

# ***OREGON OSHA FIELD INSPECTION REFERENCE MANUAL***



**JANUARY 2003**

*Oregon Occupational Safety & Health Division (OR-OSHA)*

# **OR-OSHA FIRM**

## **DISCLAIMER**

**This manual is intended to provide guidance regarding some of the internal operations of the Oregon Occupational Safety and Health Division (OR-OSHA), and is solely for the benefit of the State of Oregon Government. No duties, rights, or benefits, substantive or procedural, are created or implied by this manual. The contents of this manual are not enforceable by any person or entity against the Department of Consumer and Business Services.**

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## CHAPTER 1

## PRE-INSPECTION PROCEDURES

- A. General Responsibilities and Administrative Procedures. The following are brief descriptions of the general responsibilities for positions within OR-OSHA. This document empowers OR-OSHA personnel to make decisions as situations warrant with the ability to act efficiently to accomplish the mission of OR-OSHA and to enforce the Oregon Safe Employment Act.
1. Administrator of the Oregon Occupational Safety/Health Division (OR-OSHA).
    - a. General. The Administrator directs and sets policy for the Division, and establishes goals and strategies for reducing occupational injuries and illnesses in Oregon.
    - b. Responsibilities. Directs the state safety and health program in accordance with state and federal rules, regulations, and statutory provisions. Formulates division policies, goals and objectives, and implements decisions of the Department. Administers and coordinates the following programs:
      - (1) Rules promulgation, including research and development of administrative rules for administration of the division and technical standards for safety and health.
      - (2) Enforcement, including conducting on-site inspections, and providing compliance assistance and abatement assistance to employers and employees.
      - (3) Voluntary compliance, including conducting on-site consultations; providing training to employers and employees; and preparation and dissemination of safety and health information and publications to the public.
      - (4) Insurer services, including setting standards and monitoring for compliance.
  2. Deputy Administrator, Operations
    - a. General. Directs and sets policy for the safety and health program, establishes goals and strategies for reducing occupational injuries and illnesses in Oregon.
    - b. Responsibilities. Oversees and directs the daily operations of the state safety and health program in accordance with state and federal rules, regulations, and statutory provisions. Formulates division policies, goals and objectives,

and implements decisions of the Department. Oversees effective operation of the following programs, in conjunction and cooperation with Administration:

- (1) Rules promulgation, including research and development of administrative rules for administration of the division and technical standards for safety and health.
- (2) Enforcement, including conducting on-site inspections and providing compliance assistance and abatement assistance to employers and employees.
- (3) Voluntary compliance, including conducting on-site consultations; providing training to employers and employees; and preparation and dissemination of safety and health information and publications to the public.
- (4) Insurer services, including setting standards and monitoring for compliance.

3. Manager of Enforcement.

- a. General. Manages agency enforcement resources and develops and coordinates the implementation of enforcement policy for OR-OSHA.
- b. Responsibilities. Long-range planning and the establishment of goals and objectives for the Enforcement program. Sets program goals and performance expectations. Implements improvements in programs, organization, policies, and procedures in keeping with the OSEAct to achieve statewide effectiveness and uniformity. Mentors the management of the enforcement program and provide direction and leadership.

4. Safety/Health Enforcement Managers.

- a. General. Safety/Health Enforcement Managers plan and coordinate the field activities of the Safety/Health Enforcement Program and employees in accordance with the OSEAct.
- b. Responsibilities. In fulfilling their responsibilities for the enforcement program, duties include but are not limited to:
  - (1) Supervise and evaluate field safety/health personnel in enforcement, compliance and abatement assistance programs, and ensure goals and expectations are met and required training is accomplished.
  - (2) Mentor subordinate field staff, providing guidance and help, and acting as a role model for regulatory professionals.

- (3) Participate in establishing goals for the safety/health enforcement program. Analyze and initiate improvement of the program to see that it meets statutory administrative requirements.
- (4) Direct field safety/health resources, including personnel and equipment. Provide necessary resource information to the Manager of enforcement for budgetary and statistical purposes.
- (5) Schedule inspections in accordance with procedures outlined in ORS 654 and OAR437, Division 1. Evaluate and assign complaints and referrals.
- (6) Serve as liaison for the area with labor and management organizations and the public.

5. Safety/Health Compliance Officers (S/HCO).

- a. General. The S/HCO represents OR-OSHA to the public and, in so doing, to carry out the policies and procedures of the agency under the direction of the Safety/Health Enforcement Managers.
- b. The S/HCO is the primary point of contact between the Division and the public. He/She must at all times exhibit behavior expected of the regulatory professional.
- c. Responsibilities. The primary responsibility of the S/HCO is to carry out the mission of the agency in accordance with established policies and procedures. The most effective means of achieving this goal is to build cooperative relationships in the interest of workplace safety and health. This is accomplished primarily through quality inspections reflecting the highest level of professionalism.
  - (1) Balanced Approach. OR-OSHA policy is to remain neutral in dealing with management and labor. The S/HCO is an agent of neither side, but rather of OR-OSHA, and is, therefore, charged with ensuring a safe and healthful workplace. Nonetheless, it is imperative for S/HCO's to actively acknowledge the roles of both Management and Labor in providing safe and healthful workplaces. Bias, or even the appearance of partiality toward one side or the other, will lessen OR-OSHA's ability to carry out its legislative mandate.
  - (2) Thoroughness. OR-OSHA will be judged at every step of the inspection by the actions of the S/HCO. The closing conference shall be used as a means of reinforcing the agency's intent to be cooperative, helpful and courteous in the conduct of its business. The S/HCO should explain the availability of the other OR-OSHA programs in addition to enforcement, such as consultation, and training.

- (3) First Impression. The S/HCO must be aware that a good first impression is of utmost importance to the creation of an atmosphere of cooperation and is essential to the successful completion of the inspection. Such an impression can be created by careful planning. Dress shall be appropriate to the type of establishment to be inspected. Proper protective equipment shall be worn and safety and health policies scrupulously observed. Precise and respectful professionalism shall characterize the S/HCO's demeanor. The inspection shall be conducted as efficiently as possible, without undue delay.
- (4) Concern for Safety and Health. During the walk-around, the S/HCO should encourage dialogue and questions related to safety and health issues and should offer suggestions and explanations as to how problems might be abated. The major goal of an OR-OSHA inspection is to foster a mutual interest on the part of labor and management in eliminating or reducing all workplace hazards, not only those relating to rules and standards.
- d. Subpoenas Served on S/HCOs. If a S/HCO is served with a subpoena, he/she should immediately inform the Safety/Health Enforcement Manager and provide all pertinent information.
- e. Testifying in Hearings. The S/HCO may be required to testify in hearings on OR-OSHA's behalf. The S/HCO shall keep this fact in mind when recording observations during inspections. The firm file should reflect conditions observed in the workplace as accurately as possible. If the S/HCO is called upon to testify, the firm file will be invaluable as a means for recalling actual conditions.
- f. Release of Inspection Information. The information obtained from inspections and investigations is generally considered public record upon receipt of the "Green Card" (Return Receipt, PS form 3811) indicating official notification to the employer. Information in the inspection package pertaining to trade secrets or the confidentiality of a complainant or other confidential information may be exempt from disclosure. (See SOP 17.)
- (1) The S/HCO should not discuss information connected within any case except as indicated elsewhere in this manual. Thus, for example, firm file information may be discussed with employer or employee representatives during the investigation, in the closing conference, during informal conferences, and the like.
- NOTE:** This subparagraph is intended to apply to discussions with persons outside of OR-OSHA. It is not intended to prohibit professional consultation with other division employees or other agencies and outside professionals.

(2) Any requests for such information shall be directed to the Central Office. If it is determined that a request for information is not a routine request but one covered by the Oregon Public Records Law, the request shall be immediately referred to the Office Operations Manager.

- g. Disposition of Inspection Records. All S/HCO records must be included in the firm file. These include original field notes, information received by phone, documents, and any other information pertinent to the inspection.
- h. Correspondence with the Public. S/HCOs will not normally correspond with the public except as necessary to confirm or arrange appointments or inspection details. All written correspondence with the public shall be submitted to the immediate Safety/Health Enforcement Manager for approval and signature. All written correspondence must include the signature of a Safety/Health Enforcement Manager and may include the S/HCO's signature also. This does not mean that a S/HCO cannot answer questions regarding the OSEAct, the administrative rules, or enforcement rules if he/she is asked, either during an inspection or over the telephone.

#### B. Inspection Scheduling.

- 1. Program Planning. Compliance Programming provides general guidelines to the Managers of Enforcement and the Safety/Health Enforcement Managers in planning compliance operations and related activities and instructions for their implementation. The primary consideration in conducting compliance operations is the attainment of maximum effectiveness.
- 2. Inspection/Investigation Types.
  - a. Unprogrammed. Inspections in response to alleged hazardous working conditions that have been identified at a specific work site are unprogrammed. This type of inspection responds to fatalities/catastrophes, complaints, and referrals. It also includes follow-up and monitoring inspections scheduled by the field office.

**NOTE:** This category includes all employers directly affected by the subject of the unprogrammed activity.

- b. Unprogrammed Related. Inspections of employers at multi-employer work sites whose operations are not directly affected by the subject of the conditions identified in the complaint, accident, or referral are unprogrammed related. An example would be a trenching inspection conducted at the unprogrammed work site, where the trenching hazard was not identified in the complaint, accident report, or referral.
  - c. Programmed. Inspections of work sites or employers which have been scheduled from a scheduling list are programmed. The work sites are selected according to the criteria in OAR 437-001-0057, and Program Directives A-244, A-248 and A-247.

- d. Programmed Related. Inspections of employers on multi-employer work sites whose activities were not included in the programmed assignments. An example would be citing an employer not programmed for an inspection for a serious hazard observed during conduct of the programmed inspection.

3. Inspection Priorities.

- a. Order of Priority. Priority of accomplishment and assignment of manpower resources for inspection categories are as follows (OAR 437-001-0055):

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Fatality/Catastrophe or Accident Investigations
Third	Investigation of Complaints
Fourth	Investigation of Referrals
Fifth	Programmed Inspections and Emphasis Inspections
Sixth	Follow-up Inspections

- b. Efficient Use of Resources. Unprogrammed inspections are normally scheduled and conducted prior to programmed inspections, but for efficient use of resources, programmed inspections may, at times, be conducted before unprogrammed inspections.
- c. Follow-up Inspections. In cases where a follow-up inspection is indicated , it should be conducted as promptly as resources permit. Follow-up inspections normally should be conducted within **thirty days** ~~six months~~ following the latest violation abatement date, or final order date, whichever is later. The seriousness of the hazards requiring abatement shall determine the priority among follow-up inspections.
- d. Scope of Inspection. The scope of an inspection may be expanded under any of the following circumstances which shall be documented in the case file:
  - (1) The establishment is listed on a current field office safety or health inspection scheduling list and it is reasonably anticipated that a scheduled inspection would occur by years end.
  - (2) OR-OSHA inspection records for the establishment or for the employer, in the case of a mobile work site, indicate a history of significant violations.
  - (3) The S/HCO observes other serious hazards which are not within the scope of the original inspection.

