

# The Association of American Pesticide Control Officials together with The U.S. Environmental Protection Agency (EPA)

As part of a cooperative state/federal outreach program, your company, or your Internet site has been identified as possibly being involved in the sale or distribution of materials or products classified as pesticides. This notice is intended to alert you that this activity may be regulated under both federal and/or state law. Please read the following information carefully and visit the sites referenced at the end of this message. In order to avoid other agencies duplicating this message to you, please acknowledge your receipt of this message to the sender.

Any material, whether naturally derived or not, that is used or intended to be used for control or elimination of any pest (weeds, insects, microorganisms, etc.) is classified as a pesticide. EPA has developed an Internet site to help you determine what is considered a pesticide. <http://www.epa.gov/pesticides/about/index.htm>.

Examples of products that are pesticides are:

- Cockroach sprays and baits
- Insect repellants
- Rat and mouse poisons
- Flea and tick sprays, powders, collars, and wrist bands
- Disinfectants and sanitizers
- Mold and mildew controls
- Lawn and garden products that kill weeds, insects, or some plant diseases
- Some swimming pool chemicals
- Insect control chalk (also known as Chinese chalk)
- Plant protection chemicals that kill weeds, insects, or plant diseases

While there are a few exceptions, most pesticides require registration with the EPA and with any state in which they are sold or distributed. Even advertising products or materials that may be classified as pesticides may be construed as distribution of a pesticide. It is against the law to sell unregistered or misbranded pesticides in the United States. This means that if you produce, sell, or offer for sale a pesticide product or device<sup>1</sup> via the Internet that is mislabeled, not registered, or no longer registered, you could be breaking the law and subject to penalties, including fines. Generally, it is the *seller's responsibility* to ensure that pesticides sold over the Internet are labeled according to federal standards and are registered by EPA and any state in which they are distributed before offering them for sale.

The following important points should be considered regarding your establishment operations:

- > **Federal and State Law:** The EPA administers the federal pesticide law and each state has a pesticide control law that further restricts and/or clarifies local administration of pesticide commerce. BOTH levels of law must be followed.
- > **Distribution:** Actual sale and distribution of pesticides are regulated by both the EPA and the states.

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<sup>1</sup> A pesticide device is any instrument or contrivance (other than firearm) which is intended for trapping, destroying, repelling, or mitigating a pest, but NOT including the equipment used to apply pesticides.

Some states have declared specific general use pesticides as “State-Limited-Use” pesticides. These pesticides may require a dealer license to sell and a certification to purchase and use them.

> **Dealer Licensing:** Many states also require that all pesticide dealers operating in that state be licensed, even if the dealer is not physically located in the state. This includes sales over the Internet. Many states also regulate the offer for sale of pesticides even though the company does not take possession of the products being offered for sale (such as auction sites or electronic brokerage).

> **Certified Applicators:** Some pesticides are classified as “Restricted Use” pesticides (RUPs). Both federal and state laws require sellers and/or buyers of RUPs to be licensed or certified by the state agencies where either party involved in a transaction may operate.

> **Records:** Many states require that sales records be kept and reports of transactions be submitted on a regular basis.

It is beyond the scope of this message to summarize all of the requirements of federal and state pesticide law. Your electronic commerce site has been entered into the [list tracking site here] that serves as a resource to the pesticide regulatory agencies to track electronic commerce of pesticides. The intent of this tracking is to reduce the number of times you may receive this message, as well as be a tool for the regulatory agencies.

To review specifics on the federal pesticide law (Federal Insecticide, Fungicide, and Rodenticide Act), please click here: <http://www4.law.cornell.edu/uscode/7/ch6.html>

To obtain a list of all state pesticide agency home pages, please click here: <http://aapco.ceris.purdue.edu>

For information about federal pesticide registration, please click here:  
<http://www.epa.gov/pesticides/regulating/registering/index.htm>

This notice does not constitute a warning or enforcement action by any federal or state authorities. Such authorities may independently pursue any initiative that, in their judgement, they believe is appropriate. Similarly, this notice does not reflect the enforcement policy of any federal or state authorities.

