

Rule-Making Cover Sheet

2019-028

TO: Secretary of State
ATTN: Administrative Procedure Officer,
State House Station 101, Augusta, Maine 04333.

- 1. Agency: Inland Fisheries and Wildlife
2. Agency umbrella and unit number: 09-137
3. Title of rule: Animal Damage Control Agent Certificate
4. Chapter number assigned to the rule: Chapter 27
5. Date(s)/method(s) of notice: 11/07/2018 - See Secretary of State rule-making ad
6. Date(s)/place(s) of hearing(s): November 28, 2018 @ 5:30pm - Augusta Armory, Room 209, 179 Western Ave, Augusta
7. Type: X new rule [] partial amendment(s) of existing rule
[] suspension of existing rule [] repeal of rule [] emergency rule
[] repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.



- 8. Name/phone of agency contact person: Becky Orff - 287-5202
9. If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following
[] Provisional adoption (prior to Legislative review) [] Final adoption
[] emergency adoption of major-substantive rule

10. Certification Statement: I, Judith Camuso hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by Inland Fisheries & Wildlife on January 29, 2019. I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act. Signature: [Handwritten Signature] Printed name & title: Judith Camuso, Acting Commissioner

11. Approved as to form and legality by the Attorney General on 1/31/19. Signature: [Handwritten Signature] Printed Name: Mark Randlett, Assistant Attorney General

EFFECTIVE DATE: FEB - 5 2019

BASIS STATEMENT**UNIT NUMBER:** 09-137**AGENCY:** Inland Fisheries and Wildlife**RULE TITLE:** Chapter 27 – Animal Damage Control Agent Certificate

This rule is the result of an extensive review over the past year to modernize the Department's policy governing the ADC program. This review involved Department staff representing multiple Bureaus. During the review, Department staff examined other states' ADC programs to evaluate consistency, guidance, and administration. This review also involved consultation with several ADC agents certified under the current standards.

In the process of modernizing the policy that governs the Animal Damage Control (ADC) Program, the Department developed the new rule (Chapter 27) to govern how IFW staff utilize Animal Damage Control agents and how the agents function when dealing with human-wildlife conflicts. Increased demand for services on Departmental staff and ADC agents that deal with nuisance wildlife issues necessitate these rules. The rule establishes a standard application, operating standards, and eligibility requirements. As part of the application process, prospective ADC agents must meet minimum experience and training requirements as well as submit to a background check. The combination of expectations established in this new rule should provide consistent, safe, and reliable services to Maine's citizens when resolving human-wildlife conflicts.

A public hearing to discuss the proposal was held on November 28, 2018 with zero members of the public attending. One written comment was received. The comment was acknowledged and forwarded to staff for consideration.

The Acting Commissioner brought the original proposal forward to the Advisory Council at their regularly scheduled meeting held on January 29, 2019. The nine (9) members in attendance voted unanimously to adopt the proposal as presented.

Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: 09-137 Inland Fisheries and Wildlife

NAME, ADDRESS, PHONE NUMBER, E-MAIL OF AGENCY CONTACT PERSON:

Becky Orff, Inland Fisheries and Wildlife, 284 State Street 41 SHS, Augusta, ME 04333; phone: 207-287-5202; fax: 207-287-6395; e-mail: Becky.Orff@maine.gov

CHAPTER NUMBER AND RULE TITLE: Chapter 27 – Animal Damage Control Agent

Certificate STATUTORY AUTHORITY: 12 MRS 10104, 10105

DATE, TIME AND PLACE OF PUBLIC HEARING: Wednesday, November 28, 2018 @ 5:30pm, Augusta Armory, Room 209, 179 Western Avenue, Augusta

COMMENT DEADLINE: December 10, 2018

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: In the process of modernizing the policy that governs the Animal Damage Control (ADC) Program, the Department has developed rules to govern how IFW staff utilize Animal Damage Control agents and how the agents function when dealing with human-wildlife conflicts. Increased demand for services on Departmental staff and ADC agents that deal with nuisance wildlife issues necessitate these rules. The rule establishes a standard application, operating standards, and eligibility requirements. As part of the application process, prospective ADC agents must meet minimum experience and training requirements as well as submit to a background check. The combination of expectations established in this new rule should provide consistent, safe, and reliable services to Maine's citizens when resolving human-wildlife conflicts.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? YES NO

ANALYSIS AND EXPECTED OPERATION OF THE RULE: The rule will provide IFW staff with clear direction for certification of ADC agents, as well as providing prospective applicants clear requirements to become eligible for certification as an ADC agent. The operating standards and experience and training requirements provided in the proposed rule will allow for a consistent, safe and reliable program moving forward to aid the public in the resolution with conflicts they have with wildlife.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE(including up to 3 primary sources relied upon): The rule results from extensive review over the past year to modernize the Department's policy governing the ADC program. This review involved Departmental staff representing multiple Bureaus. During the review, Department staff examined other states' ADC programs to evaluate consistency, guidance, and administration. This review also involved consultation with several ADC agents certified under the current standards.

ESTIMATED FISCAL IMPACT OF THE RULE: No fiscal impact anticipated.

