

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes. Most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, if a producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by or around those workers.

A. Federal Insecticide, Fungicide, and Rodenticide Act

EPA also administers the Federal Insecticide, Fungicide, and Rodenticide Act²⁸ (FIFRA), the major federal statute governing pesticide use. FIFRA establishes minimum national standards for the use of pesticides, and regulates the registration, production, and sale of pesticides.

FIFRA grants primary, but not exclusive, enforcement responsibility for pesticide use to the states. States retain the authority to regulate the sale or use of any federally- registered pesticide or device in the state, but only if state regulations do not permit sale or use of pesticides prohibited under FIFRA. States may not impose any requirements for pesticide labeling or packaging in addition to or different from those required under FIFRA.

1. *Use of Pesticides*

FIFRA provides that it is unlawful for any person to use a registered pesticide in a manner inconsistent with its labeling. Based on the pesticide's toxicity or the degree of adverse effects on humans and the environment, EPA divides pesticides into two broad groups, either unclassified (general use) or restricted use pesticides.²⁹

²⁸ 7 U.S.C. § 136 *et seq.* (1994).

²⁹ Pesticides classified under FIFRA for restricted use are listed at 40 C.F.R. § 152.175 (1996).

Pesticides for unclassified or general use may be purchased and used by any person in a manner consistent with the pesticide's label. Restricted use pesticides may be applied only by or under the direct supervision of a certified applicator. Note that "under the direct supervision of a certified applicator" means that the pesticide is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed. This means that the certified applicator need not be physically present at the time and place the pesticide is applied, unless the pesticide label prescribes a greater degree of supervision (see discussion of state pesticide laws on page NE-30).

FIFRA requires the certification of applicators of restricted use pesticides and provides for EPA-approved state certification programs.

2. *Record Keeping Requirements*

Under FIFRA regulations, commercial applicators must keep and maintain routine operational records containing information on kinds, amounts, uses, dates, and places of application of restricted use pesticides. Records must be maintained and kept for a period of two years.

Producer Note: Individual states may have requirements which are more stringent than FIFRA.
--

The 1990 Farm Bill added the following record keeping and disclosure requirements for pesticide use:

- All pesticide applicators, including certified and non-certified, must maintain restricted use pesticide application records; time frames governing when records must be maintained are included and spot application records are required;
- Within 30 days of a restricted use pesticide application, all applicators must give a copy of the records of pesticide application to the person for whom the application was provided;
- Records must be made available to any federal or state agency that deals with pesticide use or any health or environmental issue related to the use of pesticides at the request of the agency; however, a government agency may not release data from the records that directly or indirectly reveals the identity of individual producers and USDA is charged with administering access to the records by federal agencies, while states designate a lead agency to administer access by state agencies;

- When a health professional determines that pesticide information maintained in the records is necessary to provide medical treatment or first aid to an individual who may have been exposed to pesticides, persons required to maintain the records must promptly provide the record and available label information to the health professional upon request, and, in the case of an emergency, the information must be provided immediately;
- Penalties in the form of fines may be imposed by USDA for failure to comply with pesticide use and reporting requirements; and
- USDA and EPA are required to use the records to develop and maintain a database sufficient to enable USDA and EPA to publish annual comprehensive reports concerning agricultural and nonagricultural pesticide use.

Producer Note: Certified private pesticide applicators must record information no later than 14 days following the pesticide application. The information must include the brand or product name of the federal restricted use pesticide and the product's EPA registration number; the total amount applied; the size of the area treated; the crop, commodity, stored product, or site to which the pesticide was applied; the location of the application; the month, day, and year of the application; and the certified applicator's name and certified number.

Producer Note: For spot applications, certified private pesticide applicators must record information regarding spot treatments if they apply restricted use pesticides on the same day in a total area of less than 1/10th of an acre. The information must include the brand or product name of the federal restricted use pesticide and the product's EPA registration number; the total amount applied; the location of treatment designated as "spot application," followed by a description (e.g. the location could be recorded as "spot application" followed by "treatment for noxious weeds on Field A, C, and all pastures"); and the month, day, and year of the application. This provision does not pertain to greenhouse and nursery applicators, who are required to keep all data elements as listed.

3. *Disposal of Pesticides and Pesticide Containers*

Producer Note: Producers must take special care in disposing of pesticide containers. Although permits for disposal are not required under FIFRA, the pesticide labeling will reflect requirements for disposal which must be met in order to prevent violations of the law.