4. Inspection Selection Criteria.

a. General Requirements. OR-OSHA's priority system for conducting inspections is designed to distribute available OR-OSHA resources as effectively as possible to ensure that maximum feasible protection is provided to the working men and women in Oregon.

(1) Scheduling. The Safety/Health Enforcement Managers shall ensure that inspections are scheduled within the framework of the priorities outlined in this chapter and Division 1, and that they are consistent with the objectives of the agency. See Appendices A & B for current congressional exemptions and limitations on OR-OSHA inspection activity.

b. Employer Contacts. Contacts for information initiated by employers or their representatives shall not normally trigger an inspection. Nor shall such employer inquiries protect them against regular inspections conducted pursuant to guidelines established by the division. Further, if an employer or his representative indicates that an imminent danger exists or that a fatality or catastrophe has occurred, the Safety/Health Enforcement Manager shall act in accordance with established inspection priority procedures.

C. Complaints & Other Unprogrammed Inspections.

1. Complaints. **All complaints will be handled in accordance with Program Directive A-219**

a. Responding to Complaints.

(1) Priorities for Responding to Complaints.

(a) All imminent danger complaints should be responded to by inspection within 24 hours.

(b) Serious complaints should generally be responded to by inspection within 5 working days.

(c) Other-than-serious complaints may be responded to by inspection, letter, fax, or telephone based on the evaluation by the Safety/Health Enforcement Manager. Those scheduled for inspection should be opened within 30 working days.

2. Referrals.

a. General. As a rule, referrals made to OR-OSHA will be handled in a manner similar to that of complaints.

- b. Definitions. For the purpose of this chapter, a referral is normally distinguished from a complaint by the source providing information on the alleged hazard.
- (1) Notices of hazards or alleged violations originated by the sources listed in (2) of this section shall be considered as referrals except as noted in Program Directive A-219 (Complaint Policies and Procedures). All other notices of hazards shall be considered as complaints. Complaints received by other government agencies and simply forwarded to OR-OSHA for action are complaints since they do not originate with the agency or its employees.
- (2) Referrals may originate from the following sources:
- (a) S/HCO Referrals. This category includes referrals from a S/HCO that works for OSHA.
- (b) Safety and Health Agency Referrals. This category includes referrals by consultation programs and technical section, state or local health departments, and medical doctors or other health or safety professionals.
- NOTE:** For purposes of assigning an inspection priority, referrals from these sources will be considered as equivalent to S/HCO referrals, although not counted as such by IMIS.
- (c) Discrimination, Nonformal Complaint Referrals. The Bureau of Labor or U.S. Department of Labor may decide to recommend certain safety and/or health complaints from former employees (discrimination complaints which also allege hazardous working conditions or violations of OR-OSHA rules) to OR-OSHA for investigation.
- (d) Other Government Agency Referrals. Notification of hazards observed and reported (referred) to OR-OSHA by other federal, state, or local government agencies or their employees; e.g., Federal Grain Inspection Service, Nuclear Regulatory Commission, local building inspectors, fire marshal, etc., are included in this category.
- (e) Media Reports. Reports of accidents involving serious injury or of potentially serious workplace hazards in the media shall be considered as referrals. "Reports" shall be understood to include news items reported in the media as well as hazards reported directly to OR-OSHA by media sources. Thus newspaper or magazine articles or photographs or news items reported over radio or television are

examples of media reports as well as calls to the office by reporters.

- c. Procedures. Each referral shall be evaluated as thoroughly as possible in accordance with the guidelines for evaluating complaints to determine whether there are reasonable grounds to believe that a safety or health hazard exists. If so, the hazard shall be classified as imminent danger, serious or other-than-serious. Referrals to be inspected shall be assigned a priority by the Safety/Health Enforcement Manager according to the severity of the alleged hazard.
  - d. When the S/HCO observes an imminent danger situation an inspection should be conducted without delay and the Safety/Health Enforcement Manager informed as soon as possible after the inspection has been initiated.
    - (1) During the inspection all serious hazards observed will be addressed and cited.
    - (2) The inspection will be classified as a Referral Inspection and the S/HCO will complete an OSHA-90 that will be included in the inspection packet.
  - e. When the S/HCO observes a serious hazard that needs to be addressed they should contact a Safety/Health Enforcement Manager and request a referral to conduct an inspection.
    - (1) If the Safety/Health Enforcement Manager makes a referral to the S/HCO a referral inspection will be conducted. All serious hazards observed during the inspection will be addressed and cited.
    - (2) The inspection will be classified as a Referral Inspection and the S/HCO will complete an OSHA-90 that will be included in the inspection packet.
3. Accidents. Accidents discovered from a records review or during the walkaround on a programmed inspection shall be handled as part of the programmed inspection.
- D. Programmed Inspections. Programmed inspections shall be scheduled in accordance with Division 1, and Program Directives A-244, A-247 and A-248.
- E. Inspection Preparation.
1. General. The conduct of effective inspections requires identification, professional evaluation, and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail depending upon the circumstances in each case.
  2. Planning. It is most important that the S/HCO spend an adequate amount of time preparing for an inspection. The S/HCO should have all report forms in

sufficient quantity to conduct the inspection, all assigned personal protective equipment available for use and in serviceable condition, and appropriate handouts, if available.

- a. OR-OSHA policy requires that the S/HCO comply with all safety and health rules and practices at the establishment and wear or use the safety clothing or protective equipment required by OR-OSHA standards or by the employer for the protection of employees (SOP 28).
- b. The S/HCO will not enter any area where special entrance restrictions apply until the required precautions have been taken. It shall be ascertained prior to inspection, if possible, if an establishment has areas with immunization or other special entrance requirements. If the Safety/Health Enforcement Manager and S/HCO cannot make a determination through consultation, the Safety/Health Enforcement Manager may telephone the establishment. Such communication will not be considered advance notice.

3. Advance Notice of Inspections.

- a. Definition. Advance notice exists when an agent of OR-OSHA, or any other person informs the owner, employer, agent or employee that an inspection is going to be conducted prior to OR-OSHA arriving on site to conduct the inspection.
- b. Policy. ORS 654.067 and OAR 437-01-060 contain a general prohibition against the giving of advance notice of inspections, except as authorized by the director.
  - (1) The Oregon Safe Employment Act regulates many conditions which are subject to speedy alteration and disguise by employers. To forestall such changes in work site conditions, the act in ORS 654.067(1)&(2) prohibits unauthorized advance notice and authorizes the director to enter work sites "without delay" in order to preserve the element of surprise.
  - (2) There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice.
  - (3) Advance notice of inspections may be given only with approval of a manager and only in the following situations:
    - (a) In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;
    - (b) When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;

(c) To ensure the presence of employer and employee representatives or the appropriate personnel who, as determined by the Safety/Health Enforcement Manager are needed to aid in the inspection; and

(d) When the Safety/Health Enforcement Manager determines that giving advance notice would enhance the probability of an effective and thorough inspection (e.g., in complex fatality investigations).

(4) It is not considered advance notice to arrange for sampling of a specific process or person, unless it is a lengthy or unreasonable delay.

**Note:** Notice of an inspection may be given to another government agency with prior approval of the Safety/Health Enforcement Manager.

c. Documentation. The conditions requiring advance notice and the procedures followed shall be documented in the firm file.

4. Pre-inspection Warrants. ORS 654.206(1) authorizes the agency to seek a warrant in advance of an attempted inspection. Pre-inspection warrants have proved to be useful for those cases which might be frustrated if entry were sought without a warrant.

a. Warrants. Warrants shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Safety/Health Enforcement Manager, circumstances exist which make such pre-inspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek a warrant in advance of an attempt to inspect or investigate include (but are not limited to):

(1) When the employer's past either implicitly or explicitly puts OR-OSHA on notice that a warrantless inspection will not be allowed, or;

(2) When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work site, or;

(3) When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

5. Expert Assistance. The Safety/Health Enforcement Manager may arrange for a specialist from within OR-OSHA to assist in an inspection or investigation when

the need for such expertise is identified. If OR-OSHA specialists are not available, the Safety/Health Enforcement Manager may arrange for the services of qualified outside experts through the Central Office.

- a. Expert assistance may be necessary during inspections for the implementation of engineering or administrative controls involving, but not limited to, noise, air contaminants, complicated machine guarding, and construction.
  - b. OR-OSHA specialists may accompany the S/HCO or perform their tasks separately. Outside experts should be accompanied by a S/HCO and must sign confidentiality agreements, agreeing to protect the inspected parties' trade secrets. OR-OSHA specialists and outside experts should be briefed on the purpose of the inspection and personal protective equipment to be utilized (OAR 437-001-0065(5)).
  - c. All data, conclusions, and recommendations from the assigned specialists shall be made part of the inspection report, including information on any resultant actions.
6. Personal Security Clearance. Some establishments have areas which contain material or processes which are classified by the U.S. Government in the interest of national security. Whenever an inspection is scheduled for an establishment containing classified areas, the Safety/Health Enforcement Manager should consult with the Manager of Enforcement who will decide the procedure to follow.
  7. Disclosure of Records. OR-OSHA's policy regarding the disclosure of documents in investigation and other files is governed by the Oregon Public Records Law and the attorney general's public meetings and records manuals. Specific guidelines for the application of this policy to OR-OSHA files are set forth in Section 2. OR-OSHA policy is to disclose all documents to which the public is entitled under the Oregon Public Records Law and the other state rules. At the same time, great care shall be taken to ensure that documents which are not disclosable are kept confidential since disclosure of such documents may seriously prejudice the prosecution of cases and the entire OR-OSHA enforcement program.
  8. Classified and Trade Secret Information. The collection of any classified or trade secret information, and the number of personnel with access to it shall be limited to the minimum necessary for the conduct of the compliance activities. The S/HCO shall identify all such information in the firm file (SOP #17).

Appendix "A"  
Small Business Exemption (Byron Rider)

A. Small Business Exemption

Appropriations Act (Byron Rider). In providing funding for Federal OSHA, Congress has placed restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries.

