



## Chemical Producers and Distributors Association

*1730 Rhode Island Avenue, N.W.  
Suite 812  
Washington, D.C. 20036  
202.386.7407  
FAX: 202.386.7409*

March 27, 2008

Office of Pesticide Programs  
OPP Regulatory Public Docket (7502P)  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-0001

Re: **Pesticide Registration (PR) Notice 2007-X**  
**Draft Guidance for Pesticide Registrants on Label Statements Regarding**  
**Third-Party Endorsements and Cause Marketing Claims**  
**Docket ID Number EPA-HQ-OPP-2007-1008**

Dear Madam or Sir:

The Chemical Producers & Distributors Association (CPDA) appreciates this opportunity to submit comments on the above-referenced draft PR Notice 2007-X governing third-party endorsements and cause-marketing claims appearing on federal pesticide labels. CPDA is the preeminent U.S. based trade association representing the interests of generic pesticide registrants, with a membership that includes manufacturers, formulators, and distributors of pesticide products. CPDA membership also includes manufacturers and suppliers of inert ingredients used to enhance the delivery and efficacy of pesticide products. For the reasons set-forth herein, CPDA opposes EPA's proposal as specified in the draft PR Notice 2007-X.

## Introduction

EPA recently deviated from the Agency's long-standing policy of strictly limiting the types of non-pesticidal claims permitted on pesticide labels by allowing a registrant to use the Red Cross logo and certain related label claims to market a registered pesticide product in the United States. By this decision and the draft PR Notice 2007-X, EPA appears poised to become enmeshed in the marketing efforts of registrants instead of focusing the Agency's label decisions on health and safety factors related to use of a pesticide. CPDA believes this regulatory approach is unwise and will unnecessarily complicate the registration process. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to make regulatory decisions about the safe use of pesticides. Approved pesticide labels represent an agreement between EPA and a registrant on the legally binding uses of a product, and the information required to mitigate hazards to humans and the environment. CPDA has limited its comments to cause marketing claims and third-party endorsements on pesticide labels, and lack of comments on other aspects of the PR Notice 2007-X should not be interpreted as CPDA's tacit agreement with EPA's proposed actions or procedures.

## Cause Marketing and Third-Party Endorsements on Pesticide Labels are Inconsistent with FIFRA Requirements and EPA's Implementing Guidance

EPA is legally obligated to prevent unacceptable risk to human health and the environment when the Agency approves a label under FIFRA,<sup>1</sup> and pesticide products must contain labels that set forth all claims for a product and directions for their use.<sup>2</sup> A pesticide label is the primary means of providing the public with the information needed to prevent unreasonable risks associated with use of a pesticide. For almost 40 years, EPA has dedicated significant resources to the development of guidance on compliance with FIFRA label requirements. The results of this ongoing effort have been compiled in the Label Review Manual, which among other information includes guidance on language, symbols, and graphics allowed on labels consistent with their safe use.<sup>3</sup> Consequently, registrants and the general public have come to rely on this document as EPA's definitive guide for preparing product-specific use and safety information in a fairly standard label format. However, EPA now proposes in PR Notice 2007-X to deviate from certain provisions of the Label Review Manual for no identified public benefit, a change that will unnecessarily complicate the pesticide registration process.

In approving the registrant's cause-marketing claims, EPA departed from its previous policy of limiting pesticide label language to the statutory requirements of product claims and use directions. Even though the Label Review Manual expressly identifies the Red Cross symbol as an "unacceptable" symbol of "safety or nontoxicity,"<sup>4</sup>

---

<sup>1</sup> FIFRA §3(c)(5)(C). EPA must determine that a pesticide "will perform its intended function without unreasonable adverse effects on the environment."

<sup>2</sup> FIFRA §3(c)(1)(C).

<sup>3</sup> EPA, *Label Review Manual*, Chapters 12 & 16.

<sup>4</sup> *id.* Chapter 16, p. 3. (updated December 5, 2007).

EPA nevertheless deviated from its long-standing guidance to approve this prohibited symbol. This decision could establish a precedent whereby the Agency would find itself inundated with requests for approval of any number of label changes proposing the addition of non-pesticide related symbols or marketing statements. CPDA believes that such a potential scenario would inappropriately divert limited Agency resources away from EPA's primary responsibility of assessing the health and safety impacts of these pesticide products. Moreover, this new label policy is neither expressly authorized by FIFRA nor consistent with the focus of FIFRA and EPA's long implementation record. Therefore, CPDA urges EPA to not move forward with PR Notice 2007-X.

