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***Keeping an Eye on Washington***

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**EPA Submits Draft Pesticide Container Recycling Rule to USDA for Comment**

EPA has published a notice in the March 28, 2008 *Federal Register* announcing that it has submitted a draft of its proposed pesticide container recycling rule to the Secretary of Agriculture for review as required under Section 25(a) of FIFRA. As reported previously, EPA has decided to move forward with the development of a proposed rulemaking that would establish a mandatory duty on registrants to support container recycling. Agency personnel have signaled that they hope to publish a proposed rule for comment sometime in the fall of 2008.

Section 25(a) of FIFRA directs the EPA Administrator to provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days before signing it for publication in the *Federal Register*. FIFRA allows USDA 30 days to comment on the rule. If the Secretary of Agriculture comments in writing on the draft rule within 30 days of receiving it, the Administrator must include those comments as well as EPA's response to those comments when the proposal is published in the *Federal Register*. If the Secretary of Agriculture does not comment in writing within 30 days after receiving the draft rule, the EPA Administrator may sign the proposal for publication in the *Federal Register* anytime after the 30-day period.

**Update on Possible Revisions to EPA's Pesticide Container and Containment Rule**

It would appear that EPA has completed its final internal agency review of a proposed rule that would revise the Agency's pesticide container and containment regulation promulgated in August 2006. Industry representatives have been told that USDA has agreed to waive its review of the proposal. If the Office of Management and Budget (OMB) agrees to follow suit, final EPA sign-offs over the proposed rule could be completed within one to two months. The proposed rule would then be ready for publication in the *Federal Register* with a public comment period likely to be 30 days.

As reported previously, the August 2006 rule sets forth new labeling requirements for pesticide product containers. The proposed rule now under consideration is expected to make three minor corrections to the promulgated regulations that would: 1) extend the compliance date by which required label changes must be made to three years from the date EPA issued its guidance for implementing the August 2006 rule (the guidance document was issued on October 29, 2007 in the form of a PR Notice); 2) clarify that any product released for shipment prior to the current August 17, 2009 compliance date is considered existing stock that is not subject to the new labeling requirements (without this clarification, potentially thousands of products already in the distribution chain will have to be relabeled to come into compliance with the rule); and, 3) exempt certain pesticide products from the non-refillable labeling requirements. CPDA and allied pesticide trade associations have been working cooperatively in support of these suggested changes to the pesticide container and containment rule.

### **CPDA Submits Comments on EPA's Draft PR Notice on Cause-Marketing Claims and Third-Party Endorsements**

On March 27, 2008 CPDA submitted comments to EPA addressing the Agency's draft PR Notice 2007-X regarding third-party endorsements and cause-marketing claims appearing on federal pesticide labels. EPA recently allowed a registrant to use the Red Cross logo and certain related label claims to market a registered pesticide product in the United States. In its comments, CPDA voiced its opposition to PR Notice 2007-X maintaining that such a policy could entangle EPA in the marketing efforts of registrants and distract the Agency's focus from making label decisions on health and safety factors related to use of a pesticide.

In its comments, CPDA emphasized that the approach upon which PR Notice 2007-X is based is unwise and will unnecessarily complicate the registration process. CPDA explained that FIFRA directs EPA to make regulatory decisions about the safe use of pesticides and that approved pesticide labels represent an agreement between the Agency and a registrant on the legal use of a product as well as the information required to mitigate hazards to humans and the environment. "In approving the registrant's cause-marketing claims," CPDA stated, "EPA departed from its previous policy of limiting pesticide label language to the statutory requirements of product claims and use directions." CPDA added that even though the Label Review Manual expressly identifies the Red Cross symbol as an "unacceptable" symbol of "safety or non-toxicity," EPA nevertheless deviated from its long-standing guidance to approve this prohibited symbol. "This decision," CPDA asserted, "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."

In other concerns, CPDA maintained that non-pesticidal information on pesticide labels is potentially misleading. CPDA explained that 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 one particular cause over another and that such consumer behavior has been well documented by market research. As such, 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. "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 risk of using the pesticide," CPDA stressed, "is potentially misleading."

CPDA also pointed out that seven states have already expressed formal opposition to EPA's new policy of allowing cause-marketing claims and third-party endorsements on pesticide labels and that other states will likely follow suit. "These are not mandatory FIFRA requirements that states must adopt," CPDA stated. "Moreover, EPA may have to deal with unnecessary and resource-wasting disputes related to non-compliance with the underlying cause-marketing and endorsement agreements."

