

AMENDED STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

In the Matter of:

Adopting: OAR 437-004-6405, 437-004-6406

Rule Caption:

Oregon OSHA's Application Exclusion Zone for the Worker Protection Standard rules.

Statutory Authority: ORS 654.025(2) and 656.726(4)

Stats. Implemented: ORS 654.001 through 654.295; 654.412 through 654.423; 654.760 through 654.780

Need for the Rule(s):

Oregon OSHA administers and enforces the Environmental Protection Agency's (EPA) pesticide Worker Protection Standard (WPS) as adopted in Division 4/W (Agriculture/Worker Protection Standard), OAR 437-004-6000. Oregon OSHA proposes to adopt two new Oregon Administrative Rules (OARs) that reflect specific requirements for employers in Oregon.

These rules complement and complete the changes adopted by Oregon OSHA on February 14th, 2017 on the amended Worker Protection Standard adopted by the EPA in the November 2, 2015 Federal Register.

The new OARs:

- Restrictions associated with outdoor production pesticide applications (which replaces 170.405(a)) where workers or other people are adjacent to pesticides being applied in outdoor production areas.
- Prevention of contamination of employee housing and related agricultural structures due to pesticide spray drift.

The WPS rules are also referenced, in Division 2, General Industry, at OAR 437-002-0170; and in Division 7, Forest Activities, at OAR 437-007-0010.

Pesticides, although a clear necessity in many workplaces, also represent varying levels of risks to workers and others (depending on both the particular pesticide used and the circumstances of the application). The Worker Protection Standard, taken as a whole, provides a number of important protective measures to reduce those risks. However, the risk of unintended exposures due to what is typically referred to as unintended "drift" can create exposure to workers outside the intended application area. In the case of worker housing, that exposure can also involve the workers' family members. The provisions of this proposed rule – as was true of the original EPA rule addressing AEZs – are intended to address that potential by providing an added measure of protection against unintended and unanticipated exposures outside of the locations where pesticides are intended to be applied. The rule changes are expected to lead to an overall reduction in incidents of unsafe pesticide exposure and to improve the occupational health of agricultural workers and pesticide handlers.

Documents Relied Upon, and where they are available:

- Pesticides; Agricultural Worker Protection Standard Revisions (RIN 2070-AJ22), available at: <http://www.regulations.gov/document?D=EPA-HQ-OPP-2011-0184-2510>
- (EPA prepared an economic analysis of the potential impacts associated with this rulemaking. A chart in Unit II. C. summarizes costs and impacts at the national level.)
- Oregon OSHA rules that reference the Worker Protection Standard:
 - Division 2/ General Industry, Subdivision Z, in OAR 437-002-0170; available at: <http://osha.oregon.gov/OSHARules/div2/div2Z-437-002-0170-wps.pdf>
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 - Division 7/ Forest Activities, Subdivision A, in OAR 437-007-0010, available at: <http://osha.oregon.gov/OSHARules/div7/div7A.pdf>

- United States Census Bureau, information about the 2002 North American Industrial Classification System (NAICS), available at: <http://www.census.gov/eos/www/naics/> (NAICS codes were used to identify industry employment numbers and median wages.)
- Cost calculations are based on information available at the following sources:
2012 Census of Agriculture information for the state of Oregon on Hired Labor - Workers and payroll, accessed October 3, 2016 at United States Department of Agriculture, National Agricultural Statistics Service https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_007_007.pdf (See page 7 in this document for Oregon's 2012 overview.)
- Information on occupations and wage ranges within potentially affected agricultural industries by NAICS codes (111, 113, and 115 accessed at Oregon Employment Department, Oregon Labor Market Information System, and Database of Employers: <https://www.qualityinfo.org/>

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

All state agencies and local government units are affected by the rules in the sense that they are employers under the Oregon Safe Employment Act (OSEAct).

The public as a whole will be affected only to the degree that members of the public are employers and employees.

EPA stated in their economic analysis that (nation-wide) the majority of the costs of the modified rules will be borne by farms, nurseries, and greenhouses that hire labor and use pesticides. Commercial pesticide handling establishments, contracted to apply pesticides on farm crops, are also expected to see an incremental cost increase.

