

Proposed pesticide drift rule would exceed EPA's

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We at the Oregon Occupational Safety and Health Division read with interest and appreciation Thursday's editorial regarding our proposed rule involving the protection of workers and their families from pesticide drift. The comment period, as the editorial noted, remains open — in fact, we plan to extend it to Jan. 31.

We appreciate the interest shown to this issue, and to the importance of protecting workers and their families from the risk these substances can present.

During the comment period, we ordinarily do not engage in extended discussions about a rule proposal because we are engaged in gathering and considering public input. However, The Register-Guard's editorial perpetuates a misunderstanding about the underlying federal rule, and it is worthwhile to correct that misunderstanding.

Put simply, the federal Environmental Protection Agency has not adopted a buffer zone around worker housing where pesticides cannot be applied. Rather, the EPA rule requires that workers be evacuated to a distance 100 feet from the spray equipment until the equipment has moved on. Since this Application Exclusion Zone is outside the treated area, the pesticide label's re-entry interval does not apply and workers can return immediately as soon as the equipment moves past.

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The concept of the AEZ was created by the EPA to provide an added measure of protection outside of the treated area — the location where pesticides are intended to be applied. Drift outside the treated area is already illegal, but it certainly occurs on occasion. And the recognition that such unintended drift will occur is why the EPA chose to create an additional protected area where people would be removed for a very short time while pesticides were applied.

The primary focus of the EPA rule is on workers and others in adjacent fields. Based on the agency's economic analysis, it appears that the EPA has little, if any, consideration to the interaction of the AEZ with worker housing.

While it is certainly possible to debate the merits of the EPA rule and Oregon OSHA's proposal, and we will give the testimony received serious consideration as we consider the record, it is unquestionably the case that the Oregon OSHA proposal exceeds the EPA rule in several respects — including provisions specifically questioned by the editorial.

For pesticides where respirators are required to be used by the applicator, the Oregon OSHA proposal would require evacuation to 150 feet — 50 feet more than the EPA rule. And it would

require that evacuation last at least 15 minutes after the spray equipment moved on, rather than end immediately, as is the case with the EPA rule.

Fifteen minutes is, indeed, a brief period. But the proposed requirement does provide 15 minutes longer to recognize that illegal drift has in fact occurred, as well as to allow any pesticide drift to settle, compared to the EPA rule.

For all pesticide applications, the Oregon OSHA rule would require doors, windows and air intakes be closed. The EPA rule requires evacuation, but makes no provision to close the structure. And the EPA rule does not include the proposed requirement to provide suitable storage for shoes and boots.

Does the proposed Oregon OSHA rule go too far, the right distance or not far enough? Is allowing workers to remain in structures when pesticides that do not present a respiratory hazard are used a wise policy, or would it be a mistake? These are questions on which there is certainly room for disagreement. And we will consider the entire record and our legal authority before making a final decision.

But those comments should not be based on a belief in non-existent federal requirements for a buffer zone. And they should not be based on a mistaken belief that the proposed Oregon rule simply “lowers the bar” in all respects.

OSHA is accepting public comments on the proposed rules through Jan. 31. To see the rules, visit osha.oregon.gov, go to rules and laws, and then proposed rules. Comments can be emailed to tech.web@oregon.gov, faxed to 503-947-7461 or mailed to the Department of Consumer and Business Services/Oregon OSHA, 350 N.E. Winter St., Salem, OR 97301-3882.

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