



QUESTIONS CONCERNING BULK PESTICIDE REPACKAGING

This Document Supersedes All Previous Q & A Documents

AUTHORITY

1. What is the purpose of the bulk pesticide repackaging policy?

EPA's Office of Enforcement issued the "Enforcement Policy Applicable to Bulk Shipments of Pesticides" (hereinafter referred to as the bulk pesticide repackaging policy) on July 11, 1977, and amended the policy on March 4, 1991, in order to address the practice of transport and transfer of large quantities of pesticides. The transport and transfer of a pesticide in bulk quantities requires the changing of the container of the pesticide. This change of containers is repackaging and therefore production as defined by 40 CFR 167.3 and section 7 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The resultant repackaged pesticide is subject to the registration requirements of section 3 of FIFRA. EPA developed the bulk pesticide repackaging policy in order to accommodate a practice that the Agency recognizes as having many benefits, without having each repackaging establishment register the repackaged bulk pesticide as long as the repackaging establishment repackages only a registered pesticide under specific conditions.

2. When may a pesticide be repackaged without a separate registration being required?

The bulk pesticide repackaging policy allows the repackaging of any quantity of registered pesticides into refillable containers, provided:

- 1) the container is designed and constructed to accommodate the return and refill of greater than 55 gallons of liquid pesticide or 100 pounds of dry product; and
- 2) either: (a) the containers are dedicated to and refilled with one specific active ingredient in a compatible formulation, or (b) the container is thoroughly cleaned according to written instructions provided by the registrant to the repackaging establishment prior to introducing another chemical to the container in order to avoid cross-contamination; and
- 3) the facility at which the transfer occurs must be registered with the U.S. EPA, pursuant to section 7 of FIFRA; and

[Note: The Agency does allow the registrant to make such a transfer without the final establishment being registered if the establishment is owned by the same registrant who produced the pesticide being transferred in bulk.]

- 4) the repackaging facility must have written authorization (a repackaging agreement) from the registrant to repackage and use its label; and
- 5) all repackaged pesticides being distributed and sold by the repackaging facility must be labeled with the current EPA-registered end-use product label, including bearing the repackaging facility's EPA establishment number and the correct net contents of the repackaged pesticide introduced into the container; and
- 6) all repackaged pesticides must meet the same standard for product integrity as any other pesticide being released by the registrant; and
- 7) the bulk storage tanks must be correctly labeled with the registrant's current EPA registered label (including the EPA establishment number where the pesticide was last produced); and
- 8) the repackaging facility must keep records as required by section 8 of FIFRA (receiving, repackaging, sales, shipping, etc.) and report to EPA annually, the types and amounts of pesticides produced (repackaged) as required by section 7 of FIFRA.

3. What is the legal authority for the conditions set out in the bulk pesticide repackaging policy?

EPA has exercised its enforcement discretion to allow registrants to authorize dealers to repackage registrant's pesticides, but only to the extent set forth in the policy.

The bulk pesticide repackaging policy sets forth the conditions under which a dealer can repackage pesticides without a separate registration for the repackaged pesticide. Please note that the major condition is that the accountability for the product remains with the registrant for the product as well as the repackaging establishment and that the registrant must authorize such repackaging in writing. The legal authority for: 1) the registration requirements is section 3 of FIFRA; 2) the establishment registration and reporting requirements is section 7 of FIFRA; and 3) the record keeping requirements is section 8 of FIFRA.

4. Is a person producing a pesticide if all he does is transfer the pesticide from a bulk container to another container?

Yes. The transfer of a pesticide from one container to another, except by an end-user for purposes of dilution and use, is considered repackaging the pesticide. The regulation at 40 CFR section 167.3 defines the term “produce” to include repackaging, labeling, relabeling or otherwise changing the container of any pesticide. Further, the term formulation is defined at 40 CFR section 158.153(c)(2) to include the repackaging of any registered product.

