

AGENCY UMBRELLA-UNIT: **01-026**

AGENCY NAME: **Maine Department of Agriculture, Conservation and Forestry, Board of Pesticides Control**

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RULES ADOPTED SINCE THE LAST REGULATORY AGENDA:

EXPECTED 2020-2021 RULE-MAKING ACTIVITY:

CHAPTER 10: Definitions and Terms

STATUTORY AUTHORITY: 22 MRS §§1471A-X

PURPOSE: In 1996, the Board consolidated all rule definitions in this Chapter. This chapter must be updated each time a new definition is added or amended. It received a series of housekeeping amendments in January 2005 and in 2012. The rule was amended in 2019 to change the definition of aerial applicator to allow for the use of UAS by those with agricultural pesticide applicator licenses. Issues may arise necessitating further amendment.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021

AFFECTED PARTIES: All individuals and businesses affected by the Board's rules.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 20: Special Provisions

STATUTORY AUTHORITY: 22 MRS §§1471A-X

PURPOSE: In 2007, the Board amended Chapter 20 to clarify that authorization from the property owner is required prior to applying a pesticide. The Board passed an amendment in 2013 to eliminate the need for individual homeowner permission in the event of a public health threat. In 2014, a requirement was added for applicators making outdoor treatments to residential properties to implement a system to positively identify application sites in a manner approved by the Board. The Board may develop specific duties that an employer must perform to protect their employees from occupational exposure to pesticides. These amendments may be modeled on the 2015 Federal Worker Protection Standard and the 2017 Federal Pesticide Applicator Certification Standard. In addition, Chapter 20 is a key chapter for the Board when it determines that additional regulation is in the public interest, so other amendments are also possible.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Applicators making outdoor treatments to residential properties; since this is already required by policy, there will be no real affect.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 22: Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition

STATUTORY AUTHORITY: 7 MRS §§ 601-625 and 22 MRSA §§1471A-X

PURPOSE: Aerial spraying is a very controversial issue and the Board completed a major overhaul of this chapter in 2009 to provide greater protection for area residents. In 2013 the Board passed amendments to exempt the sections concerning Identifying and Recording Sensitive Areas, Presence of Humans and Animals, and certain specifics of Site Plans in the event of a public health threat. In 2014, the requirement of identifying sensitive areas was eliminated for commercial applications conducted under categories 6A (rights-of-way vegetation management), 6B (general vegetation management) and 7E (biting fly & other arthropod vectors [ticks]). Further experience with the revised rule may reveal the need to make additional modifications.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All applicators making outdoor applications with powered application equipment.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 24: Pesticide Storage Facility Standards/Pesticide Distributors

STATUTORY AUTHORITY: 22 MRS § 1471-O and 7 MRSA § 610(2)(B)

PURPOSE: The Board has received letters expressing concern that odors and spilled chemicals may represent a health risk for both employees and customers who enter the self-service display areas of general-use pesticide distributors. In addition, inequities have been noted between the requirements for agricultural distributors versus the requirements for warehouse-style retailers. Finally, a few provisions are somewhat vague and would benefit from additional clarity. Consequently, the Board may adjust these standards to address concerns.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Pesticide retailers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 26: Standards for Indoor Application of Pesticides

STATUTORY AUTHORITY: 22 MRS §§1471A-X and 7 MRSA §§ 601-625

PURPOSE: The Board adopted this chapter during 2006 and it became effective in January of 2007. An amendment was made during 2007 to address concerns raised by structural applicators. Concerns have arisen about the higher risk of indoor applications versus outdoor applications. Further refining may be necessary for this rule.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All structural pest control applicators, owners or managers of businesses, institutions and apartment houses, as well as interested members of the general public.

CONSENSUS-BASED RULE DEVELOPMENT: Not Contemplated

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CHAPTER 27: Standards for Pesticide Applications and Public Notification in Schools

STATUTORY AUTHORITY: 22 MRS §§1471A-X and 7 MRSA §§ 601-625

PURPOSE: The Board adopted this rule in 2003 and made some housekeeping amendments to it during 2005, 2007 and 2012. Several minor clarifications have been

identified which should be addressed. Since use of pesticides on school grounds continues to garner legislative and public attention, further amendments may be necessary in the future.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All public and private school systems as well as commercial applicators and all persons using school buildings and grounds.

