

FIFRA PESTICIDE SAMPLING PROCEDURES

One of the essential parts of an inspection is the proper sampling and documentation of pesticide products being formulated or marketed by a firm. The inspector must properly collect, prepare, and document the sample in order for it to be admissible as evidence of a violation. All samples will be either physical or documentary.

Inspectors should follow the appropriate Quality Assurance Project Plan (QAPP) for the State Lead Agency (SLA)/Tribe/Region.

AUTHORITY

Section 9(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, authorizes any officer or employee duly designated by the Administrator to enter, at a reasonable time, any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, and samples of any containers for labeling for such pesticides or devices.

Section 12(a)(2)(B) of the Act makes it unlawful for any person to refuse to allow an officer or employee of the EPA to take a sample of any pesticide pursuant to Section 9 or to inspect records to be retained pursuant to Section 8. Should consent not be granted, see Chapter 15 for obtaining a warrant.

OBJECTIVE

An official sample of a pesticide formulation or device is necessary for use as evidence in most of the enforcement actions taken as a result of a producer or marketplace inspection. A sample must be suitable to support the government's charge that there has been a

violation of the law. The sample must also conform to the rules regarding admissibility of evidence. A properly collected, prepared, and documented sample includes the following:

- < Sufficient portion of a batch of a pesticide for laboratory analysis (as stated in other chapters of this manual, please consult the lab that analyzes your samples and make sure you are shipping enough quantity of sample, and that they can analyze for that chemical or active ingredient, which will be shipped to that location.)
- < A report of the inspector's observations of the batch, which may also include photographs and/or copies of records, data, or correspondence.
- < Labeling and/or literature, or copies of these items, that accompany this product and/or batch, during sale or distribution.
- < Signed statements from people who may potentially serve as witnesses.

POLICY

It is important to reduce, to a minimum, the amount of time between the date of sample collection and the date that any appropriate enforcement action is taken. The inspector plays an important role in minimizing this interval by promptly forwarding all samples and records to the laboratory. Pesticide formulation samples shall not be held for more than five working days before making arrangements to transport to the laboratory.

SAFETY

It is the responsibility of inspectors to protect themselves and others during pesticide sampling and sampling activities associated with an inspection. To minimize risk, appropriate protective clothing and safety equipment must be used by the inspectors. Protective gear must be adequate to prevent accidental exposure to pesticides through eyes, nose, mouth, and skin. The inspector shall refer to the precautions described on the pesticide label during formulation sampling and handling.

TYPES OF SAMPLES

Official samples of pesticide products or devices are those that, if potentially violative or otherwise problematic, serves as a basis for legal or regulatory action. In general, an official sample is categorized in one of five ways: physical, documentary, import, induced, and use dilution.

Physical Samples

A physical sample (identified as "PHY") is an actual sample of the pesticide formulation or device. The physical sample may include the original labeled packaging, copies of or photographs of the label, and all other labeling associated with the pesticide or device. Copies of any records showing the distribution or sale of the physical sample will be collected for documentary purposes. Copies of shipping records substantiating the distribution or sale of the pesticide product or device are vital to all enforcement cases.

Documentary Samples

A documentary sample (identified as "DOC") is taken when a physical sample of a pesticide or device is not collected. Copies of bin labels, photographs or advertising, and copies of shipping records, invoices showing shipments of the product and the responsible parties are normally collected for documentary purposes. Labels are an important part of documentary sampling and should be collected if possible.

The following is an example of a statement that can be used when obtaining documentary samples:

“My name is Jane Doe and I am the production manager for ABC Corp. in Chicago, IL. As such, I oversee the shipment of all products, including pesticide products, that leave the warehouse. To the best of my knowledge, the bin label for the product, Mighty Roach Killer, that was collected by Inspector Clouseau as sample number 021201187560101, is a true and accurate representation of the label that was affixed to the product Mighty Roach Killer that was shipped on January 5, 2001, as indicated in the shipping record collected by Inspector Clouseau as sample number 021201187560102.”

Import Samples

Import samples (identified as "IMP") are physical or documentary samples of pesticide formulations or devices that are offered for importation into the United States from foreign countries. Documentation for imported shipments should include U.S. Customs Service entry papers, foreign invoices, shippers' Bill of Lading and records showing movement from the port of entry are necessary (see Chapter 14).

Induced Samples

An induced sample should not be considered until all other sources for direct purchase have been exhausted. Induced samples

(identified as “IND”) of pesticides or devices are usually requested by mail, telephone, or the internet. Complete documentation is necessary, including the original advertisement. A webpage printout may be considered advertising of the pesticide product, but your FIFRA attorney should be consulted before collecting this evidence.

Use Dilutions

Use dilution samples are collected during pesticide use inspections. A formulated pesticide has been blended with a carrier such as water, and is ready to be applied by an end user.