REPACKAGING AGREEMENTS

5. Who can grant authorization for a dealer to repackage in bulk?

Only the basic registrant of the pesticide, or a person authorized by the basic registrant to enter into repackaging agreements with dealers on behalf of the basic registrant, can authorize a dealer to repackage its product and use its label. The authorization must be in writing, and the dealer must keep a copy of the authorization on file and make it available upon request to an authorized EPA representative, including state and tribal representatives authorized by the EPA to conduct pesticide inspections. Failure to have a written authorization may result in the dealer being charged with selling or distributing an unregistered pesticide. For the purposes of the policy, a basic registrant is the registrant who holds the registration of the product being sold and transferred in bulk.

6. What conditions must the registrant meet?

Conditions that must be met are found in bulk pesticide repackaging policy which specifies that the registrant remains responsible for the integrity of the product and the product labeling at all levels of sale and distribution. Summarizing the bulk pesticide repackaging policy, in order for a registrant to authorize a dealer to repackage his product and use his label, the registrant must:

- 1) provide written authorization to each establishment that he wishes to authorize to repackage his product; and
- 2) provide copies of the registrant’s label to place on the repackaged product; and
- 3) mark the net contents of the tank filled at the dealer’s facility at the time of delivery in units of volume such as gallons or pounds (it is not necessary for the dealer to revise the net contents on his storage tank each time he withdraws product from the tank unless State or local law requires this.); and

4) assure that the label placed on the dealer's storage tank at the time of delivery bears the establishment number of the registrant's production facility and not the dealer's EPA-assigned establishment number; and

5) assure the integrity of the product and its labeling; and

6) provide written cleaning instructions for both the storage containers and the containers into which the product is being repackaged if the containers are not dedicated.

The registrant should also take the following steps to assure that a dealer is repackaging his product in accordance with the policy:

1) assure that the dealer has registered the establishments where the dealer will repackage the pesticide;

2) assure that each establishment has a current written authorization to repackage the registrant's product, and;

3) explain the terms of the bulk pesticide repackaging policy to the dealer.

7. What conditions must the dealer, [i.e., the person repackaging the product (other than the registrant)] meet?

A dealer who wishes to repackage a registrant's pesticide must follow the bulk pesticide repackaging policy. In summary, a dealer must:

1) register each of the repackaging sites which he owns or operates as a "pesticide-producing establishment" with the U.S. EPA; and

2) obtain written authorization from the registrant of the product to repackage the pesticide and use the registered label and be able to produce the written authorization upon request by EPA or an authorized EPA representative; and

3) place the dealer's EPA-assigned establishment number on the product label which is securely attached to the containers that are utilized to sell or distribute the repackaged pesticide product, along with the net contents of the repackaged container; and

4) securely attach the product label and provide labeling to the end-user; and

5) keep records on the delivery, movement, or holding of repackaged pesticides as required by section 8 of FIFRA (shipping and receiving, sales, etc.); and

6) report annually to EPA the types and amounts of pesticides produced (repackaged) as required under FIFRA section 7. The EPA annual report form is mailed to the company headquarters of the registered establishment; usually in December. The completed annual report is due to the EPA regional office in which your company headquarters is located by March 1. Amounts used by a dealer in his custom application service do not need to be reported as production; and

7) assure the integrity of the product (i.e., assure that the product does not become contaminated or cross-contaminated).

8. A dealer operating under the bulk pesticide repackaging policy must register his establishment and submit annual production reports. Where can one obtain more specific information on this requirement? What forms are required to be submitted to the Agency? When and where are these forms submitted?

A dealer may contact any EPA regional office to obtain more information on how to register his establishment. The regional office will send the dealer the information necessary to fill out an establishment registration application form and information on where to send the form. This is usually a quick process. Once a dealer has registered his establishment and submitted his initial report, he is required to file an annual report of production (in this case repackaging) that occurred at his establishment in the previous year. The dealer will receive a reporting form in the mail from EPA. The annual production report must be submitted to the appropriate regional office using EPA Form 3540-16 (Pesticides Report for Pesticides-Producing Establishments) by March 1 of each year.

