

# **Revised State Certification Plans**

**EPA's Certification and Work Protection Branch  
Pesticide Re-Evaluation Division  
Office of Pesticide Programs**

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**Full SFIREG Meeting  
June 7/8, 2021**



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# Outline

- **Agricultural Worker Protection Standard (WPS) Update**
  - Covid-19 Temporary Guidance and Amendment related to WPS and Respirators
  - WPS and Application Exclusion Zone (AEZ) Rule Update
- **Modified State Certification Plans**
  - Certification Plan Review Dates and Status
  - EPA Review – Share Feedback



# Update on Worker Protection

Agricultural Worker Protection Standard  
(WPS) 40 CFR Part 171



# OECA/OCSP Temporary Guidance

## Enforcement

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Enforcement Home

Enforcement Basics

Air Enforcement

Water Enforcement

Waste, Chemical and Cleanup Enforcement

Criminal Enforcement

Enforcement at Federal Facilities

Data and Results

Policy, Guidance and Publications

## Statement Regarding Respiratory Protection Shortages and Reduced Availability of Respirator Fit Testing Related to Pesticide Uses Covered by the Agricultural Worker Protection Standard during the COVID-19 Public Health Emergency

EPA has heard from states and stakeholders about Personal Protective Equipment shortages in the agricultural sector. To respond to these reports and to help ensure the health and safety of America's farmers, EPA is providing temporary guidance regarding respiratory protection requirements for agricultural pesticide handlers. Our guidance aligns with recent OSHA memos on respirators while addressing EPA's responsibilities under FIFRA and the Agricultural Worker Protection Standard (WPS).

<https://www.epa.gov/enforcement/statement-regarding-respiratory-protection-shortages-and-reduced-availability-respirator>

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## Amended Statement Regarding Respiratory Protection Shortages and Reduced Availability of Respirator Fit Testing Related to Pesticide Uses Covered by the Agricultural Worker Protection Standard during the COVID-19 Public Health Emergency

On June 1, 2020, EPA issued a "Statement Regarding Respiratory Protection Shortages and Reduced Availability of Respirator Fit Testing Related to Pesticide Uses Covered by the Agricultural Worker Protection Standard during the COVID-19 Public Health Emergency" to provide guidance for agricultural employers and pesticide handlers seeking respiratory protection for use of pesticides in agricultural production. The "annual fit test delay" provision of the June 2020 memorandum, which is applicable to all NIOSH-approved respirators that require fit testing, was time-limited to 2020. Based on the continued challenges of the COVID-19 public health emergency, EPA is amending the "annual fit test delay" option to extend that option until September 30, 2021. The remainder of the June 2020 memorandum remains valid and unrevised.

It is important to note that neither the options in the June 2020 memorandum nor this amendment provide a waiver of regulations or label requirements. Handler employers and handlers are expected to make every effort to comply with all applicable pesticide product label and Worker Protection Standard requirements, and to exhaust all available compliance options before considering the options presented in June 2020 memorandum.

<https://www.epa.gov/enforcement/amended-statement-regarding-respiratory-protection-shortages-and-reduced-availability>



# Respirator Statement – Temporary Guidance

- Label Requirements and WPS provisions remain in effect - Not a waiver of WPS or label requirements
- EPA encourages the following WPS compliant approaches:
  - Use of respirators approved by NIOSH that are equally or more effective than the respirator required on the label
  - Use pesticide products intended for the same use that do not require the use of respiratory protection
  - Secure the services of a commercial applicator with sufficient supplies of the required PPE
  - When possible, delay use of pesticides until one or more compliance options are available



# Respirator Statement – Temporary Guidance

- Minimize handler risk when all other compliant options have been exhausted
  - Access to Respiratory Protection
    - Extended use or reuse of disposable N95 FFRs;
    - Use of FFRs beyond their recommended service life
    - Use of FFRs that have been certified in certain countries/jurisdictions
  - Completion of Respiratory Fit Testing
    - Delay of annual fit test - **expires September 30, 2021**
    - Delay of fit test for handlers who have been previously fit tested for a different but equivalent FFR



# WPS AEZ Rule Update

- **Until further notice from OPP or OGC, the 2015 WPS remains in effect with no changes to the AEZ provisions**
- Final Rule published Oct. 30, 2020
- Dec. 2020 - Lawsuits filed challenging AEZ Final Rule; proceedings stayed by the court
- No implementation of the 2020 AEZ Rule
  - Preliminary injunction has stayed the effective date
  - EPA enjoined from implementing the provisions
- Preliminary injunction in effect until June 18, 2021
  - Ongoing litigation could extend injunction



