

Summary of Comments and Agency Decisions

Title: Division 4, Agriculture – updates to the Hazard Communication Standard for agricultural employers, and twelve other rules.

Administrative Order Number: 3-2014

Adopted Date: August 8, 2014

Effective Date: August 8, 2014

In 2012, federal OSHA adopted the United Nation's globally harmonized system for the classification and labeling of chemicals (GHS) into the federal Hazard Communication Standard (29 CFR 1910.1200) and amended several related rules to align them with the GHS classification and labeling standards. Subsequently, Oregon OSHA adopted these changes into the Division 2, General industry and Division 3, Construction rules.

Incorporation of the GHS definitions and terminology into Oregon OSHA's Division 4, Agriculture rules is the final phase of this rulemaking process. It is expected to improve safety by establishing a uniform flow of information about chemical hazards in all the Oregon OSHA rules. In order to simplify compliance for agricultural workplaces, revisions to the Division 4 Hazard Communication Standard (HCS) focused on the requirements that apply to users of hazardous chemicals (as opposed to those that apply to manufacturers, importers, and distributors.) Several related Division 4 rules, including the "universal" definitions that apply to most of Division 4, rules concerning flammable liquids, fire prevention, pipe labeling, and the storage of hazardous chemicals were clarified, simplified, and made consistent with the GHS-modified HCS requirements.

In early November 2013, Oregon OSHA established a group of stakeholders representing small and larger agricultural businesses and agriculture-related services. This group worked for about five months, primarily through e-mail communications. In addition, two in-person committee meetings were held, on March 14th and March 24th, 2014, at the Oregon OSHA Portland Field Office.

The changes to these Division 4, Agriculture rules were influenced by information submitted by people from the regulated community who shared their concerns and suggestions during the rule writing and review process.

The proposed rules were filed on April 15, 2014 and were available on the Oregon OSHA website at www.orosha.org.

Two public hearings were held: on June 13, 2014 at the Pine Grove Grange in Hood River, Oregon; and, on June 18, 2014 at the Linn County Armory in Albany, Oregon.

There were 8 attendees at the Hood River hearing with 4 providing testimony. These were the only comments received during the comment period. No one opposed the proposed rule changes. Comments were made and questions were asked about the requirements of the Hazard Communication Standard (HCS) and how these are changing. The following is a synopsis of the discussion points:

- More than one commenter suggested that the requirements for workplace Safety Data Sheets (SDSs) in the HCS are, in many cases, not practical.

Although remote work locations, and language and literacy differences among employees may make the requirements for workplace Safety Data Sheets (SDSs) seem impractical for the agricultural industry, providing employees with access to the information in SDSs has always been a requirement and this has not changed in the modified HCS.

- There were comments about the advantages of using electronic means to access SDSs rather than keeping a binder.

Electronic access to SDSs continues to be allowed by the HCS as long as there is a backup system that provides a reliable, secondary source for the necessary SDS information if the electronic system fails.

- A question was asked about whether SDSs must be provided in Spanish for Spanish-speaking employees.

The HCS has never required that SDSs be provided in any language other than English. Employers may provide SDSs in other languages in addition to English, but are not required to do so by the rule. Oregon OSHA noted that the Globally Harmonized System is being adopted into the HCS in part to provide information about chemical hazards that transcends language differences, for example by using pictograms.

- A comment was made that employers are more likely to take the pesticide label, rather than an SDS, with them to get emergency care in the event of a workplace pesticide exposure.

Oregon OSHA responded that this would be appropriate. Nevertheless, the employer must ensure that all hazardous chemicals, including pesticide products, have a readily available SDS.

- A favorable comment was made about a provision in the new rule that exempts pesticide application equipment such as spray tanks and backpack-type sprayers from the secondary container labeling requirements as long as the pesticide handlers have access to the pesticide product's label(s) during handling activities.

No one attended the Albany hearing. The public comment period closed on June 30, 2014.

Thirteen rules, in five subdivisions, were amended:

- **Division 4/B:** OARs 437-004-0100 Universal Definitions; and 437-004-0150 Standards Organizations.
- **Division 4/H:** OARs 437-004-0720 Flammable Liquids; 437-004-0725 Spray Finishing; and 437-004-0950 Hazardous Waste Operations and Emergency Response (HAZWOPER).
- **Division 4/L:** OARs 437-004-1430 Sources of Fire; 437-004-1440 Required Postings; 437-004-1450 Extinguishers; 437-004-1460 Fire Prevention Plan; and 437-004-1470 Employee Equipment and Training.
- **Division 4/N:** OAR 437-004-1680 Storage of Hazardous Chemicals.
- **Division 4/Z:** OARs 437-004-9800 Hazard Communication Standard for Agricultural Employers; and 437-004-9850 Pipe Labeling.

