

Response to Comments – Chapters 10, 22 and 28

Person Commenting/ Affiliation	Summary of Comments	Staff Analysis
Heather Spalding MOFGA	Supports improved definition of sensitive areas. 200’ buffer to SALOs too small. Cites ¼ mile buffer used in California. Observes there were useful provisions in the current section relating to drift management plans, such as using IPM and the lowest effective rate.	
Molly Sholes	Discussed her circumstance and how the proposed 200’ buffer to roads would preclude aerial treatment of much of acreage. She provided maps illustrating the effects of the 200’ buffer. Suggested a variance and possibly using signs on the roads.	
Charles Corliss Dept. of Conservation	Corliss is the trails coordinator for DOC. He is concerned that landowners may choose to retract permission to use the trails if posting is required as contemplated by the proposed amendments.	
Darin Hammond	Definition of SALO with public roads is too vague. May be a violation of the right to farm law – taking 200’ out of production. Growers may be forced to restrict public access to their land due the notification requirements. Feels people are present or they aren’t. Zero drift on public roads is not realistic. Keep drift management plans. Site map won’t reduce drift.	
Paul Sweetland Coastal Blueberry	Opposes the zero tolerance standard. It will prevent spraying. Opposes the requirements to determine who wants to be notified. It will require an unreasonable amount of work every year. He feels the current notification system is working. If people want to be notified, they will find him.	
Brian Powers	Observed there are a large number of small blueberry fields. Feels notification will be too difficult under the proposal. Thinks the public is uneducated about risks.	
Deborah Aldridge	Approved of the SALO idea. Feels the 200’ buffer is too small. Believes a lack of science on the toxicology of a pesticide does not equate to the product being safe.	
Tim Hobbs Maine Potato Board	Mentioned the 18 consent drift agreements Feels the Board should explore data on the incidence of organic produce being compromised by drift. It should be public information. Concerned about the “zero” tolerance standard. Concerned about the need for maps. How will farmers identify wetlands of special significance?	

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Patricia Kontur Wild Blueberry Commission	Believes the Board should not regulate relationships between growers and neighbors. Oppose one size fits all buffer requirements. Promotes simple, science-based rules that consider the toxicity of individual chemicals.	
Jody Spear Sierra Club	200' is not a meaningful setback. ¼ mile recommendation is preferred. Does not support the exception when neighbors don't object to drift. Opposes the variance section. Opposes the exception for identifying sensitive areas not visible from 1000'.	
David Bell Wild Blueberry Commission	60,000 – 65,000 acres of blueberries in Maine. 20% in the midcoast area, 20% in the Ellsworth Blue Hill area, the rest in Washington County. Yields vary from 1,000 to 12,000 lbs/acre. Organic production around 500-2000 lbs/acre. Notification will be a large burden for growers who manage small fields.	
Tim Lindsey	Had questions about the applicability of the proposed rules. Rules weren't applicable.	
Emily Smith	Growers 4000 acres of broccoli rotated through 20,000 acres. Proposed notification requirements would amount to a ban on aerial spraying. Feels the current rules are working well.	
Todd Merrill	Current notification is working. Not many people want to be notified. The administrative burden would be too costly for notice. 200' setback to roads will eliminate border spraying. Likes the idea of defining SALOs. Suggests web based notice.	
Liza Egar	Beekeeper supports enforceable rules.	
Henry Mann	Feels the Board is headed toward banning all pesticides.	
Trevor Michaud	Feels the current set of rules are working.	
Ivan Hanscomb	Opposes the proposed changes. Too much burden to smaller growers.	
Jim Dickinson Surry Gardens	Doesn't believe tighter notification requirements are needed for ground application. Thinks homeowners are the major problem and should only allow homeowners to purchase pesticides with caution or warning signal words. Should tighten control of home use products before tightening control of licensed users.	

