



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

JAN 13 2017

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

Nathan Bowen  
Director Public Policy  
National Association of State Departments of Agriculture  
4350 North Fairfax Drive, Suite 910  
Arlington, VA 22203

Dale W. Moore  
Executive Director, Public Policy  
American Farm Bureau Federation  
600 Maryland Ave. SW, Suite 1000W  
Washington, DC 20024

Subject: Petition for Rulemaking

Dear Mr. Bowen and Mr. Moore:

This letter is in response to your petition on behalf of the National Association of State Departments of Agriculture (NASDA) and the American Farm Bureau Federation (AFBF) to the U.S. Environmental Protection Agency's Administrator Gina McCarthy dated December 21, 2016, requesting that the agency postpone the implementation date of the agricultural worker protection (WPS) regulation until January 2018.

In your petition, you specifically requested that the EPA amend the WPS rule (40 CFR Part 170) by postponing the effective date of the rule from January 1, 2017 to January 1, 2018. Your request is based on your claim that the EPA has failed to comply with 1) requirements of law in promulgating the "designated representative" provision in 40 CFR 170.311(b)(9) and; 2) statutory obligations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to finalize and deliver to state lead agencies (SLAs) the enforcement guidance, educational materials and training resources necessary to effectively implement the rule changes and assist the regulated community with compliance activities. We address each of the asserted grounds for your petition below.

1. You have asserted that the EPA violated section 25(a)(3) of FIFRA (7 USC §136w(a)(3)) by failing to provide a copy of the final form of the WPS, including the "designated representative" provision, of the regulation to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Nutrition and Forestry of

the U.S. Senate at the same time that the regulation was provided to the Secretary of Agriculture.

EPA Response:

The draft final rule submitted to the U.S. Department of Agriculture and the Congressional Committees in May of 2015 did not include provisions for authorized or designated representatives, although such a provision was included in the proposed rule published in March of 2014; the EPA provided the USDA with a version of the final rule reinstating the provision on June 22, 2015; and the EPA provided the final version of the rule (containing the reinstated designated representative provision) to Congress on October 9, 2015, nearly a month before publication of the final rule in the Federal Register. The EPA does not agree that, as a matter of law, the version of the regulation provided to the USDA and Congressional Committees in May of 2015 had to be identical to the final version codified in the Code of Federal Regulations – that would seem to defeat the purpose of sharing proposed final versions of regulations with the USDA and Congress. And in the case of the WPS rule, both Congress and the USDA were provided with the final language of the regulation, including the designated representative provision, well before the final rule was published in the Federal Registrar. Moreover, it is not at all clear why the asserted failure to notify Congress of a provision in May of 2015, that was included in the Final Rule published in November of 2015 (and that Congress and the USDA were aware of before the Final Rule was published), is appropriate grounds to delay the effectiveness of the WPS, especially given the importance of the WPS to farmworker protection. Nor is it clear why the asserted failure to do something in 2015 should appropriately serve as a basis for a last-minute request to delay the effective date filed in late December of 2016, more than 18 months after the asserted failure to appropriately notify Congress and more than a year after the Final Rule was published.

2. You have also asserted that the agency failed to meet the statutory obligations under FIFRA to finalize and deliver to SLAs the enforcement guidance, educational materials, and training resources necessary to effectively implement the rule changes and assist the regulated community with compliance activities.

EPA Response:

There is no provision in FIFRA requiring the agency to deliver to SLAs or the regulated community the materials identified in your petition. Nevertheless, sections 170.401(c)(3) and 170.501(c)(3) of the WPS stipulate that compliance with some of the new WPS training requirements is not required until 180 days after the EPA makes certain training materials available to the public. The EPA has been involved in training activities with SLA's since November 2015. Following the signing of the final worker protection regulation, we immediately began extensive training for state regulators and state inspectors. Training our state co-regulators is a top priority, and all of the states, territories and tribes have received training. Although it was resource-intensive, we prioritized providing in-person training to states to allow for in-depth face-to-face dialogue on these important revisions. We also conducted numerous trainings in 2015

and 2016. Moving forward, we intend to continue to provide training to our state co-regulator partners, both in-person and through webinars. Working with our state partners, the EPA has developed several compliance and implementation aids to facilitate compliance with the new safety standards. The availability of the How to Comply Manual, Quick Reference Guide and other compliance, implementation materials has been widely publicized and they are available on the EPA's website <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps> and on an EPA grantee's web site <http://pesticideresources.org/>, and 47,500 How to Comply Manuals have been printed through a state cooperative extension service partner and sent to the SLAs. The EPA notes too that sections 170.401(c)(3) and 170.501(c)(3) of the WPS stipulate that compliance with some of the new WPS training requirements will not be required until 180 days after the EPA makes certain training materials available to the public. The EPA fully intends to make these safety training materials for workers and handlers available in time to meet the current implementation schedule.

Furthermore, it is perplexing that you are concerned about the availability of educational and training materials considering that NASDA refused to accept grant funds to support pesticide safety activities specifically "Field Implementation Meeting Support" and "Funding Distribution for Pesticide Safety Education Programs." These grants would have provided \$7.5 million to your organization over five years to support essential elements of state regulatory agencies and state extension services activities in communication and implementation efforts related to the EPA's revisions of the WPS rule as well as the revised pesticide applicator certification regulation. NASDA has cooperated in the past with pesticide state regulatory agencies and state agricultural university pesticide safety education programs by providing technical assistance with implementation of federal regulatory requirements. Given this history, it was extremely disappointing that NASDA refused to accept our support for a common goal, particularly as it related to the implementation of these regulations to protect agricultural workers. The EPA believes it would have been more constructive for NASDA to have accepted the grant funds to support WPS than to now criticize the EPA for alleged shortcomings in its implementation efforts.

For the reasons provided above, the EPA is denying your petition to delay the effective date of the WPS rule.

Sincerely,



James J. Jones  
Assistant Administrator