



AMERICAN CHAMBER OF COMMERCE IN INDIA

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg
New Delhi - 110016, INDIA Tel : 91-11-2652 5201, Fax : 91-11-2652 5203
Email : amcham@amchamindia.com Website : www.amchamindia.com

DRAFT REPRESENTATION REGARDING GAZETTE NOTIFICATION

3rd July 2017

Mr. Ashwani Kumar
Joint Secretary (Plant Protection)
Ministry of Agriculture & Farmers Welfare
Government of India
Krishi Bhawan
New Delhi - 110001

Dear Mr. Kumar,

Sub: Draft Gazette Notification No. 383 (G.S.R. 480 E) dated May 12, 2017; published on May 17, 2017

Objections Explanations & Suggestions submitted by AMCHAM for consideration by Govt.

This has reference to the Draft Gazette Notification incorporating "**The Insecticides (Third Amendment) Rules 2017**", published in G.S.R. 480(E) dated 12 May, 2017 wherein MoA/ DAC has proposed to add sub-rules 5,6 and 7 after sub-rule (4), in rule 6 of the Insecticides Rules 1971.

AMCHAM has carefully deliberated the Amendments proposed by the Ministry and is hereby submitting our point wise response to each of the proposed sub rules, for your kind consideration.

- A) Clause: In the Insecticides Rules, 1971, in rule 6, after sub-rule (4), the following sub-rules shall be inserted namely:—
"(5) For any import of registered insecticides, permission for import of specified quantity, during a quarter or year shall be obtained in addition to the Certificate of Registration.

AMCHAM Comments:

AMCHAM would like to oppose insertion of above sub-rule (5) in rule 6, after sub rule (4), for the following reasons, and also consider our recommendations as below:

- AMCHAM fully supports the "Make in India" initiative of our Government. However, the proposed new Clause which would restrict quantities to a specified number in a quarter/year, and obtaining yet another import permit (**on top of Registration Certificate issued following a stringent and robust process of around 6-7 years**) is tantamount to a major retrogressive step for India's **Ease of Doing Business** and its agricultural growth.

- Such a step will be in contravention of our constitutional right to do business as well as against our freedom to operate in a non - controlled environment. Such a “Permit Raj/License Raj” will lead to a monopolistic situation leading to malpractices. Undue competition in the form of hoarding to mislead the market can arise, which will be detrimental to Indian Farmers.
- The Insecticide Act has been enacted to regulate the Import, manufacture, sale, transport, distribution and use of insecticides **with a view to prevent risk to human beings or animals, and for matters connected therewith**. The spirit of the Act does not talk about regulating commercial matters like “specified quantity”/ “restricted import”. **Rather such Import matters pertain to decisions from Ministry of Commerce.**
- Agriculture is highly weather dependent activity and so are the pest outbreaks. Considering this fact, it is a highly theoretical exercise to predict demand of solo/ combination pesticides in advance (based on hypothetical pre-assessment of weather conditions and pests). In a year of pest epidemic, limited quantity availability will lead to hue and cry situation. **In any case, DAC/CIB&RC currently play no role in estimating Pesticide Quantity requirements. Also the proposal does not appear to exclude Import for Export, and such an amendment will affect our Export effort as well**
- Regarding newly registered pesticides, there would not be any import data available for previous years as a base. In such cases, it would be really challenging to ascertain the basis for granting permission of “specified quantity” to such new molecules / products.
- In a Country which is already ranked low on account of “Ease of Doing Business”, these proposed restrictions and License Raj will lead to an uncertain Regulatory environment resulting in the companies losing interest in bringing in new Technologies. Such a situation would be highly detrimental for our Farming community as the Indian Farmers would be deprived of new technologies / innovations which they receive currently.
- Even this suggested move will be in contravention to Govts. resolxSSSve to double the Farmers’ income in next 5 years.
- From a legal perspective, Certificate of Registration (CR) is in itself a valid legal document, granted by CIB&RC after satisfaction with efficacy against pests and safety to humans, animals and environment, by doing exhaustive scrutiny for 3 – 4 years in addition to 2.5 – 3 years data generation. Granting yet another “permit or license” over and above legally recognized certificate of registration, granted u/s 9(3b) , 9(3) , 9(4) , would be a situation of duplication.
- It is very pertinent to point out that India is signatory to WTO (TRIPS) and bringing in such import restrictions would keep us misaligned globally as no other country in the world Impose import restrictions. Rather freedom to operate is encouraged and thus offers level playing field to local manufacturers and Importers.
- With this new rule, Companies would be discouraged to invest on label expansions on new segments as there will be limited scope of adding more quantities on a base quantity allowed in previous years, while Label expansions in effect lead to need of more quantities.
- Matters pertaining to label expansions (w.r.t. India) have already been raised at global forums e.g. CCPR (FAO/WHO) but Restrictions on import by specifying quantities , would be in breach to such initiatives and commitment of the Government to International forums.

