



OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Expedited Settlement Agreement Pilot Program Under the Federal Insecticide, Fungicide, and Rodenticide Act

FROM: Gregory Sullivan, Director
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GREGORY SULLIVAN

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TO: Regional Counsels, Regions 1-10
Enforcement and Compliance Assurance Division Directors, Regions 1-10

This memorandum and the attached proposal establish a new Expedited Settlement Agreement (“ESA”) Pilot Program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (the “Pilot Program”) consistent with the [2014 Revised Guidance on the Use of Expedited Settlement Agreements](#).

The purpose of this Pilot Program is to provide an additional enforcement tool that encourages resource prioritization and violation deterrence through expedited resolution of cases involving minor violations that are easily correctible and do not cause significant health or environmental harm. As a result, there are general and violation-specific parameters that must be met for a case to be eligible for resolution under this Pilot Program. Further, penalty amounts are non-negotiable and traditional enforcement tools will be used if an offer is rejected or ignored. As always, the EPA reserves the right to not extend a settlement offer to any particular party.

The Pilot Program is available for optional use by all regions and at headquarters for a period of 36 months from the date of approval. Thirty months from the date of approval, the Pesticides and Tanks Enforcement Branch (PTEB) of the Waste and Chemical Enforcement Division (WCED) will evaluate the effectiveness of this Pilot Program based on data and feedback provided by the regions.

This document identifies internal EPA policies and procedures for the EPA employees in coordinating Agency enforcement activities. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not create any judicially enforceable rights or obligations substantive or procedural in any person and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The EPA may decide to follow the procedures and policies provided in this document, or to act at variance with them based on its analysis of the specific facts presented.

Submit all inquiries or requests to [OCE FIFRA Matters@epa.gov](mailto:OCE_FIFRA_Matters@epa.gov).

Attachment: Expedited Settlement Agreement Pilot Program Under the Federal Insecticide, Fungicide, and Rodenticide Act

EXPEDITED SETTLEMENT AGREEMENT PILOT PROGRAM UNDER THE
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

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This document identifies internal EPA policies and procedures for the EPA employees in coordinating Agency enforcement activities. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not create any judicially enforceable rights or obligations substantive or procedural in any person and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The EPA may decide to follow the procedures and policies provided in this document, or to act at variance with them based on its analysis of the specific facts presented.

I. Purpose and Goal

This document describes a new Expedited Settlement Agreement (ESA) Pilot Program Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (the “Pilot Program” or “Pilot”) that will be implemented to address certain easily identifiable and correctable reporting and distribution and labeling violations that did not result in significant harm to human health or the environment. Under the Pilot Program, case teams will be able to offer a discounted, non-negotiable settlement in lieu of a more formal, traditional administrative enforcement process for certain FIFRA violations. The Pilot Program is expected to be implemented for three years.

The last six months of pilot implementation is expected to be used to evaluate two years and six months of implementation.¹

Use of ESAs for this pilot program is intended to decrease transaction costs and achieve speedy compliance. However, like any enforcement tool, the use of ESAs to address FIFRA violations is discretionary. ESAs should not be undertaken at the expense of larger, more complex matters, which may present greater potential for harm to human health or the environment. Case teams are expected to follow-through with formal enforcement when violators fail to accept the ESA offer or do not timely meet their obligations.

The Pilot Program adheres to the EPA's [Revised Guidance on the Use of Expedited Settlement Agreements](#) (Nov. 24, 2014) (the "2014 ESA Guidance"). This Pilot may apply to any eligible administrative proceedings initiated after this Pilot Program is announced.²

II. Covered Violations

Only certain cases and FIFRA violations are eligible for resolution under this Pilot Program. The violation specific violations and parameters are available in [Attachment A](#). The general parameters for cases suitable for ESA resolution under this Pilot Program are listed below:

- A) The case involves domestically produced or imported pesticides or device products in violation of select statutory or regulatory provisions listed in the Proposal.
- B) The case does not require the EPA review and approval of registration changes including labeling changes.
- C) The case involves repeat violator(s) under the parameters outlined in Section 4 of this memorandum.
- D) The ESA follows the penalty matrix outlined in this memorandum and in the attached proposed FIFRA ESA Pilot Program. Penalties are based upon a respondent's size of business for each ESA-eligible violation. The total proposed penalty should not exceed \$24,000. Matters with a total proposed penalty exceeding \$24,000 will require an administrative resolution such as a consent agreement and final order or complaint under 40 C.F.R. Part 22.
- E) The violation occurs within the issuing office's geographic boundaries. If the respondent's primary place of business is outside the geographic boundary, regions are expected to consult with the region in which the respondent's

¹ There is a separate FIFRA ESA program in place that address certain reporting violations under FIFRA Section 7(c). Memorandum, [Revised Federal Insecticide, Fungicide, and Rodenticide Action Section 7 \(c\) Expedited Settlement Agreement Program – Penalty Matrix \(Section VII\)](#) (Aug. 23, 2019).

² An eligible administrative proceeding may include one in which EPA has not yet transmitted a proposed settlement penalty amount. At the discretion of the case team, it may also be applied in pending cases in which negotiations have commenced.

primary place of business is located regarding the enforcement action. For purposes of this Pilot Program, consultation may be completed via email. Multi-regional cases triggering the November 2022 Super Delegation³ are not eligible under this Pilot Program.

