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Pesticide Worker Safety Program Enhancement

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The American Association of Pesticide Safety Educators (AAPSE) is committed to the establishment of the highest standards in pesticide certification and safety education, the promotion of practical and enforceable pesticide certification/education policies, and the implementation of safe and effective pesticide-use practices. AAPSE supports pesticide risk reduction programs and practices to protect human health and the environment and provides a collective voice for cooperative extension services and state, provincial, tribal and federal agencies and industry educators to work cooperatively on Certification and Training (C&T) needs, policies, and strategies. The Board has had the opportunity to review issue papers C&T 1, 2, 3 and 5, and Worker Protection Standard (WPS) 1 & 2 and provides the following comments for the Pesticide Worker Safety Program Enhancement. The Board did not have time to review all of the other issues. In a separate letter, AAPSE representatives will submit individual comments provided by its members.

Overall Comments on C&T Issue Papers

1. AAPSE recognizes changes would be national in scope and that states can still be more restrictive than the national standards.
2. AAPSE's comments are restricted to conventional pesticides and do not pertain to the application and handling of antimicrobials.
3. AAPSE recognizes that changes to both certification programs and safety education programs **will be very significant**, especially for states that do not already regulate at the level being proposed.
 - a. EPA must consider how practical and enforceable the proposed changes are. If regulations are in place without an enforcement program, the goal of the regulation is not realized – regulations must be feasible to manage and enforce. Enforcement costs must be calculated along with certification and education costs.
 - i. Consider the complexity of understanding the breadth of the regulatory changes. Keep the proposed changes simple and relatively easy to explain, such as no more than two tiers: certified applicator and technician/handler. States with complex certification systems have a real challenge in explaining the different types and tiers of those who purchase, supervise, handle, and apply products. This can also lead to enforcement issues.
 - ii. The number of new “regulated” applicator/technician individuals could be immense depending on limitation/expansiveness of the final scope. In states with large urban areas, where current regulations do not require certification or training of non-restricted use pesticides (NRUP), the numbers could be staggering for landscape/residential and public agency pesticide applications. AAPSE suggests that EPA contact those states that do and do not currently meet the proposed certification/training standard to assess potential impacts.
 - b. In order to meet the demands of an expanded scope of applicator certification, resources (FTEs, operational dollars) must be provided to support the SLA certification infrastructure and Extension education programs in order to develop training resources and credential new people as certified applicators and technicians.

- i. The Agency needs to consider the cost of ramping up certification and education programs: training/examination infrastructure, training curricula and materials, exams, and databases.
 - ii. The Agency needs to consider the ongoing maintenance of programs: numbers of verified/monitored trainings, numbers of exams/retakes, database management/tracking, training material revisions, everyday client communication.
- 4. There is also some concern that states that currently regulate beyond an expanded scope might get pressure to reduce their current level of regulation.
- 5. AAPSE agrees that changes to 40 CFR 171 are needed, but requests that EPA assess mechanisms of labeling that could regulate certification level (competency gauge) by product use-restriction labeling (e.g., add definitions to rules and change language of RUP statement, and/or the option to make certain occupationally-applied products RUP, due to breadth of use patterns and the potential exposure to the public/environment through misuse).

