

Summary of Comments and Agency Decisions

Title: Preamble for changes to *Division 4/A, Agriculture/General Subjects; Division 4/C, Agriculture/Safety Awareness; and Division 4/K, Agriculture/Medical/First Aid*

Administrative Order Number: AO 4-2010

Adopted Date: July 8, 2010

Effective Date: January 1, 2011

These changes result from legislation, input from the regulated community, and input from Oregon OSHA staff. Interested parties shared their suggestions, concerns, and issues during the rule writing process and many were incorporated into these rules. To begin the process of rule writing, Oregon OSHA gathered a group of stakeholders representing small and larger agricultural businesses and agriculture-related services. This group worked over a period of several months and met twice early in 2009 to review numerous subdivisions from Division 4. Rulemaking was delayed due to staff changes in the Technical Section. The three parts of Division 4 that Oregon OSHA chose to bring forward first were Subdivisions A, C, and K. The proposed changes were published March 17th, 2010. Two public hearings were held: April 27th, 2010 at the Rockford Grange in Hood River, Oregon; and April 29th, 2010 at the Labor and Industries Building in Salem, Oregon. The comment period closed on May 7th, 2010.

Division 4/A, Agriculture/General Subjects. Changes affect *OAR 437-004-0002, 437-004-0003, 437-004-0004* (rescinded) and *437-004-0099*.

There were no comments received during the open comment period related to the proposed changes in Subdivision A.

Changes to ***437-004-0002, Scope***, cross-reference and clarify the Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes to which the Division 4/Agriculture rules apply. Two notes are added. One clarifies the criteria for determining whether an employer classified under *SIC 0723/ NAICS 115114 (Crop Preparation Services for Market)* is an agricultural employer covered by Division 4 or a general industry employer covered by Division 2.

The other *Note* clarifies Oregon OSHA’s criteria for determining whether an employer classified under *SIC 0831/ NAICS 113210 (Forest Nurseries and Gathering of Forest Products)* is covered by Division 4 or is a forest activities employer covered by Division 7. A commenter noted that a federal court had broadly interpreted the definition of “agricultural worker”-- as used in the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Protection Act -- to include workers gathering pine straw. Oregon OSHA’s reason for separating employers in this SIC/ NAICS who are involved in different activities is only to clarify the scope of the Division 4 rules. The issue here is not to limit the protections covering agricultural workers as more broadly defined under the laws mentioned, but to divide out employers under Oregon OSHA’s jurisdiction to either the Division 4 or the Division 7 rules.

The activities considered agricultural (under Division 4) in this SIC/NAICS code apply agricultural or horticultural techniques to produce commodities other than wood products. Gathering wild commodities from forest areas, utilizing natural resources, or harvesting uncultivated natural growth are considered forest activities and are under the scope of Division 7.

Changes to **437-004-0003, *Exclusive Coverage***, add titles to the rule numbers in *Division 1* that do not apply to agricultural employers. The rules in *Division 4* that apply are identified with the corresponding OAR numbers and titles. A note emphasizes that *ORS 654, Oregon Safe Employment Act* applies to all workplaces in Oregon, including those in agriculture. Another note that reminded employers of the two basic elements necessary for an Oregon OSHA citation was determined to be unnecessary and removed.

437-004-0004 was rescinded because it duplicated the adoption of the pesticide Worker Protection Standard. (See *Division 4/W, OAR 437-004-6000.*)

In **437-004-0099, *General Standards, (1)(b)***, the rule for employers to “Keep all safeguards or devices operating properly and fully effective at providing the protection originally intended,” puts the former requirement into plain language.

Rules for inspecting workplaces in **(3)** and for investigating time-loss injuries and illnesses in **(4)(a)** are cross-referenced with the changes in *Subdivision 4/C*.

All of the other **437-004-0099** rules are included without modification. A note under *Employment of Minors* provides updated contact information for the Wage and Hour Division of the Bureau of Labor and Industries.

Division 4/C, Agriculture/Safety Awareness. Changes to *OAR 437-004-0240, Safety Orientation for Seasonal Workers*; *437-004-0250, Safety Committees* (rescinded); and *437-004-0251, Safety Committees and Safety Meetings* (added).

Background.

