



US Environmental Protection Agency Office of Pesticide Programs

Pesticide Container Repair Interim Policy

October 9, 2009

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Issue

Approximately five million pounds of consumer pesticide products may become waste each year in the United States due to damage to pesticide containers before the pesticides can be sold by retailers.

Allowing retailers to repair minor damage to pesticide containers under proper conditions would allow the pesticides to be used as intended, rather than disposed of, which is consistent with the U.S. Environmental Protection Agency's (USEPA's) long-standing policies of waste minimization and pollution prevention.

Background

Section 3(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136a(a), provides that "no person in any State may distribute or sell to any person any pesticide that is not registered under this [Act]." Registration is the principal means of ensuring that a product is brought under the FIFRA regulatory scheme. The registrant must demonstrate to the satisfaction of the USEPA that the product meets the statutory criteria for registration with respect to composition, labeling, and the lack of unreasonable adverse effects. The registrant must take responsibility for quality control of the product's composition and for adequate labeling describing the product, its hazards, and its uses.

Section 7(a) of FIFRA requires that pesticides be produced in USEPA-registered establishments, and 40 C.F.R. § 167.3 defines the term "produce" to include "to package, repackage, label, relabel, or otherwise change the container of any pesticide or device." With limited exceptions, USEPA's position is that packaging or labeling activity constitutes "production" under FIFRA.

Current Action

I. Consideration of a Generally Applicable Policy

With that background in mind, USEPA is currently considering the possibility of adopting a generally applicable policy regarding whether, under certain circumstances, minor repair of pesticide containers does not constitute "production" under 40 C.F.R. § 167.3. In shaping this possible policy, USEPA intends to engage in a dialogue with all potential stakeholders, possibly including states, registrants, distributors, retailers, trade organizations, manufacturers, worker representatives, environmental advocates and/or others. USEPA estimates that this process will take approximately two years.

II. Interim Policy / Case-by-Case Consideration of Proposals

As an interim measure pending USEPA's full consideration of a generally applicable policy, USEPA will consider, on a case-by-case basis, whether individual proposals for "minor

repair programs” constitute “production” under 40 C.F.R. § 167.3, and thus whether minor damage to pesticide containers may be repaired, and the product may be sold or distributed, under the terms of the existing registration. For those individual proposals, and for the limited purposes of this “interim policy” pending a possible future adoption of a generally applicable policy, USEPA will make a determination of whether or not the specific “minor repair program” constitutes “production” based on the specific facts of each individual case. Such proposed programs must, at a minimum, ensure label integrity, product integrity, and container integrity.

Unless a person, as defined by FIFRA §2(s), submits an individual proposal for his own specific “minor repair program” and receives specific approval from USEPA for that individual proposal, any repairing of pesticide containers will constitute “production” under 40 C.F.R. § 167.3, such that the person will be in violation of FIFRA and subject to enforcement action if “production” is taking place in other than an “establishment” registered in accordance with Section 7(a) of FIFRA and 40 C.F.R. Part 167.

Any person that receives specific approval of its individual “minor repair program” from USEPA remains fully subject to all State pesticide law and regulation. Approval of any person’s “minor repair program” by USEPA does not alter or negate any State law or regulation, or shield such person from State enforcement action pursuant to otherwise applicable State law or regulation.

Proposals for “minor repair programs” should be sent to the Director of the Office of Pesticide Programs at: U.S. EPA, Office of Pesticide Programs (7501P), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

A. Label Integrity

Pursuant to FIFRA § 2(q), a pesticide will be considered to be “misbranded” if part of the label is missing or if a patch or repair makes part of the label illegible. In addition, FIFRA § 12(a)(2)(A) makes it unlawful for any person to “detach, alter, deface or destroy, in whole or in part, any labeling required under [the Act].” Further, pursuant to FIFRA § 2(q)(1)(E), a pesticide product is misbranded if “any word, statement, or other information required by or under [the Act] to appear on the label or labeling is not prominently placed thereon with such conspicuousness ... and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”

In order for the Agency to consider approving a specific “minor repair program,” the proposal must demonstrate that the program maintains label integrity.

B. Product Integrity

A pesticide product could be misbranded under FIFRA § 2(q)(1)(A) and/or 2(q)(2)(C) if the net weight or measure of the content differs from what is listed on the label, except that USEPA may permit reasonable variations. If foreign matter is introduced into the container, the pesticide could be adulterated, and therefore it may be unlawful to sell or distribute the pesticide under FIFRA § 12(a)(1)(E).

In order for the Agency to consider approving a specific “minor repair program,” the proposal must demonstrate that the program maintains product integrity. The repaired containers must have had no appreciable loss of contents or change in the net contents as indicated on the label. The composition of the product must be as described in its confidential statement of formula (CSF) that is required under FIFRA section 3, and no foreign matter may be introduced that alters the composition as stated in the CSF. The physical characteristics of the product must remain unchanged, with no dampening or hardening as a result of contact with water or other liquid. Further, the patch or repair itself must not adversely affect product integrity.

C. Container Integrity

In order for the Agency to consider approving a specific “minor repair program,” the proposal must demonstrate that the program maintains container integrity. The patch or repair must be of a construction, and applied, such that under normal conditions and use of the container, the patch or repair will remain affixed. The patch or repair must be made of a material with sufficient thickness, durability and strength to prevent leakage during the life of the container. The patch or repair must not compromise the strength of the container in the area where it is applied. Further, the proposal must demonstrate how the program will ensure that the patch or repair is applied appropriately, such as the development of guidance and conducting training for the people who will be applying the patches or repairs.

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