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August 18, 2014

OPP Docket
Environmental Protection Agency Docket Center
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Washington, DC 20460

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RE: Docket ID # EPA-HQ-OPP-2011-0184; Agricultural Worker Protection Standard Revisions; Proposed Rule

On behalf of the Agricultural Retailers Association (ARA), I submit the following comments regarding the EPA's proposed changes to the agricultural Worker Protection Standards (WPS) regulations.

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.

Overview

Agricultural Worker Protection Standard (WPS)¹ was first established in 1992 to provide workplace protections for agricultural workers and pesticide handlers to prevent or reduce occupational pesticide exposure and incidents and illnesses. EPA states that this proposal is designed to “reduce the incidence of occupational pesticide exposure and related illnesses among agricultural workers (workers) and pesticide handlers (handlers) covered by the rule.” This regulation, in combination with other components of EPA's pesticide regulatory program, is intended to “prevent unreasonable adverse effects” of pesticides among pesticide applicators, handlers, workers and the general public.

¹ 40 CFR Part 170

ARA members place the safety, training, and well-being of their employees and customers (i.e. farmers and ranchers) as a top priority. Agricultural pesticides registered or re-registered by EPA 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 regime falls under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)² and the Food Quality Protection Act (FQPA)³. ARA would support adjustments to the current pesticide education and training that occurs if proven to be cost effective. While ARA agrees some targeted portions of the WPS regulations should be reviewed and possibly updated, we have serious concerns regarding the adverse economic impact this proposal will have on agribusinesses and disagree that major changes are needed to the WPS regulations. ARA believes the EPA has significantly underestimated the costs to agricultural retailers and their farmer customers that these additional regulations will impose. For example, EPA estimates an additional cost of \$60 per handler per year. The cost for the additional training as well as transportation costs and other potential fees or expenses (including wages) would be significantly higher. There would also be additional costs for the increased record keeping, revised signs and postings, and other regulatory requirements.

The health and working conditions for pesticide handlers and farm workers has improved over the past 22 years due to an effective WPS regulatory program. In the Preamble, EPA promotes a negative image of the industry. There has been a significant reduction in incidents of acute poisonings and associated work-related illnesses. However, the agency fails to highlight these successes; fails to recognize major advances in new pesticide applicator technologies; and fails to properly recognize the extensive worker-protection stewardship programs of states, registrants, professional applicators and producers. Worker safety is a joint responsibility. ARA respectfully requests the EPA withdraw this proposal and work with state agencies and the agricultural industry to improve the communication and effectiveness of the current WPS programs.

Definitions – § 170.5

“Authorized Representative” is defined as “a person designated by the worker or handler, orally or in writing, to request and obtain any information that the employer is required to provide upon request to the worker or handler.” ARA believes this definition should be eliminated from the proposal and potentially conflicts with other existing federal and state labor laws. If a handler or worker needs information from their employer that is required to be provided then they should make that request directly themselves. This proposal appears as an attempt to promote the unionization of the agricultural industry.

“Immediate Family” is defined as “limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, and sisters-in-law.” ARA agrees with EPA’s effort to provide a better understanding regarding who should be considered part of the “Immediate family.” American farm and ranch operations usually include a broad spectrum of a family members participating in the daily operations.

² 40 CFR Parts 150-189

³ P.L. 104-170

Agricultural Employer Duties – § 170.9

ARA opposes the proposed revisions to the WPS included in this section. For most ARA agricultural retail members, which include ground and aerial applicators (i.e. pesticide handlers) these changes would impose impractical legal burdens. EPA should maintain the current “prompt” response that recognizes differences in geographical locations and the proximity of medical facilities and available transportation. Establishing a national emergency response standard of “within 30 minutes” for all circumstances may not be feasible depending on the location and existing conditions. The responsibility for emergency responses should apply only to current employees seeking emergency medical assistance for acute incidents. ARA agrees with the PPC request to clarify what qualifies as an “emergency medical facility.”

Pesticide Information Requirements on Agricultural Establishments – § 170.11

ARA agrees with EPA that it is important for agricultural establishments to properly display “Pesticide Safety Information” in areas that workers and or handlers are likely to pass and conveyed in a manner that is easy to understand. We also agree with several of the keep points that should be included such as referenced in Section 170.11(a)(1)(i) – (viii). However, ARA opposes the requirement under Section 170.11(a)(1)(ix) that the safety information must also include the name, address and telephone number of the state or tribal lead agency responsible for pesticide enforcement. This information improperly directs employees seeking emergency medical attention to contact enforcement officials rather than the proper medical personnel.

