transitioning to new license period	Housekeeping	RT

11	Chapter 32 Section 1	Amend list to include Label comprehension; Pests (but not the ability to identify specific pests); Responsibilities for supervisors of noncertified applicators; Stewardship; Ability to read and understand pesticide labeling	Required C&T	RT
12	Chapter 32 Section 2(A)(5)	Eliminate sections as EPA now requires ability to read labels	Required C&T	RT
13	Chapter 32	New Section—Create supplemental private categories which can be obtained in addition to certification for private licensure: Aerial application Soil fumigation Non-soil fumigation	Required C&T	RT
14	Chapter 32	<i>Applicators in categories likely to affect pollinators <u>should</u> receive information on protecting pollinators in competency standards under “avoiding harm to non-target organisms” and under reading and understanding the labeling requirements</i>	Optional C&T	RT
15	Chapter 31 Section 5(B) and Chapter 32 Section 2(B)	<i>Question: is this already covered in the existing rule?</i> Add criteria for determining: Content covered by the program and how BPC ensures the required content is covered; Process used to approve courses; How the applicator’s successful completion is verified How BPC ensures on-going quality of the continuing education program	Required C&T	RT
16	Chapter 31 Section 5(B) and Chapter 32 Section 2(B)	Require BPC to verify successful completion of each recertification course/event, including the identity of candidates for recertification	Required C&T	RT
17	Chapter 31 and Chapter 32	New Section—require a government-issued photo id for all exams	Required C&T	RT

18	Chapter 31 and Chapter 32	<p>Establish annual training requirement for noncertified applicators of RUPs which can be accomplished:</p> <ul style="list-style-type: none"> • Completing training outlined in the rule, or • Completing training as a handler under the WPS, or • Holding a valid applicator certification in an unrelated category from another jurisdiction • Satisfying the requirements for noncertified applicators established by the certifying authority that meet or exceed federal standards <p>Training must be provided by:</p> <ul style="list-style-type: none"> • A currently certified applicator, or • A certifying authority-designated trainer of certified applicators or handlers, or • A person who has completed an EPA-approved train-the-trainer course under the WPS <p>Supervising applicators must:</p> <ul style="list-style-type: none"> • Ensure noncertified applicators under their supervision are qualified under 171.2001(b)(2) and (c), including the minimum age requirement • Ensure the noncertified applicator has access to applicable labeling during use and provide specific instructions related to the application • Ensure a means for immediate communication between the supervisor and supervisee is available <p>Require records documenting noncertified applicator qualification—must have access to records for 2 years from date of RUP use</p>	Required C&T	RT
19	Chapter 31 and Chapter 32	<p>Establish minimum age for individuals certified as commercial or private applicators with the following exception:</p> <ul style="list-style-type: none"> • Persons using RUPs under the supervision of a private applicator who is an immediate family member must be at least 16 years old. The exception does not apply if the RUP is a fumigant or an RUP to be applied aurally. 	Required C&T	RT
20	Chapter 31 and Chapter 32	<p>Describe the credentials issued to each applicator verifying certification, which might include:</p> <p>Full name of applicator License number Type of certification (private/commercial) Categories/Commodities Expiration date A statement that the certification is issued by Maine</p>	Required C&T	RT
21	Chapter 50 Section 1(A) (II)	Add customer address	Required C&T	RT

22	Chapter 50 Section 1(A)(II)(b)	Add “name(s) of any noncertified applicator that made the application under the direct supervision of the certified applicator”	Required C&T	RT
23	Chapter 50 Section 1(A)(II)(c)	<i>Consider changing “distinct site” to “distinct location” or alternatively adding “location” to the list of requirements</i>	Optional C&T	RT
24	Chapter 50 Section 1(A)(II)(e)	Change TBT to something like “TBT and copper”. There are currently 4 federally registered TBT products—3 of which are only registered in Florida and the other is not currently registered in any other state. That said, TBT may come back to Maine, but people are also using copper compounds which pose a similar, but different risk to that applicator and marine life.	Housekeeping	RT
25	Chapter 50 Section 1(B)(I)	Clarify language with something like “Dealer records must include the name and address of each person to whom the RUP was distributed or sold”. It is not currently clear that the address is required.	Required C&T	RT
26	Chapter 50 Section 1(B)(I)	Clarify that in addition to recording the applicator’s certification number the dealer must also record the “issuing authority, certification expiration date, and categories of certification”.	Required C&T	RT
27	Chapter 50 Section 1(B)(II)	Change “chemical purchased” to “product name” and add “State special local need registration number (if applicable)”	Required C&T	RT
28	Chapter 50 Section 1(C)	Definition of “spray period” was repealed in Title 22 so Spray Period Records should not be required.	Housekeeping	RT
29	Chapter 50 Section 2	Consider changing the requirements to better suit reporting needs—liquid/solid, site based on application category, etc.	Housekeeping	RT
30	Chapter 50	During discussion of removing the requirements for monitors and spotters, the Legislature suggested that the spray application maps should be provided to the BPC after application.	Requires Discussion	RT
31	Chapter 26	Incorporate Interim Interpretative Policy on the Applicability of CMR 01-026 Chapter 26 (Clarify the definition of “occupied buildings” to mean fully enclosed indoor spaces inside building and that open air structures are not buildings for the purpose of the rule)	Incorporate Policy	MS
32	Chapter 27 Section 2(B)(4)ii	Change wording “a list of pesticide applications conducted on school grounds” to include “to school buildings” to clarify that all pesticide applications must be included in log	Housekeeping	RT

33	Chapter 27 Section 2(B)(5)	Change wording from “made in school buildings and on school grounds” to “made <u>to</u> school buildings and on school grounds” to clarify that it includes the exterior of buildings	Housekeeping	RT
34	27 Section 3(A)	Add insect repellents to the list of exemptions	Housekeeping	RT
35	Chapter 28 Section 3(B)(2)(d)v	Clarify that the telephone number on the sign must be a working number	Incorporate Policy	RT
36	Chapter 36	Repeal entire chapter—Certification and Licensing Provisions/Monitors and Spotters for Forest Insect Aerial Spray Program. Requirements were repealed in statute because they are no longer necessary with the current technology used in aircraft.	Housekeeping	RT