

## **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, 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. In 2002, EPA issued but never finalized draft PR Notice 2002-X, which revised and superseded the prior guidance, particularly the former policy of allowing use of the word “brand” to qualify certain terms that implied enhanced efficacy. As the frequency of names being rejected increased during 2009, CPDA and several other trade associations 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 draft PR Notice, particularly on EPA’s (1) issuance of “clarifying guidance” under an express threat of enforcement for not complying with the guidance, which effectively amends an existing legislative rule (40 C.F.R. §156.10(a)(5)) in violation of section 553 of the Administrative Procedure Act; (2) consistently understating the economic impact of the notice and use of inappropriate supporting information; and (3) proposing actions that would improperly restrict commercial speech. CPDA also emphasized the need for much greater clarity regarding what words in brand names, and their related contexts, that EPA staff would consider to be false or misleading, and recommended actions the Agency could take to enhance consistent decision-making among its staff.