

# **WPS Final Rule and Certification Rule Update**

Western Region Pesticides Meeting  
May 17, 2016



# Agenda

## **Certification Rule**

- Background
- Comment overview/approach
- Schedule

## **WPS**

- Background
- Significant changes
- Application Exclusion Zone



# Certification Overview

- The federal Certification of Pesticide Applicators Rule has been in place since 1974
  - Establishes requirements for determining the competency of applicators of **restricted use pesticides (RUPs)**
  - Sets standards for states, tribes and federal agencies to administer programs to certify applicators
- The Certification Rule covers private applicators, commercial applicators, and those using RUPs under their direct supervision



## Certification Program Administration

- States, tribes, territories, and federal agencies can certify applicators under a “**certification plan**” approved by EPA
  - EPA has approved certification plans for all 50 states & D.C., 3 territories, 4 tribes, 4 federal agencies
  - EPA directly administers 2 certification plans
- Although all approved plans comply with the existing rule, most states have adopted at least some standards more stringent than the federal standards; there is significant variance among states’ standards for various parts of the rule



## Reasons for Rule Change

- Pesticide Exposure and Incidents
  - Some current pesticide illnesses to applicators and public incidents are avoidable
- Negative Environmental Impacts
  - Data on the damage associated with ecological incidents are difficult to capture and quantify
  - Review of EPA's ecological incident database: 245 incidents from 2009 thru 2013; use of RUPs damaged crops or killed fish, birds, bees or other animals



## Comments on Certification Rule

- Over 700 unique comments
  - States, PSEPs, applicators, growers, others
- Nearly all states and many pesticide safety education programs submitted detailed comments
  - Helpful in describing intricacies of their programs and how proposal would impact them
- Clear that state certification (& recertification) programs have gone many different ways over past 40 years



## Comments on Certification Rule

There are different ways to accomplish many of the goals of the proposal, including:

- Ensuring continued competency of applicators through recertification
- Ensuring the competency of applicators working under the supervision of a certified applicator
- Establishing standards for adequate supervision by a certified applicator

Based on comments, we are considering more flexible options for final rule

- Would accommodate the different approaches that states have taken



## Certification Rule Schedule

- Proposed on Aug 24, 2015
- Comment period ended Jan 22, 2016
  - Extended several times
- Final rule plan
  - To OMB this summer
  - Finalized by the end of the year (2016)



# Worker Protection Standard



# Background: Who is Covered by WPS?

## Who is responsible for providing the protections?

- Agricultural employers on crop-producing establishments
- Commercial pesticide handling establishment employers

## Who is protected?

- Farmworkers – work in the fields to harvest and cultivate
- Pesticide handlers – mix, load, and apply pesticides for use on crops
- Other persons during pesticide applications



# Background: Relationship Between Pesticide Labeling & WPS

- The labeling has product-specific requirements to protect workers and handlers
- WPS has instructions on how to implement the requirements
- WPS also has general protections too lengthy to place on every label, e.g., requirements for pesticide safety training, hazard communication materials, decontamination, and emergency assistance

## Pesticide Labeling

- Length of the restricted entry interval (REI)
- What PPE must be worn

## WPS

- How to notify workers about the REI (oral or field posting)
- Providing, maintaining, and ensuring proper fit of PPE 11



# Goals of the Revised WPS

- Improve **occupational protections for agricultural workers and handlers** to make them comparable to those for workers in other industries covered by OSHA
- Reduce **acute occupational pesticide exposures** and incidents
- Reorganize and streamline rule to make it **easier to understand and follow**
- Address concerns raised through **years of stakeholder engagement** through EPA's Federal Advisory Committee, the National Assessment process, and in meetings with regulatory partners<sub>12</sub>



## Key Points Contained In Revisions

- Retained and expanded exemption for **farm owners and immediate family members** - over 520,000 agricultural establishments largely unaffected by most WPS provisions
- Delayed **compliance dates** to give farmers and States time to become familiar with new requirements and prepare for implementation
  - Compliance with most new requirements by Jan 2, 2017
  - Compliance with all requirements by Jan 2, 2018