Although Congress exempted small businesses in certain SIC categories from scheduled safety inspections, OR-OSHA through access to Workers' Compensation Data has a more efficient system to detect employers who, regardless of SIC, are experiencing numbers of serious accidents and thus should receive an inspection. Accordingly, OR-OSHA will conduct inspections of Byron exempt firms as follows:

1. Safety Inspections

- a. Any regularly scheduled safety inspection of a firm employing ten or fewer employees and whose SIC is included under the Byron exemption may be conducted and such activity will be funded with 100 percent state funds. Enter the code "N 09 100%" in block 42, Optional Information of the OR-OSHA-1.
- b. Any safety complaint properly evaluated according to procedures of PD A-219 may be inspected. Such an inspection of a firm employing ten or fewer employees and whose SIC is included under the Byron exemption, will be made and funded with 100 percent state funds. Enter the code "N 09 100%" in block 42, Optional Information of the OR-OSHA-1.
- c. Fatalities or hospitalization of two or more employees may be investigated regardless of the number of employees or SIC and such investigations will be funded in the normal manner with federal funds.
- d. Accident investigations other than fatalities or hospitalization of two or more employees at a firm employing ten or fewer employees and whose SIC is included under the Byron exemption may be conducted and will be funded with 100 percent state funds. Enter the code "N09 100%" in block 42, Optional Information of the OR-OSHA-1.
- e. Imminent danger inspections shall be made and will be funded in the normal manner with federal funds. Enter the code "N 09 IMMIDENT" in block 42, Optional Information of the OR-OSHA-1.

2. Health Inspections

- a. All types of health inspections may be made in Byron exempt firms and funded in the normal manner. However, no safety violations will be cited except with regard to imminent danger complaints or fatalities or hospitalization of two or more employees.
- 3. In calculating the number of employees employed by a firm for the purposes of determining if there are ten or less, "employees" means employees in all operations statewide, on the day of the inspection or in the previous 12 month period.
- 4. Inspections of small employers in Byron exempt SICs are tracked by entering the following codes in box 42, Optional Information, of the OR-OSHA-1:

<u>Type</u>	<u>ID</u>	<u>Value</u>
N	09	100%
N	09	IMMINENT

**NOTE:** Health inspections do not require coding for Byron exemption.

- 5. The inspection scheduling list has possible Byron SIC firms identified on it. The OR-OSHA Safety/Health Enforcement Manager shall discuss these firms with the compliance officer prior to the assignment of complaint, accident, fatality or catastrophe inspections. On the day of the inspection the S/HCO shall determine the total number of employees employed by the firm statewide and during the preceding 12 months. The S/HCO shall document this information in his/her notes if exemptions apply, and field office management shall review all reports to assure the OR-OSHA 1 data for SIC, employment size, and optional information is properly coded.

## APPENDIX A

SIC CODES FOR INDUSTRIES WITH A LOST  
 WORKDAY INJURY RATE BELOW THE NATIONAL  
 PRIVATE SECTOR RATE OF 2.6 FOR 2001

FISHING MINING CONSTRUCTION	MANUFACTURING	TRANSPORTATION PUBLIC UTILITIES	TRADE	FINANCE REAL ESTATE INSURANCE SERVICES		
0130*	2047	2591	3519	4140	5040	6000-8900
0160*	2082	2610	3542	4520	5060	EXCEPT
0740	2100	2620	3545	4600	5080	7010
0810	2200	2630	3546	4720	5090	7020
0900	EXCEPT	2655	3559	4730	5110	7030
1300	2240	2700	3565	4740	5120	7040
1530	2253	EXCEPT	3570	4810	5130	7210
	2254	2732	3594	4820	5160	7350
	2262	2752	3613	4830	5190	7630
	2282	2754	3624	4890	5250	7690
	2295	2760	3625	4910	5260	7940
	2296	2770	3629	4920	5270	7990
	2298	2780	3647	4930	5420	8030
	2299	2800	3652		5430	8040
	2311	EXCEPT	3660		5460	8050
	2322	2850	3670		5500	8060
	2323	2890	3699		EXCEPT	8080
	2326	2910	3760		5530	8330
	2329	2951	3795		5600	8360
	2330	2990	3800		5720	8420
	2340	3142	EXCEPT		5730	
	2350	3144	3821		5800	
	2360	3149	3911		5900	
	2371	3275	3915		EXCEPT	
	2389	3295	3944		5930	
	2395	3296	3951		5960	
	2396	3353	3960		5980	
	2493	3489	3996			

NOTE: SICs with zero in the third or fourth digit include all three and four digit SICs with the same leading two or three digits.

OFFICE OF STATISTICAL ANALYSIS, OSHA, 12/30/02.

Appendix "B"  
Farming Operations

A. Definitions

1. **Farming Operation** - means any operation [employers engaged in businesses that have a two digit Standard Industrial Classification (SIC) of 01 (Agricultural Production - Crops), 02 (Agricultural Production - Livestock and Animal Specialties), and four digit SIC 0711 (Soil Preparation Services), 0721 (Crop Planting, Cultivating, and Protecting), 0722 (Crop Harvesting, Primarily by Machine), 0761 (Farm Labor Contractors and Crew Leaders), and 0762 Farm Management Services)] involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations. An employer who is engaged in production of field crops, fruits and nuts, livestock, and animal specialties of all types.
2. **Small farm** - A Farming Operation with 10 or fewer agricultural employees during the previous calendar year.

B. OR-OSHA Inspection of Farms with 11 or more Employees

1. S/HCO shall conduct an inspection in accordance with the FIRM under either of the following conditions and funded in the normal manner with federal funds:
  - a. If a farming operation currently employs, or has employed at any time during the preceding 12 months, more than 10 employees; or
  - b. If a farming operation maintains an active temporary labor housing facility regardless of the number of employees.

NOTE: Family members of farm employers shall not be regarded as employees when making the determination of numbers.

C. OR-OSHA Inspection of Small Farms

1. Appropriations Act (Byron Rider). In providing funding for Federal OSHA, Congress has placed restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries.

Although congress exempted small farms from scheduled safety and health inspections, OR-OSHA through access to workers' compensation data has a more efficient system to detect employers who are experiencing numbers of serious accidents and thus should receive an inspection. Accordingly, OR-OSHA may conduct inspections of small

farms as follows:

- a. A complaint has been filed pursuant to ORS 654.062, or
  - b. Within the preceding two calendar years an accident has resulted in death or an injury resulting in hospital admission, or
  - c. The employer and principal supervisors have not completed annually at least 4 hours of instruction on agriculture safety and health rules and procedures. This instruction must be conducted by OR-OSHA or contain the same content as that offered by OR-OSHA, or
  - d. Within the preceding 4 year period the establishment has not had a comprehensive consultation by OR-OSHA or a representative of the workers' compensation insurance carrier as provided for in OAR437-01-1035 and 1040 or a private consultant, or
  - e. Subsequent to the comprehensive consultation mentioned above, the employer fails to correct all items noted in the consultation report within 90 days.
- 2. All inspections of small farm operations will be funded with state money.
  - 3. All inspections of Agriculture Labor Housing (ALH) will be funded in the normal manner with federal funds.
- D. All inspections in farm SICs must be coded into the IMIS by coding Item 42, Optional Information. Use:

<u>Type</u>	<u>ID</u>	<u>Value</u>
N	09	100% (100% state funding)
N	09	TLC (ALH, federal funding)

## CHAPTER 2

### INSPECTION PROCEDURES

#### A. General Inspection Procedures.

1. Inspection Scope. Inspections, either programmed or unprogrammed, may fall into one of two categories depending on the scope of the inspection.
  - a. Comprehensive. 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.
  - b. Partial. An inspection whose focus is 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 S/HCO determines are necessary.
2. Conduct of the Inspection.
  - a. Time of Inspection. Inspections should be attempted during regular working hours of the establishment except when special circumstances indicate otherwise.
  - b. Presenting Credentials. At the beginning of the inspection, the S/HCO should attempt to locate the owner, employer, or agent in charge at the workplace and present appropriate credentials. On construction sites, this will most often be the representative of the general contractor.
    - (1) When the person in charge is not present at the beginning of the inspection, identify the top official present at the site. This person may be the foreman, lead person, gang boss, or senior member of the crew.
    - (2) If the person in charge at the workplace cannot be determined record the extent of the inquiry in the notes and proceed with the physical inspection. If the person in charge arrives during the inspection, an abbreviated opening conference shall be held, and the person shall be informed of the status of the inspection and included in the continued walkaround. An attempt will be made to contact the owner or management person after the inspection to conduct a closing conference (SOP 33).
    - (3) When an inspection is programmed for the Oregon Military Department or other such facility, the S/HCO shall contact the base commander or other government person in charge to inform him or her of OR-OSHA's presence on the facility for the purpose of inspecting a contractor.

- (4) On multi-employer sites, the S/HCO will ask the superintendent, project manager, or other representative of the general or prime contractor to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations.
- c. Refusal to Permit Inspection. ORS 654.067 of the Oregon Safe Employment Act provides that S/HCOs may enter without delay and at reasonable times any establishment covered under the Act for the purpose of conducting an inspection.
- (1) Refusal of Entry For Inspection. The S/HCO shall not engage in an argument concerning refusal. When the employer refuses to permit entry upon presenting proper credentials or allows entry but then refuses to permit or hinders the inspection in some way, a tactful attempt shall be made to obtain as much information as possible about the establishment.
- (a) If the employer refuses to allow an inspection of the establishment to proceed, the S/HCO shall leave the premises and immediately report the refusal to the Safety/Health Enforcement Manager, who shall notify the central office of the refusal in cases that may have significant impact on OR-OSHA.
- (b) If the employer raises an objection to the inspection of portions of the workplace, the S/HCO should consider this as a refusal of entry and after contacting the Safety/Health Enforcement Manager, seek an inspection warrant.
- (c) In either case the S/HCO should advise the employer that the refusal will be reported to the Safety/Health Enforcement Manager and that the agency may take further action, which may include obtaining legal process.
- (2) Employer Inspection Interference. Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the S/HCO should immediately contact the Safety/Health Enforcement Manager for instructions on whether or not to consider this action as a refusal. Examples of interference are refusals to permit the walkaround, the examination of records essential to the inspection, the taking of essential photographs and/or videotapes, the inspection of a particular part of the premises, indispensable employee interviews, or the refusal to allow attachment of sampling devices.

