March 24, 1993

Pesticide Regulation (PR) NOTICE 93-4

NOTICE TO MANUFACTURERS, FORMULATORS, DISTRIBUTORS, AND REGISTRANTS OF PESTICIDE PRODUCTS

ATTENTION: Persons Responsible for Federal Registration of Pesticide Products

SUBJECT: BAN ON AEROSOL PRODUCTS CONTAINING CFCs AND HCFCs UNDER THE CLEAN AIR ACT

This notice alerts pesticide registrants to a recently issued rule under the Clean Air Act (CAA) banning distribution and sale of aerosol and pressurized products,including pesticide products, that contain chlorofluorocarbons (CFCs). In addition, this notice alerts registrants to the upcoming ban on sale or distribution of aerosol and pressurized products containing hydrochlorofluorocarbons (HCFCs).

The HCFC ban is effective January 1, 1994. The CFC ban is effective January 17, 1994. After those dates, no person may distribute or sell such products in interstate commerce, including import and export of banned products. There is no ban on use of products already in the hands of users.

Although no response to this notice is required under FIFRA, registrants must ensure that in complying with CAA requirements, they continue to be in compliance with FIFRA requirements.

This notice discusses actions registrants may take under FIFRA, and the status of products containing other ozone-depleting substances, including carbon tetrachloride and methyl chloroform under the ban provisions of the CAA.

EPA expects to issue additional PR Notices as needed to keep registrants informed of other actions under the CAA that may affect pesticide products. PR Notice 93-5, issued concurrently with this notice, explains in detail the upcoming warning statement requirements affecting pesticide products. Registrants should read these notices together.

I. BACKGROUND

On March 19, 1992, EPA issued PR Notice 92-3, which described in detail provisions of Title VI of the Clean Air Act for the protection of stratospheric ozone. That notice discussed major provisions of the Clean Air Act that may affect pesticide products, including a ban on non-essential products and uses of ozone depleters (See Unit IV of PR Notice 92-3).

Briefly, CAA sec. 610 bans (or requires EPA to ban) non-essential products containing or manufactured with certain ozone-

depleting substances (ODS), including CFCs, halons, carbon tetrachloride, methyl chloroform (Class I ODS), and HCFCs (Class II ODS).

II. BAN ON HCFC AEROSOLS/PRESSURIZED PRODUCTS

As of January 1, 1994, the Clean Air Act bans the sale and distribution of all aerosol and pressurized products containing HCFCs, either as active ingredients or inert ingredients. This ban is self-effectuating; no regulations are required. Exceptions allowing continued use may be granted only on the basis of worker safety or flammability. The Agency is preparing regulations that will propose exceptions on the basis of worker safety and flammability.

According to Agency records, there are fewer than 100 pesticide products containing HCFCs, all as inert ingredients.

III. BAN ON CFC AEROSOLS/PRESSURIZED PRODUCTS

Under CAA sec. 610(b), EPA is required to identify non-essential products containing or manufactured with Class I ozone-depleting substances (ODS), and to ban their sale and distribution. The Agency issued a final rule on January 15, 1993 (58 FR 4768), finalizing this ban (the Ban rule), effective January 17, 1994.

The Ban rule applies to aerosol or pressurized products containing CFCs, either as active or inert ingredients. The Agency believes that all currently registered pesticide products that contain CFCs are aerosol or pressurized products, in which the CFC functions as a propellant or solvent. Accordingly, EPA believes that the ban affects all remaining pesticide products containing CFCs.

According to Agency records, there are no pesticide products that contain CFCs as active ingredients. Approximately 120 products that contain CFCs as inert ingredients are currently registered.

IV. METHYL CHLOROFORM AND CARBON TETRACHLORIDE

The Bans affect only products containing or manufactured with HCFCs or CFCs. EPA has not issued any rules banning products containing carbon tetrachloride or methyl chloroform. The Agency may choose to issue such bans in the future, however, and will provide notice and comment opportunity if it does so.

V. WHAT REGISTRANTS SHOULD DO

In response to these products bans, registrants should:

½Take steps to stop distribution and sale of existing stocks of products containing CFCs and HCFCs before January 1994 and notify downstream distributors of the date that product may no longer be sold and distributed. (Refer to Unit VII,

Effective Date).

½Submit applications for new registration of replacement or substitute products as soon as possible (Refer to VIII, Registration of New Products).

½Determine whether they wish to cancel existing registrations of banned products. Cancellation is not required. (Refer to Unit IX, Cancellation of Existing Registrations).

½Determine whether any banned products were produced on or after May 15, 1993, and therefore must bear a warning statement required by the Clean Air Act in the interim before January 17, 1994 (Refer to Unit X and PR Notice 93-5).

½Notify supplemental distributors of the ban and warning statement requirements.

VI. EFFECTIVE DATE

As of January 1, 1994, no person may distribute or sell any aerosol or pressurized pesticide product containing HCFCs.

As of January 17, 1994, no person may distribute or sell any aerosol or pressurized products containing CFCs.

