

## **Defend American Farmers and Pesticide Applicators Against Frivolous Lawsuits and Enforcement Actions**

### **Talking Points:**

(1) Protection of human health for adults and children and of the environment is best accomplished through a Federal Insecticide Fungicide and Rodenticide Act (FIFRA) approved and enforced label for the pesticide product, which includes Directions for Use that are based upon a risk assessment and incorporates mitigations and application techniques designed to minimize drift.

(2) The issue of Spray Drift has been discussed and scientifically studied for years. Recently, the Washington State Department of Health Pesticide Program issued a study entitled “Organophosphorus Pesticide Air Monitoring Project” (Fenske et al., June, 2009), confirming that risks to bystanders from pesticide drift are well below levels that would pose a health concern; therefore, ubiquitous interim buffers are unnecessary.

(3) Vague language such as “**could cause**” or “**may cause**” adverse effects does not belong on a pesticide label because it is NOT in accordance with the FIFRA risk-based standard of ‘no unreasonable adverse effects’ and it forces state regulators into the role of risk assessor to determine what ‘may or could’ cause an effect, which they are not trained to do and is the role of EPA.

(4) EPA’s guidance on how to enforce the proposed drift label language sets an unachievable zero drift standard and sets the stage for frivolous lawsuits and enforcement actions. For example, a headache that is untreated or verified by a medical professional, may be the basis for an enforcement action or lawsuit, particularly when a farmer’s neighbor has a predetermined reason or history of conflict with the farmer.

(5) EPA Office of Pesticide Programs should:

- maintain the FIFRA risk-based standard of “no unreasonable adverse effects”;
- acknowledge that some small level of pesticide drift is unavoidable (in some cases) and does not pose an “unreasonable adverse effect”;
- acknowledge that the mere detection of a pesticide off-target does not pose an unreasonable adverse effect and is not a violation of FIFRA that requires an enforcement action;
- remove the new hazard-based standard of “harm” from the Drift Pesticide Registration Notice; and
- remove the vague, unenforceable, and unmanageable concepts of “could cause” or “may cause” adverse effects or “harm” from the Drift PRN.

### **What you can do:**

Go to [www.regulations.gov](http://www.regulations.gov) and search for docket number EPA-HQ-OPP-2009-0628 to read the documents and submit a letter expressing your opinion and how this EPA action would affect you. **Deadline is March 5, 2010.**

Go to <http://www.gopetition.com/online/33776.html> and sign the petition - “**Defend American Farmers and Pesticide Applicators Against Frivolous Lawsuits and Enforcement Actions, Unnecessary Loss of Vital Cropland, and Unnecessary Delays in Harvesting**”.

### **Background:**

On November 4, 2009, the Environmental Protection Agency (EPA) issue a Federal Register Notice entitled “Draft Guidance for Pesticide Registrants on Pesticide Drift Labeling” [74 FR 57166, 11/4/2009, Docket No. EPA-HQ-OPP-2009-0628], requesting comment on three documents: (1) Pesticide Registration Notice (PRN) Draft Pesticide Drift Labeling; (2) Draft Pesticide Drift Labeling Interpretation; and (3) Draft PRN Additional Information and Questions for Commenters.

In the PRN, EPA **expands the Worker Protection Standard (WPS)** for products intended for agricultural crop, nursery, forestry, and greenhouse uses from the required statement:

“Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

by adding the following statement:

**"In addition, do not apply this product in a manner that results in spray [or dust] drift that could cause [emphasis added] an adverse effect to people or any other non-target organism or site".**

Also, EPA expands the application of the original WPS plus this additional language to other areas that EPA now deems "commercial", which includes **"applications to rights-of-way, golf courses, athletic fields, residential turf, landscapes, parks, grounds, and other similar sites, commonly performed by hired personnel"**.

And EPA is applying the following label language to products intended solely for non-commercial application, such as **residential use on lawns and gardens:**

**"Do not apply this product in a way that could contact people, or that results in spray [or dust] drift that could cause harm [emphssis added] to people, pets, property, aquatic life, wildlife, or wildlife habitat".**

In the Labeling Interpretation document, EPA cites and defines the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) risk-based legal standard of “unreasonable adverse effects”; however, EPA equates this to a new term “harm”, which is not in FIFRA, and continually leaves out “unreasonable” from label language and the Agency’s interpretation for enforcement.

