

2020 Final AEZ Provisions Frequently Asked Questions

1. What changes are occurring under the AEZ final rule?

EPA has clarified and simplified the AEZ requirements based in part on input from EPA's outreach to state pesticide regulatory agencies and agricultural stakeholders after the adoption of the 2015 WPS rule. Consistent with the Pesticide Registration Improvement Act of 2018, EPA is only implementing changes related to the AEZ requirements in the WPS. These changes do the following:

A. Limits the AEZ requirements to within the boundaries of the agricultural establishment.

- The handler/applicator is not responsible for implementing AEZ requirements off the establishment, where the owner lacks control over persons in the AEZ.
- No changes were made to the "Do Not Contact" provision that prohibits a handler/applicator and the handler's employer from applying a pesticide in such a way that it contacts workers or other persons directly or through drift.

B. Addresses issues raised about when handlers may resume an application that has been suspended. Specifically:

- Clarifies that handlers may resume a suspended application when no workers or other persons (other than appropriately trained and equipped handlers involved in the application) remain in an AEZ within the boundaries of the establishment.
- Adds language to allow applications to be made or resumed while persons not employed by the establishment are present on easements that may exist within the boundaries of agricultural establishments because, depending on the terms of the easement, the owner or agricultural employer may be unable to control the movement of people (e.g., utility workers) within an easement. The "Do Not Contact" provision, however, still applies.
- Allows owners and their immediate family (as defined in 40 CFR 170.305) to shelter in place inside closed buildings, housing, or shelters within the AEZ, and allows applications performed by handlers to proceed provided 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.

C. Clarifies and simplifies the AEZ requirements for outdoor production. Specifically:

- Eliminates language and criteria pertaining to spray quality, droplet size, and volume median diameter, and using only "sprayed applications" as the criterion.
- Limits the criteria for 100-foot AEZ distances for outdoor production to pesticide applications made by any of the following methods: 1) aerially; 2) by air blast or air-propelled applications; or 3) as a fumigant, smoke, mist or fog.
- Establishes a 25-foot AEZ for all sprayed applications made from a height greater than 12 inches from the soil surface or planting medium, and no longer differentiate between sprayed applications based on the spray quality or other factors for setting different AEZ distances for outdoor production.

D. Expands the exemption for owners of agricultural establishments and their immediate families to exempt them from the requirement to leave the AEZ when in an enclosed building. It also permits handlers to continue applications when the owner's family is inside enclosed structures or homes, provided that the owner has expressly instructed the handlers that only the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence.

- EPA anticipates family members will take appropriate steps to protect each other. Providing this exemption reduces burden on owners of agricultural establishments.
- This exemption should not negatively impact farm owners or their immediate families because family members will still be subject to the "do not contact" provision and other safety measures outside of the enclosed building.
- This revision should not impact WPS protections for farmworkers, handlers or their families because owners will still have to observe AEZ requirements for non-family-member employees or other persons on the establishment and must ensure applications will not contact anyone on or off the establishment.

2. How is EPA changing the definition of the Application Exclusion Zone (AEZ)?

In the 2015 revision of the Worker Protection Standard (WPS) regulations, the application exclusion zone (AEZ) was defined as "the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications."

Through EPA's October 2020 final rulemaking, the agency has revised this definition as "the area surrounding the point(s) of pesticide discharge from the application equipment that must generally be free of all persons during pesticide applications."

This revised definition is now consistent with how EPA has been describing the AEZ in trainings and outreach since 2015 and continues to reinforce that in general only appropriate trained and equipped handlers are permitted in the AEZ during a pesticide application on the establishment. However, the definition now accounts for the revisions to the rule that allows farm owners and their families to remain inside enclosed structures or their homes when pesticide applications are occurring, provided that the owner has expressly instructed the pesticide handlers that the application should proceed despite their presence. This revised definition also accounts for the revision to limit the AEZ to within the establishment and the exception for individuals working on or in easements. Despite these exemptions or exceptions, the handler must ensure the application will not contact people or take appropriate measures to prevent contact from occurring.

4. Why is EPA making these changes?

Members of the agricultural community, including the U.S. Department of Agriculture (USDA), state pesticide regulatory agencies and organizations, and several agricultural interest groups have expressed concerns with the AEZ requirements in the 2015 WPS rule.

EPA began hearing general concerns about rule implementation and more specific concerns about the rule's AEZ requirements from some state pesticide regulatory agencies responsible for WPS and pesticide enforcement during the Agency's extensive outreach and training efforts after promulgation of the 2015 WPS rule. Comments about the AEZ included concerns about the complexity and enforceability of the requirements. Similar concerns were expressed through the agency's Regulatory Reform Agenda outreach process and during meetings of federal advisory committees such as the Pesticide Program Dialogue Committee.

5. Will this rule impact health protections for farmworkers, handlers, or their families?

This revision will not impact WPS protections for farmworkers, handlers, or their families because owners and handlers will still have to observe all AEZ requirements for non-family member employees or other persons on the establishment and must ensure that applications will not contact anyone on or off the establishment. Farmworkers, handlers, and their families inside closed buildings will still be covered by the AEZ requirements on the establishment.

6. What will the impact of this rule be on the farm owner's family?

This revision includes expanding the exemption for owners of agricultural establishments and their immediate families to exempt them from the requirement to leave the AEZ when in an enclosed building. This exemption will not negatively impact farm owners or their immediate families because family members are still protected by the "Do Not Contact" provision and other safety measures outside of the enclosed building.

7. Will the AEZ revisions mean that people walking on paths and roads beside the agricultural establishment will not be protected from pesticide sprays? What is the wording on labels that protects people from being sprayed?

The WPS contains several provisions that, working together, protect bystanders from pesticide exposure. Most explicitly, the WPS regulation contains a "Do Not Contact" provision that prohibits the handler and the handler's employer from allowing the pesticide application to result in any contact to people other than appropriately trained and equipped handlers involved in the application. Off-farm bystanders are still protected from pesticide applications by the "Do Not Contact" requirement that prohibits use in a manner that would contact unprotected individuals. Therefore, the AEZ revision does not mean people walking on paths and roads beside the agricultural establishment will be unprotected from pesticide sprays. Handlers must not spray people that may be near ongoing pesticide applications. Violations of the WPS are violations of the label – or pesticide misuse violations – and are subject to enforcement action.

8. Is EPA allowed to make these changes under PRIA?

Yes. These changes are consistent with the Pesticide Registration Improvement Act of 2018 (effective March 8, 2019).

9. What input did EPA receive on the proposal?

EPA received comments from commenters such as state pesticide regulatory agencies and associations, farmworker advocacy organizations, public health associations and professionals, growers and grower organizations, agricultural producer organizations, applicators and applicator organizations, farm bureaus, concerned citizens, and others. This final action balances the input EPA received from a wide range of stakeholders during the 90-day comment period.

10. What's changed between proposal and final?

Many of the changes proposed in November 2019 were retained in the final rule. One area that required additional clarification and revision to the regulatory text revolved around providing an immediate family exemption to the AEZ requirements. The final rule clarifies that the AEZ exemption for the immediate family members only applies when the farm owner or their immediately family members are inside an enclosed building within AEZ. It also clarifies that owners may permit handlers to continue with applications when the owner's family is inside an enclosed structure or home, provided that the owner has expressly instructed the handlers that *only* the owner's immediate family are inside the closed shelter and that the application should proceed despite their presence within that structure.