

Oregon OSHA Proposed Changes to Division 1, General Administrative Rules

June 2009

Text to be added/adopted is in **bold and underlined**.

Text to be removed/repealed is in [~~brackets with line through~~].

437-001-0015 Definitions. The following definitions shall apply to OAR 437, unless the context requires otherwise:

Abatement – Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.

Accepted ~~[D]~~**d**isabling ~~[C]~~**c**laims – Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

Accepted ~~[D]~~**d**isabling ~~[C]~~**c**laims ~~[R]~~**r**ate – The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).

Act – The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).

Administrator – The Administrator of the Oregon Occupational Safety and Health Division (~~O~~**R**-~~regon~~ OSHA).

Affected employee – An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date₁ or variance.

Agent of the employer – The manager, superintendent, foreperson₁ or other person in charge or control of all or part of the place of employment.

Appeal – A written request for a hearing [~~in which~~] to contest a citation, notice₁ or order issued by the Division. Unless the context otherwise requires, any writing [~~which~~] **that** clearly contests,

objects, [tø] or seeks relief from a Division citation, notice, or order shall be construed as an appeal.

Audiometric Zero – The lowest sound pressure level that the average[;] young adult with normal hearing can hear.

Board – The Workers' Compensation Board created by ORS 656.712.

Catastrophe – An accident in which two or more employees are fatally injured, [øf] three or more employees are admitted to a hospital, or an equivalent medical facility.

Citation – A document issued by the Division [pursuant] **according** to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

Complaint – A written or oral report from an employee, employee representative, or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

- (a) Imminent danger
- (b) Serious
- (c) Other than serious

Compliance [Ø]officer – A designated Division employee [whose] responsibility [is to] **for** conducting inspections or investigations; [tø] identifying possible violations and hazards; [and tø] propos[ø]ing citations, penalties, and correction dates[;]; and to assist employers and employees with information to correct violations and hazards.

Comprehensive [G]consultation – [is a] **A** consultation to cover the entire establishment and entails a physical hazard assessment evaluation[;] **and a** review[ø] of records, written programs, and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

Comprehensive inspection – A substantially complete inspection of the establishment. An inspection may be comprehensive even though, as a result of the exercise of professional judgment, not all potentially hazardous conditions, operations, and practices within those areas are inspected.

Consultant – A designated Division employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees, and other agency staff with information, advice, and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices, and development of safety and health programs.

~~[Correction order – A written Division order which directs a person to stop a violation within a given period of time. The term also includes a Red Warning Notice issued pursuant to OAR 437-001-0096.]~~

DART (Days Away, Restricted, or Transferred) [(DART)] – The number of lost workday injury and illness cases experienced by 100 full-time workers (DART rate = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

NOTE: Lost Workday cases include both days away from work and days of restricted time.

Decibel (dB) – Unit of measurement of sound level. For purposes of this rule, decibels refer to the combined average of the readings at 2000, 3000, and 4000 Hz on the audiogram.

Department – The Department of Consumer and Business Services.

Director – The Director of the Department of Consumer and Business Services, or the ~~[D]~~director's designee.

Division – The Oregon Occupational Safety and Health (~~O[R-]regon~~ OSHA) Division of the Department of Consumer and Business Services.

Emphasis Program – A special program that targets Division activity to industries that~~, according to national or state data,~~ have a high potential for serious injuries or illnesses, **according to national or state data.**

Employee – Any individual, **including a minor**, who is currently ~~[employed]~~ or formerly employed, ~~[including a minor whether]~~ **either** lawfully or unlawfully, **and** ~~[employed,]~~ who engages to furnish services for ~~[a]~~ remuneration, financial or otherwise~~[-]~~. **An employee is** subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts, and other public corporations~~[-]~~. ~~[or a]~~ **Any [individual who is] person** provided with workers' compensation coverage as a subject worker ~~[pursuant to]~~ **under** ORS Chapter 656, whether by operation of law or by election, **is also considered an employee for the purposes of these rules.**

Employee exposure record – A record of monitoring or measuring ~~[which]~~ **that** contains ~~[a]~~ qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

Employee medical record – A record ~~[which]~~ **that** contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

- (a) The results of medical examinations and tests;
- (b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and
- (c) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

Employee representative – A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

Employer -

- (a) Any person who has one or more employees, or
- (b) Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker ~~[pursuant]~~**according** to ORS 656.128, or
- (c) Any corporation in relation to the exposure of its corporate officers except for corporations without workers' compensation coverage under ORS 656.128 and whose only employee is the sole owner of the corporation, or
- (d) Any successor or assignee of an employer. For purposes of this definition and ORS 654.005(5)(c), a business or enterprise is substantially the same entity as the predecessor employer if:

(A) A majority of the current business or enterprise is owned by the former owners or their immediate family members, and

(B) One or more of the following criteria exist for both the current and predecessor business or other enterprise:

Substantially the same type of business or enterprise.

Similar jobs and working conditions.

A majority of the machinery, equipment, facility, or methods of operation.

Similar product or service.

A majority of the same supervisory personnel.

A majority of the same officers and directors.

NOTE: Not every element **needs** be present ~~[to find]~~**for** an employer to be a successor. The cumulative facts will determine the employer's status.

Employer representative – An individual selected by the employer, to serve as spokesperson or, in the absence of a selected spokesperson, the person in charge of the place of employment at the time of the inspection.

