

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA)



The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the major U.S. law regulating pesticides. The U.S. Environmental Protection Agency (EPA) regulations implementing FIFRA can be found at [40 CFR Parts 152 to 180](#). Under FIFRA, the EPA is responsible for registering or licensing pesticide products for use in the United States. Registered pesticides have labels that are approved by the EPA. These approved labels have the force of law, and any use that is not in compliance with the label directions and precautions may be subject to civil and/or criminal penalties.

Retailers that purchase, store, sell, or dispose of pesticides must be aware of registration, labeling, and other pesticide management requirements. Pesticides are defined broadly and include products that everyone recognizes as a pesticide, such as wasp and hornet killers as well as products such as repellants, antimicrobial dish drainers, and carpet sanitizers. Some stores may be selling pesticides and not realize it.

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WHAT ARE PESTICIDES?

The EPA defines "pesticides" as 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 (used to dry up plant tissues).

A product is likely to be a pesticide if the labeling or advertising:

- Makes a claim to prevent, kill, destroy, mitigate, remove, repel, or any other similar action against any pest;
- Indirectly states or implies an action against a pest;
- Draws a comparison to a pesticide; or
- Pictures a pest on the label.

TYPES OF PESTICIDES

Types of pesticides that retailers will commonly handle include:

Conventional pesticides, which are generally synthetic materials that directly kill or inactivate the pest. Think of bug killers and rat poison.

Biopesticides, which are certain types of pesticides derived from such natural materials as animals, plants, bacteria, and certain minerals. For example, products containing the active ingredient citronella or black pepper oil are examples of biopesticides.

Antimicrobial pesticides, which are substances used to destroy or suppress the growth of harmful microorganisms, whether bacteria, viruses, or fungi, on inanimate objects and surfaces. Antimicrobials that are antiseptics and germicides, which are used to prevent infection and decay on humans and animals, are regulated by the Food and Drug Administration. Think of the difference between disinfectant wipes meant to clean countertops and baby wipes.

Antimicrobial pesticides that retailers commonly carry include:

- General use disinfectants, which generally kill both viruses and bacteria, used in households, swimming pools, and water purifiers. An example is bleach—but not always. Here's where it gets tricky—and it's all in the label or claim. Products containing bleach that claim to "sanitize" or "disinfect" or "kill bacteria" are considered pesticides and must be registered with the EPA. However, products containing bleach that do not claim to sanitize or disinfect are not pesticides and are often sold as laundry additives or cleaners.
- Sanitizers, including those used on food-contact products for dishes and cooking utensils and non-food-contact products such as carpet sanitizers, air sanitizers, laundry additives, in-tank toilet bowl sanitizers or in healthcare settings.

[Minimum-risk pesticides](#) have active ingredients, such as cloves and mint oil that, alone or in combination, pose little risk. Minimum-risk pesticides do not require EPA registration as long as six conditions are met:

1. Each product containing the substance must have a label identifying the label display name and percentage, by weight, of each active ingredient

listed in the table 1 in 40 CFR 152.25(f)(1). Each product must also list all inert ingredients by the label display name that the EPA has classified as listed in table 2 in 40 CFR 152.25(f)(1); commonly consumed food commodities, animal feed items, and edible fats; and certain chemical substances listed under 40 CFR 180.950(e).

2. The product may not make any claims to control microorganisms that threaten human health or insects or rodents that carry specific diseases. For example, the product can say, "Controls ticks," but it may not say, "Controls ticks that carry Lyme disease."
3. The label must include the name of the producer or the company for whom the product was produced. If the company whose name appears on the label is not the producer, the company name must be qualified by appropriate wording such as "packed for [insert name]," "Distributed by [insert name]," or "Sold by [insert name]," to show that the name is not that of the producer.
4. Contact information for the producer, or other company as described in (3), must appear on the label including the street address, ZIP code, and telephone number of the location at which the company can be reached.
5. The company name and contact information must be displayed prominently on the product label.
6. The label must not include any false or misleading statements.

