

9-21

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 September 21, 2009
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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Rules Coordinator Address Telephone

to become effective September 21, 2009 as OR-OSHA Administrative Order 9-2009.
Date upon filing or later

Rulemaking Notice was published in the July 2009 Oregon Bulletin.**
Month and Year

RULE CAPTION

Adopt 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.

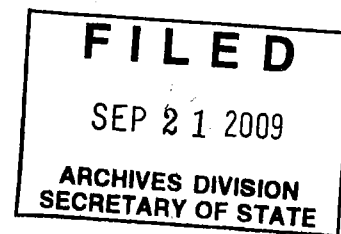
RULEMAKING ACTION

ADOPT: OAR 437-002-0170

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

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

ORS 654.001 through 654.295
Stats. Implemented



RULE SUMMARY

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.

OSHA 9-2009

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



Authorized Signer

Michael D. Wood

Printed name

9/17/09

Date

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

**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 5:00 pm on the preceding workday.

ARC 930-2005

OAR 437, Oregon Occupational Safety and Health Division
Oregon OSHA Administrative Order 9-2009,
Adopted and effective September 21, 2009

DIVISION 2, OCCUPATIONAL SAFETY AND HEALTH RULES
SUBDIVISION Z, TOXIC AND HAZARDOUS SUBSTANCES

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, 170.103 Exceptions)

For mosquito abatement, or similar wide-area public pest control programs sponsored by governmental entities;

To control pests on livestock or other animals, or in or about animal premises;

To control pests on plants not grown for sale or resale such as ornamental plants in or around habitations, home fruit and vegetable gardens, and home greenhouses;

To control pests on plants that are in ornamental gardens, parks, public or private lawns or grounds that are intended only for aesthetic purposes or climatic modification;

By direct injection into plants; (Direct injection does not include pesticides applied through irrigation water or soil-injection.)

For control of structural pests;

For control of vegetation in non-crop areas;

For control of vertebrate pests;

As attractants or repellents in traps.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

DIVISION 4, AGRICULTURE

SUBDIVISION W – WORKER PROTECTION STANDARD

437-004-6000

Adoption by Reference of Federal Standard.

Oregon OSHA administers and enforces the Worker Protection Standard (40 CFR 170) as adopted with this rule. All parts of the WPS apply in addition to, and not instead of, any other part of Division 4, Agriculture. Should any conflict exist between the WPS and other Division 4 rules, the employer must comply with the rule offering the most protection to workers. The Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 40 CFR 170, in the Federal Register:

Subpart A – GENERAL PROVISIONS

- (1) 40 CFR 170.1 Scope and purpose, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (2) 40 CFR 170.3 Definitions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (3) 40 CFR 170.5 Removed.
- (4) 40 CFR 170.7 General duties and prohibited actions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (5) 40 CFR 170.9 Violations of this part, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

Subpart B – STANDARD FOR WORKERS

- (6) 40 CFR 170.102 Applicability of this subpart, published 5/3/95, FR vol. 60, no. 85, p. 21952.
- (7) 40 CFR 170.103 Exceptions, published 5/3/95, FR vol. 60, no. 85, p. 21952.
- (8) 40 CFR 170.104 Exemptions, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.
- (9) 40 CFR 170.110 Restrictions associated with pesticide applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (10) 40 CFR 170.112 Entry restrictions, published 6/21/06, FR vol. 71, no. 119, pp. 35543-35547; 6/29/07, FR vol. 72, no. 125, p. 35663; 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.
- (11) 40 CFR 170.120 Notice of applications, published 6/26/96, FR vol. 61, no. 124, p. 33207.
- (12) 40 CFR 170.122 Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (13) 40 CFR 170.124 Notice of applications to handler employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (14) 40 CFR 170.130 Pesticide safety training, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.
- (15) 40 CFR 170.135 Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(16) 40 CFR 170.150 Decontamination, published 6/26/96, FR vol. 61, no. 124, p. 33212.

(17) 40 CFR 170.160 Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

Subpart C – STANDARD FOR PESTICIDE HANDLERS

(18) 40 CFR 170.202 Applicability of this subpart, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(19) 40 CFR 170.203 Exceptions, published 5/3/95, FR vol. 60, no. 85, p. 21952.

(20) 40 CFR 170.204 Exemptions, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.

(21) 40 CFR 170.210 Restrictions during applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(22) 40 CFR 170.222 Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(23) 40 CFR 170.224 Notice of applications to agricultural employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(24) 40 CFR 170.230 Pesticide safety training, published 5/3/95, FR vol. 60, no. 85, p. 21953

(25) 40 CFR 170.232 Knowledge of labeling and site-specific information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(26) 40 CFR 170.234 Safe operation of equipment, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(27) 40 CFR 170.235 Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(28) 40 CFR 170.240 Personal protective equipment, published 9/1/04, FR vol. 69, no. 169, p. 53341; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.

(29) 40 CFR 170.250 Decontamination, published 6/26/96, FR vol. 61, no. 124, p. 33213; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.

(30) 40 CFR 170.260 Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

DIVISION 7, FOREST ACTIVITIES

SUBDIVISION A, GENERAL REQUIREMENTS AND DEFINITIONS

437-007-0010

Worker Protection Standard.

Oregon OSHA administers and enforces the Worker Protection Standard (40 CFR 170) as adopted in OAR 437-004-6000 in Division 4/W. All parts apply without regard to the scope of Division 4 in addition to, and not instead of, any other part of Division 7, Forest Activities. Should any of the parts of these two standards conflict, comply with the part offering the most protection to workers.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.