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Glen Koehler Pomological Society	Doesn't know of problems related to apple orchards that follow the existing rules. Don't see basis for increasing the sensitive area radius. Can live with the 24 hour notice period but nothing longer.	
Peter Aldridge Hatch Knoll Farm	May not know who will be using pesticides next to organic production making it difficult to inform them of organic status, suggests allowing use of a sign to notify neighboring pesticide users.	
Bruce Ballard Ballards Custom Spraying	Developing maps for each field seems like a big burden for him as a ground applicator.	
Katherine Fiveash Organic Gardener	Supports the proposed changes to all three chapters.	
Ric Mallamo MOFGA Member	Supports the proposed changes to all three chapters with some reservations. Should develop rules as incentives to assist farmers in the transition to organic methods.	
Leslie Schneider Home Gardener	Supports the blueberry growers and feels they do a good job of limiting over spray.	
Charlotte Wasserman Citizen	Opposes spraying of blueberries, concerned about drift affecting children and thinks growers should adopt organic practices.	
Amy Krietz Citizen	Editorial comments about need to capitalize "sensitive areas" consistently, leaving out February 29, word order and numbering problem in Chapter 22.	
Nancy Oden Clean Earth	Notifications are meaningless because they may not get to it that day and do it the next day without notifying again. Concentrate on organic methods.	
Holly Twining Wildlife Advocate	Need more stringent rules to protect birds in the blueberry barrens.	
Vicki Vadas Neighbor	Had drift damage on their land in the past, now spraying has changed. Have ongoing concerns about runoff.	
David Holmes Citizen	Aerial spraying of any kind violates the rights of man. Worried about chem-trails in the sky.	

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Cindy Look Neighbor	Concerned about forest herbicide application on abutting land. Notification system has not worked for her. Plane has buzzed their house before.	
Peter Poors Acadia ATV'ers	Changes may cause the loss of recreational trails, believe the changes are unnecessary.	
Patricia Verrill Citizen	Restrict all use of pesticides and untested GMOs.	
Hugh Lassen Organic blueberry grower	Supports proposed changes. Need for clearly defined buffers and a designation of who must maintain them. Buffer burden is currently unfairly on the organic growers.	
Litltrader@aol.com Neighbor	Concerned about effects from broccoli spraying. Applicators spray in fog and high winds. They see problems from aerial and ground spraying. Not enough checking into applications and anyone can spray anything. Family has been affected.	
Ted Knadler Knadler Real Estate	We already have enough rules; don't jeopardize small blueberry farms or recreational trails.	
Ronnie Neighbor	Overspray killed everything green in his garden. Burned his skin and throat. Says we found 51% overspray and that a 200 foot buffer was not enough. Doesn't think even a 700 foot buffer is enough because they spray in high winds. Need better notification.	
Terry Johnston Organic Grower	Concerned about losing organic status, wants larger buffer.	
Bill Spiller Small Fruit & Veg Grower	Route 9A runs through their farm and the 200 foot buffer from roads will have a large impact on their farm. Can't move his small fruit crops. Doesn't mind discussing his management with neighbors, but 24 hour notice will make it very difficult for him and the neighbors. Concerned that organic growers are not held to the same standards.	
Arlene Trudel Citizen	Reduce toxins protect the wild denizens.	

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Wendell Caler Blueberry Grower	Opposes the rule changes. Seem to be first step toward eliminating spraying. Current regulations are good. Buffer zones are illegitimate way to take good farm land out of production. Zero tolerance is too much, already is illegal to drift onto non-target properties. Expanded notification adds too much burden on spray crews. Disabling perimeter spraying.	
Kristian Kangas Knox County Blueberry Growers	Regulations called for by anti-pesticide concerns, many are encroaching on blueberry land for the views but don't like or respect the use of pesticides as necessary to provide a crop. 200 foot buffer will severely damage their ability to grow a crop. Many growers will go out of business. Education should be the focus.	
Lauchlin Titus Maine Vegetable & Small Fruit Growers Assoc.	Rules too complex and long. Don't like roads as sensitive areas because of buffer requirements. Site maps are a step backward. Former language allowed more flexibility to get to the same result. Maps to scale will be too large to go into the field. Zero tolerance for residues is excessive and unenforceable. Need alternative language to protect people on roads. New language regarding the national Organic Program standards doesn't appear to mean anything. Need better alternative language or enforcement of existing rules. Not enough flexibility in Chapter 28. Too much burden placed on the "landowner" to provide notice. Shouldn't be that hard to find out who is doing the applications. Growers may need to make application decisions in less than 24 hours. Address with BMPs. Alternate spray dates are at best a wild guess. Pre-notification about the pesticide is problematic because the grower may change at the last minute depending on field conditions. Allow a neighbor and manager to agree on a menu of BMPs.	