# Implementation Timeline

Date	Milestone
September 28, 2015	Revised WPS final rule signed and announced.
November 2, 2015	Revised WPS final rule published in the <i>Federal Register</i> .
January 1, 2016	Revised WPS final rule becomes effective. [Compliance is required with existing WPS during 2016.]
January 2, 2017	Compliance is required with <u>most</u> of the <u>revised</u> WPS requirements.
January 2, 2018	Compliance is required with <u>all</u> of the <u>revised</u> WPS requirements. Last three requirements: <ul style="list-style-type: none"><li>• Cover new content in worker and handler training</li><li>• Include new content on pesticide safety information display</li><li>• Handlers suspend applications if anyone is in the application exclusion zone.</li></ul>



## Key Revisions to WPS

**Inform** workers and handlers about potential exposure to pesticides

- Pesticide safety training
- Display & provide application information and safety data sheets
  - Can be requested by worker/handler, treating medical personnel or designated representative
- Post signs if REI > 48 hours (outdoor applications)



# Pesticide Safety Training

## Current

- Pesticide safety training every 5 years
- Allow brief 5 point training prior to entering treated area and delay full pesticide safety training for up to 5 days (“grace period”)

## Revision

- Pesticide training every year
- Expand training content *[Delayed implementation]*
- Require recordkeeping of training for 2 years
  - Provide worker or handler a copy upon request
- No “grace period” for workers
- Keep certified applicators as trainers
- Train-the-trainer programs must be approved by EPA



## Key Revisions to WPS

**Protect** workers, handlers and other people from exposure to pesticide

- If labeling requires respirator for handler, provide medical evaluation, fit testing and respirator training
- Application exclusion zone during applications
- Handlers and early-entry workers must be 18 years old



## Key Revisions to WPS

**Mitigate** any pesticide exposures that workers or handlers receive

- Provide routine decontamination supplies for workers, handlers and early-entry workers
- Provide eyewash system for mixers/loaders if labeling requires protective eyewear



# Eyewash System

## Current

- If handler is using a product that requires eye protection, one pint of water must be immediately available to each handler

## Revision

- If handler is mixing/loading a product that requires eye protection or using a closed system under pressure, eyeflush water must be immediately available at the mix/load site for handler eye flushing
- If applicator is using a product that requires eye protection, one pint of water must be immediately available to each applicator



# Some Changes between Proposed and Revised Final Rule

## Proposed rule

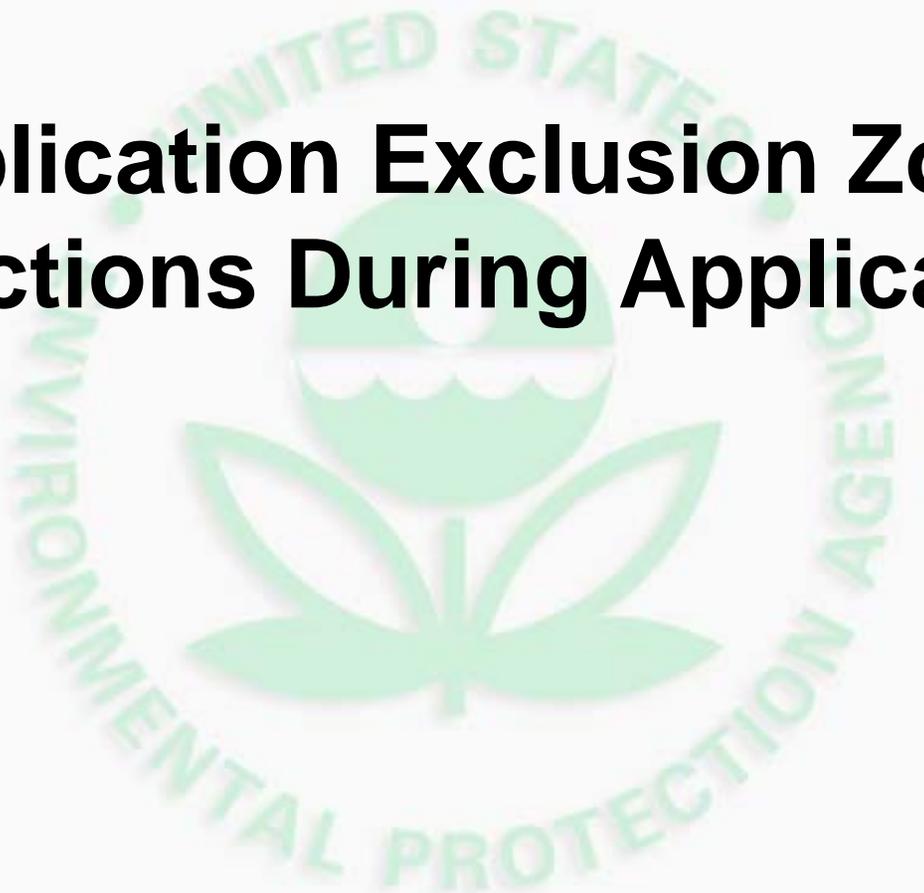
- Certified applicator can't train workers
- Entry restricted area
- Hazard communication: application information, product labeling and SDS
- Immediate family: add in-laws, grandparents & grandchildren
  - Exemption applies if farm wholly owned by immediate family
- Authorized representative identified orally or in writing; no requirements

