



Oregon Administrative Rules
Chapter 437

Division 2

General Occupational Safety and Health

Worker Protection Standard

Subdivision

Z

Administrative
Order 1-2017



The Oregon Department of Consumer and Business Services adopted these rules pursuant to ORS 654.025(2).

The Secretary of State designated OAR Chapter 437 as the "Oregon Occupational Safety and Health Code." Six general subject areas within this code are designated as "Divisions."

- **Division 1** General Administrative Rules
- **Division 2** General Occupational Safety and Health Rules
- **Division 3** Construction
- **Division 4** Agriculture
- **Division 5** Maritime Activities
- **Division 7** Forest Activities
- **Oregon Revised Statutes (ORS) 654** The Oregon Safe Employment Act (OSEAct)

Oregon-initiated rules in this division of the Oregon Occupational Safety and Health Code are numbered in a uniform system developed by the Secretary of State. This system does not number the rules in sequence (001, 002, 003, etc.). Omitted numbers may be assigned to new rules at the time of their adoption.

Oregon-initiated rules are arranged in the following Basic Codification Structure adopted by the Secretary of State for Oregon Administrative Rules (OAR):

Chapter	Division	Rule	Section	Subsection	Paragraphs
<i>437</i>	<i>002</i>	<i>0322</i>	<i>(1)</i>	<i>(a)</i>	<i>(A)(i)(I)</i>

The majority of Oregon OSHA rules are adopted by reference from the Code of Federal Regulations (CFR), and are arranged in the following basic federal numbering system:

Chapter	Division	Part	Subpart (Subdivision)	Section	Paragraphs
437	002	1910	G	.303	(a)(1)(i)(A)(1)

The terms "subdivision" and "subpart" are synonymous within OAR 437, Oregon Occupational Safety and Health Code.

To obtain an order form or copies of these codes, address:

Department of Consumer & Business Services
Oregon Occupational Safety & Health Division (Oregon OSHA)
350 Winter St. NE
Salem, OR 97301-3882

Or call the Oregon OSHA Resource Library at 503-378-3272

The rules referenced in this division are available for viewing in the Office of the Secretary of State, Oregon State Archives Building, Salem, Oregon, or the Central Office, Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services, 350 Winter St. NE, Salem, Oregon, and on our web site at osha.oregon.gov.

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437-002-0170 Worker Protection Standard

Oregon OSHA administers and enforces the pesticide Worker Protection Standard (WPS – 40 CFR 170) as adopted in OAR 437-004-6000. When a pesticide product with Worker Protection Standard language (“Agricultural Use Requirements”) on the product label is used on plants grown or maintained for sale or resale, such as those at retail nurseries or greenhouses, the WPS applies. Plants grown or maintained for sale or resale include but are not limited to food, feed and fiber plants; ornamental trees and shrubs; turfgrass sod; flowering plants and seedlings. This is consistent with the Environmental Protection Agency’s interpretation and application of the WPS.

All parts of the WPS apply (without regard to the scope of Division 4) in addition to, and not instead of, any other part of Division 2, General Industry. Should any conflict exist between the WPS and other Division 2 rules, the employer must comply with the rule offering the most protection to workers.

A full text of the [Worker Protection Standard is found in Division 4, Agriculture, Subdivision W.](#)

Note: 437-002-0170 Worker Protection Standard does not apply when any pesticide is applied in the following circumstances: (See 437-004-6000, 170.303(b))

As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

For control of vertebrate pests, unless directly related to the production of an agricultural plant.

As attractants or repellents in traps.

On the harvested portions of agricultural plants or on harvested timber.

For research uses of unregistered pesticides.

On pasture and rangeland where the forage will not be harvested for hay.

In a manner not directly related to the production of agricultural plants, including, but not limited to structural pest control and control of vegetation in non-crop areas.

Stat. Authority: ORS 654.025(2) and 656.726(4).
Stats. Implemented: ORS 654.001 through 654.295.
Hist: OR-OSHA Admin. Order 9-2009, f. 9/21/09, ef. 9/21/09.
OR-OSHA Admin. Order 1-2017, f. 2/14/17, ef. 1/1/18.