9. A bulk pesticide dealer owns several branch locations and repackages pesticides at each of those locations - is each facility required to be a registered establishment?

Yes, each site where pesticide product is repackaged must be a registered establishment and a separate annual report of production must be filed for each establishment.

10. If a company owns several bulk pesticide producing establishments, must each establishment have written authorization from the registrant?

Yes. The registrant may, in one document, authorize all the producing establishments owned by a company to repackage his product and use his label when

repackaging the product in bulk. The single authorization must list all the establishments owned by the company from which the authorization is granted. A copy of the authorization needs to be maintained at each establishment.

11. How long must I retain the written authorization?

Dealers who wish to operate under the bulk pesticide repackaging policy must retain the written authorization for the period of time the authorization is valid. The length of time the authorization is valid should be reflected in the authorization and is at the discretion of the registrant. If there is no expiration date, the authorization must be retained as long as the dealer is operating under that authorization. If the registration is sold or transferred, a new authorization must be obtained from the new registrant.

LABELING

12. How do the provisions of the Worker Protection Standards affect bulk pesticide repackaging?

After April 21, 1994, regardless of whether the label affixed to the bulk tank at the repackaging facility has Worker Protection labeling, the registrant is responsible for providing to the dealer labeling that is in compliance with PR notices 93-7 and 93-11 and the Worker Protection Standards for all pesticides repackaged into other containers. This is the compliance date for registrants and applies to dealers repackaging the registrant's product.

13. If a registrant sells pesticide in bulk to a dealer and the product is being stored in the dealer's holding tank, whose establishment number must appear on the registrant's label that is on the storage tank?

The establishment number of the establishment that originally produced the pesticide must appear on the storage tank. The net contents at the time of transfer must be placed on the storage tank. The net contents do not have to be changed each time pesticide is withdrawn from the storage tank. However, please note that states may require that the net contents be changed each time product is withdrawn from the storage tank.

14. If a dealer transfers pesticide in bulk to another container (i.e., a customer's mini-bulk tank), whose establishment number should appear on the registrant's label that must be affixed to the container?

The dealer's establishment number must be placed on the registrant's label and affixed to the container. Please keep in mind that the transfer can only occur at the

registered establishment and that the dealer must place the correct net contents in gallons or pounds (listing the net contents as “bulk” is not sufficient) on the registrant’s label that is affixed to the container.

SITING AND ENVIRONMENTAL CONCERNS

15. How can one obtain information on diking around bulk pesticide tanks?

At the present time EPA does not have specific requirements under FIFRA on secondary containment or diking except in those cases where the label may impose such a requirement. However, many states have their own requirements regarding secondary containment. Dealers should contact their state environmental agencies and agriculture departments to determine what state requirements for containment must be met. One source of information on secondary containment is a document produced by the Midwest Plan Service, Designing Facilities for Pesticide and Fertilizer Containment (MWPS-37). This document can be obtained by contacting the Midwest Plan Service at 122 Davidson Hall, Iowa State University, Ames, IA 50011-3080; phone (515) 294-4337; fax: (515) 294-9589. EPA is currently developing regulations under 40 CFR Part 165 which will set federal performance standards for containment structures (secondary containment and containment pads) at retail establishments and other facilities.

16. At the end of the season a dealer has a few gallons of registered pesticide remaining in his bulk tank. He wants to clean out the tank for a new product next season.

16.a What are his options for disposing of the leftover pesticide?

The dealer has four options: 1) dispose of the excess pesticide in accordance with state, local, and federal laws and regulations; 2) return the excess pesticide to the manufacturer if the manufacturer agrees to accept the material; 3) repackage the remaining pesticide for future distribution in a manner which meets all the conditions of the bulk pesticide repackaging policy, with the registrant’s permission, [Note, registrant and dealer retain responsibility for the integrity of the product’s composition] or 4) apply it according to label directions to a site listed on the label.

16.b What are his options for disposing of leftover rinsate?

