



## **Chemical Producers & Distributors Association**

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March 5, 2010

*VIA EPA Docket*

Veronique LaCapra  
Office of Pesticide Programs  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington DC 20460-0001

**Re: Comments on Draft PR Notice 2009-X titled “Draft Guidance for Pesticide Registrants on Pesticide Drift Labeling,” 74 Fed. Reg. 57166 (November 4, 2009, Docket No. EPA-HQ-OPP-2009-0628)**

Dear Ms. LaCapra:

The Chemical Producers & Distributors Association (“CPDA”) appreciates this opportunity to comment on the above-referenced document (“PR Notice”), and on the companion documents included in the docket titled “Pesticide Drift Labeling Interpretation” (“Labeling Interpretation”) and “Additional Information and Questions for Commenters” (“Questions for Commenters”).

CPDA is the primary advocate on federal legislative and regulatory issues for generic pesticide registrants, adjuvant and inert ingredient manufacturers, and product formulators and distributors. We represent over \$7 billion worth of pest control products used on food, feed, and fiber crops and in non-crop segments of the pesticide industry.

CPDA supports EPA's interest in improving management of spray drift to ensure pesticide uses do not result in "unreasonable adverse effects" on human health or the environment as required by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA")<sup>1</sup>, but generally opposes EPA's proposed approach because it is a *de facto* "no-drift" policy that presumes all offsite drift "could cause" adverse effects or "harm."<sup>2</sup> Such a policy fails to recognize that even when appropriate drift reduction technology and best drift management practices are used, *de minimis* levels of drift may occur that do not result in actual or potential adverse effects. Moreover, Congress designated the risk-benefit, science-based no "unreasonable adverse effect" safety standard for regulating pesticides under FIFRA, and not the vague "could cause an adverse effect" standard used in the PR Notice. The following comments address this overarching concern and related issues and provide responses to certain questions set forth in the Questions for Commenters document.

## 1. Proposed General Drift Statements

EPA proposes an unsupportable safety standard for a policy governing pesticide use under FIFRA, which unambiguously sets forth the following safety standard that EPA must meet when registering a pesticide for specific uses:

"[The pesticide]...will perform its intended function without unreasonable adverse effects on the environment... [and]...when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment."<sup>3</sup> (emphasis added).

EPA ignores this fundamental safety standard, which allows EPA to register a pesticide for specific uses only when it finds that those uses will not generally cause unreasonable adverse effects, "taking into account the economic, social, and environmental costs and benefits of the use of any pesticide,"<sup>4</sup> and instead establishes a new standard by prohibiting drift that "could cause an adverse effect."<sup>5</sup> (emphasis added). EPA has no FIFRA discretionary authority to simply ignore the fact that Congress established a reasonableness standard for regulating pesticides. Without this reasonableness qualification of actual or potential adverse effects from spray drift, the new safety standard becomes a *de facto* "no-drift" standard that is not supported by the FIFRA section 2(bb) definition of no "unreasonable adverse effects on the environment." Therefore, CPDA strongly opposes the Agency's efforts to improve management of spray

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<sup>1</sup> FIFRA §§ 2 *et seq.*; 7 U.S.C. §§ 136 *et seq.* (see §§ 2(bb) and (3)(c)(5)).

<sup>2</sup> For purposes of the PR Notice, EPA considers the term "harm" to be synonymous with the term "adverse effects" (Labeling Interpretation, p.7). However, the Agency's use of the term "harm" is also inconsistent with the FIFRA-mandated no unreasonable adverse effect safety standard and should not be used in the PR Notice. Moreover, use of two different terms (adverse effect and harm) in label mitigation statements is potentially confusing to the user and inconsistent with the goals of precision and clarity of label language.

<sup>3</sup> FIFRA §§ 3(c)(5)(C) and (D). (see also, FIFRA § 3(d)(1)(B) (classification of such pesticides for "general use" by the public).

<sup>4</sup> FIFRA § 2(bb).

<sup>5</sup> PR Notice, p. 5-6.

drift in this manner. It is inconsistent with mandated provisions of FIFRA and serves only to impose unjustified, unrealistic, and confusing drift mitigation requirements on users of pesticide products.

**2. EPA Question: Please Comment On The Portion Of The General Drift Statement Prohibiting Drift That “Could Cause” Adverse Effects.**

EPA proposes to use the following two forms of a general drift mitigation statement to manage offsite drift that may result in specified effects:

- a. For Commercial or Agricultural Applications - “Do not apply this product in a manner that results in spray [or dust] drift that could cause an adverse effect to people, or any other non-target organism or site.”<sup>6</sup>
- b. For Non-Commercial (“homeowner”) Applications - “Do not apply this product in a way that could contact people, or that results in spray [or dust] drift that could cause harm to people, pets, property, aquatic life, wildlife life, or wildlife habitat.”

