



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

JANET T. MILLS
 GOVERNOR

AMANDA E. BEAL
 COMMISSIONER

Memorandum

To: Board of Pesticides Control
 From: Alexander Peacock, Director
 Subject: Experimental Use Permits

October 2, 2026

Board staff has received several inquiries about obtaining experimental use permits to trial pesticides on off-label sites. The BPC previously had a statute, Title 7 § 608, which established the Board's ability to issue EUPs. This section was repealed by the legislature in 2005. This is an overview of current EPA regulations regarding EUPs and a discussion of the possible need for a policy to inform EUP requests of federal standards established by EPA.

ALEXANDER PEACOCK, DIRECTOR
 90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
 WWW.THINKFIRSTSPRAYLAST.ORG

Title 7, Chapter 103, PRODUCTS CONTROLLED

9. Adverse environmental effects. If at any time after the registration of a pesticide, the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the board. [1989, c. 878, Pt. E, §5 (amd).]

PL 1975, Ch. 382, §3 (NEW).
PL 1977, Ch. 694, §52-55 (AMD).
PL 1979, Ch. 644, §1 (AMD).
PL 1981, Ch. 9, § (AMD).
PL 1983, Ch. 568, §1 (AMD).
PL 1985, Ch. 592, § (AMD).
PL 1985, Ch. 627, §1 (AMD).
PL 1987, Ch. 310, §1 (AMD).
PL 1987, Ch. 723, §1 (AMD).
PL 1989, Ch. 878, §E5 (AMD).
PL 1993, Ch. 410, §S1 (AMD).
PL 2001, Ch. 498, §1 (AMD).
PL 2003, Ch. 282, §1 (AMD).

§607-A. Review or reregistration

1. Review required. The board shall review all chemical pesticides used in this State in accordance with the requirements of this section. This review must be completed for presently registered pesticides on a schedule to be determined by the board, with restricted use pesticides and the most widely used pesticides receiving priority, and within 3 years for pesticides registered after September 23, 1983. [RR 1997, c. 2, §26 (cor).]

2. Review process. In cooperation with technical personnel of the Department of Environmental Protection; the Department of Inland Fisheries and Wildlife; the Department of Health and Human Services; and the Department of Conservation, specifically the Maine Forest Service, the board shall conduct a review to include the following: [1989, c. 878, Pt. E, §6 (amd); 2003, c. 689, Pt. B, §6 (rev).]

A. An environmental risk assessment to determine the effects of pesticides on the ecosystem. This assessment is to be based on available literature. The board shall request data that it determines necessary to carry out the purpose of this chapter, but, when the literature is not available, is inadequate or incomplete, this assessment shall be based on an environmental monitoring protocol;

[1989, c. 878, Pt. E, §6 (amd).]

B. A health risk assessment, based on a literature search of laboratory, clinical and epidemiological data available within and without the State. The board shall request data it determines necessary to carry out the purpose of this chapter; and

[1989, c. 878, Pt. E, §6 (amd).]

C. A water residue survey to determine a representative sample of a number of wells or bodies of water, either at random, in areas of possible contamination or at other bases to be described by the board, for the purpose of testing these waters and preparing a profile of the kinds and amounts of pesticides present.

[1989, c. 878, Pt. E, §6 (amd).]

3. Effect of review on reregistration. If the reviews in this section demonstrate that the impact of the pesticide on the ecosystem warrants additional health or environmental safeguards, the board shall require implementation of those safeguards prior to reregistration. [1989, c. 878, Pt. E, §6 (amd).]

PL 1983, Ch. 558, §3 (NEW).
PL 1989, Ch. 878, §E6 (AMD).
RR 1997, Ch. 2, §26 (COR).
PL 2003, Ch. 689, §B6 (REV).

§608. Experimental use permits

1. Board's powers. Provided the State is authorized by the Administrator of EPA to issue experimental use permits, the board may: [1989, c. 878, Pt. E, §7 (amd); 1999, c. 547, Pt. B, §78 (amd); §80 (aff).]

A. Issue an experimental use permit to any person applying for an experimental use permit, if it determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 607. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed;

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[1989, c. 878, Pt. E, §7 (amd).]