- F) The case does not involve criminal or fraudulent behavior (e.g., intentionally falsifying information).⁴
- G) The violator does not deliberately conceal evidence of noncompliance.
- H) The violator does not fail or refuse to provide records or access needed to determine compliance.
- I) The violator is not otherwise obstructive or uncooperative with the compliance monitoring processes or early settlement.

No more than 10 independently assessable violations should be included in any single ESA action. If an action includes any violations for which the ESA does not apply, the action should not be pursued under the Pilot. Case teams are expected to exercise sound judgement on when to pursue a matter under this Pilot Program versus when to use other enforcement and compliance tools.

This is an expansive Pilot Program and Regions may need to deviate from the model documents to meet region-specific needs. **Therefore, Regions shall consult with PTEB for ONLY the first offer made under this ESA Pilot Program.**

III. Timely Return to Compliance

ESAs offered under this Pilot Program will be offered with a 30-calendar day period to respond as described below. To ensure fast resolution, the respondent has 30 calendar days from receipt of the ESA offer letter to adequately respond before the ESA is automatically withdrawn. An adequate response from the ESA recipient would include the following.

- A) Returning a signed agreement;⁵
- B) Paying the full penalty per the ESA terms offered; and
- C) Submitting a signed, certified statement that Respondent no longer engages in violative activities, that the violations have been corrected, or that lists the steps Respondent has or will take to prevent recurrence of the violation(s), as applicable.

³ Memorandum, [1-142. Civil Judicial and Administrative Enforcement Actions, Inspections and Information Gathering Outside of Geographic Regional Boundaries](#) (Nov. 17, 2022).

⁴ Case teams should refer these types of suspected violations to the EPA's Criminal Investigation Division or the appropriate criminal enforcement authorities. For additional information, see the [Strategic Civil-Criminal Enforcement Policy](#) (April 17, 2024).

⁵ Signed and electronically transmitted versions of the agreement may be used to assist with the expedited time frame.

Although violations covered by the new pilot are easily correctible, if the respondent demonstrates in writing that it is technically infeasible or impracticable to correct the violations within the 30-calendar day period, the case team, at its discretion can extend the deadline for the response for an additional 30 calendar days (total maximum of 60 calendar days from the receipt of the offer letter). Extensions should be requested within 30 calendar days from the respondent's receipt of the ESA offer letter and the case team should document its denial or approval of the extension.

IV. Respondent Eligibility and Repeat Violators

Under this Pilot Program, eligibility for an ESA does not depend necessarily on the size or type of entity regulated under FIFRA. Nonetheless, even if a case meets the criteria for ESA treatment, the case team may determine that an ESA is not the appropriate response to the noncompliance of a particular violator. For example, the duration of noncompliance may have been significant, or the violator may have gained a significant economic benefit, such that enforcement under the FIFRA ERP is more appropriate.

The 2003 OECA ESA guidance,⁶ defined a “repeat violator” as a “violator who, in the past five years, has had the same or closely related violations 1) at the same facility where the instant violation occurred; or 2) at multiple facilities, i.e., three or more facilities under the ownership, operation, or control of the violator. The five-year period begins to run when a federal, state, tribe, or local government has given the violator notice of a specific violation . . .” While the 2014 ESA Guidance provides that it still generally remains inappropriate to provide an ESA to a “repeat violator”, the 2014 ESA Guidance does not prohibit the issuance of an ESA to a “repeat violator.” Instead, the 2014 ESA Guidance provides that there may be circumstances where an ESA may be suitable, and ESAs may be offered to repeat violators if such an ESA program clearly sets forth the parameters regarding when an ESA would be an acceptable enforcement response for a repeat violator and explains why such treatment is appropriate. For example, the duration of noncompliance has not been significant and the violator has not gained a significant economic benefit.

Under this Pilot Program, a “repeat violator” is a violator who, within a five-year period, repeated the same violation that was subject to **one** previous non-penalty federal FIFRA enforcement action such as a Notice of Warning (NOW) or Notice of Refusal of Admission (NORA). Violators that have signed a CAFO for the same violation within a five-year period are **NOT** eligible under this ESA Pilot Program.

The first ESA can be used to resolve a repeat FIFRA violation for which one prior non-penalty enforcement action was taken pursuant to the authority in FIFRA Sections 9(c)(3), 14(a)(4), or

⁶ Memorandum, [Use of Expedited Settlements to Support Appropriate Tool Selection](#) (Dec. 2, 2003) (generally superseded by 2014 guidance).

17(c) within five years of that enforcement action. A second ESA may be appropriate if the case team believes the respondent will return to compliance quickly and the penalty increased by 50% to provide sufficient deterrence. A second ESA may be issued to resolve the same repeated violation that was subject to up to **two (2)** previous enforcement actions, including the first ESA, within a 5-year period. A third ESA is not allowed. Continued non-compliance of the same violation(s) suggests a systemic problem that warrants a formal enforcement response. See Figure 1 below for a hypothetical timeline.

Year 1	FIFRA Violation(s)	Previous Enforcement Response	Explanation
↓	1 st FIFRA violation(s)	NOW or NORA	Actions that trigger the start of the five-year period
↓	2 nd FIFRA violation(s)	1 st ESA	Same FIFRA violation(s) within the five-year period.
↓	3 rd FIFRA violation(s)	2 nd ESA or FIFRA ERP	Same FIFRA violation(s) within the five-year period, then the penalty is escalated by 50%. ESA-eligible only if the case team determines return to compliance is quick and will provide sufficient deterrence. Otherwise, not ESA eligible. Warrants ERP enforcement.
↓			
Year 5	4 th FIFRA violation	FIFRA ERP	Continued non-compliance of same violation(s). Suggests a systemic problem that warrants ERP enforcement.

