

July 9, 2010

Oregon OSHA - Adopted Changes In Division 4, Agriculture

These changes result from legislation, input from the regulated community and input from Oregon OSHA staff.

Changes to **Subdivision 4/A, Agriculture/ General Subjects**, at *OAR 437-004-0002, Scope*, cross-reference and clarify the SIC and NAICS codes to which the Division 4 rules apply. A duplicate rule for adoption of the Worker Protection Standard (*OAR 437-004-0004*) was eliminated. In *OAR 437-004-0099, General Standards*, a requirement at (1)(b) was rewritten in plain language. At (3), rules for inspecting workplaces, and at (4)(a), rules for investigating time-loss injuries and illnesses were cross-referenced with the numbering changes in *4/C Safety Committees and Safety Meetings*.

Changes in **Subdivision 4/C, Safety Awareness**, fulfill Oregon OSHA's responsibility under a recent legislative mandate to require all Oregon employers, regardless of size, to have either a safety committee or to hold safety meetings.

The safety committee rule, *OAR 437-004-0250* is repealed on the effective date, January 1, 2011, and is being replaced with *OAR 437-004-0251, Safety Committees and Safety Meetings*, incorporating the changes required by the legislative mandate. The scope of the rule is defined as all agricultural employers with workers, excluding seasonal workers. All employers with workers can have a safety committee. The number of (nonseasonal) workers, both full-time and part-time, per location determine whether the employer also has the option of holding monthly safety meetings instead of having a safety committee.

The special needs of agricultural employers are addressed by maintaining separate safety orientation requirements for employers of seasonal workers, as outlined in *OAR 437-004-0240, Safety Orientation for Seasonal Workers*. The original definition was maintained in the final rule: Seasonal workers are "employed in a job tied to a certain time of year by an event or pattern and for not more than 10 months in a calendar year." Additional notes were added to this section to cross reference and explain the minimum training and orientation requirements for seasonal workers who perform only "hand labor operations" as defined in the rule.

The Division 4/C rules for employers of both seasonal and non-seasonal workers now specifically state – at *OAR 437-004-0240(2)(b)* and *437-004-0251(2)(b)* – that safety awareness information must be communicated "in a manner that workers can understand." Employers with employees who have language barriers must "include content that is either translated into the language used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media."

Changes in **Subdivision 4/K, Agriculture/ Medical and First Aid**, at *OAR 437-004-1305*, are mostly stylistic, putting the existing requirements for first aid, emergency medical treatment, the emergency medical plan, and emergency eyewash and safety showers into clearer language.

Paragraph (5), Emergency eyewash and shower facilities, are rewritten for the final rule to address concerns by commenters. The final rule clarifies when eyewash, shower equipment, or both are required and defines the minimum standards for both plumbed (potable) and self-contained systems. In the final rule, employers must provide employees with an emergency eyewash, shower equipment, or both to decontaminate themselves, based on the hazard. Eyewash and shower equipment requirements apply both to all chemical substances that may be present in the workplace and, for pesticide products, based on what the pesticide label requires.

Decontamination equipment is no longer linked to its location at a fixed or mobile site but is related to the hazard.

Based on comments received, Oregon OSHA is delaying the effective date to January 1, 2011, for all changes in this rulemaking.

This is Oregon OSHA Administrative Order 4-2010, **adopted July 8, 2010 and effective January 1, 2011.**

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Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on July 8, 2010 by the
Date prior to or same as filing date

Department of Consumer & Business Services/Oregon Occupational Safety & Health Division 437
Agency and Division Administrative Rules Chapter Number

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to become effective January 1, 2011 as Oregon OSHA Administrative Order 4-2010.
Date upon filing or later

Rulemaking Notice was published in the March 2010 *Oregon Bulletin*.**
Month and Year

RULE CAPTION

Adopt changes in Division 4, Agriculture.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

ADOPT: OAR 437-004-0251.
AMEND: OAR 437-004-0002, 437-004-0003, 437-004-0099, 437-004-0240, 437-004-1305.
REPEAL: OAR 437-004-0004, 437-004-0250.

ORS 654.025(2), 656.726(4)
Stat. Auth.

ORS 654.001 through 654.295
Stats. Implemented

RULE SUMMARY

These changes result from legislation, input from the regulated community and input from Oregon OSHA staff.

Changes to **Subdivision 4/A, Agriculture/ General Subjects**, at OAR 437-004-0002, *Scope*, cross-reference and clarify the SIC and NAICS codes to which the Division 4 rules apply. One note specifies the criteria for classification of an employer under SIC 0723/ NAICS 115114 (*Crop Preparation Services for Market*) as an agricultural employer (Division 4) or a general industry employer (Division 2). Another note, with SIC 0831/ NAICS 113210 clarifies when "tree farms" are agricultural employers as opposed to Division 7/ Forest Activities employers. A duplicate rule for adoption of the Worker Protection Standard (OAR 437-004-0004) was eliminated. In OAR 437-004-0099, *General Standards*, a requirement at (1)(b) was rewritten in plain language to read: "Keep all safeguards or devices operating properly and fully effective at providing the protection originally intended." At (3), rules for inspecting workplaces, and at (4)(a), rules for investigating time-loss injuries and illnesses were cross-referenced with the numbering changes in 4/CSafety Committees and Safety Meetings. Current contact information is provided for the Wage and Hour Division of the Bureau of Labor and Industries in a note about "Employment of Minors."