Both statements expressly prohibit offsite drift that “could cause” the specified effects, which EPA interprets as drift that could cause adverse effects at the time of application and drift that could cause those effects anytime in the future. Moreover, EPA indicates that compliance with product-specific drift management label requirements, such as wind speed or droplet size drift mitigation requirements complements compliance with the general drift statements.<sup>7</sup> Therefore, applicators must comply with both the general drift prohibition and the product-specific drift management requirements on a label, and compliance with specific drift management requirements may not protect an applicator from enforcement actions based on non-compliance with the general drift statements. This new “no drift” standard would therefore supersede the science and risk-based drift mitigation measures developed by EPA and outlined on the label.

CPDA does not support EPA’s broad interpretation of the phrase “could cause” as including any and all adverse affects, including *de minimis* effects that do not meet the FIFRA risk-based no unreasonable adverse effects safety standard. EPA has long been aware of uncontrollable *de minimis* levels of drift occurring from most pesticide applications,<sup>8</sup> and yet the Agency is now, without any articulated justification, treating any degree of direct or indirect exposure from drift as a misuse of a pesticide subject to enforcement, regardless of the level of risk involved or the drift mitigation precautions taken. This proposed zero-drift policy is not consistent with the mandate of FIFRA to

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<sup>6</sup> This statement would be added to product labels that already contain mandatory worker protection statements prohibiting pesticide applications that contact workers or other persons directly or through drift.

<sup>7</sup> Labeling Interpretation, p.7.

<sup>8</sup> Draft PR Notice 2001-X, p. 4 (“EPA recognizes there will always exist controllable and uncontrollable factors which lead to drift...” and “EPA recognizes that some *de minimus* [sic] level of drift would occur from most or all applications as a result of the uses of pesticides.”).

balance the risks and benefits to society from each use of a pesticide. Moreover, Congress authorized EPA to implement a risk-based regulatory program under FIFRA, not one based solely on exposure to a pesticide. EPA's proposed general drift statement would impose a zero-drift obligation on applicators that is impossible to meet. It would also provide a basis for unwarranted private lawsuits and enforcement actions against farmers, commercial applicators and homeowners for any detectable drift, and lawsuits against states and/or EPA for not enforcing the zero-drift policy.

CPDA recommends that EPA abandon this effort to mitigate drift through these ambiguous and impractical general "no drift" label statements, and continue to focus instead on product-specific mitigation requirements like droplet size or other spray modifiers coupled with a general drift requirement to use verifiable best management efforts to reduce drift. In addition, the Agency should also strongly encourage applicators to use new drift reduction technologies, such as validated drift reduction nozzles and adjuvants as they become available. Unlike EPA's proposed approach, this approach is consistent with FIFRA's implicit sanctioning of *de minimis* drift in risk-benefit decisions EPA must make when approving pesticide uses, and not based on mere exposure to detectable drift residues that may occur despite use of drift control technologies and compliance with product-specific drift control requirements.

**3. EPA Question: *Are the timeframes outlined above adequate? Are there time considerations that EPA should take into account in determining when new labeling should be submitted, or when products bearing new labeling should be released for shipment?***

CPDA is concerned that EPA does not appreciate the magnitude of the time and cost involved in complying with label changes, particularly when compliance times for multiple new label requirements are involved. For instance, EPA proposes to require label changes by notification for adding general drift statements to registered products with no existing drift labeling within 6 months of the date of release of the PR Notice. This is an unrealistic time period to cover the range of circumstances registrants will face in making the label changes. For instance, the labels must be submitted to certain states for their approvals prior to preparing the commercial label. This can take several months, and if a notification is rejected, the registrant must initiate another approval cycle involving additional time. Therefore, CPDA recommends that EPA use at least a 9-month period, and preferably a 12-month month period, for notifications. Similarly, CPDA recommends using an 18-month period for label amendment applications that are not PRIA actions to account for the range of known and unknown circumstances that cause delays in completing these registration actions.

**4. PR Notice Appendix A**

Table Format. CPDA supports use of tables to organize and present drift reduction information on labels. This is an effective way to communicate product-specific drift mitigation statements and those related to drift reduction technologies. EPA indicates in

the Appendix to the PR Notice that it intends to use “stars” to represent the level of verified drift reduction achieved by a technology, with increasing number of stars correlated with increasing levels of drift reduction, when its new drift reduction technology (DRT) program is implemented.<sup>9</sup> However, CPDA cautions that star ratings may be suitable only for certain technologies. Other technologies, such as drift reducing adjuvants or combinations of spray nozzles and drift reducing adjuvants may require different methods of communicating the effectiveness of a drift reduction technology.

