

BASIS STATEMENT FOR AMENDMENT TO CHAPTER 50—RECORD KEEPING AND REPORTING REQUIREMENTS

Basis Statement

The passage of Public Law 2011, Chapter 510, eliminated the statutory mandate for a restricted use pesticide container deposit system. As a result, the Board is repealing Chapter 21 of its rules which contains the detailed requirements for the container deposit system. Since there will no longer be a container deposit requirement, there will also be no need to maintain records of deposits. Consequently, the Board proposed to repeal the associated record keeping provisions. Amending this rule will reduce the regulatory burden on both pesticide distributors and applicators.

No comments were received concerning this amendment during the comment period.

Consequently, the Board determined that it is both logical and appropriate to eliminate the record keeping requirements that will soon become obsolete and adopted the amendment as proposed.

Impact on Small Business

In accordance with 5 MRSA §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

Department of Agriculture, Conservation and Forestry—Maine Board of Pesticides Control

Chapter Number and Title of Rule

CMR 01-026, Chapter 50—Record Keeping and Reporting Requirements

Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule

Approximately two pesticide distributors will likely be impacted by the proposed amendments to Chapter 50.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

Small distributors of restricted use pesticides will likely need to spend about five fewer hours per year maintaining records of container deposits. This would translate into an annual administrative savings of approximately \$250.

Brief Statement of the Probable Impact on Affected Small Businesses

The administrative burdens on small businesses will be reduced slightly by the proposed amendments.

Description of Any Less Intrusive or Less Costly, Reasonable Alternative Methods of Achieving the Purposes of the Proposed Rule

Since the proposed repeal will eliminate some current administrative requirements, there are no less intrusive or less costly alternatives.

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

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 (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 applicator's name and certification number (where applicable) and spray contracting firm (where applicable).

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- 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 certification number should 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 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 chemical purchased, the EPA registration number, the quantity and size of containers purchased and the date of purchase. ~~For restricted/limited use containers subject to Chapter 21 of the Board's rules, the dealer shall also record the serial number of each sticker affixed to the containers and the amount of deposit paid or posted to credit.~~

- 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.
- C. Spray Period Records for Major Forest Insect Aerial Spray Programs
- I. Each monitor employed on a major public or private forest insect aerial spray application program shall prepare written spray period records describing each spray period.
 - II. The spray period records shall include the following information: Date and time of the spray period; Area actually sprayed; Pesticide used; Weather conditions before, during and immediately after spraying; Spray behavior, including visible drift to nontarget areas; and Notation of any reason why a spray period was terminated prior to completion of area. The records shall also include a map showing any nontarget areas that were sprayed.
 - III. The spray period records shall be made available for inspection by representatives of the Board as soon as practicable following the close of each spray period and, in any event, before the next spray period and before the end of the day. The spray records shall be maintained on file and available for inspection by representatives of the Board for a period of at least two years.

Section 2. Reports

- A. Annual Summary Reports by Commercial Applicators. Annual summary reports must be submitted for each calendar year by January 31 of the following year. 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 before their pesticide dealer license can be renewed. The Board will furnish report forms.
- C. 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.
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STATUTORY AUTHORITY: Title 22 M.R.S.A., 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.

SUMMARY OF COMMENTS—CHAPTER 50—SEPTEMBER 2012

TESTIMONY GIVEN AT SEPTEMBER 7, 2012 PUBLIC HEARING

Person/Affiliation	Summary of Testimony	Board Response
No testimony was given		

WRITTEN COMMENTS RECEIVED BY SEPTEMBER 28, 2012

Person/Affiliation	Summary of Comments	Board Response
No written comments were received		