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*Keeping an Eye on Washington*

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**EPA Proposes Revisions to Pesticide Container and Containment Rule**

On June 11, 2008, EPA published in the *Federal Register* a proposed rule to amend the pesticide container and containment regulations promulgated on August 16, 2006. The Agency has announced a 30-day public comment period on its proposal ending on July 11, 2008. Thereafter, EPA hopes to move forward with a final rule in October 2008. However, until such time as the proposed amendments are finalized, the requirements of the current version of the August 2006 rule remain in effect.

EPA is proposing to amend the container and containment regulations to: 1) provide for a one-year extension of the labeling compliance date from August 17, 2009 to August 17, 2010; 2) change the phrase “sold or distributed” to “released for shipment” as associated with all of the compliance dates; 3) provide for exceptions to the language requirements for some specific non-refillable packages; 4) allow for waivers of certain label requirements for other refillable and non-refillable containers on a case by case basis; and, 5) correct typographical and other minor errors appearing in the original rule. In addition, EPA is proposing to establish a new definition of “released for shipment” as follows:

*“A product is released for shipment when the producer has packaged and labeled it in the manner in which it will be shipped, or has stored it in an area where finished products are ordinarily held for shipment. An individual product is only released for shipment once, except where subsequent events constitute production (e.g., relabeling, repackaging).”*

The proposed changes respond to concerns articulated by CPDA and allied industry stakeholders that the delay in EPA’s release of guidance on how to effect the required labeling revisions made it difficult to meet the August 2009 compliance date set forth in the final pesticide container and containment rule. Specifically, a number of registrants have refrained from making the required label changes pending the issuance of EPA guidance on whether these changes could be made through the more expedient notification process rather than the more complex and time-consuming amendment

process. The Agency did not issue its guidance in the form of PR Notice 2007-4 until November 7, 2007, some 15 months after the final container and containment rule was promulgated. As such, although the final rule envisioned a full three year period for registrants to implement the label changes, in actuality, companies have had a significantly shorter period of time.

EPA's proposed rule also responds to a request made by CPDA and its allied partners for a clarification of the phrase "distributed or sold by a registrant" as it appears in the final regulations. Specifically, industry representatives sought a correction to the final rule clarifying that any product "released for shipment" prior to the effective date is not subject to the new container labeling requirements and that only product released for shipment after the effective date is required to bear the revised labeling. Industry's request was prompted by concerns within the registrant community that product bearing the old labeling that was shipped to retail and/or distribution facilities on consignment in the spring of 2009 could be returned to the registrant after the August 17, 2009 compliance date if it did not sell (until final sale, product under consignment is technically owned by the registrant). Subsequent sale or distribution of the returned products would not be in compliance with the container and containment regulations unless the product was relabeled. In discussions with EPA, CPDA and other industry representatives emphasized that in the absence of a clarification that products released for shipment prior to the effective date would not be subject to the new labeling requirements, potentially thousands of products already in the distribution chain will have to be relabeled to come into compliance with the rule. Industry representatives emphasized that the relabeling of product that has already left the registrant's production facility would be an expensive, lengthy, and resource intensive task that would require EPA to consult with registrants, retailers, and distributors on how such an activity could best be accomplished. Moreover, in its proposed rule EPA points out that many of these products might require repackaging that could result in unintentional exposures to the pesticide. In its proposal, EPA expresses its concern that "registrants would be more likely to dispose of returned product bearing old labeling rather than relabel or repackage the product." EPA continues, "While the Agency believes that the label language required by the container and containment regulations is important, the expected decrease in risk from improving handling practices for the relatively small number of returned containers is likely not significant enough to justify the cost of expensive relabeling, repackaging or disposal of product bearing old labels, and the potential exposure from repackaging or disposal of product." The Agency states that under its proposed definition of the phrase "released for shipment," any product returned at the end of a use season could be redistributed or sold and would remain in compliance with the container and containment regulations.

