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Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Facilities

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Summary

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the Federal statute that governs the registration, distribution, sale, and use of pesticides in the United States. With certain exceptions, a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, or any nitrogen stabilizer.

Key Federal Facility Responsibilities Under FIFRA

In brief, under FIFRA, Federal Facilities are required to:

- Sell or distribute pesticides only as set forth in §12 of FIFRA
- Properly follow pesticide labeling instructions
- Use any pesticide under an experimental use permit consistent with the provisions of the permit
- Ensure that applicators are properly trained and, wherever necessary, certified to use restricted use pesticides and are using appropriate personal protective equipment
- Properly manage pesticide storage facilities
- Dispose of pesticide residues and waste in accordance with required and recommended procedures
- Maintain records of applications of restricted use pesticides, except when applied by a certified applicator who is a private contractor.
- At facilities where pesticides are produced, sold or distributed, allow entry, inspection, copying of records or sampling authorized by FIFRA

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Basics of FIFRA

FIFRA enforcement is focused on the sale, distribution, and use (which can include disposal) of pesticides. Generally, before a pesticide may be sold or distributed in the United States, it must be registered (licensed) with the EPA. Before EPA may register a pesticide under FIFRA, the applicant must show, among other things that using the pesticide according to specifications “will not generally cause unreasonable adverse effects on the environment.” Taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, FIFRA defines the term “unreasonable adverse effects on the environment” to mean the following:

- Any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use

of any pesticide.

- Any human dietary risk from residues that result from use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act

The version of FIFRA, enacted in 1947, required that persons register pesticides distributed in interstate commerce with the U.S. Department of Agriculture (USDA) and established a rudimentary set of labeling provisions. Concerns regarding the toxic effects of pesticides and residues on applicators, non-target species, the environment, and food prompted significant changes in the original FIFRA legislation. Subsequent amendments, some of which occurred as a result of the current statute. In 1972, the Federal Environmental Pesticide Control Act amended FIFRA, as did the Pesticide Registration Improvement Act of 2003. These amendments:

- Strengthened the enforcement provisions of FIFRA
- Broadened the legal emphasis on protecting health and the environment
- Regulated the use of pesticides
- Extended the scope of Federal law to cover intrastate registrations, and,
- Streamlined the administrative appeals process

Originally, USDA administered FIFRA, which monitored the efficacy claims of manufacturers through a registration program. FIFRA's initial intent was to protect farmers by requiring accurate labeling of pesticide contents, thereby enabling farmers to make informed choices regarding the product's effectiveness. In 1970, with the formation of EPA, responsibility for administering FIFRA transferred from USDA to EPA.

The primary objective of FIFRA is to ensure that, when applied as instructed, pesticides will not generally cause unreasonable risk to human health or the environment. To reach this objective, FIFRA includes provisions that require EPA to establish several programs. Below is a summary of those programs.

Labeling (40 CFR Part 156)

All registered pesticide products must display labels that show the following information clearly and prominently:

- Name, brand, or trademark product sold under
- Name and address of the producer or registrant
- Net contents
- Product registration number
- Producing establishment's number
- Ingredient statement
- Warning or precautionary statements
- Directions for use
- Use classification

By regulation, EPA promulgated various requirements pertaining to pesticide labels. These regulations have requirements for warning statements and mandate that pesticide products have adequate use directions. Labels may include, for example, instructions requiring the wearing of protective clothing, handling instructions, and instructions setting a period before workers may re-enter fields after the application of pesticides. For more information on labeling requirements, see 40 CFR Section 156.10(h) and (i).

Packaging (40 CFR Part 157)

Since 1981, FIFRA has required most residential-use pesticides with a signal word of “danger” or “warning” to be in child-resistant packaging (CRP). CRP is designed to prevent most children under 5 years old from gaining access to the pesticide, or at least delay their access. FIFRA §25(c)(3) authorizes EPA to establish standards with respect to the package, container, or wrapping in which a pesticide or device is enclosed to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated under FIFRA. Additionally, §25(c)(3) requires EPA's CRP standards to be consistent with those established under the Poison Prevention Packaging Act of 1970.

