

June 22, 2009

## **Oregon OSHA - Proposed Changes to the Worker Protection Standard in Agriculture, General Industry, and Forest Activities**

***Public Hearing Scheduled for:***

<u>Date</u>	<u>Time</u>	<u>Location</u>
July 29, 2009	9:30 am	Labor and Industries Building Basement – Conference Room F 350 Winter Street NE Salem OR 97301

Oregon OSHA proposes to amend OAR 437-004-6000 in Division 4/W, Agriculture/Worker Protection Standard, with changes as they appeared in the Federal Registers (FR) listed below.

Per 73 FR 75598 (Corrections and technical amendments), EPA reviewed its pesticide regulations contained in 40 CFR Part 170, and made non-substantive technical changes in a number of areas to correct errors and cross-references, and to improve presentation and format. The final federal rule was published in the Federal Register December 12, 2008 and became effective February 10, 2009.

Per 72 FR 35663 (Correction), § 170.112, paragraph (a)(1) was corrected to read as follows: “170.112 Entry restrictions. (a) \* \* \* (1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.” Revised as of July 1, 2007.

Per 71 FR 35546 (Technical amendments), the EPA’s Office of Pesticide Programs (OPP) notified all those affected concerning a change of address. OPP has relocated to new offices in Arlington, VA. EPA revised references throughout its pesticide regulations to reflect these address changes. Final rule was effective on June 21, 2006.

Oregon OSHA proposes to amend Division 2, Subdivision Z – Toxic and Hazardous Substances by adopting a new rule to clarify that all parts of the Worker Protection Standard (WPS) apply to General Industry, and are a part of Division 2 in addition to, and not instead of, any other part of Division 2. Should any part of the WPS conflict with other parts of Division 2, the employer must comply with the part offering the most protection to workers.

Oregon OSHA also is amending OAR 437-007-0010 Worker Protection Standard in Division 7, Forest Activities, to clarify the reference to WPS in Agriculture.

**When does this happen:** Adoption tentatively will be August 2009

**To get a copy:** Our web site – [www.orosha.org](http://www.orosha.org) Rules/Compliance, then Proposed Rules  
Or call the OR-OSHA Resource Center at 503-947-7447

**To comment:** Department of Consumer and Business Services/Oregon OSHA  
350 Winter Street NE  
Salem OR 97301-3882  
E-mail – [tech.web@state.or.us](mailto:tech.web@state.or.us)  
Fax – 503-947-7461

**Comment period closes:** August 3, 2009

**OR-OSHA contact:** Kathleen Kincade, Central Office @ 503-947-7452;  
or email at [kathleen.kincade@state.or.us](mailto:kathleen.kincade@state.or.us)

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

Agency and Division

OAR 437

Administrative Rules Chapter Number

Sue Joye

Rules Coordinator

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503-947-7449

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**RULE CAPTION**

Proposed changes to the Worker Protection Standard in agriculture, general industry, and forest activities.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Labor and Industries Building  
Basement – Conference Room F  
350 Winter Street NE  
Salem OR 97301

July 29, 2009

Hearing Date

9:30 am

Time

Location

Sue Joye

Hearings Officer

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

**RULEMAKING ACTION**

**ADOPT:** OAR 437-002-0170

**AMEND:** OAR 437-004-6000, 437-007-0010

ORS 654.025(2) and 656.726(4)

Stat. Auth.

Other Authority

ORS 654.001 through 654.295

Stats. Implemented

**RULE SUMMARY**

Oregon OSHA proposes to amend OAR 437-004-6000 in Division 4/W, Agriculture/Worker Protection Standard, with changes as they appeared in the Federal Registers (FR) listed below.

Per 73 FR 75598 (Corrections and technical amendments), EPA reviewed its pesticide regulations contained in 40 CFR Part 170, and made non-substantive technical changes in a number of areas to correct errors and cross-references, and to improve presentation and format. The final federal rule was published in the Federal Register December 12, 2008 and became effective February 10, 2009.

