

Summary of Comments Received Regarding 130th Legislature, LD 264, Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State

Board of Pesticides Control CMR26-01 Chapter 20

#	Name	Summary of Comments	Response
1	<p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association;</p> <p>Patricia Rubert-Nason – Maine Sierra Club;</p> <p>Sarah Woodbury – Director of Advocacy for Defend Our Health;</p> <p>Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> All work done for Ch. 20 is appreciated. Agrees with the Board definition of PFAS, provides consistency with other state agencies. 	<ul style="list-style-type: none"> The Board of Pesticides Control (BPC) appreciates the support. BPC plans to keep the current definition to remain consistent with other state agencies.
2	<p>Patricia Rubert-Nason – Maine Sierra Club;</p> <p>Sarah Woodbury – Director of Advocacy for Defend Our Health;</p> <p>Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> Required affidavits submitted by registrants should be publicly available. 	<ul style="list-style-type: none"> All reports and affidavits produced by the BPC are already public documents.
3	<p>Patricia Rubert-Nason – Maine Sierra Club;</p> <p>Sarah Woodbury – Director of Advocacy for Defend Our Health;</p> <p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic 4Farmers and Gardiners Association</p>	<ul style="list-style-type: none"> Concerned about and would like clarification regarding the Confidential Statement of Formula (CSF) and the need to include all inert ingredients, active ingredients, and contaminants in addition to the CSF. 	<ul style="list-style-type: none"> Confidential Statement of Formula (CSF) includes the active and inert ingredients and are protected by federal law FIFRA §10(a) as confidential business information (CBI). Any material not identified as a part of the CSF is considered to be a contaminant. The CSF would not be included in any public documents due to their confidentiality. The Environmental Protection Agency (EPA) considers Perfluoroalkyl and Polyfluoroalkyl Substances

			<p>(PFAS) to be potentially toxicologically significant contaminants and may trigger 159.179(b) in the Code of Federal Regulations (CFR). Under FIFRA Section 6(a)(2), pesticide registrants should report to EPA additional factual information on unreasonable adverse effects, including metabolites, degradates, and impurities (such as PFAS). EPA has identified a master list PFAS that is available on their website. BPC staff have an inquiry into EPA and AAPCO (Association of American Pesticide Control Officials) regarding the process of requiring 6(a)(2) reporting.</p>
4	<p>Sarah Woodbury – Director of Advocacy for Defend Our Health; Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> Recognized that the resolution specifically responded to HDPE containers, but to expand the scope of containers from just HDPE containers to any fluorinated plastic containers. 	<ul style="list-style-type: none"> BPC recognizes that many plastics – not just HDPE containers – are fluorinated. Identifying additional container types to be included in affidavits is beyond the scope of the current ask from LD 264. EPA has noted that there is no evidence that PFAS occur from containers other than HDPE. Additionally, LD 1503 will ultimately prohibit any intentionally fluorinated

			products in the State of Maine by 2030.
5	Patricia Rubert-Nason – Maine Sierra Club; Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association	<ul style="list-style-type: none"> • More should be done to eliminate PFAS in pesticides 	<ul style="list-style-type: none"> • BPC agrees that long-chain PFAS resulting from the fluorination of pesticide product containers should not be allowed to continue to occur. BPC is working toward a greater understanding of the scope of PFAS in pesticides as more information becomes available in this rapidly evolving issue. BPC also acknowledges that any product that contains intentionally added PFAS will be prohibited under LD 1503 by the year 2030.
6	Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy	<ul style="list-style-type: none"> • Full extent of legal authority that the Board has should be used against PFAS. • The full panel of PFAS chemicals should be excluded from pesticides. • Affidavits should not be withheld from the public, as the committee that led the implementation of LD 1503 voted to not keep documents and affidavits confidential. • Disclosure of CSF should include contamination. • Clarify that affidavits are public records, under Maine’s Freedom 	<ul style="list-style-type: none"> • The BPC has reviewed its authority and has outlined it in their full report regarding LD 264 to the Maine Legislature. • The current definition proposed by BPC includes all PFAS chemicals identified by the EPA and is consistent with other state agencies. • The BPC recognizes that during the implementation of LD 1503 affidavits were not withheld and intends to make affidavits public records. • Contaminants in pesticides are required to be reported upon