CONSENSUS-BASED RULE DEVELOPMENT: Not Contemplated

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CHAPTER 28: Notification Provisions for Outdoor Pesticide Applications

STATUTORY AUTHORITY: 22 MRS § 1471-M (2)(D)

PURPOSE: This rule was adopted in 1998 and slightly amended in 2000, 2007, 2011 and 2014. It contains all of the Board outdoor notification requirements. In 2014, it was amended to require posting for applications under categories 6B (general vegetation management) except when making applications to sidewalks and trails, power substations, and railroad sidings; and 7E (biting fly & other arthropod vectors [ticks]) and to require notice per Board policy for applications to sidewalks and trails under 6B (general vegetation management). The Maine Legislature recently enacted and subsequently repealed a pesticide notification registry. There is some sentiment indicating that additional legislative initiatives may be forthcoming on this subject, which would likely necessitate rulemaking. This chapter also needs some updating to reflect the evolution of its usage.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Pesticide applicators and persons who live near sprayed sites. Persons who believe they are sensitive to pesticides. Regulated parties include all commercial pesticide applicators, the landowners who hire them and anyone who applies pesticides outdoors in the vicinity of persons on the registry.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 29. Standards for Water Quality Protection

STATUTORY AUTHORITY: 22 MRS § 1471-M(2)(D)

PURPOSE: A recent federal court decision now requires applicators to work under a Maine Pollution Discharge Elimination System permit for certain outdoor pesticide applications that have the potential for a portion of the spray to deposit in surface water, so Chapter 29 may need to be amended to address this change. In addition, the Board may look to exempt certain urgent applications from the 25-foot buffer requirement. Recently, concerns have arisen relative to pesticides and the marine environment. A current outbreak of browntail moth may necessitate amendments to this rule around products approved for use for control. Finally, water quality has emerged as one of the more significant environmental fate concerns with pesticides. All of these issues suggest a possible need to amend this chapter.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Pesticide manufacturers, outdoor applicators, persons owning land next to surface water bodies and environmental groups.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 31: Certification and Licensing Provisions for Commercial Applicators

STATUTORY AUTHORITY: 2 MRS §§ 1471-D and S

PURPOSE: The Board amended this chapter during 2007 and 2014, but may find it necessary to revise this regulation again to accommodate new licensing software, streamline processes or deregulate certain types of pesticide applications. Several amendments were adopted in 2015. Changes to the federal certification and training requirements necessitated amendments, which were adopted in 2019.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All persons licensed by the Board.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Megan Patterson, 28 SHS, Augusta, Maine 04333 (207) 287-2731
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CHAPTER 32: Certification and Licensing Provisions for Private Applicators

STATUTORY AUTHORITY: 2 MRS §§ 1471-D and S

PURPOSE: The Board may amend any of its current regulations dealing with the examination, certification, licensing and relicensing of private applicators to accommodate new licensing software, streamline procedures and/or adjust the fees. An amendment to reduce the waiting time for re-taking a failed exam was passed in 2014. Changes to the federal certification and training requirements necessitated amendments, which were adopted in 2019.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All persons licensed by the Board.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 33: Certification Provisions/Private Applicators of General Use Pesticides

STATUTORY AUTHORITY: 2 MRS §§ 1471-D (2-D), 22 MRSA 1471-M (1) (C-1)

PURPOSE: This new rule was recently adopted to fulfill the requirements of Public Law 2011, Chapter 169 which requires pesticide applicator licensing for certain farmers who apply only general use pesticides. Since it is a newly adopted rule, experience may reveal some desirable upgrades. In addition, the potential for new licensing software may also necessitate changes. An amendment to reduce the waiting time for re-taking a failed exam was passed in 2014. Changes to the federal certification and training requirements will necessitate amendments to this rule.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 34: Certification and Licensing Provisions for Pesticide Dealers