SAMPLES

The sample must be identified, officially sealed, and documented immediately following collection. Official pesticide formulation samples are normally collected only from material that has been packaged, labeled, and released for shipment. The term "packaged, labeled, and released for shipment" refers to the point in the production-marketing process of a pesticide where (1) the product has been produced and (2) it is the intent of the producer that such products are introduced into commerce.

At the producers' establishment level, such intent to introduce the product into the channels of trade may be evident by the following:

- < The producer's assertion that the material being sampled is representative of what is actually sold.
- < The product is stored in areas such as loading docks, warehouses, or other areas where finished goods are held for shipment in the ordinary course of business.

At the distributor (wholesale and retail) level, the product is considered to have been "released for shipment" by the producer establishment and, therefore, is subject to inspection and sampling.

Sample Collection Procedure

- < Review all pesticides that are packaged, labeled, and released for shipment for label/labeling violations.
- < Immediately following the collection of a sample, the sample shall be identified, officially sealed, and documented in inspection notes, and inspection forms. Official pesticide formulation samples are normally collected only from material that is packaged, labeled, and deemed released for shipment by the manufacturer. The term “packaged, labeled, and released for shipment” refers to the point in the production and marketing of a pesticide where (a) the product has been produced, and (b) it is the intent of the producer that such product be introduced into the channels of trade.

At the producer establishment level, such intent to introduce the product into channels of trade may be documented by (1) the producers assertions that the material being sampled is representative of what is actually sold in the marketplace, or (2) the product is stored in a loading dock, warehouse, or other area where finished goods are held for shipment in the ordinary course of business.

At the distributor level, in wholesale and retail marketplaces, the product is considered “released for shipment” by the producer establishment, and therefore, subject to inspection and sampling.

- < Ask the management if they would like a duplicate sample(s). If yes, the inspector will collect and prepare two identical samples. The inspector will take one and leave one for the firm.

What to Sample

- < Sample all products found with apparent label/labeling violations.
- < Obtain samples ONLY from products or devices that are packaged, labeled, and released for shipment.
- < Obtain samples from all types of pesticides being formulated during PEI. Example - Insecticide, Herbicides, Fungicides, etc.
- < Sample technical material imported directly from overseas during PEI. Indicate on the Sample Collection Report that the sample is an IMPORT.

Number of Samples to Collect

- < It may be desirable and up to the discretion of the inspector and supervisor, to sample all non-violative products during Producer Establishment Inspection. During a Producer Establishment Inspection sample all violative products that are found.
- < Sample about 20% of the technical material imported from overseas. Document as a marketplace sample.

Amount of Material to Collect

- < Samples shall be taken from original, previously unopened shipping cases. If more than one code or batch number is present, the predominant code or batch is to be sampled.
- < If different sized containers are present and the labels are identical (except for net contents), only one size needs to be sampled and the number of cases of each size is recorded on the Sample Report.

Liquid, Dry, and Aerosols (Collecting the Entire Container)

- < Select an unopened case that is packaged, labeled, and released for shipment.

- < Open the container, and remove one container from the case, remove two if duplicate samples are requested. Note: Collect two aerosols cans for each sample.
- < Complete the information on the sample bottle label and attach it to the side of the container(s).
- < Place the container(s) in an inverted polyethylene bag, secure with a knot, fold top of plastic bag over the knot, twist the bag, and tape below the knot. Place an EPA Official Sample Seal (EPA Form 7500-2) or equivalent State/Tribal Sample Seal, if conducted as a State inspection around the tape which is below the knot.
- < Restore the case lot to its original location.
- < If collected at a producing establishment, take photos of the container label/labeling of the physical sample. Obtain a bin or specimen label of the product sampled, as back-up to photos (or in the case where photos can't be taken) to accompany the sample. Note: Place the following statement on the bin label "Bin label is the same as the label on the container sampled." Have the manager initial and date the statement. Place the assigned sample number and the inspector's initials in the upper right-hand corner of the label.
- < Have the management sign the Sample Collection Report and leave the top copy with management for their Receipt for Samples.

SUB-SAMPLING FORMULATION PESTICIDES

Liquid Formulations

- < Review the label for personal safety equipment requirements and if manufacturers' instructions include shaking before use. If so, be sure material is thoroughly mixed before opening the container. Put on required safety equipment. Note: Do not attempt to agitate containers larger than 5 gallons.
- < Fill out "Pesticide Sample Collection Report" and "Sample Bottle Label" completely and accurately.
- < Remove cap, flex-spout, or bung. Remove slowly to release any pressure inside the container. Note: If container opening is covered by a foil seal, a small hole must be punctured in the seal with a nail.
- < Attach a Y- 7 piece of tygon tubing or straw to an unused 30cc syringe.