		<p>of Access Act (preferably on the website, not as a document that must be accessed through a formal freedom of access request).</p> <ul style="list-style-type: none"> • It is not necessary to wait for further legislative direction or authority to include adjuvants as a part of the manufacturers' affidavit as to the presence or absence of PFAS. The Board has extensive authority to require information about the formulation and to require other information for registration of a product and should make clear that adjuvants are covered with other inert ingredients. • Board should make a point to prohibit registration of PFAS 	<p>federal registration with FIFRA §6(a)(2) incident reporting and would be available as a part of products' federal registration process. BPC has inquiries into EPA and AAPCO regarding additional requirements for 6(a)(2) reporting.</p> <ul style="list-style-type: none"> • Affidavits will be public records. • If adjuvants are contained within a pesticide formulation, the CSF would disclose that information. Adjuvants that are added to pesticides separately are not considered to be pesticide products and the Board has included the avenues that need to be taken in order to regulate adjuvants or fluorinated adjuvants in the future in their full report regarding LD 264 to the legislature. Since this proposed action would require amendments to state statute, the BPC will wait for further legislative direction to address this issue. • The proposed resolve does not currently prohibit PFAS from pesticide products but does require BPC to identify if PFAS are in registered products. BPC
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			acknowledges this concern and would like to note that all products that contain intentionally added PFAS will be prohibited by 2030 as outlined in LD 1503.
7	Karen Reardon – Vice President of Public Affairs for Responsible Industry for a Sound Environment	<ul style="list-style-type: none"> • Definitions of PFAS should take data assessments into account. • The Board should consider reviewing the container leeching study that will be coming from US EPA in the first quarter of 2022. • The Board should not rush to complete rulemaking before they have a full finding of what is happening with HDPE containers. 	<ul style="list-style-type: none"> • Initially, BPC was interested in referring to policy for a group of PFAS considered to be the “most concerning” by the EPA but ultimately decided to remain consistent with other state agencies in their definition. BPC will continue to review new data assessments as they are published. • The BPC will consider reviewing the container leeching study during its development of rulemaking regarding containers. • BPC staff have already entered into rulemaking guidelines, following A.P.A. procedures, and must meet deadlines for amendments, approval from Board members, and public comment. This process is not typically quickly implemented but must continue to comply with LD 264.
8	Sarah Woodbury – Director of Advocacy for Defend Our Health	<ul style="list-style-type: none"> • Chapter 20, Section 1 affidavit requirements requires clarification; should require 	<ul style="list-style-type: none"> • Complete formulations from the CSF are protected under federal law FIFRA §6(a)(2) and