V. Case Prioritization

ESAs should only be used when all of the violations are ESA-eligible violations. Regions may prioritize ESA appropriate cases, provided that such prioritization and enforcement is part of a comprehensive program that encompasses an appropriate balance of ESA and non-ESA enforcement.

VI. Penalty Reductions

No more than ten independently assessable violations should be included in any ESA and the basis for the ESA penalty calculation and the number of violations should be documented in the case file.

The ESA penalty is determined by the gravity of the specific ESA eligible violation and the violator’s size of business. Size of business is determined from an individual’s or a company’s gross annual revenue from all revenue sources, including its corporate family, for the prior calendar year. This information may be found from sources such as Hoover’s Dun & Bradstreet, LexisNexis global data analytics platform, SEC filings, violator’s credit risk score, other publicly available records, or provided directly by the violator.

This Pilot Program provides different penalty amounts based upon the size of the violator’s operation. The Pilot Program penalty matrix is within [Attachment B](#). The penalty levels are intended to result in a lower penalty amount than a case team ordinarily would derive using the FIFRA ERP penalty methodology. The total penalty in an ESA may not exceed \$24,000. If the total ESA penalty calculation exceeds \$24,000, the matter will require a formal administrative resolution such as a CAFO or Complaint under 40 C.F.R. Part 22.

VII. Environmental Benefits

The 2003 OECA ESA Guidance required that ESAs obtain environmental benefits, as well as penalties.⁷ However, the 2014 ESA Guidance removed the “penalty-only” prohibition on ESAs, recognizing that a key goal of ESAs is returning a source to compliance and that penalty-only ESAs may provide benefits.⁸

In addition, for a respondent that has an obligation to submit or correct a record required under FIFRA, the ESA settlement document should compel the respondent to fulfill such duty as a condition of settlement.

VIII. Formal Enforcement and Policy Use

Case teams are expected to pursue appropriate enforcement as provided by the FIFRA ERP if, within 30 calendar days of respondent’s receipt of the ESA offer, the respondent does not correct the violations and return the signed agreement. The 30-calendar day deadline for a response is important so that, if the respondent fails to meet the ESA deadlines, cases do not languish and the case team may proceed promptly to formal enforcement.

Any settlement agreement under this Pilot Program that is signed by the parties for which a final order is filed constitutes a final order within the meaning of the FIFRA ERP and 40 C.F.R Part 22.⁹ Case teams must comply with all applicable provisions of 40 C.F.R. Part 22 and guidance from the Office of Administrative Law Judges governing filing and service of the ESA and Final Order.

⁷ See 2003 OECA ESA Guidance *supra* note 1, at p. 4 (“[The] Regions should not design an expedited settlement approach aimed solely at collecting penalties. Rather, through these expedited settlements, EPA should obtain both environmental benefits and collect penalties.”).

⁸ See 2014 ESA Guidance *supra* note 1, at p. 8 (“[A] penalty-only ESA could provide a deterrent effect to prevent repeat violations, address actual or potential environmental harm caused by the violation, or help maintain the integrity of the overall regulatory program.”).

⁹ 40 C.F.R §§ 22.18(b)(3) and 22.31.

Regions and HQ have the option to implement this Pilot Program. Implementation of this Pilot Program is not mandatory. Regions and HQ may continue to use the FIFRA ERP and the penalty formulation methods therein.

IX. Model Documents

Case teams may use the appended Model Notice Letter and Model Expedited Settlement Agreement and Final Order in implementing this Pilot Program.

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ATTACHMENT A: ELIGIBLE VIOLATIONS

The following violations are eligible for resolution under this Pilot Program within the parameters listed in [Attachment B](#). The table below lists the applicable violation descriptions and citations from the Appendix A of the 2009 FIFRA ERP, Appendix G of the 1991 ERP for the FIFRA Good Laboratory Practice (GLP) regulations, and Appendix H of the 2012 ERP for the FIFRA Container/Containment Regulations.

Non-Misbranding Violations

FIFRA SECTION	CODE	VIOLATION
12(a)(1)(A)	1AA	Sold or distributed a pesticide not registered under section 3 or one whose registration was cancelled or suspended, except to the extent authorized by the administrator.
12(a)(2)(N)	2NA	A registrant, wholesaler, dealer, retailer, or other distributor failed to file reports required by the Act. *Other than reports addressed in the Section 7(c) ERP.
12(a)(2)(Q) ¹	2QC	Any person that falsely represented compliance with the FIFRA Good Laboratory Practice (GLP) regulations as a result of a mid or low level GLP violation.
12(a)(2)(Q) ¹	2QD	Registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor that falsely represented compliance with the FIFRA GLP regulations as a result of a mid or low level GLP violation.
12(a)(2)(Q) ¹	2QE	Persons under FIFRA Section 14(a)(2) (i.e., private applicators and other persons not listed under Section 14(a)(1)) who falsely represented compliance with the FIFRA GLP regulations as a result of a mid or low level GLP violation.
12(a)(2)(S)	2SB	Person violated the following regulatory provisions promulgated under FIFRA Section 19. ² (i) 40 C.F.R. §§ 165.70(e)(10) and (j): Refiller who is not a registrant repackaged pesticides into refillable containers but failed to maintain records in accordance with 40 C.F.R. § 165.70(j).