NEW CHAPTER 27 – ADD CHAPTER 27 AS FOLLOWS:

09-137 DEPARTMENT OF INLAND FISHERIES & WILDLIFE

Chapter 27: ANIMAL DAMAGE CONTROL AGENT CERTIFICATE

27.01 SCOPE

This rule chapter applies to the application, examination and certification process as well as the training, operating standards, and activities conducted by Animal Damage Control Agents [ADC]. Certified agents are authorized by the Department of Inland Fisheries & Wildlife to act as an agent of the Commissioner while engaging in the take or relocation of any wildlife as authorized in 12 M.R.S. §10105 subsection 1.

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- 27.11 Transition and Grandfathering Provisions

27.03 DEFINITIONS

1. **Animal Damage Control:** Authorized taking or relocation of wildlife to mitigate human-wildlife conflict.
2. **Animal Damage Control Agent:** A person certified by the Department who acts as an agent of the Commissioner and works to mitigate human – wildlife conflict and is authorized under 12 M.R.S. §10105 to take or relocate wildlife as necessary when responding to complaints of animal damage.

27.04 CLASSIFICATIONS OF ADC CERTIFICATIONS

ADC Agents may be certified under one or more of the following classifications:

1. **Class 1** (Home and Garden): a person who has met the qualifications to perform ADC work to mitigate nuisance wildlife issues related to home and garden species listed within the department policy;
2. **Class 2** (All Other): A person who has met the qualifications to perform ADC work to mitigate issues related to all other species that are not contained in another certification.
3. **Bats:** a person who has met the qualifications to perform ADC work to mitigate human-bat conflicts; and
4. **Hazing with dogs:** a person who has met the qualifications to perform ADC work to mitigate issues related to nuisance wildlife whose behavior can be modified by the use of dogs.

27.05 ELIGIBILITY

1. An applicant must meet the following eligibility requirements to become certified as an ADC agent in one or more classifications:
 - A. Completion of the application including but not limited to a description of any relevant experience applicable to the classifications the person wishes to become certified in;
 - B. The application must be signed stating that the applicant has completed review of all required training and policy materials prior to submission of the application;
 - C. Must pass the written examination; (see section 27.07)
 - D. Has a current and valid trapping license with the exception of those only classified for bat exclusion or hazing with dogs;
 - E. Disclose any criminal convictions and civil violations, and submit to a background check. Any of the following convictions or adjudications may disqualify the applicant from certification upon review by the department.
 - (1) Class A, B, C or D convictions within the previous 3 years (except the disqualification period for convictions may be longer where provided for by law);
 - (2) Any conviction or adjudication for a violation of any provision of 12 M.R.S. Part 13 within the previous 5 years.

27.06 APPLICATION

1. The application shall include:
 - A. A requirement that any criminal convictions and/or civil violation adjudications be disclosed;
 - B. Training and policy materials provided within the application packet to be reviewed prior to submitting application;
 - C. A requirement that any experience relevant to ADC work be listed;
 - D. A requirement that ADC applicants obtain signatures on the application form from a regional wildlife biologist and a game warden endorsing the applicant as suitable for approval by the Department as an ADC agent.

27.07 EXAMINATION

1. **Written:** Applicants must satisfactorily complete a written exam in each classification for which they apply. A passing score on the written exam must be 80% or higher in each section of the exam. Testing accommodations shall be provided upon request in compliance with A.D.A. standards. Applicants who have previously held an ADC agent certificate and are applying for a new certificate will be required to take a written exam if they have not successfully passed an exam within the past 3 years.

27.08 OPERATING STANDARDS

1. Agents must abide by all applicable State and Federal laws.
2. Failure to comply with department ADC Policy may result in revocation or suspension of the agent certificate.

27.09 TERM OF CERTIFICATION

1. An ADC certification authorizes a person to perform the work of an ADC agent of the Commissioner from the date of issuance through June 30th of the 2nd complete year following the year of issuance.

27.10 DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATION

1. The department may deny an application for certification if eligibility and application requirements are not met (see section 27.05 and 26.06).
2. The department may revoke or suspend a certification if:
 - A. There are violations of the operating standards (see section 27.08);
 - B. The agent is found to be no longer eligible for certification (section 27.05);
 - C. The agent submitted false information or failed to disclose information required by the application;
 - D. The agent is found to be incompetent, negligent or neglectful in the conduct of ADC activities, including, but not limited to, entering into a contractual agreement with a client to provide services and then failing, without just cause, to provide the services as agreed;
 - E. Failure to meet the qualifications for the certification, including but not limited to, failing to pass reexamination;
3. The department will notify the agent of any denial, revocation or suspension in writing, which shall inform the agent of the reasons for the department's decision.
4. Any person whose application for certification has been denied, or whose certification has been suspended or revoked, may request an appeal hearing before the department. The request for a hearing under this paragraph must be submitted to the department, in writing within 30 days of receipt of the notice of denial, revocation or suspension of the ADC certificate. Appeal hearings will be held in accordance with the adjudicatory proceeding provisions of the Maine Administrative Procedures Act. The issues on appeal will be whether there are sufficient grounds for the denial, revocation or suspension and whether the issuance or reinstatement of a certificate would be in the best interests of justice.

27.11 TRANSITION AND GRANDFATHERING PROVISIONS

1. Any person who is certified as an ADC agent as of July 1, 2019, may continue to perform ADC services and upon recertification is exempt from the examination requirements but must still meet the background and training requirements for that recertification and any future recertification. If a person who is certified as an ADC agent as of July 1, 2019, fails to recertify, within 3 years past the expiration date of their certificate, may be required to comply with all certification requirements including background check, training and examination.