



The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460-0001

July 13, 2021

RE: AAPCO's Comments on EPA's Current FIFRA Sec. 24(c) Policies

The Association of American Pesticide Control Officials (AAPCO) submits the following comments on the U.S. Environmental Protection Agency's (EPA) recent changes in Sec. 24(c) standards and processes.

I. About AAPCO

The Association of American Pesticide Control Officials (AAPCO) was formed in 1947, the same year that Congress enacted the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). AAPCO is a professional association comprised of the officers charged by law with the execution of the state, territorial, provincial, and federal pesticide laws in the United States, including all its territories, and in Canada. The Environmental Protection Agency (EPA) and States are co-regulators in the implementation and enforcement of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Our mission is to represent state pesticide control officials in the development, implementation, and communication of sound public policies and programs related to the sale, application, transport, storage, and disposal of pesticides.

II. General Comments

For decades, State Lead Agencies (SLAs) have followed EPA guidelines and policies with few issues. There has been a respectful relationship between co-regulators to help enable specialized local pest management options. AAPCO is disappointed in the current shift in the Sec. 24(c) Special Local Needs process. As designated by the EPA *Guidance on FIFRA 24(c) Registrations* captured April 2019, "States may register a new end use product for any use, or an additional use of a federally registered pesticide product." It is further supported that a state may register a 24(c) for an existing or imminent pest problem within a state,



based on satisfactory information, when an appropriate federally registered pesticide product is not sufficiently available.

States have consistently demonstrated their ability to register products for additional uses as federal law allows, in a manner that effectively minimizes adverse effects to crops and the environment and allows their growers the critical flexibilities to battle local pest pressures of all types.

SLAs have historically used 24(c) registrations to effectively impose more restrictive label language as allowed in the Office of Pesticide Programs' "Guidance on FIFRA Section 24(c) Registrations," as far back as February 9, 1996. This allowance was also included in the 24(c) Guidance documents of 2019. For years, States have used 24(c) to better protect groundwater resources, specialty crops, and vulnerable sensitive environments. This was most effectively evidenced by the many State 24(c) registrations for over-the-top products containing dicamba. States proactively sought to impose more stringent label language to fight the adverse effects of drift; impose critical and often state-specific training requirements; impose cut-off dates; limit the number of treatments; require more detailed record keeping; and to lower wind speeds below those allowed by Section 3 Labels of these products. These State-imposed local needs restrictions have also helped inform EPA's subsequent decisions as to what application practices were needed to reduce the adverse effects of drift from these products. These registrations were a means for the states to attempt to manage a very difficult product registration that EPA now acknowledges was not properly registered federally by EPA.

EPA's own Guidance issued on April 10, 2019, indicated that EPA would re-evaluate the approach of allowing more restrictive label language. Additional guidance on EPA's webpage stated, "Before making any changes in this regard, EPA intends to take public comment on any potential new approaches before adopting them." States, however, were not afforded the opportunity to comment, nor to explain the basis for their imposition of additional restrictions to the labeling, and thus were denied the ability to support their growers' needs with these products.

During the 2020 summer and fall meetings of SFIREG and the Joint Working Committees, the States expressed concerns that EPA would arbitrarily disallow the long-standing precedent of States imposing more restrictive label language by utilizing the 24(c) process. While this discussion focused heavily on dicamba, this has much broader implications as States have utilized this process to allow the continued use



of other pesticides that may otherwise not be available in their states. During the discussion, EPA made very clear that states could be less restrictive, as the Federal labels would impose very restrictive use patterns on the dicamba products. However, once EPA received notification of state 24(c) registrations in the spring of 2021, EPA choose to deny even the states' explicit 24(c) authority for the 2021 growing season for dicamba over-the-top products.

The US EPA's Office of Inspector General (OIG) reported in February 2021 their evaluation to determine whether management controls within the EPA's Special Local Needs pesticide registration program effectively promote the EPA's goal of risk reduction and pollution prevention. Their report cited certain deficiencies, including a lack of effective communication with stakeholders. We would have to agree with their findings. States received conflicting information from career staff within the registration branch leadership and upper management. While the states have thus far chosen to accept EPA's late-coming request that there not be any 24(c) registrations for dicamba over-the-top products for the 2021 season, we do not expect that EPA will continue to assert the ability to deny state authority for managing special local needs into the future and we do not believe EPA is in alignment with the federal regulations by doing so. Furthermore, any future desire of EPA to alter the fundamental authority of the states to manage special local needs should be clearly communicated well ahead of time, with satisfactory rationale provided and opportunity for input from SLAs.

III. Conclusion

AAPCO believes that States should be recognized for their judicious and conservative use of their authorities granted under the federal 24(c) provisions and must be allowed flexibility to invoke those authorities to address their state specific needs. SLAs have long recognized their authority under Section 24(a), which is why many states have laws regarding an active ingredient that are more restrictive than federal laws. EPA has suggested that states utilize 24(a) for all our specific needs, in lieu of Section 24(c). This is difficult, if not impossible, to have a state regulation for each active ingredient. It is also unnecessary. As included in our previous communications dated April 4, 2019, state-specific regulations may take several years for final adoption, during which further damage could occur, potentially resulting in the technology option being lost.



AAPCO takes this issue very seriously, and strongly support a state's right to grant a Section 24(c) pesticide registration to reduce risk. We look forward to working with the EPA, and the continued dialog.

AAPCO appreciates the opportunity to comment on this important issue. As regulatory partners with EPA, our goal is to promote more effective and cooperative communication regarding the 24(c) process to ensure our growers continue to have access to a broad range of technologies and crop protection tools needed to preserve their ability to produce our nation's food, fiber, and fuel. We do realize EPA's daunting task of approving pesticide use for every county, state, and territory in the US, especially considering environmental conditions, climate, and specialty crops within our areas. Therefore, it is critical that SLAs can issue 24(c)'s that address these local issues.

Please contact patrick.jones@ncagr.gov if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Patrick Jones". The signature is written in a cursive, flowing style.

J. Patrick Jones
President, AAPCO