		<p>complete formulation including active, inert, and contaminants.</p> <ul style="list-style-type: none"> • There is no reasonable claim for the need to prohibit disclosure of the affidavits to protect confidential business information since no one could derive a formula simply based on the presence or absence of thousands of potential ingredients. • Maine should have a single definition of PFAS, and that definition should be the same one already in use in statute, which is now the one proposed in the draft rule as well. • Noted that contaminants should be added to the rule because Maine already has PFAS contamination and the cleanup will cost millions. • The rule should unequivocally state the affidavits are public and accessible records. While this may be the intent of the proposed language, ambiguity should be eliminated by separately listing the three required items or adding a sentence explicitly clarifying the public nature of the affidavits. • Stated that the Board should make a recommendation to the 	<p>cannot be included with affidavits as public records – however the affidavits will describe if a pesticide product contains PFAS.</p> <ul style="list-style-type: none"> • Information in the CSF itself is confidential business information (CBI) under federal law FIFRA §10(a). Affidavits themselves will be public documents and will describe whether a PFAS known to the manufacturer is in the product or if it is stored in an HDPE container. • BPC recognizes the statements made and has incorporated a definition of PFAS that has been used across multiple state agencies. • Contaminants are addressed during federal registration FIFRA §6(a)(2). BPC currently has an inquiry in at EPA and AAPCO regarding 6(a)(2) reporting at the state level. BPC acknowledges that millions will be spent on remedial PFAS activities. • BPC acknowledges the concern regarding transparency of the affidavits. BPC will consider
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		<p>legislature that the Board supports no use of pesticides containing PFAS or of pesticides stored in HDPE containers.</p>	<p>changing the rule to incorporate this sentiment.</p> <ul style="list-style-type: none"> The BPC is working toward understanding the full scope of PFAS in pesticides and is implementing measures to better understand if PFAS are in pesticides registered in Maine through its registration process. The full scope of PFAS in pesticides, the Maine registration process, and all legal authorities that the BPC has to regulate these classes of chemicals is outlined in the full report to the Maine legislature regarding LD 246.
9	<p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association</p>	<ul style="list-style-type: none"> Stated that new rules will help minimize reliance on pesticides. The original legislation was to stop PFAS contamination from aerial spraying and morphed into LD 264. Described the PFAS problem was being exacerbated by pesticides that contain PFAS and farmers were losing businesses, land, and health. Hoped this rule would help Maine turn off one of the PFAS taps by discovering the extent of PFAS in pesticides. CSF is confidential but affidavits can be made public. 	<ul style="list-style-type: none"> It is the BPC’s policy title 22 M.R.S §1471-X to minimize reliance on pesticides and promote integrated pest management. BPC appreciates the sentiments made to reduce PFAS contamination in Maine’s environment. To BPC’s current understanding, most PFAS contamination in the environment in Maine is attributed to sludge and sludge-derived compost in agriculture rather than pesticides. BPC agrees that the CSF is confidential and that the

		<ul style="list-style-type: none"> The Board should exercise the broad authority it has to gather formula data in consideration of granting product registration. We hope that the system established for compiling the information would be streamlined so that it would not create an undue burden on the BPC staff. Manufacturers know whether PFAS is in their products and they must be responsible for reporting that in an online database that would minimize additional work for the staff. 	<p>affidavits will be public documents.</p> <ul style="list-style-type: none"> BPC has researched and started the implementation of adding affidavits to its existing registration software, Maine Pesticide Registration and Licensing Software (MEPRLS). This would allow registrants to state whether or not they have PFAS in their product as they are conducting the registration process, reducing staff time and burden.
10	Patricia Rubert-Nason – Maine Sierra Club	<ul style="list-style-type: none"> Would like to thank the Board of Pesticides for their work on implementing LD 264. Urges the Board to ensure that all ingredients and known contaminants are included in the affidavits and that those affidavits are shared with the public. 	<ul style="list-style-type: none"> The BPC appreciates the support and plans to use CSF to determine if PFAS are in pesticide formulations, which include active and inert ingredients. Contaminants known to manufacturers are required to be addressed during federal registration FIFRA §6(a)(2). However, BPC has inquired about 6(a)(2) forms to both EPA and AAPCO.
11	Mariana Tupper – Yarmouth, ME	<ul style="list-style-type: none"> Particularly concerned about the use of PFAs. As both our Environmental Protection Agency and the Food & Drug Administration say, such substances are dangerous for 	<ul style="list-style-type: none"> BPC appreciates the support and will continue to work on this issue as it relates to pesticides.

		<p>human beings and other species on which we depend. Please help the State of Maine stay a strong leader in sensible, smart, and safe agriculture. Progress made in 2021 should be underscored, embellished, and celebrated.</p>	
12	<p>Lelania Avila – Northeast Harbor, ME; Penelope Andrews – Hermon, ME, Member of Sierra Club of Maine and Natural Resources Council of Maine; John Olsen – Jefferson, Maine</p>	<ul style="list-style-type: none"> • Urges Maine's Board of Pesticides Control to implement the pesticide laws passed in the last session of the Legislature. The laws will restrict and assess and address the problem of PFAS in pesticides. • Please ensure that any PFAS chemical added to the product as an "inert" ingredient will be included in the reporting. The same goes for PFAS contaminants known to the manufacturer. 	<ul style="list-style-type: none"> • BPC will implement rules regarding PFAS from the Maine legislature. • Active and inert ingredients are included in the required affidavits and CSF. Contaminants that are known to the manufacturer are reported under FIFRA §6(a)(2) reporting during the federal registration process. BPC is reviewing its ability to also require 6(a)(2) reporting.