¹ Violations regarding laboratory practice are covered in the FIFRA Good Laboratory Practice (GLP) Regulations dated September 30, 1991. Appendix GLP-B provides guidance for determining whether a GLP violation under FIFRA Section 2(a)(2)(Q) qualifies as a high, middle, or low-level violation.

² Specifically related to violations identified in Appendix H of the March 2012 Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations.

FIFRA SECTION	CODE	VIOLATION
		<p>(ii) 40 C.F.R. § 165.70(e)(11): Refiller who is not a registrant repackaged pesticides into refillable containers but failed maintain records required by 40 C.F.R. Part 169.</p> <p>(iii) 40 C.F.R. § 165.90(a)(4): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.</p> <p>(iv) 40 C.F.R. § 165.90(a)(5): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to ensure that each lockable valve on a stationary pesticide container, if required, is closed and locked, or that the facility is locked, whenever the facility is unattended.</p> <p>(v) 40 C.F.R. § 165.90(b)(1): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to make monthly inspections of each containment structure.</p> <p>(vi) 40 C.F.R. § 165.95(a): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to maintain records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances.</p>

Misbranding Violations

FIFRA SECTION	CODE	VIOLATION
12(a)(1)(E) ³ 12(a)(1)(F) 2(q)(1)(D)	1ED	Sold or distributed a pesticide or device that is misbranded in that the label did not bear the registration number assigned under section 7.
12(a)(1)(E) ³ 2(q)(1)(H)	1EH	Sold or distributed a non-registered pesticide intended for export that is misbranded in that the label did not have a prominently displayed “Not Registered for Use in the United States of America”

³ Where misbranding could result in improper disposal, which might present harm to the environment, such violation is not appropriate for an ESA.

FIFRA SECTION	CODE	VIOLATION
12(a)(1)(E) ³ 2(q)(2)(C)	1EK	<p>Sold or distributed a pesticide that is misbranded in that there is not a label affixed to the pesticide container, and to the outside wrapper of the retail package if the required information on the immediate container cannot be clearly read, a label bearing all of the following information:</p> <ul style="list-style-type: none">(i) the name and address of the producer, registrant, or person for whom produced;(ii) the name brand, or trademark under which the pesticide is sold;(iii) the net weight or measure of the contents;(iv) and when required by regulation, the registration number assigned to the pesticide.

ATTACHMENT B: PENALTY MATRIX AND VIOLATION PARAMETERS

ESA-Eligible Violation with Parameters	Size of Business					
	\$300K and under	\$300K to \$1M	\$1M to \$5M	\$5M to \$10M	\$10M to \$20M	\$20M+
<p>12(a)(1)(A): Person sold or distributed an unregistered pesticide.</p> <p>Violation Parameters: The only pesticide product categories eligible under this Pilot Program are unregistered pesticides that either (1) would qualify as an exempt minimum risk pesticide if its label or labeling met the requirements of 40 C.F.R. § 152.25(f)(3); or (2) could be lawfully sold or distributed if its label or labeling met the conditions of 40 C.F.R. § 152.30.</p> <p>Changes to the product label must not require EPA review and approval, this includes but is not limited to changes made via registration amendment or notification. Label changes must be capable of being corrected within the ESA time period by applying new labels. Examples include, but are not limited to, fixing a missing ingredient statement or a producer name.</p> <p>For products that would be exempt under 40 C.F.R. § 152.25(f)(3), the label should not include any false or misleading statements. Products with labeling that includes public health claims are NOT ESA-eligible.</p> <p>Products that could be moved under 40 C.F.R. § 152.30, once corrected, must be located in an EPA registered establishment for relabeling to occur. Products exempt from FIFRA registration requirements post corrective action may be relabeled in non-EPA registered establishments.</p> <p>In an import situation, shipments containing violative pesticides must be conditionally released under bond pending case resolution.¹</p>	\$900	\$1,100	\$1,400	\$1,800	\$2,200	\$2,700

¹ “Conditionally releasing an import under bond” means that Customs and Border Protection (CBP) will allow the imported goods to be released to the importer of record, but only temporarily, while still holding the

ESA-Eligible Violation with Parameters	Size of Business					
	\$300K and under	\$300K to \$1M	\$1M to \$5M	\$5M to \$10M	\$10M to \$20M	\$20M+
<p>12(a)(1)(E); 2(q)(1)(D): Person sold or distributed a misbranded pesticide.</p> <p>Violation Parameters: The only products eligible are pesticides that are misbranded because the label does not bear the establishment number assigned under FIFRA Section 7 for the establishment in which it was produced.</p> <p>Label changes must be capable of being corrected within the ESA time period by applying new labels. Relabeling must occur within an EPA-registered establishment.</p>	\$900	\$1,100	\$1,400	\$1,800	\$2,200	\$2,700
<p>12(a)(1)(E); 2(q)(1)(H): Person sold or distributed a misbranded pesticide.</p> <p>Violation Parameters: The only products eligible are unregistered pesticides intended for export that are misbranded because the label does not have prominently displayed the statement, “Not Registered for Use in the United States of America.”</p> <p>Label changes must be capable of being corrected within the ESA time period by applying the new labels that meet the requirements of 40 C.F.R. §§ 168.70 and 168.75. In most cases this will include the submission of a foreign purchaser acknowledgement statement (FPAS) to the EPA. Relabeling must occur within an EPA-registered establishment.</p>	\$900	\$1,100	\$1,400	\$1,800	\$2,200	\$2,700
<p>12(a)(1)(E); 2(q)(2)(C): Person sold or distributed a misbranded pesticide.</p> <p>Violation Parameters: The only products eligible are those that are misbranded because there is not a label affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through</p>	\$700	\$900	\$1,100	\$1,400	\$1,800	\$2,200

importer liable through a customs bond, pending further inspection or verification of the goods to ensure compliance with FIFRA regulations.

