



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

To: Board Members  
From: Staff  
Re: Review of Potential Rulemaking in Response to LD 155 and LD 264  
Date: October 8, 2021

On June 10, 2021 LD 155 and LD 264 were signed by the Governor. These resolves, in part, directed the Board to conduct rulemaking. Staff have proposed potential responses to these rulemaking directives. All items are organized by the resolve in which they are referenced and are otherwise organized as follows:

The provided rule chapters include numbers corresponding to those in column one. These are the proposed locations of the rulemaking concepts.

The second column details the actionable item.

The third column provides a detailed description of the potential rulemaking concept.

Complete list of possible rulemaking chapters: 20, 41

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LD 264— Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State	
1 Chapter 20—new subsection—confidential statement of formula and affidavits	<p>For review of registration or reregistration, the Board shall require submission of the confidential statement of formula and the following affidavits:</p> <ul style="list-style-type: none"> <li>• a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide has or has never been stored, distributed, or packaged in a fluorinated high-density polyethylene container; and</li> <li>• a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide formulation does or does not contain perfluoroalkyl or polyfluoroalkyl substances as defined by the Board for the purpose of this section.</li> </ul> <p>Given the emerging nature of PFAS science, staff proposes creation of a policy to address the definition of PFAS as referenced in this subsection.</p>
LD 155— Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use	
2 Chapter 41—new section—definition	<p>“Invasive invertebrate pests” means any invertebrate species, including its eggs or other biological materials capable of propagating that species, that is not native to that ecosystem, whose introduction does or is likely to cause economic or environmental harm or harm to human health.</p> <p>Staff suggest incorporating either a definition OR the recommendation of expert provided lists noted in item 5.</p>
4 Chapter 41—new section—publication of a product list	<p>The Board of Pesticides Control will publish by X, 2022 and by March 15th of each year thereafter a list of insecticide products containing dinotefuran, clothianidin, imidacloprid or thiamethoxam registered in Maine for which the manufacturer has verified that there is an outdoor ornamental vegetation or turf use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of outdoor ornamental plant or turf. Pesticides labeled solely for use in preserving wood, managing indoor pests, managing structural pests within five (5) feet of a human dwelling, and treating pets are specifically exempt from this list.</p>

5	Chapter 41—new section—licensing requirements	<ul style="list-style-type: none"> <li>• No person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid or thiamethoxam identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.</li> <li>• Unless exempted for the purposes of managing invasive pests of ornamental plants, no person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid or thiamethoxam in outdoor residential landscapes to include ornamental plants and turf.</li> <li>• Distribute any pesticides containing dinotefuran, clothianidin, imidacloprid or thiamethoxam identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board.</li> <li>• Registered pesticides containing dinotefuran, clothianidin, imidacloprid or thiamethoxam and identified on the Board's annual listing are exempt from the prohibition of use in outdoor residential landscapes to include ornamental plants and turf where these pesticides will be used for management of an invasive pest of ornamental plants as identified by the Maine State Horticulturalist and Maine State Entomologist.</li> </ul>
6	Chapter 41—new section—records and reporting	Dealers distributing any pesticides containing dinotefuran, clothianidin, imidacloprid or thiamethoxam identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."
7	Chapter 41—new section—effective date	<p>LD 155 is silent on a suggested timeline for implementation. During the stakeholder information gathering meetings, members of the public suggested:</p> <ul style="list-style-type: none"> <li>• implementation similar to the timeline outlined in LD 316</li> <li>• a two-year discontinuance</li> <li>• a “phase out date” of January 1, 2024</li> </ul> <p>Another state implementing a similar restriction offered the following approach:</p> <ul style="list-style-type: none"> <li>• notification for registrants of new state restricted status;</li> <li>• a letter to registrants offering one-time cancellation with a requirement to actively remove products from the channels of trade; and</li> <li>• the option of two-year discontinuance in the future.</li> </ul>