Summary of Comments Received Regarding 130th Legislature, LD 155, Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use

Board of Pesticides Control CMR26-01 Chapter 41

#	Name	Summary of Comments	Response
1	<p>Patricia Rupert-Nason – Maine Sierra Club; Representative Nicole Grohoski – State Representative for House District 132 representing Ellsworth and Trenton; Anya Fetcher – State Director, Environment Maine; Lelania Avila – Northeast Harbor, ME</p>	<ul style="list-style-type: none"> Noted that pollinators are in crisis and decline, often due to factors such as pesticides. 	<ul style="list-style-type: none"> The BPC recognizes the concern regarding pollinators and pesticides and agrees that pesticides should be used in accordance with their labels to reduce misuse and non-target impacts.
2	<p>Patricia Rupert-Nason – Maine Sierra Club; Representative Nicole Grohoski – State Representative for House District 132 representing Ellsworth and Trenton; Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association (MOFGA)</p>	<ul style="list-style-type: none"> Concerned with the current definition of “invasive invertebrate pests”. Recommends a specific list of insect pests that are exempt from the rule. Would like to keep the original bill language of “emerging invasive insects”. 	<ul style="list-style-type: none"> The definition that the BPC has used as a part of this rule was proposed during a consultation with IPM specialists within DACF, including the State Entomologist, State Horticulturist, and IPM Specialist. “Invertebrate” was chosen to incorporate other non-insect pests, such as mites and nematodes, that can be damaging to ornamentals. One specific example that was discussed included current testing that has indicated dinotefuran as a potential treatment option for the nematode (<i>Litylenchus crenatae mccannii</i>), which has been associated with beech leaf disease. In consultation with DACF IPM specialists, the BPC has determined that restricting this definition to only insects would potentially leave few options for management of this and other invasive pests. Originally, a list of species was discouraged as they can be difficult to assess, upkeep, and maintain over time as new invasive threats are identified. There was also interest in a variance process, but this was also

			<p>discouraged by The Board. Ultimately, the definition and list of criteria were created with DACF staff for this rule. A complete list of invasive insect pests would be costly to update via rulemaking and cause time constraints for the limited DACF staff available outside of the BPC.</p> <ul style="list-style-type: none"> • BPC will review its options and consult with specialists within DACF (State Entomologist, State Horticulturist, and IPM Specialist, among others) to determine the most appropriate and practical options for definitions moving forward.
3	<p>Patricia Rupert-Nason – Maine Sierra Club; Anya Fletcher – State Director for Environment Maine</p>	<ul style="list-style-type: none"> • Recommended a list of products and the species appropriate for the use of those products. 	<ul style="list-style-type: none"> • Section 6 (B) would already require the Board to develop a list of products registered in Maine that manufacturers have indicated have turf or ornamental use. All pesticide labels also must have a site for use and/or pests that are appropriate for use – although this would not be on the published list it would be available on the label of any product. The BPC is not able to provide product recommendations, but the University of Maine Cooperative Extension is able to provide product recommendations for these species.
4	<p>Patricia Rupert-Nason – Maine Sierra Club; Representative Nicole Grohoski – State Representative for House District 132 representing Ellsworth and Trenton</p>	<ul style="list-style-type: none"> • Current definition could cause confusion and burdens on applicators to decide what pests fit the list of criteria 	<ul style="list-style-type: none"> • Applicators are already required to research pests that they intend to treat per best IPM management practices and are trained depending on their license category on specific pests. Applicators are instructed to seek assistance for the identification of specific pests from multiple sources including The University of Maine Cooperative Extension, The Maine Forest Service, and the Board of Pesticides Control. In addition, many applicators are required to learn how to identify specific pests in the outdoor ornamental exam (3A). BPC will consult with DACF staff on ways to reduce confusion among applicators.