B. Prescribe terms, conditions and period of time for the experimental use permit, which shall be under the supervision of the board; and

[1989, c. 878, Pt. E, §7 (amd).]

C. Modify any experimental use permit in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, if the board finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment. These permits may be revoked by the District Court if the terms or conditions are being violated or are inadequate to avoid unreasonable adverse effects on the environment.

[1989, c. 878, Pt. E, §7 (amd); 1999, c. 547, Pt. B, §78 (amd); §80 (aff).]

2. Development and promulgation of other requirements. The board may develop and promulgate such other requirements by regulation, adopted in a manner consistent with the Maine Administrative Procedure Act, as are necessary for the state plan to receive such authorization from EPA. [1989, c. 878, Pt. E, §7 (amd).]

3. Limitation or prohibition of experimental use pesticides. The board may, by regulation adopted in a manner consistent with the Maine Administrative Procedure Act, limit or prohibit the use of any pesticide for which an experimental use permit has been issued by EPA pursuant to Section 5(a) of FIFRA, and which the board finds may cause unreasonable adverse effects on the environment. [1989, c. 878, Pt. E, §7 (amd).]

PL 1975, Ch. 382, §3 (NEW).

PL 1977, Ch. 694, §56-58 (AMD).

PL 1989, Ch. 878, §E7 (AMD).

PL 1999, Ch. 547, §B78 (AMD).

PL 1999, Ch. 547, §B80 (AFF).

§609. Refusal to register, cancellation, suspension, legal recourse

1. Procedure. Provided the State is certified by the Administrator of EPA to register pesticides formulated to meet special local needs, the board shall consider the following for refusal to register; for cancellation; for suspension; or for legal recourse for such pesticides. This registration, cancellation and suspension shall be considered rule-making as that term is defined in the Maine Administrative Procedure Act and notice shall be provided in a manner consistent with the Maine Administrative Procedure Act. [1989, c. 878, Pt. E, §8 (amd).]

A. If it does not appear to the board that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this subchapter or regulations adopted thereunder, the board shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this subchapter so as to afford the applicant an opportunity to make the necessary corrections and shall notify, in a manner consistent with the Maine Administrative Procedure Act, the applicant of the opportunity for hearing prior to refusal to register.

[1989, c. 878, Pt. E, §8 (amd).]

B. When the board determines that a pesticide or its labeling does not comply with the provisions of this subchapter or the regulations adopted thereunder, the board may cancel the registration of a pesticide or change its classification, after notice and opportunity for hearing has been provided in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act.

[1989, c. 878, Pt. E, §8 (amd).]

C. When the board determines that there is an imminent hazard, it may, on its own motion, suspend the registration of a pesticide in a manner consistent with the Maine Administrative Procedure Act, Title 5, section 8054, as to emergency rule-making pending decisions reached after notice and opportunity for a hearing. Hearings shall be held with the utmost possible expedition.

[1989, c. 878, Pt. E, §8 (amd).]

D. When the board becomes cognizant of any possible hazard or violation involving either a registered or unregistered product, it shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings or charge to be preferred, to be delivered by registered mail, return receipt requested, to the person concerned, who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the board.

[1989, c. 878, Pt. E, §8 (amd).]

E. Any person who will be adversely affected by such order in this section may obtain judicial review thereof by filing in the District Court, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the

TITLE 7

REVISION BILL 2005

PESTRICIDES

1st draft showing changes to be made-- not in bill form

**SUBCHAPTER 2-A
MAINE PESTICIDE CONTROL ACT OF 1975
(HEADING: PL 1975, c. 382, @3 (new))**

7 § 601. Title

This subchapter ~~shall~~ may be known and cited as the "Maine Pesticide Control Act of 1975." *[technical]*

Section history:

1975, c. 382 , § 3 (NEW).

7 § 602. Enforcing official

This subchapter is administered by the Board of Pesticides Control, hereinafter referred to in this subchapter as the "board-"; established in Title 5, section 12004-D, subsection 3 and further described in Title 3222, chapter 258-A. *[technical]*

Section history:

1975, c. 382 , § 3 (NEW). 1979, c. 731 , § 19 (AMD). 1989, c. 841 , § 1 (AMD). 1989, c. 878 , § E1 (AMD). 1993, c. 349 , § 22 (RPR).

