



January 27, 2020

Jackie Mosby,
Field and External Affairs Division (7506P)
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Office of Pesticide Programs
U.S. Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Ave NW
Washington, DC 20460

Re: Docket ID No: EPA-HQ-OPP-2017-0543
Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements

Thank you for the opportunity to comment on the proposed changes to the Agricultural Worker Protection Standard (WPS) to simplify the application exclusion zone (AEZ) requirements.

This letter is submitted on behalf of the members of the Association of American Pesticide Control Officials (AAPCO). AAPCO members represent the officials charged by law with the execution of the state, territorial, provincial, and federal laws in the United States, including all its territories, and in Canada regulating the production, labeling, distribution, sale, use, and disposal of pesticides. AAPCO was formed in 1947, the same year that Congress enacted the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

AAPCO strongly supports EPA's efforts to decrease pesticide exposure incidents among farmworkers and their family members. We support EPA's proposals to simplify the AEZ, and believe that the revisions will lead to increased compliance. In this letter, AAPCO is proposing to further simplify the AEZ, beyond those proposed by EPA. These proposals are consistent with the 2019 Pesticide Registration Improvement Act (PRIA).

The 2015 WPS rule revision established AEZ requirements for pesticide applications in outdoor agricultural production, with the AEZ defined as the area extending horizontally around application equipment from which persons generally must be excluded during pesticide applications. The 2015 revision stated that the AEZ moves with the application equipment, and extended beyond the field border or property line in order to properly protect nearby persons.

AAPCO Proposal: Simplifying Criteria for Indoor Applications

Application Exclusion Zone (AEZ). EPA is proposing to simplify the criteria for determining the AEZ distances for outdoor applications based on application method, rather than having a reliance on the criteria of droplet size. AAPCO particularly supports this part of EPA's proposal because the current criteria are far too complex and enforceability is difficult. For these reasons, AAPCO also proposes that these criteria are applied to enclosed space production areas (indoor applications).

Restricted Entry Interval. In addition to the AEZ for indoor applications being overly complex, the droplet size criteria also led to the Restricted Entry Interval (REI) being so difficult to understand that a separate explanation document had to be created. When regulations are overly complex, understanding and compliance are often reduced. The following is stated in 40 CFR 170.405(b)(1): During pesticide applications in enclosed space production areas, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in specific areas for specified times and/or conditions. The conditions are described Table 1. Entry restrictions During Enclosed Space Production Pesticide Applications

Confusion about Table 1 led stakeholders to request an explanation document from the EPA funded Pesticide Educational Resources Collaborative (PERC). This document reflects the complexity of the issue <http://www.pesticideresources.org/wps/hosted/ventilationFS.pdf>. The operator must remember a complicated equation of criteria, including distance from the nozzle to the growing medium (not the foliage), droplet-size, and PPE requirements in order to determine the re-entry times in a greenhouse-type space. The ventilation criteria are flexible, with six choices, and that variability makes recall very difficult.

The existing criteria also provides a disincentive to greenhouse growers to invest in certain application equipment technologies such as electrostatic sprayers, which use less pesticides and result in less spray drift than conventional sprayers.

It should be noted that if EPA includes indoor applications in their effort to simplify the AEZ and REI, workers will still have protections provided by the AEZ, the REI and other Work Protection Standard (WPS) requirements; the certification and training law; and the pesticide label statement which prohibits applications to be made in such a way that workers or other persons are contacted by pesticides, either directly or through drift.

AAPCO Proposal: Shelter in Place Provision

EPA is also proposing to amend the AEZ requirements for owners of agricultural establishments and their immediate family members by expanding the exemption at 40 CFR 170.601(a) to include the AEZ requirements at 40 CFR 170.405(a). AAPCO supports EPA's proposal for a "shelter in place" provision for immediate family members. However, we propose that EPA establish a mechanism or process to review and accept (when warranted), AEZ equivalency plans submitted by State Lead Agencies, territories and tribes.

At least one state currently has a "shelter in place" provision in law. The law was developed after a long, inclusive and transparent rulemaking process with farm worker advocacy groups and grower groups. This state law provides clarifications and revisions to the federal requirements, and also provides protections in addition to those specified in the federal AEZ.

AAPCO Request - Fumigation Applications:

Lastly, AAPCO urges EPA to consider how the AEZ applies in soil fumigation applications, and any potential confusion or perceived conflicts about which may result from:

- (1) Stationary buffer zones (which may vary in size with application rate, block size, and tarping method) on fumigation labels, versus the consistent 100 ft AEZ, which moves with the application equipment; and
- (2) Stationary buffer zones on pesticide labels which are not limited to the boundaries of the agricultural establishment versus the AEZ which will be limited to the boundaries of the agricultural establishment, if EPA's proposal is finalized as published.

To ensure consistent compliance education and enforcement related to soil fumigant applications, members of AAPCO are requesting an EPA guidance document.

On behalf of AAPCO, thank you for your willingness to consider our proposals and suggestions. Please do not hesitate to contact me or any of the AAPCO Directors if you have any questions.

Sincerely,



Rose Kachadoorian
AAPCO President
Pesticides Program Manager,
Registration, Licensing and Certification
Natural Resource Policy Area
Oregon Department of Agriculture
635 Capitol Street NE, Salem, Oregon 97301
Email: rkachadoorian@oda.state.or.us