



January 29, 2020

Jackie Mosby  
Office of Pesticide Programs  
Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

*Submitted electronically via regulations.gov (<https://www.regulations.gov/document?D=EPA-HQ-OPP-2017-0543-0004>). Docket No. EPA-HQ-OPP-2017-0543; Pesticides; Agricultural Worker Protection Standards; Revision of the Application Exclusion Zone Requirements.*

The National Association of State Departments of Agriculture (NASDA) respectfully submits the following comments on the U.S. Environmental Protection Agency's (EPA) proposed Revisions of the Application Exclusion Zone (AEZ) Requirements. NASDA believes that the proposed changes are aligned with EPA's efforts to decrease pesticide exposure incidents among farmers, farm workers and their family members, while also clarifying requirements within AEZ.

### **I. About NASDA**

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the spread of disease, and fostering the economic vitality of our rural communities. Conservation and environmental protection are also among our chief responsibilities.

In forty-three states and Puerto Rico, the state department of agriculture is a co-regulator with EPA and responsible for administering, implementing and enforcing the production, labeling, distribution, sale, use and disposal of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

### **II. Revisions to Address AEZ Extending Beyond the Boundaries of the Agricultural Establishment**

NASDA appreciates EPA's revising the AEZ provision 170.505(b) that requires handlers to "suspend the application" if a worker or other person is in the AEZ, which as currently described can extend beyond the boundaries of the agricultural establishment. This provision can cause a lot of challenges for pesticide handlers, and State Departments of Agriculture that oversee enforcement of this provision.

The AEZ measurements are defined from the application equipment, so the AEZ "halo" moves with the application equipment as the equipment advances its application. If the application equipment creates an AEZ buffer that is close to a property lines, and someone on the neighbor property decides not to leave, currently the handler would have to cease the application over something that he has no control. In fact,

legally the person on the neighbor property doesn't have to leave since they are within their private property lines. This causes enforcement challenges as well, and the handler should not be responsible for implementing AEZ off of the establishment.

The revised proposal would limit the AEZ to within the boundaries of the agricultural establishment. NASDA supports the change and believes that the revised proposal will create more consistency. The Worker Protection Standard (WPS) provision 170.405(a)(2) already establishes a requirement for the agricultural employer to not allow any workers or other persons to enter the AEZ within the boundaries of the establishment until the application is complete. The proposed changes would ensure that provisions 170.505 (b) and 170.405 (a)(2) are now compatibles.

It is important to highlight that pesticide handlers are already complying with multiple safety measurements under FIFRA and WPS, such as the "do not contact" requirement, which implements restrictions during applications by ensuring that pesticides applied do not contact worker or other people. The restricted-entry interval (REI) is also another safety measure utilized to protect agricultural workers and others after pesticide application. The REI is the time immediately after a pesticide application when entry into the treated area is restricted. Some pesticides have REIs of 12 hours.

Protecting agricultural workers from potential adverse effects of pesticides is an important function of State Departments of Agriculture, which are the primary co-regulators of FIFRA with EPA. NASDA is supportive of the EPA's WPS measures, but as this regulatory framework evolves, we need to ensure that the new provisions being included are not duplicative, unnecessary or confusing.

### **III. Revisions to Address when Handlers May Resume an Application that has been Suspended**

The 2015 WPS rule was silent on if and when a handler could resume an application after it has been suspended because workers or other people were present in the AEZ. This was probably because EPA never envisioned that AEZ requirements could lead to an application being potentially suspended permanently, like some of the scenarios discussed on the previous comment section. The clarification being proposed by EPA to explicit state when applications can be resumed are welcomed. EPA is proposing revise the WPS to clarify that handlers may resume a suspended application when no workers or other persons remain in an AEZ within the boundaries of the establishment. Even though this clarification may seem common sense, when dealing with pesticide safety rules, clarity is key.

### **IV. Expansion of Exemptions for Owners of Agricultural Establishments and Their Immediate Families**

The extended exemption would allow for owners of the agricultural establishments as well as their immediate family to stay on their homes during a pesticide application if their homes are within the AEZ. This concept being proposed by EPA is similar to shelter-in-place plans that are utilized by various agencies. In fact, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) describes "Shelter-in-Place" as "*selecting an interior room or rooms within your facility, or ones with no or few windows, and taking refuge there*".

NASDA believes that expanding the exemption (170.601) to include owners of the agricultural establishment and their immediate families to requirements under section 170.405 (a) will create more flexibility to agricultural producers and workers while still not compromising their safety.

## **V. Revisions Addressing AEZ Requirements for Outdoor Production**

NASDA overall supports EPA's proposal to clarify AEZ requirements for outdoor production. Even though EPA released guidance documents trying to clarify some of the confusion and address the concerns expressed by stakeholders, the documents did not address all the worry expressed to the agency. The proposed revisions will clarify the confusion while also codifying the changes. NASDA is confident that the safety of farmers and farm workers will not be compromised by any of these changes.

## **VI. Communication**

Lastly, NASDA urges EPA to work with NASDA and State lead agencies on outreach. Communication on any changes to WPS needs to be done in a timely fashion so State lead Agencies can be confident that the right information is being distributed to impacted stakeholders, and the right adjustments are made.

## **VII. Conclusion**

NASDA appreciates EPA's work and we look forward to continuing to work with the Agency as these important issues impacting food and agriculture evolve. Please reach out to [Aline.DeLucia@nasda.org](mailto:Aline.DeLucia@nasda.org) to help with any questions.

Sincerely,



**Barbara P. Glenn, Ph.D.**  
*Chief Executive Officer*