If the product does not meet all the conditions for the exemption, it must be registered as a pesticide. **"Treated articles"** are articles or products that are treated with an antimicrobial pesticide to protect the articles or products. These products are exempt from FIFRA registration requirements if the only purpose of the added pesticide is to protect the item and the pesticide is registered for that specific use. This "treated articles exemption" is in 40 CFR 152.25(a). Examples of this exemption are paints treated with a pesticide to protect the paint coating, and wood products treated to protect the wood against insect or fungal infestations. Even though a treated articles exemption product does not carry an EPA pesticide registration number, it must have a clarifying statement indicating that the product contains a preservative such as an insecticide or fungicide, built in or applied as a coating to protect the product.

There has been confusion regarding consumer products that have been treated with antimicrobial pesticides, the EPA provided guidance in Pesticide Registration Notice 2000-1. The treated articles exemption is for a non-public-health use of a pesticide that is intended to protect only the treated article. Articles or products that make a public health claim that goes beyond the preservation of the treated article must be registered as pesticides. Public health claims include statements or implications, including the name of a product, or that the product will protect people or pets from germs, bacteria, fungi, or viruses. An example of a public health claim is that a product will control allergens by controlling or removing mold or mildew.

Examples of treated products that the EPA says have made implied or explicit public health claims are cutting boards, kitchen sponges, high chairs, cat litter, toothbrushes, and children's toys. Be careful if there are public health claims on treated products like these, as they may need to be registered under FIFRA. If there is not an EPA registration number on a treated product that is making an antimicrobial claim, it should contain a statement to the effect that the antimicrobial properties in the product are meant to protect the product and do not protect users. The claim and qualifying statement on the label should be no more prominent than the other descriptions of the product.

PESTICIDE DEVICES

Pesticide devices are products meant to kill, control, repel, or mitigate pests that work by physical means, such as electricity, light, or mechanics (excluding firearms), and don't contain a pesticide substance or mixture. Although many

pesticide devices do not have to be registered, they must be made in a registered pesticide-producing establishment. An EPA establishment number must be on the label, but a product registration number is not required.

Like pesticides, the label for pesticide devices may not contain any false or misleading statements or graphics, including about the composition of the device or its effectiveness.

Products, such as flyswatters or rat or mouse traps, that depend more on the user than the device itself for pest control or that operate to trap animals with backbones are not regulated under FIFRA.

Pesticide application equipment sold separately from the pesticide is not considered a device or a pesticide.

The EPA provides [a good example](#) of how similar products are considered differently under FIFRA:

A bait station used to trap rodents or insects is considered pesticide application equipment and is not regulated by FIFRA. If the same application is sold with toxic bait, it is regulated under FIFRA as a pesticide product and must be registered. If the bait station is sold with a sticky trap inside, it is regulated under FIFRA as a pesticide device because it achieves pest control by physical means.

Examples of pesticide devices that may be found in retail stores include ultraviolet lights used to kill fungi, bacteria, or viruses; bug zappers; flypaper; ground vibrators, such as mole thumpers; air filters; and water filters that do not include a substance to disinfect the water. If a device is sold together with a pesticide (as in a kit), the product may need to be registered with EPA.

PURCHASING PESTICIDES

KNOW YOUR SUPPLIERS

Retailers that have the responsibility for purchasing pesticides for their retail operation should make it a priority to deal with reliable suppliers.



Many retailers depend on their suppliers (manufacturers, importers, and/or wholesalers) to provide products that comply with product laws. However, under FIFRA, the retailer may be subject to enforcement for selling noncompliant products even if the supplier indicated that the product was compliant. Given the potential risk to retailers, it is important for a retailer to understand the applicable regulations and use reliable suppliers.

If you change suppliers or brands, make sure that the products you buy are registered and labeled appropriately.

