

Petition for Rulemaking to Establish Procedures for Creating and Amending ESA Bulletins

Overview

Under EPA's Endangered Species Protection Program, the Agency may require pesticide product labels to direct users to "County Bulletins" that contain enforceable geographically specific use limitations for protecting endangered species or habitats. In January 2010, Dow AgroSciences, Makhteshim Agan of North America, and Cheminova ("Petitioners") petitioned EPA to undertake rulemaking to establish procedures for creating and amending County Bulletins and procedures to address situations involving registrants that are unwilling to accept proposed amendments to their labels. The Petitioners assert that EPA has been using an *ad hoc* County Bulletin development and implementation process that does not adequately protect the rights and interests of "registrants and "the broader agricultural and forestry communities" under certain provisions of section 1010 of a 1988 statute. In July 2010, EPA published a Federal Register Notice asking for comments on this petition ("first petition"). On September 16, 2010, a grower's coalition filed a similar petition ("second petition") based on other provisions of section 1010, asking the Agency to promulgate procedures for notice and comment on EPA's pesticide effects determinations and potential pesticide restrictions.

CPDA Comments

CPDA through the Pesticide Policy Coalition (PPC) contributed comments on both petitions (see appendix). The comments were submitted to EPA on September 28, 2010, and expressly supported the first petition as being consistent with section 1010, and listed specific concerns about certain aspects of recently proposed County Bulletins. The PPC comments also ask EPA to publish the second petition for public comment as it specifically addresses EPA's failure to comply with section 1010's requirement that the Agency provide the public with notice and opportunity to comment. The second petition further asks EPA to confirm that it will invoke section 1010 procedures (1) when the Agency completes a biological assessment and (2) during consultation that may result in an amendment to an existing label or imposition of ESA labeling requirements for a new product. It also asks EPA to promulgate regulations granting agricultural producers, pesticide applicators, and other users specific information and procedural rights during key stages of the consultation process and implementation of any agency mitigation measures.