



PETITION FOR RULEMAKING
TO ACCELERATE IMPROVEMENTS TO PESTICIDE LABELS

May 24, 2022

The Honorable Michal Freedhoff
Assistant Administrator
Office of Chemical Safety & Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

Dear Assistant Administrator Freedhoff,

In light of the Environmental Protection Agency's ("EPA") endangered species workplan and efforts to improve its pesticide registration programs, the Center for Biological Diversity ("Center") submits this petition in the spirit of cooperation to offer you a mechanism — the EPA's existing Label Improvement Program — to implement uniform and consistent protections for species facing extinction and to protect farmworkers by requiring that all labels be printed in both English and Spanish. Codifying regulations to formalize the Label Improvement Program will provide a durable mechanism for the EPA to meet its mandates under the Endangered Species Act ("ESA") and Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA").

Over three decades ago, the EPA established a Label Improvement Program as a mechanism to rapidly respond to identified labeling needs for large numbers of pesticide labels simultaneously. Through the years, the EPA has used this program to implement systematic label changes that were needed for a wide variety of pesticide products including fumigants and rodenticides. While the program has been utilized sporadically, it has been effective in implementing label changes.

We have been encouraged by Biden Administration's initiatives to meet its obligations under the Endangered Species Act ("ESA"), but until the EPA is able to implement pesticide product label changes, pesticide applications will continue to harm endangered species. Similarly, while there have been several improvements in farmworker safety in recent years, one of the biggest unaddressed risks to farmworkers remains the failure to require pesticide product labels in Spanish and other languages that farmworkers speak.

We believe that the Label Improvement Program offers a common solution for these problems, and indeed has the potential to address many other challenges the pesticide program faces. Stakeholders across the spectrum recognize that the EPA must move to an electronic labeling system, in which pesticide labels can be submitted electronically, and also be reviewed by computers using machine-learning rather than by hand, line-by-line. But just as EPA must find ways to review labels efficiently and quickly, it must also have a mechanism to quickly and efficiently require label changes.

Formalizing the Label Improvement Program through regulations would provide several benefits. First, as the petition describes, the EPA could revisit the somewhat outdated approach set forth in 1980 for implementing any across-the-board labeling requirements, including explicitly moving towards an electronic labeling system. Second, the Center believes that the EPA should provide a period of public notice and comment before requiring any uniform labeling requirements to ensure fairness and transparency. And third, requiring uniform labeling would also remove perceived competitive advantages by ensuring conformity and consistency among all pesticide products and registrants.

This petition requests that first the EPA formalize and codify the Label Improvement Program. Second, the petition requests that *Bulletins Live!* language be required for all pesticides that have outdoor uses that might cross the ESA's "may affect" threshold. Third, the petition offers and requests a uniform Hawaii label to protect endangered species on those islands using the Label Improvement Program. Fourth we request the EPA require all labels be available in Spanish, as well as California-specific labels be available in Mixteco, Triqui, and Zapotec languages.

I. The Label Improvement Program Should be Codified.

In 1980, the EPA established a Label Improvement Program as a mechanism to "upgrade pesticide labels in certain areas that contribute to the protection of health and environmental safety" and to "respond rapidly to labeling needs identified within the Agency."¹ The EPA was concerned that many pesticide labels that needed changes might not "be comprehensively reviewed until a considerable time in the future" given the long periods of time that registration review could take. Thus, the EPA began a rulemaking to codify the Label Improvement Program so it could operate as a program that "can be initiated at any time that the circumstances warrant" to respond to immediate "problem-specific" labeling needs. Unfortunately, the EPA never finished the rulemaking process for the label Improvement Program, but the EPA acknowledged that the Label Improvement Program will continue to be used informally until a point were "the Agency may propose regulations."²

As originally envisioned in the 1980s, where the EPA had identified a need for a widespread label revision, the EPA would require noticed registrants to amend their labels within established timeframes, typically within 60 days of receipt. If the registrant failed to comply, the EPA would act under their FIFRA authority to issue a Notice of Intent to Cancel under FIFRA Section 6(b).³ In 1988, the EPA declined to finalize regulations for the Label Improvement Program, citing that the program "has not 'matured' to the point of regulation as yet."⁴ The program has since been utilized to implement systematic label improvements. For example, the EPA issued a Label Improvement Program notice that fourteen fumigant pesticides and their respective products implement sixteen label changes including a Spanish warning statement, a restricted use statement, a human hazard precautionary statement, detailed use instructions, and spill, storage,

¹ *Pesticide Registration Label Improvement Program*, 45 Fed. Reg. 37884 (June 5, 1980)

² *Id.*

³ 7 U.S.C. § 136d(b).