C&T Issue Paper 1: Expand the Scope of Applicators Subject to Regulation

- 1. AAPSE strongly suggests that EPA consider no more than two tiers: tier one for the purchaser/supervisor (who can also apply) and tier two for the mixer/loader/applicator employee.
 - a. AAPSE cautions EPA to clearly delineate the allowed duties for each tier (purchase/supervise versus mix/load/apply).
- 2. The AAPSE Board was unanimous in its consensus for requiring any business that applies any conventional (i.e., non-antimicrobial) pesticide for hire to have a Certified Pest Control For-Hire Applicator in their employ. This individual could **purchase and supervise** the use of general or restricted use pesticides (the credential would also allow them to apply). The scope would include any owner, manager, lead-applicator employee who supervises any pesticide applied onto properties owned by another for non-wage/salary monetary compensation. This Certified Pest Control For-Hire Applicator could supervise a technician(s). This would include any business that charges a fee for service to apply pesticides in homes, businesses, landscape maintenance, aquatic weeds/fish, forestry, agriculture, schools, right of way, etc.
 - a. AAPSE supports that any person working under the supervision of a Certified Pest Control For-Hire Applicator (or Certified RUP Commercial or Private Applicator) must be credentialed by either a participating in a verifiable, mandatory training or passing a content-relevant core exam.
 - b. Achieving this expansion to a two-tier scope approach will mitigate human health and environmental exposures by ensuring the supervisor and supervisee have met minimum competency gauges.
 - c. AAPSE philosophically agrees with the premise that any person who applies pesticides to the properties of others for a fee (non-wage) should be a certified applicator who has passed a core and category exam; however, the impact for some states could be very significant since that definition would include high school teenagers or other individuals that hire themselves out for summer lawn mowing and make infrequent and limited applications of NRUP lawn and garden pesticides.
- 3. Regarding certification of applicators (occupational not-for-hire) who as part of their employment apply NRUPs on their employers' properties (public or private property), AAPSE discussed the tactic of regulating on "sensitive sites" and found some merit with it since many states already regulate this way, but AAPSE also discussed problems with defining what falls within or is exempted out of the definition. AAPSE also discussed government employees who apply NRUPs to public properties and found some merit in regulating these applicators since some states

regulate this way, but found problems as well. AAPSE did not have a majority or minority opinion for “occupational not-for-hire” pest control applicators.

4. AAPSE also discussed the possibility of EPA regulating certification level (competency gauge – two tiers: certified applicator or technician-WPS handler) by product use-restriction labeling and new definitions in 40CFR171 (e.g., For retail sale to and use only by certified applicators. This product may be applied only by the certified applicator or by an EPA-approved trained technician or WPS handler under the supervision of a certified applicator and only for those uses covered by the certified applicator’s certification.)
5. AAPSE does not support C&T Issue Paper 1 options 2, 5, or 6.
6. AAPSE would like to have had more time and more details in order to provide more substantial comments to EPA on this scope-defining issue.
7. For EPA to assess costs and impacts, AAPSE suggests that EPA contact states that have already implemented similar regulations to assess new applicator/technician numbers and what infrastructure would be required to manage the increase. The Agency should also contact states that will be impacted to assess their needs.

C&T Issue Paper 2: Expand Scope of Applicators Subject to Testing and Training

1. Given an expanded scope of two tiers, AAPSE suggests the following competency gauges for each tier (old and expanded scope).
 - a. **Tier I - Certified Applicator**
 - i. **RUP Private** - state-verified content relevant training program with specific training criteria (control elements) or optional content relevant exam
 - ii. **RUP Commercial** – content-relevant core and category exams
 - iii. **Pest Control for Hire** (NRUP or RUP) – content-relevant core and category exams
 - b. **Tier II - Supervised Employee**
 - i. **Technician**– This group would include any non-certified person working under the supervision of a RUP Commercial Applicator, Pest Control For-Hire Applicator, or RUP Private Applicator (who is exempted from WPS – non farm, forest, nursery, greenhouse) who has the appropriate category. AAPSE supports a *competency gauge* with dual-options (per the choice of the technician): (1) state-verified content-relevant training program with specific training criteria similar to WPS with possible expansion of environmental topics and take home pesticides or (2) a content-relevant core exam. Technicians could not purchase or supervise others. Since ag handlers must at a minimum have training, then non-ag employees who apply RUPs or Certified Pest Control For Hire Applicator employees applying NRUPs must meet the same measure.
 - ii. **WPS Handler** – This group would include any non-certified person working under the supervision of a certified Private Applicator. The *competency gauge* would have dual-options: state-verified content-relevant training program with specific training criteria or content-relevant core exam. WPS Handlers could not purchase or supervise others.
2. The AAPSE Board strongly supports that EPA require any examination used to demonstrate competency be a proctored, written, closed-book, content-relevant examination (definition from CTAG issue paper 2003). AAPSE recognizes that closed-book exams can include proctor-provided labels, resource manuals, specimens for identification, etc. In such cases, the exam candidate brings no reference materials into the examination room and no reference materials leave the examination room.