ARA also has concerns with Section 170.111(b) regarding the “Keeping and providing information about pesticides used on the agricultural establishment.” We believe this requirement may go above and beyond what is necessary. The FIFRA approved label, EPA registration number of the product, and the Safety Data Sheet (SDS) should provide sufficient information for emergencies. The EPA proposal includes a 2 year record keeping requirement. ARA agrees with comments submitted that 4 years should be an adequate time frame to maintain these types of records. If the effective age requirement of the WPS proposal is 16 years old, then records being maintained for an additional two years after a worker or handler becomes 18 would help protect workers and handlers and mitigate any potential lawsuits.

Commercial Pesticide Handler Employer Duties – § 170.13

ARA is concerned with the broad and open ended requirements listed under this section as it relates to “a handler who is employed by a commercial pesticide handling establishment” working on an agricultural establishment. The employer responsibilities appear to be comprehensive and require multiple parties to coordinate information without a framework in which to complete. ARA is also concerned with the information updates required in Section 170.13(j) requiring that the “agricultural employer is provided updated information within 2 hours after completing the application.” During the busy pest-control season, both ground and aerial applicators often spray multiple fields with work periods beginning early in the morning and ending in the early evening or perhaps later with operators that apply product at night.

Requiring these applicators to communicate within 2 hours of any change is impractical and unnecessary.

This new requirements listed in this section will only lead to non-compliance. The proposed change on information would be expensive for ARA members to implement. For example, ARA received an estimate from an independent pesticide applicator indicating this proposal would cost nearly \$200,000 annually to implement. ARA recommends this section be eliminated from the proposal.

Training Requirements for Workers – § 170.101

EPA is proposing revisions to the training requirements for workers and handlers that ARA believes goes beyond what is necessary and the cost estimates are lower than the actual costs that will be incurred by agricultural establishments. ARA supports worker and handler safety training in order to prevent accidents or any adverse incidents. ARA has partnered with The Asmark Institute's unique mobile Professional Applicator Training Course⁴ that focuses on maximizing performance while minimizing spray drift. Participants can receive credits for both CCA and the Department of Agriculture, or the governing body responsible, when requested in the states where training occurs in accordance with state requirements. The one-day course, offered at 36 locations nationwide, costs \$295 per participant.

The current WPS requires employers to ensure that workers and handlers are trained once every five years. EPA is proposing to establish an annual retraining interval with an annual worker training cost of \$8.7 million per year for the industry as a whole or \$22 per year for each agricultural establishment. The EPA estimates the cost to employers to provide pesticide safety training to handlers annually would be \$3.5 million per year with the average cost of \$17 per year for agricultural establishments and \$66 per year for commercial pesticide handling establishments. ARA members would fall under the commercial pesticide handling establishment requirements.

ARA recommends any additional training requirements for workers or handlers recognize their existing experience and previous training. A brief web-based refresher course and on-line training videos should be sufficient for experienced workers. ARA believes any in-depth training requirements should remain at the current five year requirement. ARA supports the EPA proposed exemptions for certified pesticide applicators of restricted use pesticides (RUPs) and certified crop advisors (CCA). ARA recommends the exemption also include all commercial pesticide applicators. Certified applicators and CCAs already receive extensive training which negates the need for the additional costs that may be imposed by these new WPS requirements. We are concerned with the proposed limitations being placed on certified pesticide applicators not being allowed to train workers in the future. These well-trained certified applicators are legally capable of training and supervising a non-certified applicator to apply restricted-use pesticides. ARA believes certified applicators have the necessary skill and

⁴ <https://www.asmark.org/TrainingCourses/PATCourse.cgi>

expertise to serve as WPS trainers under the current and proposed WPS regulations and oppose any restrictions that may be placed on that role.

Entry Restriction Association with Pesticide Applications (§ 170.105)

EPA is proposing to expand the current regulations to require agricultural employers to restrict handlers, workers and other persons on agricultural establishments from being in entry-restricted areas (ERAs) adjacent to those areas targeted for pesticide application. The size of the ERA would depend on the types of product applied and the application method. Many of the common application methods such as aerial or air blast the agency is proposing “treated area plus 100 feet around the treated area within the boundaries of the agricultural establishment.” For ground boom applications or for those which a respirator is required by the product label the agency proposes the ERA would extend 25 feet around the treated area, within the boundaries of the agricultural establishment.

