

Minor Crop Farmer Alliance

September 14, 2016

OPP Docket
Environmental Protection Agency Docket Center (EPA/DC)
(28221T)
1200 Pennsylvania Avenue, NW,
Washington, DC 20460-0001

Dr. Derek Berwald
Biological and Economic Analysis Division, MC 7503P
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

RE: Pesticides; Draft Guidance for Pesticide Registrants on the Determination of Minor Use, 81 Fed. Reg. 38704-38705, June 14, 2016, Docket Identification Number: EPA-HQ-OPP-2015-0814.

Dear Dr. Berwald,

These comments are submitted on behalf of the Minor Crop Farmer Alliance (“MCFA”) in response to the subject June 14, 2016 Federal Register Notice on Draft Guidance for Pesticide Registrants on the Determination of Minor Use. We appreciate the Agency’s willingness to involve the stakeholders and U.S. Department of Agriculture in the process as described in the Draft Guidance. We would have appreciated more involvement in the preliminary discussions given the direct involvement MCFA had in the development of the legislative language on which the guidance is based. USDA’s Office of Pest Management Policy was created as a result of that legislation, and we fully endorse their direct involvement as well. While we appreciate the Agency’s involvement of stakeholders as represented by the PRIA Coalition, MCFA has not been part of those discussions.

The MCFA is a coalition of national, regional and individuals representing growers, packers, handlers and processors of various agricultural commodities, including, food, fiber and horticultural products, and organizations involved with public health pesticides. MCFA was instrumental in the development of the statutory provisions that this draft guidance is intended to clarify and better define and MCFA members worked very hard to secure the passage of those provisions. We fully support the Agency’s efforts to provide clarity and enhanced definitions to allow the more efficient submission of information required from registrants to pursue the incentives for registrations that will serve the needs of our diverse membership. While “minor use” is a term of art, the crops depending on these registrations represent over \$45 billion in farm gate receipts, almost half of the nation’s agricultural production, and a major value component of farm exports globally.

It may be useful for the Agency to consider the negotiations that led to the development and passage of the underlying legislation that this guidance is addressing. The initial discussions with the Agency to derive a “bright line” definition of “minor uses” in the draft legislation were fraught with challenges. While MCFA supported the inclusion of an acreage designation as part of the definition, we also made clear that the 300,000 acre designation reflected in the provision as adopted, could just as well have been 500,000 acres or even 1,000,000 acres if the return on initial investment to justify a registration was the paramount factor to be considered. We fully support the Agency’s use of the USDA Census of Agriculture as the most appropriate data set to define the “bright line” criteria. It may be appropriate to use some statistical derivative or a rolling average of acreage over several census intervals to smooth out the variability of an individual census period.

The original definition of a minor use was developed and described when the cost of guideline studies and the total scope of studies needed for registrations were much less than the present requirements. As born out in the incentives side of the legislation, we were never considering that the whole marketplace for any active ingredient would be on the specialty crop side of the ledger. Major deterrents to registration of crop protection tools in specialty crop agriculture include the very high costs associated with the agronomic production requirements of these specialty crops coupled with the very high per acre value of the crops produced. Consequently, the potential cost associated with product performance liability is a very real and constant consideration for the registrants as new pesticide materials are considered for the market place. This becomes exceedingly important for crops with limited potential acreage of use. We encourage the Agency to be very aggressive in pursuing ways to minimize the obstacles to allowing registrants the most efficient and economical manner to access the “minor use” benefits authorized by the underlying statute.

The economic models proposed by the Agency to determine when a use “does not provide sufficient economic incentive to support the registration” appears to be reasonable but as growers we do not have the necessary expertise to provide additional comments in this specific area. We would defer to CropLife America and individual registrants’ perspectives in addressing this question. The Agency has been liberal in their review and evaluation of what constitutes a minor use in the past and we would encourage them to continue to do so in the future.

We look forward to the final guidance and will work with the Agency to ensure that an equitable and reasonable process is adopted, one that achieves the major aim of the underlying legislation, namely supporting the registration of products and associated amendments necessary to increase access of crop protection tools for these minor uses all within the framework of meeting the safety standards established by FIFRA and the FFDCA as applicable.

Sincerely yours,



Daniel A. Botts, FFVA
Chair of the Minor Crop Farmer Alliance Technical Committee