ESA-Eligible Violation with Parameters	Size of Business					
	\$300K and under	\$300K to \$1M	\$1M to \$5M	\$5M to \$10M	\$10M to \$20M	\$20M+
<p>which the required information on the immediate container cannot be clearly read, a label bearing –</p> <p>(i) the name and address of the producer, registrant, or person for whom produced. (ii) the name brand, or trademark under which the pesticide is sold. (iii) the net weight or measure of the content. (iv) when required by regulation, the registration number assigned to the pesticide under FIFRA and its use classification.</p> <p>All other EPA labeling requirements must be met. A label must be capable of being affixed to the outside container or wrapper of the retail package within the ESA offer period. Relabeling must occur within an EPA registered establishment.</p> <p>Misbranding violations involving improper storage or disposal that present harm to human health or the environment are NOT ESA-eligible.</p>						
<p>12(a)(1)(F); 40 C.F.R. § 152.500: Person sold or distributed a misbranded device.</p> <p>Violation Parameters: The only products eligible are devices that are misbranded because the label did not bear the registration number assigned under FIFRA Section 7 to the establishment in which it was produced.</p> <p>Label changes must be capable of being corrected within the ESA time period. Relabeling must occur within an EPA-registered establishment.</p>	\$900	\$1,100	\$1,400	\$1,800	\$2,200	\$2,700
<p>12(a)(1)(F); 40 C.F.R. § 168.71: Person sold or distributed a misbranded device.</p> <p>Violation Parameters: The only products eligible are devices intended for export that are misbranded because the label does not comply with 40 C.F.R. § 168.71.</p>	\$900	\$1,100	\$1,400	\$1,800	\$2,200	\$2,700

ESA-Eligible Violation with Parameters	Size of Business					
	\$300K and under	\$300K to \$1M	\$1M to \$5M	\$5M to \$10M	\$10M to \$20M	\$20M+
Label (or collateral labeling per 40 C.F.R. § 168.69) changes must be capable of being corrected within the ESA time period. Relabeling must occur within an EPA-registered establishment.						
12(a)(2)(N): Person who is a registrant, wholesaler, dealer, retailer, or other distributor failed to file reports (other than reports addressed in the FIFRA Section 7(c) ERP) required by the Act. Violation parameters: Submission or correction of records (not covered by the FIFRA Section 7 ESA Program) must be made within the ESA time period.	\$900	\$1,100	\$1,400	\$1,800	\$2,200	\$2,700
12(a)(2)(Q): Registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor falsely represented compliance with the FIFRA Good Laboratory Practice (GLP) regulations as a result of a mid or low level GLP violation. Violation Parameter: The false representation must be a result of ordinary negligence, inadvertence, or mistake as opposed to knowingly or intentionally false. Where a representation is knowingly or intentionally false, an ESA is NOT eligible.	\$700	\$900	\$1,100	\$1,400	\$1,800	\$2,200
12(a)(2)(Q): Persons under FIFRA section 14(a)(2) (other person not listed in 14(a)(1)) falsely represented compliance with the FIFRA GLP regulations as a result of a mid or low level GLP violation. Violation Parameter: The false representation must be a result of ordinary negligence, inadvertence, or mistake as opposed to knowingly or intentionally false. Where a representation is knowingly or intentionally false, an ESA is NOT eligible.	\$200	\$200	\$300	\$400	\$500	\$600
12(a)(2)(S); 40 C.F.R. §§ 165.70(e)(10) and (j): Refiller who is not a registrant repackaged pesticides into refillable containers but failed to maintain records in accordance with 40 C.F.R. § 165.70(j).	\$600	\$700	\$900	\$1,100	\$1,400	\$1,800

ESA-Eligible Violation with Parameters	Size of Business					
	\$300K and under	\$300K to \$1M	\$1M to \$5M	\$5M to \$10M	\$10M to \$20M	\$20M+
<p>Violation parameters: Submission or correction of records (not covered by the FIFRA Section 7 ESA Program) must be made by the ESA response deadline.</p>						
<p>12(a)(2)(S); 40 C.F.R. § 165.70(e)(11): Refiller who is not a registrant repackaged pesticides into refillable containers but failed to maintain records as required by 40 C.F.R. Part 169.</p> <p>Violation parameters: Submission or correction of records (not covered by the FIFRA Section 7 ESA Program) must be made by the ESA response deadline.</p>	\$600	\$700	\$900	\$1,100	\$1,400	\$1,800
<p>12(a)(2)(S); 40 C.F.R. § 165.90(a)(4): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.</p> <p>Violation parameters: Submission or correction of records (not covered by the FIFRA Section 7 ESA Program) must be made by the ESA response deadline.</p>	\$600	\$700	\$900	\$1,100	\$1,400	\$1,800
<p>12(a)(2)(S); 40 C.F.R. § 165.90(a)(5): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to ensure that each lockable valve on a stationary pesticide container, if required, is closed and locked, or that the facility is locked, whenever the facility is unattended.</p> <p>Violation parameters: Submission or correction of records (not covered by the FIFRA Section 7 ESA Program) must be made by the ESA response deadline.</p>	\$600	\$700	\$900	\$1,100	\$1,400	\$1,800
<p>12(a)(2)(S); 40 C.F.R. § 165.90(b)(1): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to make monthly inspections of each containment structure.</p>	\$600	\$700	\$900	\$1,100	\$1,400	\$1,800