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# Fact Sheet on Pesticides Sales in E-Commerce

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Internet-based pesticide marketing is a new and evolving medium for pesticide sales and distribution. All types of pesticides are sold through the internet, including conventional use and antimicrobial pesticides. U.S. EPA is working closely with the states through the Association of American Pesticide Control Officials (AAPCO) to develop an informed and nationally consistent approach to pesticide electronic commerce activities, including agricultural use pesticides.

## What is a pesticide?

A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant. The substances listed below are all examples of pesticides.

- Cockroach sprays and baits
- Flea and tick sprays, powders, collars and wrist bands
- Hospital disinfectants
- Industrial Chemicals
- Insect control chalk (a/k/a Chinese chalk)
- Insect repellants
- Kitchen, laundry, and bath disinfectants and sanitizers
- Lawn and garden products that kill weeds, insects, or plant diseases
- Plant protection chemicals that kill weeds, insects, or plant diseases
- Products that kill or control mold or mildew
- Rat, mouse, and other rodent poisons
- Some swimming pool chemicals

## Why is the U.S. EPA concerned about pesticide sales over the internet?

Pesticides are poisons designed to control specific organisms. Handling of pesticides according to U.S. EPA and state registration and labeling requirements ensures that exposure to these products is minimized. However, a misused or mishandled pesticide may be harmful to humans, other organisms, and the environment. The anonymity and remoteness of the parties involved in internet sales increases the inherent risk involved with the handling or use of pesticides when they are purchased over the internet and shipped.

## What laws apply if you sell pesticides over the internet?

Many different types of pesticides are offered for sale over the internet. Both federal and state pesticide laws and regulations apply to these sales. Relevant federal requirements are listed below.

- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. §§135 *et seq.*
- Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. §§301 *et seq.*
- 40 Code of Federal Regulations Parts 150 to 189
- 49 Code of Federal Regulations Parts 100 to 185
- 19 Code of Federal Regulations §§12.110 to 12.117

No person in any state may distribute, sell, or offer for sale or distribution to any person any pesticide that is not registered in accordance with §3 of FIFRA. Generally, it is the **seller's**

**responsibility** to ensure that pesticides sold over the internet are labeled according to federal standards and are registered both by the U.S. EPA and any state in which they are distributed before offering them for sale.

If you are selling a pesticide over the internet, be aware that there are federal and state laws affecting the shipment, proper transportation, and delivery of the pesticide. Federal laws administered by the U.S. EPA, the U.S. Department of Transportation, U.S. Postal Service, and the U.S. Department of Homeland Security regulate the shipping and transportation of pesticides. Each state has its own laws regulating the sale, distribution, and use of pesticides within that state. You should check on the state laws regulating the use and sale of pesticides in each state where you sell pesticides. Some states regulate restricted use pesticides (see below) more strictly than the federal government.

Dealers must meet federal requirements and be certified according to state law in each state where they sell pesticides. Applicators must meet federal requirements and be licensed in each state where they apply pesticides. Certification and licensing functions are typically administered by states and defined by state law. Some higher risk pesticides are classified as restricted use pesticides (RUPs), and are more stringently regulated by the states and the U.S. EPA than general use pesticides. RUPs may be sold only by licensed dealers and purchased only by certified applicators.

### **What laws apply if you purchase pesticides over the internet?**

The label is the law. The pesticide you purchase must be used in accordance with the instructions on the label. It is a violation of federal law to use a pesticide in a manner inconsistent with its labeling.

If you purchase a restricted use pesticide (RUP), federal law requires that you must be a certified applicator in the state where the pesticide will be used. Applicator certification, although

required by both state and federal law, is administered by the individual states.

### **What does it mean to “handle” a pesticide?**

Proper handling of pesticides may include, but is not limited to, the listing, sale, purchase, shipping, transport, delivery, receiving, preparation, and use of the product. Some of these actions are covered by FIFRA and state laws relating to the use of pesticides.