Environmental ~~[E]~~**exposure** ~~[S]~~**sampling** – Sampling of the workplace environment~~[,]~~ performed for a variety of reasons including~~[,]~~ identif~~ication of~~**ying** contaminants ~~[present]~~ and their sources, determin~~ation of~~**ing** worker exposures~~,~~ and checking the effectiveness of controls.

Establishment – An establishment is a single physical location doing business~~,~~ ~~[or]~~ offering services~~,~~ or ~~[with]~~**having** industrial operations. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas~~,~~ and sanitary services; and similar operations, the establishment is the main or branch office~~[s]~~, terminal~~[s]~~, station~~[s]~~, etc. that either supervise such activities or are the base ~~[from which]~~**for** personnel **to** carry out these activities.

- (a) One location/multiple establishments. Normally, one business location has only one establishment. Under limited conditions, two or more separate businesses that share a single location are separate establishments. An employer may divide one location into two or more establishments only when:

(A) ~~(e)~~Each of the establishments represents a distinctly separate business;

(B) ~~(e)~~Each business is engaged in a different economic activity;

(C) ~~[no one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and]~~

~~[(D) s]~~Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, each business can be a separate establishment.

(b) Multiple locations/one establishment. Only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(A) ~~(f)~~The employer operates the locations as a single business operation under common management;

(B) ~~(f)~~The locations are all near each other; and

(C) ~~(f)~~The employer keeps one set of business records for all the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) Telecommuting from home. For employees who telecommute from home, the employee's home is not a business establishment, ~~[do not keep]~~and a separate 300 Log is not required. ~~[Link e]~~Employees who telecommute **must be linked** to one of [your] **the business**' establishments under 437-001-0700(15)(c).

Farm operation – Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

Filed – A document ~~[shall be deemed]~~is considered to have been filed on the date of postmark if mailed, or on the date of receipt, if transmitted by other means to O~~[R-]~~regon OSHA, DCBS, or the WCB~~[by other means]~~.

First aid – Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, or similar injuries ~~[which]~~that do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though it is provided by a physician or registered professional personnel.

Fixed place of employment – The entire facility maintained by an employer at one general location, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations, fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months.

Hazard – A condition, practice, or act ~~[which]~~that could result in an injury or illness to an employee.

Health [H]azard – Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents, and harmful physical stress agents.

Imminent danger – A condition, practice, or act [which]that exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately.

Injury or illness – An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, [a] skin disease, respiratory disorder, or poisoning. (Note: Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.)

Inspection – An official examination of a place of employment by a [C]ompliance [O]fficer to determine if an employer is in compliance with the Act. [An inspection may be classified as:]

(a) Programmed[.] – **Inspections conducted under the provisions of OAR 437-001-0057.**

~~[(A) Routine inspection — An inspection of a place of employment which is made based principally on that place of employment's record of workers' compensation claims or Standard Industrial Classification and number of employees;~~

~~(i) Emphasis inspection — An inspection made in response to a national or state Emphasis Program.~~

~~(B) Periodic inspection — An inspection made because of a time-related factor, including, but not limited to, intermittent or seasonal employment activity;~~

~~(C) Area inspection — An inspection made because of a geographic factor;~~

~~(D) Random inspection — An inspection scheduled and conducted pursuant to written neutral administrative standards.]~~

(b) Unprogrammed.

(A) Follow-up inspection – An inspection[.]made to determine if a previously [cited]identified violation has been corrected. [or after a request for an extension, a stay of correction time or a variance has been denied;]

(B) Complaint inspection – An inspection made in response to a complaint[.];

(C) Accident investigation – A systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures[.]; and]

(D) Referral inspection – An inspection made in response to a referral.

Letter of [C]orrective [A]ction – A letter stating the corrective action(s) taken by the employer to comply with the violation(s) that were not corrected at the time of the inspection.

Lost workdays – The actual number of days after, but not including, the day of injury or illness [during which]when the employee would have worked, but could not perform all or any part of

~~[his/her]~~**their** normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

~~[Lost Workday Cases Incidence Rate (LWDCIR) (Also see DART) – The number of lost workday injury and illness cases experienced by 100 full-time workers (LWDCIR = Number of lost workday cases times 200,000 divided by the number of employee hours worked).]~~

Medical treatment – Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel, nor does it include treatment ordinarily considered diagnostic or preventative in nature.

MOD (Experience Rating Modification Factor) – Experience rating recognizes the differences among individual insureds with respect to safety and loss prevention. It compares the experience of individual insureds with the average insured in the same classification. The differences are reflected by an experience rating modification, based on individual payroll and loss records, that may result in an increase, decrease, or no change in premium.

North American Industry Classification System (NAICS) – A classification system developed by the Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity. The 2002 edition of the NAICS manual is used for coding.

Order to correct – A written Division order that directs an employer to abate a violation within a given period of time.

Owner – Every person having ownership, control, or custody of any place of employment or of the construction, repair, or maintenance of any place of employment.

Partial inspection – An inspection with focus limited to certain potentially hazardous areas, operations, conditions, or practices at the establishment. The inspection may include review of injury and illness records and any required programs that the compliance officer determines necessary.

Person – One or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

Personal exposure samples – Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their specific work exposures. Personal samplers are placed on the worker to obtain either one continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

Physician or ~~[O]ther [L]icensed [H]ealth [C]are [P]rofessional~~ – A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

Place of employment –

(a) Includes every place ~~[, whether]~~ **that is** fixed or movable~~[-];~~ ~~[whether]~~ indoors, ~~[or]~~ **outdoors**, or underground~~[-];~~ and the premises and structures appurtenant thereto~~[-];~~ ~~where either temporarily or permanently]~~

(b) Includes every place where an employee works or ~~[is]~~ intend~~[ed]~~s to work **either temporarily or permanently.** ~~[and]~~

(c) Includes every place where there is ~~[carried on]~~ any process, operation, or activity related, either directly or indirectly, to an employer's industry, trade, business, or occupation, including a labor camp provided by an employer for ~~[his/her]~~ **their** employees or by another person engaged in providing living quarters or shelters for employees~~[-];~~ ~~but place of employment]~~

(d) ~~[d]~~ Does not include any place where the only employment involves nonsubject workers employed in or ~~[about]~~ **around** a private home.

