



AMERICAN PUBLIC HEALTH ASSOCIATION  
*For science. For action. For health.*

January 30, 2020

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460-0001

Re: EPA–HQ–OPP–2017–0543 RIN 2070–AK49 Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements

Dear Administrator Wheeler:

The American Public Health Association, a diverse community of public health professionals that champions the health of all people and communities, appreciates the opportunity to submit comments regarding the U.S. Environmental Protection Agency’s proposed rule: Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements, 84 Fed. Reg. 58,666 (Nov. 1, 2019). These comments were prepared in collaboration with the association’s Occupational Health and Safety Section.

We strongly oppose this rulemaking, which would remove or otherwise weaken the Application Exclusion Zone provisions of the Agricultural Worker Protection Standard – an important protection against pesticide poisonings for farmworkers, their families and rural communities surrounding agricultural establishments. Specifically, we oppose EPA’s proposal to: 1) limit the protection of the AEZ to areas within the agricultural establishment, even though pesticide drift does not recognize property lines; 2) eliminate the requirement that pesticide application be suspended when people are within the AEZ, even if they are on the agricultural establishment, if they are within an easement; and 3) alter the criteria used to determine the radius of the AEZ so as to decrease its size in some instances.

First, as EPA itself recognized in 2015, the AEZ provides an essential protection for farmworkers and their families from pesticide poisonings – protection that is vitally needed. Indeed, when the agency strengthened the WPS in 2015, it pointed to overwhelming evidence that people were still being sprayed by pesticides, both on and off of growing areas, despite other protections in the WPS. This evidence included data from SENSOR-Pesticides and California’s Pesticide Illness Surveillance Program, as well as information from commenters about “incidents of exposure from drift or workers in the area being treated being sprayed directly.” To address this well-documented need, EPA adopted the AEZ, which is defined as the area extending either 100 feet or 25 feet (depending on droplet size and application method) horizontally in all directions from the pesticide application equipment during spray applications. The provision

calls for a simple, common-sense measure: pesticide applicators must suspend application whenever someone other than an appropriately trained and equipped handler involved in the application is in the AEZ. EPA purposefully chose not to limit the AEZ to areas within the property lines of the grower establishment because “incidents cited by commenters show that workers are directly exposed to pesticide applications from neighboring establishments as well.”

Additional studies, also previously considered by EPA, highlight the need for the AEZ to protect farmworkers from pesticide poisoning. For example, one study analyzing 3,271 cases of pesticide poisoning over a seven-year period found that the incidence rate for agricultural workers was 38.3 times that for non-agricultural workers<sup>1</sup>. Notably, it found that, among workers doing routine work not involving pesticide application, half were exposed due to off-target drift from a nearby application. Indeed, in cases where a contributing factor could be identified, off-target drift was the single most common factor, responsible for 63% of cases. Thus, given that pesticide drift is a major threat to farmworkers, as well as others who live, work, and play near agricultural fields, the AEZ is an important provision providing necessary protections for a vulnerable community, and it should not be rolled back.

Second, there is simply no basis for EPA to reverse its position from just four years ago to now propose revisions to the AEZ that would severely decrease its effectiveness and result in more farmworkers and farmworker families being exposed to pesticide drift. If finalized, this would pose unreasonable risk of serious health harm, and EPA’s proffered justifications do not pass muster. When formulating the proposed rule, EPA did not involve farmworkers or public health organizations, which stands out in stark contrast with the careful, thoughtful process used to implement the AEZ as part of the revised WPS in 2015. In that rulemaking – which came after decades of EPA efforts to determine how to prevent pesticide poisonings – EPA engaged multiple stakeholders, including farmworker organizations, health care providers, public health professionals, state regulators, educators and trainers, pesticide manufacturers, farmers, organizations representing agricultural commodity producers and crop advisors. Before finalizing the rule, EPA considered and responded to 2,400 written comments with over 393,000 signatures. Here, by contrast, EPA proposes to weaken the AEZ protections, and it does so without any genuine stakeholder input and without providing any new evidence to suggest that pesticide poisonings via drift are no longer of concern – even if the AEZ is removed. Instead, EPA claims – without support – that the existing requirement that handlers assure the pesticide is applied in a way that does not contact workers is sufficient to protect workers from pesticide drift. But this is directly contrary to EPA’s determination in 2015: “EPA disagrees with the assertion that the ‘do not contact’ requirements, along with the other protections on pesticide labels, are by themselves sufficient to protect workers and bystanders from being directly contacted by pesticides that are applied.” EPA fails to justify why it now proposes to retract this well-founded determination.