⁴ *Pesticide Registration Procedures; Pesticide Data Requirements*, 53 Fed. Reg. 15952 (May 4, 1988).

and disposal statements.⁵ And in 1994, the EPA required label changes in rodenticide bait stations to protect children and pets.⁶

The Label Improvement Program represents a potentially effective mechanism to require pesticide label changes to protect endangered species, but would be most effective if it was formalized through regulation.⁷ This petition specifically requests that EPA always provide a period of notice and comment prior to implementing any label changes under the Label Improvement Program, and clarifies other aspects of the program to make the program less cumbersome for all stakeholders. This will ensure the goals of uniform rapid response to problem-specific label changes envisioned at the program's inception.

II. *Bulletins Live! Two Must be Required on Product Labels.*

In 2005, the EPA acknowledged the *necessity* of including label language on pesticide products that may harm endangered species, directing users to follow measures contained in Endangered Species Protection Bulletins ("*Bulletins Live! Two*") found online.⁸ The EPA stated then that: "geographically specific use limitations are *necessary* to ensure legal use of a pesticide product will not result in jeopardy to the species," and that "absent the appropriate label statement, EPA believes a pesticide generally will not meet the FIFRA risk/ benefit standard."⁹ Accordingly, the EPA stated that it will "generally seek to ensure that registrants include" label language directing pesticide users to the *Bulletins Live!* system. Despite this stated policy change, the EPA approved thousands of pesticide products over the following 17 years that failed to contain this label language, and therefore should not have meet the FIFRA risk/benefit standard.

When the EPA first announced *Bulletins Live!*, the agency noted that endangered species compliance and determining species-specific and site-specific measures "is not a task that can be accomplished quickly." However, over 17 years later, only a select few pesticides bear these label requirements, and usually only through the threat of litigation.¹⁰ Numerous Biological Opinions by the National Marine Fisheries Service have required *Bulletins Live!* language, and still the EPA has failed to implement this language.¹¹ The best way forward to ensure uniform label language is to simply require all labels to include *Bulletins Live!* language.

The Label Improvement Program provides a mechanism to implement this critical language across the wide swath of chemicals that have shown to jeopardize endangered species. Using the

⁵ *Notice to Manufacturers, Formulators, Producers & Registrants of Fumigant Products* PRN 84-5 (Nov. 15, 1984).

⁶ *Label Improvement Program for the Revision of Use Directions for Commensal Rodenticides and Statement of the Agency's Policies on the Use of Rodenticide Bait Stations* PRN 94-7 (Sept. 16, 1994).

⁷ 40 C.F.R. § 152.130(d).

⁸ The Bulletins can be accessed at <https://www.epa.gov/endangered-species/endangered-species-protection-bulletins>. *Endangered Species Protection Program Field Implementation*, 70 Fed. Reg. 66392 (Nov. 2, 2005).

⁹ *See, Endangered Species Protection Program Field Implementation*, 70 Fed. Reg. 66392 (Nov. 2, 2005).

¹⁰ *Amended Label as Required by the Final Biological Opinion for Rozol Use on Black-tailed Prairie Dogs Registered Under Section 3 of FIFRA* EPA Reg. No. 7173-286 (Aug. 8, 2012)

https://www3.epa.gov/pesticides/chem_search/ppls/007173-00286-20120808.pdf.