The change in requirements for all Oregon’s employers to establish and administer a safety committee or allowing certain employers to involve employees in promoting safety and health through less formal safety meetings was prompted by *House Bill (HB) 2222*, passed into law by the 74th Oregon Legislative Assembly – 2007 Regular Session. *HB 2222* required the Department of Consumer and Business Services to adopt safety committee and safety meeting rules that address membership, frequency of meetings, maintenance of written records, and compensation for employee’s time spent in training and attending.

The Department was also required to prescribe the duties and functions including procedures for workplace safety inspections; for investigations of all safety incidents, accidents, illnesses, and deaths; and guidelines for the training of safety committee members. In addition, the legislature mandated that the Department prescribe alternate forms of safety committees and safety meetings to meet the special needs of small employers, agricultural employers and employers with mobile worksites.

Changes to the *Division 1, Safety Committees and Safety Meetings Rules, OAR 437-001-0765* – that apply to all workplaces under Oregon OSHA’s jurisdiction except those under *Division 4/Agriculture* and *Division 7/Forest Activities* – were adopted September 19, 2008 and became effective January 1, 2009. (The effective date for employers with 10 or fewer employees not engaged in construction was September 19, 2009.)

These changes to *Division 4/C, Safety Awareness*, complete the Oregon Department of Consumer and Business Services/ Occupational Safety and Health Division’s responsibility to comply with *HB 2222*. Consideration of the special needs of agricultural employers is based on whether or not their employees are seasonal workers and on the number of non-seasonal workers at any one location.

- 1) Agricultural employers of all seasonal workers must provide effective basic safety awareness information as specified in *OAR 437-004-0240*.
- 2) Agricultural employers of all other full-time and part-time workers must either establish and administer an effective safety committee or hold monthly, effective safety meetings as specified in *OAR 437-004-0251*. All employers can choose to have a safety committee. The safety meetings option is open only to employers with ten or fewer employees at a location.

The Division 4/C, Agriculture/Safety Awareness rules were adopted on July 8, 2010 and become effective on January 1, 2011.

In *437-004-0240, Safety Orientation for Seasonal Workers, Definitions:*

For the convenience of the reader, a definition of hand labor operations is added that mirrors the definition in *OAR 437-004-1110, Field Sanitation for Hand Labor Work*. The more limited training requirements for this type of work are cross-referenced in a note following (2)(b).

The March, 2010 proposal included a change to the definition of seasonal worker, limiting the time that a worker is considered seasonal to three or fewer months in a calendar year. The majority of comments opposed revising the definition for a variety of reasons. The current definition was maintained in the final rule that states, "Seasonal workers are employed in a job tied to a certain time of year by an event or pattern and for not more than 10 months in a calendar year."

The definition of non-seasonal worker included in the March 2010 proposal was deemed unnecessary and not included in the final rule.

The former safety orientation rule pertained to seasonal workers but applied only to agricultural employers with ten or fewer non-seasonal worker. Requirements for employers with more than ten non-seasonal workers who also had seasonal workers were essentially the same but were covered in the former safety committee rule in *437-004-0250(8)*. *OAR 437-004-0240* now applies to all agricultural employers with seasonal workers, independent of whether they employ non-seasonal workers.

The worksite-specific basic safety awareness information for seasonal workers is outlined in (2)(a). This information must be provided at the worker's orientation meeting before beginning work for the first time and when work conditions or locations change in a way that could reasonably affect their safety or health.

The basic safety awareness information required is outlined in (2)(a)(A) through (D). The provisions are the same as the former rules but expressed in plain language. The employer must provide seasonal workers with at least the following information:

- (A) Safety and health rules for their work.
- (B) Procedures for workers to contact supervisors or managers in case of accident, illness, or problems related to safety or health.
- (C) Procedures for treating injured or sick workers and for summoning emergency assistance.
- (D) The location of posted safety and health information.

In (2)(b), a new provision reinforcing existing requirements in the Hazard Communication rules for Agriculture – in 4/Z: 437-004-9800(7) -- and the pesticide Worker Protection Standard – in 4/W: 170.130(a)through(d) -- requires employers who have employees with language barriers to communicate safety awareness information in a manner that workers can understand. Employers are directed to include content that is either translated into the language used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media. This is consistent with Oregon OSHA's policy concerning training of employees. For more information, see:

<http://www.osha.oregon.gov/interps/2010/worker-training-standards.pdf>. Those giving testimony on the subject at both hearings recognized the importance of providing effective training but commented that it would take time and resources to put together multi-language or non-verbal training materials.