2. Cost of compliance effect on small business (ORS 183.336):

- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The WPS applies to "agricultural employers" producing agricultural crops - defined broadly in the rules to include not only traditional agricultural crops but also the production of trees grown for wood products in forests. Total numbers of small agricultural employers in Oregon that are potentially subject to the scope of the pesticide Worker Protection Standard rules were estimated from Table 7 of the 2012 Census of Agriculture for Oregon as 80% of all the farms that hired farm labor: approximately 8,500 places of business. This would include NAICS code 111/ Crop Production, NAICS code 113/ Forestry, and NAICS code 115/ Support activities for crop production. (NAICS code 115 encompasses spray application services and pest control services for both traditional agriculture and forestry.)

The EPA's economic analysis predicted no significant impact on most "small business entities" and a negligible effect on jobs and employment. (Their estimations of size are based on production numbers rather than on number of employees.) Oregon OSHA estimates that the revised rules will affect both small and large farms, nurseries, and greenhouses that have employees and use agricultural pesticides in crop production; and also, commercial pesticide applicators contracted to apply agricultural pesticides.

- b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The costs of notification before each application to close doors, windows and air intakes, start and stop times, and whether or not occupants can stay within agricultural structures or evacuate is anticipated to be done within the same visit. Therefore, the following costs would be incurred one time per application.

- For compliance cost of a 100-foot AEZ airblast/aerial applications when the label requirements does not require a respirator: the notification method would be verbal, the time involved include driving to the housing location (15 miles – 20 minutes each way), for a supervisor from Oregon BLS the rate is approximately \$24.07/hr average providing 15 minutes on site from March to August would be a conservative estimate every ten days or 4 times a month (\$96.28) to approximately 1 time a month (\$24.07) with a mileage cost of \$0.55 per mile or approximately \$16.50 for total mileage. Oregon OSHA estimates that there is no fiscal impact if the occupants remain in the structure or if they were to evacuate.
- Compliance cost of 150-foot AEZ when label requires applicator to wear a respirator: the notification method would be verbal, the time involved include driving to the housing location (15 miles – 20 minutes each way), for a

supervisor from Oregon BLS the rate is approximately \$24.07/hr average providing 15 minutes on site from March to August would be a conservative estimate every ten days or 4 times a month (\$96.28) to approximately 1 time a month (\$24.07) with a mileage cost of \$0.55 per mile or approximately \$16.50 for total mileage. Oregon OSHA estimates that there is no fiscal impact for the occupants to be evacuated from the structure.

- Compliance cost of a 25-foot AEZ when not applied either aerially or through an airblast sprayer greater than 12 inches from the planting medium: the notification method would be verbal, the time involved include driving to the housing location (15 miles – 20 minutes each way), for a supervisor from Oregon BLS the rate is approximately \$24.07/hr average providing 15 minutes on site from March to August would be a conservative estimate every ten days or 4 times a month (\$96.28) to approximately 1 time a month (\$24.07) with a mileage cost of \$0.55 per mile or approximately \$16.50 for total mileage. Oregon OSHA estimates that there is no fiscal impact if the occupants remain in the structure or if they were to evacuate.
- Compliance cost to notify occupants to close windows, doors, air intakes prior to spraying: the notification method would be verbal, the time involved include driving to the housing location (15 miles – 20 minutes each way), for a supervisor from Oregon BLS the rate is approximately \$24.07/hr average providing 15 minutes on site from March to August would be a conservative estimate every ten days or 4 times a month (\$96.28) to approximately 1 time a month (\$24.07) with a mileage cost of \$0.55 per mile or approximately \$16.50 for total mileage. Oregon OSHA estimates that there is no fiscal impact if the occupants remain in the structure or if they were to evacuate.

Initial training would be required by rule to occupants of agricultural structures 1-2 times per season (which accounts for employee turnover). Oregon OSHA estimates this initial training would take approximately 30 minutes. This would include speaking to occupants regarding how to close doors, windows, and air intakes, how to best secure personal or household items, and the location of pesticide safety information. This training will also include the use of a shoe tote to minimize tracking pesticides into the structure. Oregon OSHA anticipates this training would occur separate from notification of applications.