~~7 § 603. Declaration of purpose~~

~~—The purpose of this subchapter is to regulate in the public interest, the labeling, distribution, storage, transportation, use and disposal of pesticides as hereinafter defined. The Legislature hereby finds that pesticides are valuable to our State's agricultural production and to the protection of man and the environment from insects, rodents, weeds and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. New pesticides are continually being discovered or synthesized which are valuable to the control of pests and for use as defoliants, desiccants, plant regulators and related purposes. The dissemination of accurate scientific information as to the proper use of any pesticide is vital to the public health and welfare and the environment, both~~

specifically the Maine Forest Service, the board shall conduct a review to include the following:

~~A. An environmental risk assessment to determine the effects of pesticides on the ecosystem. This assessment is to be based on available literature. The board shall request data that it determines necessary to carry out the purpose of this chapter, but, when the literature is not available, is inadequate or incomplete, this assessment shall be based on an environmental monitoring protocol;~~

~~B. A health risk assessment, based on a literature search of laboratory, clinical and epidemiological data available within and without the State. The board shall request data it determines necessary to carry out the purpose of this chapter; and~~

~~C. A water residue survey to determine a representative sample of a number of wells or bodies of water, either at random, in areas of possible contamination or at other bases to be described by the board, for the purpose of testing these waters and preparing a profile of the kinds and amounts of pesticides present.~~

~~3. Effect of review on reregistration.~~ If the reviews in this section demonstrate that the impact of the pesticide on the ecosystem warrants additional health or environmental safeguards, the board shall require implementation of those safeguards prior to reregistration.

[Substantive -- Board wishes to repeal this; has never been followed due to lack of resources]

Section history:

1983, c. 558 , § 3 (NEW). 1989, c. 878 , § E6 (AMD). RR 1997, c. 2 , § 26 (COR). 2003, c. 689 , § B6 (REV).

~~7 § 608. Experimental use permits~~

~~1. Board's powers.~~ Provided the State is authorized by the Administrator of EPA to issue experimental use permits, the board may:

~~A. Issue an experimental use permit to any person applying for an experimental use permit, if it determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 607. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed;~~

~~B. Prescribe terms, conditions and period of time for the experimental use permit, which shall be under the supervision of the board; and~~

~~C. Modify any experimental use permit in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, if the board finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment. These permits may be revoked by the District Court if the terms or conditions are being violated or are inadequate to avoid unreasonable adverse effects on the environment.~~

~~2. Development and promulgation of other requirements. The board may develop and promulgate such other requirements by regulation, adopted in a manner consistent with the Maine Administrative Procedure Act, as are necessary for the state plan to receive such authorization from EPA.~~

~~3. Limitation or prohibition of experimental use pesticides. The board may, by regulation adopted in a manner consistent with the Maine Administrative Procedure Act, limit or prohibit the use of any pesticide for which an experimental use permit has been issued by EPA pursuant to Section 5(a) of FIFRA, and which the board finds may cause unreasonable adverse effects on the environment.~~

[Substantive: board wishes to repeal – does not have staff or resources to issue experimental use permits]

Section history:

1975, c. 382, § 3 (NEW). 1977, c. 694, § 56-58 (AMD). 1989, c. 878, § E7 (AMD). 1999, c. 547, § B78 (AMD). 1999, c. 547, § B80 (AFF).