- < Pull the plunger to the 10cc mark and insert the tubing/straw and slowly extract 20cc's of the liquid. Note: Any pesticide whose primary active ingredient is less than 2.0% should have 3 ounces of the liquid collected. Place in a 4-oz. glass sample bottle. The extra amount is needed for analytical purposes.
- < Extract the liquid slowly, keeping a 10cc air gap between the liquid and the rubber tip on the plunger. Note: Some liquids react with the rubber tip causing it to swell, resulting in difficulty in discharging the extracted liquid.
- < Carefully discharge the liquid into a clean unused 1-oz glass sample bottle and attach the "Sample Bottle Label" to the side of the bottle.
- < Reseal the container with the cap, new flex spout, or bung. If a foil seal was punctured, place a small piece of metal tape over the hole.
- < Take photographs of the entire label/labeling including the top and bottom of the container if a bin label is not available during a PEI.
 - Identify each photograph with the assigned sample number, inspector's initials, date/time, and a brief description of the photograph on an address label.
 - Place the photographs in a clear sheet protector and attach the address label at the bottom of each photograph.
 - Digital photographs must include the date and, if possible, time of the photograph so that this information is imprinted on each photograph. Be mindful that the inspector may be challenged in court as to whether the photographs have been altered in any way.
- < Place the sample bottle in an inverted polyethylene bag, secure with a knot, fold top of plastic bag over the knot, twist the bag, and tape below the knot, place an EPA Official Sample Seal (EPA Form 7500-2) or equivalent State/Tribal sample seal if conducted as a State inspection around the tape which is below the knot.
- < Restore the case lot to its original location.
- < If collected during a Federal PEI, obtain a bin or specimen label of the pesticide sampled to accompany the sample, make a word-for-word comparison against the label on the container sampled in order to verify that the labels are identical. Note: Place the following statement on the bin label "Bin label is the same as the label on the container

sampled." Have the management initial and date the statement. Place the assigned sample number and the inspector's initials in the upper right-hand corner. For Federal inspections, federal forms and procedures must be followed.

- < Have the management sign the Federal Receipt for Samples. Place all paperwork pertaining to the sample in an EPA sample folder and arrange in the following order:
 - Pesticide Sample Collection Report.
 - Photographs or bin label.
 - Dealers Statement.
 - Shipping documentation.
 - Notice of Inspection.
- < Deliver the sample(s) and sample folders to an approved laboratory.

Dry Materials (Dusts and Granular Formulations)

- < Review the label for personal safety equipment requirements. Put on required safety equipment.
- < Fill out "Pesticide Sample Collection Report" and "Sample Bottle Label" completely and accurately.
- < Select two representative bags from the lot to be sampled and lay them flat. Note: On granular materials the bags selected should be turned end over end several times to redistribute any fine materials which have sifted to the bottom during shipment and storage.
- < Cut a V-shaped slit on the side or flat surface of the bag where writing is not found. Note: Use only a clean knife for cutting the slit. NEVER use a pocket knife used for other purposes.
- < Insert a clean unused plastic tube diagonally through the bag, when obtaining the sample, not just from one location in the bag.
- < Carefully remove and fill a sample bottle/can with the material and identify the sample with the inspector's initials, the sample number, date, etc. on the side of the bottle/can. Note: Any pesticide whose primary active ingredient is less than 2.0% should have 4-ozs of the material collected. The laboratory needs the extra amount for analytical purposes.

- < Reseal the bag(s) by placing a piece of wide imprinted inspection tape over the slit with the date sampled and inspectors' initials and restore the container to its original location.
- < Take photographs of the entire label/labeling including the top and bottom of the container if a bin label is not available during a PEI.
 - Identify each photograph with the assigned sample number, inspector's initials, date/time, and a brief description of the photograph on an address label.
 - Place the photographs in a clear sheet protector and attach the address label at the bottom of each photograph.
 - Digital photographs must include the date and, if possible, time of the photograph so that this information is imprinted on each photograph. Be mindful that the inspector may be challenged in court as to whether the photographs have been altered in any way.
- < Place the sample bottle in an inverted polyethylene bag, secure with a knot, fold top of plastic bag over the knot, twist the bag, and tape below the knot, place an EPA Official Sample Seal (EPA Form 7500-2) or equivalent State/Tribal sample seal if conducted as a State inspection around the tape which is below the knot.
- < Restore the case lot to its original location.
- < If collected during a Federal PEI, obtain a bin or specimen label of the pesticide sampled to accompany the sample, make a word-for-word comparison against the label on the container sampled in order to verify that the labels are identical. Note: Place the following statement on the bin label "Bin label is the same as the label on the container sampled." Have the management initial and date the statement. Place the assigned sample number and the inspector's initials in the upper right-hand corner. For Federal inspections, federal forms and procedures must be followed.
- < Have the management sign the Federal Receipt for Samples. Place all paperwork pertaining to the sample in an EPA sample folder and arrange in the following order:
 - Pesticide Sample Collection Report.
 - Photographs or bin label.
 - Dealers Statement.
 - Shipping documentation .
 - Notice of Inspection.