### Non-Pesticidal Information on Pesticide Labels is Potentially Misleading

FIFRA prohibits the sale or distribution of any pesticide that is "misbranded," which is defined to include those that contain any "false or misleading statements" on their labels.<sup>5</sup> EPA intends to rely primarily on this "false or misleading" prohibition as the statutory legal standard to determine whether to allow cause marketing claims and third-party endorsements on pesticides. In practice, however, EPA would assess the likelihood of label language causing misuse of a product and the extent of adverse health effects resulting from that misuse, which is likely to require significant data from registrants. Thus, EPA presumably intends to use information intensive analysis on a case-by-case basis to assess whether proffered symbols and language are false or misleading. This is contrary to the Agency's previous interpretation that certain statements and symbols are potentially misleading because they are not related to a product's use and safety and may imply other uses, conditions, or characteristics.

EPA's decision-making in allowing the registrant's cause-marketing effort to proceed underscores the complexities of this new policy. EPA first denied the registrant's requested label amendment, but subsequently allowed the registrant to submit survey data that purported to show that consumers were not being misled by the presence of the Red Cross symbol on containers with respect to implied safety claims and purchase motives. Apparently, neither EPA nor any third-party validated the study protocol, conduct, or data to ensure their quality and suitability for this regulatory decision. The study involved only a limited number of respondents; all of whom were English-speaking females over the age of 18 who provided responses electronically. Thus, the key study information EPA used to determine that no implied safety claims or misleading information existed excluded all non-computer users, males, and those with limited English language skills. Moreover, EPA's action appears to contradict its own guidance, which states that false and misleading statements include ones "about the value of a product for purposes other than as a pesticide or device."<sup>6</sup> The cause marketing claims approved by EPA could entice purchasers to buy a registrant's brand of pesticide product based on their preference for donating to a particular cause rather than another. This

---

<sup>5</sup> FIFRA §12(a)(1)(E) & FIFRA §2(q)(1)(A).

<sup>6</sup> EPA, *Label Review Manual*, Chapter 12, p. 2 (November 2007).

consumer behavior has been well documented by market studies on consumer perceptions and choices.<sup>7</sup>

Therefore, it is reasonable to assume that most consumers could interpret symbols such as the Red Cross on a pesticide product as an implicit endorsement of the product, a claim about its safety, and an inducement to purchase the product.<sup>8</sup> Moreover, any statement in small typeface similar to that used on the registrant's product disclaiming endorsement is unlikely to dispel these inferences. EPA should not deviate from its previous practice of treating these symbols as misleading, and should abandon the Agency's effort to advance PR Notice 2007-X. Any information on a pesticide label that is not there to enhance a purchaser's or user's understanding of how to use the product properly for the specified approved uses, and to mitigate risks of using the pesticide, is potentially misleading.

### State Resistance and Enforcement

Seven states have already formally opposed EPA's new policy of allowing cause marketing claims and third-party endorsements on pesticide labels, and it is likely that others will quickly follow suit. These are not mandatory FIFRA requirements that states must adopt, and as the State of Minnesota has demonstrated, may simply ban products with cause marketing or endorsement labeling. Thus, EPA may expend significant time and resources to approve these labels, only to have states prohibit them. Moreover, EPA may have to deal with unnecessary and resource-wasting disputes related to non-compliance with the underlying cause-marketing and endorsement agreements. For instance, upon a breach of an underlying agreement for cause marketing or third-party endorsement, relevant label language and symbols would arguably become "false or misleading," thereby subjecting a registrant to civil penalties for distributing or selling these now "misbranded" products at any time after the breach. EPA should not be making unnecessary policy decisions that have these possible consequences.

### Conclusion

CPDA respectfully urges EPA to abandon the Agency's efforts to develop PR Notice 2007-X. The difficult regulatory task EPA has in balancing the need for pesticides with the risks from their use should not be disturbed by additional regulatory involvement in cause marketing claims and third-party endorsements.

---

<sup>7</sup> What's In a Nonprofit's Name? - Preliminary Multi-State [Attorneys General] Report on Commercial/Nonprofit Marketing, Part I.C.1.b, (April 1999).

<sup>8</sup> *id.* Part I.C.