The March 2010 proposal also included a requirement that the provider of this basic safety awareness information must be able to understand and respond to worker's questions. Comments at both hearings noted that this would require all employers to have persons fluent in all the languages of all their employees as trainers and this would create a logistical problem, a financial hardship, and a potential legal liability. This requirement was removed from the final rule.

Notes following (2)(b) cross-references the training requirements under the Hazard Communication Rule in *Division 4/Z, 437-004-9800* and the pesticide Worker Protection Standard in *Division 4/W, 170.130(c)* with the required basic safety awareness information. This information is included to help clarify the minimum training requirements for seasonal workers who perform only hand labor operations.

437-004-0251, *Safety Committees and Safety Meetings* replaces *437-004-0250, Safety Committees*.

Definitions, taken from *437-004-0250*, are included for Management, and Workers. The definitions of non-seasonal and seasonal workers included in the March 2010 proposal were removed from the final rule.

A **purpose** statement for both safety committees and safety meetings is included. The purpose of safety committees and safety meetings is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in each workplace. This duplicates the purpose of the safety committee in the old rule.

Added in the new rule are specific ways that the safety committee assists the employer by establishing procedures, performing inspections, evaluating safety and health programs, and recommending changes in workplace conditions and practices.

For safety meetings, cooperation and participation is emphasized. Workers and management must work together to recognize hazards and to make safety and health improvements at the workplace.

As stated in (I), the safety committee and safety meeting rules apply to agriculture employers with workers, excluding seasonal workers. Most other references to seasonal and non-seasonal workers were replaced with “workers.” In the former *Division 4/C* safety committee rule, a committee was only required if the employer had more than ten non-seasonal workers or, if they had ten or fewer employees and had one or more lost workday cases during a 12-month period.

The general requirements in (2) apply to all employers, whether they will have a safety committee or safety meetings. In (2)(a), employers are required to either have an effective safety committee or to hold effective safety meetings, based on the options in Table 1. All agricultural employers can choose to have a safety committee. Employers with ten or fewer workers at a location, including satellite and auxiliary worksites, can choose the option of having monthly safety meetings instead of a safety committee at that location. Employers with eleven or more workers at a location are required to have a safety committee and are not permitted to choose the safety meeting option. Table 1 in the March 2010 proposal referred to non-seasonal workers in each option. In the final rule, these are all replaced with “workers.”

In (2)(b), all employers who have employees with language barriers must communicate safety awareness information in a manner that workers can understand. They are directed to include content that is either translated into the language used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media. This is the same language used for employers of seasonal employees in *OAR 437-004-0240(2) (b)*.

The statement in the proposed rule, “If you hire both seasonal and non-seasonal workers, follow these rules for the non-seasonal workers and *OAR 437-004-0240* for the seasonal workers” was thought to be unnecessary because of the addition of application statements and was removed from the final rule.

A *Note* following (2)(c) states that nothing in the rules prohibits employers from allowing seasonal workers to attend safety meetings.

Once employers decide how they will implement their safety awareness program, either by establishing and administering an effective safety committee or by holding effective safety meetings, they can follow the specific requirements in each category. Many of the provisions of the former safety committee rule were maintained in the new rule under (3) *Safety Committees*. The rules under (4) *Safety Meetings* are all new to Division 4, but follow many of the requirements created for the Division 1 safety meeting rules.

What has changed in the new Safety Committee rules, OAR 437-004-0240(3)?

The safety committee section is reorganized into categories. The requirements in (3)(a) related specifically to **management's duties** are brought together from various parts of the old rule. Included here are the duties to pay members their regular rate of pay for attending to the functions of membership; to provide members with timely access to the safety committee rule and all Oregon OSHA standards that apply to their work; and to respond to the recommendations of the committee within a reasonable time.

In (3)(b), the **effectiveness** of the committee is evaluated by determining the employees' awareness or knowledge of their rights related to the committee, the employer's method or system of reporting health and safety issues, and the sharing of information that occurs through the committee. A requirement from the old rule, that workers must know the committee's responsibility to review all incident and accident reports was thought to be redundant and removed in the new rule.