The S/HCO may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. If disruption or interference occurs, the S/HCO should use professional judgment as to whether to suspend the walkaround or take other action. The Safety/Health Enforcement Manager should be consulted if the walkaround is to be suspended.

- (3) Access to Records. If the employer refuses to allow the S/HCO access to the injury or illness records needed to perform a records review for purposes of determining whether the employer is in compliance with recordkeeping rules, the S/HCO shall proceed as for any other case of refused entry.
- (4) Obtaining a Warrant. If it is determined that a warrant will be sought, it will be obtained from the appropriate local court and be served as quickly as possible
- (5) Warrant Obtained. When a warrant is obtained requiring an employer to allow an inspection, the S/HCO is authorized to conduct the inspection in accordance with the provisions of the court order or warrant. All questions from the employer concerning reasonableness of any aspect of an inspection conducted pursuant to the warrant process may be referred to the Safety/Health Enforcement Manager.
- (6) Serving the Warrant.
  - (a) Present appropriate credentials to the person in charge at the site.
  - (b) The S/HCO shall show the original copy of the warrant to the employer, occupant or owner, and make a separate notation as to the time, place, name, and job title of the individual shown, and their affiliation to the employer. They will give the employer, occupant or owner a copy of the warrant.
  - (c) The Return of Warrant has a space for entry by the S/HCO in which the exact dates of the inspection made pursuant to the warrant are to be entered. Upon completion of the inspection, the S/HCO will return the original warrant to the court from which it was obtained using the Return of Warrant. Copies of the Return of Warrant, affidavit, and warrant should be included in the inspection packet.
  - (d) If physical resistance or interference by the employer is anticipated, the Safety/Health Enforcement Manager shall ask that a peace officer assist in the inspection.
  - (e) When the walkaround is limited by a warrant or an employer's consent to specific conditions or practices, a subpoena for records may be served, if necessary. The records specified in the subpoena could include (as appropriate, but not limited to) injury and illness records, exposure records, the written hazard communication program, the written lockout-tagout program, and records relevant to the employer's safety and health management program, such as safety and health manuals or minutes from safety meetings.

- (f) With a warrant, the S/HCO may promptly enter the place of employment if no one else is in possession or the S/HCO reasonably believes that no one is in possession of the place of employment.
- (7) Police Assistance. A state, county, or local police officer may accompany a S/HCO when executing the warrant.
- (8) Refused Entry or Interference.
  - (a) When apparent refusal to permit entry or inspection is encountered upon presenting the warrant, the S/HCO should specifically inquire whether the employer is refusing to comply with the warrant.
  - (b) If the employer refuses to comply, the S/HCO should not attempt to conduct the inspection, but should leave the premises and contact the Safety/Health Enforcement Manager concerning further action. The S/HCO will make notations, including all possible witnesses to the refusal, and fully report all relevant facts. If refusal is not clearly given, such as an employer who simply expresses an objection to the inspection, the S/HCO will proceed with the inspection unless physical interference is threatened.
  - (c) The Safety/Health Enforcement Manager should immediately contact the Manager of Enforcement concerning the refusal to comply or the interference.
  - (d) The Manager of Enforcement, jointly with the Department of Justice, will decide what further action will be taken.
- d. Forcible Interference with Conduct of Inspection. It is a Class A misdemeanor under ORS 162.235 to physically obstruct governmental administration.
  - (1) Agency Response. Whenever an OR-OSHA official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity shall cease.
    - (a) The Safety/Health Enforcement Manager should be advised as soon as possible.
    - (b) Upon receiving a report of such forcible interference, the Safety/Health Enforcement Manager or designee should immediately notify the Manager of Enforcement.
- e. Release for Entry. The S/HCO should not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret

information.

- (1) If the employer requires that a release be signed before entering the establishment, the S/HCO should inform the employer of the department's authority under Oregon Safe Employment Act (ORS 654.025(1) and ORS 654.067). If the employer still insists on the signing of a release, the S/HCO should report the matter promptly to the Safety/Health Enforcement Manager who shall decide if the situation is to be treated as a refusal of entry, or use the OR-OSHA release form (SOP 17).
  - (2) The S/HCO may sign a visitor's register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises. Such signature shall not constitute any form of a release or waiver of prosecution or liability under the Act.
- f. Out of Business. If the establishment scheduled for inspection is found to have ceased business and there is no known successor employer, the S/HCO should report this by a short narrative attached to the OR-OSHA-1. If an employer, although adjudicated bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection shall proceed. An employer must comply with the Act until the day the business actually ceases to operate.
- g. Strike or Labor Dispute. Plants or establishments may be inspected regardless of the existence of labor disputes involving work stoppages, strikes, or picketing. If the S/HCO identifies an unanticipated labor dispute at a proposed inspection site, the Safety/Health Enforcement Manager should be consulted before any contact is made.
- h. Employee Participation. S/HCO should advise the employer that ORS 654.067(4) authorizes a representative of the employees the opportunity to accompany the inspector during the inspection of any place of employment.
- (1) S/HCO shall determine as soon as possible after arrival whether the employees at the worksite to be inspected are represented and, if so, shall ensure that employee representative(s) are afforded the opportunity to participate in all phases of the workplace inspection.
  - (2) If an employer resists or interferes with participation by employee representative(s) in an inspection and this cannot be resolved by the S/HCO, the continued resistance shall be construed as a refusal to permit the inspection.
  - (3) When an employee representative cannot reasonably be identified, employee interviews may suffice to obtain employee input. The S/HCO will not select an employee to represent the employees.

**NOTE:** For the purpose of this chapter, the term "employee representative"

refers to: (1) a bargaining unit representative; or if none, (2) an employee member of a safety and health committee who has been chosen by employees; or (3) an individual selected by employees, who serves as their spokesperson.

3. Opening Conference. The S/HCO will, prior to inspection, conduct an opening conference. The S/HCO should, if possible, conduct a joint opening conference with the employer or representative and an employee representative. The opening conference shall be kept brief, normally not to exceed one hour. Conditions of the work site should be noted upon arrival, as well as any changes which may occur during the opening conference. The employer and the employee representatives will be informed of the opportunity to participate in the physical inspection of the workplace.

**Note:** An abbreviated opening conference may be conducted whenever the S/HCO believes that the circumstances at the place of employment dictates that the walkaround begin as promptly as possible. In such cases, the opening conference could be limited to a simple introduction and identification of the S/HCO. The remainder of the opening conference will be covered as soon as possible.

- a. Attendance at Opening Conference. The S/HCO may conduct a joint opening conference or separate conferences as follows:
  - (1) Joint Conference. Whenever practicable, a joint opening conference may be held with the employer and the employee representatives (if there is an employee representative as defined in the note under A.2.h. of this chapter).
  - (2) Separate Conferences. Where either party chooses not to have a joint conference, separate conferences may be held for the employer and the employee representative(s). A written summary of each conference should be made and attached to the firm file. A copy of the written summaries will be available from central files upon request by the employer or the employee representative. Where it is determined that separate conferences will unacceptably delay observation or evaluation of the workplace safety or health hazards, each conference shall be brief and, if appropriate, reconvened after the inspection of the alleged hazards.
- b. Scope. The S/HCO should outline in general terms the scope of the inspection, including private employee interviews, physical inspection of the workplace and records, possibility of expanding the scope and the closing conference(s).
  - (1) Explain that a records review is standard procedure on all inspections and that the calculation of the establishment's days away, restricted, or transferred rate (DART) will be done. Workplace areas with high injury

numbers may be inspected regardless if covered under the scope of the inspection.

- (2) Explain that previously issued citations, if any, may also be included as part of this investigation as a follow-up or to monitor abatement progress.
  - (3) Whenever the scope of an inspection is expanded the S/HCO will advise the employer and the employee representative(s), if applicable, of the expanded scope of the inspection.
- c. Form Completion. The S/HCO should obtain available information for the OR-OSHA-1 supplement and other appropriate forms and complete applicable sections during the opening conference.
- d. Employees of Other Employers. During the opening conference, the S/HCO should determine whether the employees of any other employers are working at the establishment.
- (1) If there are such employees and any questions arise as to whether their employers should be included in the inspection, the S/HCO shall contact the Safety/Health Enforcement Manager to determine whether additional inspections shall be conducted and what limitations there may be to such inspection activity.
  - (2) If additional inspections are initiated, both employer and employee representatives of the other employers should be invited to the opening conference. The inspection should not be delayed to wait for these employer or employee representatives longer than would be reasonably necessary for either to arrive.
  - (3) If the site is a multi-employer site, such as construction, the S/HCO should determine during the opening conference who is responsible for providing common services available to all employees on site (e.g., flush toilets, sanitation, first aid, handrails, etc.).
- e. Consultations. In accordance with OR-OSHA procedures, the S/HCO shall determine at the opening conference whether an OR-OSHA consultation is in progress, or scheduled to start within seven days.
- (1) An employer will be exempt from a programmed inspection of a fixed site from seven days prior to the scheduled date of the consultation to 60 days after receipt of the written consultation report.
  - (2) An employer will be exempt from a programmed inspection of a mobile site from seven days prior to the scheduled date of the consultation to 30 days after receipt of the written consultation report.
  - (3) If the programmed inspection is scheduled for a multi-employer worksite, such as a construction site, and the general contractor has invited the

consultant on site, the S/HCO shall determine the scope of the consultation and contact the Safety/Health Enforcement Manager.

- (4) Imminent danger, fatality/catastrophe, complaint or referral inspections will not be deferred; but the scope will be limited to those areas required to complete the purpose of the inspection. The S/HCO will also comply with the provisions for a partial inspection, except to the extent that those items are being addressed by the consultant. For example, if the consultant is working with the employer's hazard communication program, that program need not be reviewed by the S/HCO.
- f. Walkaround Representatives. Those representatives designated to accompany the S/HCO during the walkaround are considered walkaround representatives.
- (1) Employer Representatives. A representative of the employer shall be given an opportunity to accompany the S/HCO during the physical examination of the place of employment for purposes of aiding such inspection.
  - (2) Employee Representatives. Representative of the employees, if one exists shall be given an opportunity to accompany the S/HCO during the physical examination of a place of employment for purposes of aiding such inspection.
- Note: The right to accompany under ORS 654.067(4) during the physical examination of the place of employment does not mean that the representatives of either the employees or the employer must be present during all aspects of the physical examination of the place of employment.
- (a) Employees Represented by a Certified or Recognized Bargaining Agent. During the opening conference, the highest ranking union official or union employee representative shall designate who will participate in the walkaround.
  - (b) Safety Committee. The employee members of an established plant safety committee may have designated an employee representative for OR-OSHA inspection purposes or agreed to accept as their representative the person designated by the committee to accompany the S/HCO during an inspection. This representative should be invited to participate in the walkaround.
- g. Jurisdiction by Another Agency. In some cases, the Act does not apply to working conditions over which other federal or state agencies exercise statutory responsibility. The determination of jurisdiction by another agency is in many cases a highly complex matter. The S/HCO should bring the situation to the attention of the Safety/Health Enforcement Manager. These situations will be dealt with on a case-by-case basis.