CHECK REGISTRATION AND LABELING

Retailers should make sure that:

- Any pesticides offered for sale are [registered with the EPA](#) and in the states where they will be sold. The EPA maintains databases of all pesticide products registered in the United States in its [Pesticide Product Information System](#). In addition, the [National Pesticide Information Retrieval System \(NPIRS\)](#) maintains a list of federally registered products, and offers free and paid search functions.
- Pesticides are labeled with an [EPA-approved](#) label. Be careful of a label that compares properties of an unregistered product, such as an unregistered cleaning product, to those of a registered pesticide. According to the EPA, such a product appears to make a pesticidal claim, which would likely result in the need to register the cleaning product bearing such claim.

ABOUT LABELING

All label language must be approved by the EPA before a pesticide can be sold or distributed in the United States. The overall intent of the label is to provide clear directions for effective product performance while minimizing risks to human health and the environment. It is a violation of federal law to use a pesticide in a manner inconsistent with its labeling. The courts consider a label to be a legal document.

All pesticide labels must contain the following information, so be suspicious if you do not see all the required information on a pesticide in your store:

- The name, brand, or trademark under which the product is sold;
- The name and address of the producer, registrant, or

person for whom the pesticide was produced;

- The net contents;
- The product registration number;
- The producing establishment number;
- An ingredient statement that includes the percentage in weight of each active ingredient;
- Hazard and precautionary statements for human and domestic animal hazards and for environmental hazards;
- The directions for use; and
- The use classification (either general or restricted use).

BE LABEL CONSCIOUS IF YOU ARE A SUPPLEMENTAL DISTRIBUTOR (PRIVATE LABELER)

Under FIFRA, a company may market a product already registered with the EPA by another company (the "original registrant") under its own company or brand name without a separate registration. Such distribution and sale is termed "supplemental distribution," and the product is referred to as a "distributor product."

Labeling associated with the distributor product must be the same as that of the basic registered product. The distributor, also known as a "sub-registrant," may not make additions to the original registrant's basic product label (e.g., add claims, additional sites, or pests). According to the EPA, such unapproved product labeling can "lead to misuse and misapplication as well as pose significant risks to the users who rely on product labels to inform them about proper and safe pesticide use."

Under FIFRA, the distributor is considered an agent of the registrant for all intents and purposes, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

ILLEGAL PESTICIDES

Any pesticide that you sell must be registered with the EPA. If a product claims to kill or repel pests in any wording or way and does not have an EPA registration number, it is illegal to sell it. You can be fined a civil penalty of up to \$7,500 for each sale of an illegal, unregistered pesticide.

Common illegal pest products include mothballs, pet products, a product called "Tres Pasitos" that is illegally imported from Mexico and Latin America, and certain antibacterial products.

UNREGISTERED PESTICIDES

There are certain instances when an unregistered pesticide or a pesticide with a registration that has been canceled or suspended may be distributed, sold, or transferred. The circumstances that would be applicable to retailers are:

- Emergency exemptions, where the EPA allows state and federal agencies to permit the unregistered use of a pesticide in a specific geographic area for a limited time if emergency pest conditions exist.
- A canceled or suspended pesticide may be distributed or sold to the extent and in the manner specified in an order issued by the EPA concerning existing stocks of the pesticide. The EPA does not maintain a list of canceled pesticides but has suggested that information about the status of specific pesticides can be found through [query forms](#) developed by California's Department of Pesticide Regulation. Enter an active ingredient or product name to retrieve information about that pesticide. According to the EPA, these forms search selected EPA databases.

IMPORTING PESTICIDES

If you are in charge of importing pesticides for your company, you must submit [Form 3540-1](#) (Notice of Arrival (NOA) of Pesticides and Devices) to the EPA prior to the arrival of your products in the U.S. The Agency will determine the appropriate disposition of the product and return the NOA form to you as the importer. You must then present the NOA form to the U.S. Customs and Border Protection (CBP) at the port of entry. The CBP will not permit entry without a completed NOA.