The CAA and the Ban rule provide no existing stocks provisions: all registrants, wholesalers, distributors, and retailers of these pesticides must cease sale and distribution, including import and export, after the effective dates of these prohibitions. Product already in the hands of users may continue to be used until supplies are exhausted.

The ban on sale and distribution is on products "in interstate commerce." EPA interprets this phrase to apply to all products not produced, distributed and sold solely within a single state from components and labor also originating in that single state. Moreover, any company that produces the product in more than one state, regardless of whether an individual product is distributed and sold in a single state, is viewed as operating in interstate commerce. As a practical matter, EPA believes that few registrants and products can meet the stringent standard that would permit continued sale or distribution of a banned product in intrastate commerce beyond January 1994.

Thus, registration by a State of a product under FIFRA sec. 24(c) will not be deemed by itself to be "intrastate commerce." Nor will a registrant's amending his label to limit sale and distribution to a single State necessarily avoid the ban.

Accordingly, registrants of aerosol products containing H[illegible]s and CFCs are urged to ensure that existing stocks of products have moved out of channels of trade by the January 1994 compliance date, to minimize the possibility that product must be disposed of.

VII. NEW REGISTRATION OF PRODUCTS CONTAINING NO HCFCs OR CFCs

Any registrant who wishes to obtain registration to sell and c :ibute an aerosol or pressurized product that does not co..ain HCFCs or CFCs must, in accordance with Unit III of PR Notice 92-3, submit an APPLICATION FOR NEW REGISTRATION to the Registration Division, OPP. Identify the application as a response to Clean Air Act requirements.

EPA encourages early submission of applications for new registration, in order to obtain registration before the January 1994 compliance date. Applications should be submitted no later than July 1, 1993. The Agency will treat such applications as fast-track if they meet the criteria of FIFRA sec. 3(c)(3) for fast-track review, and expects that applications for substitute products would meet those criteria. Nonetheless, EPA cannot ensure that applications submitted late in the process can be approved before the January 1994 compliance date.

Registrants should also notify any supplemental distributors under FIFRA of the upcoming ban.

VIII. CANCELLATION OF EXISTING REGISTRATIONS

EPA does not intend to cancel or take action against the registration of any affected product because of its ban under the Clean Air Act. The ban does not change the registration status (ıy product.

A registrant who does NOT intend to register a new product which does not contain HCFCs or CFCs may request cancellation of his registration at any time (for example, to avoid paying registration maintenance fees). Existing stocks provisions for a cancelled product will be limited to the January 1 or January 17, 1994, compliance date, depending on whether the product contains HCFCs or CFCs, respectively.

IX. BANNED PRODUCTS NOT ACCEPTABLE FOR REGISTRATION

In PR Notice 92-3, EPA announced that it would no longer accept applications for registration of new aerosol products containing CFCs, and that it would also refuse applications of other Class I or II products if additional bans were proposed.

Effective immediately, EPA will not accept applications for new registration of aerosol or pressurized products containing CFCs or HCFCs. Although EPA could possibly approve new products containing these ODS before January 1994, as a practical matter the Agency sees no benefit in registering new products whose sale and distribution will be banned for environmental risk reasons within the year. Moreover, even if EPA approval were obtained er than usually occurs, EPA believes that registrants would . nable to use the registration because they would not be able to package and distribute the products through channels of trade before the ban takes effect.

Only if EPA grants exceptions to the HCFC ban will the Agency again accept applications for registration of these

products. As discussed in Unit X below, EPA does not expect to grant many exceptions.

X. FUTURE EXCEPTIONS

EPA is currently evaluating whether exceptions under flammability and worker safety criteria may be granted for HCFCs, and will be proposing exceptions later this year for notice and comment. EPA does not expect that a significant number of exceptions will be granted, since exceptions may be granted only on the basis of flammability or worker safety concerns, and only if the only available substitute is a Class I ODS that may be legally substituted.

XI. INTERIM LABELING OF BANNED CFC PRODUCTS

Registrants may wish (but are not required) to cease production by May 15, 1993, of CFC aerosol products that will be banned. In another action under the Clean Air Act, products produced on or after May 15 will be required to bear a warning statement (See Unit V of PR Notice 92-3). Products produced before May 15, 1993, are not subject to the warning statement requirement. Registrants who rely on ceasing production to avoid the warning statement requirement should maintain sufficient records to verify the date of production of existing stocks sold or distributed after May 15, 1993.

PR Notice 93-5, issued concurrently with this notice, explains the labeling requirement in detail.

It is the Agency's policy to take no enforcement action on labeling compliance under the Clean Air Act until November 1993, in order to allow producers time to comply with its requirements. ENFORCEMENT DISCRETION APPLIES ONLY TO THE CLEAN AIR ACT WARNING STATEMENT REQUIREMENTS, AND DOES NOT AFFECT ENFORCEMENT OF LABELING REQUIREMENTS UNDER FIFRA.

XII. FOR FURTHER INFORMATION

Further information on this notice may be obtained from Jean M. Frane, Policy and Special Projects Staff, OPP, at 703-305-5944.

Questions on applications for new registration of substitute products may be referred to Product Managers in the Registration Division.

Douglas D. Campt
Director
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