



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 18 2017

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

The Honorable Tom Udall  
United States Senate  
Washington, DC 20510

Dear Senator Udall:

This letter provides an update regarding issues raised in your October 20, 2017, letter to Senators Roberts and Stabenow. The Pesticide Registration Improvement Act provides significant benefits to the American people, expanding the availability of safe products to meet pest control needs and providing supplemental funding to support worker safety education programs.

As you know, in November 2015, the U.S Environmental Protection Agency issued an update to the Agricultural Worker Protection Standard. Through this revised regulation, developed through extensive stakeholder interactions, the agency is working with our state and tribal co-regulatory partners to implement stronger protections for agricultural workers, handlers and their families. Despite these efforts, in early 2017, the agency learned through discussions with the National Association of State Departments of Agriculture (NASDA), that additional materials to support implementation of these new protections were needed in order for the states to effectively and confidently implement the revised rule. In May 2017, the agency announced its intention to extend the compliance dates for implementation of the new rule. Upon further reconsideration, the agency has determined that it is not necessary to extend the compliance dates for the worker protection standard. On December 14, 2017, we released Federal Register Notices informing the public that the compliance dates in the revised WPS published on November 2, 2015 remain in effect and that the EPA does not intend to extend them.

The regulation issued in November 2015 remains in effect and the compliance dates of January 2, 2017 (for most aspects of the revised regulation) and January 2, 2018 (for all other aspects of the regulation) remain in place.

To better understand what support states need to implement the new standard, the EPA has been meeting with the state departments of agriculture and other stakeholders to identify which aspects of the rule might need clarification and, if necessary, revision. This conversation continued most recently as part of the November 2, 2017, meeting of the Pesticide Program Dialogue Committee (PPDC), a federal advisory committee providing advice to the Office of Pesticide Programs' policy and regulatory decisions. During the November 2017 meeting, the PPDC discussed three significant issues, also raised as part of the Regulatory Reform effort

initiated by the agency in response to Executive Orders 13771 and 13777: 1) minimum age for agricultural handlers; 2) the designated representative provision; and 3) the application exclusion zone. The following summarizes feedback the EPA received from the Regulatory Reform comments and the PPDC, as well as the agency's path forward on these targeted components of the worker protection standard:

- Regarding the minimum age provision, while PPDC stakeholders advised the agency that, for the most part, they are able to implement this provision as promulgated in the regulations, there was agreement that the "family exemption" provision was not flexible enough to accommodate family-owned and operated businesses of commercial applicators. Some stakeholders at the meeting expressed an interest in letting states determine a minimum age for agricultural handlers that meets the needs of the local rural economy. Furthermore, the EPA has heard from other stakeholders that the "family exemption" is more restrictive than USDA's definition of "family." In order to maintain current practices in rural America that allow young people to contribute to all aspects of farming operations, the EPA intends to issue a proposed rule for public comment that would reconsider the worker protection standard minimum age requirements to address these stakeholder concerns.
- Regarding the designated representative provision, the members of the PPDC noted that many states with high agricultural production have already adopted state designated representative provisions. PPDC members encouraged the EPA to consider identifying a neutral representative. A neutral representative could ensure meaningful assistance to the farm worker community and address agricultural producers concerns. At the meeting, there was not agreement on a practical way to alleviate stakeholder concerns regarding who could qualify to be a designated representative and how the information could be used, a concern also voiced via commenters on the Regulatory Reform efforts. Therefore, the agency intends to include a request in the proposed rule for public comment on reconsideration of the designated representative provision.
- Regarding the application exclusion zone ("AEZ"), the PPDC commended the agency for the additional guidance that has been issued since the promulgation of the revised rule. PPDC members did, however, identify some additional scenarios often encountered during pesticide applications where there is a need for additional guidance. The EPA is currently working on revised guidance that addresses these scenarios and hopes to issue the updated guidance by January 2, 2018. The agency will propose to make technical clarifications and codify aspects of the revised guidance related to the AEZ through the rulemaking process. These changes will provide agricultural employers and handlers certainty in practices related to applications, particularly for applications near roads and houses at the edge of a field.

In addition, the agency has been working closely with stakeholders to develop training, outreach and educational materials to ensure that the agricultural community can effectively implement the revised agricultural worker protection standard. For example, through the Pesticide Educational Resources Collaborative (PERC), a cooperative agreement between the Office of Pesticide Programs and the University of California Davis Extension, in collaboration

with Oregon State University, a large collection of materials has been developed to support implementation of the revised standard. The PERC includes an advisory board to support development of outreach, educational, and pesticide safety training materials, with membership from several state departments of agriculture, cooperative extension, and the farmworker advocacy community. More information about the PERC's activities can be found at: <http://pesticideresources.org>.

Once any necessary changes to the regulation have been made, in response to public comment, EPA will, consistent with the final rule issued on November 2, 2015, publish in the Federal Register a notice of the availability of the pesticide safety training materials for workers and handlers. To allow time for the completion and distribution of revised training materials and to allow time for trainers to become familiar with them and begin training workers and handlers, the current rule extends the implementation period for the content of the training until six months after EPA has made the revised training materials available. Nevertheless, the requirements for notification, respirator fit testing and medical evaluation, improved decontamination supplies, minimum age, and the application exclusion zone, among other provisions, do not depend upon the above-referenced Federal Register notice in order for these provisions to go into effect. These requirements went into effect on January 2, 2017, and the remaining requirements will go into effect on January 2, 2018.

