



Regulatory Directive

Pesticide Export Guidelines

This Regulatory Directive provides guidelines for the regulation of pesticides and pesticide-treated materials for export. These guidelines:

- ! are intended to clarify the current provisions of the *Pest Control Products Act* and *Regulations*;
- ! provide information on provisions of the *Canadian Environmental Protection Act* concerning the export of toxic substances, including pesticides; and
- ! reflect Canada's commitment to the International Code of Conduct on the Distribution and Use of Pesticides under the United Nations Food and Agriculture Organization.

This Directive is an update of Memorandum to Registrants R-90-04 which was published August 31, 1990. Comments and suggestions received in response to Memorandum R-90-04 have been taken into consideration in the drafting of this document.

(publié aussi en français)

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1.0 Introduction

Countries and international bodies have developed regulations and procedures for international trade of certain hazardous chemicals in order to protect human health and the environment from potential harmful effects of these chemicals.

Memorandum to Registrants R-90-04 was published on August 31, 1990 to clarify Canada's position on the export of pesticides. The memorandum

- ! invited comments on the proposed guidelines for the regulation of pesticide export under the current provisions of the *Pest Control Products (PCP) Act and Regulations*;
- ! provided information on provisions of the *Canadian Environmental Protection Act (CEPA)* concerning the export of toxic substances; and
- ! provided information on the Prior Informed Consent (PIC) procedure under the International Code of Conduct on the Distribution and Use of Pesticides of the United Nations Food and Agriculture Organization (FAO).

Comments received on Memorandum R-90-04 indicated two major areas of concern:

- ! there is no provision for the importation of unregistered pesticides for the purpose of manufacturing products for export; this situation puts Canadian manufacturers at a competitive disadvantage; and
- ! seed importers from other countries often request that seed be treated with a pesticide product registered in their country; the stringent Canadian registration requirements and the fact that exporters cannot use an unregistered seed treatment have a negative impact on the Canadian seed industry.

In consideration of the above comments, and following the Pesticide Registration Review Recommendations, a program has been established to resolve the question of the importation of pesticides solely for manufacturing and export. Steps have also been taken to address the issue of seed treatment for export purposes.

Please note that this document reflects existing provisions under the current *PCP Act and Regulations*, and communicates to the industry a *CEPA* requirement that currently applies to pesticides as well as to other chemicals. It does not introduce any new requirement either under the *PCP Act* or *CEPA*.

2.0 The *Pest Control Products (PCP) Act*

The *PCP Act* and *Regulations* currently do not have specific and detailed rules governing the export of pesticides. However, the following sections of the *PCP Regulations* have a significant impact on pesticide exportation and serve as the basis for the export guidelines:

Section 6: “Subject to Section 5, every control product imported into, sold or used in Canada or used or contained in another control product in Canada shall be registered in accordance with these *Regulations*.”

Subsection 45(1): “No person shall use a control product in a manner that is inconsistent with the directions or limitations respecting its use shown on the label.”

2.1 Products Manufactured Exclusively for Export

Any technical grade pesticide or manufacturing-use product **imported into Canada** for the formulation of an export product must be registered under the authority of Section 6 of the *PCP Regulations*.

Any formulated product manufactured in Canada exclusively for export is not required to be registered in Canada, and it will not be required to undergo the usual registration review. It must, however, be manufactured using an active ingredient which has been registered in Canada if the technical material is imported for formulation purposes.

Note: Following the Pesticide Registration Review recommendations, a special registration procedure has been developed for products imported into Canada solely for manufacturing an export product (Regulatory Directive Dir95-05).

2.2 Products Manufactured for both Export and Canadian Use

All products manufactured for both export and Canadian use must be registered and labelled in Canada under provisions of the *PCP Act* and *Regulations*.