Some of the examples of "adverse effects or "harm" that EPA provides are:

- **For humans, any negative physical impact, health symptom, or illness, regardless of whether it requires medical treatment or is temporary in nature or term.**
- For wildlife, any negative effects on the viability of beneficial insects (e.g. pollinators), fish, birds, or other wildlife, including but not limited to death.
- For property, damage to agricultural commodities or ornamental plantings, including but not limited to the death, injury, stunting, deformation, or discoloration of plants; Any negative effects on the viability of domestic animals, including but not limited to death; Structural or cosmetic damage to inanimate objects (e.g. corrosion, discoloration);
- For the environment, damage to aquatic or wildlife habitat, including but not limited to the death, injury, stunting, deformation, or discoloration of plants, or the contamination of water or soils at levels that would cause adverse effects on wildlife.

## **Save American Farmers from Loss of Vital Cropland due to Unnecessary Buffers**

### **Talking Points:**

(1) Protection of human health for adults and children and of the environment is best accomplished through a Federal Insecticide Fungicide and Rodenticide Act (FIFRA) approved and enforced label for the pesticide product, which includes Directions for Use that are based upon a risk assessment and incorporates mitigations and application techniques designed to minimize drift.

(2) The issue of Spray Drift has been discussed and scientifically studied for years. Recently, the Washington State Department of Health Pesticide Program issued a study entitled “Organophosphorus Pesticide Air Monitoring Project” (Fenske et al., June, 2009), confirming that risks to bystanders from pesticide drift are well below levels that would pose a health concern; therefore, ubiquitous interim buffers are unnecessary.

(3) EPA Office of Pesticide Programs should:

- NOT impose unnecessary buffers that would reduce cropland available for American agriculture;
- develop a bystander risk assessment exposure scenario for the pesticide registration process; and
- develop risk-based tolerances for non-target property.

### **What you can do:**

Go to [www.regulations.gov](http://www.regulations.gov) and search for docket number EPA-HQ-OPP-2009-0825 to read the documents and submit a letter expressing your opinion and how this EPA action would affect you. **Deadline is March 5, 2010.**

Go to <http://www.gopetition.com/online/33776.html> and sign the petition - “**Defend American Farmers and Pesticide Applicators Against Frivolous Lawsuits and Enforcement Actions, Unnecessary Loss of Vital Cropland, and Unnecessary Delays in Harvesting**”.

### **Background:**

On November 4, 2009, the Environmental Protection Agency (EPA) issued a Federal Register Notice requesting comment on “Petition to Protect Children from Pesticide Drift” [74 FR 57168, 11/4/2009, Docket No. EPA-HQ-OPP-2009-0825], which was submitted to EPA from Earthjustice and Farmworker Justice.

The Petition alleges that EPA has “violated the Food Quality Protection Act” (FQPA) as well as “executive orders directing EPA to ensure that its programs do not have disproportionate adverse health impacts on children, minority, and low-income populations” by failing to “assess children’s exposures to pesticides that drift from agricultural sites to homes, schools, daycares, parks, and other places where children may be exposed”. The petition request that EPA:

“(1) expeditiously evaluate the exposure of children to pesticide drift and impose safeguards to ensure that children are protected from aggregate pesticide exposures, including pesticide drift; and

(2) immediately adopt interim prohibitions on the use of toxic drift-prone pesticides such as organophosphates and n-methyl carbamates near homes, schools, parks, and daycare centers or wherever children congregate.”

The “interim prohibitions” include **no-spray zones** of at least **60 feet for ground** applications and **300 feet for aerial** applications around areas where children may congregate such as homes, schools, parks, playgrounds, and daycare centers.

## **Protect American Agriculture from Loss of Modern Tools and Delays in Harvesting**

### **Talking Points:**

- (1) Pesticides are the most heavily regulated products on the market today. Pesticides have been used safely for production of crops for decades. We know more about this class of compounds than any other used in commerce today. Risk assessment methodology for workers should be based on sound science, not on the unlikely presence of daycare-aged children in the agricultural workplace.
- (2) The issue of Spray Drift has been discussed and scientifically studied for years. Recently, the Washington State Department of Health Pesticide Program issued a study entitled “Organophosphorus Pesticide Air Monitoring Project” (Fenske et al., June, 2009), confirming that risks to bystanders from pesticide drift are well below levels that would pose a health concern; therefore, ubiquitous interim buffers are unnecessary.
- (3) Protection of human health for adults and children and of the environment is best accomplished through a Federal Insecticide Fungicide and Rodenticide Act (FIFRA) approved and enforced label for the pesticide product, which includes Directions for Use that are based upon a risk assessment and incorporates mitigations and application techniques designed to minimize drift.
- (4) The arbitrary application of another 10-fold uncertainty factor when conducting occupational risk assessments for pesticide products will have significant ramifications on the economy including factors such as: continued availability of products; availability and cost of alternative products or technologies; restrictions on product use; shifts in agricultural practices; and costs of production.
- (5) EPA Office of Pesticide Programs should:
  - NOT impose an arbitrary 10x uncertainty factor for the unlikely presence of daycare-aged children in the agricultural workplace and for other unlikely or low-risk exposures; and
  - develop risk-based tolerances for non-target property.