Worker Protection Standards (40 CFR Part 170)

Facilities that handle pesticides must adopt workplace practices designed to reduce or eliminate exposure to pesticides and must

establish procedures for responding to exposure-related emergencies. FIFRA prohibits registration of pesticides that generally pose unreasonable risks to people, including agricultural workers, or the environment. EPA uses two primary resources to protect agricultural workers:

1. Pesticide-specific restrictions and label requirements
2. Broadly applicable Worker Protection Standards (WPS)

If EPA believes the risks to workers posed by a pesticide are excessive, it can take actions such as requiring additional label warnings or requiring labeling that mandates use of protective clothing. The WPS specifically address how to reduce the risk of illness or injury resulting from occupational exposures to pesticides used in the production of agricultural plants on farms, in nurseries, in greenhouses, and in forests, and from the accidental exposure of workers and other persons to such pesticides. The standards establish ventilation criteria, entry restrictions, personal protective equipment guidelines, and information display requirements.

Registration of Pesticides (§3)

No person in any State may distribute or sell to any person any pesticide that is not registered pursuant to §3 of FIFRA. EPA may, by regulation, limit the distribution, sale, or use in any State of any pesticide that is not registered and that is not the subject of an experimental use permit under §5 of FIFRA or an emergency exception under §18 of FIFRA.

Experimental Use Permits (§5)

EPA has the authority to issue permits to applicants for conducting tests that are needed to collect the information necessary to register a pesticide. States can submit a plan to EPA to receive authorization to issue experimental use permits. States cannot issue permits for pesticides suspended or canceled by EPA.

Use of Restricted Use Pesticides—Applicators (§11)

Another action that EPA may take is to classify a pesticide as a

“restricted use” pesticide, which means that only certified pesticide applicators or those under the supervision of a certified pesticide applicator may use the pesticide. Only certified applicators may use restricted use registered pesticides. Certification is a statement by the certifying agency that the applicator is competent and authorized to use or supervise the use of restricted pesticides. EPA establishes the certification standards, but any State with a State Certification Plan approved by EPA can establish its own program, if the program meets EPA standards. Each State must submit a plan for applicator certification to the EPA Administrator for approval. If EPA does not approve the plan, then EPA conducts the certification program for all applicators of registered pesticides.

Unlawful Acts (§12) - Unlawful acts include, among other things, the following:

- Distributing or selling to any person a pesticide that is not registered
- Operating with a registration that has been canceled or suspended
- Detaching, destroying or defacing any required labeling
- Refusing to prepare, maintain or submit any required records
- Refusing to allow any entry, inspection, copying of records or authorized sampling

Exemption of Federal and State Agencies (§18)

EPA may exempt any Federal or State agency from any provision of FIFRA if the EPA Administrator determines that emergency conditions that require such an exemption exist.

Storage, Disposal, Transportation, and Recall (§19)

FIFRA stipulates that EPA has the authority to establish regulations and procedures regarding pesticide storage and disposal. Section 19 of FIFRA authorizes EPA to collect information and establish requirements for the storage, disposal, transportation, and packaging of pesticides. The objective of the regulations and recommendations is to provide procedures for storage, disposal, and transportation that adequately protect public health and the environment. FIFRA disposal regulations are implemented rarely and only in the context of risk-based and time-limited cancellations. Pesticide wastes generally are subject to the

requirements of the Resource Conservation and Recovery Act.

Authority of States (§24)

A State may regulate the sale or use of any registered pesticide within the State. However, the regulation on the sale and use of the pesticide must not permit any sale or use prohibited by FIFRA. In addition, the State shall not impose any requirements for labeling or packaging in addition to, or different from, those imposed by FIFRA.

A State may register additional uses of a federally registered pesticide within the State to meet local needs unless EPA previously denied, disapproved, or canceled such use.

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Application of FIFRA to Federal Facilities

EPA has oversight responsibility for the regulation of pesticide use in most States and primary responsibility in those States where all or part of the pesticide program has not been delegated. Amendments to FIFRA have delegated responsibility and authority to States for training, registration, and enforcement. Any Federal agency which seeks relief from any FIFRA requirement in an emergency condition must request an exemption pursuant to §18 of FIFRA. Before federal employees may apply restricted use pesticides, they must be certified commercial applicators based on the type of application they will use. Situations where Federal facility staff might wish to apply a restricted use pesticide include the following:

- A structure to limit the control of pests such as rodents or cockroaches
- Ground areas or water to control weeds, insects, or mosquitoes
- Food handling areas to control bacteria

Under the 1996 amendments to FIFRA, EPA instructed federal agencies to use Integrated Pest Management (IPM) techniques to promote IPM activities such as procurement and regulations. 40 CFR 171.9.

