



May 12, 2023

Office of Pesticide Programs  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 201460

**RE: Agricultural Worker Protection Standard; Reconsideration of the Application Exclusion Zone Amendments; Docket ID # EPA-HQ-OPP-2022-0133-0002**

The Agricultural Retailers Association (ARA) appreciates the opportunity to comment on the Environmental Protection Agency's (EPA) Reconsideration of the Application Exclusion Zone (AEZ) Amendments.

**Statement of Interest**

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

**Comments**

ARA members place the safety, training, and well-being of their employees and farm and ranch customers as a top priority. Agricultural pesticides registered and re-registered by EPA's Office of Pesticide Programs (OPP) undergo an extensive and thorough scientific review to ensure the products will not cause unreasonable adverse effects to human health and the environment when following the approved label requirements. This rigorous regulatory process falls under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)<sup>1</sup> and the Food Quality Protection Act (FQPA)<sup>2</sup>. ARA shares the EPA's goal of protecting farmers and their workers through regulations that are feasible, enforceable, and make economic and scientific sense.

ARA opposes the agency's reconsideration of the AEZs as they are not justified by the most recent published incident data. Incidents from both aerial and ground applications are few and declining thanks, in large part, to improved precision ag technologies and equipment. Our members use

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<sup>1</sup> 40 CFR Parts 15-189

<sup>2</sup> P.L. 104-170

pesticide application equipment and new adjuvants to reduce spray drift and help ensure the pesticide products remain on their intended targets.

ARA has serious concerns about the proposed revision to 40 CFR 170.505(b). As written, the current boundary of an AEZ is limited to the property boundary of the Agricultural establishment. Specifically, § 170.505(b)(1) states that “*any handler performing a pesticide application must immediately suspend the pesticide application if any worker or other person is in an application exclusion zone described in § 170.405(a)(1) that is within the boundaries of the agricultural establishment or the area specified in column B of the Table in § 170.405(b)(4)...*”

EPA’s proposed expansion of this rule to allow for the AEZ to extend beyond the boundaries of an establishment creates unnecessary challenges in the enforcement of this provision. Additionally, ARA does not support the proposal to remove language from the 2020 AEZ rule provisions at 40 CFR 170.405(a)(2)(ii) and 170.505(b)(1)(ii) and (b)(2)(ii) that make the AEZ requirements inapplicable in easements within the agricultural establishment.

Due to the uncertainty of weather and pest threats, the timeliness of pesticide applications is critical to ensure that possible ecological impacts are mitigated. This proposal would allow for anti-pesticide activists to protest just outside the property boundaries of an agricultural establishment to interrupt the pesticide application by standing in the AEZ but outside the private property under the control of the farmer or rancher. Many ground and aerial pesticide applications occur along rural roads or near egress points, which would exist within the proposed AEZ. ARA believes these new proposed application restrictions are impractical and likely unenforceable. On larger fields, it is not uncommon for pesticide applications to take several hours to complete. Prohibiting workers from using these roads or gaining access to farm buildings and land for long periods of time would have a significant adverse economic impact on America’s agricultural industry. Some roads located on farmers or ranches may be the only access to other areas of the agricultural establishment located outside the proximity of any pesticide applications.

ARA agrees with the statements made in EPA’s Worker Protection Standard Application Exclusion Zone Requirement’s Updated Questions and Answers issued February 15, 2018. Under the question “What action should the handler take if a person enters the AEZ that is located off the establishment”, there are three steps. The second step allows the applicator to “evaluate the situation and conditions and determine if you can resume the application without contacting anyone with the pesticide, either directly or through drift.” The third step allows the applicator to “resume the application only if you are sure you can continue without it resulting in contact with any nearby workers or other persons.”

These statements are vastly different than the statement in the proposed 2023 Reconsideration of the Application Exclusion Zone Amendments, which only states applications “may be resumed after those individuals have left the AEZ.” The statements from the 2018 questions and answers document allow an applicator to assess their specific situation and allow the application to continue even if the person is still within the AEZ. The wording still ensures off site people are protected

from spray, and it makes clear it is the applicator's responsibility to protect these people. ARA strongly supports including the 2018 guidelines in any final reconsideration proposal.

ARA agrees with the National Agricultural Aviation Association (NAAA) comments that all propose buffers on FIFRA labels be wind directional. Wind-directional buffers should be part of the AEZ requirements, in terms of when applications must be initially suspended and when they may be resumed. Only allowing an application to resume once an individual has left the AEZ does not alleviate the concern about letting bystanders outside of the control of both the applicator and the farmer or rancher dictate when an application be made. If an applicator determines that the wind is moving away from a person within an AEZ, then they should be allowed to continue the application. If they suspended an application because someone entered an area outside of the target field but within the AEZ due to the wind blowing towards that person, then they should be allowed to resume the application when the wind direction changes in a direction away from the person.

ARA believes the proposed AEZ amendments are duplicative and overly burdensome. Current Worker Protection Standards (WPS) already require handlers and applicators to take the necessary steps to ensure bystanders and other unauthorized persons are not exposed to pesticide applications. As part of the regulatory process, EPA conducts conservative exposure and risk assessments for pesticide applicators, handlers as well as agricultural workers before approving any conventional pesticide product and the detailed, enforceable conditions of its label. Regulations already exist prohibiting applicators allowing pesticides to be applied to a person.

### **Conclusion**

Thank you for your review and consideration of ARA's comments! We concur with the comments submitted by NAAA. We look forward to working with you on this and other important issues impacting the nation's agricultural retailers, commercial applicators, their farmer customers, and their rural communities.

Sincerely,



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