



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

To: Board Members
From: Staff
Re: Review of Rulemaking Concepts
Date: July 21, 2023

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023 Board meeting, the Board discussed several rulemaking topics that had been identified by staff. At the March 25, 2023 Board meeting, the Board narrowed the rulemaking initiatives to more urgent items that needed to be addressed in rule versus items that did not need to be addressed or could become policy. At the April 7, 2023 Board meeting, the Board discussed interest in moving forward with rulemaking concepts, but decided to postpone rulemaking until the legislature had adjourned given that some additional rulemaking initiatives were likely to pass.

Staff have compiled the Board’s responses to rulemaking concepts that had interest in moving forward. The Board identified 4 items of interest, which must be voted on to move forward in initiating rulemaking. The potential rulemaking are categorized by the following criteria:

Required C&T	Required 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)):

MEGAN PATTERSON, DIRECTOR
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RT
MS

Routine Technical
Major Substantive

The first column corresponds to the attached reference documents.

The second column details the actionable item.

The third column provides a purpose for the rulemaking.

The fourth column provides notes on the Board's discussions at the February 24, 2023, March 15, 2023 and April 7, 2023 Board meeting

The fifth column provides a detailed description of the potential rulemaking concept.

A complete list of possible rulemaking chapters to include 20, 31, 32, 41.

2	Chapter 20, Section 7(A)	<p>The Board expressed interest in incorporating “Chapter 20: Positive Identification of Proper Treatment Site by Commercial Applicators” policy into rule.</p> <p>The Board may want to consider also adding additional methods for proper site identification while reviewing this policy or a clause for submission of methods.</p>	Incorporating Policy	The Board has discussed this policy, must vote to initiate rulemaking	RT
4	Chapter 31(2)(VII)(c)(1)(2)(3) and Chapter 31(3)(VII)(c)(1)(2)(3)	<p>Staff have identified issues with 7C category licensure. See memo “Revisions of 7C categories to reflect licensure”.</p> <p>The Board may want to consider changing these categories by combing all categories to 7C: Biocide and Disinfectants</p> <p>Currently, there is confusion regarding which certification category is needed for commercial application of disinfectants. If these sections are changed, competency standards should also change to reflect categories.</p>	Housekeeping	The Board must vote to initiate rulemaking	RT
7	Chapter 32, section 2 (A)(1)	<p>This was identified when staff revised the state plan.</p> <p>Incorporate by reference 40 CFR § 171.201 requirements for noncertified applicators and their supervision by certified applicators.</p>	Required C&T	The Board must vote to initiate rulemaking	RT
9	Chapter 41, Section 5	<p>A Board member expressed interest in updating and modernizing Chapter 41, Section 5, which addresses plant incorporated protectants. Staff need additional guidance on concepts the Board might want addressed in this section.</p>	Requires Discussion	Staff have incorporated edits from April 7, 2023 meeting, the Board must vote to initiate rulemaking	MS

TIMELINE FOR RULEMAKING

RT Rulemaking Timeline for July 2023				
Step	Timeline	Date		Notes
Send Forms to Initiate APA Process	Monday prior to week of posting	7/24/2023		For initiating rulemaking after 7/21 board meeting
Posting Week		8/2/2023		
Hearing	17 - 24 days after posting	8/19/2023	8/26/2023	
	2 days after submitting notice to SOS	8/4/2023		
Last Day to Receive Written Comments	10 days after public hearing	8/29/2023	9/5/2023	
Board Reviews Comments	Once comments from public hearing are summarized and compiled	9/5/2023	10/13/2023	Next scheduled board meeting is 10/13/2023
AAG reviews, signs, submits for final adoption	150 days from comment deadline (within 90 for emergency)	1/26/2024		

MS Rulemaking Timeline for July 2023

Step	Timeline	Date		Notes
Send Forms to Initiate APA Process	Monday prior to week of posting	7/24/2023		For initiating rulemaking after 7/21 board meeting
Posting Week		8/2/2023		
Hearing	17 - 24 days after posting	8/19/2023	8/26/2023	
	2 days after submitting notice to SOS	8/4/2023		
Last Day to Receive Written Comments	10 days after public hearing	8/29/2023	9/5/2023	
Board Reviews Comments	Once comments from public hearing are summarized and compiled	9/5/2023	10/13/2023	Next scheduled board meeting is 10/13/2023
Provisional Adoption -- must be voted on by the Board	4 documents approved within 120 days of comment deadline	12/27/2023		
Commissioner signature	By beginning of January	1/1/2024		
Sent to AAG for approval and SOS	Within 150 days of comment deadline	1/26/2024		

20 copies sent to Legislative Council, 1 copy to Executive Director, and E-file with legislature	Second Friday of January		1/12/2024	
Resolve written, Hearing in Committee, Vote by Legislature, Sent to Governor				
Formal Adoption of Rules	Within 60 days after effective date of legislation approving rule (stamped date)	Depends on when committee timeline		
Final Adoption	Rule becomes effective 30 days after filing or later as specified	See above (likely into spring/summer)		