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 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 Substanive

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.
<table>
<thead>
<tr>
<th></th>
<th>Chapter and Section</th>
<th>Action</th>
<th>Description</th>
<th>Complexities</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Chapter 10</td>
<td>Amend</td>
<td>definition of “Aerial Applicator” so that it does not automatically require commercial certification</td>
<td>Required C&amp;T Requires Discussion</td>
<td>RT</td>
</tr>
<tr>
<td>2</td>
<td>Chapter 10 Section 2(P)(2)b</td>
<td>Incorporate</td>
<td>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</td>
<td>Incorporate Policy</td>
<td>MS</td>
</tr>
<tr>
<td>3</td>
<td>Chapter 10 Section 2(P)(2)(d)ii</td>
<td>Incorporate</td>
<td>Policy Concerning Denying Access to the Public for Seven Days to Areas “Open to Use by the Public”</td>
<td>Incorporate Policy</td>
<td>RT</td>
</tr>
</tbody>
</table>
| 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
- 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 Section 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 | **Applicators in categories likely to affect pollinators should receive information on protecting pollinators in competency standards under “avoiding harm to non-target organisms” and under reading and understanding the labeling requirements** | Optional C&T  
RT |
| 15 | Chapter 31  
Section 5(B)  
and Chapter 32  
Section 2(B) | Question: is this already covered in the existing rule?  
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 | Establish annual training requirement for noncertified applicators of RUPs which can be accomplished:  
- 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  
Training must be provided by:  
- 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  
Supervising applicators must:  
- 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  
Require records documenting noncertified applicator qualification—must have access to records for 2 years from date of RUP use | Required C&T | RT |
|---|---|---|---|---|
| 19 | Chapter 31 and Chapter 32 | Establish minimum age for individuals certified as commercial or private applicators with the following exception:  
- 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 aerially. | Required C&T | RT |
| 20 | Chapter 31 and Chapter 32 | Describe the credentials issued to each applicator verifying certification, which might include:  
Full name of applicator  
License number  
Type of certification (private/commercial)  
Categories/Commodities  
Expiration date  
A statement that the certification is issued by Maine | Required C&T | RT |
<p>| 21 | Chapter 50 Section 1(A) (II) | Add customer address | Required C&amp;T | RT |</p>
<table>
<thead>
<tr>
<th>Chapter 50</th>
<th>Section 1(A)(II)(b)</th>
<th>Add “name(s) of any noncertified applicator that made the application under the direct supervision of the certified applicator”</th>
<th>Required C&amp;T</th>
<th>RT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 50</td>
<td>Section 1(A)(II)(c)</td>
<td>Consider changing “distinct site” to “distinct location” or alternatively adding “location” to the list of requirements</td>
<td>Optional C&amp;T</td>
<td>RT</td>
</tr>
<tr>
<td>Chapter 50</td>
<td>Section 1(A)(II)(e)</td>
<td>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.</td>
<td>Housekeeping</td>
<td>RT</td>
</tr>
<tr>
<td>Chapter 50</td>
<td>Section 1(B)(I)</td>
<td>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.</td>
<td>Required C&amp;T</td>
<td>RT</td>
</tr>
<tr>
<td>Chapter 50</td>
<td>Section 1(B)(I)</td>
<td>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”.</td>
<td>Required C&amp;T</td>
<td>RT</td>
</tr>
<tr>
<td>Chapter 50</td>
<td>Section 1(B)(II)</td>
<td>Change “chemical purchased” to “product name” and add “State special local need registration number (if applicable)”</td>
<td>Required C&amp;T</td>
<td>RT</td>
</tr>
<tr>
<td>Chapter 50</td>
<td>Section 1(C)</td>
<td>Definition of “spray period” was repealed in Title 22 so Spray Period Records should not be required.</td>
<td>Housekeeping</td>
<td>RT</td>
</tr>
<tr>
<td>Chapter 50</td>
<td>Section 2</td>
<td>Consider changing the requirements to better suit reporting needs—liquid/solid, site based on application category, etc.</td>
<td>Housekeeping</td>
<td>RT</td>
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<tr>
<td>Chapter 50</td>
<td>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.</td>
<td>Requires Discussion</td>
<td>RT</td>
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<td>Chapter 26</td>
<td>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)</td>
<td>Incorporate Policy</td>
<td>MS</td>
<td></td>
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<tr>
<td>Chapter 27</td>
<td>Section 2(B)(4)ii</td>
<td>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</td>
<td>Housekeeping</td>
<td>RT</td>
</tr>
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<td></td>
<td>Chapter/Section</td>
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<tr>
<td>33</td>
<td>Chapter 27 Section 2(B)(5)</td>
<td>Change wording from “made in school buildings and on school grounds” to “made to school buildings and on school grounds” to clarify that it includes the exterior of buildings</td>
<td>Housekeeping</td>
<td>RT</td>
</tr>
<tr>
<td>34</td>
<td>27 Section 3(A)</td>
<td>Add insect repellents to the list of exemptions</td>
<td>Housekeeping</td>
<td>RT</td>
</tr>
<tr>
<td>35</td>
<td>Chapter 28 Section 3(B)(2)(d)v</td>
<td>Clarify that the telephone number on the sign must be a working number</td>
<td>Incorporate Policy</td>
<td>RT</td>
</tr>
<tr>
<td>36</td>
<td>Chapter 36</td>
<td>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.</td>
<td>Housekeeping</td>
<td>RT</td>
</tr>
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</table>