## Revised rule

- Certified applicator can train workers
- Application exclusion zone
- Hazard communication: application information and SDS
- Immediate family: also add aunts, uncles, nephews, nieces & first cousins
  - Exemption applies if farm is majority owned by immediate family
- Designated representative identified in writing; other requirements



# **Application Exclusion Zone/ Protections During Applications**





# Existing Protections During Applications

## WPS Label statement:

- Requirement: “Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.”
  - Who is responsible for compliance: Applicator (handler)
  - Who is protected: Workers & other persons (besides protected handlers)
  - Is the protection limited to the boundaries of the ag establishment? No, it extends beyond boundaries



# Existing Protections During Applications

## Handler employer & handler responsibilities:

- Requirement (170.210(a) & 170.505(a)): Handler employer & handler must ensure no pesticide is applied so as to contact worker or other person other than an appropriately trained and equipped handler involved in the application
  - Who is responsible for compliance: Handler employer and handler (applicator)
  - Who is protected: Workers & other persons (besides protected handlers)
  - Is the protection limited to the boundaries of the ag establishment?  
No, it extends beyond boundaries



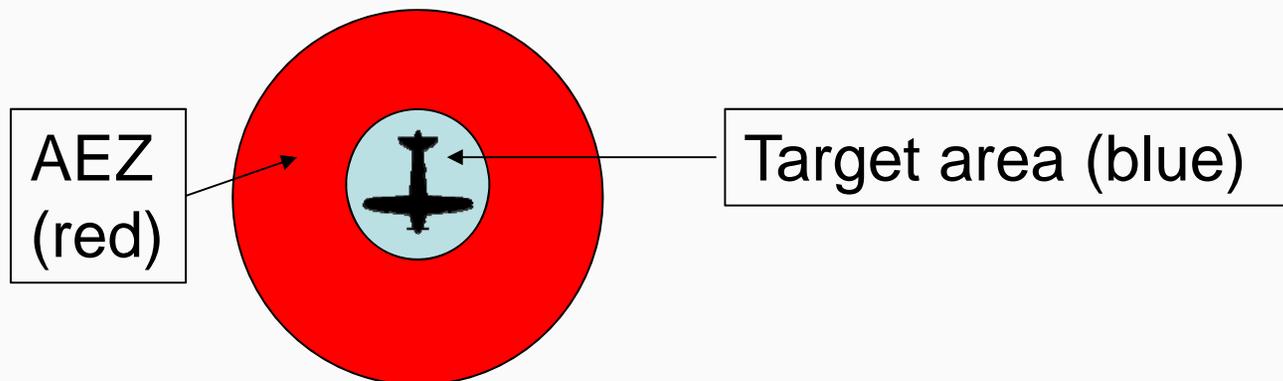
# **New Protections During Applications in Outdoor Production**