(e) Does not include ~~[A]~~ any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews, or grandchildren.

Record – Any recorded information regardless of its physical form or character.

Recordable occupational injuries or illnesses – Any occupational injuries or illnesses ~~[which]~~ **that** result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that prevent the employee from performing ~~[his/her]~~ **their** normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or

(c) Nonfatal cases~~[-];~~ without lost workdays ~~[which]~~ **that** result in **transferring** to another job or terminat~~[e]~~ng ~~[of]~~ employment, ~~[or]~~ require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses ~~[which]~~ **that** are reported to the employer but are not classified as fatalities or lost workday cases.

Referral – A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.

Rule – Any agency directive, standard, regulation or statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of the agency and is adopted according to the Administrative Procedure Act. The term includes the amendment or repeal of a prior rule, but does not include, unless a hearing is required by statute, internal management directives, regulations, or statements ~~[which]~~ **that** do not substantially affect the interests of the public.

Scheduling ~~[L]~~list – An electronic or paper list of places of employment or employers scheduled for inspection. ~~[Lists can be in electronic form, paper form or both.]~~

Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

(b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, pneumoconiosis, narcosis, or occupational infections (caused by biological agents), and other cases of comparable severity.

Standard ~~[H]~~Industrial ~~[C]~~classification (SIC) – A classification system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget, for ~~[use in]~~ classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity, ~~[which]~~that is determined by the value of receipts or revenue for services rendered or products produced, or in some cases by the employment or payroll. The 1987 edition of the SIC manual is used for coding.

Standard ~~[T]~~threshold ~~[S]~~shift (STS) – A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.

Substantial failure to comply – When an employer engaged in the production of crops intended for human consumption fails to provide acceptable and accessible toilet facilities, handwashing facilities, or drinking water, and that failure exposes affected workers to a serious hazard likely to result in an injury or illness.

Suspended penalty – A penalty ~~[which]~~that is determined but not assessed.

Variance – The written authority given by the Division to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:

(a) Permanent – A variance that remains in effect until modified or revoked ~~[in]~~ accordance ing to ~~[with]~~ OAR 437-001-0430;

(b) Temporary – A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule;

(c) Research – A variance granted for a stated period of time to allow industrial or governmental research designed to demonstrate or validate new and improved safety or health techniques or products; and

(d) Interim order – The temporary authority for an employer to use an alternative means or method by which the employer effectively safeguards the safety and health of employees until final action can be taken on the variance request.

Violation – The breach of a person’s duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard, or order.

(a) Specific classifications of violations are:

(A) Serious violation – A violation ~~[in which]~~ **where** there is ~~[a]~~ substantial probability that death or serious physical harm could result from an **existing** condition, ~~[which exists,]~~ or from one or more practices, means, methods, operations, or processes ~~[which]~~**that** have been adopted or are in use in a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know ~~[of the presence of]~~**about** the violation;

(B) Other than serious violation – A violation ~~[which]~~**that** is other than a serious or minimal violation; and

(C) Minimal violation – A violation ~~[which]~~**that** does not have a direct or immediate relationship to the safety or health of employees.

(b) Specific types of the above classifications are:

(A) Willful violation – ~~[a]~~**A** violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard, or order.

(B) Unabated violation – A violation that has not been fully corrected by the date ordered.

(C) Repeat violation –

(i) An employer’s second or subsequent violation of the requirements of the same statute, regulation, rule, standard, or order.

(ii) Subsequent violations ~~[shall]~~**will** not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, **“r[R]epeat,” “r[R]epeated,”** and **“r[R]epeatedly”** are used ~~[as]~~ synonym~~[s]~~**ously**.

(D) First-instance violation – An employer’s first violation of a particular statute, regulation, rule, standard, or order.

(E) Egregious – Those conditions which normally constitute a flagrant violation of the **Oregon Safe Employment Act**, ~~[or] O[R-]~~**regon** OSHA standards, or regulations such that each instance of the violation is cited separately.

(c) Combined violation – Multiple violations of the same statute, regulation, rule, standard, or order within an establishment ~~[which]~~**that** have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard, or order.

(d) Grouped violation – Multiple violations of different statutes, regulations, rules, standards or orders, within an establishment ~~[which]~~ **that** have been combined as one violation:

- (A) To indicate an increase in the severity or probability of the violation, or
- (B) Recordkeeping and posting requirements involving the same document, or
- (C) The violations are so closely related as to constitute a single hazardous condition.

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

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order, 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 7-1979, f. 8-20-79, ef. 9-1-79.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

WCD Admin. Order, Safety 9-1983, f. 11-15-83, ef. 11-15-83.

WCD Admin. Order, Safety 2-1984, f. 3-2-84, ef. 3-15-84.

WCD Admin. Order, Safety 12-1984, f. 9-20-84, ef. 11-1-84.

WCD Admin. Order, Safety 9-1986, f. 10-7-86, ef. 12-1-86.

APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 10-1990, f. 5/31/90, ef. 5/31/90 (temp).

