(c) *Exemption.* Except for the circumstances described in paragraphs (c)(1) through (c)(3) of this section, the rules in this part do not apply to any non-public materials (and the non-public information contained therein) provided to the Commission by any person in connection with activities under 39 U.S.C. 407(b)(2)(A).

(1) The following persons shall adhere to the requirements of § 3011.302 regarding the non-dissemination, use, and care of the non-public materials (and the non-public information contained therein) provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

(i) Members of the Commission;

(ii) Commission employees; and

(iii) Non-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts) assisting the Commission in carrying out its duties.

(2) Any person that discovers that non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) have been inadvertently included within materials that are accessible to the public shall follow the procedures of § 3011.205.

(3) Non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) are construed to exclude each of the following:

(i) Non-public materials provided by the Postal Service to the Commission pursuant to a subpoena issued in accordance with part 3013 of this chapter;

(ii) Non-public materials filed in response to an information request issued in accordance with § 3010.170 of this chapter;

(iii) Non-public materials filed in compliance with any applicable Postal Service reporting required under part 3050 or part 3055 of this chapter; and

(iv) Non-public materials filed in a Commission docket.

■ 7. Amend § 3011.103 by revising paragraph (a) to read as follows:

§ 3011.103 Commission action to determine non-public treatment.

(a) The inadvertent failure of a submitter to concomitantly provide all documents required by § 3011.200(a) does not prevent the Commission from according appropriate confidentiality to non-public information contained with any materials provided to the Commission. Information requests as described in § 3010.170 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be accorded to the materials claimed by any person to be non-public.

* * * * *

[FR Doc. 2023–04978 Filed 3–10–23; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[EPA–HQ–OPP–2022–0133; FRL–8528–03–OCSPP]

RIN 2070–AK92

Pesticides; Agricultural Worker Protection Standard; Reconsideration of the Application Exclusion Zone Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to reinstate certain requirements that were amended in 2020 regarding the application exclusion zone (AEZ) requirements of the Agricultural Worker Protection Standard (WPS). EPA has reconsidered the amended AEZ requirements and has determined that several aspects of the AEZ provisions, such as those regarding the applicability of the AEZ and distance determination criteria, should be revised to reinstate previous requirements that are protective of public health and to limit exposure for those who may be near ongoing pesticide applications.

DATES: Comments must be received on or before May 12, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0133, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carolyn Schroeder, Pesticide Re-Evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2376; email address: *schroeder.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you work in or employ persons working in crop production agriculture where pesticides are applied. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (NAICS code 111000);
- Nursery and Tree Production (NAICS code 111421);
- Timber Tract Operations (NAICS code 113110);
- Forest Nurseries and Gathering of Forest Products (NAICS code 113210);
- Farm Workers (NAICS codes 11511, 115112, and 115114);
- Pesticide Handling on Farms (NAICS code 115112);
- Farm Labor Contractors and Crew Leaders (NAICS code 115115);
- Pesticide Handling in Forestry (NAICS code 115310);
- Pesticide Manufacturers (NAICS code 325320);
- Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319);
- Farm Worker Labor Organizations (NAICS code 813930); and
- Crop Advisors (NAICS codes 115112, 541690, 541712).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 through 136y, particularly sections 136a(d), 136i, and 136w.

C. What action is the Agency taking?

EPA is proposing to revise certain AEZ requirements of the WPS that were amended by EPA in a final rule published on October 30, 2020 (85 FR 68760) (''2020 AEZ Rule'') (Ref. 1). As further explained in Unit II.A.4., the effective date of the 2020 AEZ Rule is currently stayed pursuant to a court order; that is, the 2020 AEZ Rule has not yet taken effect. EPA proposes to revise the AEZ requirements by rescinding the

following changes outlined in the 2020 AEZ Rule and reinstating the related AEZ requirements as published in a final rule on November 2, 2015 (80 FR 67496) (''2015 WPS'') (Ref. 2).

1. The Area Where the AEZ Applies

The 2020 AEZ Rule would have limited the applicability of the AEZ to the agricultural employer's property such that the AEZ would no longer cover bystanders on adjacent properties. As a result, the 2020 AEZ Rule would have solely relied upon the ''Do Not Contact'' requirement in the WPS (further described in Unit II.A.) as the method of protecting people on adjacent properties had the rule gone into effect. This rule proposes to reinstate the 2015 WPS regulatory text requiring pesticide handlers to suspend applications if any worker or other person, other than appropriately trained and equipped handlers involved in the application, enters an AEZ regardless of whether they are on or off the establishment. See Unit II.B. for the detailed discussion of this proposed revision.

2. The Exception to Application Suspension Requirements for Property Easements

The 2020 AEZ Rule would have created an exception for agricultural employers and handlers from the requirement to suspend pesticide applications due to the presence of an individual not employed by the establishment who is within an AEZ but in an area subject to an easement that prevents the agricultural employer from temporarily excluding those individuals from that area. This rule proposes to reinstate the 2015 WPS regulatory text that requires pesticide handlers to suspend applications if any worker or other person, other than appropriately trained and equipped handlers involved in the application, enters an AEZ regardless of whether they are in an area subject to an easement. See Unit II.C. for the detailed discussion of this proposed revision.

3. The Distances From the Application Equipment in Which Entry Restrictions Associated With Ongoing Pesticide Applications Apply

The 2020 AEZ Rule would have reduced AEZ distances from 100 feet to 25 feet for certain ground-based sprays using fine droplet sizes and simplified all ground-based sprays to be 25 feet when sprayed at a height of greater than 12 inches. This rule proposes to reinstate the 2015 WPS regulatory text that specifies a distance of 100 feet for ground-based fine spray applications, a 25-foot AEZ for ground-based applications using medium or larger droplet sizes sprayed above 12 inches, and to reinstate all applicable determination criteria from the 2015 WPS with the exception of the Volume Median Diameter (VMD) droplet size criterion when making distance determinations. EPA proposes to replace VMD by citing standards that more accurately define medium droplet sizes. Additionally, to maintain consistency in the requirements between outdoor production applications and applications associated with enclosed space production, EPA is also proposing to remove VMD as a criterion for entry restriction distances during enclosed space production pesticide applications and instead using the same droplet size standards as those used for outdoor production. See Units II.D. and II.E. for the detailed discussion of these proposed revisions.

EPA is also proposing to maintain certain revisions that were presented in the 2020 AEZ Rule, such as the provision that clarifies that pesticide applications that were suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ, and the exemption that allows farm owners and members of their immediate family (as defined in 40 CFR 170.305) to shelter within closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence. See Unit II.F. for a detailed discussion of these proposals.

D. Why is the Agency taking this action?

EPA has reexamined the 2020 AEZ Rule both in accordance with the Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (86 FR 7037, January 25, 2021), and in response to an error in the preamble of the 2020 AEZ Rule. As further discussed in Unit II.A.4., EPA discovered a factual error while compiling the administrative record in response to litigation. As a result of our reexamination of the 2020 AEZ Rule, EPA has determined that certain amended AEZ requirements in the 2020 AEZ Rule should be rescinded, with several protections from the 2015 WPS regulatory text being reinstated. EPA has determined that reinstatement of these protections from the 2015 WPS will be more effective at reducing potential exposures from ongoing pesticide applications and to promote public health for all populations and communities near agricultural establishments. In addition, EPA's analyses supporting the 2015 WPS have shown that these protections will better support the Agency's efforts to reduce disproportionate risks associated with agricultural pesticide exposures that currently fall on populations and communities with a history of environmental justice concerns, particularly agricultural employees (*i.e.,* workers and handlers), the employees' families, and the communities that live near establishments that use pesticides (Ref. 3). These protections are consistent with FIFRA's mandate to protect health and the environment against unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits. Reinstating the regulatory text for certain AEZ requirements from the 2015 WPS, as described in Unit II.B., II.C., and II.D., will be associated with minimal cost to the regulated community, as described in Unit I.E.

E. What are the incremental impacts of this action?

1. 2015 WPS Baseline Assessment

Since the 2020 AEZ Rule has not been implemented due to the court-ordered stay discussed in Unit II.A.4., the 2015 WPS continues to provide the operative regulatory language for the AEZ requirements during the current stay and any future extensions of the stay. Therefore, the Agency has determined that there will be no new impacts from the portions of this proposal seeking to reinstate the 2015 WPS provisions that make the AEZ applicable beyond the boundaries of an agricultural establishment and within easements on the agricultural establishment, as further described in Unit II.B. and II.C.

Additionally, this action proposes to reinstate the 2015 WPS criteria and factors for determining AEZ distances at 40 CFR 170.405(a) for ground spray applications, with the exception of language around a Volume Median Diameter (VMD) as a determining factor, which is further explained in Units II.D. and II.E. The Agency does not anticipate any new costs or impacts due to reinstating this regulatory language since the 2015 WPS remains in effect. However, the proposal to remove VMD from the AEZ criteria and instead use droplet size classifications (*i.e.,* ''medium'' as defined by the American National Standards Institute/American Society of Agricultural and Biological Engineers (ANSI/ASABE); see Units II.D. and E.) is expected to provide a clear, practical, and easy approach for determining AEZ and enclosed space

distances. EPA anticipates that this revision will improve compliance with other AEZ requirements and make it easier to enforce these provisions by eliminating any need to determine whether an application is over or under the specified VMD of 294 microns, as required by the 2015 WPS.