ESA-Eligible Violation with Parameters	Size of Business					
	\$300K and under	\$300K to \$1M	\$1M to \$5M	\$5M to \$10M	\$10M to \$20M	\$20M+
<p>Violation Parameters: Inspection must be completed and certified before the ESA response deadline and violator must list steps that have been taken to prevent recurrence of the violation.</p>						
<p>12(a)(2)(S); 40 C.F.R. § 165.95(a): Owner or operator of a new or existing pesticide containment structure (e.g., retailers, custom blenders, and commercial applicators) failed to maintain records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances.</p> <p>Violation parameters: Submission or correction of records (not covered by the FIFRA Section 7 ESA Program) must be made by the ESA response deadline.</p>	\$600	\$700	\$900	\$1,100	\$1,400	\$1,800

ATTACHMENT C: MODEL OFFER LETTER (General Use)

[MONTH DAY, YEAR]

**SENT VIA ELECTRONIC MAIL
READ RECEIPT REQUESTED**

Facility Contact Name, Title
Facility Name
Facility Address

RE: NOTICE OF EXPEDITED SETTLEMENT OPPORTUNITY
pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act
Docket No. FIFRA-XX-202X-XXXX

Dear Facility Contact:

The U.S. Environmental Protection Agency (EPA) has conducted a review to determine whether **[RESPONDENT]** is compliant with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or “the Act”), 7 U.S.C. §§ 136-136y. The EPA’s review indicates that **[RESPONDENT]** has committed one or more violations of FIFRA.

By this letter, the EPA is providing **[RESPONDENT]** an opportunity to resolve these violations by entering into an Expedited Settlement Agreement (ESA), which allows for quick resolution of this matter once compliance is achieved and a substantially reduced penalty is paid. Without the benefit of an ESA, the EPA may assess civil penalties of up to \$24,255 per violation pursuant to Section 14 of FIFRA, 7 U.S.C. § 136f. This amount is adjusted for inflation annually pursuant to 40 C.F.R. § 19.4.

The EPA’s review of Respondent’s activities indicate that the following violations occurred:

[Specify the FIFRA unlawful acts allegedly violated by the Respondent and how the Respondent failed to meet the applicable FIFRA requirements]

If you dispute these violations, please provide a written explanation, along with any documentation to **[EPA CONTACT]** at **[EMAIL]** within 30 calendar days of receipt of this letter. Please provide the written explanation soon as possible to ensure EPA has enough time to consider the information and provide a response.

Procedures for Expedited Settlement

The EPA is willing to resolve the above violations by settling this matter for \$[AMOUNT]. To take advantage of this offer, the following actions should be completed within 30 days of receipt of this letter:

- (1) All outstanding violation(s) must be corrected. Respondent should provide a certified statement under penalty of perjury and signed by a person authorized to sign on behalf of Respondent that provides a detailed explanation for how compliance was achieved. It should include all relevant dates and locations, a description of the actions that were taken, the quantity of product brought into compliance, and any other information (e.g., product images) showing that compliance with FIFRA was achieved. The location should include the mailing address and the EPA establishment number for the facility where corrective action took place. The statement may also include steps taken to prevent future violations.
- (2) The enclosed ESA must be signed and returned to the EPA. Signing the ESA is certification that: (a) all information concerning correction of the violations are true, accurate, and complete; (b) all corrective actions have been completed; and (c) the civil penalty of \$[AMOUNT] will be paid within 30-calendar days of the date the ESA is filed with the Regional Hearing Clerk (or Environmental Appeals Board for cases originating out of the EPA headquarters). Once you sign the ESA and return it to the EPA, the EPA will file the ESA with the Regional Hearing Clerk. Once it is filed, you will receive a copy of the filed ESA. Signing the Agreement will also waive any opportunity for a hearing or appeal under 40 C.F.R. Part 22 concerning the violations.
- (3) Payment is submitted. Payment must be submitted according to the instructions in the Agreement within 30 calendar days of receiving the filed ESA from the Regional Hearing Clerk (or Clerk of the Board for cases originating from the EPA Headquarters). A copy of the fully executed Agreement will be sent via [EMAIL] once it has been filed with the Regional Hearing Clerk (or the Environmental Appeals Board). Please do not send payment for the penalty before receiving a copy of the fully executed ESA, which will include the docket number that is required to submit payment.

The EPA may, at its discretion, grant an extension for corrective action in limited circumstances upon submission of a written extension request detailing why achieving compliance within 30 calendar days of receipt of this letter is infeasible or impracticable. Extension requests should be made no later than **ten calendar days** before the end of the 30-day compliance deadline. The compliance deadline is 30 calendar days after receipt of this letter. The request should also state whether Respondent intends accept the offered ESA. Once the EPA receives a response from the Respondent, the EPA will provide a written response regarding the extension request.

If you do not follow the procedures outlined in this letter for expedited settlement, then this offer will be automatically withdrawn without prejudice to the EPA's ability to file any other enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

For questions concerning this correspondence, please contact **[EPA CONTACT]** via phone at **[INSERT]**, or via email at **[INSERT]**.