In (3)(c), a **centralized committee** is permitted under the same circumstances as those permitted in the former rule for combined or joint committees, except the alternate requirement that the locations employ some of the same workers was removed. These committees must meet the requirements of an effective committee as defined in the rule and must represent the safety and health concerns of all workers at all locations

A guideline for determining the minimum number of committee members is outlined in (3)(d), **Membership and Training**. A provision that members should represent the major activities of the employer's business is added in (A).

In (3)(d)(B), the committee is required to have an equal number of employer-selected members and worker-elected or volunteer members. There is also a provision that if both parties agree, the committee may have more worker-elected or volunteer members. A **note** is added here stating that management can select a supervisor or other employee to represent them. Workers can volunteer or elect any peer as a representative. The former safety committee rule stated, "Do not coerce workers to serve on the committee. Give all workers the opportunity to volunteer to serve on the committee. If there are no volunteers, the employer may appoint the member(s)."

The key word in the explanatory note is “peer.” The advisory committee debated whether it is acceptable for workers to elect a supervisor to represent them on the safety committee. Some felt that it was a bad idea to allow someone from management to represent the workers, even if that individual were elected. Some pointed out that it is difficult to obtain volunteers or anyone who will agree to be elected to serve on the safety committee. Another concern was that elections in multi-cultural, agricultural workplaces may not meet our “civics class ideals,” especially where there is no common cultural background and no common language. Another complication is that employees who speak more than one language -- a definite advantage when representing employees’ interests in multi-lingual workplaces -- often become working foremen or supervisors. The point was also made that an employee may be a working foreman or supervisor on one job and not on another.

The decision reflected in the final rule is that employees in these circumstances should not be barred from serving on the committee. As in general industry, employee groups comfortable with having their foreman or supervisor represent them on the safety committee may now elect them to do so. The intension is that an election would be a deliberate decision made by the represented workers and that this will expand participation. The point is not the status of the individual serving, but how well that individual represents the safety and health interests of the employees represented.

In **(3)(d)(C)**, an additional requirement for training in the principles of accident investigation is added to the training requirements on the purpose and operation of the safety committee and the training requirements in hazard identification from the former safety committee rule. Safety committee members must be trained in the principles of accident and incident investigations so that they may effectively evaluate those events. It is difficult to get to the root cause of an accident and make suggestions that will prevent future accidents without understanding those principles.

This is an extension of the same logic behind the requirement for training in hazard identification. Employees providing assistance to the employer as a member of the committee must be able to recognize hazards associated with their workplaces. Trained committee members are more effective at inspecting the workplace, reviewing reports from safety and health inspections, and performing and evaluating incident and accident investigations. They have a better understanding of the rules, standards, and issues when making recommendations to the employer for improving work practices or workplace conditions.

In **(3)(d)(D)**, a new provision is added to have members serve a minimum of one year, when possible. This was taken from the Division 1 revised safety committee rule. Experienced, trained safety committee members are an asset to the employer. It is understood that it may be difficult to keep a safety committee member for a year or more due to the turnover in the industry. The language “when at all possible” has been added in recognition of this problem. It is also desirable for members to stagger their start dates to allow at least one experienced member to remain on the committee as others complete their one-year obligation. One year is a minimum and does not imply that members should resign from service at the end of a year.

In **(3)(d)(E)**, requiring a majority to agree on a chairperson is also new to Division 4. Unlike the Division 1 safety committee rule, the previous agriculture rule did not address the selection of a chairperson. The final rule allows members to agree upon a chairperson. The person running the meetings, organizing the details and following up on issues may be the person who can most effectively direct the committee, and it may not take an election to recognize that fact. The majority of committee members must agree on who that person will be.

In **(3)(e) *Safety Committee Functions***, the committee must do all of the following:

(A) Meet at least monthly, except in those months when quarterly inspections occur.

(B) Establish procedures for doing the quarterly safety and health inspections required by *OAR 437-004-0099(3)*. Persons performing inspections must be trained in hazard identification.