### **EPA Announces Public Comment Period for New Information Collection Request Activity Focused on Improved Labeling of Consumer Use Pesticides**

EPA has published a notice in the April 2, 2008 *Federal Register* announcing that it plans to initiate a new voluntary information collection activity for consumer research to test the response of the general public to various versions of pesticide labels. The Agency states that the purpose of such consumer research is to identify the consumer's understanding of the information on a pesticide product label. As required under the Paperwork Reduction Act, EPA has proposed a new Information Collection Request (ICR) for this activity titled "Use of Consumer Research in Developing Improved Labeling for Insect Repellants" (EPA ICR No. 2297.01 and OMB Control No. 2070-new). The Agency is accepting public comment on this document through June 2, 2008. Comments may be submitted to EPA electronically at the federal government eRulemaking portal ([www.regulations.gov](http://www.regulations.gov)) and should be identified by docket number EPA-HQ-OPP-2008-0156. Following the close of the public comment period, EPA will amend the ICR as appropriate and then submit the document to OMB for review.

As detailed in a supporting statement for the ICR that accompanied the April 2<sup>nd</sup> *Federal Register* announcement, EPA plans to gather information about consumer behavior, consumer comprehension of the information on the pesticide product label, and the manner in which a consumer uses this information to make product purchasing decisions. The Agency proposes to conduct two to six surveys of the general public over the next three years via telephone, mail, shopping center intercept, web-based surveys, and face-to-face focus groups and interviews. EPA indicates that the collected information will provide support for possible revisions of pesticide product labels.

In explaining its rationale in support of the new ICR, EPA states that pesticide product labeling requirements were developed primarily for agricultural use products.

The Agency points out that over time the market for FIFRA regulated consumer products has grown. “Today,” EPA states, “there is concern that the current label requirements do not adequately address the distinction between the needs of consumers and the needs of agricultural sector users. The Agency’s labeling regulations need to be updated to more adequately address consumer needs.”

In particular, EPA intends to focus on the usefulness and understandability of insect repellent product labels. The Agency explains that efficacy for agricultural pesticide products can be readily observed simply by visual inspection of the crop that is treated with the chemical. In addition, there are reliable, readily available sources of information on efficacy, products, and expertise such as that provided by the USDA Agriculture Extension Service, State Departments of Agriculture, and academia. Agricultural producers routinely consult with these organizations for questions on comparing two agricultural pesticides and the most appropriate pesticide for their use. In contrast, EPA finds that there is no comparable source of information regarding efficacy information for public health pesticides such as insect repellents. EPA states, “Generally, the information that is most available to the public on efficacy of insect repellents is anecdotal information in popular magazines. While studies of comparative efficacy are available in journals such as the New England Journal of Medicine, most members of the public do not read such journals. EPA believes that efficacy information should be available on the label at the time of purchase.”

### **SFIREG Working Committee Meeting Includes Update on Web-based Labeling**

The SFIREG Pesticide Operations Management Working Committee met at EPA’s offices in Arlington, Virginia, on April 7-8, 2008. EPA’s Bill Jordan provided the group an update on the Agency’s web-based labeling initiative that centers on the electronic distribution of labeling to users via the Internet or toll-free telephone numbers. Based upon the feedback received by the Agency thus far, EPA plans to limit its web-based labeling initiative to agricultural and professional use pesticides and to exclude consumer use products. Jordan reported that there is interest in conducting a pilot on this initiative possibly in 2009. He added that in its first year, the pilot would likely be initiated on a small scale and then expanded in subsequent years 2010 and 2011. Jordan stated that EPA has formed a work group that is considering how web-based labeling can be moved forward effectively. He noted that EPA has conducted a series of web-based labeling outreach sessions with a diverse constituency that includes industry trade associations, user groups, environmental interests, USDA, and the states. As a result of these meetings, EPA has compiled a list of questions for discussion as follows:

- Should a pesticide user be mandated to maintain a copy of the label in his/her possession at the time of pesticide application or should he/she only be required to comply with its requirements?
- Is it sufficient for a pesticide user to save an electronic copy of the label on his/her computer or should the individual be required to possess an actual paper copy of the label?

- What information needs to be on the pesticide container to make the downloaded label enforceable?
- Should labels that are downloaded off a web site or obtained through a toll-free number have a discrete life span?
- Should the web site host be EPA, NPIRS, or pesticide companies that hold the registration?

