

Summary of Comments and Agency Decisions

Title: Preamble for changes to Division 4 /I, Agriculture/ Personal Protective Equipment; and Division 4/ Z, Agriculture/ Chemicals and Toxins

Administrative Order Number: AO 4-2012

Adopted Date: September 19, 2012

Effective Date: January 1, 2013

These changes result from input from the regulated community, legislators, and Oregon OSHA staff who shared their suggestions, concerns, and issues during the rule writing process.

This process of rule writing began in late September 2010, when Oregon OSHA gathered a group of stakeholders representing small and larger agricultural businesses and agriculture-related services. This group worked for about eighteen months, primarily through e-mail communication. Committee meetings were held, on March 4, 2011, and February 1, 2012, at the Salem Field Office.

Initially, as published on April 30, 2012, Oregon OSHA proposed to modify four subdivisions of Division 4/Agriculture: Subdivisions A, B, I, and Z.

Three public hearings were held: June 11, 2012 at the Woodburn Grange in Woodburn, Oregon; June 19, 2012 at the Cherry Park Grange in The Dalles, Oregon; and June 22, 2012 at the Central Point Grange in Central Point, Oregon. No one from the public attended the hearing proceedings or submitted comments in connection with the hearings.

We received a written comment in May 2012 from Oregon State Representative Andy Olson, expressing his concern about one of the proposed changes in Subdivision 4/A that limited the scope of the agriculture rules.

The comment period was initially set to close on June 29, 2012, but was extended in mid-June to close on August 31, 2012. On July 9, 2012, Oregon OSHA decided to withdraw Subdivisions 4/A, General Subjects, and 4/B, Definitions from this proposed rulemaking. Oregon OSHA plans to gather another group of stakeholders, including agricultural employers who are also engaged in crop processing or other activities or industries that would typically fall outside the scope of the Division 4 rules, to reconsider the proposed changes to the scope and the exclusive coverage provisions in Subdivisions 4/A, General Subjects, and 4/B, Definitions.

Oregon OSHA continued with the remaining proposed rule changes in Subdivisions 4/I, Protective Equipment, and 4/Z, Chemicals/ Toxins. The changes include adding one new rule to Subdivision Z, one new Appendix to Subdivision I, and text changes to twenty-three existing rules.

Division 4/I, Agriculture/Personal Protective Equipment.

The requirements in Subdivision I for agricultural employers who select and provide “general” personal protective equipment (PPE other than Respirators or Hearing Protection) were modified in the following ways:

1. OAR 437-004-1005, General Requirements for Protective Equipment now requires the employer to perform an evaluation of workplace hazards and to use this as the basis for the selection of general PPE. Although documentation of the evaluation is not required, a new non-mandatory Appendix A to Subdivision I provides a template for employers to use in this evaluation.
2. Employers also have new requirements and guidelines for training each employee they require to use general PPE.
3. OAR 437-004-1020, Personal Fall Protection reflects equipment guidelines and “qualified person” and “competent person” responsibilities modeled after the Division 3, Construction rules.
4. OAR 437-004-1030, Work Clothing, requires employers to determine if employees will be exposed to “on-highway type moving vehicles in work zones and street or highway traffic” and, if so, to comply with the Division 2/I High-Visibility Garment rules.
5. OAR 437-004-1035, Eye and Face Protection, adds a requirement for employers to evaluate the potential for electrical and laser hazards to the eyes and face.
6. OAR 437-004-1050, Head Protection, adds a requirement for employers to include an evaluation of electrical hazards to the head.
7. OAR 437-004-1060, Hands, Feet and Extremities adds a requirement to evaluate hazards to and protection for “the extremities” (arms and legs) as well as for hands and feet.
8. The wording of the requirements was clarified in OAR 437-004-1070, Working Underway on Water, and OAR 437-004-1075, Working over or in Water.

The requirements in Subdivision I for agricultural employers who are subject to the OAR 437-004-1041, Respiratory Protection Standard, were modified in the following ways:

1. Text changes throughout the Division 4 Standard more accurately reflect the requirements in Federal OSHA’s Respiratory Protection Standard for General Industry including recent changes to 1910.134 promulgated through phase three of the Standards Improvement Project (SIP III.)
2. A text change at OAR 437-004-1041(5)(e) and a change in the numbering format in Appendix C, the Respirator Medical Evaluation Questionnaire, clarify the agricultural employer’s responsibility to provide the required supplemental information to the physician or other licensed healthcare professional (PLHCP) performing the evaluation. A new Spanish translation of Appendix C is also included.

Division 4/Z, Agriculture/Chemicals and Toxins.

The Oregon Rules for Air Contaminants, at OAR 437-004-9000, were last modified in 2001 when the Z-Tables in Division 2/ General Industry, Division 3/ Construction, and Division 4/ Agriculture were all updated to match changes in Federal OSHA's Air Contaminant rules and the Z-Tables at 1910.1000.

Oregon OSHA changed the Z-Tables in Divisions 2 and 3 again in 2008 when the permissible exposure limit (PEL) in Table Z-3 for Silica (as respirable crystalline quartz) was changed from a formula to a fixed limit of 0.1 milligrams per cubic meter (mg/m³) of air and the formula and footnote for Silica (as total dust crystalline quartz) were also amended. The same changes have now been adopted into the Division 4 Air Contaminant rules. As we believed in 2008, an exposure limit provided as a number is easier to understand and comply with than an exposure limit expressed as a formula.

Although the previous Division 4 Air contaminant rules stated that exposure limits to all the regulated substances listed in the Division 2 Z-tables also applied to agriculture, the previous Division 4 Z-Tables included only "hazardous substances commonly found in agriculture." For consistency across all regulated industries, the Z-Tables in Division 4 are now identical to the Division 2 and Division 3 Z-Tables.

New, standardized wording is used in all of the substance-specific rules that pertain to agricultural employers (OAR 437-004-9050, Asbestos; OAR 437-004-9090, 13 Carcinogens; OAR 437-004-9600, Lead; OAR 437-004-9620, Cadmium; OAR 437-004-9640, Benzene; OAR 437-004-9710, Acrylonitrile; OAR 437-004-9740, Ethylene Oxide; OAR 437-004-9760, Formaldehyde; OAR 437-004-9780, Methylenedianiline) and also OAR 437-004-9650, Bloodborne Pathogens. Employers are required to "...determine, before work begins, if any task or activity assigned to workers will result in a potential exposure to" (the substance).... "Work that exposes employees to" (the substance) "must comply with" (the substance rule reference from Division 2) "except that construction activities exposing employees to" (the substance) "must comply with" (the substance rule reference from Division 3) "based on the type of activity."

A NOTE is included in each rule that defines "construction activities" as "building, altering and repairing, and includes painting." In some cases, examples of typical "tasks or work activities that could expose" agricultural employees to the substances are also included.

A new substance-specific rule, using the same standardized wording, is added for hexavalent chromium, at OAR 437-004-9626, Chromium (VI).

In OAR 437-004-9860, Hazardous Chemicals in Laboratories, the terms used in the rule and the conditions for compliance with other referenced rules are more clearly defined. For agricultural employers only engaged in Quality Control-type work in a laboratory setting, the requirements remain consistent with the previous rule. For other types of laboratory work, employers are referred to more comprehensive rules in Division 2.