Notes

Historical Notes for Subdivision Z, Worker Protection Standard

Note: In Oregon, Oregon OSHA administers and enforces the pesticide Worker Protection Standard (WPS: 40 CFR 170) as adopted in Division 4, Agriculture, Subdivision W, OAR 437-004-6000.

This rulemaking amends OAR 437-004-6000 to reflect non-substantive corrections and technical amendments that were published in the Federal Register from 2006 through 2009.

Oregon OSHA is also amending the pesticide Worker Protection Standard (WPS) in Division 7, Forest Activities, Subdivision A, General Requirements, OAR 437-007-0010, to clarify the references in Division 7 to the WPS in Division 4.

In addition, Oregon OSHA is amending Division 2, General Industry, Subdivision Z, Toxic and Hazardous Substances, by adopting a new rule (OAR 437-002-0170) to clarify that under certain circumstances all parts of the Worker Protection Standard (WPS) apply to general industry workplaces, and are a part of Division 2 in addition to, and not instead of, any other part of Division 2.

Members of the public submitting written comments expressed support for the changes but noted that the proposed amendments (being non-substantive) do not go far enough to improve the protection of Oregon's affected workers from exposure to pesticides. The changes suggested by these commenters were outside the parameters of this rulemaking.

This is Oregon OSHA **Administrative Order 9-2009, adopted September 21, 2009 and effective September 21, 2009.**

Note: Oregon Occupational Safety and Health Division (Oregon OSHA) administers and enforces the employee safety and health part of the U.S. Environmental Protection Agency (EPA)'s pesticide Worker Protection Standard (WPS) as adopted in Division 4/ Agriculture as adopted at OAR 437-004-6000. The standard aims to protect workers – those who work in pesticide-treated crop areas – and handlers – those who mix, load, and apply pesticides. EPA modified the WPS at the federal level (40 CFR 170) in the November 2, 2015 Federal Register. In response, Oregon OSHA initiated the rule-making process working with an advisory committee – including representatives of labor, employers, grower organizations, and government and nonprofit agencies, and other stakeholders – and reviewed extensive public comments received both orally at three public hearings held around the state, and in written format following formal proposal in late 2016.

Oregon OSHA is adopting most of the modified rules initiated by the EPA as well as several Oregon-initiated rules introduced to reflect the unique circumstances for employers in Oregon. The agency will continue to enforce the existing WPS through the end of 2017.

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 adopted OARs:

437-004-6001 gives expiration and implementation dates for the existing and revised rules. The rules codified in Division 4/W as 170.1 through 170.260 will remain in effect through 2017, and expire on 12/31/2017. The new rules, codified as 170.301 through 170.607, and the other five new OARs will be implemented beginning on January 1, 2018.

437-004-6401 and 437-004-6501 provide specific effective dates for the revised subject matter to be included in training programs for both workers and handlers. In addition, the requirements for crop advisor training programs necessary to exempt workers and handlers from WPS training is cross-referenced to the minimum subject matter in these OARs.

437-004-6508 Respiratory Protection and 437-004-6509 Emergency eye-washes and eye flushing supplies maintain Oregon OSHA's more protective requirements related to respiratory protection and emergency eye-washes while fulfilling the EPA's pesticide label requirements.

437-004-6502 augments training requirements in Oregon for trainers of WPS handlers who use the Train-the-Trainer qualification described in 170.501(c)(4)(ii) of the WPS. The adopted rule does not apply to trainers of WPS handlers who meet the qualification as certified applicators described in 170.501(c)(4)(iii).

The agency will reconsider some details of the 2016 WPS proposal through a separate public rulemaking process centered on the Application Exclusion Zone (AEZ.) To give more time to fine-tune those provisions and to ease the transition to the modified rule requirements, Oregon OSHA is delaying implementation of the modified standard until Jan. 1, 2018. The expected result will be a revised proposal initiated in 2017, in time for it to take effect with the other modified sections of the WPS on Jan. 1, 2018.

This is Oregon OSHA Administrative Order 1-2017, adopted February 14, 2017 and effective January 1, 2018.