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**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 437-002-0170; and  
Amending OAR 437-004-6000, 437-007-0010.

**Rule Caption:**

Proposed changes to the Worker Protection Standard in agriculture, general industry, and forest activities.

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

**Stats. Implemented:** ORS 654.001 through 654.295

**Need for the Rule(s):**

The Environmental Protection Agency (EPA) has broad-based enforcement authorities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to ensure the proper use, handling, storage, and reporting requirements for pesticides. Pursuant to FIFRA, Section 25, EPA promulgated the Worker Protection Standard (WPS)(40 CFR Part 170) in 1992, to protect agricultural, nursery, greenhouse, and forestry workers, and pesticide handlers. Oregon Occupational Safety and Health Division (Oregon OSHA) has entered into a cooperative agreement with the Oregon Department of Agriculture (ODA) delineating the roles and responsibilities of each party for pesticide enforcement.

In Oregon, pursuant to a Memorandum of Agreement between the (ODA) and Oregon OSHA , the occupational safety and health provisions in the WPS, are codified and enforced as occupational safety and health rules by Oregon OSHA under OAR 437-004-6000.

Oregon OSHA proposes to adopt the same changes to the Worker Protection Standard that were implemented by the U.S. Environmental Protection Agency and finalized in the Federal Register documents listed below. These are primarily non-substantive technical changes to this regulation. Sections were removed from the text of the rule that had provisions for effective and compliance dates occurring in the past, with expired dates for uncertified/unlicensed crop advisors, and with expired time periods for administrative exceptions to the 170.112 section.

Oregon OSHA proposes to adopt the provisions of the Worker Protection Standard into Division 2/Z General Industries for the protection of workers who may be exposed to WPS-labeled pesticides in establishments outside those covered by the Division 4, Agriculture and Division 7, Forest Activities rules. As an example, nurseries (such as those found in retail stores) who use WPS labeled pesticides and sell the plant product, fall under the WPS. Those who use “home owner use only” products do not. This is consistent with EPA’s application of the WPS and will make it clear to employers in Oregon once adopted.

The WPS is designed to reduce the risks of illness or injury resulting from workers’ and handlers’ occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests *and also from the accidental exposure of workers and other persons to such pesticides*. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies. Except as provided in §170.103 and §170.104, the WPS applies when:

- 1) Any WPS labeled pesticide product is used on any farm, forest, nursery, or greenhouse in the production of agricultural plants.
- 2) Any WPS labeled pesticide product is used in other establishments on plants grown or maintained for resale.

**Documents Relied Upon, and where they are available:**

**Federal Register** / Vol. 73, No. 240 / December 12, 2008, pp. **75598-75599**.

<http://www.epa.gov/fedrgstr/EPA-PEST/2008/December/Day-12/p29375.htm>

**Federal Register** / Vol. 72, No. 125 / June 29, 2007, pp. **35663**.

<http://www.epa.gov/fedrgstr/EPA-PEST/2007/June/Day-29/p55508.htm>

**Federal Register** / Vol. 71, No. 119 / June 21, 2006, pp. **35546**.

<http://www.epa.gov/fedrgstr/EPA-PEST/2006/June/Day-21/p9750.htm>

The Environmental Protection Agency's interpretive documents concerning the WPS are available at:

<http://www.epa.gov/pesticides/safety/workers/wpsinterpolicy.htm>

**Fiscal and Economic Impact, including Statement of Cost of Compliance:**

The proposed new rule in Division 2/Z and the changes in Division 4/W, and Division 7/A have no substantive fiscal impact.

**How were small businesses involved in the development of this rule?**

Through the Small Ag Advisory Committee.

**Administrative Rule Advisory Committee consulted? Yes.**

**If not, why?**

The Small Ag Advisory Committee.

/s/Michael D. Wood

Authorized Signer

Michael D. Wood

Printed name

6/12/09

Date

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