5	<p>Representative Nicole Grohoski – State Representative for House District 132 representing Ellsworth and Trenton; Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association (MOFGA)</p>	<ul style="list-style-type: none"> Noted that emergency rulemaking can be used as a tool to add emerging pests not already on a list to it as evidence becomes available that a pest may emerge in Maine. 	<ul style="list-style-type: none"> BPC could use emergency rulemaking to amend any lists of invasive pests, but this process would make them temporary changes. According to title 5 M.R.S. § 8054, an immediate threat to public health, safety, or general welfare must be identified for an agency to undergo emergency rulemaking, and any emergency rule shall be effective for 90 days, after which the rule must be adopted by the guidelines outlined in title 5 M.R.S. § 8052 (A.P.A. guidelines). Although this could be used to add species to the list, it is unclear if pests that only impact ornamental vegetation in residential landscapes under this rule would be considered an immediate threat to public health, safety, or general welfare. It is likely that the BPC would have to enter routine technical rulemaking every time they were to add new pests to an exempted list of invasive insects. Annual rulemaking regarding emerging pests may become difficult to implement given the high costs associated with filing and advertising rulemaking and DACF staff time constraints.
6	<p>Representative Nicole Grohoski – State Representative for House District 132 representing Ellsworth and Trenton; Anya Fetcher – State Director, Environment Maine</p>	<ul style="list-style-type: none"> Urged the Board to move quickly on this issue before the growing season starts. 	<ul style="list-style-type: none"> BPC staff agree that this is an urgent and important issue and will work as swiftly as possible to implement this rule. Additionally, every time additional amendments are made there are costs (upwards of \$2,000) to file and re-advertise rulemaking. BPC staff are required to follow A.P.A. rulemaking guidelines and additional amendments and costs may take extra time to incorporate into the proposed rules and ultimately implement. Many applicators and distributors have already been made aware of rulemaking surrounding neonicotinoids.
7	<p>Patricia Rupert-Nason – Maine Sierra Club</p>	<ul style="list-style-type: none"> The Board should consider the tradeoff between severity of 	<ul style="list-style-type: none"> Board of Pesticide Control Rules CMR26-01 Chapter 20, Chapter 26, Chapter 27, Chapter 29, and Chapter