In commenting on some of these issues, Bill Jordan expressed his belief that it makes sense for the user to possess a paper copy of the label at the time of application given that web-based labeling signifies a cultural change whereby the user must go to a source other than the product itself to obtain the label. One of the state representatives of the SFIREG group remarked that having a paper copy of the label at the application site is useful if a site inspection is conducted or if the applicator has questions about the use of the product. In addition, the availability of a copy of the label on site is useful should an emergency arise that requires the dispatch of first responders. However, the state representative added that first responders would likely be looking at the MSDS for the product rather than the pesticide label.

With regard to questions surrounding whether the downloaded label should have a distinct expiration date, one member of the SFIREG working committee suggested that the label life-span should be synchronized with the time period at the state level for reviewing pesticide labels (i.e., many states review pesticide labels on a two year cycle). EPA's Bill Jordan noted that the expiration date of the downloaded label should not affect the validity of the pesticide registration. Some members of the registrant community have called for a 12-month minimum life-span for the label explaining that some companies offer users an incentive or discount for the early purchase of product sometimes as much as six months prior to the time the pesticide will actually be applied.

One member of the SFIREG group advocated for an expiration date for the label to become effective 24 months after it is downloaded. He explained that a 12-month expiration date might not be adequate to cover certain parts of the country where the growing season extends beyond a 12-month calendar year.

Other discussion turned to whether the contents of the URL site accessed by users should be limited to the PDF version of the label or whether the web site should include other pertinent information related to drift reduction, container disposal, and conservation buffers. One SFIREG participant commented that the type of information posted at the URL address will make a difference in deciding what entity should host the web site.

In related developments, EPA signaled that as part of its overall e-labeling initiative, the Agency intends to conduct a high level IT requirements analysis this summer. As part of this effort, Agency personnel will scrutinize the structure of the label in an effort to identify what is needed in the internal design of EPA's IT systems to best accommodate and facilitate the submission of electronic labeling.

## **SFIREG Group Discusses FIFRA Section 25(b) Issues**

EPA personnel at the recent SFIREG Pesticide Operations Management Working Committee meeting provided an update on minimal risk FIFRA Section 25(b) inert ingredients, also known as List 4A inert ingredients. These substances are approved for use in minimal risk pesticide products under FIFRA Section 25(b) which are pesticides deemed to be exempt from the requirement for a registration as long as they meet all of the criteria described in 40 CFR 152.25 (f).

In 1987, EPA announced a comprehensive policy to “reduce the potential for adverse effects from the use of pesticide products containing toxic inert ingredients (52 FR 13305, April 22, 1987). The 1987 policy categorized inert ingredients into four categories of lists including: List 1 (considered to be of “toxicological concern”); List 2 (classified as potentially toxic with a high priority for testing); List 3 (chemicals of unknown toxicity); and, List 4 (chemicals of minimal concern). In 1989, List 4 was further divided into List 4A (minimal risk inerts), and List 4B (inerts for which EPA had sufficient information to conclude that their current use patterns in pesticide products would not adversely affect public health and the environment).

Now that the reassessment of food tolerances and tolerance exemptions under FQPA is complete, there are no longer food use inerts classified as List 1, 2, or 3. All approved food use inert ingredient tolerances and tolerance exemptions are listed in the CFR. However, the 4A category is still being used for the purposes of FIFRA Section 25(b).

EPA personnel at the recent SFIREG working committee meeting reported that the Agency continues its efforts to eliminate the 4A list of inerts and to incorporate these substances into CFR 180.950 which identifies tolerance exemptions for minimal risk active and inert ingredients. Several members of the SFIREG group noted that some substances that are categorized as List 4A inerts actually possess active ingredient properties in certain situations. One example given was that of acetic acid which, when used with a herbicide, exhibits active ingredient behaviors. Another example mentioned at the meeting was Vitamin E, used by some individuals as a mosquito repellent. When used in this manner, Vitamin E does not behave as an inert ingredient but rather acts as an active ingredient.

Several members of the SFIREG group expressed concern that some of the products on the marketplace that have claimed the FIFRA Section 25(b) minimum risk exemption are, in reality, unregistered pesticides. States regulators add that due to resource limitations, Section 25(b) enforcement cases receive a lower priority in lieu of more egregious violations of FIFRA. Some of the SFIREG members commented that it takes them longer to review a Section 25(b) label than it does a FIFRA Section 3 label to ensure that the product in question does, indeed, meet the minimum risk exemption criteria.