¹¹ *See e.g.* NAT'L MARINE FISHERIES SERV., BIOLOGICAL OPINION ON THE ENVIRONMENTAL PROTECTION AGENCY'S REGISTRATION REVIEW OF PESTICIDE PRODUCTS CONTAINING METOLACHLOR AND 1,3-DICHLOROPROPENE 1227 (Jul. 30, 2021); NAT'L MARINE FISHERIES SERV., BIOLOGICAL OPINION ON THE ENVIRONMENTAL PROTECTION AGENCY'S REGISTRATION OF PESTICIDE CONTAINING CHLORPYRIFOS, DIAZINON, AND MALATHION (Dec. 29, 2017).

Label Improvement Program in tandem with the *Bulletins Live! Two* language would allow for immediate and proactive on the ground conservation measures for endangered species.

III. Prohibiting Pesticide Use on Critical Habitat in Hawaii.

As an example of a specific Bulletin that should be implemented uniformly through the Label Improvement Program, the Center is hereby petitioning for a Hawaii-specific label that would protect endangered species from all pesticides in that State. Specifically, we petition the EPA to prohibit all uses of outdoor agricultural pesticides in critical habitat in the Hawaiian islands.

With over 500 endangered species, Hawaii is home to approximately one-third of all federally protected species, and is the frontline of the extinction crisis with nine species found there declared extinct just last year. In Hawaii, the primary causes of extinction are non-native, invasive species, habitat loss, and climate change, with pesticides representing a secondary threat to most listed species. However, because of the overbroad nature of most pesticide labels, and the gravity of threats already facing Hawaiian species, they could be put at risk through reckless and unnecessary pesticide use.

Using data provided by the U.S. Department of Agriculture and the U.S. Fish and Wildlife Service, the Center has mapped out the intersection between agriculture in Hawaii and designated critical habitat in Hawaii. As shown below, there is very little overlap other than in one area of southern Kauai where several endemic cave species are found, and which are potentially harmed through groundwater contamination. Banning the use of agricultural pesticides in critical habitat would be a simple, proactive conservation measure that has the potentially to dramatically reduce the scope of all future ESA nationwide consultations for pesticides. Protecting these critical habitat areas in a proactive manner would also improve the EPA's compliance with the ESA, including both Section 7(a)(1) and Section 7(a)(2).

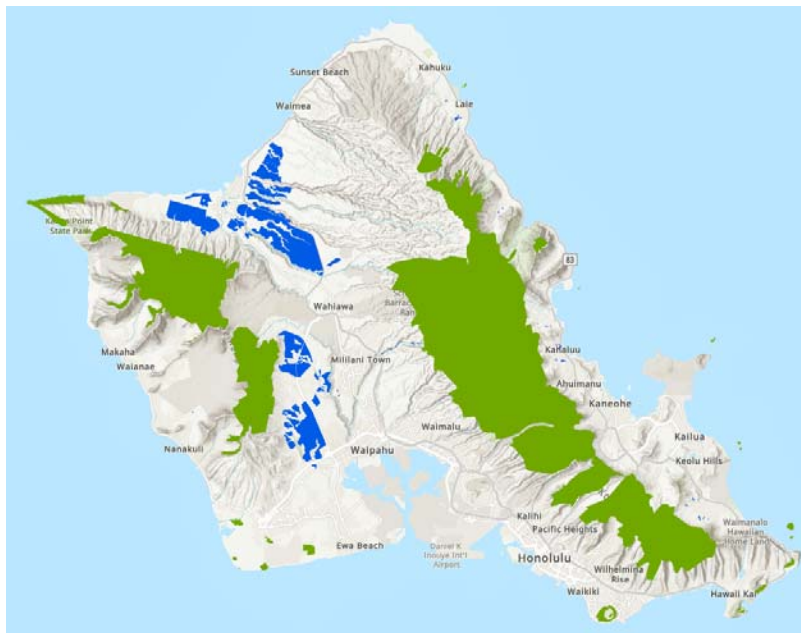
Critical habitat is mapped in green, agriculture in blue and overlap in red. Maui-nui is shown first:



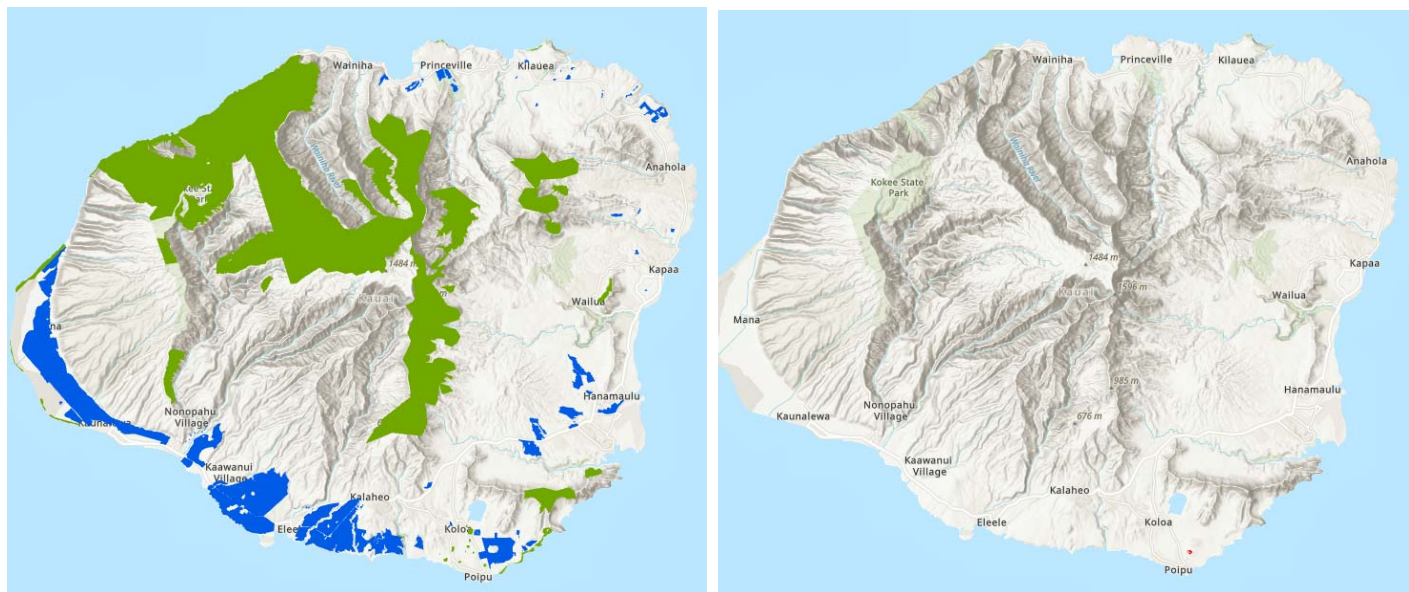
Hawaii Island:



Oahu:



Kauai. The map on the right shows the one area of overlap near Poipu.



IV. Mandatory Spanish Label Language Is Necessary to Protect Farmworkers.

Pesticide labels convey critical information about health hazards for pesticides, directions for safer use, and first aid actions to take if someone is accidentally exposed. Given the high rate of pesticide exposure, it is critical that farmworkers be provided with labels that they can understand. Without, at a minimum, bilingual labeling, too many farmworkers will remain at unnecessary risk of pesticide exposure. To protect farmworkers from dangerous exposure, the EPA should codify a Spanish label language requirement and use the Label Improvement Program to implement other geographic label changes to better protect farmworker communities from harm.

The EPA's current pesticide labeling requirements are inadequate to protect farmworkers. Most farmworkers in the U.S. are foreign-born and Spanish speaking, and many cannot read English.¹² While current EPA regulations recognize the prevalence of Spanish speaking agricultural workers, they do very little to address risk communication and language barriers. As of now, Spanish language is only required on labels for two of the most toxic categories of pesticides, with the required warning: "Si Usted no entiende la etiqueta, busque a alguien para que se la explique a Usted en detalle." Or "If you do not understand the label, find someone to explain it to you in detail."¹³

For the many other pesticides that can cause harm to farmworkers but do not rise to this high level of toxicity, such a warning statement is absent. It is highly unlikely that these warning will allow farmworkers to understand how they can best protect themselves or the health risks these

¹² U.S. Dep't of Labor, Findings from the National Agricultural Workers Survey (NAWS) 2001-2002 (Mar. 2005) https://www.panna.org/sites/default/files/naws_rpt9.pdf; Jonathan Hofman et al, *Development of a computer-based survey instrument for organophosphate and N-methyl-carbamate exposure assessment among agricultural pesticide handlers* 54 ANNALS OF OCCUPATIONAL HYGIENE 640 (Apr. 22, 2010)

¹³ 40 C.F.R. § 156.206(e).

pesticides present. However, requiring that *all* labels be printed in both English and Spanish will greatly enhance risk communication and allow farmworkers to protect themselves from hazardous pesticides.