Government Agency Plan

Federal agencies that conduct pesticide applications in more than one State must prepare a Government Agency Plan (GAP) determining and attesting to the competency of Federal employees whose duties require them to use or supervise the use of restricted use pesticides. A GAP does not relieve Federal employees from meeting State certification requirements. The State lead agency will review credentials issued under a GAP and may issue reciprocal credentials or require the employees to go through the State certification process.

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EPA Enforcement

EPA's enforcement authorities are set forth in FIFRA §13 and §14. Section 13 addresses EPA's authority to issue a "stop sale," use, or removal order whenever a pesticide or device is found to be in violation of FIFRA requirements. Section 14(b) of FIFRA pertains to the assessment of criminal penalties for violations of FIFRA and its implementing regulations. EPA prohibits the sale and distribution of unregistered, adulterated, or misbranded pesticides and the use of any registered pesticide in a manner inconsistent with its labeling. To enforce FIFRA requirements, EPA conducts producer establishment inspections, marketplace surveillance, and pesticide sampling and analysis.

Historically, EPA has not assessed civil penalties against Federal agencies for violations of FIFRA. As a matter of practice, given the current state of the law, EPA does not intend to pursue such penalties.

Federal Facility Compliance Agreements

Typically, EPA will negotiate a Federal Facility Compliance Agreement with Federal agencies that are in violation of FIFRA requirements. The compliance agreement contains several provisions including, but not limited to, a schedule for achieving compliance and dispute resolution.

Criminal Enforcement

§14(b)(1): Criminal Penalties: In general - Any registrant, applicant for a registration, or producer who knowingly violates any provision of FIFRA is subject to a fine of not more than \$50,000 and/or imprisonment not to exceed 1 year. Any commercial applicator of a restricted use pesticide; or any other person not described previously who distributes or sells pesticides, and who knowingly violates any provision of FIFRA is subject to a fine of not more than \$25,000 and/or imprisonment not to exceed 1 year.

§14(b)(2): Criminal Fines: Private applicator - Any private applicator who knowingly violates any provision of FIFRA is subject to a fine of not more than \$1,000 and/or imprisonment not to exceed 30 days.

Federal employees also may be subject to other State and local criminal penalties. Additionally, criminal fines may be imposed under 18 U.S.C. §3571, the Alternative Fines Act.

Emergency Authority

Section 6(c) of FIFRA, provides for the suspension of a pesticide registration if the Administrator determines it is necessary to prevent an imminent hazard. Section 13(a) of FIFRA, provides for the issuance of a stop sale, use, removal, and seizure order under circumstances outlined in the statute.

FIFRA contains no emergency authority provision.

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State Enforcement

Under FIFRA §26, a State shall have primary enforcement responsibilities for pesticide use violations if EPA determines that such State has adopted and is implementing adequate pesticide use laws and regulations, enforcement procedures, and recordkeeping and reporting requirements. Under FIFRA, States have broad authority to regulate pesticides; however, it is unlawful for States to impose or continue in

effect any requirements for labeling or packaging in addition to or different from those required under FIFRA. For more information on this limitation, see 7 U.S.C. §136 v(b).

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Tribal Enforcement

FIFRA does not specifically address Tribal enforcement of FIFRA regulations. However, under FIFRA, and at the discretion of EPA, a limited Tribal role similar to the State's role may be allowed (see 40 CFR §171.10, Certification of Applicators on Indian Reservations).

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Citizen Enforcement

FIFRA contains no citizen enforcement provisions.

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EPA FIFRA Policies and Guidance

- [Pesticides Enforcement Policy and Guidance](#) – policy and guidance used in enforcement of FIFRA that relate to the required proper handling and management of pesticides.
- [Publications from the Office of Pesticide Programs: Worker Protection Pesticide Safety Materials](#)
- [Worker Protection Standard for Agricultural Pesticides](#)

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LAST UPDATED ON JANUARY 29,
2018