		<p>pests and effectiveness of treatments for pests.</p> <ul style="list-style-type: none"> • A positive list of invasive insect species exemptions should be considered. Species do not typically emerge as a problem abruptly and without warning. In most cases, problems with particular species are well-documented for months, if not years, in other states prior to arriving in Maine. Suggests DACF Staff periodically report on emerging invasive species that might be appropriately addressed with neonicotinoids to the BPC, allowing rulemaking prior to their becoming an urgent problem in Maine. • The proposed definition would permit virtually any invertebrate which presents any level of economic (or other) harm, even if it is modest, to be characterized as an invasive pest, even if it is a native species, or is not particularly aggressive. part c of the definition “native or non-native vectors of plant diseases” could permit neonicotinoids to be applied for the control of a wide range of insects. Many plant-eating insects can transmit plant 	<p>33 describe selecting lowest risk pesticides, a strong tenant of integrated pest management (IPM). This aligns with the BPC’s policy to minimize reliance on pesticides and promote IPM (title 22 M.R.S §1471-X). Licensed applicators are required to become educated in the lowest risk effective approaches to pesticide use through initial certification and annual recertification programs (CMR26-01, Chapter 31). University of Maine Cooperative Extension can give product recommendations for specific pests, as BPC cannot recommend specific products. The Board will consider this policy and other established rules when publishing the product list in Section 6(B).</p> <ul style="list-style-type: none"> • Whilst staff recognizes that many species slowly become invasive over time and have predictable pathways, there are recent documented instances of sudden emergences of invasive species. Throughout Maine’s ecological history, we’ve seen this occur from several insect species (e.g. southern pine beetle, spotted winged drosophila, European fire ant, browntail moth) where very little warning was given to state agencies prior to their arrival or re-emergence – resulting in a lag in agency response and public awareness. BPC will consider this when further developing this proposed rule after consultation with DACF staff with IPM expertise (State Entomologist, State Horticulturist, and IPM Specialist). • The proposed definition was developed in consultation with department IPM specialists (State Entomologist, State Horticulturist, and IPM Specialist). This definition uses the basis for how many invasive species are defined (Executive Order 13112, Executive Order 13751) with a list of criteria
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		<p>diseases, thus the proposed definition would allow a wide range of species, including many native species, to be characterized as “invasive pests” and is much broader than the conventional definition of invasive species.</p> <ul style="list-style-type: none"> • LD 264 says that the use of neonicotinoids should be permitted for the control of “invasive insect pests” “in order to safeguard the public health, safety and welfare of the State and to protect the natural resources of the State.” This would seem to indicate that the focus in determining the limits of the exemption should be on human health and environmental impact rather than economics. 	<p>outside of that definition that would be applicable to some species in Maine. The term “invertebrate” was used to incorporate some pests on ornamentals that are not insects (e.g. mites, nematodes). Plant vectors of disease were included to help protect residential ornamental vegetation from plant diseases caused by invertebrate vectors (e.g. nematodes that cause beech leaf disease). BPC acknowledges that this definition is not the most restrictive with respect to allowing native species and others not typically defined as “invasive” – but many species that are native to our continent are not native to our eco-region, which was the intent of including those groups. The BPC will take this into consideration while reviewing the possibility of a list of invasive species, a definition of invasive species that aligns with federal executive orders, or both.</p> <ul style="list-style-type: none"> • BPC is presuming this comment is in reference to LD 155. As discussed above, the Executive Order 13112 (and subsequently 13751) is a federal document that defines invasive, non-native, and alien species; which were used to develop the proposed definition. The Maine Forest Service, Maine Natural Areas Program, and Maine Invasive Species Network all use the same or a similar definition to those defined in Executive Order 13112, and if BPC is to remain consistent with other state and UMCE agencies, the definition should include economic impacts. BPC will consider this when reviewing a definition for this proposed rule.
8	<p>Representative Nicole Grohoski – State Representative for House District 132 representing Ellsworth and Trenton</p>	<ul style="list-style-type: none"> • Urged to keep the “emerging invasive insects” definition, with emerging meaning unknown now and showing up at a later date. 	<ul style="list-style-type: none"> • The BPC agrees that invasive insects that have not yet been a threat in Maine should be on or considered for the proposed list. • The BPC agrees that the three species listed were derived from BPC testimony which was developed in

