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BOARD OF PESTICIDES CONTROL
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WALTER E. WHITCOMB
COMMISSIONER

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Memorandum

Date: May 6, 2014
To: Board
From: Henry Jennings
Subject: Description of Rulemaking Concepts

At the March meeting, the Board selected a list of rulemaking topics and directed the staff to further refine and develop the proposed concepts. The table below attempts to summarize the conceptual changes that the Board has discussed.

BPC Rule	Reason for Change	What Language Would Be Changed
20	The Board has a policy requiring the positive identification of the application site. This cannot be enforced unless it's incorporated into a rule. Also, the current policy conflicts in some ways with the verifiable authorization requirements.	A new paragraph would be added to Section 6 stating that applicators must positively identify application sites in a manner approved by the Board.
22 Section 2C	Every year, the Board grants to companies a series of variances from the requirement to identify sensitive areas doing vegetation management along rights-of-way. Since these variances always contain the same requirements (drift reduction & public notice), it may make more sense to just change the rule to reflect what the Board is requiring through a variance.	A new paragraph would be added to Section 2C which would exempt linear rights-of-way applications from the requirement of identifying sensitive areas provided that the applicator implement a drift management plan and publish public notice about the project.
22 Section 2C	When the Board first adopted Chapter 22 and the requirement to identify sensitive areas, it exempted certain types of "residential" pesticide applications from the sensitive area requirement, based on the logic that sensitive areas are a given when conducting residential applications. Instead, outdoor residential applications require the applicator to post the site, which the Board reasoned would provide greater public benefit. However, since the Board adopted the rule, other types of residential applications have become common. Consequently, there is defensible logic to suggest that all common residential applications should be treated equally.	The "residential" exemption for identifying sensitive areas contained in Section 2C would be expanded to include Category 7E – Biting Fly and Other Arthropod Vectors, and non-linear applications under Category 6B – Industrial/Municipal Vegetation Management.

BPC Rule	Reason for Change	What Language Would Be Changed
28 Section 3	If the Board elects to make the second proposed change to Chapter 22 described above, it would then require a change to Chapter 28 to expand the list of categories requiring posting instead of identification of sensitive areas.	The list of application categories requiring posting contained in Section 3 would be expanded to include Category 7E and non-linear applications made under Category 6B.
31 Section 1E	The Board has adopted policies to exempt adults applying repellents to children from the commercial licensing requirements and to exempt persons installing antimicrobial metal hardware from the licensing requirements. Such exemptions are better incorporated into rule when the applicable chapter is undergoing revisions.	A paragraph would be added to section 1E to exempt adults applying repellents to children provided that their parents provide written consent. Another paragraph would be added to 1E to exempt persons installing antimicrobial hardware from the licensing requirement.
31 Section 4	While Title 22 allows the Board to recognize substantially equivalent applicator certification from other states, Section 4 specifies that certified master applicators must pass a written exam covering Maine regulations. When circumstances indicate a need for out-of-state aerial applicators to assist with urgent pest problems, the Board has been forced to adopt an emergency rule to allow out-of-state applicators to quickly assist. An emergency exemption clause may be a more efficient and logical way to address this concern.	A new paragraph would be added to section 4A, which would exempt aerial applicators certified in other states from passing a written regulation exam when the staff determines that an urgent pest issue exists, and when the staff verbally reviews important and pertinent Maine laws with the applicator prior to issuing a reciprocal license.
31 Section 5A(V)a,b	The Board has expressed some concern about the hardship created by the 14 and 30 day waiting periods required when an applicant fails an exam once or twice respectively.	The wait periods would be revised per Board consensus.
32 Section 2A(4)a,b	The Board has expressed some concern about the hardship created by the 14 and 30 day waiting periods required when an applicant fails an exam once or twice respectively.	The wait periods would be revised per Board consensus.
33 Section 2A(4)a,b	The Board has expressed some concern about the hardship created by the 14 and 30 day waiting periods required when an applicant fails an exam once or twice respectively.	The wait periods would be revised per Board consensus.
41 Section 3	Darin Hammond of Jasper Wyman and Son wrote the Board requesting that the special restrictions on hexazinone contained in Section 3 be repealed since all growers producing more than \$1,000 worth of plants for human consumption will need to be certified after April 1, 2015, negating the need for the certification requirement in this section.	The Board could repeal all of Section 3 or just the part requiring applicator and dealer licensing.