

# CLIENT ALERT

March 1, 2019!

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## Deadline for Filing Annual Pesticide Production Reports

Facilities, foreign and domestic, that produce pesticides, devices or active ingredients (“pesticidal products”) must file with EPA their annual production reports for 2018 on or before March 1, 2019.

**The Pesticide Production Registration and Reporting Requirement:** Any facility that produces a pesticidal product – including registered and unregistered pesticide products and devices – must register with EPA. This requirement applies to any domestic establishment producing a pesticide or device for export abroad, as well as any foreign establishment producing a pesticide or device for export to the U.S. A facility must obtain an establishment number *before* producing a pesticidal product. The producer must then submit an initial production report no later than 30 days after the first registration of each establishment and annually thereafter. In addition to registering his or her establishment to produce pesticides, devices, or both, as appropriate, the producer also must be sure to keep all of the production records required by [40 C.F.R. § 169.2](#).

**The Annual Production Report:** Registered pesticide- and device-producing facilities must file an annual report on or before March 1, for the preceding year. A report must be filed even if the facility did not produce any product in the reporting year. Failure to file an annual report is a violation of FIFRA and can result in the termination of an establishment’s EPA registration and the assessment of civil monetary penalties.

***Practical Pointer:** Block 5 on EPA’s Notice of Arrival (NOA) form requires the importer to identify the establishment number of the facility that produced the imported pesticidal product or device. The EPA Regional Office reviewing an NOA may review the Agency’s records to confirm that the annual production reports of the foreign producing establishment are current. The Agency may not release the import shipment if the annual reports of the establishment that produced the imported pesticidal product are not current. This can delay EPA’s release of the shipment until the foreign establishment is current in its annual production reporting. For this reason, importers may want to require proof from foreign producers that they have timely filed annual production reports.*

**Production and Distribution:** FIFRA broadly defines “produce” to include not only the manufacture and formulation of a pesticidal product, but also packaging, repackaging, labeling, relabeling or otherwise changing the container of any pesticide or device. See [40 C.F.R. § 167.3](#). In addition to reporting the amount of a pesticide or device produced in the reporting year, the facility must report the amount sold or distributed in the reporting year, regardless of whether it was produced in the reporting year. Finally, the facility is required to estimate the amount that it will produce in the current year. Companies do not have to report the production of custom-blended pesticides, but a facility that custom blends *and* otherwise produces pesticidal products or devices must report those pesticides and devices that were “produced,” as broadly defined by EPA.

**Where to File:** Companies may file annual production reports electronically after registering with EPA’s Central Data Exchange. Otherwise, producers must file their annual reports in the EPA Region in which their production establishment is located, unless

the company's headquarters is not located in the same EPA Region where production occurs, in which case the annual report is filed in the EPA Region where the company's headquarters is located. Foreign establishments file their annual reports with EPA's Office of Enforcement and Compliance Assurance at the Agency's headquarters in Washington, D.C.

***Practical Pointer:** Pesticide and device producers should carefully complete their annual reports. State and federal inspectors will likely review a company's most recent annual production reports before inspecting a pesticide- or device-producing establishment. During an inspection, inspectors may compare the production and distribution information reported for a pesticide or device in annual production reports against the production and distribution records that a producer is required to maintain in accordance with 40 C.F.R. § 169.2.*

Helpful websites:

- [EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device -Producing Establishments](#)
- [Instructions for Completing EPA Form 3540-16](#)
- [Pesticide Establishment Registration and Reporting Contacts](#)
- [Pesticide Establishment Registration and Reporting](#)

Please mark your calendars for March 1, 2019, and call any of us if you have any questions or comments concerning production establishment registration, reporting, or recordkeeping.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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