**NOTE:** Routine contact with federal or other agencies at the local level is highly desirable. The Manager of Enforcement and Safety/Health Enforcement Managers shall maintain active liaison with their counterparts in other agencies to ensure full cooperation in the event a situation requires clarification.

- h. Disruptive Conduct. The S/HCO may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. If disruption or interference occurs, the S/HCO shall use professional judgment as to whether to suspend the inspection or take other action. The Field Office Safety/Health Manager shall be consulted if the inspection is to be suspended. The employee representative shall be advised that, during the inspection, matters unrelated to the inspection shall not be discussed.
- i. Alleged Trade Secrets. The S/HCO shall determine if the employee representative is authorized to enter any trade secret area(s). If not, the S/HCO shall interview a reasonable number of employees who work in the area.
- j. Examination of Records, Programs and Posting Requirements.

(1) Records. As appropriate, the S/HCO shall comply with the records review procedures that follow, and document the findings in the firm file.

(a) Injury and Illness Records. At the time of the inspection, all injury and illness records required by the OSEAct, rule or standard should be examined to determine DART rate or any other records that appear appropriate.

**Note:** The S/HCO shall not request access to the Bureau of Labor Statistics survey questionnaire (OSHA-200S) or even ask if the employer has participated in the survey program.

(2) Procedures for Determining DART Rate. See Program Directive A-249.

(3) Posting. Determine if posting requirements are met in accordance with administrative rules. These include, but are not limited to:

(a) OSEAct (OR-OSHA) poster informing employees of their rights and obligations under the act.

(b) Summary of Work-Related Injuries and Illnesses. (OSHA form 300A, to be posted February 1 to April 30 each year.)

(c) Current citations.

(d) Extension of correction.

4. Physical Examination of the Place of Employment. The main purpose of the

walkaround is to identify potential safety and or health hazards or violations of the OSEAct in the workplace. The S/HCO should conduct the inspection in such a manner as to eliminate personal exposure to hazards and violations.

- a. Evaluation. The employers safety and health program shall be evaluated to ascertain the degree to which the employer is aware of potential hazards present in the workplace and what actions have been taken to minimize the hazards.
- b. Collecting Samples.
  - (1) The S/HCO should determine as soon as possible after the start of the inspection whether sampling is required based on information collected during the walkaround and from the pre-inspection review.
  - (2) If either the employer or the employee representative requests sampling results, summaries of the results shall be provided to the requesting representative as soon as practicable after consultation with the Safety/Health Enforcement Manager.
- c. Taking Photographs and/or Videotapes. Photographs and/or videotapes provide pictorial documentation of violations and should be taken. Photos and videotapes should be handled in accordance with SOP 25.
- d. Interviews. A free and open exchange of information between the S/HCO and employees is essential to an effective inspection. Interviews provide an opportunity for employees or other individuals to point out hazardous conditions and, in general, to provide assistance as to what violations of the act may exist and what abatement action should be taken.
  - (1) Purpose. ORS 654.067(1)(b) authorizes the S/HCO to question any employee privately during regular working hours in the course of an inspection. The purpose of such interviews is to obtain whatever information the S/HCO deems necessary or useful in carrying out the inspection effectively. Such interviews, however, shall be conducted within reasonable limits and in a reasonable manner and shall be kept as brief as possible. Individual interviews are authorized even when there is an employee representative.
  - (2) Employee Right of Complaint. Even when employees are represented on the walkaround, the S/HCO may consult with any employee who desires to discuss a possible violation. Upon receipt of such information, the S/HCO shall investigate the alleged violations, where possible, and record the findings.
  - (3) Time and Location. Interviews normally will be conducted during the

walkaround; however, they may be conducted at any time during an inspection. If the S/HCO believes it necessary, interviews may be conducted at locations other than the workplace.

- (4) Privacy. Employers shall be informed that the interview will be conducted in private. Whenever an employee expresses a preference that an employee representative be present for the interview, the S/HCO shall make a reasonable effort to honor that request. Any employer objection to private interviews with employees shall be construed as a refusal of entry and handled as such.

e. Employer Abatement Assistance.

- (1) Policy. S/HCOs may offer abatement assistance during the walkaround regarding elimination of workplace hazards and violations. The information shall provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance.
- (2) Procedures. Information provided by OR-OSHA to assist the employer in identifying possible methods of abatement for alleged violations should be provided to the employer as it becomes available or necessary. The issuance of citations shall not be delayed.
- (3) Disclaimers. The employer should be informed of the following:
  - (a) The employer is not limited to the abatement methods suggested by OR-OSHA;
  - (b) The methods explained are general and may not be effective in all cases; and
  - (c) The employer is responsible for selecting and carrying out an appropriate abatement method.

f. Special Circumstances.

- (1) Trade Secrets. Trade secrets are matters that are not of public or general knowledge. A trade secret is any confidential formula, pattern, process, equipment, list, blueprint, device, or compilation of information used in the employer's business which gives an advantage over competitors who do not know or use it (SOP 17).
  - (a) Policy. It is essential to the effective enforcement of the Act that the S/HCO and all OR-OSHA personnel preserve the confidentiality of all information and investigations which might reveal a trade secret.

- (b) Restrictions and Controls. When the employer identifies an operation or condition as a trade secret, it shall be treated as such. Information obtained in such areas, including all negatives, photographs, videotapes, and OR-OSHA documentation forms shall be labeled:

"ADMINISTRATIVELY CONTROLLED INFORMATION"  
"RESTRICTED TRADE INFORMATION".

- 1 All information reported to or obtained by a S/HCO in connection with any inspection or other activity which contains or which might reveal a trade secret shall be kept confidential. Such information shall not be disclosed except to other OR-OSHA officers or employees of the Department or other state agencies.
- 2 Title 18 of the United States Code, Section 1905, referenced in ORS 654.120 (3), provides criminal penalties for employees who disclose such information. These penalties include fines of up to \$1,000 or imprisonment of up to one year, or both, and removal from office or employment.

- (c) Photographs and Videotapes. If the employer objects to the taking of photographs and/or videotapes because trade secrets would or may be disclosed, the S/HCO should advise the employer of the protection against such disclosure afforded by OR-OSHA procedures in SOP #17. If the employer still objects, the S/HCO should contact the Safety/Health Enforcement Manager.

- (2) Violations of Other Laws. If a S/HCO observes apparent violations of laws enforced by other government agencies, such instances should be discussed with the Safety/Health Enforcement Manager. Referrals should be made using appropriate field office procedures.

## 5. Closing Conference.

- a. At the conclusion of an inspection the S/HCO shall, if practicable, conduct a closing conference with the employer and the employee representatives (On multi-employer worksites, the S/HCO shall decide whether separate closing conferences will be held with each employer representative). A joint closing conference shall be held with the employer and the employee representatives whenever practical. Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference, separate closing conferences will be held and a written summary of each conference will be made and attached to the firm file. A copy of the written summaries will be available from the Safety/Health Enforcement Manager upon request by the employer or the employee representative.
- b. The S/HCO will describe the apparent hazards and violations found during

the inspection and other pertinent issues. During the course of the closing conference, both the employer and the employee representatives should be advised of their rights to participate in any subsequent conferences, meetings, or discussions.

- (1) Since the S/HCO may not have all pertinent information at the time of the first closing conference, a second closing conference may be held by telephone or in person to inform the employer and employee representatives whether the establishment is in compliance.
- (2) The S/HCO should advise the employee representative(s) that:
  - (a) Under rules of the Hearings Division, if the employer contests, the employees have a right to elect "party status."
  - (b) They will be notified by the employer if a notice of contest is filed.
  - (c) They have discrimination rights.
  - (d) They have a right to contest the abatement date. Such contest must be in writing and must be filed within 20 calendar days after receipt of the citation.

## B. Special Inspection Procedures.

### 1. Follow-Up Inspections.

a. Inspection Procedures. The primary purpose of a follow-up inspection is to determine if the previously cited violations have been corrected. Normally, follow-up inspections involve no additional inspection activity unless the S/HCO observes a serious hazard.

### b. Failure to Abate.

- (1) A failure to abate exists when an employer has not corrected an other-than-serious violation which was cited previously when the previous citation has not been contested and the final abatement date has passed, or a serious violation has not been corrected/abated and the final abatement date has passed.
- (2) If it is determined that an employer has failed to abate a violation the S/HCO shall inform the employer and a Notice of Failure to Correct Violation shall be completed on site. The employer shall be informed that they will continue to accrue additional daily penalties until the violation is abated.
- (3) If the employer has not called to inform the S/HCO of abatement of the

violation after 10 days a second follow-up inspection shall be conducted. If this follow-up reveals the employer still has not corrected the original violations, another Notification of Failure to Abate Alleged Violation should be completed and additional daily penalties shall be issued. If a Notification of Failure to Abate Alleged Violation and additional daily penalties are not to be proposed, the Safety/Health Enforcement Manager should immediately contact the Manager of Enforcement detailing the circumstances.

(4) If it is determined that the originally cited violation was abated, but then recurred, a citation for repeated violations may be appropriate.

- c. Reports. The applicable OR-OSHA note forms should be used for documenting correction of violations and failure to correct items during follow-up inspections. If violation items were appropriately grouped in the original case, they may be grouped on the follow-up. If not, individual violations may be written for each item. The correction of other-than-serious violations may be documented in the narrative portion of the firm file.

## 2. Fatality/Catastrophe Investigations.

- a. Policy. All job-related fatalities and catastrophes, however reported, shall be investigated as thoroughly and expeditiously as resources and other priorities permit.

In accordance with OAR 437-001-0052 all fatalities or catastrophes must be reported to OR-OSHA within 8 hours and accidents or injuries resulting in a hospital admission with medical treatment, other than first aid, within 24 hours after the employer receives notification.

- b. Definitions. The following definitions apply for purposes of this section:

(1) Fatality. An employee death resulting from an employment accident or illness; in general, from an accident or illness caused by or related to a workplace hazard.

(2) Catastrophe. An accident in which two or more employees are fatally injured or three or more employees are admitted to a hospital or an equivalent medical facility.