ATTACHMENT D: MODEL OFFER LETTER
(Import Violations)

[MONTH DAY, YEAR]

**SENT VIA ELECTRONIC MAIL
READ RECEIPT REQUESTED**

Contact Name, Title
Respondent Name
Respondent Address

RE: NOTICE OF EXPEDITED SETTLEMENT OPPORTUNITY
pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act
Docket No. FIFRA-[XX-202X-XXXX]

Dear Facility Contact:

The U.S. Environmental Protection Agency's (EPA) review of information submitted by **[RESPONDENT]** (Respondent) via the U.S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) shows that Respondent committed one or more violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or "the Act"), 7 U.S.C. §§ 136-136y.

By this letter, the EPA is providing an opportunity to resolve these violations by entering into an Expedited Settlement Agreement (ESA), which allows for quick resolution of this matter once compliance is achieved and a substantially reduced penalty is paid. Without the benefit of an ESA, the EPA may assess civil penalties of up to \$24,255¹ per violation pursuant to Section 14 of FIFRA. 7 U.S.C. § 136f.

The importation of pesticides and pesticide devices is subject to FIFRA Section 17(c), 7 U.S.C. § 136o(c), and its implementing regulations at 19 C.F.R. §§ 12.110-12.117. The EPA's review of Respondent's import activities indicate that the following violations occurred:

1. [Failure to File Reports Required by FIFRA]

Pursuant to Section 17(c)(1) of FIFRA, and implementing regulations at 19 C.F.R. § 12.112(a), an importer or their authorized agent seeking to import a pesticide or device must submit a Notice of Arrival of Pesticides and Devices EPA Form 3540-1 ("NOA") or its

¹ This amount is adjusted for inflation annually in 40 C.F.R. § 19.4.

electronic alternative (“eNOA”) prior to the arrival of the shipment into the United States. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), makes it unlawful for anyone who is a registrant, wholesaler, dealer, retailer, or distributor to fail to file reports required by the Act.

In this matter, Respondent failed to submit an NOA or eNOA prior to the arrival of the following pesticide products or devices, in violation of Section 12(a)(2)(N) of FIFRA.

eNOA Entry Date/ Anticipated Entry Date on Paper NOA	Entry Number [CBP-sensitive]

2. **[Sale or Distribution of Unregistered Pesticides]**

Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A), make it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under the Act. FIFRA defines the term “pesticide” in part as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u). **[INSERT BRIEF DESCRIPTION OF VIOLATION]**

The definition of “to distribute or sell” in 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3 includes import activities. Respondent imported the following unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA.

eNOA Entry Date/ Anticipated Entry Date on Paper NOA	Entry Number [CBP-sensitive]

3. **[Sale or Distribution of Misbranded Pesticides]**

Section 12(a)(1)(E) of FIFRA provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide that is misbranded. 7 U.S.C. § 136j(a)(1)(E). A pesticide may be misbranded if **[INSERT CASE SPECIFIC MISBRANDING]**. 7 U.S.C. § 136(q) (1/2) (A/B/C/D/E). The definitions of “to distribute or sell” in 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3 include import activities.

Respondent imported pesticides misbranded under the above provisions in violation of FIFRA Section 12(a)(1)(E).

eNOA Entry Date/ Anticipated Entry Date on Paper NOA	Entry Number [CBP-sensitive]

4. [Sale or distribution of Misbranded Devices]

Section 12(a)(1)(F) of FIFRA provides that it is unlawful for any person in any State to distribute or sell to any person any device that is misbranded. 7 U.S.C. § 136j(a)(1)(F). FIFRA defines the term “device” to mean any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals). 7 U.S.C. § 136(h); see also 40 C.F.R. § 152.500(a). A device may be “misbranded” if, [INSERT (e.g., its label does not bear the establishment number of the final establishment at which the product was produced. 7 U.S.C. § 136(q)(1)(E); 40 C.F.R. §§ 156.10(a)(1)(v), (f).)]

eNOA Entry Date/ Anticipated Entry Date on Paper NOA	Entry Number [CBP-sensitive]

If you dispute these violations, please provide a written explanation, along with any documentation to [EPA contact] at [email] within 30 calendar days of receipt of this letter. Please provide the written explanation soon as possible to ensure EPA has enough time to consider the information and provide a response.

Procedures for Expedited Settlement

The EPA is willing to resolve the above violations by resolving this matter for \$[Amount]. To take advantage of this offer, the following actions should be completed within 30 days of receipt of this letter:

- (1) All outstanding violation(s) must be corrected. Respondent should provide a certified statement, under penalty of perjury, by a person authorized to sign on behalf of Respondent with a detailed explanation for how compliance was achieved. It should include all relevant dates and locations, a description of the actions that were taken, the quantity of product brought into compliance, and any other information (e.g., product images) showing that compliance with FIFRA was achieved. The location should include the mailing address and the EPA establishment number for the facility where corrective action took place. The statement may also include steps taken to prevent future violations.
- (2) The enclosed ESA must be signed and returned to the EPA. Signing the ESA is

certification that: (a) all information concerning correction of the violations is true, accurate, and complete; (b) all corrective actions have been completed; and (c) the civil penalty of \$[Amount] will be paid within thirty 30-calendar days of the date the ESA is filed with the Regional Hearing Clerk (or Environmental Appeals Board for cases originating from the EPA Headquarters). Signing the Agreement will also waive any opportunity for a hearing or appeal under 40 C.F.R. Part 22 concerning the violations.