Similarly, the PPDC and Regulatory Reform comments also discussed the Certification of Pesticide Applicators rule issued in January 2017. The PPDC discussed the minimum age provision in this rule and, as with the worker protection standard, identified scenarios where the "family exemption" provision was not flexible enough to accommodate for common practices in rural communities. Stakeholders commenting under the Regulatory Reform effort highlighted the increased labor costs for pesticide application businesses nationwide, and noted that the requirement was unnecessary for individuals who pass the State certification standard to apply restricted use pesticides and follow pesticide labels, including the use of personal protective equipment. Some commenters also stated that age requirements should be the decision of the States. Additionally, the minimum age provision does not provide flexibility for other common practices in rural communities, such as the hands on agricultural education young people receive via 4-H and other organizational activities. As with the worker protection standard, the agency intends to develop a proposed rule for public comment that would reconsider the certification of pesticide applicators regulation to address stakeholder's concerns.

Regarding chlorpyrifos, the March 2017 decision to deny the petition, submitted by the Natural Resources Defense Council and the Pesticide Action Network North America, initiated the objections phase of the petition process provided under the Federal Food, Drug, and Cosmetic Act (FFDCA).<sup>1</sup> The FFDCA requires the EPA to respond to the objections "as soon as practicable". As discussed recently with your staff, the same individuals that support the

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<sup>1</sup> Once the EPA makes a decision on a petition, and publishes its decision in the Federal Register, the second stage of the petition process is triggered. At this point, parties who disagree with the EPA's decision, whether it is a decision to grant or deny the petition, may file objections with the EPA to the decision made. The objection stage gives parties a chance to seek review of the EPA's decision before the agency. The EPA's published response to the objections completes the objections stage, after which an adversely affected person may seek judicial review.

agency's response are also working on many other competing time-sensitive deadlines and priorities.

The statutorily mandated re-evaluation of this insecticide continues as the agency works to meet the statutory deadline for the registration review (reevaluation) of nearly 725 pesticide active ingredients by October 1, 2022. As part of the reevaluation of chlorpyrifos, EPA's scientists are also considering the comments submitted in response to the October 30, 2015, proposed rule and the November 17, 2016, notice of data availability. During these comment periods, stakeholders raised significant issues with the scientific conclusions supporting the ongoing rulemaking. We are developing responses to the comments raised in the stakeholder feedback submitted during the rulemaking process.

The EPA has several additional milestones to complete before it will be able to finalize a registration review decision for chlorpyrifos. Two of these milestones include the publication of documents with public comment periods where stakeholders can weigh in on the agency's assessments. Meanwhile, agency scientists continue to monitor and consider the ongoing research and literature evaluating the potential human health effects for chlorpyrifos. In addition, the agency also continues to consider how best to use the available observational epidemiology data in light of the comments from the FIFRA Scientific Advisory Panel as well as comments received in response to the November 2016 Notice of Data Availability. The agency estimates this work will take approximately 18 months, or 24 months if the analysis requires peer review. The Human Health Risk Assessment will then be published for a 60-day public comment period, after which the agency will prepare a response to comments document and Proposed Interim Decision, which will also be published for public comment for 60 days. The agency will then address public comments received on the Proposed Interim Decision, and develop the Interim Decision for chlorpyrifos.

Chlorpyrifos is an organophosphate pesticide, therefore, consistent with the FFDCA, the agency must update the organophosphate cumulative assessment completed in 2006. In order to revise this cumulative assessment, the agency must complete the underlying single chemical risk assessments for all of the organophosphate insecticides. Before these assessments can be completed, new studies to support physiologically based pharmacokinetic (PBPK) modeling need to be received. We anticipate receiving these studies in 2018. Once reviewed, these studies can be incorporated into the single chemical risk assessments. We anticipate seeking external peer review through the FIFRA Scientific Advisory Panel (FIFRA SAP). The purpose of the FIFRA SAP meeting will be to consider and review PBPK modeling to address pharmacokinetic differences between and within species. Based upon current resources and study submission schedules, a draft revised update to the organophosphate cumulative risk assessment will likely be issued for public comment in the late 2019-2020 timeframe.

I hope you find this information helpful as you consider a path forward for the reauthorization of PRIA. Our determination to not extend any of the compliance dates for the Worker Protection Standard is a significant change in direction. Instead, the agency will use the rulemaking process, which includes opportunity for public comment, to reconsider only a few aspects of the rule while all compliance dates continue to remain in effect.

If you have questions, please contact me or your staff may contact Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at [kaiser.sven-erik@epa.gov](mailto:kaiser.sven-erik@epa.gov) or at (202) 566-2753.

Sincerely,

A handwritten signature in black ink that reads "Charlotte Bertrand". The signature is written in a cursive style with a large, sweeping initial "C".

Charlotte Bertrand  
Acting Principal Deputy Assistant Administrator