BUYING GREEN

One way to reduce regulatory risks associated with pesticide management is to sell greener products. EPA resources for greener products include the [Green Suppliers Network](#), a collaboration between the EPA and industry, the [Greener Products Portal](#) and the [Safer Choice Initiative](#). There is also a pilot program under [Design for the Environment for Pesticides](#) that would put the Design for the Environment Program (DfE) logo on pesticide labels. This would help

retailers (and consumers) find products that are more toward the green end of the pesticide spectrum.

STORING PESTICIDES: BEST MANAGEMENT PRACTICES AND RULES

PESTICIDE CONTAINER AND CONTAINMENT RULE

The Pesticide Container and Containment (PCC) rule under FIFRA covers container design and procedures for transferring pesticides. The EPA provides [information](#) on the rule and [PCC Regulations at a Glance](#). The PCC sections most likely to apply to retailers are:

- Refillable Containers
- Repackaging Pesticide Products
- Containment Structures (applicable to agricultural retailers)

REFILLABLE CONTAINERS

If you repackage a pesticide, you must comply with the requirements for stationary tanks and repackaging and are indirectly subject to the requirements for portable refillable containers ([40 CFR 165.45\(e\)](#)). The [American Agronomic Stewardship Alliance](#) provides resources for retail facilities about portable refillable containers. The stationary tank requirements (found at [40 CFR 165.45\(f\)](#)) apply to tanks with capacities of 500 gallons (liquids) or 4,000 pounds (dry) or greater and that are stationary (i.e., fixed or in place \geq 30 days).

REPACKAGING PESTICIDE PRODUCTS

Retailers that repackage pesticide products must be registered with the EPA as a producing establishment. They must obtain from the registrant, and keep on file, a procedure to clean refillable containers and a description of acceptable containers that meet the requirements for stationary tanks and portable refillable containers. When you are repackaging, you must follow inspection, cleaning, and other requirements found at [40 CFR 165.70](#).

CONTAINMENT STRUCTURES

Retailers that repackage agricultural pesticides and whose principal business is retail sale (i.e., more than 50 percent of total annual revenue comes from retail operations) must meet the PCC requirements for containment structures. These requirements, which can be found at [40 CFR 165.80 to 165.97](#), include secondary containment, inspections, and recordkeeping.

CONTAINER REPAIR INTERIM POLICY

EPA's [Container Repair Interim Policy](#) establishes a process for pesticide retailers and distributors, under certain circumstances, to repair minor damage to pesticide containers. The retailer must provide a proposal to the EPA for their container repair program, which the EPA considers on a case-by-case basis. The interim policy has very specific requirements, including an application and review process to ensure the integrity of the label, the product, and the container of the repaired products.

Any repairing of pesticide containers is considered "production," so a retailer that wants to put in a proposal to repair minor damages to containers must be registered with the EPA as a producing establishment.

LABEL INTEGRITY

When repairing containers, you must maintain the integrity of the label. If part of the label is missing or if a patch repair covers part of the label, the pesticide will be considered "misbranded."

PRODUCT INTEGRITY

A proposal for a pesticide container minor repair program must contain procedures that will ensure the integrity of the pesticide product. There must be no appreciable loss of content or change in net contents as seen on the label. Of particular importance is to ensure that no foreign substances are introduced that alter the composition of the product as it is described in the confidential statement formula section of the label.

CONTAINER INTEGRITY

The proposal for a minor repair program must also contain procedures that will maintain the integrity of the container. The strength of the container in the area where the patch or repair is applied may not be compromised.

SELLING PERSTICIDE

GENERAL BMPS

Retailers should follow a few best management practices (BMPs) when selling pesticides:

- As with purchasing pesticides, be sure that any pesticide you offer for sale is registered with the EPA and any relevant states. The EPA maintains databases of all pesticide products registered in the United States in its [Pesticide Product Information System](#).
- Make sure the pesticides are labeled with an EPA-approved label.
- Restricted use pesticides (RUPs), which may be used only by licensed and certified pesticide applicators, may not be sold to consumers. The list of RUPs can be found at 40 CFR 152.175. Some states regulate additional pesticides as RUPs.
- Don't break out pesticides that come in multiple units. The label information may be lost. Also, it would be considered "repackaging." Retailers that repackage pesticide products must be registered with the EPA as a producing establishment.