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Deborah & Peter Aldridge Hatch Knoll Farm	The interaction of aerial spraying and people needs to be covered in the rules in an enforceable way. Maybe structure the rules so that more restrictive provisions apply to restricted use pesticides. Need to add “area actually occupied” as a sensitive area likely to be occupied. Modify SALO section to include “Public Roads on private lands, including trails, may at the choice of the owner be: a) considered Public Roads and therefore SALOs, b) considered Recreational Area SALOs and posted as such, c) Closed for the duration of the application and re-entry period thereafter. A Trail or Recreational Area entirely on private lands could be posted closed. Perimeter treatments will not be effected by the buffer zone requirement in practice. Also a field that can be harvested can be treated by ground and therefore is not impacted by the 200 foot buffer. Zero residues may be problematic as there may be a background residue. Maybe drop the 20% figure to 5%. Establish a registry by zip code and make it available to growers so they know who they need to contact.	
T. Pietsch Citizen	Drift is serious problem, make buffer zone as wide as possible.	
David King Davey Tree	Does pesticide contacting a road constitute a violation? Do we have to draw a site map for every property? 250 foot notification radius is enough, must make notice provisions more flexible if the radius is increased.	
Robin Hansen Organic Gardener/Livestock Producer	Make buffer zone at least ¼ mile for aerial applications near SALOs and organic producers.	
Vernon & Helga LeCount Organic Blueberry Grower	Need to protect organic certification. Suggest a 700 foot buffer, make organic fields SALOs, high powered ground application can be as damaging as aerial, must communicate with all concerned local people.	
Ellen McAdam McDougal Orchards	Zero tolerance is not possible. Need to balance pesticide drift regulation with ability to produce local foods.	

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Jim Lane ATV Maine	Do not support the changes because the 200 foot buffer may cause the loss of their trails.	
Evan McDougal McDougal Orchards	Concerned about zero tolerance, suggests making detection evidence of drift but not a violation on its own. Would like to see a residue floor set along with a set detection methodology.	
David Yarborough University of Maine	Suggests we use MCL or HAL levels in place of detectable levels. The 200 foot setback is arbitrary and not needed as the current rules have worked. Making public roads sensitive areas will hinder perimeter spraying and requiring applicators to know school bus schedules is too burdensome. Should replace with a provision to allow applicators to stop traffic. Mandatory notification is too burdensome; the Board should enforce the current rules or add a notification registry for agricultural applications.	
Tracy Gregoire Citizen	Supports the proposed changes, however, the proposed 200 foot buffer is not enough and she would like us to bring back the drift management plan language.	
Gerry Mirabile Central Maine Power Company	Question if there is evidence to increase the extent of the sensitive areas around structures from 100 feet to more than 1000 feet where schools are involved. Making roads sensitive areas will cause CMP to update site maps on nearly all of their 230 substations. Annual updates of sensitive area maps will be burdensome because of the extended sensitive area definition. Because of their application patterns which present a very low risk of drift they request the residue standard be damage-based rather than zero or some other arbitrary number. Also suggest keeping the drift management plan section. 24 hour notice is too burdensome because of weather variability.	
Steve Sutter Citizen	Expresses full support for proposed amendments.	
Bill Elliot Camden Hills State Park	Rules will impact his ability to control invasive plants and may cause applicators to apply pesticides in bad weather because of the need to re-notify because of weather delays.	