		<ul style="list-style-type: none"> • The three species included in the bill should be considered a start to a list for emerging invasive insects and the Board should continue it. • Resolve specifically used the word “insect” in its definition of “emerging invasive insects” and the proposed rule uses “invertebrate”. This should be changed. • Can provide a list of 164 products currently available in Maine that would be affected by this rule, urges the Board to review and publish that list for the spring growing season (April 1st, 2022). • Rule also should include many technical revisions • There are two places the proposed rule says “turf and lawn” and four where it just says “turf.” Using the full phrase “turf and lawn” would provide clarity and consistency with the resolve language, unless there is a scientific and management reason why only “turf” is used in the cases where it is. • Change section in 6 (B) where “the Board may exempt from this list pesticides that it determines are not for use in 	<p>consultation with DACF staff. These species were identified as invasive insects for which there are limited options for management other than neonicotinoid pesticides. The BPC agrees that these three species should be on any proposed list, especially since Asian Longhorn Beetles are not yet known to occur in Maine.</p> <ul style="list-style-type: none"> • Invertebrate was initially included to incorporate non-insect pests like mites and nematodes for which there are limited chemical management options. The BPC will meet with IPM specialists in DACF to discuss options for a definition. • BPC will review the list of products containing the four active ingredients listed in the bill and work to publish a list as soon as possible. Due to time constraints and costs to amend and adopt the current proposed rulemaking and limited staff availability, the publishing date of April 1st, 2022 is not feasible for BPC staff. BPC will aim for the list publishing date in the proposed language of July 1st, 2022. BPC did not receive a list of 164 products in the form of written comment and cannot comment on reviewing this list of 164 products. • Technical revisions will be made as this rule is amended to incorporate public comments. • BPC will consider changing the language to say “turf and lawn” where applicable to make the rule more consistent. • BPC will consider changing this language to better align with the rest of the proposed rule. • Publishing dates are dependent upon rulemaking amendment timelines and BPC staff time constraints. BPC will work swiftly to publish this product list by July 1st, 2022.
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		<p>the <i>control</i> [emphasis added] of outdoor ornamental plants or turf." Changing this to "managing" would better align with the rest of the language.</p> <ul style="list-style-type: none"> • Set an effective publishing date of April 1, 2022 for a list of products. • Supports the idea of the emergency permitting process that was discussed during the public hearing. 	<ul style="list-style-type: none"> • During the hearing, emergency rulemaking and the permitting process for limited use pesticides were discussed, but they are separate processes. If the BPC were to conduct emergency rulemaking to add invasive species to a list, it would be a temporary change and would require follow-up rulemaking after the end of the emergency rulemaking period per title 5 M.R.S. § 8054 (90 days). In order for emergency rulemaking to take place an immediate threat to public health, safety, or general welfare must be identified by the agency (BPC). It is not clear to BPC staff that a new invasive pest in Maine that impacts residential ornamental vegetation would be enough of an immediate threat to public health, safety, or general welfare to warrant emergency rulemaking to permit the use of neonicotinoids for this pest for 90 days. In this instance, routine technical rulemaking to amend the rule as soon as a new invasive insect is identified would be more practical. In reference to a permitting process, if these 4 active ingredients were classified as limited use pesticides, applicators would have to apply for a permit that is approved by The Board for every application they want to make (CMR26-01, Chapter 40). These requests for use would be reviewed at board meetings and approved or denied by The Board. Staff view this avenue as impractical due to the number of applicators that currently use these products and the 4-6 week interval between board meetings. This could cause substantial back-up for permits and reduce the ability of applicators to quickly address pest management issues for their customers. BPC staff will consider how to give clear guidance to applicators and reduce staff
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			and Board member workload while reviewing options for this proposed rule.
9	Anya Fetcher – State Director, Environment Maine	<ul style="list-style-type: none"> Recommended the Board research what other states have done and the resources those states use to make and write rules. Implement an invasive species definition that is as restrictive as possible and includes insect pests and products used for them. Supports a list of invasive insects. Neonicotinoids are not tools for all insects, alternatives exist. Look into other resources and what other states are doing to develop a list of emerging invasive insects. 	<ul style="list-style-type: none"> Given more time, BPC staff would be interested in researching what other states have done, BPC appreciates this suggestion. BPC staff will research implementing a definition that gives clarity exemptions from the rule by meeting with department IPM specialists (IPM Specialist, State Entomologist, and State Horticulturist). A separate product list will also be published by July 1st, 2022. Product labels are required by law to sites and/or pests they can be used for directly on the product, of which applicators can determine what is the best product to use for a site/pest. BPC cannot give product recommendations, but UMCE can give product recommendations for specific pests and are a resource available for applicators. There are several effective pest management and IPM techniques that exist for many pests in ornamental vegetation. Many of these techniques include non-chemical methods such as cultural, biological, and physical management that can be utilized as a part of an IPM program to reduce pests.
10	Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association (MOFGA)	<ul style="list-style-type: none"> Discussed the need to be precautionary with the use of neonicotinoids for cosmetic/aesthetic use. Noted that pesticides are one of the reasons for insect decline. 	<ul style="list-style-type: none"> BPC acknowledges the need to be precautionary with any chemical methods of pest management. IPM can be used for cosmetic and aesthetic purposes. It is BPC’s policy to use IPM and minimize reliance on pesticides (title 22 M.R.S §1471-X). BPC is working to implement education campaigns to reach homeowners, gardeners, and growers about IPM, the BPC, and tools that can be used to reduce reliance on pesticides. BPC agrees that some insect decline has been due to improper pesticide use.