### **What you can do:**

Go to [www.regulations.gov](http://www.regulations.gov) and search for docket number EPA-HQ-OPP-2009-0889 to read the documents and submit a letter expressing your opinion and how this EPA action would affect you. **Deadline is April 12, 2010.**

Go to <http://www.gopetition.com/online/33776.html> and sign the petition - “**Defend American Farmers and Pesticide Applicators Against Frivolous Lawsuits and Enforcement Actions, Unnecessary Loss of Vital Cropland, and Unnecessary Delays in Harvesting**”.

### **Background:**

On December 9, 2009, the Environmental Protection Agency issued a Federal Register Notice requesting comment on a draft policy paper entitled “Revised Risk Assessment Methods for Workers, Children of Workers in Agricultural Fields, and Pesticides with No Food Uses,” [74 FR 65121, 12/9/2009, Docket No. EPA-HQ-OPP-2009-0889] (Policy Paper).

EPA proposes to apply an additional safety/uncertainty factor of 10 when assessing risks to agricultural workers and their children including: infants, children, fetuses (as a result of exposure of women of child-bearing age) and for adult by-standers near agricultural fields that may be exposed to pesticides via “off site” drift. Based on existing Occupational Safety and Health Administration (OSHA) worker protection laws, small children should not be in the workplace, including agricultural workplaces. Today’s farms are not natural pristine environments and conducting modern farming practices and equipment requires training and education. Children should not be working in fields nor should they be visiting fields, particularly when pesticides are being applied. Especially on family farms, both farmers and pesticide applicators understand pesticide label directions and *restricted entry intervals* (REIs – the time after a pesticide application during which entry into the treated area is restricted

to farm workers and applicators). The REIs already include safety/uncertainty factors below levels at which no toxic effect has been observed. The occasional or inadvertent presence of a child in a field, after an REI has been observed, would not reasonably be expected to cause adverse effects in the short or long term. Imposing another safety/uncertainty factor, which could result in the loss of valuable crop protection tools for farmers, to protect children from an exposure that should not exist, is illogical and unnecessary. This policy is akin to establishing traffic laws or estimating auto insurance rates on the probability that your three-year-old will be driving your car. EPA should enforce existing worker protection standards. If it is determined that insufficient worker protection standards exist, EPA should seek to enhance the protectiveness of existing standards in concert with OSHA and other appropriate state and federal authorities.

Occupational risks are typically expressed as a *margin of exposure* (MOE), wherein an estimated human exposure level is compared to a toxicological endpoint at which no toxicity was observed (referred to as a *no observable effect level* (NOEL)). An MOE of 100, which is commonly applied in regulating occupational exposure to pesticides, means that the estimated human level of exposure is 100 times lower than the highest dose tested that produced NO adverse effects in the toxicity study. To better understand the potential impact of EPA's proposed change of increasing the MOE 10 fold, REI's for several crops were generated using a typical pesticide, and then recalculated under EPA's proposed policy. As you can see below, application of the additional 10-fold safety/uncertainty factor renders this low-toxicity product, useless by dramatically increasing the REI. The following parameters were used to calculate the REIs:

- The pesticide is applied at an application rate of 1 lb a.i./acre
- The pesticide has a low toxicity with a dermal toxicity NOEL of 100 mg/kg/day
- Standard EPA methodology and assumptions relating to pesticide residue transfer and absorption were used

***Scenario 1: Harvesting Blueberries and Strawberries***

- Current REI would be 12 hours with a required MOE of at least 100
- If EPA increases the required MOE to at least 1000 by applying an additional 10-fold safety factor, the REI would ***increase to 13 days!***

***Scenario 2: Hand Harvesting Stone and Pome Fruit***

- Current REI would be 12 hours with a required MOE of at least 100
- If EPA increases the required MOE to at least 1000 by applying an additional 10-fold safety factor, the REI would ***increase to 20 days!***

***Scenario 3: Hand Harvesting Citrus***

- Current REI would be 12 hours with a required MOE of at least 100
- If EPA increases the required MOE to at least 1000 by applying an additional 10-fold safety factor, the REI would ***increase to 20 days!***

***Scenario 4: Hand Harvesting Lettuce and Leafy Vegetables***

- Current REI would be 12 hours with a required MOE of at least 100
- If EPA increases the required MOE to at least 1000 by applying an additional 10-fold safety factor, the REI would ***increase to 18 days!***

***Scenario 5: Hand Harvesting Grapes and Brassicas***

- Current REI would be 3 days with a required MOE of at least 100
- If EPA increases the required MOE to at least 1000 by applying an additional 10-fold safety factor, the REI would ***increase to 25 days!***