



March 15, 2024

Edward Messina
Director, Office of Pesticide Programs
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20001

RE: Request to Clarify February 8, 2024 Notice (89 Fed. Reg. 8675) Regarding Child Resistant Packaging for Pesticides in Flexible Packaging to Exclude Antimicrobial and Certain Conventional Pesticides

Dear Mr. Messina:

The American Chemistry Council Center for Biocide Chemistries (CBC), which represents registrants of antimicrobial pesticides, and the Household & Commercial Products Association (HCPA), which represents registrants of antimicrobial and conventional residential pesticides, are concerned that the above-referenced notice can be read as applicable to antimicrobial or conventional pesticides, such as premoistened disinfecting and sanitizing towelettes, or dilutable powders or tablets, that are not packaged in flexible packaging resembling child food products. While we appreciate the clarity provided by the Antimicrobials Division to CBC and Registration Division to HCPA that the intent of the Notice is only to apply to packages that resemble child food packaging, and not products such as towelettes or dilutable powders, small water-soluble packets, or tablets in flexible packaging, we urge the Environmental Protection Agency (EPA) Office of Pesticide Programs (OPP) to clarify further the scope of products required to comply with the Notice in an updated Federal Register Notice. This will avoid any uncertainty regarding the scope of the Notice among states, other stakeholders, EPA's Office of Enforcement and Compliance Assurance (OECA), and future staff within OPP.

Antimicrobial and conventional pesticides may be sold in flexible packaging in sizes of 20 oz or less for a range of uses, and these packages do not typically resemble child food pouches. Relatively small sizes of premoistened disinfectant wipes are an illustration of products in this category. These pesticides do not meet the criteria to trigger child-resistant packaging (CRP) under 40 CFR 157.22(a). EPA provided written clarification to CBC and verbal confirmation to HCPA that it did not intend to cover such products with its finding under 40 CFR 157.22(a)(6) that CRP is required. CBC and HCPA support this conclusion and submit that such a finding could not be made for antimicrobial products in flexible packaging.

It is important that EPA's conclusion that such antimicrobials and conventional pesticides sold in small-sized flexible packaging are not covered by this Notice be unambiguously communicated

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to registrants and other stakeholders. To accomplish this, CBC and HCPA request that EPA issue a clarified notice in the Federal Register explaining the limitation on pesticides covered. This should exclude products that are not sold in packaging resembling, at a minimum, pouches, granules, and towelettes/wipes. Attempting to implement this clarification through other means could result in uncertainties for registrants and OPP that lead to future issues, including issues with state registrations and/or enforcement, private litigation, and even OECA referring to the formal finding by EPA in the Federal Register.

We hope that you will be able to publish this clarification promptly. Please contact me with any questions, comments, or to discuss the potential implementation issues.

Sincerely,



Anastasia Swearingen
Executive Director
American Chemistry Council's Center for Biocide Chemistries



Steve Bennett
Executive Vice President, Scientific & Regulatory Affairs
Household & Commercial Products Association

CC: Charles "Billy" Smith, Director, Registration Division
Anita Pease, Director, Antimicrobials Division