Rinsate generated from cleaning the bulk tank may be used as a diluent for the same product, if the dealer chooses to apply the leftover pesticide, provided that the diluent/solvent used for cleaning out the tank is referenced on the label, or water is used for those labels that do not list a diluent. The rinsate alone could also be applied to a site listed on the label of the product the rinsate was generated from, provided such use is

in accordance with the label. In addition, the rinsate could be disposed of in accordance with state, local, and federal laws and regulations.

BULK SALES AND DELIVERY

17. May a dealer mix compatible formulations of the same active ingredient from different registrants in the same storage tank?

No. A storage tank may only hold one specific product at a time. Only when the storage tank has been completely emptied and thoroughly cleaned in accordance with the registrant's written cleaning instructions may another registrant's product be introduced into the tank.

18. May a registrant deliver pesticides in bulk directly to a farm or other end use sites even if the farm or other such end use sites are not registered as producing establishments? May someone other than the registrant do this?

In the Agency's February 3, 1994 Q & A document, EPA stated that someone other than the registrant could not deliver pesticides in bulk at a farm or other end-use sites. Upon reconsideration, EPA's response was revised on March 21, 1995. The new response supercedes the response provided in the February 3, 1994 Q & A document. This revision is being made because end users are not the persons repackaging shipments of bulk pesticides at the farm and other end use sites.

The terms and conditions of the 1977 bulk policy and 1991 amendments are unchanged. Since the pesticide that is transferred at the farm or other end-use site is not being transferred and held for sale, final accountability for meeting the terms of the bulk policy remains with the registrant and the last establishment making a transfer associated with a pesticide sale, the dealer. Registrant and dealer establishments are responsible for reporting repackaging as production pursuant to 40 CFR 167.85. Although not a requirement, EPA recommends that pesticides be transferred into stationary bulk containers protected by a secondary containment structure at end use sites.

A registrant, dealer, or other authorized person pursuant to the Enforcement Policy Applicable to Bulk Shipments of Pesticides (July 11, 1977) may transfer pesticides in bulk at a farm or other end-use sites, even if the farm or such end use sites are not registered as pesticide producing establishments. However, the Agency will continue to pursue enforcement actions against all end users that use any registered pesticide in a manner inconsistent with its labeling pursuant to FIFRA § 12(a)(2)(G).

19. What procedures must a company follow when it transports bulk quantities of pesticide products?

Regardless of the mode of transportation; ship, rail, or highway; the registrant or producer of the pesticide is required to furnish the transport company with a label that is identical to the label of the product being transported, including the establishment number of the site at which the product was produced. This label must be attached to the shipping papers and left with the consignee at the time of delivery. In addition, any requirements of the Department of Transportation (DOT) hazardous materials for placarding or other actions need to be followed. When transferring product from one shipping conveyance to another, the label must be transferred as well.

The transport company may ship the product to a dealer or directly to the end-user. In both cases the transport company's procedures are the same. The transport company transfers pesticide product into a bulk storage tank. When the transport company delivers product into a bulk tank at either an end-user or dealer, the trucker places the product label containing the original establishment number on the bulk tank. If the transport company is delivering to multiple sites, the driver must be provided multiple labels.

If the bulk tank at the end-user or dealer contains product from more than one shipment of the same product, the label from the most recent delivery should always be on the tank bearing the net contents of the most recent shipment.

20. Can the dealer sell 56 gallons of pesticide in a 55-gallon container (i.e., overfill or fill beyond the intended capacity)?

No. To repackage pesticides under the bulk pesticide repackaging policy, the container must be designed and constructed to accommodate greater than 55 gallons. Also, this practice may not meet DOT hazardous materials requirements.

21. Can the dealer transfer 18 gallons of pesticide into any size/type container?

No. The container must be designed and constructed to accommodate the return and refill of greater than 55 gallons liquid for liquid pesticides or 100 pounds of dry product for dry pesticides. In addition, the containers must: (a) be dedicated to be refilled with one specific active ingredient in a compatible formulation; or (b) be thoroughly cleaned according to written instructions provided by the registrant of the product in the container, to the dealer prior to introducing another chemical into the container in order to avoid cross-contamination.