- < Deliver the sample(s) and sample folders to an approved laboratory.

DOCUMENTARY SAMPLES

- < Select an unopened case that is packaged, labeled, and released for shipment.
- < Remove one container from the case.
- < Take photographs of the entire label/labeling including the top and bottom of the container.
 - After development of the photographs, identify each with the assigned sample number, inspectors initials, and a brief description of the photograph on an address label.
 - Place the photographs in a clear sheet protector and attach the address label at the bottom of each photograph. Note: The photographs must be legible to be valid.
 - Digital photographs must include the date and, if possible, time of the photograph so that this information is imprinted on each photograph. Be mindful that the inspector may be challenged in court as to whether the photographs have been altered in any way.
- < Restore the case lot to its original location.
- < If collected during a PEI, obtain a bin or specimen label of the pesticide sampled to accompany the sample, make a word-for-word comparison against the label on the container photographed in order to verify that the labels are identical. Note: Place the following statement on the bin label "Bin label is the same as the label on the container photographed." Have the management initial and date the statement. Place the assigned sample number and the inspector's initials in the upper right-hand corner.
- < Complete a "Pesticide Sample Collection Report" on each sample collected.
- < Complete a Dealer's Statement and obtain shipping documentation on the pesticide such as an invoice, bill of lading, shipping records, etc.
- < Have the management sign the Federal Receipt for Sample form and leave the top copy with the management.
- < Place all paperwork pertaining to the sample in an EPA Sample folder and arrange in the following order:
 - Pesticide Sample Collection Report.
 - Receipt for Samples.

- Photographs or bin label.
- Dealers Statement.
- Shipping documentation.
- Notice of Inspection.

Producer Samples

Since the sample is collected at the location where the pesticide is produced, only limited paperwork is required:

- < Notice of Inspection.
- < Receipt for Samples.
- < Pesticide Sample Collection Report.
- < Bin label of the label.
- < Photographs if required, see sampling instructions.
- < Any additional labeling/sales literature, document in a statement.
- < Obtain copies of shipping records, invoices, etc. to document outgoing or incoming shipments of potentially violative pesticides/devices.

Marketplace Samples

Since the pesticide is sampled in channels of trade, its movement to its present location must be documented. Accomplish this by obtaining a copy of the sales invoice, bill of lading, or freight bill and document it in a Dealers Statement. Required paperwork is as follow:

- < Notice of Inspection.
- < Receipt for Samples.
- < Pesticide Sample Collection Report.
- < Photographs of the entire label and labeling.
- < Sales Invoice.
- < Dealer's Statement.
- < Any additional sales literature accompanying the product, document in the Dealer's Statement.

Additional Labeling

When collecting samples (Physical or Documentary) ask the interviewees if there is any additional labeling, including advertising literature. Make sure that all labeling and literature are collected in the cases of Producer Establishment Inspections, Marketplace Inspections, and Export/Import Inspections. This material shall be identified in the inspector's handwriting with the sample number, inspector's initials, and exhibit number in the upper right-hand corner. Examples of an exhibit number would be the inspector's

initials plus a numeric number, JES-01. The inspector shall initial and date each of the collected materials. Document the literature with Statement during a PEI and during a Market Place Inspection.

Payment for Samples

Payment shall be offered for physical samples collected, when the entire container is collected. Distributors and dealers are entitled to invoice cost plus a nominal charge (usually 10 to 15 percent) for freight, handling, and storage. Producers are entitled to their production cost.

Shipment and Custody of Samples

Following collection, documentation, and initiation of chain-of-custody, samples shall be stored in a cooler and kept secure prior to transfer to the laboratory. Pesticide samples must have a "Chain of Custody Record" form completed by the inspector before delivering to the laboratory. When transporting sample(s), several requirements shall be followed:

- < Glass containers shall never be packaged directly against one another.
- < The sample label, whether for a prepackaged unit or for sub-sampled material, shall always be legible through the plastic bag on physical samples.
- < Sample records, inspection reports, and other documentation should be shipped to the Laboratory under separate cover, i.e., do not include these documents directly with the sample. Samples should be shipped to the laboratory as-soon-as-possible, the shipment shall include information to the lab as to the identity or suspect identity of the sample(s). The shipment shall also indicate that further documentation regarding the sample will be forwarded to the lab, ASAP.