ARA recommends this section be eliminated from the WPS proposal as the new ERA requirements are not justified by the most recent published incident data. Incidents from both aerial and ground applications are few and declining. The Association of American Pesticide Control Officials (AAPCO) collected drift incident data in surveys conducted in 1999, representing the years 1996-1998⁵. The survey determined that ground application spray drift complaints for the years 1996, 1997, and 1998 were 338, 445, and 365. This yields an annual average nationwide of 382 complaints for the period covered by the survey. The second survey⁶ conducted during the years 2002, 2003, and 2004 showed that determined ground application spray drift complaints were 342, 302, and 342 respectively. This yields an annual average nationwide of 328 for the period covered by the survey, a significant drop from the previous survey. The AAPCO data cited in the WPS comments submitted by the National Agricultural Aviation Association (NAAA) also show a significant drop in aerial application spray drift incidents. From the years 2002, 2003, 2004 there was an average of 247 confirmed incidents were reported from aerial applications to more than 70 million acres of U.S. cropland. The first survey showed an annual average nationwide of 333 complaints from aerial applications for the period covered by the survey (1996-1998). Over 80% of all pesticide applications made in the U.S. on commercial agricultural operations are made on the ground while almost 19% of applications are made by air. CropLife America (CLA) in its public comments regarding this proposal cites additional more recent data that disputes the EPA’s assumptions of widespread adverse effects from exposure to pesticides applied following the FIFRA label. ARA supports the comments submitted by NAAA and CLA.

Many ground and aerial pesticide applications occur along rural roads or near egress points, which would be within the proposed area of the ERA. ARA believes this requirement would disrupt normal agricultural operations and would be impractical. 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 for those periods of time would have a significant adverse economic impact and is impractical. Some roads located on farms or

⁵ <http://www.aapco.org/documents/surveys/drift99.html>

⁶ <http://www.aapco.org/documents/surveys/DriftEnforce05Rpt.html>

ranches may be the only access to other areas of the agricultural operations located outside the proximity of any pesticide applications.

Worker Entry Restrictions After Pesticide Applications (§ 170.107)

This provision is unnecessary and redundant. Under current WPS regulations, employers are prohibited from sending workers into a treated area during the restricted entry interval (REI) requirements except under specific exceptions listed in 40 CFR 10.112(a). Any workers entering under one of the specified exceptions needs to be wearing Personal Protection Equipment (PPE), following all label precautions, and has access to water and decontamination supplies when the worker exits the treated area. ARA recommends this section be eliminated.

Oral and Posted Notification of Worker Entry Restrictions (§ 170.109)

ARA recommends this section be eliminated from any final regulation. The current WPS requirements relating to the oral or posted notifications to workers for outdoor production applications are sufficient. ARA believes the proposed requirements will be overly burdensome for employers and certified applicators. In addition, some of the wording changes being proposed from “KEEP OUT” to “ENTRY RESTRICTED” will only lead to confusion and increase costs due to the required reprinting of signs.

Worker Decontamination Supplies (§ 170.111)

EPA is proposing requirements for agricultural employers to provide decontamination supplies for workers on an agricultural establishment who is performing an activity in an area where pesticide was applied and who contacts anything that has been treated with the pesticide, including, but not limited to soil, water, and plants. ARA agrees with EPA that it is important to have the proper decontamination supplies available and supportive of this section.

Training Requirements for Handlers (§ 170.201)

EPA is proposing that before any handler performs any handler activity involving a pesticide product bearing a label requiring compliance with the WPS regulations, the handler employer must ensure the handler has been trained in accordance with this section within the last 12 months except as specified in (b) of this section, which includes certified applicator of restricted use pesticides and certified or licensed crop advisor. ARA believes the provisions in the current rule are sufficient. There are requirements included in this section under 170.201(c)(2) that are already covered in applicator certification training and in non-certified applicator supervision requirements. There also appears to be extensive recordkeeping requirements listed in 170.201(d). The additional recordkeeping requirements are unnecessary and will increase costs for handler employers without any identifiable increased benefits or protections. This will only create additional paperwork burdens without any evidence of improved worker protections.

Knowledge of Labeling, Application-Specific, and Establishment-Specific Information for Handlers (§ 170.203)

EPA is proposing that “the handler employer must ensure that the handler has access to the product labeling at all times during handler activities.” ARA believes this requirement is not feasible nor realistic. Aerial applicators should not be expected to be required to read a pesticide label while in flight. Similarly ground applicators need to focus on the operation of the equipment when providing application services. ARA recommends the information be readily available at mixing and loading sites for reference and guidance.

Requirements During Applications to Protect Handlers, Workers and Other Persons (§170.205)

The EPA proposal states that “the handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler locate on the establishment.” ARA is concerned this section is an expansion of the current WPS to cover “other persons”, which are not agricultural workers and handlers and not subject to the WPS. Including “other persons” in this section and proposed rulemaking goes beyond the scope of the WPS and creates the potential for frivolous legal challenges by anti-chemical activist groups seeking to prevent routine operations taking place on American farms and ranches. ARA recommends delete the use of the term “other person” from the proposal.

