



PPC

PESTICIDE POLICY COALITION
A Coalition Working for Sound Pest Management Policies

May 15, 2017

U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Ave. NW.
Mail Code 1803A
Washington, D.C. 20460-0001

Submitted via Federal eRulemaking Portal

Re: Evaluation of Existing Regulations; Docket ID No. EPA-HQ-OA-2017-0190

The Pesticide Policy Coalition (PPC or “the Coalition”) is pleased to submit comments to the U.S. Environmental Protection Agency (EPA) on its evaluation of existing regulations in accordance with Executive Order (EO) 13777, Enforcing the Regulatory Reform Agenda.

PPC is an organization of food, agriculture, forestry, pest management and related industries that support transparent, fair and science-based regulation of pest management products. PPC members include: nationwide and regional farm, commodity, specialty crop, and silviculture organizations; cooperatives; food processors and marketers; pesticide manufacturers, formulators and distributors; pest-and vector-control operators; research organizations; and other interested stakeholders. PPC serves as a forum for the review, discussion, development and advocacy around pest management regulation and policy.

COMMENTS

The following comments refer to the regulations and policies PPC has identified as top candidates for regulatory reform actions, including modifications, replacement and/or elimination of specific regulations, or requirements within those rules. These recommended reforms will further the Administration’s goals set forth in the EO of

eliminating regulatory requirements that inhibit job growth, impose burdensome costs that exceed environmental benefits, are unnecessary and ineffective, or are not substantiated by available data or are inconsistent with the data guidelines implementing the Information Quality Act.

I. Modifications and Revisions

A. Certified Applicator and Training Rule (82 Fed. Reg. 952).

The previous Administration recently finalized a regulation on certification and training of applicators of restricted use pesticides (RUPs). The responsibility of administering pesticide applicator certification programs rests solely with state, tribal and territorial authorities. EPA would not be able to effectively implement the program without this federal-state partnership. The certification and training rule brings a number of significant changes and increased certification requirements with which applicators must now comply, and state certifying authorities must implement in their respective state certification plans. The final rule underestimates the time and cost to overhaul state certification programs. Implementation of the rule is a resource-intensive process, and in some states will require legislative actions. Among other changes, the new rule sets a new minimum age requirement for commercial RUP applicators at 18 years. Prior to the new rule, individuals under the age of 18 could apply RUPs if they met certification and training requirements. No health or environmental risk or rationale is provided to justify or support such change. Further, several states allow individuals under 18 to apply RUPs. Implementation of the new age limit will require many of those states to pursue legislative action to amend applicable state law without any benefit to public health or the environment.

Faced with a largely unfunded federal mandate, and limited resources, some state legislatures could recommend returning the program to EPA. EPA does not have the capacity to run programs of the same scale, depth and caliber as do the state and local partners. Any loss of state/local partnerships would result in a significantly pared down program and potential increased risks to public health and the environment.

The PPC recommends that EPA modify the rule to eliminate the minimum age requirement. Absent the federal requirement, individual states are free to set age requirements at the state level, and the removal of this requirement will alleviate the need for state legislative actions in several states. The PPC also recommends that EPA delay implementation of the final rule and work with state authorities to identify a realistic implementation timeline to provide flexibility to account for states' resource concerns and needs.

B. Agricultural Worker Protection Standard (80 Fed. Reg. 67496)

Promulgated in November 2015, EPA's new worker protection standard (WPS) for agricultural workers increased the frequency of required training, added recordkeeping requirements and introduced new concepts, including the "application exclusion zone" and "designated representative." Most of the new standard's requirements became effective in January 2017, in spite of a petition filed by groups representing farmers and state departments of agriculture requesting a delay to provide adequate time for implementing the changes. EPA failed to provide state lead agencies with enforcement guidance and training materials, and resources necessary to effectively implement the rule ahead of the effective date and to assist farmers and ranchers with compliance.

The PPC remains concerned about the concept of a "designated representative." Farmers and ranchers are entitled to a reasonable expectation of privacy in their businesses; this provision in the rule could result in disclosure of confidential and proprietary information, and also subject farmers to harassment and unfair criticism for the lawful and safe use of EPA-approved pesticides on their properties. EPA has not provided any assurance to growers that fraudulent requests by designated representatives will not expose them to legal liability, nor has EPA taken steps to limit disclosure of proprietary farm data to unrelated third parties. At no time has EPA brought forth evidence demonstrating that the provision would result in greater worker safety. The PPC urges the Task Force to recommend a revision of the WPS to eliminate or revise this "designated representative" provision to restore reasonable privacy protections for farmers and ranchers.

The Coalition also recommends that EPA amend the final WPS rule to eliminate the Application Exclusion Zone (AEZ). The AEZ created a one-hundred foot buffer surrounding the application equipment that, according to the regulations now in place, extends beyond the agricultural establishment. The AEZ prohibits pest mitigation activities if there is any kind of structure, permanent or otherwise, inhabited or vacant within one hundred feet of the agricultural establishment. Additionally, any individual, structure, or a passing vehicle within one hundred feet of the property can effectively cease the grower's application activity. This provision unduly burdens state agencies and grower without any additional regulatory benefits. Subsequent to finalization of the WPS rule, EPA's Office of General Counsel was working to issue interpretive guidance clarifying the EPA's intent under the final regulation. Guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity for state agencies tasked with compliance and enforcement activities, and regulatory certainty for farmers and pesticide applicators. The PPC recommends modifying the final WPS rule to remove the AEZ provision.