22. If a customer returned a partially used repackaged pesticide for credit and the repackager accepts it, can the repackager resell the unused pesticide?

Unused pesticides sold in bulk packaging pursuant to the bulk pesticide repackaging policy may be returned to the dealer and resold provided the integrity of the product is ensured and the registrant has authorized the dealer to accept returned pesticide and resell the pesticide. [Generally, the most common way of ensuring integrity of the product is to require that the pesticide be sold in and returned to the dealer in a sealed container. A sealed container is one that bears intact dealer or registrant-installed tamper-evident devices on all openings where pesticides may be introduced into the container.] The registrant and the dealer (repackager) remain liable for the integrity of the product and its labeling including the correct net contents statement. Products in refillable containers may be returned if the manufacturer and the dealer agree to the return. However, this does not apply to products that are prepackaged in single use containers. Once a prepackaged single use container is opened, it may not be returned to the dealer, or sold, or otherwise distributed.

23. A dealer sells repackaged pesticide in bulk to a customer. Because of adverse weather conditions, the customer is unable to use all of the pesticide as planned (e.g., the advanced stage of plant growth prevents use of the product). Can the customer return the remaining products to the bulk repackager?

See question 22 above.

24. When can a dealer reuse a container?

A container that meets the criteria of the bulk pesticide repackaging policy (one designed and constructed to accommodate the return and refill of greater than 55 gallons liquid or 100 pounds dry material) may be reused to hold a pesticide being repackaged pursuant to the bulk pesticide repackaging policy without cleaning the container provided the container has either been dedicated to the pesticide (one specific active ingredient in a compatible formulation) or was cleaned according to the registrant's written instructions prior to the first introduction of the product. If the dealer wishes to place a pesticide in a container which is different than the pesticide the container previously held, the dealer must thoroughly clean the container according to the written instructions of the registrant of the product being placed in the container. Both the dealer and the registrant of the pesticide being sold or distributed are liable for any cross-contamination or other adulteration which may occur.

25. A bulk pesticide dealer owns several locations and one of those locations runs low on its bulk supply. Can the dealer transfer pesticide in bulk from location A to location B for resale by location B?

Yes, as long as 1) both locations are under the same ownership, 2) both establishments are registered and 3) both have the written authorization of the registrant of the product to repackage the pesticide and transfer the pesticides to another registered establishment owned by the same dealer. Transfer of pesticide from one container to another is production and such a transfer must be reported as part of the annual section 7 pesticides production report. The transport vehicle must bear the product label with the correct net contents statement and location A's establishment number. The label on the bulk tank at location B must bear location A's establishment number.

26. Can a bulk pesticide be transferred from one bulk repackaging establishment to another bulk repackaging establishment for further repackaging?

No, a bulk repackaging establishment cannot transfer bulk pesticides to another bulk repackaging establishment unless the registrant has authorized such a transfer and given the other bulk repackaging establishment authorization to repackage the registrant's product and use the registrant's label. The July 11, 1977 Bulk pesticide repackaging policy clearly states that such a transfer would be considered transfer of an unregistered pesticide unless the accountability requirement is met.

27. Can a customer have the dealer put 25 gallons of a product into the customer's application equipment?

Yes, a dealer may transfer product into a customer's application equipment as long as the registrant's written authorization does not prohibit such a transfer, the application equipment holds greater than 55 gallons, is properly labeled before it leaves the dealer's premises and complies with DOT hazardous materials requirements. The dealer is responsible for the transfer of bulk pesticide. Additionally, both the dealer and the registrant share responsibility for the integrity of the product transferred. Note the dealer may not dilute the product as part of the transfer. Such dilution would create a new product requiring registration.