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Sally & Costas Christ Organic Blueberry Grower	Want to protect their organic certification and family and would like to extend the buffer to at least ¼ mile.	
Roy Allen Allen’s Blueberry Freezer, Inc	Doesn’t see evidence for new standard of harm. Want to delete the 200 foot buffer and reinstate the 100 foot buffer around buildings language in the existing rule. Buffers should be based on the ground conditions. Would like site maps to be more precise and include boundary lines. Remove roads from SALOs because there is no clear definition of what is a public road. Notice to all abutters is too burdensome; suggest we do a registry for agricultural applications within 1000 feet. BPC should send advertisement out to ask neighbors that choose to be notified to get on the registry. The buffers interfere with the ability to do perimeter sprays and increase the amount of pesticides applied.	
Gordon Colby Allen’s Blueberry Freezer	Asked for two week extension to comment period. Making roads sensitive areas likely to be occupied could affect 160 of the 213 fields he manages. Does not agree with “no detect buffers” as it cannot be achieved without banning pesticides. What is the harmful cut off rate? Does not have the resources to contact the 1000’s of neighbors near their fields. Suggests we use the registry format.	
Ragnar Kamp Cherryfield Foods, Inc	Switching to ground equipment together with education usually resolves most neighbor concerns about aerial application. Less than 10% of applications to blueberries in Maine are now done by air. Imposing larger penalties for repeat offenders, both applicators and land managers should make the current rules protective of people and the environment. Making roads sensitive areas likely to be occupied and adding a 200 foot buffer on top of it makes much land un-farmable and may result in lawsuits. Should limit the type of equipment used next to roads to types that limit drift or stop traffic or equipment as vehicles pass by. Special recognition for organic growers is unfair. Buffers between farmers should be negotiated by those farmers. Zero residue tolerance is not possible the 20% level appears to be workable. Education of applicators is the best way to deal with the problem.	

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James Melloh Medical Doctor	Extend the buffer to several hundred feet. Prohibit application where drift may occur onto wells, yards and residences.	
Jacquelyn Cressy	Supports the MOFGA statement, Extend buffer to ¼ mile.	
Bob Butler Jojoba Company	Supports the MOFGA statement, Extend buffer to ¼ mile.	
Richard Farnsworth, Jr.	Setbacks and notification create hardship	
Michael & Ellen Paige	Against aerial spraying, must protect vehicles on roads from being sprayed, proposed rules are a positive step forward. Notification is very important, should not be allowed to waive the notice. Low flying aircraft carrying toxic chemicals may crash into homes.	
John Paynter Bee Keeper	Pesticides kill honey bees, spraying over private property without permission is illegal. Protect organic farms.	
Igor Rakuz GRO Café	Doesn't like pesticides. Food sovereignty is the cornerstone of freedom	
Anne Saggese Business Owner	Aerial spraying is wholly irresponsible.	
Bonnie Sawyer	Notification for all outdoor applications should be universal. Should be a web based notice system. Home gardens should place flags supplied by the pesticide companies. Agricultural applications should not be exempt from the registry.	
Heather Spaulding MOFGA	Support the proposed calibration language. Organic crops cannot be marketed as organic if they have residues greater than 5% of the EPA tolerance if no tolerance than the tolerance level is zero. Change intro to Chapter 28 to make it clearer (see comment). In 2007 there were 849 acres of blueberry fields certified as organic and they estimate another 500 acres that is grown organically but is not certified. Also submitted University of Maine report titled "Economic Analysis of Organic Pest Management Strategies for Lowbush Blueberries Using Enterprise Budgeting".	
Arlene Trudel	Aerial spraying is her concern.	

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Patty Zinkowski Flying Passage Farm	Protect organic farms from aerial spray drift.	
Mark Jacoby & Lisa Mushrall Pine Barrens Farm	Support the SALO definition and addition of the buffer. Specific faults include: Allows producers to degrade the land, no incentive toward low-drift applications, not based on a rational standard of risk and encourage least-cost, most drift applications that do not consider the cost to abutters. Will not protect them as they work in their fields. New rules do not protect his organic farm.	
Jon Olson Maine Farm Bureau	Concerned about the expansion of the definition of sensitive areas and the buffer around them. Does the definition of a road include roads going through wild blueberry fields? Are ATV trails and hunted areas recreational areas? What is the definition of a lawn or livestock area? Zero drift is not possible, current 20% prima facie standard is sufficient. Keep the current flexibility for recording sensitive areas. Scaled maps too burdensome. Notification changes are too burdensome consider using the registry and advertise it. BMPs are better.	
Charles & Dorothy Dolham Dean & Pat Dolham Donna Dolham Dianee Possee Dana Dolham Seven Tree Farm	Don't like the changes in the definition of a sensitive area, the 200 foot buffer and public roads as sensitive areas. Who will be considered a legal occupant of a roadway or body of water? Could advocates say they are occupying roads or waterways to try to get notice before every application? These rule changes will impact their business.	
Jo Ann Meyers Beau Chemin Preservation Farm	Extend buffer zone to 700 feet and allow for exemptions when circumstances on the ground are more protective. Classify organic farms as SALOs. Bring back the language that says "use lowest effective rates" and use of IPM. Disappointed that the proposal does not address ground application.	
Maggie Trout	Editorial comments as well as a concern about having state-wide standards. Concerned about railroad spraying, honey bees and mosquitoes.	