OR-OSHA Admin. Order 24-1990, f. 10/10/90, ef. 10/10/90 (perm).

OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.

OR-OSHA Admin. Order 6-1994, f. 9/30/94, ef. 9/30/94.

OR-OSHA Admin. Order 2-1996, f. 6/13/96, ef. 6/13/96.

OR-OSHA Admin. Order 5-1998, f. 10/15/98, ef. 10/15/98.

OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.

OR-OSHA Admin. Order 11-1999, f. 10/20/99, ef. 10/20/99 (temp).

OR-OSHA Admin. Order 4-2000, f. 4/14/00, ef. 4/15/00.

OR-OSHA Admin. Order 11-2001, f. 9/14/01, ef. 1/1/02.

OR-OSHA Admin. Order 7-2002, f. 11/15/02, ef. 11/15/02.

OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.

OR-OSHA Admin. Order 7-2006, f. 9/6/06, ef. 9/6/06.

OR-OSHA Admin. Order 5-2007, f. 9/5/07, ef. 9/5/07 (temp).

OR-OSHA Admin. Order 1-2008, f. 2/22/08, ef. 3/1/08 (perm).

OR-OSHA Admin. Order 2-2009, f. 1/27/09, ef. 2/3/09.

OR-OSHA Admin. Order X-2009, f. X/XX/09, ef. X/XX/09.

437-001-0055 Priority of Inspections. Inspections ~~[shall]~~**will** be prioritized to predominantly focus enforcement activities ~~[up]~~ on places of employment reasonably believed to be the most unsafe. Inspections should **generally** be made according to the following priorities:

(1) Imminent danger – An inspection ~~[shall]~~**should** be made as soon as possible after the Division becomes aware of the condition, ~~[or]~~ practice, **or act that could reasonably be expected to immediately cause death or serious physical harm.**

(2) Fatality, catastrophe or accident – An ~~[investigation may]~~**inspection should** be made as soon as possible after the Division becomes aware of a fatality, catastrophe, ~~[or]~~ accident.

(3) Complaint – An inspection may be initiated when the Division receives a complaint, ~~[and]~~ **based on** the nature **and credibility** of the **allegations** ~~[information indicates the complaint's probable validity].~~

(4) Referral – An inspection may be made if safety or health violations were observed **and referred** by a Division employee; ~~[or other]~~ federal, state, ~~[or]~~ local governmental representative, **or the media, based on** ~~[and]~~ the nature **and credibility of the allegations** ~~[of the information indicates the referral's probable validity].~~

(5) Programmed Inspections – An inspection may be made by following the provisions in OAR 437-001-0057.

(6) Follow-up – An inspection **may be initiated when one or more of the following exists:**

(a) ~~[Shall be initiated when t]~~**T**he employer requests removal of a ~~[R]red [W]warning [N]notice~~; ~~[or].~~

(b) ~~[Shall be initiated when a stay of correction or a]~~**A** variance **request** has been denied; ~~[or].~~

(c) ~~[May be initiated when a]~~**A**n extension of time has been denied; ~~[or].~~

(d) ~~[May be initiated when t]~~**T**he Division believes the employer ~~[is]~~**may** not **be** in compliance ~~[or to]~~ **with a previously cited violation, or needs** monitoring **as they** progress towards correction of a violation; ~~[or].~~

(e) ~~[May be initiated when t]~~**T**he employer is issued an ~~[citation with a correction]~~ order **to correct** for one or more ~~[serious]~~ violations **that if cited could be considered serious.**

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~**4**).

Hist: WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.

OR-OSHA Admin. Order 11-1999, f. 10/20/99, ef. 10/20/99 (temp).

OR-OSHA Admin. Order 4-2000, f. 4/14/00, ef. 4/15/00.

OR-OSHA Admin. Order X-2009, f. X/XX/09, ef. X/XX/09.

437-001-0057 Scheduling Inspections. The following rules are intended to predominantly focus enforcement activities on the places of employment that the director reasonably believes to be the most unsafe.

(1) The Division will schedule programmed inspections according to a priority system based on **written** neutral administrative standards.

(2) The Division will identify the most hazardous industries and places of employment through information obtained from the Department of Consumer and Business Services claim and employer files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, **the Bureau of Labor Statistics Census of Fatal Occupational Injuries, the Oregon Employment Department,** and knowledge of recognized safety and health hazards associated with certain processes. Health hazards include carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, harmful physical stress agents, and biological agents.

(3) Scheduling lists will be provided by the Division to its field offices, at least ~~[on an]~~ **annually** ~~[basis].~~

Note: An employer will be exempt from a programmed inspection of a fixed site from seven days prior to the scheduled date of an Oregon OSHA consultation to 60 days after receipt of the written consultation report.

An employer will be exempt from a programmed inspection of a mobile site from seven days prior to the scheduled date of an Oregon OSHA consultation to 30 days after receipt of the written consultation report.

(4) Scheduling **Safety Inspections for** ~~[of]~~ Fixed Places of Employment ~~[for Safety Inspections].~~

(a) The ~~[following]~~ scheduling lists are designed as an electronic scheduling system used by safety enforcement managers to schedule **inspections at** fixed places of employment for each compliance officer. **Places of employment will be listed by North American Industrial Classification System (NAICS) and randomly selected within each level using the following percentages whenever a list is generated.** The scheduling lists will be sorted by field office. ~~[Employers will be selected and placed on one of four lists based on the following criteria:]~~

For lists generated after October 1, 2010, the random selection will be replaced with a weighted selection that uses the experience modification rating factor. Employers with a MOD greater than, or equal to, 0.75 but less than 1.25 will have a normal chance of being selected for an inspection. Employers with a MOD less than 0.75 will have a 25 percent lower chance of being selected for an inspection. Employers with a MOD greater than, or equal to, 1.25 will have a 25 percent greater chance of being selected for an inspection.