28. An ag chemical dealer ships a 110-gallon container of herbicide to Farmer A who uses 30 gallons of product and ships the container with the remainder to Farmer B who uses 50 gallons of product and ships the container with the remainder to Farmer C who uses the remaining 30 gallons. The dealer bills each farmer separately. Is this practice considered acceptable under the bulk pesticide repackaging policy?

No. Such a practice is not covered by the bulk pesticide repackaging policy and registration requirements under FIFRA. Farmers A and B would be distributing a misbranded pesticide and may be subject to civil penalties in that the net contents are inaccurate.

29. A dealer uses some pesticide from the 55-gallon container it originally came in for his custom application work. What can he do with the rest of the pesticide?

He must either store the remaining pesticide and use it in future applications or dispose of the remaining material as waste. It cannot be sold or added to a bulk storage tank for future sale since it was not sold or distributed to the dealer as bulk pesticide and therefore is not covered by the terms of the bulk pesticide repackaging policy.

30. An agricultural chemical dealership has been reorganized so that person A owns the fertilizer business and person B owns the pesticide business. Person B intends to lease bulk pesticide storage containers from person A to store pesticides and will maintain full ownership of the bulk pesticides stored in these containers. Person A also runs a custom spray application service.

30(a). Assuming person B has an EPA establishment registration and is repackaging bulk product pursuant to the bulk pesticide repackaging policy, does person A have any responsibility to EPA, since he owns but leases the tanks to person B?

No, assuming the bulk repackaging will be done at person B's registered establishment and person A will not be repackaging pesticide, only person B needs to follow the conditions set out in the bulk pesticide repackaging policy and comply with the establishment reporting requirements under section 7.

30(b). Can person B fill A's sprayers with product from person B's bulk tank?

Yes, person B may place pesticide in person A's sprayer provided that the sprayer holds more than 55 gallons and the registrant's written authorization does not prohibit such a transfer. The March 4, 1991 amendment to the July 11, 1977 bulk pesticide repackaging policy allows repackaging of any quantity of pesticides into refillable containers that are designed and constructed to accommodate the return and refill of greater than 55 gallons liquid or 100 pounds of dry product, provided all other conditions of the bulk pesticide repackaging policy are met, including cleaning of the container according to the registrant's instructions. Person B and the registrant are responsible for the integrity of the pesticide.

30(c). Could the situation described in question 29.b be considered as a custom blend, if person B metered product from his bulk tanks and person A completed the tank mix with fertilizer or water from his own facilities?

No. The situation described in question 29.b is not custom blending. Person B is repackaging the pesticide and must follow the bulk pesticide repackaging policy or register the new product. Person A could create a custom blend if he added a fertilizer to the pesticide in accordance with his customer's specifications and followed all the terms of the custom blending policy. Person A would not be able to add a diluent and call the resultant mixture a custom blend. Person A could not add a diluent to the pesticide and then apply the end-use dilution according to label directions.

31. Dealer A wants to repackage bulk products from Dealer B's bulk tanks and vice versa. Dealer A and Dealer B are not commonly owned. Is this practice acceptable? If yes, what conditions do both dealers need to meet in order to legally repackage product from each other's bulk tank?

No, this practice is not acceptable. A transfer from one dealer to another does not meet the criteria in the bulk pesticide repackaging policy. Dealer A could not repackage bulk products from Dealer B and vice versa unless they were authorized by the registrant to do so. The conditions of the bulk pesticide repackaging policy are not met when a product is transferred between two dealers unless the registrant specifically authorizes such a transfer or authorizes one dealer to repackage products owned by another dealer and allows the second dealer to use his (the registrant's) label. Without this authorization, both dealers would need to obtain a registration for their repackaged products. If this arrangement is authorized by the registrant, the transport vehicle must bear the product label with the correct net contents statement and the correct establishment number.

32. Dealer A has met the requirements of repackaging bulk pesticides. Can Dealer A repackage product into minibulk tanks and sell these to Dealer B for Dealer B to resell?

