



Oregon
Kate Brown, Governor

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October 20, 2016

[Text of proposed changes
Nov. 2, 2015 Federal Register](#)

Oregon OSHA – Proposed Changes to the Worker Protection Standard in Agriculture With Federal and State Changes

Public Hearings Scheduled for:

<u>Date</u>	<u>Time</u>	<u>Location</u>
November 29, 2016	11:00 am	Pine Grove Grange 2900 Van Horn Drive Hood River, OR 97031
December 1, 2016	10:00 am	Woodburn Grange 908 N Settlemier Avenue Woodburn, OR 97071
December 7, 2016	10:00 am	City of Medford/City Hall Suite 340 – Alba Room 411 W 8 th Street Medford, OR 97501

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. This standard (40 CFR 170) is being amended with most of the changes adopted at the federal level by the EPA in the November 2, 2015 Federal Register. In addition, Oregon OSHA proposes to adopt nine new Oregon Administrative Rules (OARs) that reflect specific requirements for employers in Oregon.

The new OARs:

- One giving expiration and implementation dates for the amended Division 4/W;
- Two serve to clarify compliance requirements by providing specific effective dates for training programs for both workers and handlers (EPA's rules reference an unspecified future date of publication of training materials and a notification in the Federal Register.);
- Two offer a compliance alternative to evacuation of tight, solid structures that may fall within the Application Exclusion Zone (AEZ – as defined in 170.405.) The rules include provisions for what is commonly referred to as "shelter in place." This allows occupants, under controlled circumstances, to remain in protected spaces that are within an AEZ during nearby pesticide applications. Requirements include notification, training, and additional drift-control measures for structures within these Zones;
- Two maintain Oregon OSHA's more protective requirements related to respiratory protection and emergency eye-washes while fulfilling the EPA's pesticide label requirements;

- One provides a compliance alternative for all Oregon employers who train workers, to ease the transition during the first year of the rule changes; and
- One augments the training requirements for those who provide handler training. This is due to the significant increase in subject matter that will be required in 2018 and the importance of quality pesticide handler training.

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. A rule reference in the 437-002-0170 note will be updated.

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.

Please visit our web site osha.oregon.gov Click 'Rules and laws' in the Topics, rules, guidelines column and view our proposed rules, or select other rule activity from this page.

When does this happen: Adoption tentatively will be in December 2016

To get a copy: Our web site – osha.oregon.gov Rules and laws, then, Proposed rules
Or call 503-947-7449

To comment: Department of Consumer and Business Services/Oregon OSHA
350 Winter Street NE
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Fax – 503-947-7461

Comment period closes: December 14, 2016

Oregon OSHA contact: Kathleen Kincade, Central Office @ 503-947-7452
or email at kathleen.kincade@oregon.gov

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

OAR 437

Agency and Division

Administrative Rules Chapter Number

Sue Joye

350 Winter Street NE Salem OR 97301-3882

503-947-7449

Rules Coordinator

Address

Telephone

RULE CAPTION

Adopt changes to the Worker Protection Standard in Agriculture with federal and state changes.

November 29, 2016	11:00 am	Pine Grove Grange 2900 Van Horn Drive Hood River, OR 97031	Sue Joye
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December 7, 2016	10:00 am	City of Medford/City Hall Suite 340 – Alba Room 411 W 8 th Street Medford, OR 97501	Sue Joye

Hearing Date

Time

Location

Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Adopt: OAR 437-004-6001, 437-004-6401, 437-004-6402, 437-004-6405, 437-004-6406, 437-004-6501, 437-004-6502, 437-004-6508, 437-004-6509.

Amend: OAR 437-002-0170, 437-004-6000.

ORS 654.025(2) and 656.726(4)

Stat. Auth.

Other Authority

ORS 654.001 through 654.295; 654.412 through 654.423; 654.750 through 654.780

Stats. Implemented

RULE SUMMARY

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. This standard (40 CFR 170) is being amended with most of the changes adopted at the federal level by the EPA in the November 2, 2015 Federal Register. In addition, Oregon OSHA proposes to adopt nine new Oregon Administrative Rules (OARs) that reflect specific requirements for employers in Oregon.

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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.

Please visit our website osha.oregon.gov Click 'Rule changes' in the Topics, rules, guidelines column and view our proposed rules; or, select other rule activity from the left vertical column on the Proposed Rules page.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.


Signature

December 14, 2016

Last day to submit written comments to the Rules Coordinator

Michael D. Wood 10/14/2016
Printed name Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday.
ARC 920-2005

Secretary of State
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

OAR 437

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Adopting: OAR 437-004-6001, 437-004-6401, 437-004-6402, 437-004-6405, 437-004-6406, 437-004-6501, 437-004-6502, 437-004-6508, 437-004-6509.

Amending: OAR 437-002-0170, 437-004-6000.

Rule Caption:

Adopt changes to the Worker Protection Standard in Agriculture with federal and state changes.

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

Stats. Implemented: ORS 654.001 through 654.295; 654.412 through 654.423; 654.750 through 654.780

Need for the Rule(s): Oregon OSHA administers the worker safety provisions of the Environmental Protection Agency (EPA's) Worker Protection Standard (WPS), 40 CFR 170. These new rules are in response to the EPA's modifications to the WPS at the federal level as published in the November 2, 2015 Federal Register. 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. The nine Oregon-initiated rules serve to clarify the requirements of several of the EPA's rules by providing specific transition dates or by offering alternative methods of compliance that more closely align with other OSHA rule requirements and typical worksite conditions in Oregon. A requirement for additional EPA-approved training for those who will be providing the new WPS handler training is based on the recognition that quality handler training is the foundation of safe application practices.