Lists are generated using the following percentages:

(A) [~~List A—Fixed places of employment, excluding agriculture, which have 11 or more employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more accepted disabling claims in the first 12 of the previous 18 months, and 2) no comprehensive safety inspection within the previous 24 months. The employers on this list will be ranked using SIC, Violation History, Weighted Claims Rate, and Weighted Claims as described in subsection (b) of this section.] **30 percent of places of employment under the NAICS identified as List A in Appendix A.**~~

(B) [~~List B—Fixed places of employment, excluding agriculture, which have 10 or fewer employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more accepted disabling claims in the first 12 of the previous 18 months, and 2) no comprehensive safety inspection within the previous 24 months. The employers on this list will be ranked using SIC, Violation History, Weighted Claims Rate, and Weighted Claims as described in subsection (b) of this section.] **25 percent of places of employment under the NAICS identified as List B in Appendix A.**~~

(C) [~~List C—Agriculture places of employment (SIC 01, 02, 0711, 0721, 0722, 0723, 0761, 0762, 0783, 0811) which have 11 or more employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more accepted disabling claims in the first 12 of the previous 18 months, and 2) no comprehensive safety inspection within the previous 24 months. The employers on this list will be ranked using SIC, Violation History, Weighted Claims Rate, and Weighted Claims as described in subsection (b) of this section.] **20 percent of places of employment under the NAICS identified as List C in Appendix A.**~~

(D) [~~List D—Agriculture places of employment (SIC 01, 02, 0711, 0721, 0722, 0723, 0761, 0762, 0783, 0811) which have 10 or fewer employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more accepted disabling claims in the first 12 of the previous 18 months, and 2) no comprehensive safety inspection within the previous 24 months. The employers on this list will be ranked using SIC, Violation History, Weighted Claims Rate, and Weighted Claims as described in subsection (b) of this section.] **15 percent of places of employment under the NAICS identified as List D in Appendix A.**~~

(E) 12.5 percent of places of employment under the NAICS identified as List E in Appendix A.

(F) 10 percent of places of employment under the NAICS identified as List F in Appendix A.

(G) 7.5 percent of places of employment under the NAICS identified as List G in Appendix A.

(H) 5 percent of places of employment under the NAICS identified as List H in Appendix A.

(I) 2.5 percent of places of employment under the NAICS identified as List I in Appendix A.

(J) No more than 0.05 percent of places of employment under the NAICS not listed in Appendix A.

(b) [~~Ranking Factors: The employers on scheduling lists A, B, C and D are ranked using High Hazard SIC, Violation History, Weighted Claims Rate, and Weighted Claims Count. The rankings from each factor are combined to produce a score for each employer, and the employers are ranked by field office based on their score.~~] **Places of employment will not be inspected if any of the following conditions apply:**

(A) [~~High Hazard SIC: The High Hazard SIC ranking comes from the Bureau of Labor and Statistics (BLS) with employers in an industry ranked as number one by BLS receiving a ranking of one and employers in an industry ranked as 200 by BLS receiving a ranking of 200. Employers in a SIC not ranked by BLS receive a rank of 999. For Agriculture lists, all employers will receive the same ranking of 999 since Agriculture SIC's are not ranked by BLS.~~] **A location has received a comprehensive safety inspection within the previous 36 months.**

(B) [~~Violation History: Employers with a violation history will be assigned points for each violation on citations that have become a final order within the previous 36 months. Willful violations are assigned five points, failure to abate violations four points, repeat violations three points, serious violations two points, and other than serious violations one point. Points are added together with the employer having the most points receiving a ranking of one followed by the employer with the next highest points receiving a ranking of two, etc. Employers not inspected within 36 months are given a ranking of zero, which will put them at the top of this category.~~] **A location has received Voluntary Protection Program (VPP) status.**

(C) [~~Weighted Claims Count: Selected Claims from the first 12 of the previous 18 months are assigned points based on the seriousness of the claim. These points are totaled for each employer. Employers are ranked on the total points with the employer having the most points receiving a rank of one, followed by the second highest weighted claims count receiving a ranking of two, etc.~~] **A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).**

(D) [~~Weighted Claims Rate: Employers are ranked in this category with the highest weighted claims rate receiving a ranking of one, followed by the second highest weighted claims rate receiving a ranking of two, etc. The weighted claims count described in (C) above is used to determine the claims rate.~~] **A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.**

NOTE: ~~The selected claims and the points assigned to the selected claims will be identified by the agency in a Program Directive.~~

(E) A location has received two consecutive comprehensive safety inspections with no serious, willful, or egregious violations, and with no inspections of any type resulting in serious, willful, or egregious violations since the date of the first of the two consecutive comprehensive inspections.

(c) The [F]field [O]office [M]managers will provide each [C]compliance [O]officer a list of inspections that are assigned in descending order from lists A through [D]J. The [C]compliance [O]officer will make a reasonable effort to inspect each **place of employment** [employer] on that list prior to receiving another list[;]; however, failure to inspect all **places of employment** [employers] on a list will not invalidate subsequent inspections. The [C]compliance [O]officer's list will generally be followed in descending order but may be inspected in any order to [utilize]use the [C]compliance [O]officer's time efficiently.