STATUTORY AUTHORITY: 2 MRS §§ 1471-D and S

PURPOSE: Amendments adopted in 2015 included shortening the wait time to re-take an exam after failing and changing both the license and certification periods to three years. Going forward, the Board may amend its current regulation to require pesticide dealers to have a company license in addition to having their employees licensed. Also, the license fee is outdated. Other changes may be necessary as the Board reviews all the licensing chapters with a view toward streamlining and simplifying procedures.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Pesticide distributors.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 35: Certification and Licensing Provisions for Spray Contracting Firms

STATUTORY AUTHORITY: 22 MRS §§ 1471-D and S

PURPOSE: In 2015 this chapter was amended to remove the requirements for spotters/monitors for forest insect aerial spray program. The license period was also changed in 2015 from two years to three. The Board may amend this chapter dealing with licensing and relicensing of firms to accommodate new licensing software, continue to streamline procedures and/or adjust fees.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All persons licensed by the Board.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 40: State Restricted Pesticide List

STATUTORY AUTHORITY: 7 MRS §§ 601-625 and 22 MRSA §§ 1471A-X

PURPOSE: The Board amended this chapter in 2007 and may update its Restricted Use List by deleting products that are no longer registered. Also, it may be necessary to modify the list as a result of the Board's registration review process which may necessitate adding any products which present a unique threat to Maine's public health or the environment.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Pesticide manufacturers, pesticide applicators and environmental groups interested in pesticide issues.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 41: Special Restrictions

STATUTORY AUTHORITY: 7 MRS §§ 601-625 and 22 MRSA §§ 1471A-X

PURPOSE: The Board amended this chapter in 2011 to relax some administrative burdens for the use of *Bt* corn seed, and in 2014 to reduce the restrictions on the use of hexazinone. This is a key chapter for the Board to implement appropriate restrictions associated with certain pesticides or classes of pesticides that pose unique risks to Maine. There have been significant changes to this chapter in the last ten years, and additional amendments are likely in the future.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All applicators and environmental groups.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 50: Reporting Requirements for Applicators and Dealers

STATUTORY AUTHORITY: 22 MRS §§ 1471-G and M

PURPOSE: The Board adopted several housekeeping amendments to this chapter in January 2005 and 2019. Changes to Chapters 22, 27 and 41 have created additional record keeping requirements that might be more appropriately incorporated in

Chapter 50. Current rulemaking around the licensing chapters may also necessitate changes to record keeping requirements.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All private and commercial applicators, dealers and consumer or environmental groups.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 51: Notice of Aerial Pesticide Applications

STATUTORY AUTHORITY: 22 MRS § 1471-R

PURPOSE: Legislative activity around pesticide notification may necessitate amendments to this chapter. The Board has expressed an interest in regulating unmanned aircraft systems, which may require amendments to this chapter.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Aerial applicators, paper companies, utility officials, and environmental groups.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

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CHAPTER 60. Designation of Critical Pesticide Control Area

STATUTORY AUTHORITY: 22 MRS § 1471 - M (4)

PURPOSE: Upon receipt of a petition, the Board would be required to consider rulemaking to restrict pesticide usage within a designated area to protect public health, threatened or endangered species or their habitat, surface or ground water, or other environmental resources. During 2011, the Board repealed one of the two designated critical control areas since the subject of protected area no longer existed.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: Persons living within the requested area and all applicators wishing to do business within the designated zone.

CONSENSUS-BASED RULE DEVELOPMENT: The Board engaged in consensus-based rule development the last time a request was received and would likely try it again.

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NEW RULE CHAPTER (# to be assigned): Unmanned Aircraft Systems, Unmanned Ground Systems

STATUTORY AUTHORITY: 22 MRS §§1471A-X and 7 MRSA §§ 601-625

PURPOSE: The Board is considering implementing rules around both unmanned aircraft systems (UAS) and unmanned ground systems (UGS) for use in pesticide applications.

SCHEDULE FOR ADOPTION: Prior to September 30, 2021.

AFFECTED PARTIES: All pesticide applicators and dealers, as well as interested members of the general public.

CONSENSUS-BASED RULE DEVELOPMENT: Contemplated

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