

FIFRA Imports Program **Frequently Asked Questions**

The U.S EPA regulates the production, distribution (including importation) and use of pesticides and pesticide devices in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Below is a sample of some frequently asked questions about FIFRA and the obligations of importers of pesticides and pesticide devices.

Q1: What is a pesticide?

A1: A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, desiccant. 7 U.S.C. § 136(u); 40 C.F.R. §§ 152.3, 152.15. Nitrogen stabilizers are also pesticides. 7 U.S.C. §§ 136(u), (hh).

A substance is considered to be intended for a pesticidal purpose if (a) the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) that the substance consists of or contains an “active ingredient” and that it can be used to manufacture a pesticide; or (b) the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or (c) the person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose. 40 C.F.R. § 152.15.

See 40 C.F.R. §§ 152.6, 152.8, and 152.10 for specific substances that are excluded from the definition of “pesticide” under FIFRA.

Q2: What are some examples of pesticides?

A2: Products intended for use as algaecides, antimicrobials including disinfectants and sanitizers, fumigants, fungicides, algaecides, herbicides, insecticides, microbial pesticides, plant growth regulators, defoliants, wood preservatives, marine antifouling paint, repellents (e.g., mosquito repellents containing DEET), and rodenticides. This list is not exhaustive but illustrates the wide variety of products that are subject to FIFRA regulation.

Q3: What is a pesticide device, i.e., a device regulated by FIFRA?

A3: FIFRA section 2(h) defines a device as any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest (other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

To learn more about devices regulated by EPA under FIFRA: <https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-13-devices>.

To learn more about requesting a determination from EPA as to whether your product is a device:
<https://www.epa.gov/pria-fees/m009-pria-fee-category>.

Q4: Are imported pesticides and pesticide devices subject to the same requirements as domestically produced pesticides and pesticide devices?

A4: Generally, yes. In the United States, sellers, distributors and users of imported pesticides and pesticide devices are subject to the same requirements under FIFRA as sellers, distributors and users of domestically produced pesticides or pesticide devices.

However, persons importing pesticides and devices subject to FIFRA must comply with additional requirements, namely the requirement to file an EPA Notice of Arrival (NOA) of Pesticides and Devices. See 19 C.F.R. §§ 12.112 - 12.117, the link below this paragraph, and Answer 5 below. In addition, persons exporting pesticides must comply with the export requirements set forth at section 17(a) of FIFRA, the regulations set forth at 40 C.F.R. §§ 168.65-85, and if applicable, PR Notice 99-1: Import of Unregistered Pesticides for Export.

EPA resources for Importing and Exporting Pesticides and Devices are set forth here:
<https://www.epa.gov/compliance/importing-and-exporting-pesticides-and-devices>

Q5: What are the import requirements under FIFRA?

A5: Section 17 of FIFRA specifically regulates both the import and export of pesticide products and pesticide devices. 7 U.S.C. § 136o. Regulations promulgated by the U.S. Customs and Border Protection (CBP) at 19 C.F.R. §§ 12.112 - 12.117 set forth the specific requirements for importing FIFRA-regulated pesticides and pesticide devices. The main requirement is that an EPA Notice of Arrival of Pesticides and Devices (NOA) must be filed for all pesticides (both registered and unregistered) and pesticide devices regulated by FIFRA.

All imported pesticides and devices, including unregistered pesticides, must have been produced in an EPA-registered establishment (even when the production establishment is outside the United States) and labeled accordingly with that establishment number. The producer is responsible for submitting annual production reports to EPA. 40 C.F.R. § 167.20(a)(3).

Pesticides that are exempt from FIFRA regulation (e.g., treated articles, minimum risk pesticides; see Answer 1 above for citations) do not require an EPA NOA upon import. Pesticides that are regulated by FIFRA but are not registered with EPA may be imported, with an EPA NOA, only under certain circumstances (see Answer 6 below), provided they are labeled appropriately.

Pesticides that are registered with EPA must be accompanied by an EPA NOA upon entry into the Customs Territory of the United States, must bear a label/labeling that has been accepted by EPA and comports with 40 C.F.R. part 156, and must meet the product composition standards established in its registration. FIFRA-regulated pesticides (whether registered or unregistered) and pesticide devices may not be misbranded or adulterated and must have been produced in an EPA-registered establishment. Imported products that are not in compliance with applicable FIFRA requirements may be subject to enforcement action, which may include CBP hold or denial actions at the port of entry, the issuance of a Stop Sale, Use, or Removal Order (SSURO), seizure, and/or the assessment of civil or criminal penalties.

For information on how to comply with the requirement to file an EPA NOA, see [ACE Tips and Guidelines for Filing EPA Pesticides](#).

Q6: When can an unregistered pesticide be imported into the U.S.?

A6: FIFRA generally prohibits the importation of unregistered pesticides unless the pesticides are exempt from FIFRA regulation, are qualifying R&D pesticides (see Q7 below) or if they meet an exception to the prohibition set forth in 40 C.F.R. § 152.30. See FIFRA §§ 3(b) and 25(b); 40 CFR §§ 152.25 and 152.30.

An unregistered pesticide may be transferred, sold or distributed (including imported) under one of the regulatory exceptions at 40 C.F.R. § 152.30, provided the applicable conditions of the exception are met. Some of the exceptions are, for example, unregistered pesticides transferred between registered establishments operated by the same producer; unregistered pesticides transferred between registered establishments not operated by the same producer; and unregistered pesticides distributed or sold under an experimental use permit. Note that this list is not exhaustive, and each exception is available only if the specific conditions to that exception are met. See 40 C.F.R. § 152.30.

Q7: What are the import requirements for pesticide chemicals used solely for research and development (“R&D”)?

A7: Chemicals that are imported for *pesticide* R&D uses, i.e., the chemical is intended for use in the R&D context to prevent, destroy or mitigate any pest, for use as a plant regulator, defoliant, or desiccant, or as a nitrogen stabilizer, are pesticides as defined by FIFRA and must be imported with an EPA NOA. This would include, for example, any R&D chemical the manufacturer, registrant, or importer intends to use or knows will be used for the purpose of gathering information in support of a pesticide’s registration, and any R&D chemical that has been issued an experimental use permit (EUP) by the EPA’s Office of Pesticide Programs. Whether registered or unregistered, all R&D pesticides must comply with all pesticide import requirements, including submission of an EPA NOA, production establishment registration and reporting requirements, and all applicable labeling requirements.

Chemicals that may have pesticidal use but are not intended for any pesticidal R&D purpose, and chemicals that are intended for use in R&D that is designed to determine whether the chemicals are in fact pesticides, are not pesticides as that term is defined under FIFRA, and therefore do not require an EPA NOA upon import. TSCA section 13 import regulations or other import requirements implemented by another federal agency, such as the FDA or USDA, may apply to such chemicals.