## **EPA Posts Two PRIA Implementation Updates on its Web Site**

EPA has made available on its web site the 21-day initial content review worksheet that OPP employees will use to screen PRIA applications for completeness. Under PRIA II, EPA has 21 days after it receives an application for registration and accompanying fee to conduct an initial screen of the application's contents for completeness and for the applicant to make any necessary corrections. If EPA determines that the application does not pass the initial screening and cannot be corrected within the 21-day period that begins on the date of receipt of the submission, the Agency will reject the application not later than ten days after making a determination of deficiency. While the worksheet was developed for EPA's internal use, the Agency is making the document publicly available as another aid for applicants to use in assembling their pesticide registration applications. The worksheet may be accessed on EPA's web site at [http://www.epa.gov/pesticides/fees/questions/pria21day\\_wrksht.pdf](http://www.epa.gov/pesticides/fees/questions/pria21day_wrksht.pdf).

In other updates appearing on EPA's web site, the Agency has posted guidance on how to request a PRIA fee exemption for certain registration applications associated with IR-4 tolerance petitions. On March 6, 2008, the President signed into law legislation that makes a technical correction to PRIA II to exempt IR-4 submissions from registration service fees. The measure is retroactive to October 1, 2007. The technical correction clarifies that IR-4 applications are entirely exempt from registration service fees if the Agency determines that the exemption is in the public interest. EPA's guidance on IR-4 submissions under PRIA II may be accessed at [http://www.epa.gov/pesticides/fees/questions/guidance\\_ir-4.htm](http://www.epa.gov/pesticides/fees/questions/guidance_ir-4.htm).

## **EPA to Announce Monthly Commencement of Regulatory Rulemaking**

This week EPA announced that it is making federal environmental regulation "more transparent" by providing on-line information as soon as the Agency begins the development of a new rule. EPA states that it is using "Action Initiation Lists" to notify the public about new rules and other regulatory actions. These documents will be posted on the EPA web site at the end of each month and will describe regulatory actions approved for commencement during the given month. Previously, the public had to wait for EPA's Semiannual Regulatory Agenda, which is updated every six months, to learn about new regulatory actions. The Action Initiation Lists will provide summaries, Agency contacts, and other information about the rules EPA has approved for development. The Action Initiation Lists may be viewed on EPA's web site at <http://www.epa.gov/lawsregs/search/ail.html>.

## **Farm Bill Update**

Conferees are meeting today in an effort to reconcile the differences between the House and Senate passed versions of the Farm Bill. The Farm Bill conference committee is likely to continue its deliberations into next week. While the first formal meeting of the conference committee took place on April 10, 2008, House and Senate Agriculture

Committee staff have been working since early January on many of the differences contained in the two bills. In related developments, on April 16, 2008 the House of Representatives passed H.R. 5813, a bill to extend farm programs until April 25, 2008, in order to give conferees time to resolve remaining issues. On April 17, 2008, the Senate passed the measure under a unanimous consent agreement. Last month, President Bush signed into law a measure that extended the authorities provided under the current Farm Security and Rural Investment Act of 2002 through April 18, 2008.

As reported previously, legislation strongly supported by CPDA titled the Agricultural Business Security Tax Credit Act was included as part of the Senate passed version of the Farm Bill. Originally introduced as S. 551 by Senators Pat Roberts (R-KS), Ben Nelson (D-NE), and Johnny Isakson (R-GA), the Agricultural Business Security Tax Credit Act would help eligible agricultural businesses to partially offset security costs by providing a tax credit of up to \$100,000 per site for security measures designed to increase protection of agricultural pesticides and fertilizers that are manufactured, distributed, or stored on site.

This provision is but one of many tax provisions included in the Senate passed version of the Farm Bill. House conferees are pushing for the elimination of certain tax provisions contained in the Senate bill. At this time, it is unclear whether the Agricultural Security Tax Credit Act is among these. CPDA will continue to monitor the conference committee proceedings and will keep its membership informed of further developments as they occur.

### **DHS Sends Out First Round of Post Top-Screen “Tiering” Letters**

The Department of Homeland Security (DHS) has notified 22 facilities that completed the Top-Screen risk assessment questionnaire that they have received a preliminary classification as high-risk or Tier 1. Facilities receiving this DHS classification have 60 days to complete and submit a Security Vulnerability Assessment to DHS. Additional preliminary tiering letters from DHS are expected to be mailed later this month to other chemical facilities that completed the Top-Screen. CPDA reminds its member companies that if they come into possession of any chemical of concern at the listed threshold quantity as identified in the final Appendix A, facility operators must complete the Top-Screen. Should you have any questions, please contact the offices of CPDA.