# New Protections During Applications in Outdoor Production

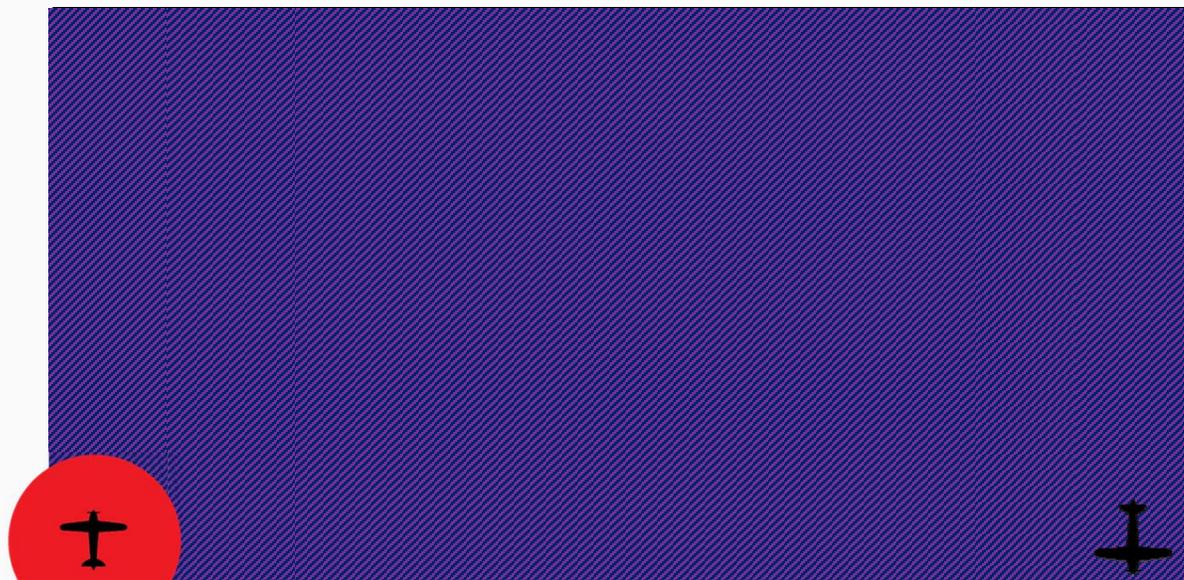
## Application Exclusion Zone (AEZ):

- Requirement (170.405(a)(1))
  - The WPS establishes AEZ distances in outdoor production of 25 or 100 feet around the application equipment based on application method





# Application Exclusion Zone in Outdoor Production



When the application is concluded, the AEZ no longer exists.



Field



AEZ



Treated Area



## AEZs in Outdoor Production (170.405(a)(1))

- 100 foot AEZ
  - Applied aerially, by air blast or with a spray quality smaller than medium (volume median diameter < 294 microns)
  - Applied as a fumigant, smoke, mist or fog
- 25 foot AEZ
  - Applied other than above & sprayed from a height of >12 inches from planting medium with spray quality of medium or larger
- No AEZ
  - Applied otherwise



# Droplet Size and Relation to AEZ

Pesticidestewardship.org

## Color Codes for Droplet Size

Category	Symbol	Color Code	Approximate VMD Range
Very Fine	VF	Red	< 150
Fine	F	Orange	150 – 250
Medium	M	Yellow	250 – 350
Coarse	C	Blue	350 – 450
Very Coarse	VC	Green	450 – 550
Extremely Coarse	XC	White	> 550

100 foot  
AEZ

25 foot  
AEZ



# Droplet Size and Relation to AEZ

## ASABE Standard S-572.1

Sidebar 4. Spray quality categories.		
ASABE Standard S-572.1 <sup>a</sup>		
Category (symbol) <sup>b</sup>	Color Code <sup>c</sup>	
100 foot AEZ	Extra Fine (XF)	Purple
	Very Fine (VF)	Red
	Fine (F)	orange
25 foot AEZ	Medium (M)	yellow
	Coarse (C)	Blue
	Very Coarse (VC)	Green
	Extra Course (XC)	White
	Ultra Coarse (UC)	Black



# Two New Protections During Applications in Outdoor Production

## (1) Ag Employer's AEZ responsibilities:

- Requirement (170.405(a)(2)): During an application, the agricultural employer must keep workers and other persons out of the treated area and AEZ that is WITHIN the boundary of the establishment owner's property
  - Who is responsible for compliance: Ag employer
  - Who is protected: Workers & other persons (besides protected handlers)
  - Is the protection limited to the boundaries of the ag establishment? Yes



# Two New Protections During Applications in Outdoor Production

## (2) Handler's AEZ responsibilities:

- Requirement (170.505(b)): Handlers must immediately ***suspend a pesticide application*** if any worker or other person (other than handler) is in AEZ (170.505(b))
  - Who is responsible for compliance: **Handler/applicator**
  - Who is protected: Workers & other persons (besides protected handlers)
  - Is the protection limited to the boundaries of the ag establishment? **No**



# New Protections During Applications in Outdoor Production

- Handlers' AEZ requirements are **NOT** effective until **January 2, 2018**
- Key Issue: What does “suspend a pesticide application” mean for the purposes of the WPS and the AEZ requirement?