EPA is also proposing to maintain certain revisions that were presented in the 2020 AEZ Rule, such as the provision that clarifies that pesticide applications that were suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ, and the exemption that allows farm owners and members of their immediate family (as defined in 40 CFR 170.305) to shelter within closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence (further described in Unit II.F.). The revision to the AEZ suspension requirement better clarifies EPA's 2015 intent for how the AEZ provisions should work once there are no longer individuals other than pesticide handlers within an AEZ and does not result in any impacts. The immediate family exemption means that owners and their immediate family members do not have to leave their homes that are within an AEZ if the doors and windows remain closed. By proposing to retain the immediate family exemption, some applications will be simpler and less burdensome than the 2015 WPS since fewer applications would need to be suspended on family farms. The effect is likely small, as the change would only apply to immediate family members of the farm owner who are inside a structure and within the AEZ. The Agency finds that these changes are consistent with the intent of the AEZ in the 2015 WPS and are supported by the administrative record, particularly with regards to the immediate family exemptions that are applicable to other portions of the 2015 WPS. Maintaining these clarifications and flexibilities provide some regulatory relief that was sought after promulgation of the 2015 WPS without increasing exposure risks to workers or bystanders.

2. 2020 AEZ Rule Baseline Assessment

The 2020 AEZ Rule was initiated in response to feedback from members of the agricultural community, including the U.S. Department of Agriculture (USDA), state pesticide regulatory agencies, several agricultural interest groups, and from public comments. These comments raised concerns about the complexity and enforceability of the AEZ requirements after the 2015 WPS was promulgated. For the 2020 AEZ rule, EPA qualitatively described the benefit of the rule as a reduction in the complexity of applying a pesticide (Ref. 4). The benefits described were not monetary; revising the requirements would have reduced the complexity of arranging and conducting pesticide applications and enforcing the provisions. The benefits of the 2020 AEZ Rule would have resulted in reduced management complexity both on and off establishment, because there would have been fewer situations where the AEZ would have applied had the rule gone into effect (*i.e.,* the AEZ would not have been applicable off the establishment or for individuals within an easement on the establishment). EPA did not discuss any costs, or increased risk from pesticide exposure, in the 2020 AEZ Rule's supporting documents due its reliance on the ''Do Not Contact'' requirement that establishes the responsibility of the applicator to prevent pesticides from contacting people either directly or through drift. This is in part because the ''Do Not Contact'' provision (further described in Unit II.A.) is applicable in all situations, without limitations on distance or the individual's location respective to the application.

After reevaluating the 2020 AEZ Rule, the Agency has determined that the 2020 changes do not effectively balance the potential social and economic costs associated with limiting the AEZ requirements to areas under the owner's control and simplifying the distance criteria for ground-based spray applications. Based on careful reconsideration of the administrative record regarding the AEZ in the 2015 WPS and 2020 AEZ Rule, EPA has determined that the 2015 requirements regarding individuals off the establishment and within easements are more protective of workers and bystanders when implemented rather than relying on the ''Do Not Contact'' requirement as the only protective measure when individuals are outside of the owner's control.

Public comments submitted to the docket during the 2015 WPS rulemaking included examples of incidents where workers were exposed to pesticide applications from neighboring establishments as well as from the establishment where they were working. As noted in the 2015 WPS, out of 17 incidents identified in the comments, only one would have been prevented if the AEZ was limited to the boundaries of the agricultural establishment as it would have been established had the 2020 AEZ Rule gone into effect. EPA's analysis at the time indicated that the AEZ would have prevented at least four of the incidents reported in the 2015 comments, and possibly as many as 12, depending on the actual distances between the workers and application equipment. EPA continues to receive reports of incidents like those provided in past comments, despite the ''Do Not Contact'' requirement and the expectation that applicators and handlers must not spray pesticides in a manner that may result in contact with individuals. While the Agency is unable to quantify the number of new incidents that could be reduced by the AEZ, EPA believes, based on this information, that its original assessment of the AEZ in 2015 is the correct approach. The AEZ requirements serve as an important supplement to the ''Do Not Contact'' requirements and are expected to reduce the total number of exposures if implemented correctly and consistently. Therefore, EPA believes its proposal to reinstate the 2015 requirements to extend beyond the establishment's boundaries and within easements, better balances social and health-related costs than the 2020 AEZ Rule and outweighs the negligible costs on agricultural establishments to implement AEZs during an application.

In determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. Compared to the 2020 AEZ Rule, the proposed changes in this rulemaking mean that more applications will have AEZs that encompass a greater area and therefore result in more situations where the AEZ will be applicable. Had the 2020 AEZ Rule been implemented, the 2020 AEZ Rule would have applied only in situations where people can be directed by the owner of the establishment, while the proposed changes in this rulemaking would apply in all situations, regardless of whether people may not be under the direction of the owner, such as individuals off the establishment or within easements. To effectively implement the changes in this proposal, owners and handlers may need to communicate more frequently with those nearby the establishment or within easements to ensure that nobody is within the AEZ and may require an application to be suspended or rescheduled. However, the impact of these changes on agricultural establishments is likely to be small compared to the 2020 AEZ Rule. Conversely, having the AEZ be

applicable in all directions, regardless of whether an individual is on or off the establishment, may simplify applications in the sense that the handler does not need to apply different requirements to different situations.

In addition, the 2020 AEZ Rule sought to establish a simplified 25-foot AEZ for all ground-based spray applications above 12 inches, regardless of the droplet size. This proposed rule reinstates the 2015 WPS criteria and factors for determining AEZ distances at 40 CFR 170.405(a) for ground spray applications, except for language around a Volume Median Diameter (VMD) as a determining factor as further explained in Unit II.D. If the 2020 AEZ Rule had gone into effect, the changes in this proposed rule may result in more complex application strategies, because the different AEZ distances may come into play more often and owners and handlers will have to consider more carefully the various application and nozzle characteristics. However, restoring the droplet size criteria back to the 2015 WPS language (*i.e.,* medium droplets as a threshold) results in increased protection from applications using fine sprays that are more susceptible to spray drift compared to the 2020 AEZ Rule. Additionally, EPA's proposal to not reinstate VMD as a criterion and instead rely on the ASABE standard's definition of ''medium'' droplet size better clarifies how to determine droplet sizes and should make it easier for applicators to understand the original requirements regarding how to achieve specific droplet classifications and how to implement the appropriate AEZ based on that information. As a result, the impact of these changes is expected to be small compared to the 2020 AEZ Rule.

As previously noted, EPA is proposing to retain certain changes made by the 2020 AEZ Rule, such as the provision that clarifies that pesticide applications that were suspended due to individuals entering an AEZ may be resumed after those individuals have left the AEZ, and the exemption that allows farm owners and members of their immediate family (as defined in 40 CFR 170.305) to shelter within closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence (further described in Unit II.F.). These changes are consistent with the intent of the AEZ in the 2015 WPS and are supported by the administrative record, particularly with regards to the immediate family exemptions that are applicable to other portions of the 2015 WPS. Retaining these clarifications and flexibilities in this proposal provides some regulatory relief that was sought in the 2020 AEZ Rule without increasing exposure risks to workers or bystanders.

II. Proposed Changes to the WPS

A. Background and Existing Requirements

1. The Agricultural WPS

EPA implements FIFRA's mandate to limit adverse effects on human health in part through the WPS regulation codified at 40 CFR part 170. The WPS is a uniform set of requirements for workers, handlers, and their employers that are generally applicable to all agricultural pesticides and are incorporated onto agricultural pesticide labels by reference. The WPS is intended to reduce the risk of illness and injury to agricultural workers and pesticide handlers who may be exposed to pesticides while working. The WPS requirements are generally applicable to pesticides used in crop production agriculture and made applicable to certain pesticide products through FIFRA's pesticide product registration process by inclusion of a statement requiring WPS compliance on the product label. The WPS requirements complement the product-specific labeling restrictions and are intended to minimize occupational exposures generally. When a registered pesticide label includes a statement requiring compliance with the WPS, any failure to comply with the WPS when using a pesticide is a violation of FIFRA.

The risk reduction measures of the WPS may be characterized as being one of three types: information, protection, and mitigation. To ensure that employees will be informed about exposure to pesticides, the WPS requires that workers and handlers receive training on general pesticide safety, and that employers provide access to information about the pesticides with which workers and handlers may have contact. To protect workers and handlers from pesticide exposure, the WPS prohibits the application of pesticides in a manner that exposes workers or other persons, generally prohibits workers and other persons from being in areas being treated with pesticides, and generally prohibits workers from entering a treated area while a restricted-entry interval (REI) is in effect (with limited exceptions that require additional protections). In addition, the rule protects workers by requiring employers to notify them about areas on the establishment treated with pesticides through posted and/or oral warnings. The rule protects handlers by ensuring that they understand proper use of and have access to required personal protective equipment (PPE). Finally, the WPS has provisions to mitigate exposures if they do occur by requiring the employer to provide workers and handlers with an ample supply of water, soap, and towels for routine washing and emergency decontamination. The employer must also make transportation available to a medical care facility if a worker or handler may have been poisoned or injured by a pesticide and provide health care providers with information about the pesticide(s) to which the person may have been exposed.