Shipping, transport, delivery and acceptance of pesticides are covered by laws and regulations administered by the states, the U.S. Postal Service, and the U.S. Department of Transportation.

If you are handling a pesticide in any of these contexts, you should contact the carrier you want to use for shipping and the pesticide officials in your state before transporting the product.

### **What types of web sites market pesticides?**

Several types of sites typically are involved in the sale, distribution, and use of pesticides, including:

#### *Registrant or producer sites*

Many registrants and producers of pesticides have established web sites that will work to support internet marketing plans.

#### *Retail or distributor sites*

These sites include both commercial pesticide retailers that specialize in pesticide sales and general retailers that sell a variety of products, including pesticides. Retailers in both groups have web sites that offer their products for sale over the internet.

#### *Commercial user and applicator sites*

Pest control and janitorial companies have web sites established to market their goods over the internet. Industrial chemicals are also marketed over the internet for sale in larger quantities.

### *Auction sites*

Auction sites, like eBay, include both general auction sites and agricultural chemical auction sites. These web sites often act like brokers and bring buyers and sellers together to sell pesticides.

eBay has developed, in cooperation with U.S. EPA, and implemented a policy that allows for the sale of general use pesticides and clean, empty containers as collectibles. This policy prohibits the sale of restricted use pesticides, unregistered, cancelled, or suspended pesticides.

### *Foreign sites*

Foreign-based web sites advertise and market pesticides worldwide, including in the United States. Pesticides marketed on foreign web sites may or may not be registered for use in the United States. Even if a particular pesticide offered for sale is registered, it may not be in compliance with FIFRA or relevant state laws and regulations.

### *Other*

Some web sites are informational and may provide copies of labels, material safety data sheets, or other information on pesticides. Sometimes these web sites will provide instructions on how to make pesticides.

## **What enforcement actions has U.S. EPA taken to date?**

Through U.S. EPA's early enforcement activities pertaining to internet pesticides, the Agency has gained valuable experience in enforcement against e-commerce violators. U.S. EPA worked cooperatively with the Federal Trade Commission (FTC) on regulating web sites that sold pesticides which targeted Anthrax. As a result, U.S. EPA and FTC are sharing information on pesticide-related e-commerce and furthering their partnership in the regulation of this aspect of e-commerce. Future areas of focus include web sites that sell restricted use pesticides to persons who are neither

trained nor certified in the application of these toxic chemicals as required by FIFRA.

## **Other useful web sites and information sources**

The following subjects provide information on compliance with pesticide laws and regulations and can be accessed through the U.S. EPA web site at: <http://www.epa.gov>

- Pesticide Compliance Assistance: <http://www.epa.gov/compliance/assistance/pesticides/index.html>
- FIFRA Enforcement: <http://www.epa.gov/compliance/civil/programs/fifra/index.html>
- Office of Pesticide Programs: <http://www.epa.gov/pesticides/about/aboutus.htm>
- Agriculture Compliance Assistance Center: <http://www.epa.gov/agriculture>
- Clean Sweep Program: [http://www.epa.gov/pesticides/regulating/clean\\_summ.htm](http://www.epa.gov/pesticides/regulating/clean_summ.htm)
- Interactive Pesticide Label: <http://www.epa.gov/pesticides/label>

The following web sites provide additional information about the proper handling, transportation and shipping of pesticides.

- U.S. Customs and Border Protection, Import Guide on Internet Purchases: [http://www.cbp.gov/xp/cgov/import/infrequent\\_importer\\_info/internet\\_purchases.xml](http://www.cbp.gov/xp/cgov/import/infrequent_importer_info/internet_purchases.xml)
- U.S. Department of Transportation - Office of Hazardous Material Safety: <http://hazmat.dot.gov>
- U.S. Postal Service, Domestic Mail Manual, Chapter 23, Hazardous Materials: <http://pe.usps.gov/cpim/ftp/manuals/DMM/c023.pdf>
- U.S. Postal Service, Hazardous, Restricted, or Perishable Mail: <http://www.usps.com/cpim/ftp/pubs/pub52.pdf>