7 § 609. Refusal to register, cancellation, suspension, legal recourse

(drafted as proposed by board with OPLA technical edits)

1. Procedure. Provided the State is certified by the Administrator of EPA to register pesticides formulated to meet special local needs, *[BPC: “no longer relevant” – certification has occurred]* the board shall consider the following for refusal to register; for cancellation; for suspension; or for legal recourse for such pesticides. The following provisions govern the board when refusing to register a pesticide, refusing to renew a pesticide registration, canceling a pesticide registration, or suspending a pesticide registration. *[substantive/technical – current provision is ambiguous as to whether this section governs just special local needs registrations or all registrations by the board; language change clarifies that it applies to all board pesticide registrations; language also technically re-written to improve grammar]* This registration, cancellation and

Pesticide Registration

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Pesticide Registration Manual: Chapter 12 – Applying for an Experimental Use Permit

In this chapter:

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- [Requirements for an Experimental Use Permit](#)
- [Exemptions from EUP Requirements](#)
- [EUPs for Indoor and Certain Antimicrobial Uses](#)
- [EUPs for Small-Scale Field Testing of Microbial Pesticides](#)
- [Applying for an EUP](#)
 - [Information Required in All EUP Applications](#)
 - [Information Required When the Product to be Tested is Not Already Registered](#)
 - [When Testing May Result in Pesticide Residues on Food](#)
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Requirements for an Experimental Use Permit

A first step for the applicant is to determine whether an EUP is required for the particular testing being considered. If the product is not intended to be used as a pesticide, an EUP would not be needed to test the product. Additionally, certain pesticide testing operations may not require an EUP if the criteria of 40 CFR 172.3 are met, as discussed below.

In general, EUPs are issued for:

- pesticides containing any chemical or combination of chemicals that have not been included in any previously registered pesticide; and
- registered pesticides for which a use, e.g., application to a particular crop, is not registered with the Agency.

However, there are certain tests and circumstances that are exempt from the requirements of an EUP because they are presumed not to involve unreasonable adverse effects. These exemptions are summarized below and described in detail in 40 CFR 172.3(b) and (c).

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Exemptions from EUP Requirements

EPA generally will not require an EUP for a substance or mixture of substances if the EUP is limited to:

- **Laboratory or Greenhouse Tests**
- **Limited Replicated Field Trials** involving fewer than 10 acres per pest for terrestrial tests or less than one acre per pest for aquatic tests, in which the sole purpose is to determine pesticidal value, toxicity, or other properties under the following small-scale field testing scenarios:
 - **Land** – Pesticide testing on plots of land 10 acres or less in size. Specifically, test plots may be as large as 10 acres per pest if the effect of each pesticide on several pests is being investigated at a different time for each pest. However, if pesticide effects on more than one pest are being investigated all at the same time, the test plot may not exceed 10 acres in size. Furthermore, any food or feed crops involved in or affected by the tests must be destroyed or consumed only by experimental animals unless a tolerance or exemption from a tolerance has been established. Please refer to 40 CFR 172.3(c)(1).
 - **Aquatic Uses** – Pesticide testing on water bodies one surface acre or less in size. Specifically, water bodies may be as large as one acre per pest if the effect of each pesticide on several pests is being investigated at a different time for each pest. However, if pesticide effects on more than one pest are being investigated all at the same time, the water body may not exceed one acre in size.
 - Bodies of water involved in or affected by the tests may not be used for irrigation, drinking water supplies, or body contact through recreational activities. In addition, pesticides may not be tested in waters that contain or that affect any fish, shellfish, or other plants or animals that may be taken for food or feed unless a tolerance or exemption from tolerance exists for the test product. Please refer to 40 CFR 172.3(c)(2).
- **Animal Treatment Uses** – Tests may be conducted only in cases where experimental animals will not be used for food or feed unless a tolerance or exemption from tolerance exists for the test product. Please refer to 40 CFR 172.3(c)(3).

- **Other Uses** – For testing operations for which acreage limits do not accurately reflect whether the testing is to be considered small- or large-scale, the Agency will determine on a case-by-case basis whether an exemption from the requirement of an EUP is appropriate. Applicants should consult with the appropriate regulatory division in OPP before initiating such testing.

The exemptions described above are not definitive. 40 CFR 172.3 gives EPA discretionary authority to exempt particular testing operations from the EUP requirements under other conditions, as well as allowing EPA discretionary authority to require EUPs for testing operations even when the exemption conditions of 40 CFR 172.3(b) and (c) are met.

Important Note: EUPs are required for testing of pesticides indoors, as well as in outdoor agricultural settings. This includes testing pesticides to control roaches in domestic dwellings and institutions, and for field-testing of swimming pool sanitizers and disinfectants under actual use conditions.