2. History of the AEZ Requirements

In 2015, EPA promulgated a final rule that comprehensively revised the WPS for the first time since 1992 (Ref. 2). The 2015 WPS added several pesticide-related safety measures and strengthened elements of the existing regulation in areas including training, notification, pesticide safety and hazard communication information, use of PPE, and implemented requirements for providing supplies for routine washing and emergency decontamination.

Under the WPS established in 1992 (57 FR 38101, August 21, 1992 (FRL–3374–6)), the pesticide handler's employer and the pesticide handler were required to ensure that no pesticide is applied in a manner that may contact, either directly or through drift, any agricultural worker or other person, other than an appropriately trained and equipped pesticide handler involved in the application. This prohibition is often referred to as the ''Do Not Contact'' provision and is applicable in all situations, without limitations on distance or location of the individuals. This particular provision was carried over into the 2015 WPS revisions and has remained unchanged.

Among other changes to improve public health and to build upon the existing protections of the 1992 WPS, the 2015 WPS established AEZ requirements for outdoor production application to reinforce the existing ''Do Not Contact'' provision and to enhance overall compliance with safe application practices intended to protect agricultural workers and bystanders from pesticide exposure from sprays and drift. The AEZ is an area surrounding the point(s) of pesticide discharge from the application equipment that must generally be free of all persons during pesticide applications, moves with the

application equipment while the application is ongoing, and ceases to exist around the equipment once the pesticide application ends. After the application has been completed or the application equipment has moved on to a new area, entry restrictions associated with treated areas go into effect.

The 2015 WPS requirement at 40 CFR 170.505(b) required pesticide handlers (applicators) making a pesticide application to temporarily suspend the application if any worker or other person, other than trained and equipped handlers assisting in the application, was within the AEZ. The 2015 WPS revisions further required a handler to suspend an application if a worker or other person was in any portion of the AEZ—on or off the establishment. These restrictions were intended to bolster the protections afforded by the ''Do Not Contact'' provision, promote an application approach aimed at reducing incidents in which people in areas adjacent to pesticide applications could be affected by either direct contact or drift, and establish a well-defined area from which people generally must be excluded during ongoing applications. The AEZ requirement was one of the many public health protection tools incorporated into the 2015 WPS rule to emphasize one of the key safety points in both the WPS and on pesticide labels—do not spray people.

As outlined in the 2015 WPS, the size of the AEZ was dependent largely on the application method used. For aerial, air blast, fumigant, smoke, mist, and fog applications, as well as sprays using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns), the area encompassed 100 feet from the application equipment in all directions. For other applications sprayed from a height of greater than 12 inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater), the area encompassed 25 feet from the application equipment in all directions. For all other applications, there was no AEZ.

3. The 2020 AEZ Rule Modifying the AEZ Provisions of the 2015 WPS

On October 30, 2020, EPA finalized updates to the AEZ provisions under the WPS (Ref. 1). The 2020 AEZ Rule modified the AEZ requirements to limit the AEZ to an agricultural employer's property where an agricultural employer can lawfully exercise control over employees or bystanders who may be within the AEZ during an application, and to simplify the criteria for determining the AEZ distances for ground spray applications. In addition, clarifications were made on when applications may resume after being suspended due to someone entering the AEZ, as well as providing an exemption for farm owners and their immediate family from having to leave their homes or another enclosed structure when it is located within an AEZ. The 2020 AEZ Rule revisions did not include any changes to the ''Do Not Contact'' provision in the WPS, which still prohibited applying pesticides in a manner that may result in contact either directly or through drift. The rule was set to go into effect on December 29, 2020.

4. Actions Seeking Judicial Review

As explained in the **Federal Register** of May 16, 2022 (87 FR 29673; FRL–9803–01–OCSPP), two civil actions were filed in the U.S. District Court for the Southern District of New York (S.D.N.Y.) on December 16, 2020, challenging the 2020 AEZ Rule (now consolidated as case number 1:20–cv–10642). Additionally, two petitions for review were filed in the U.S. Second Circuit Court of Appeals on December 17, 2020 (case numbers 20–4174 and 20–4203), which have been held in abeyance pending the proceedings in the district court.

On December 28, 2020, S.D.N.Y. issued an order granting plaintiffs' request for a temporary restraining order (TRO) and injunctive relief (Ref. 5). The court's order stayed the December 29, 2020, effective date of the 2020 AEZ Rule and enjoined all EPA authorities who would otherwise take action to make the 2020 AEZ Rule effective from doing so. Following the December 2020 Order, S.D.N.Y. has issued several additional orders consented to by both EPA and the plaintiffs, further extending the preliminary injunction and staying all proceedings in the case (*e.g.,* Ref. 6). As a result, the 2020 AEZ Rule has not gone into effect. In the course of compiling the administrative record for purposes of the litigation, EPA discovered a factual error in the preamble of the 2020 AEZ Rule regarding the scope of existing handler training on the AEZ and how to implement the AEZ when individuals are in areas not under the control of the agriculture establishment's owner. As further discussed in Unit II.A.5., the discovery of this factual error has contributed in part to EPA's reconsideration of the 2020 AEZ Rule.

5. EPA's Reconsideration of Certain 2020 AEZ Rule Amendments

Concurrent with the ongoing litigation described in Unit II.A.4., the 2020 AEZ Rule was included among several EPA actions identified for review in accordance with E.O. 13990 (Ref. 7). In the course of reviewing both the 2015 WPS and 2020 AEZ Rules in accordance with E.O. 13990, EPA has found that some of the 2020 revisions to the AEZ requirements, specifically, the 2020 AEZ Rule's simplification of AEZ distance requirements (see Unit II.D.) and the limitation of the applicability of the AEZ requirements to the agricultural establishment's boundaries (see Units II.B. and C.), are inconsistent with the objectives of protecting against unreasonable adverse effects on human health and the environment and limiting exposure to dangerous chemicals and pesticides for all populations, including those who may experience disproportionate burden or risks such as workers, handlers, and those who live, work, or play on or near agricultural establishments.

Furthermore, while preparing the administrative record for litigation, EPA discovered a factual error contained in the preamble of the 2020 AEZ Rule regarding the scope of AEZ content within EPA-approved trainings. Specifically, the preamble to the 2020 AEZ Rule states that ''EPA-approved trainings since 2018 . . . have also incorporated EPA's 2016 guidance on how to apply pesticides near establishment borders and provide information on various measures applicators or handlers can take to prevent individuals from being contacted by spray or through drift,'' and listed examples of such measures (Ref. 1). This assertion in the 2020 AEZ Rule was in error. While all EPA-approved trainings are in compliance with the WPS because they address the minimum requirements of the AEZ (40 CFR 170.501), after reevaluating the rule, EPA has determined that some of the trainings it has approved since 2018 only contained a partial set of the topics provided in guidance (Ref. 8) regarding best pesticide application practices near the borders of an establishment and on potential measures that can be used to prevent contact through drift. Therefore, the reliance on this inaccurate assumption provides further reason to reinstate the 2015 requirements regarding the applicability of AEZs for individuals off the establishment and within easements.

As a result, EPA proposes to make certain modifications to the AEZ requirements established in the 2020

AEZ Rule by reinstating the protections as originally established in the 2015 WPS. The proposed revisions aim to reestablish the level of protections afforded to all who are on an agricultural establishment and may be within the vicinity of an ongoing application, with slight modifications to support compliance and understanding. These revisions would be limited to the following three modifications made in the 2020 AEZ Rule: the limitation of the AEZ requirements to the area within the property's boundaries that are under the agricultural employer's control, the exception to the suspension and exclusion requirements due to the presence of someone within an area subject to an easement when the person has the legal right to access that area, and the reduction of the AEZ distance from 100 feet to 25 feet for certain ground-based sprays. These three provisions would essentially revert to their status under the 2015 WPS revision, although EPA is not proposing to reinstate references to VMD that are no longer current.

Some changes made by the 2020 AEZ Rule would remain in place under this proposal. For example, the 2020 AEZ Rule amendment which states that pesticide applications that have been suspended due to individuals entering an AEZ may be resumed after they have left the AEZ was supported both by the administrative record and public comments, because it provides needed clarity that was previously missing in the 2015 WPS. Additionally, the 2020 AEZ Rule added an exemption that allows farm owners and their immediate family to shelter inside closed structures within an AEZ during pesticide applications, provided that the owner has instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence. The rationale for the immediate family exemption in the 2020 AEZ Rule is consistent with the other immediate family exemptions established under the 2015 WPS (Ref. 1).

B. Revisions To Reinstate the Applicability of the AEZ to Off-Establishment Areas

1. Proposed Changes

EPA proposes to revise the AEZ provision at 40 CFR 170.505(b) that requires handlers to ''suspend the application'' if a worker or other person is in the AEZ by removing clauses limiting its effect to persons only within the boundaries of the agricultural establishment. EPA also proposes to make conforming revisions to the handler training requirements at 40 CFR 170.501(c)(3)(xi), and the exemptions at 40 CFR 170.601(a)(1)(vi) to reflect the applicability of the AEZ both on and off the establishment.

