



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

OFFICE OF
PESTICIDE PROGRAMS

May 8, 2012

Steven Dwinell, Assistant Director
Division of Agricultural Environmental Services
Florida Department of Agriculture and Consumer Services
3125 Conner Boulevard
Tallahassee, FL 32399-1650

Dear Steve,

Thank you for your March 22, 2012, e-mail and letter regarding the proposed plan to certify restricted use pesticide (RUP) applicators in Indian country. Both the letter and our conversation at the AAPCO meeting were helpful in understanding the concerns of State Lead Agencies (SLAs). We are taking several steps to address these concerns.

We understand that the SLAs are concerned about the quality of training provided by the “no-test” option for private applicators. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is required to provide a no-test option for private applicators in any federal certification plan. EPA recognizes the need to balance this statutory requirement with ensuring competency of applicators. To address this balance, one of the options we are now considering is to develop web-based training that private applicators seeking the “no-test option” must take in order to obtain federal certification. Through this online training, we can assure private applicators are receiving training on the topics we feel are needed to be competent to apply RUPs without causing harm to human health or the environment. In the interim, while we develop the online training, EPA may allow private applicators to take other approved training courses, as described in 40 CFR 171.11(d)(1)(ii), as long as they cover the general standards of competency outlined in 40 CFR 171.5 and 40 CFR 171.6. These standards include practical knowledge of pest problems and pest control practices associated with agricultural operations; proper storage, use, handling and disposal of the pesticides and containers; related legal responsibility; and practical knowledge of federal supervisory requirements, including labeling, regarding the application of restricted use pesticides by noncertified applicators.

Another concern identified in the letter was about EPA’s resources for enforcement under the federal plan. EPA is already the entity with enforcement authority under FIFRA in Indian country, including enforcement of the illegal use of RUPs. Implementation of this plan should not impose a significant additional burden for EPA. However, the plan provides a mechanism to ensure competency and clear requirements that will support enforcement of FIFRA in Indian country. In addition, tribes with cooperative agreements

may work with EPA regional offices to conduct compliance inspections and help assure compliance with FIFRA and the provisions of the federal plan.

The states also had questions regarding the impact of enforcement actions taken by EPA against RUP applicators who obtained their federal certification based on an underlying state certificate. The first question was whether EPA would share information with the states when there is a misuse or other violation. EPA does intend to notify states of misuse by applicators that have a federal certification based on their state's certification. Also, if a federal certificate is revoked, EPA will inform the state agency that issued the underlying certification as soon as possible. It will be up to each state whether applicator violations related to use of RUPs in Indian country should have an impact on the status of the state certificate. In addition, if the underlying state certificate is revoked, the federal certificate will also become invalid (with an opportunity for appeal). For that reason, we will encourage states to keep EPA regional offices informed of state certification revocations that would impact a federal certification (states will be able to identify federal certifications based on their state certifications from an EPA website).

Your letter also pointed out that there may be state requirements for dealers of RUP products that may render them unable to sell RUPs to applicators that do not have a state certificate or the equivalent. EPA recognizes that RUP dealers must comply with applicable state laws and regulations, and EPA plans to notify applicators that states may impose additional restrictions on RUP sale within the state.

Finally, you proposed that an implementation workgroup for the plan be formed. I agree that a workgroup between AAPCO or SFIREG, the Tribal Pesticide Program Council and EPA would be valuable as the plan is implemented. Please let me know how we can help facilitate this workgroup.

Again, thank you for your interest in the proposed plan. We look forward to working with you as we implement the final plan. If you have any additional concerns, please contact Nicole Zinn of my staff at 703-308-7076, or by e-mail at zinn.nicole@epa.gov.

Sincerely,

/S/

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US EPA Office of Pesticide Programs

Cc: Fred Corey, TPPC Chair
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