



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

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 GOVERNOR

AMANDA E. BEAL
 COMMISSIONER

Memorandum

To: Board of Pesticides Control
 From: Karla Boyd, Policy & Regulations Specialist
 Subject: LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

February 23, 2024

Background:

On June 23, 2023, LD 1770 “Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data” (RSLV 2022 c. 71) was signed by the governor. This resolve directs BPC to conduct rulemaking requiring electronic submission of annual commercial applicator reports and pesticide dealer reports. The Board is also obligated to submit a report to the legislature by March 2024 that reports on the progress made on the implementation of this resolve.

L.D. 1770 Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

Sec. 1. Board of Pesticides Control; pesticides sales and use data. Resolved: That, pursuant to the Maine Revised Statutes, Title 22, section 1471-M, subsection 2, paragraph D, the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall adopt any rules necessary to implement the transition from paper to electronic format of reports required to be submitted to the board as required by Title 22, section 1471-G. The board shall implement a system of electronic data collection that is efficient for those required to submit reports to the board under Title 22, section 1471-G and useful to the board and members of the public. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Report. Resolved: That, no later than March 1, 2024, the director of the Board of Pesticides Control within the Department of Agriculture, Conservation and Forestry shall submit a report regarding rulemaking and implementation of electronic reporting under

section 1 to the Joint Standing Committee on Agriculture, Conservation and Forestry, which may report out a bill to the Second Regular Session of the 131st Legislature based on the report.

The Board has appointed a member to engage with staff, stakeholders and developers to discuss changes to BPC's existing software solution, MEPERLS. There have been two stakeholder meetings. At an October 11, 2023, stakeholder meeting, staff reviewed the process for submitting reports to those in attendance and identified several needs. Since then, the board has implemented a 'review' section of the submission that gives users the ability to identify errors or mistakes and re-submit their information. Additionally, at a stakeholder meeting held November 17, 2023, participants identified the need to add adjuvants to the reports, as they are now considered pesticides under state law.

Potential Rulemaking

The Board will need to engage in rulemaking to implement LD 1770 in Chapter 50: Recordkeeping & Reporting. The Board may want to consider:

1. Adding language that requires reports be submitted electronically through a portal;
2. Creating a timeline for implementation and start year that electronic reports will be required;
3. Additional language for the transition from paper to electronic reports, especially for individuals that do not have computer or broadband access; and
4. Requiring additional information in reports that will aid in the data compilation process.

At the February 9, 2024 meeting, the Board discussed adding a waiver for individuals that do not have access to electronic devices that can submit electronic annual reports, as well as an implementation date and phase in period. Staff have added these into the proposed rulemaking for Chapter 50: Recordkeeping and Reporting Requirements and have prepared it for the Board to review.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**026 BOARD OF PESTICIDES CONTROL****Chapter 50: RECORD KEEPING & REPORTING REQUIREMENTS**

SUMMARY: These regulations describe the types of records and reports which commercial applicators, commercial agricultural producers, limited/restricted use pesticide dealers, spray contracting firms and monitors must maintain and submit to the Board.

Section 1. Records**A. Pesticide Application Records**

- I. Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request.
- II. Pesticide application records shall include, at a minimum:
 - a. Site information including town and location, crop or site treated, target organism, customer and customer address_(where applicable); and
 - i. for broadcast applications, size of treated area (when completed);
 - ii. for volumetric applications as described on the label, the volume treated;
 - iii. for non-broadcast applications (such as spot treatments, crack and crevice or stump treatments) a practical description of the scope or extent of the application (such as number of trees, stumps or rooms treated).
 - b. **Application information.** For each distinct site, records must include date and time of application(s), brand name of pesticide(s) applied, EPA registration number(s), active ingredient(s), restricted entry interval(s) and/or ventilation period(s) (where applicable), method of application (type of equipment), dilution agent(s) (other than water), the licensed applicator's name and certification number, the name of any noncertified applicator that made the application (where applicable), and spray contracting firm (where applicable).

- c. **Rate information.** For each distinct site, application rate information must be maintained as follows:
 - i. **Restricted Use Pesticides.** For restricted use pesticides, applicators shall record the total amount of pesticide applied (undiluted).
 - ii. **General Use Pesticides.** For general use pesticides, applicators shall record:
 - (1) rate information as described in (i.) above; or
 - (2) the mix ratio and the total mix applied; or
 - (3) the mix ratio and the mix per unit area applied.
- d. For outdoor applications, except those listed below, weather conditions including wind speed and direction, air temperature and sky conditions recorded such as sunny, partly cloudy, overcast, foggy or rainy. No weather condition records need be kept for outdoor applications involving:
 - i. pesticides placed in bait stations;
 - ii. pesticide-impregnated devices placed on animals, such as ear tags; or
 - iii. pesticides injected into trees or utility poles.
- e. For TBT applications to marine vessels, applicators must also record the vessel identification and size, and the disposition of TBT wastes including chips/dust removed prior to application and empty containers.