Finally, in order for states and local authorities to implement the final rule, and to account for necessary training and certification, the PPC encourages the Task Force to recommend the WPS rule be revised to delay the effective date until 2018 at the earliest.

C. National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP)

The PPC urges the Task Force to recommend modifications of the NPDES PGP requirements to decrease reporting and recordkeeping burdens. The PGP was first issued in 2011 in response to a 6th Circuit Court of Appeals decision. In that litigation, EPA was aligned with the regulated community in opposing the imposition of Clean Water Act (CWA) permitting requirements for pesticide applications into, over and near Waters of the United States. Pesticides and pesticide applications are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). All pesticides undergo a rigorous review process before being approved by EPA for use. Such testing requirements include extensive studies examining potential human health and environmental effects. FIFRA requires that pesticides used according to label instructions will not generally cause unreasonable adverse effects on the environment. Under FIFRA, applicators also are required to keep detailed records documenting the time, location, type of pesticide, target pests, amount of pesticide applied and pesticide application method. Applicators also must report any knowledge of adverse incidents associated with the use of such pesticides. Failure to comply with FIFRA requirements can result in civil and criminal penalties.

The dual regulation of pesticide application under FIFRA and CWA is duplicative, burdensome, and does not result in enhanced environmental benefit or protection. The potential legal jeopardy from CWA citizen suits for alleged PGP violations has had a chilling effect on the industry. An operator could spend substantial resources defending against a CWA citizen suit for alleged failure to meet reporting and recordkeeping requirements—mere paperwork violations that do not result in environmental harm. The PGP includes a provision that holds all operators jointly and severally liable for violations that occur in connection with permitted activities, including any action or inaction of others that is beyond their control. The threat of legal jeopardy has led some applicators to decline contracts for mosquito-control services. The Benton County Mosquito Control District in Washington State has set aside twenty percent of its annual budget in the event that it becomes party to a CWA lawsuit. These resources could be better spent combatting mosquito-borne illnesses, including the Zika virus.

The PPC recommends scaling back the permitting requirements to eliminate Notice of Intent and annual reporting and recordkeeping requirements, as well as the

permit's joint and several liability provision. An operator should only be held liable for those permitted activities that are completely within his/her control.

II. Process and Policy Reform

The Task Force should consider long overdue reforms of EPA's process and policies that form the foundation for regulatory decision-making. While not regulations per se, under FIFRA, pesticides undergo rigorous study, and registrants spend an estimated \$250 to 280 million to evaluate risk to human health and the environment prior to pesticide registration with label uses approved by EPA. Pesticide products play a vital role in crop production and public health. The rotation and mixture of a variety of pesticide products is integral to integrated pest management. The availability of a wide array of pesticide products is critical to the sustainable and safe use of pesticides and resistance management.

In recent years, EPA's risk assessment approach as part of a FIFRA pesticide registration and registration review has deviated dramatically from the fair, transparent, and risk-balancing process that Congress intended. EPA has relied on flawed science, including data that lacks reliability and reproducibility, in proposed tolerance revocations for a number of pesticide active ingredients. EPA has previously proposed revoking all tolerances for chlorpyrifos based largely on epidemiological studies that EPA's FIFRA Scientific Advisory Panels (SAP) questioned. EPA has failed to address the significant concerns expressed by three FIFRA SAP on these risk assessments, including lack of study validation and unavailability of raw data from studies used in regulatory decision making. Other respected regulatory agencies around the world have reviewed these epidemiological studies and rejected their use in risk assessments that way that EPA has proposed. These data quality issues also run afoul of reproducibility and transparency standards required by the Information Quality Act. EPA's drinking water assessment for chlorpyrifos and many other compounds need further refinement to avoid overly conservative and unrealistic exposure scenarios. Similarly, EPA's preliminary ecological risk assessment for pyrethroids—an entire class of pesticides—relies on modeling approaches to develop a risk assessment for ecological exposure to the pesticides that is not reflective of actual exposure. The models grossly overestimate exposure and will result in the loss of critical tools for farmers.

In December 2016, EPA's Office of Pesticide Programs (OPP) released its "Framework for Incorporating Human Epidemiologic & Incident Data in Risk Assessments for Pesticides" (Framework). This Framework has not been the subject of public notice and comment and requires stakeholder review. As such, the Administration should review and revise the framework with input from relevant

stakeholders, and subject to peer review, before it is used to inform any regulatory decision-making.

The PPC encourages a return to a risk-based approach that is fair, transparent, and relies on verifiable scientific input. The PPC recommends delaying the finalization of these recent actions until further review and refinements ensure that overly conservative and unsupported limitations are not placed on these pesticide products.

CONCLUSION

The PPC appreciates the opportunity to provide input on regulations for the Task Force's recommended regulatory reform actions. The success of many federal regulations hinges on partnerships with state and local authorities, and EPA should ensure those vital authorities have adequate time and assistance with implementation of new rules and standards. As highlighted above, many regulations do not result in increased net environmental benefits, and in some cases may even divert resources from environmental and public health protection efforts. Finally, any regulatory review should examine the processes and policies that have informed regulatory decisions, and ensure that actions are based on sound and credible science. We look forward to working to further assist the Task Force and Administration with identifying ways to decrease ineffective regulatory burdens on agricultural interests that hinder economic growth and innovation.

Sincerely,



Ethan Mathews
Chair, Pesticide Policy Coalition



Beau Greenwood
Vice Chair, Pesticide Policy Coalition