

Spray Drift Labeling

Overview

On November 4, 2009, EPA announced the availability for comment of draft PR Notice 2009-X (74 Fed. Reg. 57166) and related documents (enforcement guidance for states/tribes and additional information and questions for public input). The draft notice provides recommended drift management statements to reduce off-target drift. It contains a *general prohibition* statement that applies to agricultural/commercial applications for drift that will contact people or could cause adverse health or environmental effects to people, non-target organisms, or sites, and another general prohibition that applies to non-commercial applications that could contact people or could cause harm to people, pets, etc. It also contains product-specific statements, such as no-spray buffer zones and restrictions on droplet size and nozzle height, that would be required based on case-by-case risk-assessment determinations. EPA appears to be ignoring the basic FIFRA safety standard of “no unreasonable adverse effect” by using “could cause adverse health or environmental effects” and “could cause harm” standards. Moreover, the focus of the general prohibition statement on drift that “will contact” and “could contact” establishes a de facto no-drift requirement that could lead to an unwarranted strict liability standard in enforcement actions.

EPA has also asked for comment on a petition filed by Earthjustice and Farmworker Justice on October 13, 2009. The petition claims that EPA does not adequately consider exposures of children to pesticide drift (particularly in agricultural areas), and asks the Agency to undertake certain actions to reduce any risks.

Update

On December 9, 2009, EPA extended the due date for comments on the PR Notice and the petition from January 4, 2010 to March 5, 2010. CPDA solicited suggestions for comments from CPDA’s Regulatory Committee and AIC Committee and submitted formal comments to the EPA docket on March 5, 2010.