2.3 Pesticide-Treated Materials for Export

Treating a material with a pesticide is considered to be “using” the pesticide. To comply with the provisions of Section 6 and Subsection 45(1) of the *PCP Regulations*, the control product with which materials are to be treated must be registered under the *PCP Act* for the purpose of such treatment, e.g., preservation of lumber or seed treatment for export. However, the registration requirements may be modified to suit the needs of the specific use situation, on a case-by-case basis. For example, pesticides used for treating seed destined for export only may not need residue, efficacy or environmental data.

2.4 Pesticides Subjected to Cancellation, Suspension or Reevaluation

Under Section 18 of the *PCP Regulations*, a request for registration of a pesticide may be refused if the use of the product would lead to an unacceptable risk to public health or the environment. In addition, under Section 20 of the *PCP Regulations*, the registration of a control product is subject to **cancellation** or **suspension** for health or environmental reasons. Cancellation immediately stops all sale, use, production and importation of a product. Suspension stops all importation, manufacture and sale by the registrant.

For export purposes, pesticides that have been refused registration or have had their registration status removed through cancellation or suspension action, for health and/or environmental reasons, are subject to listing as: (a) “prohibited substances” or “substantially restricted substances” under definition of *CEPA*; and (b) “banned pesticides” under the provisions of the FAO International Code of Conduct on the Distribution and Use of Pesticides. If a control product (pesticide) is reevaluated and the majority of uses are subsequently cancelled, withdrawn or deregistered for health or environmental reasons, then that pesticide may become: (a) a “substantially restricted substance” under *CEPA*; and (b) a “severely restricted pesticide” under the FAO provisions.

3.0 Canadian Environmental Protection Act (CEPA)

Under Section 41 of *CEPA*, no person shall export any toxic substance, the use of which is prohibited in Canada. Also, a person shall give notice (to the Minister of the Environment and to the appropriate authority of the importing country) of the proposed export of a substance for which the uses are substantially restricted by or under an Act of Parliament (Section 42).

There are two lists of toxic substances under *CEPA* that may include pesticides for which regulatory action was taken under the *PCP Act*, for health and/or environmental reasons.

- ! The List of Prohibited Substances (Part I, Schedule II of *CEPA*) includes those pesticides that have had their registration status removed through cancellation or suspension under the *PCP Act* and for which no other uses, e.g., non-pesticidal, are acceptable in Canada. Under the provisions of *CEPA*, export of products containing pesticides from this list is prohibited.

- ! The List of Toxic Substances Requiring Export Notification (Part II, Schedule II of *CEPA*) includes those pesticides whose uses have been substantially cancelled, withdrawn or deregistered under the *PCP Act*. This list also includes those substances whose uses as pesticides have been removed through suspension or

cancellation, but for which there are other uses (non-pesticidal) that are not prohibited in Canada, e.g., the use of ethylene dibromide and ethylene dichloride as scavengers in leaded gasoline. Products on this list are subject to the notification procedure of Section 42 of *CEPA*.

For further details, refer to the *Toxic Substances Export Notification Regulations* (Canada Gazette, Part II, December 2, 1992) and contact the Director, Commercial Chemicals Evaluation Branch, Environment Canada, Ottawa, Ontario, K1A 0H3.

4.0 The Prior Informed Consent Procedure of the United Nations

The Food and Agriculture Organization (FAO) and the United Nations Environment Program (UNEP) have developed international guidelines for the export of pesticides and toxic substances. The guidelines include the principle of **Prior Informed Consent (PIC)** that international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, or contrary to the decision, of the participating importing country.

The PIC procedure is being implemented jointly by FAO and UNEP through the FAO/UNEP Joint Programme for the Operation of PIC. The FAO is the lead agency for pesticides under the International Code of Conduct on the Distribution and Use of Pesticides. The UNEP, through the International Register of Potentially Toxic Chemicals, under the London Guidelines for the Exchange of Information on Chemicals in International Trade, is the lead agency for other chemicals.