Rather than provide new evidence to support the proposed rollback, EPA instead relies on approximately 25 comments submitted by pesticide regulators and agricultural interests as part of the Regulatory Reform Agenda Process, a separate rulemaking undertaken in response to Executive Order 13777 to “alleviate unnecessary regulatory burdens.” EPA claims these comments raised concerns about the ability to enforce the AEZ and confusion about how to

---

<sup>1</sup> Calvert GM, Karnik J, Mehler L, Beckman J, Morrissey B, Sievert J, Barrett R, Lackovic M, Mabee L, Schwartz A, Mitchell Y, Moraga-McHaley S. Am J Ind Med. Acute pesticide poisoning among agricultural workers in the United States, 1998-2005. 2008 Dec; 51(12):883-98. doi: 10.1002/ajim.20623.

comply with it, but a closer examination reveals that these comments consist solely of conclusory and repetitive self-interested statements with no actual data or evidence justifying revision of the AEZ. It is arbitrary for EPA to amend a public health measure with no consideration of health and safety.

Moreover, EPA's alleged reliance on input from the Pesticide Program Dialogue Committee is sorely misplaced. Rather than support the proposed weakening of the AEZ, the PPDC expressed its support of the AEZ and found no need for formal rulemaking. At its November 2, 2017 meeting, the committee came to a consensus that there were no major implementation issues and recommended addressing any concerns through education and guidance<sup>2</sup>. The members emphasized that there is no need to roll back the AEZ, especially in light of the increased danger it would put farmworkers in.

Third, the proposed rollback is unlawful. Under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA is required to ensure that pesticides will not generally cause any unreasonable risk to man or the environment, taking into account their economic, social, and environmental costs and benefits (7 U.S.C. § 136a (c)(5)(D); 7 U.S.C. § 136(bb)). The proposed rule violates that mandate by subjecting farmworkers, their families and communities surrounding agricultural establishments to greater risk of pesticide poisoning from drift.

Fourth, EPA impermissibly ignores the deleterious environmental justice impact of the proposed rule. Farmworkers' socio-demographic factors make them especially vulnerable to pesticide poisonings, and it is unconscionable for EPA to propose to roll back protections without considering those most impacted. According to the most recent data from the National Agricultural Workers Survey<sup>3</sup>, from 2015-2016, 83% of farmworkers identified as Hispanic and 77% said Spanish was the language they were most comfortable conversing in. The average level of formal education was completion of eighth grade. Mean and median family incomes were in the range of \$20,000 to \$24,999. And, despite the many health risks associated with agricultural work, most farmworkers do not have employer-provided health insurance and just 47% of farmworkers reported having any kind of health insurance. Yet, EPA makes no mention of these factors in the proposed rule and fails to provide an environmental justice analysis. EPA must consider the fact that farmworkers are an environmental justice group and provide an environmental justice analysis prior to finalizing any rule.

Thank you for your attention to our comments. We strongly urge EPA to abandon this proposed rule and leave the existing Application Exclusion Zone provisions of the Agricultural Worker Protection Standard intact.

Sincerely,



Georges C. Benjamin, MD  
Executive Director

---

<sup>2</sup>Pesticide Program Dialogue Committee meeting: November 1-2, 2017.

<https://www.epa.gov/sites/production/files/2018-01/documents/november-2-2017-ppdc-meeting-transcript.pdf>

<sup>3</sup> Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers. Research Report No. 13. January 2018.