



INTEROFFICE MEMORANDUM

Oregon Occupational Safety & Health Division

January 27, 2006

TO: All OR-OSHA Staff
FROM: Marilyn K. Schuster, Policy Manager
SUBJECT: Policy Guidelines regarding Respiratory Protection in Agriculture: OAR 437-004-1040

Background

When Division 4 was adopted, the respiratory protection rule (OAR 437-004-1040) was created based on modifications/adaptations to the old respirator rule. This approach stemmed from input obtained from the Ag Advisory Group during the rulemaking. This rule is unique in that it blends some concepts from the current Division 2, 1910.134, Respiratory Protection standard, with much of the old standard. It is unique in its own right, and therefore, must be interpreted accordingly.

A series of issues were brought forth to Technical based on agricultural inspections related to the pesticide emphasis program. This response will serve as division policy. You will notice differences between these interpretations and Division 2. We intend to address these in a 2006 Division 4 rulemaking specific to respiratory protection.

1. Required Use of Respiratory Protection: OAR 437-004-1040(1)

Respirators are required to be used:

- where overexposure(s) to air contaminants listed in Division 4/Z are documented by compliance officers; or
- when the pesticide label requires the use of respiratory protection. OAR 437-004-1040 is applicable and enforceable.

Exceptions to Required Use:

- If employees must wear respirators because their employer says so, but neither a product label nor OAR 437-004-1040 require it, we will recognize this as the employer's policy. Since compliance is not required, OR-OSHA will not cite the employers for a deficiency in their own policies.

- These rules do not address voluntary use of respiratory protection. Interpretive guidance based on Division 2, 1910.134, is not applicable to agriculture. However, OR-OSHA resources on this subject can be used as recommendations for best practice:

<http://www.cbs.state.or.us/external/osha/pdf/pubs/fs05.pdf>

2. Requirement to Evaluate Respiratory Hazards: OAR 437-004-1040(3)

Employers are required under this rule to evaluate respiratory hazard(s) present in a worker's work area, including the identification of the contaminant and its physical state. This provides the employer with information necessary to select the appropriate type of respiratory protection, and to use it consistent with the NIOSH Certification and manufacturer's instructions.

3. Medical Evaluations, OAR 437-004-1040(2)(i)

When respirator use is required, the employer must review the respirator user's ability to wear a respirator on an annual basis. There is no identified 'grace period' beyond twelve months that provides leeway in meeting this requirement. However, there may be extenuating circumstances that the compliance officer deems credible for which delays may occur. An example would be an employer is actively working with a licensed healthcare professional and delays occur beyond the employer's immediate control. The basis for this consideration is the employer's due diligence to meet this requirement and delays are not excessive.

The employer's written respiratory protection program must address their procedures for evaluating the respirator users physical ability to wear a respirator.

OAR 437-004-1040(2)(i) reads as follows:

Do not assign workers to tasks requiring use of respirators unless they are physically able to do the work and use the equipment. A physician must make the determination based on the appropriate health and physical standards. Periodically review the respirator user's medical status. (At least annually.) The employer must give the physician the appropriate information about the worker to facilitate the examination. "Tasks requiring use of respirators" means that workers experience an overexposure to any chemical regulated by OR-OSHA or the pesticide label requires employees to wear respirators when they are mixing and/or applying the pesticide.

A "physician" is interpreted to mean an individual who is legally permitted by their license, registration, or consultation, to independently provide health-care services required in OAR 437-004-1040(2)(i). In Oregon, physician assistants and licensed nurse practitioners have such scope of practice provisions.

"Appropriate health and safety standards" means the physician is relied upon to determine what information, e.g., medical history and medical test, consultations or diagnostic procedures, is needed to adequately support a worker's ability to wear respiratory protection.

One source of information is the medical evaluation questionnaire contained in OAR 437-002-1910.134, Appendix C, "OSHA Respirator Medical Evaluation Questionnaire." For purposes of Division 4, use of this medical questionnaire is non-mandatory; it is a recommendation only.

The employer shares in the responsibility to provide a physician with information about the worker's job duties, e.g., type and weight of respirator to be used, duration and frequency of respirator use, expected physical work effort, use of personal protective clothing and equipment to be worn, and temperature and humidity extremes, to aid in a physician's determination of a worker's ability to wear a respirator.

"Examination" does not mean the actual physical examination; it is the physician's evaluation of the information provided by the employer. The physician will determine if a physical examination is needed, based on the information provided by the employer.

4. Emergency Use & Escape-Only Respirators

This rule uses the term 'emergency use' generically to describe both emergency-use respirators and escape-only respirators. If emergency-use respirators are mandated by a specific rule, or if the employer provides emergency-use respirators based on their evaluation of respiratory hazard(s) in work area(s), the provisions of OAR 437-004-1040 must be followed in their entirety.

Where escape-only respirators are provided by the employer, medical evaluation and fit testing are not required for employees whose only use of respiratory protection would be escape-only respirators.

This memorandum combines and replaces previous memos dated April 29, 2003 & September 28, 2005.