- There could be a lot of administrative hassles in granting number of such import permits to innumerable importers (in addition to certificate of registrations) during peak period of limited season and giving rise to a threatening situation.
- Currently there is human resource and capacity constraints in the CIB&RC Secretariat, leading to huge back log. Granting speedy registration of new molecules is still a dream scenario. Adding an additional layer of granting quantity oriented import permits for each molecule, would consume a lot of time of registration secretariat, which could be utilized otherwise for more productive regulatory matters.

B) Clause: In the Insecticides Rules, 1971, in rule 6, after sub-rule (4), the following sub-rules shall be inserted namely:—

(6) The validity of certificate of registration for indigenous manufacturing under all categories shall be for a period of five years, which may be renewed, whereas in case of import, the validity of certificate of registration shall be for a period of five years which may be renewed, or the period of validity of source or its renewal, if any, whichever is earlier.

AMCHAM Comments:

We may support the clause of renewal of registrations, **but** this will require lot of clarifications and suggestions

- **Export category registrations should be exempted from renewal.**
- Globally, the renewal of registration is considered after 5 – 10 years regardless of validity of registration in country of source, so no source / validity verification is done by DNA to DNA . We, therefore, request you to provide level playing field approach to both local manufacturing / import registrations by executing renewals after 5 years. Issue of illegal imports can be tackled by enforcement agencies, as per provisions of insecticides Act.
- However, this sub rule may lead to complexities while granting manufacturing license (which as per the new legislation does not need any renewal) and license for sale at state level. This needs to be streamlined to avoid confusion at the state level and safeguarding the industry from harassment.
- The above sub rule does not specify the “timeline/ lead period” by which the renewal would be granted to the registrant. We, therefore, propose the following amendment in line in harmony with the existing Insecticide Rules, 1971 for “Duration of Licenses” [rule 11(1)]:

“Where an application for renewal is made before the expiry of the Registration Certificate (or after the expiry of Registration Certificate with late fees) and the order regarding refusal or renewal is passed after the expiry of the registration certificate, the registrant (applicant) shall be deemed to have been carrying on his business in accordance with the expired Registration Certificate till the date of communication of the final order on that application”.

- Keeping in view of ease of doing business, the process of renewal of existing registration could be completely “online”.

- Industry associations should be involved in discussions prior to finalizing the renewal process / format of renewal form.
- C) Clause: In the Insecticides Rules, 1971, in rule 6, after sub-rule (4), the following sub-rules shall be inserted namely:—
(7) In case the importer changes the source of import, the same shall be revalidated after verification and all the Certificate of registration for import shall be updated accordingly.”

AMCHAM Comments:

- **The above clause is not very clear.** However it appears to refer either to addition of new site/source or change in source name. If this is so:
 - As per legislation, the source of import once registered in India never gets changed. Rather, the new sites / manufacturers are approved as additional sources by CIB&RC in addition to already approved sources. AMCHAM Supports this “addition” rather than “change” of source.
 - If it is a name change of Source, it is a welcome step and AMCHAM is in agreement of getting the “name change” revalidated on Certificate of Registration itself.

Finally, we would respectfully submit that whilst Govt. has some genuine concerns due to which the above three Amendments have been proposed, the ratification of these amendments would severely affect the major initiatives of the Prime Minister viz EASE OF DOING BUSINESS and MAKE IN INDIA.

We request you to consider our suggestions objectively so that the industry does not suffer unnecessarily while also protecting the interest of the Farmer and the Indian Agriculture.

Thanking you,



Madhvi Kataria
Deputy Director General