A pesticide's labeling may contain specific procedures for disposal of the pesticide and its container. Disposal of the pesticide in a manner inconsistent with the labeling violates FIFRA. EPA regulates the disposal of pesticides which can no longer be legally used due to cancellation of their registration. The agency also recommends special procedures for the disposal of unwanted pesticides.³⁰

To facilitate the collection and proper disposal of canceled and other unusable or unwanted pesticide products, EPA has enacted the Universal Waste Rule (UWR).³¹ Many states have enacted rules similar in content and intent to UWR. Some states sponsor collections of these products on a regular basis.

4. Worker Protection Standard

Producer Note: Producers are also required to take precautions to protect farm workers from pesticides. Producers must properly train and notify workers of pesticide dangers. Producers should refer to the EPA publication entitled *The Worker Protection Standard for Agricultural Producers) How to Comply; What Employers Need to Know* for specific explanations of the requirements.

Agricultural employers must also comply with the Worker Protection Standard (WPS) for Agricultural Pesticides. The WPS covers all agricultural employers and their employees. The WPS contains requirements for training employees who handle pesticides, provisions for protecting employees from pesticide exposure, and how to provide emergency assistance to exposed employees.

B. State Pesticide and Chemigation Laws and Regulations

Producer Note: Nebraska, like most states, has laws designed to control the use of pesticides. The laws are designed to closely monitor the distribution and ultimate use of these substances within the state.

1. Nebraska Pesticide Act

The Nebraska Pesticide Act³² contains provisions that both implement and supplement the requirements of FIFRA. The Act is administered by the Nebraska Department of Agriculture (Department), and its primary provisions are as follows:

³⁰ 40 C.F.R. pt. 165 (1996).

³¹ 40 C.F.R. pt. 273 (1996).

³² NEB. REV. STAT. § 2-2622 *et seq.* (Supp. 1996).

- The Department is required to adopt a state management plan for the prevention and mitigation of the occurrence of pesticides in groundwater and surface water;
- The state management plan may contain a list of state limited use pesticides, and the timing and conditions for use of state limited use pesticides may be regulated by the Department;
- The Act requires the registration of all pesticides which are distributed or transported within the state;
- Labeling requirements are imposed on all pesticides distributed within the state;
- Wholesale and retail pesticide dealers in the state must be licensed;
- Pesticide applicators must undergo training and/or testing and licensing, and restricted use and certain general use pesticides may be applied only by licensed applicators; and
- Applicators must maintain records of the utilization of all restricted use pesticides.

The Department is required to investigate all complaints when it has reason to believe that a violation of the Act has occurred. Improper use of pesticides and improper disposal of pesticides or pesticide containers are violations of the Act. Violations can be punished by administrative fines not exceeding \$5,000 and civil penalties not exceeding \$15,000 per offense, with each day of a continuing violation constituting a separate offense. In addition, violations may be prosecuted criminally as misdemeanors, and injunctive relief is also available.

2. *Nebraska Chemigation Act*

The Nebraska Chemigation Act³³ regulates the use of irrigation distribution systems to apply agricultural chemicals to prevent the contamination of water supplies. DEQ and the Natural Resources Districts are authorized to document, monitor, regulate, and enforce chemigation practices in the state.

The Act requires a permit for application of chemicals by means of chemigation. The permit may set forth conditions under which the chemigation will be conducted. A permit is not required for chemigation performed through an open discharge system. The Natural Resources Districts are authorized to conduct inspections of chemigation facilities to ensure compliance with the statute and with the terms of the permits. A permit may be suspended if the permit

³³ NEB. REV. STAT. § 46-1101 *et seq.* (1993 & Supp. 1996).

application was fraudulent or if the permit holder has violated any statutory provision or any regulation promulgated under the Act.

Producer Note: Chemigation applicators must undergo training and be certified under the statute. In addition, an individual must be licensed as a private applicator if applying restricted use pesticides.

The Act mandates that chemigation facilities be fitted with certain equipment to prevent contamination of water supplies. Signs are required to be posted giving notice that fields are being treated by chemigation when the chemicals being applied are restricted use pesticides or have labels which require posting. Chemigation accidents must be reported by the applicator or permit holder within 24 hours, and the permit holder is responsible for conducting cleanup operations in accordance with a recovery plan and under the supervision of the Natural Resources District or DEQ.

Violations of the statute or of the terms of a chemigation permit subject the offender to civil fines of up to \$1,000 per offense, with each day of a continuing violation being a separate offense. Criminal prosecution is also authorized for misdemeanors.

³⁴ 16 U.S.C. § 1531 *et seq.* (1994).

³⁵ 857 F.2d 1324 (9th Cir. 1988), *cert. denied* 490 U.S. 1114 (1989).