**NOTE:** Accidents discovered from a records review or during the physical examination of the place of employment should be investigated as part of the programmed inspection.

(3) Hospitalization. To be admitted as an inpatient to a hospital or equivalent

medical facility.

- (4) Reporting. Safety/Health Enforcement Managers shall report fatalities and catastrophes directly and immediately to the Manager of Enforcement and the Administrative Specialist tasked with fatality notification.

c. Families of Victims.

- (1) Family members of employees involved in fatal occupational accidents or illnesses should be contacted at an early point in the investigation, given an opportunity to discuss the circumstances of the accident or illness, and provided timely and accurate information at all stages of the investigation as directed in (2) below.
- (2) All of the following require special tact and good judgment on the part of the S/HCO. In some situations, these procedures should not be followed to the letter; e.g., in some small businesses, the employer, owner, or supervisor may be a relative of the victim. In such circumstances, such steps as issuance of the form letter may not be appropriate without some editing.
  - (a) As soon as practicable after initiating the investigation, the S/HCO should attempt to compile a list of all of the accident victims and their current addresses, along with the names of individual(s) listed in the employer's records as next-of-kin (family member(s)) or person(s) to contact in the event of an emergency.
  - (b) An information letter to the family member(s) or the person(s) listed as the emergency contact person(s) indicated on the victims' employment records within 10 working days of the time their identities have been established.
  - (c) The greatest sensitivity and professionalism is required for such an interview. The information received must be carefully evaluated and corroborated during the investigation.
  - (d) Follow-up contact should be maintained with a key family member or other contact person, when requested, so that the survivors can be kept up-to-date on the status of the investigation. Such contact can be by personal visit, telephone or letter, as requested, by the family member. These contacts should be made at appropriate times; e.g., after the citation issuance, after an informal conference has been conducted, after the contest has been received, and when the case has been closed.
  - (e) The victim's family members will be provided a copy of all citations issued as a result of the accident investigation, if requested, within 5 working days of the employer receiving their citation.

- (f) OR-OSHA staff are cautioned not to mislead the family about the speed with which they can obtain a copy of disclosable information. The employer's rights must be protected. There should be no premature release of facts or findings during meetings with non-OR-OSHA personnel before the investigation and subsequent litigation is completed.
- d. Criminal. ORS 654.991(1) provides for criminal penalties for an employer who is convicted of having willfully violated the Act when that violation caused or materially contributed to the death of any employee. In an investigation of this type, therefore, the nature of the evidence available is of paramount importance. There should be close liaison between the S/HCO or team leader, the Safety/Health Enforcement Manager and the Manager of Enforcement in any finding which might involve a violation of ORS 654.991(1). The criminal investigator should be assigned at an early stage to assist in developing the case.
- e. Rescue Operations. OR-OSHA has no authority to direct rescue operations. This is the responsibility of the employer and/or of local political subdivisions or State agencies. OR-OSHA does have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers.

**NOTE:** It is OR-OSHA policy not to interfere with rescue operations.

- (1) Consultation. OR-OSHA may consult on the safest or most effective way to conduct rescue operations. This information, based on technical knowledge of competent OR-OSHA personnel at the scene, will be given freely, if requested.
- (2) Rescue Operations. If the S/HCO is aware that the employer intends to use some rescue procedure that may be in violation of a standard or the general duty clause and the S/HCO believes other, less hazardous procedures are more desirable, the employer should be advised of this belief. The employer should be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.
- (3) Application of Rules. If rescue work is performed by an employer, OR-OSHA rules are applicable. The employer is required to take such steps as are necessary to eliminate, if at all possible, or to minimize violations or recognized hazards likely to cause death or serious physical harm, considering the urgency in a particular rescue operation.
- f. Public Information Policy. The OR-OSHA public information policy regarding response to fatalities and catastrophes is to explain OR-OSHA presence to the news media. It is not to provide a continuing flow of facts nor to issue

periodic updates on the progress of the investigation. The Information Officer or the Manager of Enforcement will normally handle responses to media inquiries. Where particularly sensitive investigations are involved, or where difficult information requests are received, they shall contact the Administrator for advice and guidance.

3. Imminent Danger Investigations.

- a. Definition. OAR Chapter 437-01-015 defines imminent danger as ". . . A condition, practice, or act which exists in any place of employment and which could reasonably be expected to cause death or serious physical harm immediately.
- b. Requirements. The following conditions must be met before a hazard becomes an imminent danger:
  - (1) Death or serious physical harm must be threatened. Serious physical harm is impairment of the body such as to render the part of the body affected functionally useless or substantially reduced in efficiency.
  - (2) For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them may cause harm to such a degree as to shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.
  - (3) The threat must be immediate or imminent. The required immanency would be present where it is reasonable to believe that death or serious physical harm could occur within a short time; i.e., before OR-OSHA could respond through complaint, referral or programmed inspection procedures.
- c. Inspection.
  - (1) Scope. Any alleged imminent danger situation brought to the attention of or discovered by the S/HCO may be inspected immediately, whether or not the inspection was initiated in response to an allegation of imminent danger. Additional inspection activity should take place only after the resolution of the imminent danger situation.
  - (2) Elimination of the Imminent Danger. As soon as it is concluded that conditions or practices exist which constitute an imminent danger, the employer should be so advised and asked to notify his or her employees of the danger and remove them from the area of imminent danger.

- (a) Action Where Voluntary Elimination Is Not Accomplished. If the employer either cannot or does not voluntarily eliminate the hazard the following procedures will be observed:
- 1 The S/HCO will call the Safety/Health Enforcement Manager who will determine whether to authorize the posting of a red warning notice:
  - 2 If it is not feasible to contact the Safety/Health Enforcement Manager the S/HCO will contact the Manager of Enforcement.
  - 3 If it is not feasible to post a warning notice or, if after posting the imminent danger is not eliminated, the Safety/Health Enforcement Manager will immediately notify the Manager of Enforcement and appropriate action will be taken, including the initiation of court action.
- (3) Issuing a Red Warning Notice to Correct Imminent Danger. If the employer does not eliminate the imminent danger or give satisfactory assurance that the danger will be voluntarily eliminated, the S/HCO will contact the Safety/Health Enforcement Manager for approval to complete and post a Red Warning Notice immediately. The Red Warning Notice does not constitute a citation of alleged violation or a notice of proposed penalty. It is only a notice that an imminent danger is believed to exist and that OR-OSHA is warning the employer not to permit employees to work in the area of the danger until it is eliminated.
- (a) The original Red Warning Notice will be signed and posted at or near the area in which the exposed employees are working. A copy will be signed and attached to the inspection report.
- (b) Where there is not a suitable place for posting the Red Warning Notice, the employer(s) will be asked to provide a means for posting.
- (c) If there is a reason to believe that the employees may not see the notice, the S/HCO will orally inform the affected employees of the location of the red warning notice.
- (4) Reporting the Posting of a Red Warning Notice. The S/HCO shall promptly notify the Safety/Health Enforcement Manager when a Red Warning Notice is posted. In addition, the Safety/Health Enforcement Manager shall promptly notify the Manager of Enforcement. The following items shall be reported:
- (a) Name and address of establishment.

- (b) Number of employees affected.
- (c) Violation/Hazard.
- (d) Date and time posted.
- (e) Reason for posting.

(5) Removal of Red Warning Notice. When the hazard has been eliminated the S/HCO will remove the Red Warning Notice. If the inspection is still open the removal will be annotated in the report. If the inspection has been closed a new inspection will be opened to document the removal of the Red Warning Notice. This would be an in-compliance inspection. Removal of the Red Warning Notice must be reported to Central.

#### 4. Construction Inspections.

- a. General S/HCO Responsibilities. S/HCO responsibilities for construction inspections are the same as for general inspections. Special situations arising in the construction industry are discussed in this section.
- b. Standards Applicability. The rules issued under the Oregon Occupational Safety and Health Code published as Division 03 Construction have been adopted.
- c. Definition. The term "construction work" means work for construction, alteration or repair, including painting and decorating. These terms are discussed in 29 CFR 1926.13. If any question arises as to whether an activity is deemed to be construction, the Safety/Health Enforcement Manager shall be consulted.
- d. Rules Applicable to Construction. Any operation or situation not specifically covered by Division 03, Construction, may be subject to any and all applicable provisions of other existing divisions of the Oregon Occupational Safety and Health Code.(See OAR437-03-005).
- e. Employer Place of Employment.
  - (1) General. Inspections of employers in the construction industry are not easily separable into the distinct places of employment. The place of employment is generally the site where the construction is being performed (e.g., the building site, the dam site). Where the construction site extends over a large geographical area (e.g., road building), the entire job will be considered a single place of employment.
  - (2) Beyond Single Field Office. When a construction "place of employment" extends beyond a single region, the Manager of Enforcement may

approve an extension of the field office jurisdiction to cover the entire project.

f. Entry into the Place of Employment.

- (1) Severe Weather Conditions. If severe weather conditions encountered during an inspection cause construction activities to shut down, the inspection may be continued when weather permits. If the work continues and the weather creates hazardous working conditions, these facts shall be reported, since they may be the subject of citations and proposed penalties based on a specific rule or, if no such rule is applicable, the general duty clause.
- (2) Right to Enter--Refusal to Permit Inspection. If the construction is being performed under contract to the Federal Government (e.g., a contract for the construction of a postal facility) or state government, the S/HCO will remind the employer that, because the contract is subject to the OSE Act OR-OSHA has a right of entry to the worksite for the purpose of ascertaining compliance with the rules. If the employer refuses to permit entry, the S/HCO shall follow the procedures for obtaining a warrant. See ORS654.067(3), .202, .216 and OAR437-01-070.
- (3) Closing Conference. The S/HCO shall advise all employers and employee representatives that a closing conference will be held with each of them following the inspection, and request that each of them arrange to have a representative available. (See OAR 437-01-099).

5. Conduct of Monitoring Inspection (Extension and Long-Term Abatement).

- a. General. An inspection shall be classified as a monitoring inspection when a safety/health inspection is conducted for one or more of the following purposes:
  - (1) To determine the progress an employer is making toward final correction.
  - (2) To ensure that the target dates of a multi-step abatement plan are being met.
  - (3) To ensure that an employer's request for extension of abatement dates is made in true and good faith and that the employer has attempted to implement necessary controls as expeditiously as possible.
  - (4) To ensure that the employees are being properly protected until final controls are implemented.
  - (5) To ensure that the terms of a permanent variance are being carried out.

- (6) To provide abatement assistance for items under citation.
- b. Procedures. Monitoring inspections shall be conducted in the same manner as follow-up inspections.