OAR 437-004-0099(3), Inspections states that a competent person or persons must inspect every place of employment at least quarterly. It also states that *OAR 437-004-0251* has other requirements related to these inspections. Performing inspections is listed in the purpose statement among the specific ways that the safety committee can aid the employer. While, in contrast to the former rule, committee members are not specifically required to perform these quarterly inspections, **(A)** makes them available and **(B)** requires them to establish procedures for the inspections and specifies that the inspectors must be trained in hazard identification. Employers with trained safety committee members should make use of those employees to fulfill their workplace inspection responsibilities.

The committee's procedures should ensure that the inspections will occur in a proactive, relevant way. When possible, inspections should anticipate the seasonal use of facilities and equipment so that safety and health issues can be addressed prior to workers' potential exposure to hazards. The committee may work with the employer or the competent person who has been performing these inspections in the past to develop checklists that will simplify the inspection process or they may decide on other procedures.

(C) Review all quarterly safety and health inspection reports and make recommendations to eliminate identified hazards.

Quarterly workplace inspection reports must be received and reviewed with recommendations made to management for corrective actions in a time sensitive way that keeps the process valuable. The inspection procedures should identify who will be providing the reports or forms, how much time that person has to submit the information to the committee, who will review the information, how much time the person receiving the information has to submit the recommendations to management, and what a reasonable time frame will be for management to respond. The entire safety committee could assume responsibility for reviewing the reports and making the recommendations or they could appoint individuals or a subcommittee with various responsibilities.

(D) Work with management to establish procedures for investigating all safety incidents, accidents, work-related illnesses, and fatalities. Persons investigating these events must be trained in the principles of accident investigation.

Agricultural employers are already required in *OAR 437-004-0099(4)* to investigate every work-related lost time injury. The object of the investigation is to determine how to prevent recurrence. *OAR 437-004-0099(4)* also notes that *OAR 437-004-0251* has other requirements related to these investigations.

In (3)(e)(D), the committee must work with management to establish procedures for investigating all safety incidents, accidents, and work-related illnesses, not just lost-time injuries and fatalities. The requirement to establish investigation procedures was in the former safety committee rules. In the new rules, the committee works with the employer rather than takes sole responsibility for the development of the procedures. Many companies have accident investigation procedures in place and the safety committee may recommend adopting, or reviewing and amending those as appropriate. For companies without developed incident and accident investigation procedures, the safety committee must work with the employer to develop them.

(E) Evaluate all investigation reports and make recommendations for ways to prevent recurrence.

The entire safety committee could assume responsibility for evaluating the reports and making the recommendations or they could appoint a subcommittee with that responsibility. Once the procedures for conducting these investigations have been established, adopted, or amended, the committee must be prepared to evaluate all incident and accident investigations. They must then make recommendations to management that address ways to prevent similar accidents or incidents from occurring. This activity will employ the training the committee members received on the principles of accident and incident investigations. It will also heighten employees understanding of the root causes of accidents. The goal is to assess and control hazardous conditions and work practices.

(F) Set guidelines for the training of safety committee members.

The former rule also required the committee to set its own training guidelines. The basic training requirements for members are stated in the rules. Guidelines could include minimum requirements for acceptable training programs, minimum test results for satisfactory completion of the training, requirements for periodic re-training, timelines for the completion of training to allow full participation in committee functions, and the consequences for any member who has not satisfactorily completed the required training.

(G) Evaluate the accident and illness prevention programs at the workplace.

The former rule also required the committee to evaluate accident and illness prevention programs. Employers are required by Oregon OSHA to have certain types of programs in place, based on the hazards and potential for exposure to those hazards. Examples are the Hazard Communication Program, Respiratory Protection Program, Hearing Conservation Program, pesticide Worker Protection Standard, and others. The committee should evaluate the effectiveness of these programs and identify any deficiencies.

Also, employers generally have some form of an accountability system for promoting safe behaviors. For managers, accountability may be tied to salary and compensation packages. For employees, accountability systems may take the form of disciplinary actions or incentive programs. Accident and illness prevention programs should be designed to hold management and employees alike, accountable for behaviors in the workplace that impact their safety and health. The committee must be active in evaluating the programs that are in place to determine whether or not they are effectively promoting safety and health in the workplace.

In **(3)(f), *Safety Committee Records***, the employer must:

(A) Ensure that records have at least the following information.

(i) Meeting date.

(ii) Names of those attending.

(iii) All reports, inspections, evaluations, recommendations, management responses, and other safety and health-related items brought before the committee.