The AEZ requirements apply to both handlers and agricultural employers, and in the 2015 WPS they applied to each differently, reflecting the different responsibilities and authorities of handlers and agricultural employers. For pesticide handlers, the AEZ requirement at 40 CFR 170.505(b) in the 2015 WPS required handlers making a pesticide application to temporarily suspend the application if any worker or other person (besides trained and equipped handlers assisting in the application) was in the AEZ, the boundaries of which were described in terms of distance from the application equipment per 40 CFR 170.405(a)(1). Thus, the handlers' obligation to suspend applications under the 2015 WPS applied if a worker or other person was in any portion of the AEZ, on or off the establishment, reflecting the handlers' responsibilities under the ''Do Not Contact'' requirement. In contrast, the agricultural employers' obligation regarding the AEZ in the 2015 WPS was that ''the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an AEZ that is within the boundaries of the establishment until the application is complete.'' 40 CFR 170.405(a)(2) (2015 version). This responsibility reflected the difference in agricultural employers' ability to control the movements of persons and to protect their workers on their property versus persons beyond the property borders where agricultural employers do not have control over their presence.

The difference between handlers' and agricultural employers' AEZ responsibilities under the 2015 WPS was a source of confusion for some stakeholders during the Agency's early outreach efforts after the 2015 WPS. Additionally, the handlers' responsibility to suspend application if a person or passing vehicle was within the AEZ, but not at risk of exposure, was viewed by some as an unreasonable burden, particularly before EPA clarified through guidance (Refs. 8, 9) that such applications could continue once the handlers have evaluated the situation and determined whether the application can resume without contacting anyone with the pesticide. The 2020 AEZ Rule changed 40 CFR 170.505(b) to limit the AEZ to the area within the boundaries of the agricultural establishment, bringing the pesticide handlers' duty to suspend applications into line with the agricultural employers' duty to exclude persons from the AEZ in 40 CFR 170.405(a)(2).

After reconsidering the comments submitted in response to the AEZ proposal in 2019 and reevaluating the information from the administrative record in both the 2015 WPS and 2020 AEZ Rule, EPA has determined that the AEZ provisions from the 2015 WPS provide a valuable complement to the ''Do Not Contact'' requirements, along with the other protections on pesticide labels, to protect workers and bystanders both on and off the establishment from being contacted by pesticides that are applied. Generally, incident data provided to the Agency lacks critical details to make firm correlations between whether a properly implemented AEZ would have prevented a contact from occurring, and often incidents are underreported or cited only on the basis of a contact occurring, so it is difficult for the Agency to fully assess and quantify the successes and benefits of the AEZ. EPA's best estimates came from comments submitted during the 2015 WPS rulemaking efforts (Ref. 2) citing 17 incidents where workers were exposed to pesticides due to drift. In assessing these incidents during the 2015 WPS rulemaking, only one of those incidents could have potentially been prevented if the AEZ were limited to the boundaries of the agricultural establishment. However, proper implementation of the AEZ requirements for individuals both on and off the establishment may have prevented at least four of the incidents reported in those comments, and potentially as many as 12, depending on the actual distances between the workers and application equipment, which were not specified in the comments at that time.

In the 2015 WPS, EPA determined that the AEZ requirements were a necessary supplement to the existing ''Do Not Contact'' provision, because they gave the applicator specific criteria for suspending an application when people other than handlers are near ongoing applications and potentially within the AEZ. In addition to providing greater protections for workers and bystanders, the current AEZ requirements are useful to applicators attempting to comply with the existing ''Do Not Contact'' requirement beyond the boundaries of the agricultural establishment. Having an AEZ in effect in all directions during an application will simplify handler responsibilities, as handlers will only be

expected to adhere to one distance for a given application type, instead of two distinct requirements during the application (one within the boundaries of the establishment and one for when the application equipment is near the establishment's boundaries). EPA finds that maintaining a consistent shape and size for an application is likely less confusing to handlers during the application and is easier to convey in handler trainings than having different requirements for on- and off-establishment situations. This approach will also help to promote the ''Do Not Contact'' requirement to not spray people during applications.

EPA's risk assessments and registration decisions are based on the premise that the label is followed and that the WPS protections effectively prevent people (workers and bystanders) from being contacted by pesticide applications. In other words, incidents where workers or bystanders are sprayed directly result in people being exposed to pesticides in a way that is not typically considered in EPA's risk assessments or registration decisions. While these types of incidents are misuse violations, public commenters to the 2020 AEZ Rule cited several examples of incidents after the 2015 WPS was finalized, showing these types of incidents continue to occur. Therefore, there remains a need to supplement the existing ''Do Not Contact'' provision to reduce exposures to workers and other persons from being directly sprayed with pesticides, including those who may be off the establishment.

2. Anticipated Effects

As explained in Unit II.A.4., the 2020 AEZ Rule never went into effect due to a series of court orders staying the effective date of the 2020 AEZ final rule. However, in determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. While the discussion in this section compares the effects of the currently proposed changes to the 2020 AEZ final rule, the AEZ requirements have always extended beyond the boundary of an agricultural establishment since it originally went into effect in 2015. Therefore, given that the 2015 rule has remained in effect since its establishment, there are no new impacts expected with this proposed rule.

Revising the requirement so that applicators must suspend an application for individuals within an AEZ outside the boundary of the agricultural establishment is anticipated to have little effect on the costs of pesticide applications. Although the proposed changes have the potential to increase the number of situations where applications would need to be evaluated and potentially suspended compared to the intent of the 2020 AEZ Rule, the proposed AEZ changes would only apply in the specific instances when people are within the AEZ. In those cases, an applicator must temporarily suspend and may have to reschedule an application to avoid potential contact. This could lead to more complex application strategies or require increased communication with people nearby to get them to move outside the AEZ before resuming an application. However, the proposed AEZ provisions will provide the applicator specific criteria for suspending an application without needing to know the specific boundary of the property, which may make it easier for the applicator to comply with the requirement that applications should be suspended if anyone is within the vicinity of the application.

EPA is unable to quantify how much pesticide exposure will change from no longer restricting the AEZ to the establishment. In addition to the AEZ, the ''Do Not Contact'' provision, whereby the pesticide handler's employer and the pesticide handler are required to ensure that no pesticide is applied in a manner that may contact, either directly or through drift, any agricultural worker or other person, other than an appropriately trained and equipped pesticide handler involved in the application. This prohibition is applicable in all situations, without limitations on distance or location of the individuals. The AEZ is an additional precaution to limit unintended pesticide exposure and to complement other protections for workers and bystanders both on and off the establishment from being contacted by pesticides. Consistent with the 2015 WPS, EPA believes that reinstating the applicability of the AEZ to off-establishment situations to support the ''Do Not Contact'' requirements will help reduce the number of exposures of workers and other non-handlers to unintentional contact to pesticide applications. Therefore, the social and economic benefits of these requirements outweigh the negligible costs to implement them.

3. Comments Sought on This Proposal

The Agency is interested in comments regarding the proposal to reestablish the applicability of the AEZ for situations when people may be within an AEZ outside of the establishment's boundaries and its efforts to improve understanding and compliance with this requirement. While this rulemaking is intended to reinstate protections for off-establishment individuals that were reduced in the 2020 AEZ Rule, EPA understands that some of the concerns raised in the 2020 AEZ Rule regarding the implementation and enforcement of off-establishment AEZs will persist without additional guidance or future rulemaking to clarify the Agency's expectations for this particular provision. EPA is interested in comments on how to improve its existing guidance (Ref. 8) on the AEZ implementation for off-establishment individuals and whether the approaches outlined in the existing guidance reflect a reasonable approach to resuming applications for those off the establishment and not under an agricultural employer's control. EPA is also interested in how to improve handler trainings to ensure that AEZs and the ''Do Not Contact'' provisions are presented in a way that is easily understood, enhances compliance, and ensures that handlers have the information and tools needed to protect those who may be near pesticide applications. Additionally, EPA is interested in feedback on other options or approaches that could help to address the concerns of state enforcement agencies or agricultural stakeholders without diminishing AEZ protections for people in all areas adjacent to ongoing applications.

C. Revisions To Remove Provisions Making the AEZ Inapplicable in Easements Within Agricultural Establishments

1. Proposed Changes

EPA proposes 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.

Portions of agricultural establishments may be subject to easements (*e.g.,* right-of-way, gas, mineral, utility, wind/solar energy) such that some persons (*e.g.,* utility workers) may have a legal right to be on parts of an agricultural establishment independent of the agricultural employer's control. In 2015, EPA presumed that all persons on an agricultural establishment would be subject to the control of the owner or agricultural employer, not recognizing the prevalence of easements which deprive the landowner of the ability, in

whole or in part, to control the movement of persons within the easement. The 2015 WPS made no exception for such easements. The 2020 AEZ Rule revised the WPS so that agricultural employers are not required to exclude, and handlers are not required to suspend applications for, persons not employed by the establishment who are in the AEZ in an area subject to an easement that prevents the agricultural employer from temporarily excluding those persons from that area.