- (3) Payment is submitted. Payment must be submitted according to the instructions in the Agreement within 30 calendar days of receiving the filed ESA from the Regional Hearing Clerk (or Clerk of the Board for cases originating from the EPA Headquarters). A copy of the fully executed Agreement will be sent via [email] once it has been filed with the Regional Hearing Clerk (or the Environmental Appeals Board). Please do not send payment for the penalty before receiving a copy of the fully executed ESA, which will include the docket number that is required to submit payment.

The EPA may, at its discretion, grant an extension for corrective action in limited circumstances upon submission of a written extension request detailing why achieving compliance within 30 calendar days of receipt of this letter is infeasible or impracticable. Extension requests should be made no later than ten calendar days before the end of the 30-day compliance deadline. The compliance deadline is 30 calendar days after receipt of this letter. The request should also state whether Respondent intends to take advantage of the offered ESA. The EPA will provide a written response either granting or denying the request.

If you do not follow the procedures outlined in this letter for expedited settlement, then this offer will be automatically withdrawn without prejudice to the EPA's ability to file any other enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

For questions concerning this correspondence, please contact [EPA contact] via phone at (insert) ###-####, or via email at [insert].

ATTACHMENT E: MODEL EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HQ/REGION [insert]
[Insert HQ/Regional Address]

_____)
In the Matter of:)
) Docket No. FIFRA-[XX-202X-XXXX]
[RESPONDENT],)
[City, State])
)
Respondent.)
_____)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Expedited Settlement Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Expedited Settlement Agreement, effective immediately.

So ordered.

[Insert Name]
[Environmental Appeals Judge
/Regional Judicial Officer]

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HQ/REGION [X]
[HQ/Regional Address]**

In the Matter of:)
)
) Docket No. FIFRA-[XX-202X-XX]
[RESPONDENT],)
[City, State])
)
RESPONDENT.)
_____)

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“Complainant”) alleges that **[Respondent Name]** (“Respondent”), located at **[Respondent address]**, **[insert brief statement of the alleged violation(s) (e.g. sold and distributed misbranded pesticides and devices)]** in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section **[insert citation]**.

2. **[Identify the specific FIFRA Unlawful act and/or requirements the Respondent allegedly violated and set out the factual basis to support the alleged ESA eligible violation(s)]**

3. The EPA is authorized to enter into this Expedited Settlement Agreement (“Agreement”) and Final Order (“Final Order”), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136/(a) and 40 C.F.R. § 22.13(b) and § 22.18(b).

4. The EPA and Respondent (collectively referred to as the “Parties”) agree to settle this matter for a civil penalty of \$[XXXX.XX*] ([write out amount]), to be paid within 30 days of the date the Agreement and Final Order is filed with the **[Regional Hearing Clerk or Environmental Appeals Board]** for the FIFRA violations identified herein.

5. Respondent shall pay the full civil penalty amount using any method, or combination of appropriate methods, as provided on the EPA website at <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

6. When making a payment, Respondent shall:

- a. Identify payment with Respondent’s name and the docket number of this Agreement and Final Order, Docket No. FIFRA-XX-202X-XXXX.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

[Insert Regional Hearing Clerk Contact or Clerk of the Board Information]

[Insert EPA Contact Information]

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Attn: Docket Number [XX-XX-XXXX]
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

* ESA penalty amounts must conform to those set forth in the Pilot Program Penalty Matrix found in [Attachment B](#). Penalties may not be further reduced for any reason.

- c. "Proof of payment" means, as applicable, a copy of the cashed check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.
8. Full payment of the penalty set forth in this Agreement and Final Order shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein.
9. No portion of the civil payment or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction of federal, state, or local income tax purposes.
10. **[OPTIONAL]** Respondent certifies under penalty of perjury that it has provided a detailed explanation for how compliance was achieved, including the date, location, and description of the action that was taken, the quantity of product brought into compliance, and any other demonstrative information (e.g., product images) showing that compliance was achieved. If the violation could not be corrected, the report does will include steps taken by Respondent to prevent recurrence of the violation.
11. By signing this Agreement and submitting payment for the above penalty amount, Respondent: (a) admits that Respondent is subject to the requirements in Paragraphs **[insert reference]** through **[insert reference]** above; (b) admits that the EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of the penalty set forth herein; and

(e) waives any right to contest the allegations contained herein and its right to appeal the proposed Final Order attached hereto.

12. Upon signing and returning this Agreement to the EPA, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

13. The Parties shall bear their own costs and fees, if any.

14. The Parties agree that settlement of this matter is in the public interest.

15. The Agreement authorized by the EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

16. This Agreement is binding on the Parties and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order.

17. The Parties consent to service of this Agreement and Final Order by email at the following valid email addresses **[insert ORC attorney's email address]** (for Complainant) and **[insert Respondent email address]** (for Respondent).

18. Unless an extension has been granted in writing by the EPA, if Respondent does not sign and return this Agreement with proof of payment of the penalty amount within 30 days of receipt of this Agreement, the Agreement is automatically withdrawn without prejudice to the EPA's ability to file an enforcement action for the above or any other violations.

19. If the Respondent chooses to not to enter into this Agreement and fully comply with its terms, the EPA may pursue more formal enforcement measures to correct the violation(s) and

seek penalties of up to \$[insert statutory maximum as adjusted for inflation] per violation pursuant to Section 14 of FIFRA, 7 U.S.C. § 136f.

WE HEREBY AGREE TO THIS:

FOR RESPONDENT:

Name (print)

Date: _____

Title

Signature

WE HEREBY AGREE TO THIS:

FOR COMPLAINANT:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[INSERT], Director
Waste and Chemical Enforcement Division
U.S. Environmental Protection Agency, Region [X]