(iv) The date that management agrees to respond to specific recommendations.

(B) Make these records available to all employees and to Oregon OSHA representatives, upon request.

Making the committee records available to all employees could be accomplished by posting the required information every month in the same area where other required safety and health information is posted, by creating a special safety committee bulletin board in an area frequented by all employees, by providing individual printed copies of the records to each employee or by any other effective means.

(C) Maintain these records for at least three years.

The requirements to keep a record of all meetings, including all reports, inspections, evaluations, recommendations, and items brought before the committee; to make the records available to workers and Oregon OSHA; and to keep the record for three years .were all in the former safety committee rule. The date, the names of those attending, and the date that management agrees to respond to specific recommendations are now also required to be in the record. In the former rule, the employer was required to respond to safety committee recommendations in a reasonable time. Having the date by which management agrees to respond to recommendations in the committee records promotes transparency and accountability.

437-004-0251(4), Safety Meetings.

The **effectiveness** of a safety meeting is determined in **(4)(a)** by evaluating the desired outcomes for employees, outlined in (A) through (C):

(A) Are aware of safety meetings, when and where they are held, and how information is shared between management and workers.

(B) Know that they have a right to have their safety and health concerns heard and questions answered at safety meetings.

(C) Know the employer's method or system for reporting safety and health concerns, incidents, and accidents.

In **(4)(b)**, the safety **meeting requirements** are outlined in (A) through (D):

(A) Include all available employees.

Employers must make certain that they schedule their safety meetings on days and at times that will optimize the number of employees in attendance. They may have to account for employees who do not regularly attend. Some employees may be expected to rearrange their schedules to attend the safety meetings. The intent in allowing safety meetings is not to have a few core employees make decisions for the safety and health of all employees. Rather, all employees should be involved in the safety and health meetings to provide input and to make suggestions or recommendations for improvement when appropriate. The employer may decide the format and the procedures for conducting the meetings.

(B) Include at least one employer representative.

The employer must make certain that at least one management representative with authority to make decisions on safety and health issues attends each meeting. It is important to note that decisions may need to be made at the meetings rather than be put off to a later date. At the very least, the authorized management representative would be able to present the issue to other levels of management for a final, timely decision.

(C) Be on company time with attendees paid at their regular rate of pay.

This requirement is the same as the requirement for safety committees. Employees must be compensated for time spent in meetings at the appropriate rate of pay. For example, if they are on over-time they should be paid at the overtime rate. A note follows instructing employers to contact the Oregon Bureau of Labor and Industries if they have questions about how to calculate rates of pay.

(D) Occur at least monthly.

All employers who choose to hold safety meetings rather than establish and administer a safety committee must meet at least once every month.

At (4)(c) the required **content of safety meetings** is outlined in (A) through (D):

(A) Information about safety and health issues relevant to the workplace.

(B) Reports from quarterly workplace safety inspections and from investigations of any work-related, time-lost injuries, including suggested corrective measures.

The safety meetings of all employers must include information about safety and health topics that pertain to that workplace, quarterly inspection reports, and reports from any accident investigations that focus on identifying ways to prevent accidents from recurring. A note cross-references the requirements in OAR 437-004-0251(4)(c)(B) with OAR 437-004-0099(3) for the quarterly inspections of agricultural workplaces and with OAR 437-004-0099(4) for the investigation of every work-related lost-time injury. Reports from workplace inspections and root-cause investigations are ways to initiate discussions, to increase recognition of hazards, and to work together to implement safety and health improvements at the workplace.

(C) Opportunities for employees to ask questions, bring up safety and health concerns, and make suggestions.

The employer must encourage employees to talk about their concerns and to make constructive suggestions about ways to make the workplace safer and improve work practices. By encouraging “every eye” to focus on safety and health, the employer is better able to take timely corrective action or make proactive improvements.

(D) Information that is presented in a manner that can be understood by all employees.

As stated in the general requirements in (2)(b), all employers who have employees with language barriers must communicate safety awareness information in a manner that workers can understand. They are directed to include content that is either translated into the language used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media.

Requirements for **meeting records** are outlined at (4)(d)(A) *through* (C):

In (A), these notes must include:

- (i) Meeting date.
- (ii) Names of those attending.
- (iii) Topics discussed.