Dealer B may sell or distribute repackaged product purchased from Dealer A only if Dealer B sells or distributes the product in the same container he receives from Dealer A and is not repackaging the product.

CUSTOM APPLICATION

33. If a dealer purchases a pesticide in bulk and uses all the pesticide through custom application work, must he register as a pesticide-producing establishment?

No, as long as he is using the pesticide only in his custom application work he does not have to register as a pesticide-producing establishment.

34. If a dealer applies pesticides for hire and sells pesticides in bulk quantities for someone else to apply, must the dealer meet the requirements of the bulk pesticide repackaging policy?

Yes, the dealer must follow the conditions set out in the bulk pesticide repackaging policy for the sale of the bulk pesticides, since the dealer is repackaging bulk pesticides and selling the repackaged product. He must register as a pesticide-producing establishment and report to EPA only the amount of pesticide he repackages for sale or distribution. He does not have to report the amount he transferred solely for custom application.

VIOLATIONS

35. What is the violation if a dealer is repackaging, selling and distributing a repackaged pesticide and does not have a written authorization from the registrant?

If a dealer is repackaging a pesticide and selling or distributing it without a written authorization from the registrant, the dealer is considered to be selling or distributing an unregistered pesticide.

36. What possible violations under FIFRA may occur when repackaging bulk pesticides and distributing or selling the repackaged product?

Violation of section 12 (a)(1)(A) - Sale or distribution of an unregistered pesticide.

Violation of section 12 (a)(1) C) - Sale of a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3.

Violation of section 12(a)(1)(E) - Sale or distribution of an adulterated or misbranded pesticide.

Violation of section 12(a)(2)(B) - Refusal to prepare, maintain, or submit records or submit reports required by or under section 7 or 8 of FIFRA.

Violation of section 12(a)(2)(L) - Violation of any of the provisions of section 7.

Violation of section 12(a)(2)(M) - Falsification of any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to FIFRA, or any report filed under FIFRA.

Violation of section 12(a)(2)(N) - Failure to file reports required by the FIFRA.

37. What penalties may be assessed for not complying with the requirements of the bulk pesticide repackaging policy?

Penalties are based on violations of the statutory provisions of FIFRA. If a registrant, dealer, or other distributor is not repackaging according to the conditions set out in the policy, the person repackaging must have a registration to sell or distribute the repackaged product or the person will be considered to be selling or distributing an unregistered product. Under FIFRA any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who sells or distributes a pesticide in violation of section 12 of FIFRA may be subject to civil penalties of up to \$6,500 per offense. In most cases, action will be taken under state law. Criminal provisions for knowing violations include up to a \$50,000 fine or imprisonment up to one year or both. In addition, EPA or the states may issue a Stop Sale, Use or Removal Order (SSURO) to the dealer to prohibit further distribution or sale of the violative product.

38. Who has liability for violations concerning the repackaged product if there is an agreement with the registrant authorizing the dealer to repackage?

Both the registrant and the dealer bear liability for violations. One of the cornerstones of the bulk pesticide repackaging policy is the accountability of the registrant for the repackaged product. This accountability is considered to be met when the product is transferred at a registered establishment operated under contract to the registrant or at a registered establishment that has been furnished written authorization for repackaging and use of the product label by the registrant. In addition the dealer is also selling/distributing the repackaged product. Depending on the circumstances of the violation, the dealer may be charged, the registrant may be charged or both parties may be charged. Generally, both parties will be charged for misbranding or adulteration violations.

39. If a product is sold in bulk, repackaged, and then sold and distributed but not in accordance with the bulk pesticide repackaging policy, can EPA issue Stop, Sale, Use or Removal Orders on the product?

EPA may issue a Stop Sale, Use, or Removal Order (SSURO) for a product that has been or is intended to be distributed or sold in violation of FIFRA. A person selling or distributing repackaged bulk pesticides without a registration for the repackaged product and not in accordance with the bulk pesticide repackaging policy would be selling or distributing a pesticide in violation of FIFRA. In addition, states may have their own SSURO authority.

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