In its other provisions, the proposed rule addresses industry's concerns regarding the scope of products subject to the new labeling requirements. As such, EPA is proposing to exempt certain inherently or obviously non-refillable packaging types from the container labeling statement requirements. The Agency provides examples such as aerosol spray cans, bait stations, and foil pouches for water soluble packets. The Agency states that while the required labeling language under the final container and containment

rule will provide extra precautions for containers that physically could be reused or refilled, registrants point out that these additional precautions are not necessary for containers that are inherently non-refillable. Existing labeling for these products generally includes a phrase such as “Do not reuse this container” which would not be subject to change under the requirements of the final container and containment regulations. Finally, the proposed rule would allow for waivers of certain label requirements on a case-by-case basis.

As mentioned above, comments on the proposed rule are due by July 11, 2008 and may be submitted electronically at [www.regulations.gov](http://www.regulations.gov). Comments should be identified by docket identification number EPA-HQ-OPP-2005-0327.

### **Posts of Interest on OPP Labeling Committee Web Site**

The OPP Labeling Committee web site has several new posts that may be of interest to the registrant community. The first is in response to a question with regard to the Agency’s position on “stickering over” an incorrectly printed EPA Registration Number. The OPP Labeling Committee web site states that “stickering over an incorrect EPA Registration Number is permitted provided the stickering over is carried out in a registered establishment and is reported as relabeling in the establishment’s end-of-year report.” Registrants are directed to 40 CFR Part 167 for more information on registered establishments and associated reporting requirements.

In another item of interest, the OPP Labeling Committee web site includes a new post advising that registrants may delete non-required advisory statements by notification but that, pursuant to PR Notice 98-10, advisory statements required by EPA such as a ground water advisory, may not be deleted by notification but instead may only be deleted by amendment. The EPA web site explains, “PR Notice 2000-5 states that label advisory statements can only be added or changed by amendment, but does not specifically mention deletion of advisory statements. An earlier PR Notice, 95-2, states that adding, revising or deleting advisory statements may be accomplished by notification. However, a later PR Notice, 98-10, modified PRN 95-2 by stating that any advisory statements required by EPA may not be deleted by notification...the latest PR Notice, 2000-5, is silent on the issue and therefore we conclude that the earlier PR Notices 95-2 and 98-10 are both still applicable.”

### **Chemical Facility Security Legislative Update**

CPDA and its allied industry partners recently participated in a series of Congressional office visits to members of the House Energy and Commerce Committee at which time coalition members presented a letter to the majority and minority leadership expressing concerns over H.R. 5577, the Chemical Facility Anti-Terrorism Security Act, introduced earlier this year by Representative Bennie Thompson (D-MS). Joining CPDA in this effort were representatives from CropLife America, the American Farm Bureau Federation, The Fertilizer Institute, the National Agricultural Aviation Association, the Agricultural Retailers Association, and the National Council of Farmer

Cooperatives. The visits were orchestrated in response to a June 12, 2008 hearing held by the Subcommittee on Environment and Hazardous Materials that focused on security at chemical plants and water treatment facilities. In its letter to Committee members, the industry coalition emphasized that H.R. 5577 would cause disruptions to the current partnership that exists between DHS and the private sector and that it would increase regulatory burdens on U.S. agriculture at a time of high fuel, transportation and crop input costs. The industry coalition urged members of the Committee to consider H.R. 5533, introduced by Representative Al Wynn (D-MD), as an alternative to the potentially damaging legislation introduced by Representative Thompson. As reported previously, H.R. 5533 is a streamlined measure that would codify and make permanent the Chemical Facility Anti-Terrorism Standards (CFATS) that in the absence of Congressional action will sunset on October 1, 2009.

The coalition letter outlined a number of concerns with the Thompson bill including its provisions mandating the use of Inherently Safer Technology (IST) at chemical facilities. The letter asserted that IST is not a security-based concept but rather is an engineering concept used to design worker safety protections at manufacturing facilities. The Coalition objected that the use of IST in H.R. 5577 was inappropriate and that the imposition of such a mandate could jeopardize the availability of lower-cost sources of plant nutrient products or certain agricultural pesticides used by farmers and ranchers.

The letter also elaborated on concerns over Section 2108 of H.R. 5577 which could erode existing protections afforded to certain types of chemical facility security data and potentially expose sensitive vulnerability information to the public. The Coalition warned, "Any breach in the confidentiality of industry security information could result in business owners withholding security details, increasing the terrorism risk."