MARKETING TACTICS

Make sure that your advertising and in-store promotions follow FIFRA requirements.

- Don't make statements about pesticide uses of a nonregistered product—if that bleach you are selling is not registered with the EPA, don't claim that it will "kill germs" or "control mildew."
- Don't make recommendations on usage of a registered pesticide that differ from the label instructions.
- If you have purchased products from another country, make sure that any statements in a different language do not make claims such as "disinfects" or "kills germs" if the product is not registered by the EPA.
- If you are advertising an RUP, the advertisement must contain a statement of its restricted use classification

RETURNED PESTICIDES

If a customer returns a pesticide, pay special attention to determine whether it can be resold. If the product has been opened and used (i.e., some of the product is missing), or if the label is damaged or obscured, the product should not be resold. Do not attempt to attach new labels or repair pesticide containers unless you are registered with the EPA as a pesticide producing establishment and have an approved minor repair program under EPA's Container Repair Interim Policy.

DISPOSAL



RECALLED, SUSPENDED, OR CANCELED PESTICIDES

The EPA can cancel a pesticide registration if it deems that the existing risks are unacceptable. The Agency can also cancel a pesticide registration for reasons unrelated to risk, such as nonpayment of maintenance fees.

The EPA can also suspend a pesticide registration. The registrant can no longer produce or sell the pesticide. The EPA maintains a [list](#) of suspended pesticides.

In the case of a recall, retailers may be required to notify the EPA and state and local officials of the quantities and locations of the suspended or canceled pesticides in their possession.

STOP, SALE, USE, OR REMOVAL ORDERS

If the EPA has canceled or suspended a pesticide or pesticide device, the Agency can issue a "stop, sale, use, or

removal order" (SSURO). That means that retailers can no longer sell the pesticide unless the order specifies otherwise with certain conditions.

HAZARDOUS WASTE PESTICIDES

Some pesticides may be considered hazardous waste. Certain hazardous waste pesticides can be collected under the streamlined collection standards for universal waste. Pesticides that qualify as universal wastes must be recalled pesticides that have been suspended or cancelled or unused pesticides that are part of a waste pesticide collection program.

The RCC [guidance for Hazardous Waste](#) has information about managing hazardous waste and the universal waste option. States are not required to adopt the federal universal waste standards, so be sure to check with your state to see if you can manage waste pesticides as universal waste, in addition state standards can be stricter. The RCC [Hazardous Variations by State Matrix](#) has information on the scope of state universal waste rules.

RECORDKEEPING

FIFRA recordkeeping requirements that concern retailers involve RUPs and retail refilling establishments that repackage agricultural pesticides. States may have additional recordkeeping requirements that apply to retailers.

RUPS

Retailers that sell RUPs must keep records for each sale of an RUP to a certified applicator or to an uncertified person for use by a certified applicator for two years.

REFILLING ESTABLISHMENTS THAT REPACKAGE AGRICULTURAL PESTICIDES

Retailers that are refilling establishments and repackage agricultural pesticides must keep records related to containment structures and pesticide containers for three years.

ENFORCEMENT

The EPA has brought a number of cases against retailers for FIFRA violations. These offenses include selling or distributing:

- Unregistered, canceled, or suspended pesticides, unless authorized by the EPA
- Chemicals containing claims different from claims made for registration purposes
- Pesticides with different composition at the time of distribution or sale from the composition at registration
- Misbranded or adulterated pesticides
- Other unlawful acts that could apply to retailers include:
 - Detaching, altering, defacing, or destroying labels
 - Failing to submit to EPA entry, inspection, copying of records, or sampling
 - Advertising a product without expressing a restricted use classification
 - Selling RUPs for an unauthorized purpose
 - Violating a suspension or cancellation order

When enforcing FIFRA, the EPA regards the company as liable for the acts of its employees.