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Marc & Cheryl Rogers Neighbor	Limit spraying to ground application. Increase buffer to ¼ mile for both aerial and ground application.	
Gregory Sweetser Sweetser’s Apple Barrel & Orchards	Concerned about zero residue tolerance because of the increasing sensitivity of monitoring equipment. Thinks it could result in the end of all pesticide application.	
Robin Hansen Livestock producer & organic gardener	Increase aerial application buffer zone around SALOs to ¼ mile.	
Gwen Brodis Blueberry grower	Please extend comment period. Do not increase buffer zones because it will compromise perimeter treatments.	
Jody Spear Sierra Club Maine Chapter	200 foot buffer is not a meaningful setback make it ¼ mile. Remove exemption from notice when neighbors decline to be notified. Make growers adhere to IPM standards and lowest effective rates. Make standard of harm apply to all situations not just SALOs. Make principles to reduce drift apply to both ground and aerial applications. Posting near trails and sporadically occupied SALOs is an urgent priority. Make agricultural applications subject to same notification standards as non-agricultural. Delete the waiver process from Section 5 of Chapter 28.	
Lee Johnston Blueberry Grower	200 foot buffer would prevent him from treating 16% of his fields by air. Zero tolerance residue standard is impossible to comply with. Reduce 20% standard to 10%. Notification of all neighbors within 1000 feet will be too burdensome, come up with a new way to notify only those that want to know.	

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<p>Todd Merrill Merrill Blueberry Farms, Inc.</p>	<p>Changes will be extremely detrimental to blueberry industry. Arbitrary 200 foot buffer should be replaced with a performance based approach. Buffer prevents growers from doing perimeter treatments. Wild blueberries cannot be uprooted and moved. Also concerned about trails being considered recreation areas that would have to be buffered. Do not include roads or trails in the SALO definition. No scientific reason to change residue standard from 20% to zero. Supports an opt-in, online registry for notification because the proposal is too burdensome. Posting sporadically occupied SALOs is fraught with problems because of the changing weather. Must preserve aerial application because of the 10 – 20% loss of crop to the crushing tires on ground equipment. Going to ground based spraying means more carbon emissions and more physical days of spraying. Who will compensate the industry for all the added expenses if aerial spraying is lost and/or if many acres of production are lost?</p>	
<p>Nate Mason RT Allen &amp; Sons Blueberry growers</p>	<p>200 foot buffer around “public” roads could result in 13.1% loss in production on their farm. Zero level of detectible residue is impossible to achieve unless even wider buffers are imposed forcing them to close 6,650 acres to sportsmen and recreational users. Opposed to “mandatory” notification.</p>	

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Tim Hobbs Maine Potato Board	Has drift onto certified organic crops been reported to MOFGA Certification Services, LLC? Section 2(A)(II) could be a problem because rates of application may fluctuate more than 5% due to changes in ground speed. Need to better define “wetlands of special significance”. Zero residues are not possible. Suggests looking at the American Association of Pesticide Control Officials (AAPCO) or Pesticide Program Dialogue Committee (PPDC) models of “No Drift at Toxic Levels” standard, “Minimize Drift” standard or the FIFRA standard. Should define a standard of harm more specifically, i.e., over MCL over tolerance, adverse effects, etc. Organic production does not need specific protection from drift, it should just be considered crop land which is already in the list of sensitive areas. Expand the existing registry to include agricultural applications and add a section to the registry regarding aerial application with a 1000 foot notification distance. Will work with us on an economic impact analysis.	
Amanda Sears Environmental Health Strategy Center	Support the proposed amendments. Appreciate the addition of school bus schedules into the site plan requirements. All local people should be able to request information about applications to protect themselves or their families from exposure.	
Marilyn Dowling Neighbor	Aerial spraying is totally uncontrollable and should be eliminated.	
Ellen Johnson & Bonita Johnson Lamb Cove Farm	Support the definition of SALOs. Increase buffer to 700 feet. Make organic farms SALOs. All local people should be able to get notification. Prohibit application where there is a likelihood of drift onto residences, yards and wells.	

