



**BERGESON & CAMPBELL, P.C.**

1203 Nineteenth Street, NW | Suite 300 | Washington, DC | 20036-2401 | tel 202.557.3800 | fax 202.557.3836 | web www.lawbc.com

**MEMORANDUM**

Via E-Mail

DATE: December 8, 2009

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: EPA Announces Revised Risk Assessment Methods for Workers, Children of Workers in Agricultural Fields, and Pesticides with No Food Uses

Earlier today the U.S. Environmental Protection Agency (EPA) announced the availability of a policy paper entitled *Revised Risk Assessment Methods for Workers, Children of Workers in Agricultural Fields, and Pesticides with No Food Uses*, which describes how EPA plans to use revised methods in conducting risk assessments for pesticide uses and exposures not governed by the Federal Food, Drug, and Cosmetic Act (FFDCA). According to EPA, implementing this policy will increase protections, especially for agricultural workers and children of workers in agricultural fields. EPA cites the renewed commitment to considerations of environmental justice as a rationale behind the proposal. Under the policy, risk assessments for children, farm workers, and others would consider aggregate pesticide exposures from all sources, in addition to the cumulative effects from multiple pesticides that have similar toxicity. EPA also would apply an additional safety factor intended to protect infants and children from the risks of pesticides where the available data are incomplete. EPA will announce the availability of the policy paper in tomorrow's *Federal Register*, which will begin a 60-day comment period on the new approach and how best to implement the improvements. More information is available on the Internet at <http://www.epa.gov/pesticides/health/worker-rsk-assmnt.html>.

According to EPA, because science has advanced, EPA is updating and changing the way it approaches pesticide risk assessments. EPA intends to apply risk assessment techniques developed in implementing the Food Quality Protection Act of 1996 (FQPA) to any pesticide risk assessment, regardless of whether it falls under FQPA, "so long as application of the risk assessment technique is consistent with good scientific practice and is not otherwise prohibited by law." EPA states that this will include:



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- Using an additional safety/uncertainty factor to protect children;
- Considering aggregate exposures to pesticides from multiple sources;
- Considering cumulative effects that may occur from exposure to multiple pesticides with a common mechanism of toxicity; and
- Reporting potential risks for individuals who had not been explicitly considered, specifically workers age 12-17 and children taken into agricultural fields while their parents work.

EPA licenses or registers pesticides for sale and distribution under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which uses a risk/benefit standard for registration. EPA establishes limits for pesticide residues in or on food under FFDCA Section 408. FFDCA applies a risk-only standard for tolerances and, as stated by EPA, explicitly sets certain approaches for assessing risks:

- Incorporating an additional safety factor to protect children;
- Aggregating all non-occupational (food, water, and residential) exposures to a pesticide; and
- Considering the cumulative effects of pesticides with a common mechanism of action.

FQPA added the risk-only standard and the mandated risk assessment approaches to FFDCA. EPA states that, although FIFRA does not require EPA to use these risk assessment approaches in assessing worker risks or non-food use pesticides, FIFRA does require EPA to consider whether pesticides pose an unreasonable risk. EPA states: "In assessing risk, EPA believes it should use the best scientific techniques available. Using the FQPA risk assessment approaches for all pesticides is consistent with good science." It is less clear how EPA will consider any revised occupational risk assessments as meeting the requirements of FIFRA.

EPA notes that, while some of the new methodology changes can be implemented immediately, others will require further research into available data and data needs, and development of science policies. EPA states that it may need to consult the FIFRA Scientific Advisory Panel and request public input for new science policies. EPA's policy paper includes the following proposed implementation strategy:



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### **Immediate Implementation**

- Consistent application of safety/uncertainty factors among food use and non-food use pesticides, and worker risk assessments as scientifically appropriate and in accordance with legal requirements.

### **Longer Term Implementation (6 to 18 months)**

- Development of exposure assessment methods for non-working children of workers in fields;
- Development of risk assessment methods for child workers (ages 12-17 years);
- Development of aggregate and cumulative exposure methodologies for adult workers and children; and
- Development of risk methods to assess by-stander exposure near agricultural fields from pesticide volatilization and/or drift pending the recommendations of the SAP consultation and comments received on the pesticide drift *Federal Register* notice.

As these policies are developed, data needs may be identified, including, but not limited to, the following:

- The transfer of pesticide residues to children and youths present in pesticide-treated fields or orchards considering the different activities in which they may be engaged (*e.g.*, working vs. not working);
- The extent to which youth under age 18 work in agriculture and the age distribution of these workers;
- The extent to which non-working children are taken into pesticide-treated fields; and



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- The likelihood and extent of co-occurrence of exposure from work in agriculture settings (or presence in agricultural settings), in addition to food, drinking water, residential and other sources of exposure.

As mentioned, a significant part of the Office of Pesticide Programs' motivation in this initiative is Administrator Jackson's emphasis on environmental justice considerations in EPA decision-making. It is not likely to be the last such initiative.

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We hope this information is helpful. As always, please call if you have any questions.