~~[(d) No more than one scheduled comprehensive safety inspection will be made at any particular fixed place of employment in any 24-month period unless the place of employment has five or more accepted disabling claims or has processes or operations which vary within the 24-month period.]~~

(5) Scheduling **Safety Inspections for** [of] Construction and Logging [Employers for Safety Inspections].

(a) Construction and logging scheduling lists will be used by safety enforcement managers and compliance staff to focus enforcement efforts on employers with the most hazardous places of employment. Employers will be selected and placed on one of two lists based on the following criteria:

(A) Construction List – The following **written** neutral administrative [criteria] **standards** will be used to select and rank employers on this list: Construction employers [which] **that** have one or more accepted disabling claims in the first 12 of the previous 18 months and are ranked in the top 500 construction employers. The employers on this list will be ranked statewide using [V]violation [H]history, [W]weighted [C]claims [R]rate, and [W]weighted [C]claims [C]count as described in subsection (b) of this section. The 500 employers with the most points will be placed on a list.

(B) Logging List – The following **written** neutral administrative [criteria] **standards** will be used to select and rank employers on this list: Logging employers [which] **that** have one or more accepted disabling claims in the first 12 of the previous 18 months and are ranked in the top 50 logging employers. The employers on this list will be ranked statewide using [V]violation [H]history, [W]weighted [C]claims [R]rate, and [W]weighted [C]claims [C]count as described in subsection (b) of this section. The 50 employers with the most points will be placed on a list.

(b) Ranking Factors: Construction and logging employers are ranked using [V]violation [H]history, [W]weighted [C]claims [R]rate, and [W]weighted [C]claims [C]count. The rankings from each factor are combined to produce a score for each employer, and the employers are ranked based on their score. The top 500 construction employers will be on one list and the top 50 logging employers will be on another list:

(A) Violation History: Employers with a violation history will be assigned points for each violation on citations that have become a final order within the previous 36 months. Willful violations are assigned five points, failure to abate violations four points, repeat violations three points, serious violations two points, and other-than-serious violations one point. [An a]Average points per citation will be determined with the employer having the most points receiving a ranking of one followed by the employer with the next highest points receiving a ranking of two, etc. Employers not inspected within 36 months are given a ranking of zero, [which] **that** will put them at the top of this category.

(B) Weighted Claims Count: Selected Claims from the first 12 of the previous 18 months are assigned points based on the seriousness of the claim. These points are totaled for each employer. Employers are ranked on the total points with the employer having the most points receiving a rank of one, followed by the second highest weighted claims count receiving a ranking of two, etc.

(C) Weighted Claims Rate: Employers are ranked in this category with the highest weighted claims rate receiving a ranking of one, followed by the second highest weighted claims rate receiving a ranking of two, etc. The weighted claims count described in (B) above is used to determine the claims rate.

NOTE: The selected claims and the points assigned to the selected claims will be identified by the agency in a [P]rogram [D]irective.

(c) The field office manager will provide selected [C]ompliance [O]fficers the construction and/or logging lists. The [C]ompliance [O]fficers will make a reasonable effort to locate and inspect those employers on the construction and logging lists, however failure to inspect all employers on a list will not invalidate subsequent inspections.

(6) Scheduling **Health Inspections for** [of] Fixed Places of Employment [for Health Inspections].

(a) The [health] scheduling lists are designed as an electronic scheduling system used by health enforcement managers to schedule **inspections at fixed [site inspections] places of employment** for each compliance officer. **Places of employment will be listed by NAICS and randomly selected within each level using the following percentages whenever a list is generated.** The scheduling lists will be sorted by field office. [Employers will be selected and placed on one of four lists based on the following criteria:]

(A) [List E — Fixed places of employment in SIC of 13, 15-51, 598, 72-76, 80, 822, 8731, 8734, 8744, or 922 which have 11 or more employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more disabling health claims in the previous 36 months, or 2) a health inspection with one or more health violations in the previous 36 months, and 3) no comprehensive health inspection within the previous 24 months.] **7.5 percent of places of employment under the NAICS identified in Appendix B.**

(B) [List F — Fixed places of employment in SIC of 13, 15-51, 598, 72-76, 80, 822, 8731, 8734, 8744, or 922 which have 10 or fewer employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more disabling health claims in the previous 36 months, or 2) a health inspection with one or more health violations in the previous 36 months, and 3) no comprehensive health inspection within the previous 24 months.] **No more than 0.05 percent of places of employment under the NAICS not listed in Appendix B.**

[(C) List G — Agriculture places of employment (SIC 01, 02, 0711, 0721, 0722, 0723, 0761, 0762, 0783, 0811) which have 11 or employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more disabling health claims in the previous 36 months, or 2) a health inspection with one or more health violations in the previous 36 months, and 3) no comprehensive health inspection within the previous 24 months.]