The PIC procedure for pesticides consists of the following:

- ! Participating countries establish a “Designated National Authority” (DNA), usually the pesticide registration authority or equivalent, for PIC implementation. Canada has two DNAs, one for pesticides and one for other chemicals. In 1990, FAO/UNEP prepared a list of 52 chemicals that have been banned or severely restricted by a number of countries. When DNAs notify the FAO/UNEP joint group of experts of control actions taken to “ban” or “severely restrict” a pesticide that meets the FAO/UNEP criteria for “banned or severely restricted”, the pesticide can be considered for inclusion on the list;
- ! FAO/UNEP prepares a Decision Guidance Document (DGD) on each pesticide that meets the criteria, distributes the DGD to the DNAs of all participating countries, and requests that the countries indicate whether they would accept imports of any of the chemicals for which DGDs have been distributed;
- ! The participating countries inform FAO/UNEP whether imports of the banned or severely restricted chemicals are acceptable (on the Importing Country Response Form);
- ! FAO/UNEP publishes a Circular (Import Decisions of Participating Countries) on a regular basis indicating the importing countries' positions with regard to acceptance or non-acceptance

of imports of the banned or severely restricted chemicals, and provides the Circular to the DNAs of all member countries;

- ! The DNAs will inform the appropriate authorities and the pesticide export industry of decisions of participating importing countries. The governments will implement appropriate measures, within their authority and legislative competence, to ensure that exports do not occur contrary to the decision of the participating importing countries.

The PIC procedure is currently carried out on a voluntary basis and relies on international cooperation. There has, however, been a proposal for the development of a legally binding instrument for PIC.

As a participant, Canada has agreed to adhere to the FAO's International Code of Conduct on the Distribution and Use of Pesticides and to implement the PIC procedure. **Pesticide exporters should contact the Canadian DNA for pesticides (the Director, Information Division, Pest Management Regulatory Agency) for Import Decisions of Participating Countries.** In the absence of more specific regulations under the *PCP Act*, exporters are asked to cooperate and respect the decisions of the importing countries.

To monitor the application of PIC, Environment Canada, in cooperation with the Pest Management Regulatory Agency, developed a model memorandum of understanding (MOU). This model was developed through consultation and cooperation with the Crop Protection Institute, the Canadian Chemical Producers Association, the Canadian Chemical Specialities Producers Association, the Mining Association of Canada and the Canadian Chemical Distributors Association. An MOU is signed by Environment Canada and by each company that is involved in exporting "PIC" chemicals (including pesticides). If a company becomes involved in exporting a PIC chemical in the future, it will need to sign an MOU with Environment Canada. If companies fail to take part in the MOU exercise, all MOUs could be cancelled and replaced by regulations. For further information on the MOU exercise, please contact the Director, Commercial Chemicals Evaluation Branch, Environment Canada, Ottawa, Ontario, K1A 0H3.

5.0 Certification of Registration

Certain countries require a Canadian certification of pesticide registration as a condition of import. Such certificates are presently provided as a courtesy by the Pest Management Regulatory Agency. In order to provide prompt service, a new "Certification of Registration" has been developed (the format is provided in Appendix I). To obtain certification, registrants are required to submit a written request which must include:

- ! a copy of the printed label for the product; and
- ! a statement of declaration that the product meets all the chemical specifications as shown on the product specification form recorded in the product registration file.

If notarization of the certification is required, the registrant must make the necessary arrangements.

Please direct any inquiries regarding this Regulatory Directive to:

The Information Service
Information Division
Pest Management Regulatory Agency
Health Canada
Nepean, Ontario
K1A 0Y9

**Pest Management Regulatory Agency
Health Canada**

Certification of Registration

This is to certify that the following pest control product is duly registered under the authority of the *Pest Control Products Act* of Canada, for uses described on the attached product label (and pamphlet, if any). This document is not the original registration certificate.

Product Name:

Active Ingredients:
(Guarantee)

Registration No: Pest Control Products Act

Registrant:

Registration Expiry Date:

Signature: Date:

_____ Registration Officer
(Print Name)

Product Management Division
Pest Management Regulatory Agency
59 Camelot Drive
Nepean, Ontario, Canada
K1A 0Y9