11	Jesse O'Brien – Portland, ME	<ul style="list-style-type: none"> • Consider the use of neonicotinoids with white grubs and management of turf. • Described the destructive process in which white grubs can destroy lawns. • Rulemaking can take useful products away from homeowners and applicators. • Recommended the Board consider looking into limited use products, where applicators petition the board for specific uses of products. • Although Portland, Maine has not had any catastrophic damage since their ordinance was implemented, many residents of Portland are unhappy that they cannot control pests with products like neonicotinoids. 	<ul style="list-style-type: none"> • BPC acknowledges that neonicotinoids are a tool used for turf management of white grubs. • Chemical controls are just one method for the management of white grubs, IPM can be a tool for homeowners, businesses, and other entities that want to keep their lawns healthy. Other management tips and tactics can be found at gotpests.org. • The BPC acknowledges that this rule takes products away from homeowners and applicators. BPC staff urge that homeowners use IPM prior to the use of pesticides to manage any pests on their properties. • BPC could make products with these active ingredients limited use, but the process would require that The Board give permission to use a product in each use or application instance. Requirements for limited use products are outlined in The Board of Pesticides Control Rules CMR26-01 Chapter 40. Limited use products have several criteria that must be met before they can be used: limited use products may only be sold by restricted use pesticide dealers, only used by licensed applicators, an application to use said products must be made to the BPC prior use, and the BPC must grant applicant permission to use or apply any limited use products. This task would be cumbersome to BPC staff and members of The Board as many requests would likely come in for neonicotinoids, as they are commonly used products for turf, lawn, and ornamental pest management. Prohibiting use for these sites and allowing exemptions for invasive insect management is an approach that would be more straightforward for homeowners, applicators, BPC staff, and The Board.
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			<ul style="list-style-type: none"> BPC recognizes municipal ordinances that are more restrictive than state law (title 22 M.R.S.A § 1471-U). There are a myriad of perspectives regarding different municipal ordinances, and regulations are perceived differently, but all ordinances are voted on and adopted by municipal officials.
12	<p>Lelania Avila – Northeast Harbor, ME; Penelope Andrews – Hermon, ME, Member of Sierra Club of Maine and Natural Resources Council of Maine; John Olsen – Jefferson, Maine</p>	<ul style="list-style-type: none"> Urges Maine's Board of Pesticides Control to implement the pesticide laws passed in the last session of the Legislature. Narrow the scope of invasive species that could be treated with neonics by listing specific insect pests and the neonic(s) approved to use in their management. The definition currently proposed by the BPC is too broad and does not reflect the original spirit of the law. 	<ul style="list-style-type: none"> BPC will implement laws from the Maine legislature. BPC will consider developing an alternative definition similar to that described in the original bill. A list of products is also proposed in Section 6 (B) that will be published by July 1, 2022. Pest and/or sites appropriate for the application of a product can be found on the product label. BPC will work with IPM Specialists in the department to revise the definition.
13	<p>Mariana Tupper – Yarmouth, ME</p>	<ul style="list-style-type: none"> Please help the State of Maine stay a strong leader in sensible, smart, & safe agriculture. Progress made in 2021 should be underscored, embellished, and celebrated. 	<ul style="list-style-type: none"> BPC appreciates the support

Summary of Comments Received Regarding 130th Legislature, LD 316, An Act To Prohibit the Use of Chlorpyrifos

Board of Pesticides Control CMR26-01 Chapter 41

#	Name	Summary of Comments	Response
1	<p>Patricia Rubert-Nason – Maine Sierra Club;</p> <p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association</p>	<ul style="list-style-type: none"> Appreciates and believes chlorpyrifos language in Chapter 41 Section 7 to be appropriate. 	<ul style="list-style-type: none"> BPC appreciates the support and will keep the rule language.