

Grower Petition on ESA Section 1010

Overview

On September 16, 2010, a coalition of growers (Growers for ESA Transparency or “GET”) filed a petition asking EPA to promulgate procedural rules for public input on EPA’s pesticide effects determinations for endangered species and subsequent regulatory actions, including draft Biological Opinions and potential product restrictions. Section 1010 of the 1988 amendments to the Endangered Species Act (“ESA”) requires EPA to provide an opportunity for public comment on EPA actions implementing the ESA, and to “minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators.” Consistent with section 1010, the petition asks EPA to promulgate a rule that confirms section 1010 provisions will be invoked when EPA completes a biological assessment or during any formal or informal consultation that may result in ESA-based amendments to existing product labels or requirements for new products. It also requests that EPA promulgate provisions that grant agricultural producers, pesticide applicators, and other end users certain notice and comment rights required by section 1010 related to (i) initial determinations that consultation is appropriate, (ii) draft Biological Opinions, and (iii) implementation of use restrictions. The petitioners assert that this public input would provide EPA with “important information relevant to the effects determination and consultation processes, including agronomic information and information about the economic and agricultural impact and regulatory burden of proposed restrictions” that is essential to proper development of ESA reasonably prudent actions and measures. EPA has not yet responded to the petition.

CPDA Comments

On February 22, 2011, CPDA submitted through the Pesticide Policy Coalition (“PPC”) brief comments on the petition (see appendix). The comments expressed support for the petition and noted that it is consistent with both section 1010 and President Obama’s January 18, 2011 public participation Executive Order 13563 on improving regulation and regulatory review.