

**EPN Comments on EPA’s “Pesticides;
Agricultural Worker Protection Standard;
Reconsideration of the Application Exclusion Zone Amendments”**

Docket No.: EPA-HQ-OPP-2022-0133

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Founded in 2017, the [Environmental Protection Network](https://www.environmentalprotectionnetwork.org) (EPN) harnesses the expertise of more than 550 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

I. Introduction

A. Summary of Recent Actions

Agricultural employers are required to refrain from applying pesticides when there are people who are unqualified and uninvolved with the process too close to the site of application. In this proposed rule, EPA has undertaken actions to clarify these restrictions and make their application more uniform, contributing to improved protections of human health and administrative efficiencies for enforcement agencies and regulated communities.

On February 15, 2023, EPA announced the availability and solicitation of comments on a proposed rule that would reinstate specific requirements for managing application exclusion zones (AEZ) of the Agricultural Worker Protection Standard (WPS) (88 FR 15346) (“2023 AEZ Rule”).

The proposed rule and supplementary information presented by EPA demonstrate how and why the agency proposes to undo some amendments made to AEZ management by a final rule published on October 30, 2020 (85 FR 68760) (“2020 AEZ Rule”). This will work to reinstate requirements from a November 2, 2015, final rule (80 FR 67496) (“2015 AEZ Rule”) that are more appropriately protective of public health, reducing the potential for pesticide exposures while maintaining administrative reliability and efficacy for enforcing agencies and the regulated community.

Specifically, the proposed rule will reinstate the application of AEZ requirements when there are people within the boundaries of an AEZ, which is understood to apply beyond the borders of an agricultural employer’s property under these regulations. It will also increase the distance requirement imposed for some applications which had smaller distance requirements imposed by the 2020 rule. Finally, the 2023 AEZ Rule also offers additional clarity regarding exemptions for members of the agricultural employers’ immediate family. EPN encourages EPA in making these proposed changes, asserting that the improved health protections and administrative efficiencies that are likely to be realized are worth the effort.

B. AEZ Context and Operation

Both the 2015 and 2020 AEZ rules bar pesticide applications when there are nonexempt people in the AEZ, which is a boundary set by a fixed distance surrounding the point of application. Further, ongoing applications must stop if nonexempt people are found to be in the AEZ after application commences.

The amendments contemplated in the 2020 AEZ Rule would have prevented the protections of the AEZ from applying outside of a regulated agricultural employer's property. These protections are significant, given the difficulty in predicting the path of pesticide drift after application, the substantial risk inherent in contact with pesticide vapors, and the lack of communication that may otherwise prevail between farmers and their neighbors (or other parties likely to be present in the AEZ but outside the property of the agricultural employer in question).

C. EPA Questions for Comment

EPN's comments in Section II of this submissions cover the three main aspects of EPA's actions under this proposed rule:

- Reinstatement of AEZ application beyond the property lines where the application is made;
- Rescinding the exception for suspension requirements where triggered by entry to property under easement that is covered by the AEZ; and
- Blocking reductions to, and implementing new distance requirements for, certain ground-based spray applications.

II. EPN Comments

EPA's efforts to reestablish the more protective and administratively reliable AEZ requirements of the 2015 AEZ Rule are warranted and beneficial. Ensuring that pesticide applications do not take place when there are people near to the spray site, but on adjacent property, prevents those people from experiencing unplanned and dangerous pesticide exposures.

Further, EPN anticipates that the rescinding of the exemption from AEZ requirements when a nonexempt party is present within an AEZ, on an easement, will prove effective at protecting human health. It is common for easements to be assigned on farmland to allow access for purposes like access to fossil fuel extraction infrastructure or renewable power generation, and farm owners and managers may not know whether parties with rights assigned by the easement intend to utilize those rights on the day of a scheduled or anticipated pesticide application. In order to comply with the proposed rule and achieve the human health benefits intended therein, agricultural employers may identify in advance how distant a pesticide application in the field must be to an easement in order for the easement to remain outside the boundaries of the AEZ invoked by the application. Whether this assembled information is ever used in order to stop or restart a pesticide application, the precedent set by the proposed rule will at least require advanced risk assessment on the part of some farmers that could contribute to additional protective actions taken to prevent inappropriate human exposure to pesticides.

Where an application will be executed so close to an easement that the easement will fall within the AEZ, the farmer can alert the parties holding the easement in advance to let them know they are not allowed to

utilize the easement during the application or the time after which entry remains barred by the requirements of any posted restricted entry interval. Many jurisdictions maintain regulations or programs that encourage or require farmers to notify neighbors when pesticide applications will take place; EPA's proposed rule will contribute to these trends toward conscientiousness of the impacts of applications without imposing rules so onerous as to significantly slow down or disrupt necessary tasks pursuant to agricultural production.

EPN also expresses support for EPA's decision to implement changes to the distances required for AEZs during ground-based spray applications. They are more administratively reliable and will increase protections to human health from important hazards.

EPN suggests that EPA rethink how the AEZ provisions may affect people who are not members of the agricultural employer's immediate family, but who are living on or near farmland where pesticide applications take place. The 2023 proposal would allow members of the immediate family of the agricultural employer to remain in a closed building when the pesticide application encompasses the building. Unrelated people, however, would need to leave any building whenever it came within an AEZ-associated pesticide application.

If a pesticide application occurs late at night or early in the morning, the occupants would need to leave, no matter what activities they were conducting – eating a meal, sleeping, spending time with family members. This could be very disruptive and should be avoided, if possible.

A prohibition on pesticide applications that would occur at locations where the resulting AEZ would encompass a building occupied by individuals other than immediate family members of the agricultural employer between 8 PM and 8 AM could be helpful in addressing this challenge. This creates reliable, relatively uncomplicated protections for individuals living near working agricultural lands where pesticides are applied. This, and other solutions like it, may be especially urgent for EPA to consider; environmental justice directives instruct the agency to pursue greater equity for disadvantaged communities. Many residential communities adjacent to working agricultural lands are disadvantaged, warranting intentional consideration of regulatory solutions to mitigate their marginalization.

Thank you for your consideration of these comments. EPN appreciates EPA's efforts enhancing the protection of human health and the environment through these proposed changes to AEZ administration.