Division 4/B:

437-004-0100 Universal Definitions.

The definitions of terms that are used in more than one subdivision of Division 4 were modified to be consistent with the “globally harmonized” Hazard Communication Standard. Examples include definitions for “Flammable liquids,” “Health hazards,” and “Physical hazards.” Additional terms and definitions were added; and, terms were deleted if they were no longer used in Division 4, or if the definition was the same as the dictionary definition.

437-004-0150 Standards Organizations.

The contact information for standards organizations referenced in Division 4 was updated, to include the most current organization names, physical addresses, phone numbers, and web site addresses.

Division 4/H:

437-004-0720 Flammable Liquids.

The definitions in 437-004-0720 were modified to be consistent with the “globally harmonized” Hazard Communication Standard. A table was added to better explain the maximum allowable sizes of various types of portable containers and portable tanks used for flammable liquids. Notes were added to cross-reference this rule with similar requirements in other subdivisions, such as 4/L Fire and 4/S Electrical. New notes allow employers to comply with either the specific editions of the NFPA codes listed or a more recent edition of the same code.

Also, a new, non-mandatory *Appendix A to OAR 437-004-0720 Flammable Liquids* compares the Globally Harmonized System (GHS) of classification for Flammable Liquids with the National Fire Protection Association (NFPA) system of classification for Flammable and Combustible Liquids.

437-004-0725 Spray Finishing.

New language and a note clarify the types of activities that would require agricultural employers to follow the Division 2 Spray Finishing rules and the types of activities that are not covered by those rules.

437-004-0950 Hazardous Waste Operations and Emergency Response (HAZWOPER.)

New language and notes clarify the types of activities that would require agricultural employers to follow the Division 2 HAZWOPER rules as well as the types of activities not covered by those rules.

Division 4/L:

437-004-1430 Sources of Fire.

The definitions of terms used throughout Subdivision 4/L were moved to this rule. New notes cross-reference other Division 4 rules pertaining to fire hazards.

437-004-1440 Required Postings.

A new note allows alternative wording for the required warning signs in fueling / dispensing areas, flammable liquid storage areas, and areas where “...there may be flammable or explosive gases, vapors, mists, dust, fibers or flyings.”

437-004-1450 Extinguishers.

Terminology changes, only.

437-004-1460 Fire Prevention Plan.

Terminology changes, only.

437-004-1470 Employee Equipment and Training.

Title of rule changed to include equipment as well as training. Terminology changes, only, in the rule.

Division 4/N:

437-004-1680 Storage of Hazardous Chemicals.

Rule was reformatted to separate the general requirements for the storage of hazardous chemicals – in (1) through (4) – from the additional requirements for the storage of Restricted Use Pesticides in (5).

Language was added to several rules to clarify the main hazard addressed by certain requirements. For example, hazardous chemicals must be stored in separate, labeled areas in order to prevent hazardous reactions from the mixing of incompatible types of chemicals.

The ventilation requirements were modified to “...as needed to keep air contaminants below 25 percent of the lower explosive limit (LEL).” (Previous rule read “lower exposure limit” – an inadvertent typographical error.)

For clarity, the additional requirements for storing Restricted Use Pesticides were grouped together at (5.)

- a. Areas must be locked to prevent access by unauthorized persons. (Previous rule only listed “unauthorized employees.”)
- b. Employer to provide separate sections within the storage area for each category of pesticide product and label them by general category. (Examples include: insecticides, herbicides, fungicides, fumigants.)
- c. New options are allowed for preventing the absorption of hazardous chemicals into floors and shelves. (Previous rule required them to “have coatings or sealants...”) Now, they can be constructed of a chemically-resistant material, or be coated/ sealed, or be provided with secondary containment.
- d. Employer must prevent any leaked or spilled chemical from leaving the confines of the storage area. (Previous exception to this requirement for storage structures “where there are normally no employees” was removed.)

NOTES reference other Division 4 rules with requirements that could also apply to chemical storage areas.

Division 4/Z: 437-004-9800 Hazard Communication Standard for Agricultural Employers.

The requirements of the Division 4, Hazard Communication Standard (HCS) are consistent with the HCS for general industry as aligned with Globally Harmonized System of classification and labeling of chemicals (GHS.)

437-004-9800 does not include the parts of the general industry HCS that apply only to producers, distributors, and importers of chemicals because these are not typical activities for agricultural employers.

Noteworthy changes to the standard are listed by paragraph:

Paragraph (2) *Scope and application.*

(2)(b) clarifies that **437-004-9800** applies to agricultural employers engaged in crop- or product-related quality control- or quality assurance-type laboratory work. (Division 4/Z, 437-004-9860, Hazardous Chemicals in Laboratories applies to specific types of laboratory activities, instead of the HCS.)

