



Oregon

Kate Brown, Governor

Department of Agriculture

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Michael Wood
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Oregon OSHA
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Dear Mr. Wood,

Thank you for the opportunity to comment on the OR-OSHA proposed rules related to Worker Protection Standard (WPS) and the Application Exclusion Zone (AEZ).

The State Board of Agriculture (BOA) is pleased to see that the Environmental Protection Agency is addressing this important issue for our growers and producers and the people who work for them. Our agricultural workforce is vital to Oregon's economy and we believe that the federal regulations are generally protective of that workforce.

We appreciate that OR-OSHA has considered and proposed a shelter-in-place compliance alternative which is not specified in the United States Environmental Protection Agency's (EPA) version of the AEZ, 40 CFR 170.405, within the revised WPS. This alternative will increase worker safety and decreases potential hazards.

The BOA does have concerns about specifics of OR-OSHA's proposed requirements, which we believe are not data driven nor science based, and do not increase the safety of workers or other occupants in enclosed agricultural structures.

- 1) OR-OSHA proposes to essentially create a 15-minute Restricted Entry Interval (REI) for the area in the Application Exclusion Zone. This is regardless of whether the use of a respirator is required by the pesticide label, or if the application is by air, air blast sprayer or certain other types of ground equipment.

The Application Exclusion Zone is outside of the treated area. We are not aware of any data to support the creation of a 15-minute REI for an area 25-150 feet outside of the treatment area. Additionally, it is unspecified whether this requirement would require occupants, who are sheltering in place, to remain in the agricultural structure for at least 15 minutes before exiting. Finally, the proposal requires an applicator to suspend the application if a person exits the enclosed structure during the application.

This mandate exceeds federal requirements and has serious implementation problems. No data have been provided to support a delayed reentry to an AEZ, and it would create a logistical nightmare to cordon off these non-treated areas for 15-minute increments, with no demonstrated benefit to workers. In contrast to OR-OSHA's proposal, there is no REI provision for the AEZ in the EPA's revised Worker Protection Standard (WPS).

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- 2) In the EPA WPS, the maximum AEZ width is 100 ft. OR-OSHA is proposing to exceed federal requirements and require an AEZ of 150 feet when the label requires the handler to use respiratory protection, and the method of application is by air blast sprayer, applied aerially or has a spray quality smaller than medium.

We do not understand why the state is proposing to be more stringent than the federal government when, as far as we know, there are no data indicating that more protection is provided to workers by a 150 ft. AEZ than by a 100 ft. AEZ. We believe that the federal standard will provide appropriate protection.

- 3) OR-OSHA is proposing to eliminate the option of the proposed shelter-in-place alternative if the pesticide label requires that the handler wear a respirator during the application process. The current proposal requires occupants of the enclosed structure to evacuate, regardless of the time of night, and age of occupants.

EPA determines whether a respirator is required based upon data from inhalation toxicity studies, and possible pesticide applicator exposure. A respirator is required to reduce risk to applicators, not bystanders outside of the application area. It would be extremely improbable that a person in an enclosed agricultural structure within an AEZ would be exposed to comparable levels as that of a pesticide applicator.

In addition, there are no data to support that it is safer to have people evacuate an enclosed structure, than to remain inside. We believe quite the opposite, it is much safer to have people shelter-in-place. The BOA does not support the elimination of the shelter-in-place option in situations in which the handler is applying a pesticide which requires respiratory protection.

It is important to have a clear understanding about the implementation process and agency responsibilities, including training and enforcement. We look forward to working with both Oregon OSHA and the Oregon Department of Agriculture on this issue.

Sincerely,



Barbara Boyer, Chair
State Board of Agriculture