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EPA Addresses Status Of FIFRA Registration Review Work As October 1 Deadline Approaches

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Key Takeaways

- **What Happened:** EPA published an update on its work and plans as the October 1 registration review deadline approaches for many pesticides. Consistent with the governing statute, EPA confirmed that pesticides without finalized reviews as of this date will remain on the market and can be used according to their current product labels.
- **Who's Impacted:** Companies who produce, distribute, and/or sell pesticides in the United States; entities and individuals who use such products.
- **What Should They Consider Doing in Response:** Monitor EPA's registration review schedule and updates, including when and how EPA will adopt "early mitigation" for endangered species and incorporate new endocrine disruptor screening methodologies into its registration review decisions.

Background

On September 26, 2022, the U.S. Environmental Protection Agency (EPA) announced its progress and additional plans to address the October 1, 2022 deadline to complete registration review for certain pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In 2007, Congress amended FIFRA Section 3(g) to mandate periodic review of all pesticides on a 15-year cycle. Known as "registration review," this program requires EPA to determine if previously approved pesticides continue to meet FIFRA's registration standards. Registration review is designed to take into account the changes in scientific capabilities for assessing risk, as well as any changes in policies and pesticide use practices over every 15-year period.

The first mandated deadline is October 1, 2022. By that date, Congress directed EPA to review the

726 conventional, biopesticide and antimicrobial pesticides that were originally registered before October 1, 2007. Part of the review includes:

- completing an Endangered Species Act (ESA) listed-species assessment and any necessary ESA consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

- taking into account Endocrine Disruptor Screening Program (EDSP) screening by testing certain substances to determine whether they may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects; and

- completing cumulative pesticide risk assessments where EPA has deemed this step necessary based on the Pesticide Cumulative Risk Assessment: Framework for Screening Analysis.

Current Status

According to EPA's announcement, the registration review process has been delayed for a number of reasons, including the Agency's prioritization of COVID-19 antimicrobial actions, delays in receiving data from registrants, a lack of resources to respond to ongoing and increasing litigation, and the scientific complexity associated with many of the pesticides yet to go through registration review. Although EPA has completed 685 draft human health and ecological effects risk assessments (reflecting 94 percent of the total 726 cases), it has issued final review decisions for 151 cases, or 21 percent. EPA has issued an additional 431 interim decisions (60 percent of the total number of cases). In many instances, these interim decisions include required label mitigations and restrictions so that a pesticide product can continue to be used while the Agency continues to work on the ESA consultation and EDSP screening components that must be completed before its decisions can be fully finalized.

Importantly, EPA's announcement confirms that pesticides without finalized review as of October 1 will remain on the market and can continue to be used according to each product's current label. This is consistent with the governing statute, FIFRA Section 3(g), which prohibits cancellation of pesticides without following the substantive and procedural requirements of the registration cancellation provisions in FIFRA Section 6.

Next Steps

In its September 26 announcement, EPA stated that it has an "aggressive plan" to review all remaining pesticide cases. According to EPA, it expects to release an update in November 2022 explaining how it will adopt early mitigation for ESA species as part of registration review decisions to "contribute meaningfully to meeting [ESA] obligations and facilitate future ESA review." EPA also plans to issue a draft Endocrine Disruptor Screening Program White Paper for public comment, which will address EPA's use of new approach methodologies that may serve as "more efficient" alternatives to current screening methods.

In addition, EPA has been updating its registration review schedule through fiscal year 2025 on a quarterly basis, and expressed its commitment to good communications with stakeholders and "an open and transparent process," including opportunities for public comment at most stages of the registration review process.

Conclusion

Although EPA has not yet fully met the October 1 registration review deadline, it has made considerable progress and has committed to an “aggressive” plan for completing review of the remaining pesticides. Information, assessments and supporting material for each pesticide are available for public review through each case’s docket at regulations.gov. If you do not know the docket number but know the chemical name you can find more information here. Pesticides that have not been issued a final decision as of October 1, 2022 remain on the market and can continue to be used according to their current product labels.

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