Personal Protective Equipment (§170.207)

Under this section, EPA discusses respirator requirements for pesticide handlers, including the use of fit-testing and proper training. ARA agrees that it is important for handles to receive the proper training regarding the use of a respirator and that the equipment fit properly on the handler. However, we have concerns with the requirement under section 170.207(b)(9)(iii) that states “handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional...to ensure the handler’s physical ability to safely wear the respirator specified on the pesticide product labeling.”

ARA believes the requirement for medical evaluation will be a significant cost on handler employers and difficult to carry out. EPA’s cost estimate of \$54 per agricultural establishment is unrealistically low and appears to not properly factor in the rising cost of health care and insurance as a result of the implementation of the “Affordable Care Act.” In addition, it is becoming more difficult to locate qualified physicians practicing in rural areas. The OSHA standard requires the use of respirators certified by the National Institute for Occupational Safety and Health (NIOSH). If EPA adopts the OSHA requirements then it needs to document the cost of purchasing certified respirators.

Exemptions (§170.301)

EPA is proposing to eliminate exemptions from protections for employees directly supervised by certified crop advisors (CCAs). Under the current WPS requirements CCAs must make specific

determinations regarding the appropriate PPE, decontamination, and safe method of conduct for those working under their direct supervision. This information, as well as information regarding the product, method, and time of application, REI tasks, and contact information, must be conveyed by the CCA to each person under their supervision. ARA recommends EPA retain the current exemption for employees under the direct training and supervision of a CCA.

Agricultural Employer Responsibilities to Protect Workers Entering Treated Areas During a Restricted-Entry Interval (§ 170.305)

Under this section, EPA includes proposals that outline the responsibilities of agricultural employers for the protection of workers entering a treated area where an REI is in effect. ARA agrees with the intent of this section addressing the responsibilities of agricultural employers for the protection of workers entering a treated area during an REI. However, we have concerns with several of the proposed changes.

In section 170.305(9)(b) it states that “the agricultural employer must maintain on the agricultural establishment for 2 years a record of the information provided to early entry workers...along with the printed name, date of birth, and signature of each early entry worker who received the information.” This proposal appears to imply that a signature is required for each individual entry ARA recommends that EPA provide clarification to this proposal by allowing a valid electronic notification and documentation be sufficient.

In section 170.305(9)(f), the EPA proposes to require “the agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment, without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention recognition, and first aid treatment of heat-related illness.” Avoiding such heat related illnesses may be very dependent on weather changes and individual worker’s sensitivities to heat stress. While ARA agrees that addressing heat-related illnesses is an important issue, we believe EPA should recognize the degree of subjectivity related to these types of illnesses that will decrease the likelihood of subjecting agricultural employers to unwarranted law suits or civil penalties while still protecting workers entering treated areas during an REI.

Exceptions to Personal Protective Equipment Requirements Specified on Pesticide Product Labeling (§ 170.307)

In this section EPA describes exceptions for requirements to wear various types of PPE and the use of closed-systems for mixing and loading of pesticides. Closed systems can significantly reduce exposure to pesticides during mixing and loading, providing they are used properly and in compliance with the FIFRA approved label. ARA is concerned with section 170.307(f) related to “Aerial Applications. The EPA proposal requires “chemical-resistant gloves” when entering or leaving the aircraft used in aerial application. It is our understanding this provision was inadvertently included in the proposal by EPA officials. ARA agrees with the comments submitted by NAAA regarding any mandatory use of “chemical-resistant gloves.”

Under subsection 170.307(f)(3) for “Enclosed cockpits” is states that “handlers occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-

specified PPE.” ARA recommends eliminating this provision as it is impractical, unwarranted, and will only create aviation safety concerns. These requirements, if implemented, could present a distraction or irritation to pilots or as a worse-case scenario overheated while flying. EPA has provided no evidence in this proposed rulemaking to show pilots being exposed to pesticides during their work. In addition, this subject matter is within the exclusive jurisdiction of the Federal Aviation Administration (FAA).

While ARA supports with the goals of the EPA as it relates to the encouraged use of closed systems, we believe this proposal is impractical and overly prescriptive. ARA agrees with the comments submitted by the PPC, NAAA, CLA, and Schertz Aerial Services that these new requirements are logistically challenging to implement and involve considerable cost and recordkeeping. ARA recommends the current WPS requirements remain in place and eliminate this section from the EPA proposal.

Conclusion

Thank you for the review and consideration of our comments! ARA believes there are many issues with the current WPS proposal and recommend the EPA withdraw it from consideration. ARA recommends EPA develop an industry stakeholder advisory group that includes agricultural retailers, ground applicators, aerial applicators, pesticide manufacturers, farmers and ranchers that can review the current WPS and provide more targeted revisions rather than wholesale changes that are unworkable and costly for the agricultural industry.

Sincerely,



Richard D. Gupton
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