B. **Limited Use/Restricted Use Pesticide Sales Records**

- I. Licensed pesticide dealers shall maintain records of each sale of a restricted/limited use pesticide on their sales slips and the customer's name, and license number must be recorded on every invoice or electronic record involving that individual. Licensed pesticide dealers must also maintain records to verify that sales of restricted/limited use pesticides to unlicensed purchasers are only made where a licensed applicator is employed to supervise the use of the restricted/limited use products. These records must include the name, address, license number, issuing agency, expiration date, and categories of certification (if applicable) of each person to whom the restricted use pesticide was distributed or sold. These records are to be available for inspection by representatives of the Board at reasonable times, upon request, and are to be maintained for two calendar years from the date of sale.
- II. Pesticide dealer records shall also include the signature of purchaser or his/her agent, the product name, the EPA registration number, state special local need registration (SLN) number (if applicable), the quantity and size of containers purchased, and the date of purchase.

- III. Any pesticide dealer who discontinues the sales of restricted/limited use pesticides shall notify the Board in writing and shall provide the Board, upon request, with all required records including a final sales report up to the date of discontinuance.

Section 2. Reports

- A. **Annual Summary Reports by Commercial Applicators.** Annual summary reports must be electronically submitted for each calendar year by January 31 of the following year through a board-approved software solution. In the event a required report is not received by the due date, the person's license may be temporarily suspended until the proper report is received or until a decision is tendered at a formal hearing as described in 22 M.R.S.A. §1471-D(7). The report filed with the Board by or on behalf of commercial applicators shall contain the following information for each site or crop treated: quantity of each pesticide used, EPA registration number and total area treated (where applicable) for each pesticide.
- B. **Annual Pesticide Sales Reports.** Pesticide dealers licensed to sell limited and restricted use pesticides must provide the Board with a calendar year-end report of total sales of all limited, restricted and general use pesticides electronically through a board-approved software solution before their pesticide dealer license can be renewed. The Board will furnish report forms.
- C. **Transition to Electronic Submission of Sales and Use Reports.**
- I. The 2024 amendments to Section 2 shall not affect the licensing status of applicators or dealers until reports for 2025 are due on January 31, 2026. At that time, reports will be required to be submitted in an electronic format through a board-approved software solution unless the submitter has received an electronic reporting waiver.
- II. The 2024 amendments to this chapter which will transition annual summary reports by commercial applicators and annual pesticide sales reports to an electronic format shall be phased in over two years. Phase one shall include promotion of the electronic portal and education for commercial applicators and dealers on how to utilize the electronic submission portal for reporting year 2024. Phase two shall include requiring commercial applicators and dealers to use the electronic submission portal for reporting year 2025, unless the submitter has received an electronic reporting waiver.
- III. If commercial applicators or dealers do not have access to an electronic device capable of submitting electronic reports, they may seek an electronic reporting waiver. Waiver applications must include the following:
- a. The name, address and telephone number of the applicant;
 - b. The license number of the applicant;
 - c. The intended format for submitting reports; and

c. Testimonial or proof that the submitter is unable to complete the electronic submission process outlined in Section 1.

IV. Within 30 days after a complete application is submitted, the Board or its staff shall issue a waiver if:

a. The waiver application is received prior to December 31 of the reporting year;

b. The applicant possesses a valid pesticide applicator or dealer license issued by the State; and

c. The applicant agrees to submit physical copies of the annual reports required in Section 1 no later than January 31 of the following year.

The Board may place conditions on any such waiver, and the applicant shall comply with such conditions. Except as required by the waiver, the applicant shall undertake the reporting in accordance with all of the conditions described in their request and all other applicable legal standards. Waivers issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

V. The contents of this section will be effective for the reporting year 2024.

€D. **Spray Incident Reports**

I. Commercial agricultural producers, commercial applicators, spray contracting firms and licensed pesticide dealers shall be responsible for telephoning a spray incident report to the Board as soon as practicable after emergency health care has been obtained for injured parties and efforts have been initiated to contain any spills.

II. A reportable spray incident is any significant misapplication or accidental discharge of a pesticide. Such incidents shall include: fires involving pesticides; vehicle and aircraft accidents resulting in a spill or human contamination; failure to turn off spray booms or other spray equipment resulting in application to sensitive areas (such as water bodies, accidentally applying pesticides to the wrong site or places of human habitation) when such application is a violation of label instructions or other law; overfilling of spray equipment resulting in risk of contamination of water; and any other equipment breakage or malfunction or pesticide handling activity which causes a pesticide release which may result in a threat to human health or the environment.

STATUTORY AUTHORITY: Title 22 M.R.S. Chapter 258-A §1471-G, M and R

EFFECTIVE DATE:

July 6, 1979 - as "Reporting Requirements," filing 79-338

AMENDED:

August 12, 1985 - filing 85-275

REPEALED AND REPLACED:

April 5, 1995 - as "Record Keeping and Reporting Requirements," filing 95-149

AMENDED:

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

November 11, 2001 - filing 2001-483

March 5, 2003 - filing 2003-61

January 4, 2005 – filing 2004-606 affecting Section 1.A.I.

December 23, 2012 – filing 2012-348 affecting Section 1.B.II.

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

July 23, 2019 – filing 2019-133