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Cary Nash Blueberry grower	<p>Buildings should have a specified distance around them included in the SALO definition. Lawns and recreation areas are open ended terms subject to interpretation. Public roads have never been sensitive areas and pose problems as sensitive areas. Why were all references to the label removed from Chapter 22? Are the site map requirements satisfied by an aerial photo or USGS map? Make all the distances referenced in the rule 500 feet for consistency and ease of enforcement. Add “of the application site” to the end of Section 3(B)(I)(i). School bus schedules are burdensome to acquire, many schools come into some areas and schedules can vary. Buffer zones should be site and weather specific and determined by the applicator. Zero tolerance is not practicable. Go to a 10% of label rate standard for drift. The terms “potential harm” and “could have resulted” in Section 4(B)(III)(II) are speculative and subject to endless debate. Keep drift management plan language. Finding all neighbors within 1000 feet will be too exhausting. This also reduces flexibility in spray decisions. Posting signs not more than 2 days prior to spraying is unreasonable because of weather delays.</p>	

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<p>Patricia Kontur Wild Blueberry Commission of Maine</p>	<p>Proposed rules will have a direct negative impact by reducing the acres of farmable crop land. Many small growers still depend on aerial application because it allows for quick and easy access and helps reduce pesticide use. Agree that it is not the role of the Board to prevent nuisances or the dislike of pesticide application. Goal should be to minimize drift onto unintended targets. Rules should have a rational focus on a defined problem with data and solutions based on science, should support the US EPA’s regulations and programs, should ensure changes are simple and straight forward, should be performance based and the rules should be enforced. Should foster direct dialogue between growers and neighbors. Incorporate outdoor powered agricultural applications into the notification registry. Include public and commercial buildings into the registry and allow for a 1000 foot radius for aerial applications. Add email as an option for communicating to the people on the registry. Post the registry on the Board’s web site. Opposes the changes to the definitions of sensitive areas. Concerned about the definition of lawn, recreational areas and roads. Current Chapter 22 rules are good. EPA’s risk assessments and label changes are adequate protection. No residue in a sensitive area is not realistic, need to simplify the rule. Buffers should not be arbitrarily required for one type of application. Incorporate identification of target sites for both aerial and ground application in Section 2. Put maximum wind speed for aerial into Section 2(C)(IV). Emphasize weather conditions instead of deleting them. Retain the drift management plan section and amend it to include the following BMPs: No spray buffer zones to meet drift standards, site maps of sensitive areas within 500 feet, list of measures to consider, and the aerial application pre-application checklist. Under standards of harm, determination of harm must include evidence of adverse impacts consistent with FIFRA Section 3(c)(5).</p>	

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Paul Sweetland Coastal Blueberry	Keep definition of sensitive area as is. Public roads is too broad a term. Require a “planned pesticide application” sign be posted to notify road users. Do not change the current 20% residue standard. Mere detection of pesticide does not constitute harm. Mandatory notification is too burdensome. Board should advertise the availability of notification already allowed.	
Signed by 15 blueberry farm neighbors	Form letter from persons living adjacent to Merrill Blueberry Farm lands. Do not change notification process; let farmers make decisions based on conditions. Keep rules flexile and less prescriptive.	
Signed by 49 blueberry growers	Form letter from RT Allen & Sons blueberry growers who oppose the rule changes.	
Signed by 22 blueberry farm neighbors	Form letter from neighbors of RT Allen and Sons blueberry growers opposing the rule changes that restrict where pesticides may be applied, buffer zones, zero residue tolerance and the limitation on perimeter spraying.	
Diane Bright	Supports MOFGA positions.	
Alexandra Alsop	Follow MOFGA recommendations	