

**FAQs on the Application Exclusion Zone (AEZ) Reconsideration Proposed Rule**  
**RIN 2070-AK92**

**1. Should agricultural employers and handlers comply with the 2020 AEZ Rule since those are the requirements that are currently in the Code of Federal Regulations (40 CFR 170)?**

- a. No. Agricultural employers and handlers (as defined in [40 CFR 170.305](#)) must comply with the application exclusion zone (AEZ) requirements as written in the [2015 WPS](#) (80 FR 67495; November 2, 2015).

On December 28, 2020, the United States District Court for the Southern District of New York issued an order in the case of *State of New York et al. v. United States Environmental Protection Agency*, which prevented the October 30, 2020, final rule ([2020 AEZ Rule](#)) from going into effect. Additional court orders have extended this ruling.

Although the Code of Federal Regulations at [40 CFR 170](#) reflects the 2020 AEZ Rule, the district court's stay orders have prevented those amendments from going into effect. Accordingly, the AEZ requirements from the 2015 WPS are the requirements that agricultural employers and handlers must comply with during the current stay and any future extensions of the stay.

For more information and updates on the 2020 AEZ Rule litigation, see [87 FR 29673](#) (May 16, 2022) and <https://www.epa.gov/pesticide-worker-safety/worker-protection-standard-application-exclusion-zone>.

**2. Which amendments from the 2020 AEZ Rule is EPA reconsidering? Are there any 2020 AEZ Rule amendments the Agency is proposing to retain?**

- a. EPA is proposing to reinstate several 2015 WPS AEZ requirements based in part on a factual error in the 2020 AEZ Rule and in response to [Executive Order \(EO\) 13990](#), which directed EPA to [review and reconsider the 2020 AEZ Rule if it conflicted with the EO's objectives](#). This rule proposes to reinstate the following:
1. The AEZ's applicability beyond the establishment's boundaries.
  2. The AEZ's applicability when individuals are within easements
  3. The AEZ distances for ground-based spray applications:
    - 25-ft for medium or larger sprays above 12 inches
    - 100-ft for fine sprays

Additionally, EPA is proposing to retain two changes from the 2020 AEZ Rule that the Agency believes are consistent with the intent of the 2015 AEZ requirements and are supported by the administrative record. EPA proposes to retain:

1. A clarification that suspended applications can resume after people leave the AEZ.
2. An "Immediate family exemption" that allows farm owners and their immediate family (defined in 170.305) to remain inside enclosed structures or homes.

**3. The proposed rule mentions a factual error in the 2020 AEZ Rule. How did that error impact the decisions made in the proposed rule?**

- a. While preparing the administrative record for litigation, EPA discovered a factual error in the preamble of the 2020 AEZ Rule regarding the types of AEZ content within EPA-approved trainings. Specifically, part of the 2020 AEZ Rule’s rationale to support the changes included the statement 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 these measures. This statement was in error. While all EPA-approved trainings meet the minimum requirements of the 2015 WPS, after reevaluating the rule, EPA has determined that some of the trainings since 2018 only contained a partial set of the topics provided in [AEZ Guidance](#) regarding best pesticide application practices near the farm’s borders and on potential measures that can be used to prevent contact through drift.

Since EPA’s rationale for the 2020 AEZ changes relied, in part, on the inaccurate assumption that handlers were receiving training on *all* of the best application practices listed in guidance, EPA has proposed to restore certain 2015 WPS AEZ requirements.

**4. The proposed rule mentions retaining the 2020 AEZ Rule’s provision that provides an immediate family exemption for agricultural establishment owners (i.e., farm owners) and their family members. Why did the Agency propose to retain that provision? Can owners use the exemption now?**

- a. The immediate family exemption is not currently available to farm owners, because the 2015 Rule is still in effect. However, if this rulemaking is finalized as proposed, then the exemption will be available for farm owners to implement.