The purpose of the easement exception was to ensure that the presence of persons who have a legal right to be on parts of an agricultural establishment independent of the agricultural employer's control should not be an insurmountable obstacle to pesticide application, provided the pesticide could be applied without contacting such persons (Ref. 1). This easement exception was based on a determination that the ''Do Not Contact'' requirement was sufficiently protective of persons in easements within the agricultural establishment. In line with the decision to not limit the AEZ to the boundaries of the agricultural establishment as discussed in Unit II.B., EPA has determined that the AEZ should also not be limited only to those areas where the agricultural employer can exclude people, and thereby should be applicable to easements within the agricultural establishment. Having the AEZ requirements apply in easements within the establishment aligns with the ''Do Not Contact'' provision and increases the protection for workers and bystanders in all areas of the establishment.

2. Anticipated Effects

As explained in Unit II.A.4., the 2020 AEZ Rule never went into effect due to court orders staying the effective date of the 2020 AEZ final rule. However, in determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. While the above discussion in this section compares the effects of the currently proposed changes to the 2020 AEZ final rule, the AEZ requirements have always extended to easements on an agricultural establishment since they originally went into effect in 2015. Therefore, given that the 2015 WPS has remained in effect since its establishment, there are no new impacts expected with the revision.

Revising the AEZ requirements so that applicators must suspend applications when people are inside an AEZ while in an area subject to an easement is anticipated to have little effect on the costs of pesticide application. Although this change has the potential to increase the complexity of pesticide applications, this requirement would only apply to specific instances in which people are within an easement that is also within the AEZ. In those cases, an owner or an applicator may have to reschedule an application, temporarily suspend applications, or communicate with people subject to an easement to move them outside of the AEZ, which could in turn lead to more complex application strategies. However, the proposal to reinstate the 2015 AEZ requirements will provide the applicator with specific criteria for suspending applications without needing to consider exceptions for easements and the location of those boundaries, which may make it easier for the applicator since the AEZ will therefore extend from the application in all directions, regardless of easements.

Since EPA is unaware of any pesticide exposure incidents involving individuals on an easement, EPA is unable to quantify how incidents of exposure will be affected by reinstating the 2015 AEZ regulatory text that would, in effect, make the AEZ applicable within easements on an agricultural establishment. As described previously, the ''Do Not Contact'' provision is applicable in all situations, without limitations on distance or the location of the individuals. The AEZ is an additional precaution to limit unintended pesticide exposure, intended to complement other protections for workers and bystanders. Despite the gap in available information, the Agency anticipates that reinstating the AEZ as finalized in the 2015 WPS will help to reduce potential exposures for those in easements if implemented properly.

3. Comments Sought on This Proposal

The Agency is interested in comments regarding the proposal to reestablish the applicability of the AEZ for people who may be in an area subject to an easement that falls within an AEZ and its efforts to improve understanding and compliance with this requirement. While this rulemaking intends to reinstate protections that were reduced in the 2020 AEZ Rule for individuals within an area subject to an easement, EPA understands that some of the concerns raised in the 2020 AEZ Rule regarding the implementation and enforcement of AEZs will persist without additional guidance or future rulemaking to clarify the Agency's expectations for this particular provision. EPA is interested in comments on how to improve its guidance on the implementation of AEZ protections for those within easements, and whether the approaches outlined in the existing guidance reflect a reasonable approach to resuming applications when those within easements and not under an agricultural employer's control. EPA is also interested in how to improve handler trainings to ensure that AEZs and the ''Do Not Contact'' provisions are presented in a way that is easily understood, enhance compliance, and ensure protection for those who may be within an easement. Additionally, EPA is interested in feedback on what other options or approaches could help address the concerns of state enforcement agencies or agricultural stakeholders without diminishing AEZ protections for people in areas subject to an easement.

D. Revisions To Reinstate 2015 AEZ Distance Requirements for Certain Ground-Based Sprays

1. Proposed Changes

EPA is proposing to reinstate the 2015 WPS criteria and factors for determining AEZ distances at 40 CFR 170.405(a) for ground spray applications, except for language around a Volume Median Diameter (VMD) as a determining factor. The 2020 AEZ Rule sought to simplify the AEZ requirements for ground spray applications by eliminating the language pertaining to spray quality and droplet size and VMD as criteria for determining the appropriate AEZ distance. This had the effect of establishing a single 25-foot AEZ for all ground-based spray applications made from a height greater than 12 inches from the soil surface or planting medium, irrespective of droplet size.

This proposed rule would reinstate language from the 2015 WPS that set AEZ distances based on the spray quality (droplet spectrum) sizes and spray height for certain pesticide application methods. Despite the Agency's efforts in the 2020 AEZ Rule to develop a simplified approach that was easier to understand and implement, EPA has reconsidered several studies cited by commenters (Refs. 10, 11, 12, 13) in response to EPA's 2019 AEZ Proposed Rule (Ref. 14) that show that pesticide applications using sprays with droplets smaller than medium (*i.e.,* fine or smaller droplet sizes) are prone to drift greater than 25 feet. After reconsidering the comments and the information submitted to the Agency during the 2019 public comment period and reevaluating the

information in the administrative record for the 2015 WPS rule, EPA has determined that the 100-foot AEZ for sprays with droplets smaller than medium is needed to provide protection to workers or bystanders near these fine-spray applications. As a result, the Agency is proposing to reestablish AEZ distances of 100 feet for sprays using a spray quality (droplet spectrum) of smaller than medium, and a 25-foot AEZ for ground applications sprayed from a height greater than 12 inches from the soil surface or planting medium using a spray quality (droplet spectrum) of medium or larger.

EPA is proposing, however, to incorporate the droplet size categories of all versions of the American National Standards Institute/American Society of Agricultural and Biological Engineers (ANSI/ASABE) Standard 572 (S572) by reference in § 170.405, including ANSI/ASABE S572.1, ANSI/ASABE S572.2, and ANSI/ASABE S572.3, to give meaning to the ''medium'' droplet size criterion instead of using the VMD values from the 2015 WPS. Because a similar approach using droplet size classifications was used in 40 CFR 170.405(b) when establishing entry restrictions during enclosed space production under the 2015 WPS, EPA is also proposing to remove VMD as a criterion for enclosed space production and instead rely on these ANSI/ASABE standards to ensure consistency between outdoor production requirements and enclosed space production requirements. The rationale for incorporating these standards by reference is further discussed in Unit II.E.

While EPA proposes to reinstate the 2015 WPS criteria for determining AEZ distances based on the droplet size and spray height, EPA reiterates that the application of a pesticide in a manner inconsistent with its labeling is a violation of FIFRA. Regardless of the droplet size criteria for the AEZ distances presented in 40 CFR 170.405(a) and the entry restriction distances for enclosed space production in 40 CFR 170.405(b), individual product labels may specify different, more protective product-specific restrictions that must be followed during the application. Pesticide users must comply with all the requirements in 40 CFR part 170, except those that are inconsistent with product-specific instructions on the pesticide product labeling.

2. Anticipated Effects

In this proposal, EPA is changing the determinants of the size of the AEZ. In some cases, such as where the handler is spraying a pesticide product with droplet sizes smaller than medium (*i.e.,* fine droplets), the size of the AEZ would have been 25 feet under the 2020 AEZ Rule. This proposal would reestablish the 2015 WPS regulatory text that set a distance of 100 feet for these applications. For sprayed applications using medium or larger droplets sprayed above 12 inches, the distance remains 25 feet, which is the same distance for these applications in both the 2015 WPS and the 2020 AEZ Rule.

Reinstating the different AEZ distances from the 2015 WPS for ground-based sprays based on droplet sizes is more complex than the 2020 AEZ for some growers, because handlers will have to assess droplet size and use that information to determine the correct size of the AEZ. However, the change in size only makes a difference for applications using a fine spray in the specific instances when people are between 25 and 100 feet from the application equipment. In those cases, an applicator would have had to reschedule an application or temporarily suspend applications until individuals leave the area. Retaining the droplet size criteria from the 2020 AEZ Rule may have made it simpler for handlers to know or understand the criteria for the AEZ, without having to know the specific characteristics of specific nozzles and applications, but it would also be less protective than the requirements of the 2015 WPS for applications using a fine droplet spray. In determining that the reinstatement of certain AEZ provisions from the 2015 WPS is warranted, EPA recognizes that an analysis of changes from the 2020 AEZ Rule and this proposed action is necessary. However, since the 2020 AEZ Rule has not gone into effect, there are no new impacts expected with the revision, and all costs associated with reinstating the 2015 WPS regulatory language are expected to be negligible.