## CHAPTER 3

### INSPECTION DOCUMENTATION

#### A. Four Stage Firm file Documentation.

1. General. These guidelines are developed to assist the S/HCO in determining the minimum level of written documentation appropriate for each of four firm file stages. All necessary information relative to violations shall be obtained during the inspection, using any means deemed appropriate by the S/HCO (i.e., notes, audio/videotapes, interviews, photographs, and employer records).
2. Firm file Stages. The following paragraphs indicate what documentation is required for each of the four firm file stages.

**NOTE:** The difference between Stage III and IV is one of format and organization only. A Stage III firm file is not understood as involving a lesser degree of documentation.

#### a. Stage I.

No on-site inspection conducted ---

- OR-OSHA Inspection Supplement is completed
- OSHA-1 is completed.
- A brief narrative expanding upon the reason for not conducting an inspection.
- Complaint/referral response, if complaint/referral inspection.

#### b. Stage II.

In-compliance inspection ---

- OR-OSHA-1 is completed.
- OR-OSHA Inspection Supplement is completed.
- Records obtained during the inspection, based on the S/HCO's professional judgement as to what should be included in the file.
- Complaint/referral response, if complaint/referral inspection.

#### c. Stage III.

Inspection conducted, citations to be issued ---

- OR-OSHA-1 is completed.
  - OR-OSHA Inspection Supplement is completed.
  - Records obtained during the inspection.
  - OR-OSHA Violation Worksheet (or OSHA-1B on computer) is completed for each violation with the following included:
    - Inspection Number
    - Firm Name
    - Date of Inspection/Violation
    - Class of violation (S,W,R,O)
    - Group and Item number
    - Probability Rating (L,M,H)
    - Severity Rating (OTS,S,D)
    - Penalty Reductions
    - Abatement Time/Complied With Date
    - Proposed Penalty
    - Rule Violated
    - Repeat Violation Reference if applicable
  - Inspection Field Notes will include the following unless already included on the Violation Worksheet:
    - Description of hazard, location, process, and measurements
    - Employer Knowledge
    - Supervision/Training
    - Number of employees exposed and frequency
    - Type of Injury most likely to occur
    - Stress factors at time of inspection (weather, noise)
    - Justification for probability and severity rating
    - How the violation was corrected if complied with at time of inspection
- NOTE:** Information in relation to exposed employees should be documented in the inspection field notes.
- Complaint/referral response, if complaint/referral inspection.

d. **Stage IV.**

Citations are contested ---

- When a citation has been contested the photos and videotapes will be

handled in accordance with SOP #25.

B. Specific Forms.

1. OR-OSHA Inspection Supplement.

The OR-OSHA Inspection Supplement will be completed for all inspection activity conducted by the S/HCO. The form should be completed in the detail provided. The following information will be recorded, at a minimum:

-Inspection Number

-Establishment Name

-Inspection Site

-Address and Phone Number at Establishment

-Names and Addresses of all Organized Employee Groups

-Names and Title of Management Representatives present at the Opening, Inspection, and Closing

-Names and Title of Employee Representatives present at the Opening, Inspection, and Closing

-Additional Citation Mailing Addresses

-Date Site was Entered and Time In and Time Out

2. Photo Identification Form.

This form will be used by the S/HCO, if photograph mounting is necessary. The form should be completed by the S/HCO in the detail provided.

C. Violations.

1. Basis of Violations.

a. Rules and Regulations. The OSEAct states that each employer has a responsibility to comply with the occupational safety and health rules promulgated under the act. The specific rules and regulations are found in the Oregon Administrative Rules. Chapter 437 establishes the source of all the rules which are the basis of violations.

**Note:** The most specific subdivision of the rule shall be used for citing violations.

- (1) Definition and Application of Horizontal and Vertical Rules. Vertical rules are those rules which apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment, or installations. Horizontal rules are those rules which apply when a condition is not covered by a vertical rule. Within both horizontal and vertical rules there are general rules and specific rules.
  - (a) When a hazard in a particular industry is covered by both a vertical and a horizontal rule, the vertical rule shall take precedence. This is true even if the horizontal rule is more stringent.
  - (b) When determining whether a horizontal or a vertical rule is applicable to a work situation, the S/HCO shall focus attention on the activity in which the employer is engaged at the establishment being inspected rather than the nature of the employer's general business. Caution must be exercised in reading scope and application for each division of rules, to assure that the proper narrow or broad focus of the division is adhered to.
- (2) Variances. The employer's requirement to comply with a rule may be modified through granting of a variance, as outlined in the Act.

An employer will not be subject to citation if the area of possible violation is in compliance with either the granted variance or the controlling rule. In the event that the employer is not in compliance with the requirements of the variance, a violation of Division 1 shall be cited with a reference in the citation to the variance provision that has not been met.

b. Employee Exposure.

- (1) Definition of Employee. Any individual who is currently employed or formerly employed, including a minor, whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, 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 any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS Chapter 656, whether by operation of law or by election.
- (2) Proximity to the Hazard. The S/HCO shall fully document exposure for every apparent violation and the proximity of workers to the point of danger of the operation.
- (3) Observed Exposure. Employee exposure is established if the S/HCO witnesses, observes, or monitors exposure of an employee to the hazardous or suspected hazardous condition. Where a standard requires engineering or administrative controls (including work practice controls),

employee exposure should be cited regardless of the use of personal protective equipment.

- (4) Unobserved Exposure. Where employee exposure is not observed, witnessed, or monitored by the S/HCO, employee exposure is established if it is determined through witness statements or other evidence that exposure to a hazardous condition has occurred, continues to occur, or could recur.
  - (a) In fatality/catastrophe (or other "accident") investigations, employee exposure is established if the S/HCO determines, through written statements or other evidence, that exposure to a hazardous condition occurred at the time of the accident.
  - (b) In other circumstances where the S/HCO determines that exposure to hazardous conditions has occurred in the past, such exposure may serve as the basis for a violation when employee exposure has occurred in the previous six months.
- (5) Potential Exposure. The possibility that an employee could be exposed to a hazardous condition may be cited when the employee can be shown to have access to the hazard. Potential employee exposure could include one or more of the following:
  - (a) When a hazard has existed and could recur because of work patterns, circumstances, or anticipated work requirements and it is reasonably predictable that employee exposure could occur.
  - (b) When a safety or health hazard would pose a danger to employees simply by employee presence in the area and it is reasonably predictable that an employee could come into the area during the course of the work, to rest or to eat at the jobsite, or to enter or to exit from the assigned workplace.
  - (c) When a safety or health hazard is associated with the use of unsafe machinery or equipment or arises from the presence of hazardous materials and it is reasonably predictable that an employee could use the equipment or be exposed to the hazardous materials in the course of work.

## 2. Types of Violations.

- a. Other-than-serious Violations. This type of violation shall be cited in situations where the injury or illness that would be most likely to result from a hazardous condition would probably not cause death or serious physical harm but would have a direct and immediate relationship to the safety and health of employees.

b. Serious Violations.

(1) ORS 654.086(2) of the OSEAct provides ". . . a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

(2) The S/HCO shall consider four elements to determine if a violation is serious.

(a) Step 1. The type of accident or health hazard exposure which the violated rule or the general duty clause is designed to prevent.

(b) Step 2. The most serious injury or illness which could reasonably be expected to result from the type of accident or health hazard exposure identified in Step 1.

(c) Step 3. Whether the results of the injury or illness identified in Step 2 could include death or a form of serious physical harm. Serious physical harm is defined as:

1 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.

2 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.

(d) Step 4. Whether the employer knew, or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition.

1 In this regard, the supervisor represents the employer and a supervisor's knowledge of the hazardous condition amounts to employer knowledge. The S/HCO will record any evidence in the notes which establishes that the employer knew of the hazardous

condition.

- 2 In cases where the employer may contend that the supervisor's own conduct constituted an isolated event of employee misconduct, the S/HCO will attempt to determine the extent to which the supervisor was trained and supervised so as to prevent such conduct.
- 3 If, after reasonable attempts to do so, it cannot be determined that the employer has actual knowledge of the hazardous condition, the knowledge requirement is met if the S/HCO is satisfied that the employer could have known through the exercise of reasonable diligence. As a general rule, if the S/HCO was able to discover a hazardous condition, it can be presumed that the employer could have discovered the same condition through the exercise of reasonable diligence. The S/HCO will record in the notes any evidence which substantiates that the employer could have known of the hazardous condition with the exercise of reasonable diligence.

c. Willful Violations. The following definitions and procedures apply whenever the S/HCO suspects that a willful violation may exist:

(1) A willful violation is 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.

(2) A willful violation exists under the OSEAct where evidence shows either an intentional violation of the OSEAct or plain indifference to its requirements.

(a) The employer committed an intentional and knowing violation if:

- 1 An employer representative was aware of the requirements of the OSEAct, or the existence of an applicable rule or regulation, and was also aware of a condition or practice in violation of those requirements.
- 2 An employer representative was not aware of the requirements of the OSEAct or rules, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement.

(b) The employer committed a violation with plain indifference to the law where:

- 1 Management officials were aware of an OR-OSHA requirement applicable to the company's business but made little or no effort to communicate the requirement to lower level supervisors and employees.
- 2 Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations.

**EXAMPLE:** Repeated issuance of citations addressing the same or similar conditions.

- 3 An employer representative was not aware of any legal requirement, but was aware that a condition or practice was hazardous to the safety or health of employees and made little or no effort to determine the extent of the problem or to take the corrective action. Knowledge of a hazard may be gained from such means as insurance company reports, safety committee or other internal reports, the occurrence of illnesses or injuries, media coverage, or, in some cases, complaints of employees or their representatives.
- 4 Finally, in particularly flagrant situations, willfulness can be found despite lack of knowledge of either a legal requirement or the existence of a hazard if the circumstances show that the employer would have placed no importance on such knowledge even if he had it.

- (3) It is not necessary that the violation be committed with a bad purpose or an evil intent to be deemed "willful." It is sufficient that the violation was deliberate, voluntary, or intentional as distinguished from inadvertent, accidental, or ordinarily negligent.
- (4) The S/HCO will carefully develop and record in the notes all evidence available that indicates employer awareness of the disregard for statutory obligations or of the hazardous conditions. Willfulness could exist if an employer is advised by employees or employee representatives regarding an alleged hazardous condition and the employer does not make a reasonable effort to verify and correct the condition. Additional factors which can influence a decision as to whether violations are willful include:
  - (a) The nature of the employer's business and the knowledge regarding safety and health matters which could reasonably be expected in the industry.
  - (b) The precautions taken by the employer to limit the hazardous conditions.