The practice of requiring bilingual labels is not a novel proposal. Puerto Rico requires all restricted use pesticides to include a Spanish translation of the original label.¹⁴ In Canada, pesticide labels have required both French and English language for over a decade.¹⁵ This is a long-overdue, and feasible change to implement. Using the Label Improvement Program, the EPA can force registrants to include such changes on a wide swath of pesticides rapidly and efficiently. Indeed, the EPA already used the Label Improvement Program to require that 14 fumigants include a Spanish warning statement on their label, giving registrants under six months to submit applications for compliance.¹⁶ The EPA has the authority and mechanism to require Spanish label language nationwide, and by codifying a new language requirement and implementing it through the Label Improvement Program, the EPA can take a feasible and meaningful effort to protect farmworkers that are highly likely to be exposed to pesticides.

However, requiring labeling in Spanish is merely a first step. Farmworkers are one of the most diverse segments of our society, and many farmworkers speak and read no English or Spanish. In fact, over 150,000 farmworkers in California speak only indigenous languages including Mixteco, Triqui, and Zapotec. The EPA must also implement requirement that all pesticide labels be available in these languages in California as well. Finally, the EPA must seriously work to comprehensively survey what languages are actually being spoken across the nation to identify language barriers facing farm workers.

V. Proposed Rule Language

Pursuant to the to the right to petition the government clause in the First Amendment to the United States Constitution¹⁷ and the Administrative Procedure Act,¹⁸ the Center submits this petition to the EPA to revise its regulations to (1) codify the Label Improvement Program and use the programs rapid label change authority to (2) require a wide swath of registrants to change their labels to include the *Bulletins Live* language critical to protect endangered species across

¹⁴ X.B. Santiago *et al*, 2016. *An Examination of the Use of Pesticides in Puerto Rican Agriculture*, 10 RURALS 1, 3.

¹⁵ Memorandum to Registrants, Applicants, and Agents (Apr. 9, 2002) <https://www.canada.ca/en/health-canada/services/consumer-product-safety/legislation-guidelines/acts-regulations/memorandum-registrants-applicants-agents-bilingual-labelling-requirements-pest-control-products-pesticides-under-pest-control-products-act.html>

¹⁶ Notice to Manufacturers, Formulators, Producers & Registrants of Fumigant Products PRN 84-5 (Nov. 15, 1984).

¹⁷ “Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.” U.S. Const. Amend. I. The right to “petition for a redress of grievances [is] among the most precious of the liberties safeguarded by the Bill of Rights.” *United Mine Workers of Am. Dist. 12 v. Ill. State Bar Ass’n*, 389 U.S. 217, 222 (1967).

¹⁸ The Center and its members are “interested persons” within the meaning of the APA. *See* 5 U.S.C. § 553(e) (granting any “interested person the right to petition for the issuance, amendment, or repeal of a rule”); *see also* 5 U.S.C. § 702 & § 551(13) (providing that “agency action” includes “the whole or a part of an agency rule, . . . or the equivalent or denial thereof, or failure to act”); *id.* § 706(1) & (2)(A) (granting a reviewing court the authority to “compel agency action unlawfully withheld or unreasonably delayed” and/or to “hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion”). Should the EPA fail to respond to this petition in a timely manner, the Center may pursue relief in federal court.

the country (3) require and implement language prohibiting pesticide use on critical habitat for listed species in Hawaii, and (4) require and implement Spanish language labeling.

A. Label Improvement Program

The Center hereby petitions EPA to amend its regulations at 40 C.F.R. §152, add Subpart J [§§ 152.180 through 152.183] to include the following regulatory language:

§ 152.180 General.

