

## **False or Misleading Pesticide Product Brand Names**

### Overview

In mid 2009, EPA began to inform registrants during routine registration actions about a “new policy” the Agency was using to reject words such as “professional (Pro),” “professional grade,” “maximum (Max),” “super,” “plus,” and “ultra” in pesticide product brand names and advertising. EPA staff claimed these and similar words and phrases were potentially “false or misleading,” in violation of FIFRA. Consequently, EPA began requiring registrants to either remove such words or develop acceptable qualifying label language to minimize the potential for a brand name or related advertising to be false or misleading under FIFRA. EPA published formal guidance on false and misleading statements related to “heightened efficacy” in the mid 1980s and additional guidance on this issue during the early 1990s. In 2002, EPA issued draft PR Notice 2002-X, which revised and partially superseded the prior guidance. Although the Agency received comments on that notice, it was never finalized. As the frequency of names being rejected increased during 2009, CPDA, CLA, CSPA, and RISE jointly asked the Director of the Office of Pesticide Programs in a December 3, 2009 letter to suspend implementation of the policy, and to reissue draft PR Notice 2002-X for public comment. On May 9, 2010, EPA published for comment a revised version of PR Notice 2002-X (now PR Notice 2010-X), along with the Agency’s responses to all comments received on the 2002 draft notice. On May 28, 2010, CPDA requested a 60-day extension of the comment period, which EPA granted on June 14, 2010 by extending the comment period to August 17, 2010.

### Update

On August 17, 2010, CPDA submitted comments on the 2010 draft notice that focused on its lack of clarity regarding what words would be false or misleading and stressed that registrants need much more clarity and certainty than provided by the draft notice when developing and selecting products for the marketplace. Requiring them to reevaluate approved existing brand names to comply with an ever-changing guidance list of “potentially” false or misleading names is an unwarranted, disruptive, and costly burden that can be minimized in the future through rulemaking. Accordingly, CPDA recommended that EPA amend 40 C.F.R. § 156.10(a)(5) to add words and phrases the Agency determines would be false or misleading in brand names under any circumstances. In addition, EPA should develop guidance in the form of a list of highly likely false or misleading words and related detailed examples of use contexts for false or misleading determinations to provide additional clarity on this issue. Finally, CPDA urged the Agency to reassess the rationale for and approach to implementing this guidance for conformance with judicially imposed requirements for protecting commercial speech under the First Amendment.