These discussions must be documented with specific enough detail that the topic is identifiable.

In (B), the records must be kept for at least 3 years,

In (C), the employer must make the records available to his employees and to Oregon OSHA representatives, upon request.

Originally, there was no language in the rule for safety meetings that required meetings to be documented. It was understood that the emphasis was to make the safety meeting rules less of a burden on employers who, in the past, were not required to have safety and health meetings. Some on the advisory committee were concerned that meetings would not be effective without some form of documentation for a number of reasons. For instance, without record, there would be a lack of continuity based on who attended the meetings. It would be difficult to track progress made on the safety and health topics discussed. If employees are absent from the meeting, discussions must be documented so they may be shared with those not attending. Requiring some documentation establishes a minimum level of accountability and enables a minimum level of enforcement.

A **note** follows, establishing the minimum that states, “If all your employees attend a safety meeting, you are only required to record the meeting date and a list of the employees attending.”

Division 4/K, Agriculture/ Medical/First Aid. Changes affect *OAR 437-004-1305, Medical Services and First Aid.*

Changes in *Subdivision 4/K, Agriculture/Medical and First Aid, OAR 437-004-1305* are mostly stylistic, putting the existing requirements for first aid, emergency medical treatment, the emergency medical plan, and emergency eyewashes and safety showers into clearer language.

In **(3) *Medical Treatment and Services***, the March 2010 proposal included a requirement for employers to (a) assure the availability of emergency medical services for injured or sick employees and (b) promptly call the emergency services to provide treatment. This revision concerned some people because it could be interpreted to mean that the employer must call an ambulance even for minor injuries. The final rule returns to the original wording in **(3)** that states, “Emergency medical services for injured or sick employees must be available and summoned in time to give appropriate treatment for the circumstances.” The original definition of emergency medical service is also restored in the final rule that states, “Emergency medical service is care by a medically trained person such as in a hospital, clinic, ambulance or rescue vehicle.”

The March 2010 proposal for *(5) Emergency Eyewash and Shower Facilities* was rewritten to address concerns by numerous people. The final rule clarifies when eye-washes, shower equipment, or both are required and defines the minimum standards for both plumbed (potable) and self-contained systems.

In *(5)(a)*, employers must provide employees with emergency eyewash, shower equipment, or both to decontaminate themselves when, based on the hazard:

(A) Employees use a chemical substance that can cause corrosion or permanent tissue damage to the eyes or when the body may be exposed to quantities of materials which are either corrosive or toxic by skin absorption or

(B) Employees handle pesticide products labeled with the signal words “Danger” or “Danger/ Poison” and with a first-aid section on the label that requires rinsing for 15 - 20 minutes for eye or skin exposure.

Most of those commenting on this section focused on the use of pesticide products, and used the phrase “the label is the law” to express their belief that no additional requirements were necessary. Oregon OSHA has chosen to clarify when eye wash and shower equipment requirements apply based on the hazard, both in more general terms that apply to all chemical substances that may be present in the workplace and for pesticide products based on what the pesticide label requires.

Another change from the March 2010 proposal unlinks the availability of plumbed, potable water at the worksite from the type of eyewash and shower equipment that is required. The employer may determine what type of equipment to use and whether it is part of a plumbed, potable water system or a self-contained unit. The employer must, however, meet the requirements listed in *(5)(b)(A)* though *(G)*:

(A) Locate it so exposed employees can reach it and begin treatment in 10 seconds or less. The path must be unobstructed and cannot require the opening of doors or passage through obstacles unless other employees are always present to help the exposed employee.

(B) Install the equipment according to the manufacturer’s instructions.

(C) Valves must stay open once activated, without the use of hands.

(D) Follow manufacture’s instructions for use and inspection.

(E) Fluid quality and temperature must be appropriate for the anticipated types of decontamination treatment.

(F) Flow and pressure must provide the needed treatment without risking injury to the employee.

(G) If the eyewash or shower could freeze, take protective measures to prevent this from occurring.

A note references the most recent ANSI standard for emergency eyewashes and safety showers: ANSI Z358.

In (5)(c), the employer is required to provide any specific decontaminants and to follow any other special treatment procedures, in addition to the eyewash or shower, if these are listed on the product label or in the material safety data sheet.