(a) The Agency's Label Improvement Program is a continuing program for the purpose of upgrading pesticide labeling for four purposes:

- (1) To reduce risks associated with the use of the pesticide;
- (2) To improve the enforceability of the instructions by eliminating ambiguities and clarifying language; and
- (3) To promote consistency in labeling of similar products.
- (4) To rapidly respond to problems-specific labeling needs identified by the Agency

(b) The Label Improvement Program is intended to function within existing regulations, policies, and procedures. The purpose is to achieve rapid response to labeling problems identified by the Agency, the States, user groups or the public.

(c) The procedures the Agency will use in administering the Label Improvement Program and the procedures that registrants must follow to comply with the program are described in this subpart. When an application for amended registration is required of registrants, the Agency will follow the same procedures as for submission and review of applications for other amendments.

§ 152.181 Public Comment and Notification for Label Improvement Program.

(a) Before the Agency initiates a Label Improvement Program notice, it will provide a period of public notice and comment, which will include the specific label language and revisions to be made to any applicable product label.

(b) When the Agency initiates a public process for the Label Improvement Program, it will also notify each affected registrant by email or certified mail of the specific revisions to be made to its product label.

(c) Within 5 business days of issuance of a notice, EPA shall notify all end-use product registrants by email or certified mail of products containing active ingredients covered in a Label Improvement Program notice of the need to submit label amendments.

(d) Applicants with registrations for products containing active ingredients covered in a Label Improvement Program notice must submit to the EPA the required label amendments indicated in the notice electronically.

§ 152.182 Time for submission.

(a) Any affected registrant shall submit to EPA the required label amendments within 60 days of the issuance of any Label Improvement Program notice.

(b) If the required materials are not submitted within the stated time, the Agency may initiate a cancellation proceeding under FIFRA section 6(b) and § 152.148 of this part.

§ 152.183 Compliance after approval of application.

(a) After 60 days, a product may not be distributed or sold by the registrant (or any supplemental distributors included under his registration) without bearing the approved amended label.

B. Bulletins Live Language

The Center hereby petitions EPA to amend its regulations at 40 C.F.R. § 156.85(b) to add the following regulatory language:

(7)(a) If a product may result in jeopardy of endangered species, as evidenced through a previously issued ecological risk assessment, initial registration decision, reregistration review or other review completed by EPA, the following language must be included on the label:

“ENDANGERED SPECIES PROTECTION REQUIREMENTS”:

“This product may have effects on endangered species. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin, if applicable, for the area in which you are applying the product. To obtain Bulletins, consult <https://www.epa.gov/endangered-species/endangered-species-protection-bulletins> or email ESPP@epa.gov. You must use the Bulletin valid for the month in which you will apply the product.”

(b) If a product will be used in Hawaii, the following language must be included on the label:

“This pesticide shall not be used in designated critical habitat of any listed species in Hawaii. Information on locations of critical habitat are contained in the Endangered Species Protection Bulletin and are set forth at 50 C.F.R. § 17.94-17.99. To obtain Hawaii-specific Bulletins, consult <https://www.epa.gov/endangered-species/endangered-species-protection-bulletins> or email ESPP@epa.gov.”

C. Spanish Language and Other Language Requirements

The Center hereby petitions EPA to amend its regulations at 40 C.F.R. § 156.10:

- (a) All required label or labeling text shall appear in the English **and Spanish** language. The Agency may require or the applicant may propose additional text in other languages as is considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements will be applied equally all labels.
- (b) All labels for pesticides used in California shall appear in English, Spanish, Mixteco, Triqui, and Zapotec languages. The Agency may require or the

applicant may propose additional text in other languages as is considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements will be applied equally all labels

VI. Conclusion

While the EPA's recent efforts to address their ESA obligations and pesticide programs are encouraging, endangered species are still in jeopardy and farmworkers are still at risk due to English-only labeling. This petition offers the EPA a mechanism to address these challenges and other systemic obstacles the agency might face in the future. Thank you for consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Glass', written in a cursive style.

J.W. Glass
EPA Policy Specialist
Center for Biological Diversity