3. Comments Sought on This Proposal

The Agency is interested in comments regarding the proposal reestablish 25- and 100-foot AEZ for ground-based sprays based on droplet size and spray height criteria. EPA is also interested in comments on the proposal to not reinstate the VMD as a criterion for determining 25- versus 100-foot AEZ distances, and whether the proposal to base AEZ distances on a classification category threshold of medium defined by the ANSI/ASABE standard and spray height still achieves the same protection that was provided in the 2015 WPS. Additionally, EPA is interested in information on whether incorporating the ANSI/ASABE standards by reference into the regulations to better define ''medium'' droplet sizes is adequate. The Agency is also interested in whether additional guidance for handlers/applicators conveying the value of using nozzle manufacturer guides and manuals to determine droplet sizes that are consistent with the ANSI/ASABE standard's definition of ''medium'' is needed to provide enough clarity to the regulated community on how to make an AEZ or enclosed space application distance determination for a given application. EPA is interested in feedback on whether incorporating the droplet classification category of medium from ANSI/ASABE is as well understood in the agricultural community as the Agency believes it to be, and whether this promotes a simplification to the requirements without diminishing protections. While this rulemaking is intended to reestablish protections from the 2015 WPS, the Agency is also interested in additional information for future consideration of the AEZ requirements regarding appropriate AEZ distances for different application methods.

E. Incorporation by Reference

EPA identified an applicable voluntary consensus standard for defining droplet size. Instead of fully reinstating the droplet size criteria established in the 2015 WPS, EPA is proposing to incorporate S572.3, Spray Nozzle Classification by Droplet Spectra, and its preceding editions by reference to enhance the Agency's compliance with the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 *note*). The NTTAA and Office of Management and Budget (OMB) Circular A–119 require agencies to use voluntary consensus standards in its regulatory, procurement, and program activities in lieu of government-unique standards, unless use of such standards would be inconsistent with applicable law or otherwise impractical.

1. Summary of Applicable Voluntary Consensus Standard

The American Society of Agricultural and Biological Engineers (ASABE) Standard S572 and updates of that standard were developed by ASABE and approved through the American National Standards Institute (ANSI). The standard defines droplet spectrum categories for the classification of spray nozzles, relative to specified reference fan nozzles discharging spray into static air or so that no stream of air enhances atomization. The purpose of classification is to provide the nozzle user with droplet size information

primarily to indicate off-site spray drift potential and secondarily for application efficacy. The standard established a basis for relative nozzle comparisons only based on droplet size. The standard does not address other spray drift and application efficacy factors, such as droplet discharge trajectory, height, and velocity; air bubble inclusion; droplet evaporation; and impaction on target. As discussed in Unit. II.E.2., the ASABE categorization of ''medium'' droplet sizes is mostly unchanged despite various updates to the standard in recent years. Given the relative stability of the categorization of ''medium'' droplet sizes, EPA proposes to incorporate by reference the current and all previous versions of S572 to establish the droplet spectrum requirements of § 170.405.

2. Reasons To Incorporate Current and Previous Versions of the Standard by Reference

EPA decided to reinstate the distance criteria based on a ''medium'' droplet size cutoff and height, but not VMD, for several reasons. The description of the droplet size/spectrum in the 2015 WPS language in 40 CFR 170.405(a)(1) and (b)(4) included a numerical value of 294 microns for the VMD. The oldest version of the ASABE standard S572 for which these requirements were originally based on defined the droplet spectrum in six categories and included numerical values for the VMD (Ref. 15). However, the ASABE standard has been revised several times, in 2009, 2018, and 2020 (Refs., 16, 17, 18). The most current standard now defines the droplet sizes into eight classification categories and no longer includes the numerical VMD values that were the basis for the specific criteria in the 2015 WPS requirements at 40 CFR 170.405(a)(1) and (b)(4). The classification categories now include a range of VMDs to define ''medium'' as opposed to a specific VMD value. The categorization of ''medium'' droplet sizes throughout the ASABE standards, however, have remained largely the same.

The ASABE classifications and categories are generally well understood by the regulated community and are referenced in several places, including on some EPA pesticide labels as they are revised during EPA's Registration Review process. Additionally, droplet classifications from the ASABE standards are also referenced in nozzle manufacturers' selection guides to assist applicators in determining which nozzles and spray characteristics will produce various droplet sizes that are consistent with the ASABE classifications.

The ASABE classification categories have defined droplet size categories for the classification of spray nozzles relative to the specified reference fan nozzle. The purpose of classification is to provide the nozzle user with droplet size information primarily to indicate off-target spray drift potential and secondarily for application efficacy. Nozzle manufacturers often provide the necessary information in their selection guides to place their nozzle types into a droplet size category (Extremely Fine (XF), Very fine (VF), Fine (F), Medium (M), Coarse (C), Very Coarse (VC), Extremely Coarse (EC), and Ultra Coarse (UC)) based at least on orifice size and pressure. The color code associated with droplet size classification categories in the ASABE standard has become commonly understood and is often the same color code currently used in nozzle manufacturer guides on speed, pressure, and nozzle type. EPA notes, however, that these colors may not always reflect the color of the nozzle itself, so care must be taken by applicators when reviewing these guides to determine the correct droplet size for a particular nozzle or nozzle configuration. EPA believes that AEZ and enclosed space distances using a droplet size of ''medium'' can be determined quickly and simply when referring to these guides and manuals, which is reflective of how applicators and handlers typically ascertain this information in preparation for applications.

Therefore, simplifying the requirements to be based on droplet size categories alone provides a clear and easy approach for determining an AEZ or enclosed space distance, and makes it easier to enforce the requirements without the complexity of determining whether an application is over or under a VMD of 294 microns as required in 2015 WPS. Additionally, EPA will consider developing additional guidance as needed to specify that the information necessary to achieve the desired droplet size based on ASABE's definition of ''medium'' can be obtained through the nozzle manufacturers' guides where the characteristics for the particular nozzle are typically provided.

3. Reasonable Availability

Copies of this standard may be purchased from the ASABE, 2950 Niles Road, St. Joseph, MI 49085, or by calling (269) 429–0300, or at *https://www.asabe.org.* Additionally, each of these standards are available for inspection at the OPP Docket in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA, West Bldg., 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room and the OPP Docket is (202) 566–1744. For information about the electronic availability of this standard for public review in read-only format during the public comment period, visit *https://www.epa.gov/pesticide-worker-safety/worker-protection-standard-application-exclusion-zone.* EPA has determined that the standard and its predecessor versions are reasonably available to the class of persons affected by this rulemaking.

If you have a disability and the format of any material on an EPA web page interferes with your ability to access the information, please contact EPA's Rehabilitation Act Section 508 (29 U.S.C. 794d) Program at *https://www.epa.gov/accessibility/forms/contact-us-about-section-508-accessibility* or via email at *section508@epa.gov.* To enable us to respond in a manner most helpful to you, please indicate the nature of the accessibility issue, the web address of the requested material, your preferred format in which you want to receive the material (electronic format (ASCII, etc.), standard print, large print, etc.), and your contact information.

F. Retention of the 2020 AEZ Rule's Suspension Clarification and the Immediate Family Exemption

1. Summary of the Retained Provisions From the 2020 AEZ Rule

EPA is proposing to retain the 2020 AEZ Rule's revisions to clarify when applications that have been suspended due to someone being within the AEZ can be resumed, and the family exemption for owners and their immediate family members to remain within an AEZ provided they are inside a closed house or structure.

In the 2020 AEZ Rule, EPA revised 40 CFR 170.505(b) to clarify that handlers may resume a suspended application provided that no workers or other persons (other than appropriately trained and equipped handlers involved in the application) remain in the AEZ. Commenters in response to the 2019 AEZ Proposed Rule were supportive of this change, because it provided the needed clarity for EPA's intent of the suspension requirement. Therefore, EPA intends to maintain this revision in the 2020 AEZ Rule and will only address the language in 40 CFR 170.505(b) regarding off-establishment individuals

and those within easements as discussed in Unit II.B. and C.

EPA also proposes to maintain the immediate family exemption at 40 CFR 170.601, which exempts owners and their immediate family members from having to leave the AEZ when they remain inside closed buildings, housing, or shelters on the establishment during pesticide applications. This exemption also permits handlers the ability to proceed with an application when owners or their immediate family members remain inside closed buildings, housing, and structures, provided that the owner has expressly instructed the handler that only the owner and/or their immediate family members remain inside the closed building and that the application can proceed despite the owner and their immediate family members' presence inside the closed building. Handlers, under this exemption, would have to receive this information from the owner of the establishment prior to application and cannot assume that only the owner's family are inside without that assurance. The Agency believes this approach is consistent with the 1992 and 2015 WPS rationales for providing exemptions to the WPS for family farms because the Agency expects owners of agricultural establishments will take all steps necessary to protect their own immediate family members, and the exemption gives owners flexibility to provide those protections by sheltering immediate family members in enclosed structures within an AEZ.

2. Comments Sought on This Proposal

While EPA intends to retain these provisions from the 2020 AEZ Rule, EPA is interested in any new information that might be available for the Agency to consider ensuring that these provisions are adequately protective while meeting the needs of stakeholders. EPA also seeks input on what the Agency can do to ensure that the expectations of these provisions are clear and enforceable. For example, EPA is interested in feedback on whether any additional guidance or future revision is needed to ensure that the intent of the immediate family exemption from the AEZ requirements is properly implemented. EPA is also interested on the clarity and enforceability of the immediate family exemption, particularly regarding handlers who have been ''expressly instructed'' by the owner to proceed with an application.