(2)(c) clarifies that any employer who produces, imports, or distributes chemical products must follow the more detailed rules that apply to those activities in Division 2/Z, 1910.1200.

(2)(d) lists all of the exempted hazardous substances (such as hazardous waste, “articles,” biological hazards) that, under the specific circumstances described are not required to be included in an agricultural employer’s hazard communication program.

NOTE: Because it has been a source of confusion, the list of hazardous chemicals whose labels are not covered by the general industry Hazard Communication Standard are NOT included in the new **437-004-9800**. (This exemption applies to manufacturers covered by other labeling regulations. Examples include consumer products whose labels are covered by the Consumer Product Safety Commission; and pesticide products whose labels are covered by the Environmental Protection Agency.) Instead, the new rule emphasizes the agricultural employers’ responsibility to ensure that all containers of hazardous chemicals in their workplaces are properly identified, as described at (5).

Paragraph (3) is now “Reserved.” The definitions used in the HCS were moved to the end of the rule, at (11).

Paragraph (4) *Written hazard communication program.*

(4)(b)(C) adds the requirement for employers at multi-employer workplaces to include in their program their methods for notifying other employers about areas where exposure to pesticides is a hazard because pesticides are being or will be applied or areas are under a Restricted Entry Interval.

Paragraph (5) *Labels and other forms of warning* focuses on workplace labeling requirements.

(5)(f) creates a new exception for the labeling of pesticide application equipment (such as spray tanks and backpack-type sprayers.) These do not require labeling as long as the pesticide product label is readily accessible to the pesticide handlers during handling activities.

Paragraph (6) *Safety Data Sheets (SDS)* focuses on workplace SDS requirements. Most of the information about manufacturer's responsibilities was removed from this section.

(6)(g) provides a new explanation of safety data sheets as employee exposure records and cross-references the requirements in 437-004-0005 Access to Employee Medical and Exposure Records.

Paragraph (7) *Employee information and training.*

(7)(a)(B) clarifies the training requirements for employees who only handle chemicals in sealed, unopened containers. As in the general industry rule, employers must give them training "to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container."

(7)(d) allows agricultural employers the options of either giving all of their employees a copy of, or provide them with training that covers the information in the Oregon OSHA publication #1951 "Safe Practices When Working Around Hazardous Agricultural Chemicals." (Previously, giving them a physical copy was the only option.)

(7)(e) as was the case in the previous rule, reduced training requirements are allowed for employees doing only field hand-labor operations where their only potential exposure is to residual pesticides. Employers must, at a minimum:

- Give each employee a copy of or provide training that covers the information in the Oregon OSHA publication #1951, "Safe Practices When Working Around Hazardous Agricultural Chemicals"; and,
- Provide information about the location and availability of, and ensure that employees have access to safety data sheets for these.

It is Oregon OSHA's position that the terms "train" and "instruct" mean to present information in a manner that employees are capable of understanding. The purpose of training is to provide employees with information that will allow them to work in a safe and healthful manner. (See Oregon OSHA's [Policy statement](#) from 2010.)

Paragraph (10) *Phase-in dates for new rule requirements.*

(10)(a) adds the requirements for additional training (on the GHS-related changes to labels and SDSs) with a phase-in date of February 1, 2015. This is a date approximately six-months after adoption of the rule, as proposed.

Paragraph (11) *Definitions.*

In the interest of creating a more concise rule that aids employers in understanding the requirements that apply to them, the definitions section was moved from paragraph (3) to paragraph (11), at the end of the rule.

Appendices to 437-004-9800.

The previous Appendices A, B, and C to 437-004-9800 were deleted.

New documents for labels, pictograms, safety data sheets, and phase-in dates, are provided to aid employers with the phased-in requirement for additional training on the GHS-related changes to product labels and SDSs. These documents are provided in English and in a Spanish version and are posted on our web site www.orosha.org.

437-004-9850 Pipe Labeling.

Paragraph (1) The scope of the rule was expanded to apply to piping systems that transport substances in a hazardous state in addition to those that contain hazardous substances or that use asbestos as insulation material. Substances "transported in a hazardous state" typically refer to the hazards of pressure and temperature. Examples include compressed air, hot water or steam, and cryogenic liquids or gases.

(The rule does not apply to buried pipe.)

Paragraph (3)(b) allows the employer to use, within defined parameters, an alternative warning method, instead of affixing labels to individual pipes.

Paragraph (3)(c) provides GHS-consistent hazard statements for labeling pipe that uses asbestos as insulation material. The same alternative warning methods defined in (3)(b) are allowed for this type of pipe.