C&T Issue Paper 3: Redefine “under the direct supervision”

1. AAPSE supports the requirement that anyone who applies pesticides under the supervision of a certified applicator (RUP Private or Commercial Certified Applicator or Certified Pest Control for Hire Applicator) must be trained in the safe and effective use of RUPs and NRUPs.
 - a. AAPSE fully supports a two-tier system and if the two-tier system is implemented, supervision becomes moot. Supervision is very complex since it differs between states and even within states between certification types. Each state has very different reasons for their supervision definitions. Having a second tier of technicians/handlers who mix/load/apply who have met a minimum competency gauge protects the environment, the public, and the workforce. AAPSE supports a dual-option approach to meet a competency gauge. The candidate has the choice of either participating in a verifiable content-relevant training program or passing a content-relevant exam (core exam). AAPSE supports requiring retraining, which could also be by training program or exam.
 - b. If the certification regulation’s scope is not expanded, EPA must address the supervision issue to ensure that supervised applicators can safely handle and apply the product. This could possibly be achieved by altering the use-restricted statement on RUP products. Example language might be similar to “For retail sale to and use only by certified applicators. This product may be applied only by the certified applicator or by an EPA-approved trained technician or WPS handler under the supervision of a certified applicator and only for those uses covered by the certified applicator’s certification.”

C&T Issue Paper 5: Establish a Minimum Age for Certified Applicators

1. AAPSE members were confused by this paper since it seemed to require a minimum age for any person that might apply a pesticide even while under the supervision of a certified applicator. AAPSE strongly suggests EPA clarify the duties for which a minimum age might be enacted (purchase/supervise versus mix/load/apply).
2. AAPSE members have very divergent beliefs as they pertain to minimum age and the Board could not achieve a consensus nor a majority or minority opinion. Discussion by the Board included the following points.
 - a. Members who support a national minimum age only support a minimum age requirement for someone who becomes a Certified Applicator (RUP Private, RUP Commercial, Pest Control-for-Hire), defined as a person who can purchase and supervise the use of a product. These same members did not support a minimum age for a non-certified person working under the direct supervision of a certified applicator. Thus, a 15-year old son or daughter on a farm could apply an RUP as long as the application was made under the supervision of a certified applicator.
 - b. Members who do not support a national minimum age maintain this is a state’s issue and federal labor law issue.
3. As stated earlier, regardless of age, AAPSE supports that any individual who purchases and supervises the use of pesticides should understand how to safely handle and use pesticides in order to protect human health and the environment. Any person who applies under someone’s supervision should also know and understand safe handling procedures and the importance of complying with the pesticide label.

WPS Issue Paper 1: Protect the Health of Agricultural Pesticide Workers and Handlers by Informing them of Pesticide Hazards

AAPSE strongly supports the concept that everyone is entitled to information about hazards they are exposed to in the workplace. However, experience in teaching pesticide safety over many years has taught us that personal safety is best protected through using best practices all the time as opposed to altering one's practices for specific exposures. We believe it will be most effective to create a culture of safety through teaching workers basic principles as well as methods to reduce or minimize exposure of themselves, their homes, and their families at all times.

Providing hazcom information, although an important right, is a separate issue and not necessarily contributory to a culture of safe use practices. We disagree with the statement in the rationale for this proposed change regarding provision of hazard communication materials that “[t]his lack of knowledge [i.e., lack of hazcom information] may prevent [agricultural pesticide workers and handlers] from taking appropriate steps to protect themselves, increasing their risk for occupational injuries or illness” (last paragraph, p.1). In fact, providing too much very specific information can lead workers to disregard certain safety practices when exposed to residues they might consider less “risky” than others.