G. Options Considered but Not Proposed

The Agency considered rescinding the 2020 AEZ Rule in its entirety and reinstating the WPS in full as finalized in 2015, but the Agency has determined that certain provisions of the 2020 AEZ Rule have merit and support in the administrative record. The Agency has determined that this rulemaking presents the best opportunity to ensure that protections from the 2015 WPS are expeditiously reinstated into the regulatory text, while preserving the meritorious provisions of the 2020 AEZ Rule (*i.e.,* clarification of when suspended applications can resume and the immediate family exemption). In addition, the Agency continues to assess the best approaches for improving understanding, compliance, and enforcement the AEZ requirements. The Agency will continue to collect additional information for future consideration on the AEZ requirements.

III. Request for Comment

In addition to the request for comments that are specific to the individual issues discussed in Unit II., EPA also requests comments generally on the proposed changes to the WPS AEZ requirements, its efforts to address potential exposure concerns in connection to the changes made by the 2020 AEZ Rule, and the Agency's intention to retain the 2020 AEZ Rule provisions related to the clarification of when suspended applications can resume and the exemption for owners and their immediate family to remain inside homes or other enclosed buildings or structures that may fall within an AEZ. EPA is also interested in whether the proposed changes may have unanticipated consequences, and whether there are any recommendations or considerations on improving the understanding, compliance, and enforceability of the AEZ provisions. To ensure that EPA can give your comments the fullest consideration, please provide the rationale and data or information that support your position.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Revision of the Application Exclusion Zone Requirements; Final Rule. **Federal Register**. 85 FR 68760, October 30, 2020 (FRL–10016–03). Available at *https://www.govinfo.gov/content/pkg/FR-2020-10-30/pdf/2020-23411.pdf.*
2. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Final Rule. **Federal Register**. 80 FR 67496, November 2, 2015 (FRL–9931–81). Available at *https://www.govinfo.gov/content/pkg/FR-2015-11-02/pdf/2015-25970.pdf.*
3. EPA. Economic Analysis of the Agricultural Worker Protection Standard Revisions, September 2015 RIN 2070–AJ22. 2015. EPA Docket ID No. EPA–HQ–OPP–2011–0184–2522. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2011-0184-2522.*
4. EPA. Cost Analysis for Revisions to the Application Exclusion Zone in the Worker Protection Standard. 2020. EPA Docket ID No. EPA–HQ–OPP–2017–0543–0152. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2017-0543-0152.*
5. *State of New York et al.* v. *United States Environmental Protection Agency,* Case No. 1:20–cv–10642; (United States Southern District of New York, December 28, 2020). Amended Order Re: Complaint for Declaratory and Injunctive Relief.
6. *State of New York et al.* v. *United States Environmental Protection Agency,* Case No. 1:20–cv–10642; (United States Southern District of New York, August 15, 2022). Eighth Stipulation and Consent Order Further Extending Stay and Extending Injunction.
7. The White House, Briefing Room. Fact Sheet: List of Agency Actions for Review. January 20, 2021. Available at *https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/.*
8. EPA. Worker Protection Standard Application Exclusion Zone Requirements: Updated Questions and Answers. February 15, 2018. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2017-0543-0008.*
9. EPA. WPS Guidance on the Application Exclusion Zone. Q&A Fact Sheet on the Worker Protection Standard (WPS) Application Exclusion Zone (AEZ) Requirements. April 14, 2016. Available at *https://www.regulations.gov/document/EPA-HQ-OPP-2017-0543-0007.*
10. Felsot *et al.* Agrochemical Spray Drift; Assessment and Mitigation—A Review, 46 J. Envtl. Sci. Health Part B 1. 2010.
11. Kasner *et al.,* Spray Drift from a Conventional Axial Fan Airblast Sprayer in a Modern Orchard Work Environment, 62 Annals of Work Exposures and Health 1134. 2018.
12. W.A. Taylor *et al., An Attempt to Relate Drop Size to Drift Risk,* Proceedings of the International Conference on Pesticide Application for Drift Management, 210–223. 2004.
13. Nuyttens *et al., Effect of Nozzle Type, Size and Pressure on Spray Droplet Characteristics,* 97 Biosystems Engineering 333. 2007.

14. EPA. Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements; Proposed Rule. **Federal Register**. 84 FR 58666, November 1, 2019 (FRL–9995–47).
15. American National Standards Institute (ANSI)/American Society of Agricultural and Engineers (ASAE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASAE S572. August 1999.
16. American National Standards Institute (ANSI)/American Society of Agricultural and Biological Engineers (ASABE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASABE S572.1. March 2009.
17. American National Standards Institute (ANSI)/American Society of Agricultural and Biological Engineers (ASABE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASABE S572.2. July 2018.
18. American National Standards Institute (ANSI)/American Society of Agricultural and Biological Engineers (ASABE). *Spray Nozzle Classification by Droplet Spectra.* ANSI/ASABE S572.3. February 2020.
19. EPA. Notification of Submission to the Secretary of Agriculture; Pesticides; Agricultural Worker Protection Standard; Reconsideration of the Application Exclusion Zone Amendments; Draft Proposed Rule; Notification of submission to the Secretary of Agriculture. **Federal Register**. 87 FR 74072, December 2, 2022 (FRL–8528–02–OCSPP).

V. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA submitted a draft of this proposed rule to the United States Department of Agriculture (USDA) (Ref. 19) and the FIFRA Scientific Advisory Panel (SAP) for review. A draft of the rule was also submitted to the appropriate Congressional Committees.

The FIFRA SAP waived its scientific review of this proposed rule on November 27, 2022. The SAP indicated that the draft proposed rule does not contain scientific issues that warranted review by the Panel.

USDA completed its review on December 28, 2022. USDA expressed its support for the action and provided no comments that warranted a response from EPA.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to OMB for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new or modify information collection requirements that would require additional review or approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations under OMB control number 2070–0190 and identified by EPA Information Collection Request No. 2491.06. This proposal does not impose an information collection burden because the AEZ requirements are not associated with any of the existing burdens in the approved information collection request.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are agricultural and handler employers, and commercial pesticide handler employers. The Agency has determined that while reinstating several of the 2015 AEZ requirements could require agricultural employers to direct workers to move away from the edge of treatment areas as the application equipment passes, this would be a very temporary disruption in any worker activity and, as summarized in Unit I.E. and otherwise discussed in Units II.B.2., II.C.2., and II.D.2., would not lead to any quantifiable impacts on agricultural establishments, including small agricultural operations. On the part of the handlers, the requirement to cease an application if someone is in the AEZ clarifies the applicator or handler's responsibility and is unlikely to result in measurable costs.

As explained in Unit II.A.4., the 2020 AEZ Rule never went into effect due to a series of court orders staying the effective date of the 2020 AEZ final rule. While the discussion compares the effects of the currently proposed changes to the 2020 AEZ final rule, the AEZ requirements have always extended beyond the boundary of an agricultural establishment and within easements since it originally went into effect in 2016. Therefore, given that the 2015 rule has remained in effect since its establishment, there are no new impacts expected with this proposed rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and tribal governments, or on the distribution of power and responsibilities between the Federal Government and tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866 (see Unit V.A.), and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order.

The WPS is intended to apply to myriad agricultural pesticides and the Agency has not developed a health or risk assessment to evaluate impact of the proposed amendments of the AEZ provisions for each pesticide subject to the WPS. Beyond the requirements of Executive Order 13045, EPA's *2021 Policy on Children's Health,* dated October 5, 2021 (*https://www.epa.gov/*

system/files/documents/2021-10/2021-policy-on-childrens-health.pdf), requires EPA to consistently and explicitly consider early life exposures and lifelong health in all human health decisions. The Agency finds that it is reasonable to expect that this proposed rule would address existing environmental health or safety risks from agricultural pesticide applications that may have a disproportionate effect on children. Children face the risk of pesticide exposure from work in pesticide-treated areas or near ongoing pesticide application, from the use of pesticides near their homes and schools, and from pesticide residues brought into the home by family members after a day of working with pesticides or being in or near pesticide-treated areas. Children also face the risk of pesticide exposure from drift. The proposed rule is intended to limit these exposures and risks by reinstating AEZ requirements that no longer limit it to the property boundary of an agricultural establishment and expanding the AEZ back to 100 feet for sprayed applications with droplet sizes smaller than medium.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves voluntary standards under NTTAA section 12(d), 15 U.S.C. 272 note. EPA is proposing to adopt the use of ANSI/ASABE S572, ANSI/ASABE S572.1, ANSI/ASABE S572.2, and ANSI/ASABE S572.3 to define ''medium'' droplet sizes. Additional information about these standards, including how to access them, is provided in Unit II.E.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or indigenous peoples. As noted in past assessments (Ref. 3), affected populations include minority and/or low-income individuals that may have a higher risk of exposure and/or are more vulnerable to the impacts of pesticides due to occupation, economic status, health and obstacles to healthcare access, language barriers, and other sociodemographic characteristics.

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. EPA seeks to limit exposure of agricultural workers, handlers, and communities adjacent to agricultural establishments to pesticides. This action would limit exposures to pesticides, improve public health, and prioritize environmental justice by rescinding certain changes to the AEZ provisions that were reflected in the 2020 AEZ Rule but have not yet taken effect. This action would reinstate, for example, regulatory text requiring agricultural employers to keep workers and other people out of the AEZ during the pesticide application regardless of whether the individuals are outside of establishments' boundaries or within easements. Additionally, these changes will reinstate larger AEZs for those sprays with the highest spray drift potential. As discussed in Unit I.E., reinstating the 2015 WPS requirements for these AEZ provisions better balances social and health-related costs than the 2020 AEZ Rule.