Compliance cost to conduct initial training includes: the time involved to drive to the training location (15 miles – 20 minutes each way), for a supervisor from Oregon BLS the rate is approximately \$24.07/hr average providing 30 minutes onsite (\$28.08 per session) with a mileage cost of \$0.55 per mile or approximately \$16.50 for total mileage.

c. Equipment, supplies, labor and increased administration required for compliance:

Administration of the option to stay or evacuate enclosed agricultural structures within Application Exclusion Zones (AEZ) would include additional duties. The employer must provide an oral notification with specific information to residents or occupants of affected structures prior to any pesticide activities that would place the structure within an AEZ as defined in the WPS. Also, employers must direct occupants to stay inside or evacuate the enclosed agricultural structures while the AEZ restrictions are in effect where appropriate and provide affected residents or occupants of these structures on the employer's property, with instructions about the steps to take prior to staying or evacuating the enclosed agricultural structure. Costs would be associated with creating an information station where impending application information would be posted, totes to store shoes to prevent tracking pesticide residue into the housing structures, tarps, or a storage area to cover or store personal items within the AEZ.

Oregon OSHA currently has 309 Registered Agricultural Labor Housing locations. Employers are not required to register all employment related housing, for example, houses occupied by a single family. We do not know how many of these structures have a potential to fall within an AEZ. Oregon OSHA estimates the notification will require 15 minutes per location per spray event.

The EPA did not anticipate any significant costs to implement their "evacuation" approach for excluding workers in an AEZ, only considering the movement of workers in one field to another field ahead of the spray application. Also, their economic analysis did not consider how nearby housing or other structures occupied by employees would be affected by this rule.

Compliance cost to provide adult farm housing occupants access to information to reduce and prevent pesticide exposure:

Building an information station could include, plywood, shingles, paint, cement, posts, and other miscellaneous items prices were obtain from three different building supply stores:

Lowes: plywood (\$26.97), shingles (\$25.00), paint (\$25.98), cement (\$10.60), posts (\$29.96), and other miscellaneous items (~ \$20.00)

Home Depot: plywood (\$27.17), shingles (\$26.00), paint (\$25.98), cement (\$3.97), posts (\$21.54), and other miscellaneous items (~\$20.00)

Tum a lum: plywood (\$37.33), shingles (\$24.00), paint (\$12.95), cement (\$3.06), posts (\$23.16), and other miscellaneous items (~\$20.00).

Material Cost (include printing estimated at Staples and Postal Annex) – for 5 posters that are 11"x16" with lamination and printing costs are approximately \$18.30.

Compliance cost to provide tool/household items storage during application:

Material/Labor Cost – Storage unit such as a garden shed 53 cubic feet; prices were obtained from two different building supply stores

Lowes ~ \$229

Home Depot~ \$249

The number of storage locations needed would depend on the site.

Compliance cost to provide closeable storage for shoes to prevent indoor tracking:

Material/Labor Cost – for a 17 gallon tote would approximately cost \$9.00.

There will be a fiscal impact to some growers who have processing facilities, or other buildings where workers would normally be working during pesticide applications. Because of lack of data, and variability between operations, the cost is indeterminate. Some of the factors that make this assessment challenging include: work and break schedules at facility, facility and farm configuration, diversity of cropping systems, spraying frequency, and type of pesticides used. Range \$0 - \$1,000

In addition, improved productivity may occur due to increased employee morale from timely and effective communication of hazards. This may result in a reduction in workers compensation claims and absenteeism, and improve employee retention and active participation in the safety and health management system.

Compliance cost to housing: Oregon OSHA believes that this rulemaking would not have a fiscal impact to housing, and although the rule is not specific to housing, housing could be included in the definition of an enclosed agricultural structure.

While it is not known exactly how many units of labor housing fall with in an AEZ, the following data is what is available to the agency:

ALH camps registered in 2017

County	Total camps	Total buildings	Total occupants
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Jackson	21	65	801
Jefferson	5	6	44
Josephine	2	2	44
Klamath	2	3	44
Lane	2	4	9
Linn	1	1	4
Malheur	1	1	8
Marion	25	46	691
Morrow	1	3	11

Multnomah	6	40	298
Polk	3	3	86
Umatilla	8	18	241
Union	2	13	52
Wasco	83	463	4,501
Washington	9	136	789
Yamhill	4	6	31

How were small businesses involved in the development of this rule?

The Small Agricultural Employer Advisory Committee (SAEAC) was provided with information from the EPA about their rule revisions, and drafts of the Oregon rules in progress. Comments on Oregon OSHA's proposed changes were solicited from the committee by e-mail correspondence, and through attendance at multiple in-person meetings of the Committee. The draft rules were also available from the SAEAC topic page on the Oregon OSHA website with contact information and an open invitation for comments from any interested person.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:



Signature

Michael D. Wood

Printed name

2/16/18

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

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FEB 16 2018

**ARCHIVES DIVISION
SECRETARY OF STATE**

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