EPA proposes to retain the immediate family exemption from the 2020 AEZ Rule, which would exempt owners and their immediate family members from having to leave the AEZ when they remain inside closed buildings during pesticide applications. This exemption would also allow handlers to proceed with an application when owners or owners’ immediate family members remain inside closed buildings, provided the following conditions are met:

1. The owner informs the handler that only the owner and/or the owner’s immediate family members remain inside the closed building.
2. The owner instructs the handler that the application can proceed despite the owner and their immediate family members’ presence inside the closed building.
3. Handlers 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 certain exemptions for family farms, because the Agency expects farm owners to

take the necessary steps to protect themselves and their family members. Additionally, this exemption gives owners additional flexibility to provide those protections by sheltering immediate family members inside closed buildings that fall within an AEZ.

**5. Why did the Agency propose to use the American Society of Agricultural and Biological Engineers (ASABE) standards to define droplet sizes instead of the 2015 WPS's Volume Median Diameter (VMD) for determining droplet sizes? How would agricultural employers and handlers use that information to determine an appropriate AEZ for applications?**

- a. Past feedback to EPA on the Volume Median Diameter (VMD) was that it was difficult to understand, implement, and enforce. While reconsidering the rule, EPA decided to restore the 2015 WPS's distance criteria based on a "medium" droplet size and height, but not VMD, to help address some of these concerns. Instead of VMD, EPA proposes to define droplet sizes based on the ASABE classifications and categories, which the Agency believes are generally well understood by the regulated community and are commonly referenced in several places, including on some EPA pesticide labels as labels 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. EPA believes that using ASABE's droplet size of "medium" can be determined quickly and simply when referring to these guides and manuals. The use of nozzle guides and manuals reflect how applicators and handlers typically determine droplet size information in preparation for applications.

Simplifying the requirements to reference droplet size categories defined by ASABE should provide a clear and easy approach for determining an AEZ 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. EPA will consider any feedback received during the public comment period to determine if this approach could adversely impact farmworker safety and if it meets the needs of employers and handlers and whether additional guidance is 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.

**6. How would someone performing a pesticide application determine whether their application requires an AEZ of 25 feet as opposed to 100 feet under this proposal?**

- a. Compliance with this proposal will essentially be the same as required under the 2015 WPS, but owners, applicators, and handlers will no longer need to consider VMD when determining droplet sizes. Consistent with past guidance explaining these requirements, to determine the size of an AEZ, you measure outward from the farthest end nozzles on the application equipment horizontally in all directions. The size of the AEZ is determined by the application method and spray quality. Spray quality (defined by ASABE S-572 and subsequent versions) is based on several factors including the nozzle design, system

pressure, and speed of the application equipment. The eight ASABE spray quality categories (which are also referenced in most nozzle charts) include:

- Smaller than medium:

- o Extra fine (XF)
- o Very fine (VF)
- o Fine (F)

- Medium or larger:

- o Medium (M)
- o Coarse (C)
- o Very coarse (VC)
- o Extra coarse (XC)
- o Ultra coarse (UC)

**Under this proposal, the AEZ must be a minimum of 100 feet horizontally in all directions when the pesticide is applied:**

- By air (fixed wing or helicopter),
- By an air blast or air-propelled application method,
- As a fumigant, smoke, mist, or fog, or
- As a spray using a spray quality smaller than medium as defined by ASABE (i.e., fine, very fine or extra fine).

**The AEZ in this proposal must be a minimum of 25 feet horizontally in all directions when the pesticide is:**

- NOT applied in a manner (see above) that would require a 100-foot AEZ, *and*
- Sprayed from a height of greater than 12 inches from the soil surface or planting medium using a spray quality of medium or larger as defined by ASABE (i.e., medium, coarse, very coarse, extra coarse and ultra-coarse).

**An AEZ is not required when the pesticide is applied in a manner other than those covered above.** Situations where no AEZ is required include applications of granular pesticides, soil incorporated pesticides (not fumigants); pre-plant, at-plant, and spot-spray pesticide applications if they are equal to or less than 12 inches from the soil and use a medium or larger spray quality.

**7. Why did EPA compare the proposed changes in this rulemaking to the AEZ requirements in both 2015 WPS Rule and 2020 AEZ Rule?**

- a. This action proposed to restore some AEZ requirements from the 2015 WPS Rule, retain some provisions of the 2020 AEZ Rule, and replace droplet size criteria to determine “fine spray versus medium or larger spray” applications (as discussed above). As a result, it was important to consider both the 2015 WPS and 2020 AEZ Rules as separate baselines to fully evaluate the economic and public health impacts of this rulemaking.