

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 Act³² (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.³³

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.

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

³² 7 U.S.C. § 136 *et seq.* (1994).

³³ Pesticides classified under FIFRA for restricted use are listed at 40 C.F.R. § 152.175 (1996).

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.³⁴

To facilitate the collection and proper disposal of canceled and other unusable or unwanted pesticide products, EPA has enacted the Universal Waste Rule (UWR).³⁵ Many states

³⁴ 40 C.F.R. pt. 165 (1996).

³⁵ 40 C.F.R. pt. 273 (1996).

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

Utah regulates pesticide use and sales in the state through the Utah Pesticide Control Act.³⁶ No person can distribute pesticides in the state without being registered with the Utah Department of Agriculture. In addition, pesticides may not be distributed in the state without first being registered with the Department of Agriculture. The registration application may contain any information which, through regulations, the Department of Agriculture deems necessary for the safe and effective use of the pesticide. However, the application will always include a complete copy of the label of the pesticide. Upon proper application and payment of a fee, the applicant is issued a registration which allows distribution of the registered pesticide for one year. The registration can be renewed each year upon payment of a renewal fee. Any person who applies a pesticide for hire must have a license. Licenses to apply pesticides for hire can be obtained from the Department of Agriculture.

All pesticide containers are required to be clearly marked with information describing the pesticide. A Pesticide Committee composed of nine members, which may contain two members of the agricultural industry, can make recommendations regarding the sale, distribution, use, and disposal of pesticides. The registration of any pesticide will be revoked or suspended if the registrant used fraudulent practices to register the pesticide.

³⁶ UTAH CODE ANN. § 4-14-1 *et seq.* (1995).

Producer Note: The Department of Agriculture can seize a pesticide and have it destroyed if it violates any regulation pertaining to the use or distribution of the pesticide. If a court orders the pesticide destroyed, all court costs and storage costs will be assessed against the owner of the pesticide.

³⁷ 16 U.S.C. § 1531 *et seq.* (1994).

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