The key to proactive implementation of measures to protect personal safety is education. Workers cannot be expected to understand even information presented primarily pictorially without proper education as to the meaning of pictograms. For instance, a pictogram currently under consideration in GHS to indicate the potential for certain health effects (a person with a star-shaped image radiating from the chest) is meant to depict any of the following: the potential for carcinogenicity, respiratory effects, target organ toxicity, reproductive toxicity, or mutagenicity. Aside from the fact that the individual viewing the pictogram will be extremely unlikely to know the meaning(s) *a priori*, what should the individual do specifically to protect himself and his family from this pesticide as opposed to a pesticide that does not carry this pictogram? In fact, instituting universal precautions, rather than picking and choosing appropriate safety practices for each residue to which one is exposed, will better ensure exposure minimization. Training workers on the meaning of the various pictorial images and how to interpret them would take time and resources away from training that currently focuses on teaching workers how and why to protect themselves and their families.

On the other hand, if hazcom information is maintained as a right-to-know issue, it would properly be made available to both the worker and his/her health care provider in the event of an overexposure or for questions from the worker about personal health. The Agency's rationale for this proposed change states that “[those who] respond to reports of pesticide illnesses among migrant workers...should have access to pesticide-specific hazard information for pesticides they may be exposed to in the workplace so these workers can...receive appropriate medical care in the event of a pesticide exposure incident or illness (first full paragraph, p.4).” AAPSE strongly agrees with this argument, but rejects the phrase indicating that pesticide-specific information would help workers “reduce their chance for pesticide exposure, injury, and illness.” Again, we believe it is counterproductive to expect workers to decide on how best to protect themselves on the basis of specific products, especially when exposed merely to the residues; rather, they should institute best practices at all times, regardless of the product.

AAPSE supports access to hazcom information solely as a right-to-know issue. Current requirements for notification and central posting of products used satisfy this need. AAPSE believes that if hazcom materials are to be distributed or made available in written and pictorial form (even primarily pictogram form requires some text) with a goal of improving workers' safety practices, it changes the goal of right-to-know to one of education, which is already adequately covered under current WP standards plus other proposed changes to improve training. Providing such written materials in English and Spanish only seems to contradict the spirit of the original WPS which requires that training be conducted in a language

understandable by the trainee. In such case, the materials ought properly to be provided in every language spoken by any of the workers (which would be a logistic nightmare for employers, SLAs, and registrants) or provided in English only. AAPSE recommends that EPA check with OSHA to determine if other industries are required to translate right-to-know information into languages spoken by employees.

In summary, AAPSE urges that hazcom materials should be considered an important right-to-know issue that serves a separate purpose. Personal protection is best achieved through instituting universal precautions regardless of individual product.

WPS Issue Paper 2: Improve Administration of Safety Training to Help Protect Agricultural Workers from Pesticide Exposure

AAPSE supports eliminating the grace period and requiring periodic training within at least every three years. We believe it is important for workers to know and understand any potential risks, as well as how to protect themselves and their families, prior to entering treated fields. From our experience with pesticide education in both WP and C&T, we believe repeating basic safety messages increases adoption of improved safety practices.

AAPSE supports the concept of knowledgeable, effective trainers. Ideally, trainers should be well-versed in both the subject matter and effective educational delivery methods. However, the realities of field situations may favor simply the availability of trainers who can deliver the subject matter using proven training materials. We believe this is particularly true for trainers of workers as opposed to trainers of handlers. In general, the handler population is more stable, and access to trainers within a very short time period is less of a problem than for workers. If certified applicators can no longer serve as trainers without completing a Train-the-Trainer course, it may adversely affect the availability of trainers, especially in large rural expanses. Since a workshop-trained trainer may not be available before the worker needs to start in the field, this would compromise the ability to eliminate the grace period.

AAPSE urges EPA to lengthen the timeline for consideration of the issue of who should be able to serve as a trainer of handlers and workers. We believe this is necessary in order to develop a feasible approach that will ensure availability of knowledgeable and effective trainers while not increasing the burden on employers to the point where noncompliance is enticing.

Submitted by:

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