~~[(D) List H—Agriculture places of employment (SIC 01, 02, 0711, 0721, 0722, 0723, 0761, 0762, 0783, 0811) which have 10 or fewer employees. The following neutral administrative criteria will be used to place employers on this list: 1) one or more disabling health claims in the previous 36 months, or 2) a health inspection with one or more health violations in the previous 36 months, and 3) no comprehensive health inspection within the previous 24 months.]~~

~~(b) [Ranking Factors: The employers on the scheduling lists are ranked using Location Weighted Claims Count, Location Violation History, Employer Weighted Claims Count, Employer Violation History, SIC Claims Count, SIC Violation History, and High Hazard SIC. The rankings from each factor are combined to produce a score for each employer, and the employers are ranked by field office based on their score.] **Places of employment will not be inspected if any of the following conditions apply:**~~

~~(A) [Location Weighted Claims Count: Selected location health claims from the first 12 of the previous 18 months are assigned points based on the seriousness of the claim, and these points are totaled for each employer. Employers are ranked on the total points with the employer having the most points receiving a rank of one followed by the employer with the next highest points receiving a ranking of two, etc.] **A location has received a comprehensive health inspection within the previous 36 months.**~~

~~(B) [Location Violation History: Employers with a location health violation history will be assigned points for each health violation per health inspection at the location that have become a final order within the past 36 months. Willful violations are assigned five points, failure to abate violations four points, repeat violations three points, serious violations two points, and other than serious violations one point. Points are added together with the employer having the most points receiving a ranking of one followed by the employer with the next highest points receiving a ranking of two, etc.] **A location has received Voluntary Protection Program (VPP) status.**~~

~~(C) [Employer Weighted Claims Count: Employer selected health claims from the first 12 of the previous 18 months are assigned points based on the seriousness of the claim, and these points are totaled for each employer. Employers are ranked on the total points with the employer having the most points receiving a rank of one followed by the employer with the next highest points receiving a ranking of two, etc.] **A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).**~~

~~(D) [Employer Violation History: Employers with a health violation history are assigned points for each health violation received per health inspection that have become a final order within the past 36 months. Willful violations are assigned five points, failure to abate violations four points, repeat violations three points, serious violations two points, and other than serious violations one point. Points are added together with the employer with the most points receiving a ranking of one followed by the employer with the next most points receiving a ranking of two, etc.] **A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.**~~

~~(E) [SIC Claims Count: Employers are ranked in this category by the number of selected claims in their three digit SIC over the previous 36 months and the weight factor assigned to the selected claims with the highest number receiving a ranking of one followed by the second highest receiving a ranking of two, etc.] **A location has received**~~

two consecutive comprehensive health inspections with no serious, willful, or egregious violations, and with no inspections of any type resulting in serious, willful, or egregious violations since the date of the first of the two consecutive comprehensive inspections.

~~[(F) SIC Violation History (not weighted): Employers are ranked in this category by the number of health violations per number of health inspections in their three digit SIC in the previous 36 months. The three digit SIC with the most violations receives a ranking of one followed by the second most receiving a ranking of two, etc.~~

~~[(G) High Hazard SIC: The High Hazard SIC ranking comes from the Bureau of Labor and Statistics (BLS) with employers in an industry with the number one ranking by BLS receiving a ranking of one and employers in an industry with a ranking of 200 by BLS receiving a ranking of 200. Employers in a SIC not ranked by BLS receive a rank of 999. For Agriculture lists, all employers receive the same ranking of 999 since Agriculture SIC's are not ranked by BLS.~~

~~NOTE: The selected claims and the points assigned to the selected claims will be identified by the agency in a Program Directive.]~~

(c) The ~~[F]field [O]office [M]managers~~ will provide each ~~[C]compliance [O]officer~~ a list of inspections that are assigned in descending order from **the health scheduling** lists ~~[E] through H].~~ The ~~[C]compliance [O]officer~~ will make a reasonable effort to inspect each **place of employment** ~~[employer]~~ on that list prior to receiving another list~~;~~; however, failure to inspect all **places of employment** ~~[employers]~~ on a list will not invalidate subsequent inspections. The ~~[C]compliance [O]officer's~~ list will generally be followed in descending order, but may be inspected in any order to ~~[utilize]~~ **use** the ~~[C]compliance [O]officer's~~ time efficiently.

~~[(d) No more than one scheduled comprehensive health inspection will be made at any particular fixed place of employment in any 24-month period unless the place of employment has five or more accepted disabling claims or has processes or operations which vary within the 24-month period.]~~

(7) Scheduling **Health Inspections for** ~~[of] Nonfixed Places of Employment[for Health Inspections]~~ – An inspection may be scheduled when ~~[from]~~ information **such as** ~~[available to the Division,]~~ recognized health hazards known to be associated with certain processes~~;~~ are reasonably thought to exist at ~~[the]~~ **a** place of employment~~;~~ and the Division determines the location of a work-site].

(8) Random Inspections – The Division will conduct random inspections of places of employment that are scheduled and conducted ~~[pursuant to]~~ **under** written neutral administrative standards. ~~[The standards will be issued as]~~ Program ~~[D]directives~~ **will be issued** and changed when the ~~[D]director~~ believes it necessary to preserve the random nature of the inspections.

(9) Emphasis Inspections – An inspection may be made if the place of employment is included in a ~~[N]national or [L]local~~ safety or health ~~[E]emphasis [P]program~~. Emphasis programs are established by identifying the most hazardous industries and processes through information obtained from the Department of Consumer and Business Services claim files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, **the Oregon Employment Department,** and knowledge of recognized hazards associated with certain processes. Program

~~D~~irectives will be issued to establish and describe emphasis programs and the **written** neutral administrative ~~criteria~~ **standards** that will be used to schedule the inspections.

(10) Farm Labor Housing Inspections – Farm labor housing is a ~~N~~ational and ~~L~~ocal ~~E~~emphasis program. A list of all known farm **labor** housing locations will be sent to field offices annually. Locations may be selected and inspected in any order to make efficient use of available resources. Housing locations not on the list may also be inspected. Farm ~~L~~abor ~~H~~ousing is not an agricultural operation~~;~~; therefore, the agriculture exemption for employers of 10 or fewer permanent, year-round employees does not apply to farm labor housing inspections.

