

**TALKING POINTS FOR OMB MEETING ON EPA'S PROPOSAL
TO MODIFY THE AEZ PROVISIONS OF THE WPS**

1. I am here on behalf of the Environmental Protection Network. EPN is an organization of several hundred citizens, most of whom (like me) are former EPA employees, who support sensible regulation to protect public health and the environment. I am here to address what I understand is a proposed rule that would modify the provisions of the Worker Protection Standard (WPS) relating to the Application Exclusion Zone (AEZ) requirements of the rule.
2. Since 1992, the WPS has included a requirement that the labels of all pesticides used in agriculture must bear the following statement: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift." It is a violation of the pesticide law to use a pesticide in a manner inconsistent with its labeling. FIFRA sec. 12(a)(2)(G). This label provision is supposed to prevent people from being sprayed with pesticide during the application process. The problem is this label restriction has not worked to prevent dangerous exposures.
3. According to a 2012 article in the Journal of Agromedicine, the annual national cost to society from pesticide exposures is nearly \$200 million / year. J. Agromedicine 2012: 17(3): 300-315.
4. I recognize that this figure of \$200 million / year is from all pesticide exposures, not just those in agriculture, but the 2014 preamble to EPA's proposed rule stated that "off-target drift" is the "leading cause of reported agricultural worker pesticide exposures from 1998 – 2005." Preamble Proposed rule 79 FR 15,490. See also CDC's SENSOR report showing agricultural activities covered by WPS account for the majority of reports of acute illness from pesticides, available at: <https://wwwn.cdc.gov/Niosh-whc/chart/sensor-pe/exposure?T=OC&V=C&S=++&D=ALL&Y=> and that the majority of acute illnesses affect people who are engaged in "routine work not pesticide related." available at: <https://wwwn.cdc.gov/Niosh-whc/chart/sensor-pe/exposure?T=AC&V=D&S=++&D=ALL&Y=>
5. The Preamble to the Final Rule said there was an average of 247 reported incidents a year. But, people in agriculture acknowledge that incidents are seriously under-reported by a factor of at least 4, and maybe 10-fold or more. That means that each year 1,000 workers and maybe several thousand workers are getting sprayed in violation of the WPS "no contact" provision.
6. Even those numbers may be too small. Worker advocacy organizations have surveyed farmworker populations and found data indicating illegal spraying of workers is much more common. In New Mexico, 20% of farmworkers reported being in a field while spraying was also occurring in the field. A survey of children working in tobacco reported that half of children said they were working either in or adjacent to a field that

was being sprayed. See the Preamble to the Final Rule 80 FR 67,522. There are an estimated 3 million farmworkers in the United States. See Larson et al. 1993 Office of Minority Health, cited in the “Farmworker Health Factsheet” of the National Center for Farmworker Health, Inc. http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-migrant_demographics.pdf If those percentages hold for the national farmworker population, this would translate into between 600,000 and 1.5 million farmworkers who be experiencing illegal spraying.

7. Based on the shockingly high number of illegal worker exposures, EPA decided that it needed to do something to strengthen the protections for workers and bystanders. So, EPA came up with the Application Exclusion Zone (AEZ). It is a relatively small area around the pesticide application equipment where no one is permitted to be when a pesticide is being sprayed. If someone is in the AEZ, an applicator must follow certain common sense steps: a) suspend spraying immediately; b) tell the person to move (if he is on the property being sprayed) or ask the person to move (if he is outside the property); and c) when the person has moved, resume spraying, or if the person is off the property, resume spraying once the applicator determines that the spray won’t contact the person. See EPA’s Frequently Asked Questions guidance document for compliance with the AEZ requirements.
8. This is practical, common sense. It is how an applicator should behave in order to make sure that sprays do not contact anyone during the application process. In fact, EPA got public comments from applicators’ trade association on its proposed rule saying that suspending application was the SOP for aerial applications. Preamble to Final Rule 80 FR 67,524.
9. The benefits of implementing the AEZ are probably going to be significant. EPA analyzed incidents that were described in public comments and concluded that as many as 70% of the incidents involving illegally spraying workers could have been avoided. Preamble to the Final Rule 80 FR 67, 524.
10. EPA further determined that the costs of complying with the AEZ were negligible. See Preamble to Final Rule 80 FR 67,525 and Economic Analysis pp. 87 – 88.
11. So, EPA made a very strong case that there are a large number of incidents in which workers are being sprayed in violation of the WPS “no contact” requirement and that the common sense AEZ requirement would reduce a significant portion of those incidents while imposing only negligible costs on growers.
12. EPN and FWJ believe that EPA should not weaken the AEZ protections without providing a solid new evidence showing its earlier determinations were not correct. In fact, the U. S. Supreme Court has said an agency cannot modify an existing regulation unless there is substantial new evidence in the administrative record to justify the change. We have seen no reason to question EPA’s earlier findings.

Provided by William Jordan
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