The following is a summary of other chemical facility security concerns identified by the Agri-Business Security Coalition:

- Federal Preemption – H.R. 5577 could result in a patchwork of conflicting rules and regulations. The DHS CFATS regulations should pre-empt inconsistent state and local chemical security laws and rules by preempting state or local requirements only if there is an actual conflict between the two, or if the state/local program "frustrates the purpose" of the federal program.
- Third-Party Lawsuits – DHS should be the sole responsible agency for determining when and how to enforce federal chemical security regulations. State, localities or third party litigants should not have the ability to bring suit to enforce any of the DHS chemical security provisions.
- Red Team Exercises – Red team exercises are dangerous and inappropriate in the manufacturing environment. Exercises and drills should be conducted in conjunction with facility employees as well as local first responders. A lack of

advance planning and coordination with this type of exercise could jeopardize the safety of both the facility employees and DHS agents.

- Expansion beyond High-Risk Facilities – The current DHS CFATS regulations cover high-risk chemical facilities. H.R. 5577 appears to expand the regulations to cover all chemical facilities, including those in low risk categories such as most agricultural businesses and most farms and ranches. This expansion will needlessly divert DHS time, manpower and financial resources away from the primary objective of protecting high-risk facilities. Most agricultural businesses operate in rural communities and present a low security risk.

In related activities, CPDA joined with a broader coalition of chemical trade association interests as a signatory to another letter on chemical facility security sent to members of the House Energy and Commerce Committee. The letter cautioned that the provisions of H.R. 5577 would disrupt federal security standards in the short term and weaken infrastructure protection and economic stability in the long term. The industry coalition urged lawmakers to refrain from moving forward with any major revision of the existing CFATS regulatory regime now in place and to instead allow adequate time for its implementation and evaluation. The letter stated, “Rushing approval of this bill would significantly disrupt the recently implemented chemical security standards and create economic uncertainty in many communities.”

CPDA will continue to monitor further legislative developments in chemical facility security and will keep its members informed accordingly.

### **CSCC Members Address State and Local Government Access to CVI**

CPDA and other members of the Chemical Sector Coordinating Council (CSCC) convened by conference call to discuss the issue of state and local government access to Chemical-terrorism Vulnerability Information (CVI), a new category of protected chemical facility security information. CVI was adopted and designed to protect information about facility security operations that could be exploited by terrorists. Department of Homeland Security officials and state representatives have been engaged in discussions pertaining to the sharing of facility information submitted to DHS by sites that are regulated under the Chemical Facility Anti-Terrorism Standards (CFATS). Under the statutory language authorizing the establishment and implementation of CFATS, DHS may provide company specific information to state and local government entities for purposes of carrying out the intent of the statute. DHS has taken the position that it may share with the states a small portion of the CVI data set – most notably Top Screen and tiering data for high risk facilities regulated under CFATS. However, the states are pressing DHS to provide *all* sensitive chemical facility security information in its possession well beyond the Top Screen and tiering data for regulated high risk sites. Moreover, it would appear that the states are seeking to expand their access to sensitive site security information to unregulated facilities that do not fall into any of the CFATS risk tiers. CPDA and other members of the CSCC believe that information provided to state and local authorities by DHS should be limited to Top Screen and tiering data for

regulated high risk facilities. Should state or local authorities need information beyond this data set, a process could be devised whereby municipalities work with individual facilities on an individual or one-on-one basis. The CSCC continues to study this issue and will work with DHS representatives in an effort to reach an appropriate consensus.

### **CPDA Annual Meeting Features Informative Speakers Program**

CPDA is pleased to announce that the speakers program for its upcoming Annual Meeting, to be held July 20-22, 2008 at the Argonaut Hotel in San Francisco, California, will feature Dan Vradenburg, Executive Vice President of the Agribusiness Division of Wilbur-Ellis Company. Mr. Vradenburg will be the featured keynote speaker as he opens the general session with an overview of marketing and business trends in the agricultural chemicals industry with a focus on key issues of importance to distributors of crop protection products.

The CPDA Annual Meeting speakers program will also include Matthew Phillips of Phillips McDougall, an independent firm based in Edinburgh, Scotland that provides customer based analysis and consultancy services to the agrochemical industry. Mr. Phillips will discuss trends in the global crop protection markets and associated impacts on commodity prices. Mr. Phillips has been a frequent speaker at previous CPDA meetings where he has been widely praised for his expertise and knowledge of the global economies of the pesticide markets.