(11) The Division will make reasonable efforts to notify, in writing, each employer whose place of employment is rated as one of the most unsafe places of employment ~~[in the state of the]~~ **that there is** increased likelihood of inspection of the employer's place of employment and ~~[of the availability of]~~ consultative services **are available**.

(a) Notification will be done on an annual basis and sent~~;~~ by regular mail~~;~~ to the last known address on record with the Division.

(b) Failure to provide notification to an employer ~~[pursuant to]~~**under** this section will not invalidate a subsequent inspection.

(12) Agricultural ~~E~~mployers with 10 or fewer permanent, year-round employees, both full-time and part-time, will be subject to scheduled inspections only if any of the following has occurred:

(a) A valid complaint has been filed ~~[pursuant]~~ **according** to ORS 654.062, or

(b) Within ~~[a 2-year period]~~**the** preceding **two-year period**, ~~[the proposed inspection date,]~~ an accident at the **employer's agricultural place of employment** ~~[employer's establishment has]~~ resulted in death or **a serious disabling injury from a violation of the Oregon Safe Employment Act or rules adopted under the act, or** ~~[an injury or illness resulting in an overnight hospital admission for medical treatment or more than 3 days of lost work, or]~~

~~[CLARIFICATION NOTE: The accident resulting from violation of the Oregon Safe Employment Act or rules adopted pursuant thereto.]~~

(c) The employer and principal supervisors of the agricultural establishment have not **annually** completed ~~[annually]~~ at least ~~[4]~~**four** hours of instruction on agricultural safety or health rules and procedures. This instruction must be documented.

(A) ~~[The i]~~Instruction ~~[will]~~ includes ~~s~~ any **instruction** conducted or accepted by O~~R-~~**regon** OSHA~~[-I]~~ ~~or~~ instruction related to agricultural safety and health that is offered or approved by any public or private college, ~~[of]~~ university, or governmental agency. ~~[will be deemed to be automatically accepted. Documentation of instruction]~~ **The employer must [be] maintain[ed by the employer] documentation of the instruction.** ~~[Such]~~**The** documentation must include the date, provider, **subject**, and duration of the instruction, ~~[the subject covered]~~ and the signature of the person completing the instruction.

NOTE: Certified Applicator Training Core A and B offered by the Oregon Department of Agriculture~~;~~ will satisfy a portion of the required training. One hour credit will be allowed annually for this training.

(B) For purposes of these sections, the time period begins to run when the instruction is received, or

(d) Within the preceding [4]four-year period, the agricultural establishment has not had a comprehensive consultation by an individual acting in a public or private consultant capacity. For purposes of this section, the time period begins to run when the consultation is received, or

(e) If the consultation was done[,], **and** the agricultural employer has failed to correct violations noted in the consultation report within 90 days [of receipt of] **after receiving** the report.

NOTE: For purposes of determining the number of employees, members of the agricultural employer's immediate family are excluded. This includes grandparents, parents, children, step-children, foster children, and any blood relative living as a dependent of the core family.

(13) [~~Effective Dates. The effective date for 437-001-0057(4) through (6) is October 1, 2000. The effective date for all other paragraphs in 437-001-0057 is April 15, 2000.~~] **Evaluation of Enforcement Scheduling:**

(a) Each year Oregon OSHA will complete a summary evaluation of enforcement scheduling, including (but not limited to) the number of scheduled inspections and the basis for those inspections, the number of attempted scheduled inspections that could not be completed, and the results of those inspections.

(b) At least every three years beginning by July 1, 2012, Oregon OSHA will assess the enforcement scheduling system and other available data to ensure that the scheduling system continues to accomplish its statutory purpose of predominantly focusing Oregon OSHA enforcement resources on those places of employment reasonably believed to be the most unsafe.

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

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.

OR-OSHA Admin. Order 11-1999, f. 10/20/99, ef. 10/20/99 (temp).

OR-OSHA Admin. Order 4-2000, f. 4/14/00, ef. 4/15/00.

OR-OSHA Admin. Order 7-2006, f. 9/6/06, ef. 9/6/06.

OR-OSHA Admin. Order X-2009, f. X/XX/09, ef. X/XX/09.

437-001-0420 Decision on Variance Request.

(1) If a variance is granted, an order of variance shall be issued. The order shall:

- (a) State the name of the employer to whom the variance is granted;
- (b) Identify the place of employment at which the variance is applicable;
- (c) State the type of variance granted;
- (d) State the specific rule to which the variance applies;
- (e) Describe the alternative methods or safeguards to be used by the employer while the variance is in effect;
- (f) Advise that the employer may be cited for any violation of the conditions established by the variance;
- (g) Inform affected employees of their right to appeal the variance decision; and
- (h) Inform affected persons that if no appeal is filed within 20 days of receipt of the order, the variance approval becomes a final order of the Director and subject to review only as specified in OAR 437-001-0430.

(2) If a variance is denied, a notice of denial shall be issued. The notice shall:

- (a) Give the reasons for the denial;
- (b) Notify the employer and employees of their appeal rights;
- (c) Inform affected persons that if no appeal is filed within 20 days of receipt of the notice, the variance denial becomes a final decision without affecting the employer's right to submit another application; and
- (d) Advise the employer that a compliance inspection [~~shall~~] **may** be made within 30 days.

(3) A copy of any variance order or denial must be posted for 20 days.

(4) A variance that has been denied, or that has expired, [~~shall~~] **may** be followed by a compliance inspection within 30 days.

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~**4**).

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order X-2009, f. X/XX/09, ef. X/XX/09.