EPA additionally identified and addressed environmental justice concerns by engaging with stakeholders from affected communities extensively in the development of the 2015 WPS rulemaking that originally established the AEZ requirements that the Agency proposes to reinstate. Those efforts were conducted to obtain meaningful involvement of all affected parties. Consistent with those efforts and assessments, EPA believes this rule will better protect the health of agricultural workers and handlers by reinstating the complementary protections of the AEZ that were intended to support the ''Do Not Contact'' requirements within the WPS.

The information supporting this Executive order review is contained in the section discussing the incremental impacts of this action in Unit I.E. and the Economic Analysis from the 2015 WPS (Ref. 3).

List of Subjects in 40 CFR Part 170

Environmental protection, Agricultural worker, Employer, Farms, Forests, Greenhouses, Incorporation by reference, Nurseries, Pesticide handler, Pesticides, Worker protection standard.

Michael S. Regan,

Administrator.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 170—WORKER PROTECTION STANDARD

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

■ 2. Amend § 170.405 by revising paragraphs (a)(1)(i) and (ii), (a)(2), and (b)(4) and adding paragraph (c) to read as follows:

§ 170.405 Entry restrictions associated with pesticide applications.

(a) * * *

(1) * * *

(i) The application exclusion zone is the area that extends 100 feet horizontally from the point(s) of pesticide discharge from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

(A) Aerially.

(B) Air blast or air-propelled applications.

(C) As a fumigant, smoke, mist, or fog.

(D) As a spray using nozzles or nozzle configurations which produce a droplet size of smaller than medium, in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see paragraph (c) of this section).

(ii) The application exclusion zone is the area that extends 25 feet horizontally from the point(s) of pesticide discharge from the application equipment in all directions during application when the pesticide is sprayed from a height of greater than 12 inches from the soil surface or planting medium using nozzles or nozzle configurations which produce a droplet size of medium or larger in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see

paragraph (c) of this section), and not as in paragraph (a)(1)(i) of this section.

* * * * *

(2) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete, except for:

(i) Appropriately trained and equipped handlers involved in the application; and

(ii) Owners of the agricultural establishment and their immediate family members who remain inside closed buildings, housing, or shelters under the conditions specified in § 170.601(a)(1)(vi).

* * * * *

(b) * * *

(4) The following table applies to paragraphs (b)(1), (2), and (3) of this section.

TABLE 1 TO PARAGRAPH (b)(4)—ENTRY RESTRICTIONS DURING ENCLOSED SPACE PRODUCTION PESTICIDE APPLICATIONS

A. When a pesticide is applied:	B. Workers and other persons, other than appropriately trained and equipped handlers are prohibited in:	C. Until:	D. After the expiration of time specified in column C, the area subject to the restricted-entry interval is:
(1) As a fumigant	Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area.	The ventilation criteria of paragraph (b)(3) of this section are met.	No post-application entry restrictions required by § 170.407 after criteria in column C are met.
(2) As a: (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) As a spray using a spray quality (droplet spectrum) of smaller than medium, in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see paragraph (c) of this section).	Entire enclosed space	The ventilation criteria of paragraph (b)(3) of this section are met.	Entire enclosed space.
(3) Not as in (1) or (2), and for which a respiratory protection device is required for application by the pesticide product labeling.	Entire enclosed space	The ventilation criteria of paragraph (b)(3) of this section are met.	Treated area.
(4) Not as in (1), (2), or (3), and: (i) From a height of greater than 12 inches from the planting medium, or (ii) As a spray using a spray quality (droplet spectrum) of medium or larger in accordance with the meaning given to ''medium'' by the American Society of Agricultural and Biological Engineers in ASABE Standard S572, S572.1, S572.2, or S572.3 (incorporated by reference, see paragraph (c) of this section).	Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space.	Application is complete	Treated area.
(5) Otherwise	Treated area	Application is complete	Treated area.

(c) *Incorporation by reference.* The material listed in this paragraph (c) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any editions other than those specified in this section, the Environmental Protection Agency (EPA) must publish a document in the **Federal Register** and the materials must be available to the public. All approved material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact EPA at: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room and the OPP Docket is (202) 566–1744. For information on the availability of this material at NARA, visit: *www.archives.gov/register//locations.html* or email: *fr.inspection@nara.gov.* The material may be obtained from the following source(s) in this paragraph (c):

(1) American Society of Agricultural and Biological Engineers, 2950 Niles Road, St. Joseph, MI 49085, (269) 429–0300, *https://www.asabe.org.*

(i) ANSI/ASAE S572, Spray Nozzle Classification by Droplet Spectra, Approved August 1999, Reaffirmed February 2004.

(ii) ANSI/ASABE S572.1, Spray Nozzle Classification by Droplet Spectra, Approved March 2009, Reaffirmed December 2017.

(iii) ANSI/ASABE S572.2, Spray Nozzle Classification by Droplet Spectra, Approved July 2018.

(iv) ANSI/ASABE S572.3, Spray Nozzle Classification by Droplet Spectra, Approved February 2020.

(2) [Reserved]

■ 3. Amend § 170.501 by revising paragraph (c)(3)(xi) to read as follows:

§ 170.501 Training requirements for handlers.

* * * * *

(c) * * *

(3) * * *

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone and must not resume the application while workers or other persons remain in the application exclusion zone, except for appropriately trained and equipped handlers involved in the application, and the owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those

closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

* * * * *

■ 4. Amend § 170.505 by revising paragraph (b) to read as follows:

§ 170.505 Requirements during applications to protect handlers, workers, and other persons.

* * * * *

(b) *Suspending applications.* (1) 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) or the area specified in column B of table 1 to § 170.405(b)(4), except for:

(i) Appropriately trained and equipped handlers involved in the application; and

(ii) The owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

(2) A handler must not resume a suspended pesticide application while any workers or other persons remain in an application exclusion zone described in § 170.405(a)(1) or the area specified in column B of table 1 to § 170.405(b)(4), except for:

(i) Appropriately trained and equipped handlers involved in the application; and

(ii) The owner(s) of the agricultural establishment and members of their immediate families who remain inside closed buildings, housing, or shelters, provided that the handlers have been expressly instructed by the owner(s) of the agricultural establishment that only immediate family members remain inside those closed buildings, housing, or shelters and that the application should proceed despite the presence of the owner(s) or their immediate family members inside those closed buildings, housing, or shelters.

* * * * *

■ 5. Amend § 170.601 by revising paragraph (a)(1) to read as follows:

§ 170.601 Exemptions.

(a) * * *

(1) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment (and, where specified in paragraphs (a)(1)(i) through (xiii) of this section, certain handlers) are not required to provide the protections of the following provisions to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this part on their own agricultural establishment.

(i) Section 170.309(c).

(ii) Section 170.309(f) through (j).

(iii) Section 170.311.

(iv) Section 170.401.

(v) Section 170.403.

(vi) Sections 170.405(a)(2) and 170.505(b), but only in regard to owner(s) of the establishment and their immediate family members who remain inside closed buildings, housing, or shelters. This exception also applies to handlers (regardless of whether they are immediate family members) who have been expressly instructed by the owner(s) of the establishment that:

(A) Only the owner(s) or their immediate family members remain inside the closed building, housing, or shelter; and

(B) The application should proceed despite the presence of the owner(s) or their immediate family members remaining inside the closed buildings, housing, or shelters.

(vii) Section 170.409.

(viii) Sections 170.411 and 170.509.

(ix) Section 170.501.

(x) Section 170.503.

(xi) Section 170.505(c) and (d).

(xii) Section 170.507(c) through (e).

(xiii) Section 170.605(a) through (c), and (e) through (j).

* * * * *

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COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, and 51–5

RIN 3037–AA14

Supporting Competition in the AbilityOne Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), operating as the U.S. AbilityOne Commission (Commission), proposes to amend the Commission's regulations to incorporate specific recommendations from the ''Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity'' (the Panel) review mandated by section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017. The mission of the Panel, in part, was to assess the overall effectiveness and internal controls of the AbilityOne Program related to Department of Defense (DoD) contracts and provide recommendations for changes in business practices. Although the Panel focused on DoD-related procurements, the Commission's proposed revisions will apply to all Procurement List (PL) additions. The proposed revisions will clarify the Commission's authority to consider different pricing methodologies in establishing the Fair Market Price (FMP) for PL additions and changes to the FMP; better define the parameters for conducting fair and equitable competitive allocations amongst multiple qualified Nonprofit Agencies (NPAs); and clarify the responsibilities and procedures associated with authorizing and deauthorizing NPAs.

DATES: The Commission must receive comments on these proposed revisions no later than May 11, 2023.

ADDRESSES: You may submit your comments, identified by ''RIN 3037–AA14,'' by using the following method: internet—Federal eRulemaking Portal. Electronic comments may be submitted through *https://www.regulations.gov.* To locate the proposed rule, use RIN 3037–AA14. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

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