On the regulatory front, the CPDA Annual Meeting will feature Jim Gulliford, Assistant Administrator of EPA's Office of Prevention, Pesticides & Toxic Substances. Assistant Administrator Gulliford has agreed to provide the CPDA membership with an overview of the Agency's Chemical Assessment and Management Program (ChAMP). CPDA has asked Mr. Gulliford to discuss how ChAMP and the North American Security and Prosperity Partnership will ensure a consistent and integrated approach to chemicals assessment and management throughout North America.

CPDA is also pleased to announce that Anne Lindsay, Deputy Director of EPA's Office of Pesticide Programs, has agreed to speak at the 2008 Annual Meeting. Ms. Lindsay will focus her remarks on export tolerances for pesticides and issues surrounding Maximum Residue Limits (MRLs).

The CPDA Annual Meeting Speakers Program will also include an in-depth look at state pesticide regulatory issues taking shape in California. Mary-Ann Warmerdam, Director of the California Department of Pesticide Regulation, will discuss DPR priorities and initiatives that will have an impact on the pesticide registrant community that has a presence in Western agricultural markets.

Other issues to be featured on the program include a discussion of challenges facing the California farming community and the agricultural policy implications of issues surrounding water usage rights in the West. For further information on the Annual Meeting or to register, please visit [www.cpda.com](http://www.cpda.com).

## **CPDA PAC Annual Meeting Events and Fundraisers**

### **Sixth Annual Silent Auction**

In conjunction with the Annual Meeting, CPDA-PAC will be conducting its sixth annual Silent Auction during which meeting attendees will have the opportunity to bid on an array of items donated by our member company representatives. Last year's silent auction provided a tremendous boost to CPDA-PAC fundraising efforts and we are asking you to help us build upon this success. Last year's silent auction included a number of fun prizes that ranged from a week at the Jersey shore, beautiful jewelry, premier gourmet wines, electronic gadgets, Washington Nationals baseball tickets, and other items too numerous to list. This year's silent auction, we anticipate, will again offer a wide array of prizes that will go to the highest bidder.

**Please start thinking of something you would like to donate to the CPDA PAC Silent Auction. CPDA will be reaching out this week for donations to this vital fundraiser.** Items donated for bidding at the CPDA-PAC silent auction can range anywhere in value and do not necessarily need to be extravagant in nature. Be creative, electronics (e.g. iPods, DVD players), jewelry, and cases of wine are always popular.

CPDA-PAC hopes you will not only help in making the silent auction a success by donating items for bidding, but also by doing some bidding yourself at this fun-filled event!

### **CPDA-PAC Raffle**

CPDA-PAC is excited to announce that a prize drawing will be held during the CPDA Annual Meeting Banquet. This event will be in addition to the CPDA-PAC Silent Auction described above. The lucky winner of the drawing will win a \$1000 cash prize.

To enter the drawing, an individual simply buys a CPDA-PAC drawing ticket. Tickets cost \$20 each. Buy five tickets for \$100 and get one extra ticket free!!!

CPDA-PAC is also asking CPDA member company representatives to help us sell drawing tickets. Information on how you can help us sell tickets has been mailed to member company key representatives. Remember, the proceeds for the sale of the CPDA-PAC prize drawing tickets will help support the association's legislative agenda on Capitol Hill.

### **On-Site Limited Raffle for a Vacation Package to New York City**

In addition to the annual CPDA-PAC Raffle, we will be conducting an on-site only, limited ticket raffle (only 20 tickets available) in San Francisco on the evening of Monday, July 21<sup>st</sup> for an exciting vacation package to NYC valued at \$1200. The package includes:

2-nights at Edison Hotel in midtown Manhattan\*\*  
Reserved seats at a Broadway show (shows include The Lion  
King, Wicked, Mamma Mia and more!)  
Lunch at Tavern on the Green  
Dinner at Langan's  
Admission to Top of the Rock Observation Deck  
Ferry ticket to the Statue of Liberty  
Horse-drawn carriage ride through Central Park

\*\*Please note that black out dates DO apply. For more details please contact Tiffany  
Kildale at (202) 386-7407.\*\*