



Pesticides: Regulating Pesticides

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 Pesticide Registration (PR) Notice 99-1

Pesticide Registration (PR) Notice 99-1: Import of Unregistered Pesticides Intended for Export

Resources

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Notice to: Manufacturers, Producers, Formulators, Registrants and Importers of Pesticide Products

Attention: Persons Responsible for the Importation of Pesticide Products

Subject: Import of Unregistered Pesticides Intended for Export

I. SUMMARY

This Pesticide Registration (PR) notice clarifies EPA's interpretation of the scope of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Section 17 (a)(1), as it relates to the import of unregistered pesticides, devices or active ingredients used in producing a pesticide when the importation is solely for the purpose of formulation or packaging for subsequent export. Under the interpretation provided in this PR notice, such pesticides do not require registration under FIFRA, as long as they comply with the provisions outlined below. This interpretation is effective immediately.

In general, unregistered pesticides and unregistered active ingredients are not permitted to be imported. However, if a pesticide or unregistered active ingredient is being imported for the sole purpose of meeting the specifications of a foreign purchaser, such an import is permitted. The Agency interprets Section 17(a)(1) to allow the importation of unregistered pesticides or unregistered active ingredients used in producing a pesticide, provided the ultimate pesticide is produced for export only according to the specifications of the foreign purchaser. This policy does not authorize the importation of unregistered pesticide for the purpose of producing a U.S. registered product, even if part or all of that production is intended for export.

II. BACKGROUND

The Agency has received requests from a number of companies to allow importation of unregistered pesticidal active ingredients for the purpose of allowing reformulation into a pesticide intended to be exported. The requestors have essentially asked the Agency to

interpret section 17(a) of FIFRA in a way that would exempt such importation from the requirements of FIFRA. That section provides in part that "no pesticide or device or active ingredient used in producing a pesticide intended solely for export to any foreign country shall be deemed in violation of [FIFRA] when prepared or packed according to the specifications or directions of the foreign purchaser," provided the producers of such pesticides, devices, or active ingredients used in producing pesticides comply with various specified provisions of FIFRA sections 2, 7 and 8.

III. CLARIFICATION OF SCOPE OF SECTION 17

A. Conditions Permitting Import

Having considered this issue, EPA believes there are certain circumstances under which unregistered pesticides and/or active ingredients may be imported into this country consistent with section 17. Specifically, EPA will consider importation of an unregistered pesticide or active ingredient into this country to be a lawful act under FIFRA if all of the following conditions apply:

1. The foreign producing establishment is registered under FIFRA Section 7 and is compliant with Section 7 reporting requirements.
2. Importation of the unregistered pesticide or active ingredient complies with all applicable regulations and section 17 of FIFRA (including presentation of an EPA authorized Notice of Arrival which specifies the quantities to be exported to Customs upon entry into the U.S.).
3. The shipment otherwise complies with all applicable Customs laws and regulations.
4. Upon lawful release by Customs, the imported unregistered pesticide or active ingredient is transported directly to a registered pesticide establishment. The owner of such establishment shall be responsible for filing an appropriate report under FIFRA section 7 concerning such imported pesticide or active ingredient which indicates the relevant activity, such as reformulation, relabeling or distribution.
5. Section 17(a) allows distribution (and importation) of an unregistered pesticide or active ingredient only if the pesticide or active ingredient are intended solely for export and have been prepared or packaged according to the specifications of the foreign purchaser. EPA interprets this to mean that the importation (and any subsequent movement) may occur only after a foreign purchaser has been identified and has provided the specifications for the exported product.

6. After the final product for export is formulated and packaged, any distribution or shipment of the product must be solely for the purpose of facilitating export of the product (i.e., all movement of the product must be directly related to exporting the product, such as shipment to a warehouse awaiting export, dock or broker).

7. The unregistered pesticide or active ingredient, and each person with any obligation under FIFRA section 2, 7, or 8 with respect to the unregistered pesticide or active ingredient, are at all times in compliance with all the applicable provisions of FIFRA identified in 17(a)(1).

8. The export of any unregistered pesticide or active ingredient complies with the purchaser acknowledgment requirements of 17(a)(2) of FIFRA.

9. The importer can demonstrate that, ultimately, all of the product has been exported, or is being held pending export.

B. Conditions after importation

EPA will consider any shipment or distribution after the original importation to a registered facility in the United States to be permissible under FIFRA (including section 17(a)) under the following conditions:

1. The shipment is either in compliance with 40 CFR 152.30 (a) (the shipment is between registered establishments owned or operated by the same producer) or,

2. The shipment is distributed only to facilitate export (the pesticide or active ingredient has been prepared or packaged according to the specifications of an identified foreign purchaser).

If any other shipments or distributions of an unregistered pesticide or active ingredient are made in the United States after the initial importation, the shipper is advised to have evidence indicating that the shipment conforms to the conditions outlined above. By way of example, such evidence could include an identification of the foreign purchaser, an explanation of why the shipment or distribution is necessary to facilitate legal export of a product under section 17(a) of FIFRA. Failure to produce such evidence could result in otherwise unnecessary stopping of the shipment, and/or a violation of FIFRA for selling or distributing an unregistered pesticide outside this limited exemption.

IV. FOR FURTHER INFORMATION

Any questions should be directed to: Cathleen M. Barnes,
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