



Chemical Producers &  
Distributors Association

Michael Goo  
Associate Administrator  
Office of Policy  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**RE: EPA-HQ-OA-2011-0156, Improving Regulations: General**

Dear Mr. Goo;

CPDA appreciates the opportunity to provide comments on EPA's implementation of Executive Order 13563 of January 18, 2011 titled "Improving Regulation and Regulatory Review." We are the primary advocate on federal legislative and regulatory issues for generic pesticide registrants, adjuvant and inert ingredient manufacturers, and product formulators and distributors.

We believe E.O. 13563 can lead to improvements, efficiencies and increased net benefits in regulatory actions. We firmly believe that the approach to designing a plan for review of all of EPA's significant rules should be developed in a transparent fashion, and allow ample time and opportunity for public input. While EPA has afforded through this notice approximately 45 days for input on the design of the plan, this is grossly insufficient for comprehensive review of individual rules and the collection of data in support of suggested revisions, identification of duplicative or outmoded rules or justification of cancellation of rules. We believe the Agency's request for input on which regulations could be modified, have achieved their original objective, have proven excessively burdensome, etc. is premature. Until such time as the structure for the review process has been established, the collection of data and development of justifications cannot be optimally developed to adequately inform the Agency.

The questions the Agency has posed to assist commentators provide a reasonable starting point for addressing the E.O. 13563 requirement that each action agency develop and submit to the Office of Information and Regulatory Affairs within 120 days, a "preliminary plan .... under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective and less burdensome in achieving the regulatory objectives." We will structure our comments around the questions posed.

The Agency asks:

***How should we identify candidate regulations for periodic retrospective review?***

E.O. 13563 requires review of all *significant* regulatory actions; rules that meet specific criteria under E.O. 12866 including those that “have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public safety or State, local, or tribal governments or communities.” EPA should identify all current significant rules and provide a list to the public, requesting comment. EPA can also solicit nominations for rules to be considered “significant” based on the nominators providing evidence in support of the classification. In abiding by the intent of the Order, EPA should also identify all significant current guidance. Although this is not required under E.O. 13563, a considerable portion of EPA’s “regulatory” actions are coordinated through guidance, and there are many examples of such guidance that meet the criteria under E.O. 12866 for “significant regulatory actions.”

***What criteria should we use to prioritize regulations for review?***

Once the list of rules to be reviewed is established, the distribution of significant rules across EPA program areas should become apparent and, “consistent with law and its resources and regulatory priorities” prioritization of rules for review within each program area would be optimal. Criteria, as appropriate, could include the scope of the rule, age of the rule, duplicity of the rule with other regulatory actions, etc.

***How should our review plan be integrated with our existing requirements to conduct retrospective reviews?***

As noted above, under E.O. 13563, the review plan should be “consistent with law and [the agency’s] resources and regulatory priorities.” Establishing the burden hours needed for review of any rule should be consistent with existing review requirements for optimal allocation of time and resources. Significant rules require several years for promulgation, and many rules have been in existence for years. Comprehensive review of each of these rules “to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome” cannot be adequately conducted without careful assessment of the time and information that will be needed.

***How often should we solicit input from the public?***

The establishment of a list of significant regulatory actions for review should be followed with development of a timeline for the review of each, taking into consideration the above qualifiers, and provided to the public for comment. No review should begin prior to adequate (at least 120 days) public notice of the commencement of the review. Once the timeline for the review of existing significant actions is

established, the Agency may opt to immediately open a docket for each action to allow adequate opportunity for the public to provide evidence and comment.

***What should be the timing of any given regulatory review?***

This can be based on statutory or final rule language already in existence, effective dates for ICRs associated with rules or guidance, or established on a priority basis for existing rules with no pre-established review schedule.

Additionally, we offer:

***Criteria for review of individual regulations.***

E.O. 12866 provides an adaptable framework for the review of individual significant regulatory actions through Section 6 parts (a)(3)(B)(i) and (ii), parts (C)(i), (ii) and (iii) and directs the review to provide:

- A reasonably detailed description of the need for the regulatory action and an explanation of how the current regulatory action has met the need, or failed to do so.
- Review of the original assessment of the benefits anticipated from the action, estimates of the potential costs and benefits of the action, and assessment of the actual costs and benefits that have accrued through implementation of the action.

***Solicitation of public input.***

As mentioned previously, the solicitation of public input should begin no later than 120 days prior to commencement of review of any regulation or guidance. Notice should be published of the schedule of dockets to be opened for each rule.

***Regulatory review of future regulations.***

For optimal and efficient implementation of periodic review of regulations and guidance, all final guidance and rules promulgated in the future should include an established schedule for mandatory review.

***Recommendations for Rules to Prioritize:***

To reiterate, CPDA believes the request for substantiated evidence for prioritizing individual rules for review is premature at this time. It is also our belief that this prioritization should be the “next steps” in the process, once the Agency’s plan for review has been finalized. However, it would appear most optimal for review purposes outlined in the Order, that the Agency considers rules that clearly require excessive reporting activities, demand significant resources from the Agency and public, and/or are obviously outdated. As an example, the inadequate but potentially effective Counter Part Regulations structuring the consultation process under the Endangered Species Act could be justified as deserving review priority. This Regulation clearly needs to be revisited, modified and streamlined so as to allow the affected agencies regulatory actions to be more efficient, timely and less burdensome. Even superficial review of the history of litigation surrounding the inability of the affected agencies to

make the consultation process work, and the concordant loss of Agency and public resources as a result indicates review is critical. With more time, the public could easily provide evidence of the need for this review, as well as for others.

An example of regulatory action through significant guidance that should be prioritized for review is the Endocrine Disruptor Screening Program (EDSP). The first phase of Tier 1 testing for 67 chemicals that is currently underway alone will cost nearly \$100,000,000. Many of these chemicals will then move on to Tier II testing at an additional cost of \$3,000,000-\$4,000,000 each. If fully implemented, Tier I and Tier II testing will then commence on, at the very least, over a thousand registered pesticide chemicals. When approving implementation of this first phase of the EDSP, the Office of Management and Budget directed the Agency to review and more accurately assess the burden of this costly program and to better demonstrate its practical utility before expanding the testing to more chemicals. We believe this directive strongly supports immediate review of this regulatory action.

**Conclusions:**

We applaud the Agency's request for stakeholder input on this critical directive on regulatory actions. We hope to be able to provide comment to the Agency when it develops its preliminary draft plan for periodic review of significant regulatory actions by April 29, as the final draft is due May 18. CPDA looks forward to assisting EPA in the actual reviews with data, evidence and justification for any recommendations we put forward.