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>

Division 4/ Agriculture, Subdivision W, in OAR 437-004-6000, available at:

<http://osha.oregon.gov/OSHARules/div4/div4W.pdf>

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, including Statement of Cost of Compliance:

Fiscal and Economic Impact:

The specific areas of fiscal and economic impact are outlined in the Statement of Cost Compliance below.

Statement of Cost of Compliance:

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

Costs incurred by Oregon OSHA represent costs associated with the promulgation, implementation, and administration of a rule. Other state agencies involved directly with crop production are under the scope of the WPS and would be affected as employers under the Oregon Safe Employment Act (OSEA).

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. Extrapolating from EPA's estimates, the cost to employ a typical farmworker in Oregon is expected to increase by about \$5 per worker per year; the cost for a more skilled pesticide handler is expected to increase by a total of about \$20 per handler per year. This fiscal impact is anticipated to affect large and small business the same, proportionately.

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

There are no additional reporting requirements. No additional administrative time has been included for the setting up of programs or for training related to EPA's revised WPS requirements for employers to provide hazard communication information and training, employee access to medical and exposure records, or to evaluate the need for personal protective equipment. This is because Oregon employers are already expected to comply with the full Oregon OSHA standards pertaining to these requirements, which exceed the WPS requirements.

For employers under the scope of the Worker Protection Standard, certain administrative and recordkeeping duties are anticipated to increase. For simplicity, the anticipated administrative and recordkeeping costs are grouped, below.

- **For employers of WPS workers** (not pesticide handlers), more administrative activities will be required for more-frequent annual training sessions (previously every 5 years) that must occur on the first day of employment. (Previously, the full training requirement was delayed until the 6th day of employment which eliminated some seasonal harvest workers from the full training requirements.) Beginning in January of 2018, more subject matter (twenty-three topic points) is required to be covered in this training (previously eleven topic points.) Also, the revised rules require employers to document the training, maintain that record for two years, and provide it to workers upon request. (However, this documentation of annual training will likely reduce some of the necessity for redundant WPS worker training provided to migrant workers at subsequent harvest locations.) The marginal cost of a typical farmworker in Oregon is expected to increase by about \$5/year.

- **For employers of WPS pesticide handlers**, more administrative activities will be required for more frequent annual training (previously every 5 years) and for additional record-keeping to document the training, maintain the record for two years, and provide it to handlers upon request. Beginning in January of 2018, more required subject matter (thirty-seven topic points) is required to be covered in this training (previously thirteen topic points.) The marginal cost for each pesticide handler for WPS handler training and record-keeping is expected to increase by about \$12/year.
- **For individuals providing the training for WPS handlers**, Oregon OSHA has added a requirement for each trainer of handlers to complete an EPA-approved Train-the-Trainer (T-t-T) session between January 2, 2017 and December 31, 2018, and to keep a record. (This is due to the increased complexity of the new required subject matter for handlers, and applies to all trainers of handlers regardless of how the trainers would otherwise qualify for conducting handler training.) In addition, WPS handler trainers whose only means of qualification for conducting the training is having completed a Train-the Trainer session must re-train at least once-every-5-years. This periodic re-training requirement does not apply to handler trainers who meet the qualification in other ways such as being "currently certified as an applicator of restricted use pesticides" as administered by the Oregon Department of Agriculture.

Numerous sources of free, EPA-approved options for Train-the-Trainer sessions are expected to be available after January 2, 2017 including computer-based, on-line sources. Therefore, only the time involved is being considered as a cost. As a one-time event, we estimate that this requirement would cost individuals in the occupation described as "*Pesticide Handlers, Sprayers, and Applicators, Vegetation*" – with a 2016 median hourly wage of \$17.60 – about \$150. This includes 8 hours of training and ½ hour to establish and maintain the training record. (We anticipate that the T-t-T sessions will cross-qualify for a portion of the re-certification credits necessary for certified applicators to maintain their licensing.)

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

No additional equipment or supplies will be needed for most Oregon employers because most employers in Oregon are already required to comply with more protective OSHA requirements for the provision of eye-washes; and for personal protective equipment, including respirators.

•**Concerning respirators**, EPA's revised WPS mandates that respirators required by pesticide labels be provided and includes certain elements drawn from 29 CFR 1910.134, OSHA's Respiratory Protection Standard along with a WPS-specific requirement to maintain records of compliance for two-years. (OSHA's respiratory standard requires one year of record retention for fit-testing as compared to the two year WPS requirement.) Oregon OSHA is using the EPA estimate that the additional cost to employers already in compliance with the OSHA's respirator requirements – as adopted in Oregon – would average about \$8 per handler per year, reflecting only the cost of this additional recordkeeping.

•**Administration of the compliance alternative to evacuation of structures within Application Exclusion Zones (AEZ)** would include additional duties. To use this alternative, commonly referred to as "sheltering in place," the employer must provide an oral notification with specific information to residents or occupants of affected structures prior to any spray activities that would place the structure within an AEZ as defined in the WPS. Also, employers must direct occupants to stay inside the protected space while the AEZ restrictions are in effect and provide affected residents or occupants of these structures on their property, with instructions about how to effectively use the space to protect themselves.

Oregon OSHA currently has 330 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 5-10 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.

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 two, in-person meetings of the Committee. In addition Oregon OSHA mailed a state-wide notification to employers in the tree-crop industries, describing the draft rule-making and inviting them to comment. 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?



Authorized Signer

Michael D. Wood 10/14/2011

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.
ARC 925-2005