Changes in **Subdivision 4/C, Safety Awareness**, fulfill Oregon OSHA's responsibility under a recent legislative mandate to require all Oregon employers, regardless of size, to have either a safety committee or to hold safety meetings.

The former safety committee rule, *OAR 437-004-0250* is repealed on the effective date, January 1, 2011, and is being replaced with *OAR 437-004-0251, Safety Committees and Safety Meetings*, incorporating the changes required by the legislative mandate. At (1), the scope of the rule is defined as all agricultural employers with workers, excluding seasonal workers. All employers with workers can have a safety committee. The number of (nonseasonal) workers, both full-time and part-time, per location determine whether the employer also has the option of holding monthly safety meetings instead of having a safety committee. The General Requirements are found at (2); requirements for Safety Committees are listed within (3); and requirements for Safety Meetings are found within (4).

The special needs of agricultural employers are addressed by maintaining separate safety orientation requirements for employers of seasonal workers, as outlined in *OAR 437-004-0240, Safety Orientation for Seasonal Workers*. The March, 2010 proposal included a change to the definition of "seasonal worker" that would have limited the period of time that a worker could be considered "seasonal" to "three or fewer months in a calendar year." The majority of commenters who expressed an opinion, either in writing during the comment period or in testimony at one of the two hearings, were opposed to revising the definition for a variety of reasons. The original definition was maintained in the final rule: Seasonal workers are "employed in a job tied to a certain time of year by an event or pattern and for not more than 10 months in a calendar year." Additional notes were added to this section to cross reference and explain the minimum training and orientation requirements for seasonal workers who perform only "hand labor operations" as defined in the rule.

The March, 2010 proposal also included a requirement in *OAR 437-004-0240* that the "provider of this basic safety awareness information must be able to understand and respond to worker's questions." Commenters at both hearings noted that this would have the effect of requiring all employers to have persons fluent in all the languages of all their employees as trainers. They felt that this would create a logistical problem, a financial hardship, and a potential legal liability. This language was removed from the final version.

The Division 4/C rules for employers of both seasonal and non-seasonal workers now specifically state – at *OAR 437-004-0240(2)(b)* and *437-004-0251(2)(b)* – that safety awareness information must be communicated "in a manner that workers can understand." Employers with employees who have language barriers must "include content that is either translated into the language used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media." Commenters at both hearings recognized the importance of providing effective training but commented that it would take time and resources to put together effective multi-language or visual training materials.

Changes in **Subdivision 4/K, Agriculture/ Medical and First Aid**, at *OAR 437-004-1305*, are mostly stylistic, putting the existing requirements for first aid, emergency medical treatment, the emergency medical plan, and emergency eyewash and safety showers into clearer language. At (3) Medical treatment and services, the March, 2010 proposal included a requirement for employers to: (a) "assure the availability of emergency medical services for injured or sick employees" and (b) "promptly call the emergency services to provide treatment." This revision concerned some commenters because it could be interpreted to mean that the employer must "call an ambulance" even for minor injuries. The final rule returns to the original wording: "Emergency medical services for injured or sick employees must be available and summoned in time to give appropriate treatment for the circumstances." The original definition of "emergency medical service" is also restored in the final rule: "Emergency medical service is care by a medically trained person such as in a hospital, clinic, ambulance or rescue vehicle."

The March, 2010 proposal to (5), Emergency eyewash and shower facilities, are rewritten for the final rule to address concerns by commenters. The final rule clarifies when eyewash, shower equipment, or both are required and defines the minimum standards for both plumbed (potable) and self-contained systems. In the final rule, employers must provide employees with an emergency eyewash, shower equipment, or both to decontaminate themselves, based on the hazard, when: "(A) Employees use a chemical substance that can cause corrosion or permanent tissue damage to the eyes or when the body may be exposed to quantities of materials which are either corrosive or toxic by skin absorption; or (B) Employees handle pesticide products labeled with the signal words "Danger" or "Danger/Poison" and with a first-aid section on the label that requires rinsing for 15 – 20 minutes for eye or skin exposure."

Most of those commenting on this section focused on the use of pesticide products, and used the phrase "the label is the law" to express their belief that no additional requirements are necessary. Oregon OSHA has chosen to clarify when our eyewash and shower equipment requirements apply both in more general terms that apply to all chemical substances that may be present in the workplace and, for these types of products, based on what the pesticide label requires.

Decontamination systems are no longer linked to a fixed or mobile site but is related to the hazard. The employer may determine which type of equipment to use, whether plumbed, potable water systems or self-contained units, but each must meet the requirements in 437-004-1305(5)(b).

Based on comments received, Oregon OSHA is delaying the effective date to January 1, 2011, for all changes in this rulemaking.

Please visit OR-OSHA's web site at www.orosha.org

/s/Michael D. Wood
Authorized Signer

Michael D. Wood 7/6/2010
Printed name Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.
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