## New Protections During Applications in Outdoor Production

- Summary of the WPS interpretive policy to clarify AEZ requirements and the meaning of “suspend a pesticide application”:
  - If the AEZ extends beyond the boundary of the property of the agricultural establishment, and a worker or other person is within the AEZ, the applicator must temporarily suspend the application, and may not proceed until the applicator can ensure that the pesticide will not contact persons in the AEZ



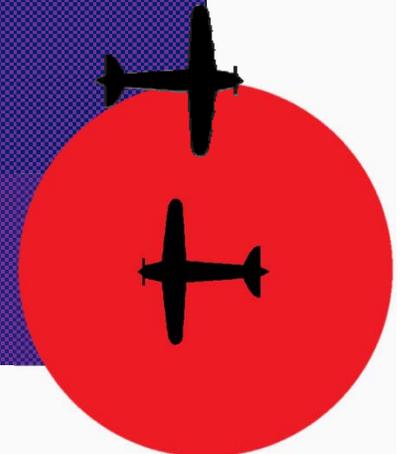
# AEZs on Field Borders

Neighboring Field

**WAS DENIED application.**  
Has anyone else had to move to  
further north to use until you  
filed on the AEZ? The application?



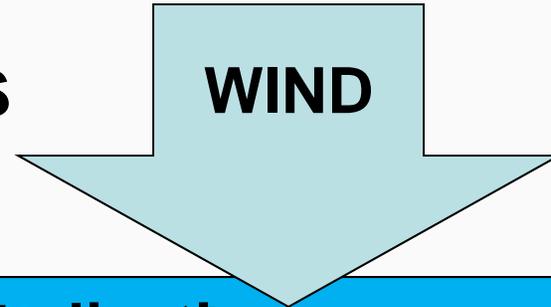
Your Field





# AEZs on Field Borders

WIND

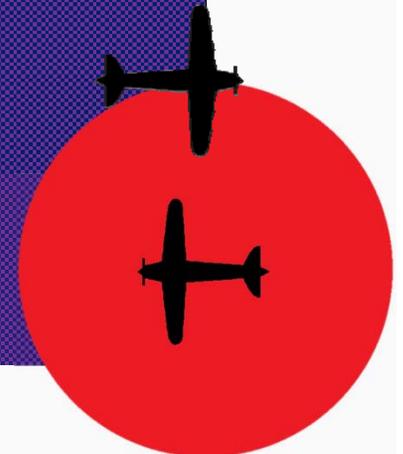


Neighboring Field

**WIND DIRECTION Application.**  
Yes, the wind is blowing away from the workers  
I am sure workers in your field  
and I can ensure that my application will not  
be exposed through AEZ drift  
contact the workers in the other field.  
they refuse to move!



Your Field





## AEZ Requirements in a Nutshell

- Ensure that **everyone** (other than trained equipped handlers involved in the application) is always an appropriate distance away from the area being treated during pesticide applications
- When applying a pesticide near establishment borders where other persons may be in the proximity of the ongoing application, do the following:
  - Suspend: If people are present, pause the application
  - Evaluate: Evaluate conditions and ensure you can continue the application safely
  - Resume: Resume the application only if you are confident you can continue the application without it resulting in contact with **any nearby workers or other persons**



# **AEZ “Suspend Application” Requirement in a Nutshell**

**THINK TWICE  
BEFORE YOU SPRAY**



# AEZ Implementation Issues

- Additional interpretive policy to clarify:
  - whether the requirement to suspend the application is person are in the AEZ requires the applicator to stop for a specified period of time or at a certain time
  - whether “easement areas” on an agricultural establishment should be considered part of the establishment for purposes of the AEZ
  - how the AEZ applies to chemigation applications



# AEZ Implementation Issues

- Additional guidance is needed on “spray quality” and its relation to the AEZ
- Worker housing on the ag establishment
- Any other interpretive policy or clarifications needed?



## Questions?

- Web site: <http://www2.epa.gov/pesticide-worker-safety>
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