# **Update on Certification Plans**

**Certification of Pesticide Applicators Rule  
40 CFR Part 171**



# Certification Rule Dates

- Modified certification plans were due to EPA by **March 4, 2020**
- Successfully submitted:
  - 56 State Lead Agency plans
  - 6 Tribal plans
  - 5 Federal agency plans, plus 1 EPA-administered plan
- **Existing plans remain in effect** until EPA approves or rejects the modified plan or **March 4, 2022**, whichever is earlier.
- EPA-approved modified plans are to be implemented according to the schedule in the plans.



# HQ/Regional Coordination for Plan Reviews

- Program staff & legal counsel coordination
- Weekly conference calls
- HQ point of contact collaborating with each Region



# EPA Detailed Review Process and Status

- Detailed Plan Reviews
  - Review writeup from program staff + attorney input
  - 32 State and Tribal Detailed Reviews complete at EPA Regional level
  - HQ Detailed Reviews under way
- Feedback on SLA plans through the Regional POC
- Share big picture feedback on detailed review at public meetings:
  - AAPCO
  - SFIREG



# Detailed Review Feedback Summary

- Sharing some comments that may be of widespread interest to you/your state
- These comments may or may not apply to your plan



# Plan Review Feedback To Date

- Covid-19-initiated program changes
- Implementation of program
- Certification/re-certification rigor of program
  - Examination for initial certification (e.g., cut score)
  - Recertification stds. of competency – (e.g., credit hours)
- Identity verification for continuing education
- Proposed regulatory language or description of
- Reciprocity
- Jurisdiction
- Resources per 171.303(b)(6)(iii)
- Include/attach SLA policies
- IPM references in Plans
- Exam proctoring (fed. exam standards)
- State's affirmative role in Training/Testing Materials
- Grounds for denying, suspending, or revoking certification



# COVID-19-initiated Program Changes

- States and Territories reported making program changes to existing plans, because of the Covid-19 Public Health Emergency
- Any changes your state intends to make permanent and not yet included in the plans under review?
  - E.g., online testing or training
- Contact Regional POC and flag where revisions/additions are needed



## Implementation (Section 13)

- EPA anticipates a 2-year implementation schedule
  - Allows flexibility when circumstances justify a longer period.
- Include Details on:
  - Schedule for legislative/regulatory changes
  - Timeframe for all state plan components including updates to training and exam materials
  - How and when will all applicators meet the competency standards of the plan?
  - Full implementation of plan by ...?



# Standards for Certification of Commercial & Private Applicators – Ensuring Competency

- Explain how exam development and exam administration together ensure competency.
- For Example
  - how the minimum passing score is derived
  - type and difficulty of exam questions
  - number questions and time provided to take the test
  - what reference materials are provided during exam



# Recertification Standards – Maintaining Competency

- Provide detail on how continuing education programs ensure continued competency
  - Explain how the quantity, content, and quality are addressed in the recertification program.
  - For Example
    - Adequate coverage of core and category competencies
    - Number of exam questions or hours of training required and how that amount was determined
    - Monitoring courses
    - Course evaluations and how they factor into the program
    - How CEUs are selected for a category recertification



# Verifying Successful Completion in Continuing Education

- Explain the process used to verify applicator's successful completion of continuing education courses/events (e.g., online/correspondence)



# Proposed Regulatory Language Q&A

*What happens if an SLA cannot submit draft regulatory text in the certification plan?*

- SLAs should submit draft reg text in the Plan or Implementation schedule or both. If, however, state laws or regulations governing rulemaking make it impractical to submit draft regulatory text, the SLA should submit a summary of the draft regulation explaining the obstacle(s) and what they plan to change and how, together with a letter from the state's AG or the SLA legal counsel affirming that draft regulation is developed and the summary reasonably describes the draft regulation.
- Have questions? Work with the EPA regional POC to determine what is needed.



# Reciprocity

- Explain the process used to revoke or terminate a certification when the certification is based in whole or in part on a certification from another authority which becomes revoked or terminated.



# SLA Policies/Practices in the Plans

- Cite/attach policy and/or practice document, if referenced
- For Example, document related to
  - Exam Standards
  - Reciprocity



## EPA Regional Contacts

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