EPA should continue to encourage development of drift reduction technologies. Some CPDA members are currently developing an ASTM standard for testing the relative drift reduction capacities of adjuvants. Laboratory tests have demonstrated the ability of these chemicals to reduce drift and to work synergistically with nozzles to achieve significant drift reduction. CPDA looks forward to working with EPA to integrate these new technologies into the Agency’s developing drift reduction polices and DRT program.

CPDA recommends that EPA delay issuing the PR Notice until the DRT program is finalized and implemented. This would give the Agency an opportunity to ensure the PR Notice is consistent with the goals and benefits of the DRT program. Registrants have faced multiple labeling initiatives during the past few years, including those related to reregistration and the PRN 2007-4 container and containment requirements, and now they may soon face this PR Notice. These mandatory label changes obligate registrants to devote significant resources to meeting these changing requirements within compliance deadlines. Therefore, CPDA suggests that EPA allow a sufficient interval of time, preferably 6-12 months after the DRT program is finalized and implemented, before issuing the PR Notice.

*No-Spray Buffer Zones.* CPDA acknowledges that EPA lists “no-spray” buffer zones in Appendix A only for illustrative purposes, and that EPA recognizes that buffer zones will not be required for all products. However, CPDA is concerned that such zones may become default mitigation requirements in many instances and recommends that EPA require buffer zones only when there is no other reasonably available alternative. Indiscriminate use of no-spray buffer zones for multiple products can quickly and cumulatively result in a significant reduction in valuable production acreage. In conducting its product-specific risk assessments, EPA should first evaluate thoroughly the ability of general best drift management practices and product-specific mitigation options to reduce drift before requiring mandatory fixed buffer zones.

All spray drift restrictions should reflect the reality that time-sensitive agricultural production practices, such as pesticide spraying, take place during constantly changing weather conditions. Therefore, drift-labeling statements that include no-spray buffer zones should be flexible enough to allow applicators to apply pesticides based on existing local climate conditions, especially the wind direction at the time of application. For

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<sup>9</sup> PR Notice, p. 20. CPDA notes that EPA gives the highest star rating for achievement of up to 95% drift reduction, implicitly acknowledging that 5% of the spray will drift even when using the best drift reduction technology covered by this rating example.

instance, EPA could define default no-spray buffer zones as the scientifically determined minimum upwind areas needed to protect specified adjacent downwind “sensitive” areas. If the stable wind direction on the day of application is away from the area needing protection, then spray applications should be allowed in all areas downwind of the protected area on that day. Thus, mandatory buffer zones would be used as needed to protect sensitive areas on the day of application, but would not be required when local weather conditions allow direct spraying of all areas (including applicable buffer zones) that are downwind of a protected area. This would minimize the amount of production land permanently excluded from direct spraying and still provide protection of sensitive areas.

### **Conclusions**

CPDA supports pesticide safety policy that incorporates advances being made in drift-reduction technologies such as GPS-guided shutoff nozzles, low drift spray nozzles and product formulations, and drift-reducing adjuvants. However, CPDA does not support drift reduction policy that seeks to substitute administratively a vague “could cause adverse effects [or harm]” standard for the FIFRA risk-based, “without unreasonable adverse effects” safety standard. Combined with a prohibition against drift that “contacts” people, this “could cause” approach imposes a *de facto* “zero drift” standard that would be impossible to meet using even the best application practices and new drift control technologies because *de minimis* drift (i.e., drift without unreasonable adverse effects) is often an unavoidable aspect of spraying pesticides. EPA’s proposed approach would prohibit farmers, commercial applicators, and residential pesticide users from applying any registered pesticide if any drift occurs and contacts people and/or presumptively could cause adverse effects/harm to people or any other non-target organism or property at any time in the future. Moreover, abandoning the no unreasonable adverse effects finding required by FIFRA, which takes into account the economic, social and environmental costs and benefits of each pesticide use, has significant potential to encourage unwarranted private lawsuits and enforcement actions based on barely detectable drift residues.

CPDA also encourages the Agency to delay development of this PR Notice until the DRT program is finalized and implemented to avoid significant confusion for registrants, formulators, and applicators. This would also facilitate EPA’s use of reliable scientific information from the DRT program to enhance the practical utility of the PR Notice to applicators.

Sincerely,  
Susan Ferenc, DVM, Ph.D.  
President