Retailers that violate any provision of FIFRA face a civil penalty of up to \$7,500 for each violation. Retailers that knowingly violate a FIFRA provision face a criminal penalty of up to \$25,000 and/or a prison sentence of up to one year.

WHAT TO EXPECT FROM EPA INSPECTIONS

Under FIFRA, the EPA and state agencies can inspect, at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale. Inspections can be broad and may include obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for pesticides or devices, or any place where any pesticide is being held.

EPA's [FIFRA Inspection Manual](#) for agency officials conducting FIFRA inspections is useful for understanding inspectors are supposed to look for so that you can be better prepared for inspections.

We'll take a look at what can be expected from four types of EPA inspections that could affect retailers.

MARKETPLACE INSPECTIONS

Marketplace inspections are normally conducted where pesticides are sold. They are meant to ensure industry compliance with product registration, formulation, packaging, and labeling requirements. They also help the EPA determine whether procedures for the disposal and storage of pesticides, pesticide containers and pesticide-related wastes are being followed.

In general, marketplace inspections are usually scheduled by seasonal demands. For example, during the growing season, feed, seed, and fertilizer outlets are sources of agricultural pesticide products. Spring and summer are deemed good seasons by the EPA to inspect for swimming pool and spa products. In winter, urban outlets may be surveyed for household pesticide products. Additionally, inspections might be triggered at any time by a citizen complaint or tip.

When EPA inspectors conduct marketplace inspections, they may be looking to:

- Detect and obtain samples of any unregistered or misbranded pesticides or devices being sold, distributed, or marketed to the public.
- Determine whether RUPs are being sold in accordance with FIFRA.
- Review labeling, advertising material, as well as accompanying literature, and other claims to determine whether any false or misleading claims are being made for the product.
- Document and/or review the label and any accompanying literature to determine if the product is an unregistered pesticide or a misbranded pesticide or device.
- Obtain samples of products that were not available for sampling at the producer's establishment.
- Follow up on recalls, stop sales, suspensions, and cancellations.
- Obtain samples of products subject to deterioration.
- Determine whether supplementary FIFRA Sections 18 or 24(c) labeling has been provided by the registrant/producer.

Inspectors who conduct a marketplace inspection at your store will most likely ask to look at any of the following applicable records:

- Invoices
- Shipping records
- Bills of lading
- Freight bills
- Waybills—if imported or exported by air
- U.S. mail or commercial carrier shipping records

RUP DEALER INSPECTIONS

RUP dealer inspections are conducted to determine compliance with FIFRA recordkeeping requirements regarding sales and distribution of RUPs and to ensure that RUPs are sold only to certified applicators or noncertified persons for application by a certified applicator specifically certified for that RUP.

'FOR CAUSE' INSPECTIONS

The EPA may conduct a "for cause" pesticide use inspection in response to suspected pesticide misuse incidents in order to develop the evidence to support a FIFRA enforcement action. For-cause inspections may be initiated by a complaint, a damage report, a referral or tip, or a known or suspected noncompliance.

In a for-cause use inspection, the inspectors may visit a number of sites, interview various persons, and collect pesticide samples. Pesticide dealers and distributors, including retailers, are among the people that may be questioned in a for-cause inspection.

BULK REPACKAGING INSPECTIONS

If you are a retailer involved in bulk repackaging, be aware that the EPA sees a growing trend for pesticides to be shipped and held in bulk quantities and has encouraged

inspectors to inspect establishments that handle bulk pesticides.

Most bulk establishments handle agricultural herbicides; however, other industries use bulk quantities of chemicals, such as sodium hypochlorite and quaternary ammonium disinfectants. In some cases, a bulk amount could be a very small quantity (e.g., certain herbicides).

In addition to documentation, like labels and invoices, inspectors will also look at berms, pads, and other containment structures to note conditions and capacity verifications. They will visually inspect containers and request records of container maintenance.

They will also check the labeling of containers and whether the registrant of the product provided the refiller/repackager with container labels for each product produced/refilled.