

**ENVIRONMENTAL PROTECTION
AGENCY**

[OPP-2004-0018; FRL-7352-2]

**Pesticides; Draft Guidance on Labeling
Statements on Products Used for Adult
Mosquito Control; Notice of
Availability**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency seeks public comment on a draft Pesticide Registration (PR) Notice entitled "Labeling Statements on Products Used for Adult Mosquito Control." This draft PR Notice provides guidance to registrants and others concerning EPA's policy on labeling statements for pesticide products used for wide-area applications to control adult mosquitoes. The specific label statements and label organization principles recommended in the draft PR Notice are intended to improve existing labels by clarifying language conveying environmental hazards posed by these products, as well as specific use directions and instructions to the applicators. The Agency believes that adoption of these recommendations will help pesticide users and pesticide enforcement officials to achieve more effective mosquito control and protection of public health, while ensuring that use of these products will not pose unreasonable risks to the environment.

DATES: Comments, identified by docket ID number OPP-2004-0018, must be received on or before July 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Roelofs, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-2964; fax number: (703) 308-1850; e-mail address: roelofs.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to pesticide registrants, pesticide regulatory officials, mosquito and vector control agencies, pesticide users, and the general public. Although this action may be of

particular interest to those persons who have a specific interest in the labeling of pesticide products used for the control of adult mosquitoes, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2004-0018. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly

available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0018. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2004-0018. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0018.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP-2004-0018. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action Is the Agency Taking?

A. Background

In recent years, State pesticide regulators and vector control agencies have raised a variety of concerns about the labeling of pesticides used for adult mosquito control. The class of products of most concern have been those used for control of adult mosquitoes through the application of Ultra-Low Volume (ULV) sprays or fogs. Since State agencies enforce pesticide use regulations under cooperative agreements with EPA, and since section 12(a)(2)(G) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) makes it an unlawful act "to use any registered pesticide in a manner inconsistent with its labeling," the interpretation of label requirements is a critical issue for EPA, its regional offices, and State pesticide regulatory agencies, as well as for users.

In 2001, EPA sponsored an Inter-Regional Mosquito Control Conference for EPA and State agency representatives. Although labeling was one of many subjects discussed at the conference, participants felt label improvements were an area that should be addressed. It was agreed that a group representing EPA's Office of Pesticide Programs (OPP), Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and State lead agency volunteers would develop initial, informal proposals for improving mosquito control-product labels, with the focus on adulticides only. The EPA-State workgroup developed a paper which included seven recommendations. In April 2003, the initial recommendations were discussed at a public meeting of the Pesticide Program Dialogue Committee (PPDC). The PPDC is chartered under the Federal Advisory Committee Act to advise EPA on pesticide issues. Its members represent a broad spectrum of interests, including the pesticide industry, grower groups, public health

agencies, academic researchers, and public interest and advocacy organizations. PPDC recommended that EPA develop the initial recommendations into more formal Agency positions.

After considering the comments and suggestions of State agencies, the PPDC and other interested parties, the Agency has decided to make the specific recommendations in the draft PR Notice as a means to achieve improvements in the labeling of adult mosquito control products. The recommendations consist of some specific statements that should appear on all labels for this class of products, some model statements that registrants may adapt to the specific characteristics of their products, and some principles on organizing elements of the label.

B. Summary of the Labeling Recommendations

The recommendations in the draft PR Notice are meant to apply only to products labeled for wide-area application by ground or aerial equipment, typically as ULV sprays or fogs, and not to home and garden use products which may list mosquitoes on the label. Control of mosquito larvae is a wholly different use pattern from adult mosquito control, and thus, products registered as mosquito larvicides are not included in the scope of the draft PR Notice.

The draft PR Notice sets forth seven recommendations for improving labels of adult mosquito control products. In brief form, the recommendations are:

1. Adult mosquito control applications should be limited to trained personnel.
2. Mosquito control directions and precautions should be clearly distinguished from those applicable to any other use allowed on the label.
3. Label precautions and directions should be revised as needed to make hazards to aquatic life as specific as possible, and also to allow the application of these products over a body of water allowable under some circumstances.
4. Users should consult with the State or Tribal lead agency for pesticide regulation to determine if permits or other regulatory requirements exist.
5. Labels should specify a spectrum of spray/fog droplet sizes, and indicate that droplet size should be determined according to the nozzle manufacturer's directions.
6. Precautionary language to protect bees should have a provision to allow mosquito control applications in order to respond to immediate threats to public health.

7. Mosquito adulticide labels should include specific statements on timing and allowable frequency of applications to a specific site.

C. What Questions/Issues Should You Consider?

Commenters are free to raise any issue, but the following question is of particular interest to the Agency, and comments on it are invited.

As presented in the draft PR Notice, recommendations 6 and 7 both propose to allow applications that might otherwise be disallowed by the label, if there is a threat to public health that warrants overriding either bee precautions or timing and frequency limitations. How and by whom should such a determination be made?

D. PR Notices are Guidance Documents

PR Notices are intended to provide guidance to EPA personnel and decisionmakers and to pesticide registrants. PR Notices are not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

E. Relationship to Interim Clean Water Act Guidance

On July 11, 2003, EPA issued Interim Guidance regarding the application of pesticides and the requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act. The Interim Guidance stated that the following applications of pesticides do not require NPDES permits if the pesticides are applied consistent with all relevant requirements of FIFRA:

1. The application of pesticides directly to waters of the United States in order to control pests.
2. The application of pesticides to control pests that are present over waters of the United States that results in a portion of the pesticides being deposited to waters of the United States.

EPA solicited public comments on the Interim Guidance, and the Agency is currently reviewing the comments received and anticipates taking final action on the Interim Guidance later this year. See the **Federal Register** of August 13, 2003 (68 FR 48385) (FRL-7542-9).

EPA believes that the recommended label language contained in Recommendation No. 3 of the draft PR Notice would be consistent with the Interim Guidance. If EPA decides to modify the Interim Guidance in any way

when it takes final action on the guidance, the Agency will take steps to ensure that the conclusions reached in the final Pesticide Registration Notice are consistent with the final guidance on NPDES permitting requirements for pesticide applications.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, Water.

Dated: April 21, 2004.

James Jones,

Director, Office of Pesticide Programs.

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ENVIRONMENTAL PROTECTION AGENCY

[FRC-7654-6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent ("AOC, Region 9 Docket No. 2004-0014") pursuant to section 122(h) of CERCLA concerning the A-American Environmental Removal Site (the "Site"), located in Alhambra, California. The respondent to the AOC is William Anderson ("Anderson"). The AOC provides Anderson with a covenant not to sue and contribution protection for the removal action at the Site. To date, EPA has incurred approximately \$599,844.04 in response costs related to the Site. Anderson is reimbursing \$15,000.00 of the incurred response costs to EPA, consistent with EPA's determination of Anderson's ability to pay. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments will be available for public inspection at IPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.