

Oregon OSHA adopts new farmworker protection standards

While advocates say new rules don't go far enough, growers say they're too restrictive

BY EMILY GREEN
SENIOR STAFF REPORTER

After nearly two years of factious debate between Oregon's agriculture sector and farmworker advocates, the state's Occupational Safety and Health Administration has adopted new protections for workers during the application of pesticides.

The state agency charged with regulating workplace safety saw an unprecedented level of participation in the rulemaking process leading up to its decision, announced July 2, with close to 1,100 individuals weighing in.

Oregonians who commented either thought Oregon OSHA's proposed rules were too restrictive or did not go far enough to adequately protect farmworkers and their families.

Comments in favor of more stringent rules to protect farmworkers outnumbered comments opposed to the rules by at least two to one, according to OSHA spokesperson Aaron Corvin.

"To my knowledge we have never had more than 1,000 people participate in an Oregon OSHA rulemaking," said the agency's administrator, Michael Wood.

Although, he said, evaluating many of the comments was a challenge because there was "the clear sense that a number of the people commenting actually hadn't read the rule and didn't have a clear sense of what was in it."

He also said that two-thirds of the comments that came in, on both sides, were form-emails or postcards with a pre-written message.

The debate began in 2016 when the U.S. Environmental Protection Agency issued its updated Agricultural Worker Protection Standard. Most new rules went into effect in January 2017, with others slated for implementation at the beginning of this year. The rules were intended to further protect farmworkers from pesticide poisoning, and adopted portions included increased training requirements for pesticide applicators.

Oregon OSHA, however, delayed the adoption of one of the new rules after strong opposition from farmworker advocates who thought it didn't do much to protect workers as it was written, as previously reported in Street Roots.

The EPA rule created Application Exclusion Zones around areas where pesticides are sprayed. The law requires a 100-foot zone around the pesticide-spraying equipment that people must vacate during application as the equipment moves across the field. Before this rule, no such exclusion zone existed.

When farmworker housing lies within the 100-foot application exclusion zone, Oregon OSHA proposed workers in that zone could go inside the housing to avoid coming into contact with pesticides, should they drift. Drift, which is illegal, happens when pesticides move through the air to areas that are outside the intended application area.

In 2017, there were 314 registered agricultural labor housing sites across the



A farmer sprays pesticide on apple trees in Hood River Valley.

state with 9,216 occupants, plus roughly 1,000 more occupants living in labor housing that is not required to register, said Corvin.

Advocates and attorneys who represent farmworkers, including representatives of Pineros y Campesinos Unidos del Noroeste (PCUN) and Oregon Law Center, argued that due to the shoddy construction of some farmworker housing and outdoor cooking, eating and play areas being located near crops that are sprayed, the proposed rule would not protect workers and their families from pesticides that may drift.

In response, OSHA convened an advisory committee of stakeholders, including farmworker advocates, growers and farm industry lobbyists, to assist in drafting a stronger rule that Oregon would adopt in place of the EPA's protection standard.

What followed was more than a year of contentious meetings in which advocates and growers often engaged in heated exchanges over what the new rules should be.

The health impacts from pesticide exposure in farmworkers, their children and pregnant women are well documented, with links to miscarriage and birth defects from prenatal exposure, neurological and other development effects in growing children, as well as links to a wide range of cancers, tumors and other serious health problems in adults, according to a 2015 EPA economic analysis leading up to the agency's new rules.

Now, Oregon OSHA has adopted the EPA 100-foot application exclusion zone rule with the addition of the following protections that go beyond the federal law:

- When the person applying the pesticide is required to wear a respirator according to the pesticide's label, the exclusion zone is extended to 150 feet and anyone within the zone must evacuate, rather than sheltering in place, for at least 15 minutes.

- Employers are required to supply workers with closeable storage where they can store their work boots and shoes outside in order to prevent tracking pesticides indoors.

- Workers will be trained to protect sensitive areas, such as outdoor areas where children play as well as outdoor cooking and eating surfaces when pesticides are being applied nearby.

- Workers will be required to shut all windows and doors and turn off all air intakes before sheltering in place during the application of pesticides. Workers living in housing that cannot be adequately sealed will be required to vacate the area.

- Employers must provide "information stations" where farm occupants can see the pesticide application schedule, and they must also make pesticide training available to all adult occupants, not just employees.

These new rules take effect Jan. 1, 2019, and also apply to some reforestation workers.

In December, the EPA under Scott Pruitt announced it was going to propose eliminating the exclusion zone rule and several other worker protection provisions.

"We are pleased that Oregon OSHA has adopted worker protection standard rules in the face of the federal government likely turning a blind eye to worker protections," said Lisa Arkin, director of Beyond Toxics. Arkin was a vocal critic of the proposed

rules at advisory committee meetings throughout the rulemaking process.

But Arkin said OSHA's new rules don't go far enough.

"We are disappointed that Oregon OSHA didn't create a no-spray buffer – at least the 60 feet required in forestry," she said, in reference to the buffer required around housing and schools when forestry workers conduct aerial sprays. "We thought all along that was a legally defensible thing for OSHA to do because it's already a law in Oregon."

She said her organization would have also liked to see all shelter-in-place provisions removed.

"We also don't think standing 150 feet away is a safe alternative. Oregon OSHA is presenting false choices that don't provide protections that Oregonians need," she said.

Wood said growers' top complaints were that the shelter in place option was not allowed for all pesticides, and that the exclusion zone had been increased to 150 feet in some circumstances.

He also said he's received comments from farmworker advocates stating OSHA is taking an important first step with the adoption of these new rules.

He said of those who submitted comments, only "one or two dozen" approved of the proposed rules as they were written.

"I'm certainly glad to put this rulemaking behind us," Wood said. "It was extraordinarily contentious, and frankly there were some very harsh things said about Oregon OSHA – and at times about me personally along the way."

emily@streetroots.org
@greenwrites