- (c) The employer's awareness of the OSEAct and of the responsibility to provide safe and healthful working conditions.
  - (d) Whether similar violations and/or hazardous conditions have been brought to the attention of the employer.
  - (e) Whether the nature and extent of the violations disclose a purposeful disregard of the employer's responsibility under the OSEAct.
- (5) The determination of whether to issue a citation for a willful or repeated violation will frequently raise difficult issues of law and policy and will require the evaluation of complex factual situations. Accordingly, a citation for a willful violation will not be issued without consultation with the Administrator, who may, as appropriate, discuss the matter with the Assistant Attorney General.
- d. Criminal/Willful Violations. ORS 654.991 of the OSEAct provides that: "Any employer who willfully violates any rule, or order promulgated pursuant to ORS 654.001 to .295, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both."
- (1) The Manager of Enforcement and Assistant Attorney General, will carefully evaluate all cases involving workers' deaths to determine whether they involve criminal violation of ORS 654.991 of the OSEAct.
  - (2) In cases where an employee's death has occurred which may have been caused by a willful violation of a safety or health rule, the manager will be consulted prior to the completion of the investigation to determine whether evidence exists and whether further evidence is necessary to establish the elements of a criminal/willful violation.
  - (3) The following criteria will be considered in investigating possible criminal/willful violations:
    - (a) In order to establish a criminal/willful violation OR-OSHA must prove that:
      - 1 The employer violated an OR-OSHA rule. A criminal/ willful violation cannot be based on violation of ORS 654.010.
      - 2 The violation was willful in nature.
      - 3 The violation of the rule or order caused the death of an employee. In order to prove that the violation of the rule caused the death of

an employee, there must be evidence in the file which clearly demonstrates that the violation of the rule or order was the cause of or a contributing factor to an employee's death.

- (b) Although it is generally not necessary to issue "Miranda" warnings to an employer when a criminal/willful investigation is in progress, the Manager of Enforcement will seek the advice of the Assistant Attorney General concerning the criminal aspects of the investigation.
- (c) Following the investigation, if the Manager decides to recommend criminal prosecution, a memorandum containing that recommendation will be forwarded promptly to the Manager of Enforcement. It will include an evaluation of the possible criminal charges, taking into consideration the greater burden of proof which requires that the State's case be proven beyond a reasonable doubt. In addition, if the correction of the hazardous condition appears to be an issue, this will be noted in the transmittal memorandum because in most cases the prosecution of a criminal/willful case delays the affirmance of the civil citation and its correction requirements.
- (d) OR-OSHA will normally issue a civil citation in accordance with current procedures even if the citation involves allegations under consideration for criminal prosecution. The Administrator will be notified of such cases, and they shall be forwarded to the local District Attorney.
- e. Repeated Violations. An employer may be cited for a repeated violation if that employer has been cited within the previous 36 months for requirements of the same statute, regulation, rule, or standard whether or not the citation has become a final order. Where a violation of a previously cited rule is present and that violation is under appeal and not yet final, the second citation shall be cited as a repeat violation. See OAR 437-01-160(2).

**EXCEPTION:** When a rule has more than one requirement within the same subparagraph it is not a repeat violation unless the same requirement of the rule is violated in both instances. In order to make this determination the S/HCO will need to review the previously issued citation.

- (1) Re-numbered Rules. Repeated violations will also be cited when re-numbered rules are violated and only the rule number has changed. Re-numbered rules with substantially different language and revised requirements would not be considered repeat violations.
- (2) Time Limitations. OR-OSHA administrative rules state that repeat violations will be calculated over a three-year period. Subsequent repeat violations may be cited as long as each repeat violation has occurred within three years of the earlier repeated rule. For the purpose of measuring the time for a repeat violation, the period begins when the

previous citation was issued and extends until the date the subsequent violation was identified during an inspection.

- (3) Geographical Limitations. For purposes of determining whether a violation is repeated, the following criteria will apply:
- (a) Fixed Place of Employment. A fixed place of employment is interpreted to mean "a single physical location where business is conducted or where services or industrial operations are performed." For purposes of considering whether a violation is repeated, citations issued to employers having fixed places of employment (e.g., factories, terminals, stores) will be limited to the cited place of employment. Fixed places of employment includes employers or owners engaged in construction activity who will be at a single work site continuously for more than 24 months.
  - (b) If the violation is going to be rated high probability serious or any probability death, the S/HCO will check statewide for repeat violations.
  - (c) Non fixed Establishment. A nonfixed establishment (e.g., construction sites, oil and logging operations) is interpreted to mean "all geographical sites or locations within OR-OSHA's jurisdiction where construction, logging, or other movable operation is being performed by the employer."
- EXAMPLE:** Where the construction site extends over a large area and/or the scope of the job is unclear (such as road building), the workplace specified in the employer's contract is an establishment. If an employer's activities at a jobsite are performed in two or more field office jurisdictions, a violation in Field Office A will serve as the basis for a repeated violation in Field Office B.
- (4) Repeated vs. Willful. Repeated violations differ from willful violations in that they may result from an inadvertent, accidental or ordinarily negligent act. Where a repeated violation may also meet the criteria for willful but the element of willfulness cannot be sufficiently proved, a citation for a repeated violation will normally be issued with the penalty calculated as indicated in Chapter 4. In such cases the Safety/Health Enforcement Manager will consult with the Manager of Enforcement.
- (5) Repeated vs. Failure to Abate. A failure to correct situation exists when an item of equipment or condition previously cited has never been abated and is noted at a later inspection. If, however, the violation was not continuous; i.e., if it had been abated and recurred, the subsequent recurrence is a repeated violation.

If a repeated citation is issued, ensure that the cited employer is fully

informed of the previous violations serving as a basis for the repeated citation, by notation in the AVD portion of the citation, using the following or similar language:

A \_\_\_\_ REPEAT VIOLATION of Item \_ on Citation \_\_\_\_\_ issued \_\_\_\_\_.

- f. Minimal Violations. Minimal violations are violations of rules which have no direct or immediate relationship to safety or health. Whenever minimal conditions are found during an inspection, they should be documented in the same way as any other violation; but no minimal notice will be issued. The criteria for finding a minimal violation are as follows:
- (1) An employer complies with the clear intent of the rule but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety or health.
  - (2) An employer complies with a proposed rule or amendment or a consensus rule rather than with the rule in effect at the time of the inspection when the employer's action clearly provides equal or greater employee protection.
  - (3) An employer's workplace is at the "state-of-the-art" which is technically beyond the requirements of the applicable rule and provides equivalent or more effective employee safety or health protection.
- NOTE:** Maximum professional discretion must be exercised in determining the point at which noncompliance with a rule constitutes a minimal violation.
- g. Failure-to-Abate Violations. This type of violation will be cited in situations where an employer has not fully corrected a violation issued on a previous OR-OSHA citation.
- h. Order to Correct. An order to correct is issued to require correction of a violation when a citation cannot be issued.
- (1) An Order to Correct is the appropriate tool when any of the following occur:
    - (a) An employer, with 10 or fewer employees, is required to have a safety committee by rule, but chooses the innovative option for small employers instead of a traditional safety committee.
    - (b) A citation is not issued within 180 days of the opening conference.
    - (c) Legal estoppel issues interfere with issuing a citation.

- (2) The criteria for proving and upholding an order to correct is the same as for a citation with penalty.
    - (a) Abatement verification is required for an Order to Correct and a Failure to Abate citation, with penalties, can be issued for nonabatement.
    - (b) A repeat violation can also be issued during subsequent inspections based on an order to correct.
  - (3) The S/HCO must document the rationale for issuing an Order to Correct in the inspection report narrative/summary.
    - i. Hazard Letters. To reduce the number of workplace injuries suffered by employees the scope of safety/health inspections must include all workplace hazards, even those that are not violations of the OSEAct. To address the issues not covered by rules the S/HCO can issue a hazard letter to inform the employer and employees of their concerns. The hazard letter does not change OR-OSHA's policy of citing for all violations of the OSEAct, including the General Duty Clause. Information supplied to employers through a hazard letter can be used to support employer knowledge in future citations that relate to the conditions addressed in the letter.
      - (1) Noncode-related hazard letters address: 1) hazards or hazardous conditions not currently addressed by a rule, 2) information on impending rule changes or new rules to be implemented, or 3) suggested ways to improve an employer's safety and health program.
      - (2) Code-related hazard letters address those hazards or conditions where a specific rule applies, but there is insufficient evidence to support a violation, or where measured samples are taken at the time of inspection and exposures are just below established acceptable limits.
    - j. Estoppel. Estoppel exists when an employer has been told or led to believe by an OSHA employee (either federal or state) that a particular condition or situation at their work place is in compliance with current safety and health rules. These items will be discussed during the closing conference and the employer and employee representatives informed that although a citation will not be issued for the violations, correction is required. The S/HCO will report these violations to the Safety/Health Enforcement Manager who will write the employer a letter describing the violations, the time for correction of the violations, the requirement to complete and return the letter of corrective action, and that a follow-up inspection may be conducted. If during the follow-up or other subsequent inspections the violations are found to be unabated they will be cited as first instance violations. Willful violations will be cited when the facts of the case so dictate.
3. Violation of the General Duty Clause (OAR 654.010). OSEAct 654.010 requires

employers to furnish a safe place of employment. "Every employer shall furnish employment and a place of employment which are safe and healthful for employees, and shall furnish and use such devices and safeguards, and shall adopt and use such practices, means, methods, operations, and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety, and health of such employees."

a. Evaluation of Potential ORS 654.010 Situations. In general, court cases under the general duty established that the following elements are necessary to prove a violation of the general duty clause:

- (1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
- (2) The hazard was recognized;
- (3) The hazard was causing or was likely to cause death or serious physical harm; and
- (4) There was a feasible and useful method to correct the hazard.

b. Discussion of ORS 654.010 Elements. The above four elements of an ORS 654.010 violation are discussed in greater detail as follows:

(1) A Hazard To Which Employees Were Exposed. A general duty citation must involve both a serious hazard and exposure of employees.

(a) Hazard. A hazard is a danger which threatens physical harm to employees.

1 Failure to Implement a Particular Abatement Method. In the past some ORS 654.010 citations have incorrectly alleged the violation is failure to implement certain precautions, corrective measures or other abatement steps, rather than failure to prevent the particular hazard. ORS 654.010 does not mandate a particular abatement measure, but only requires an employer to render the workplace free of certain hazards by any feasible and effective means which the employer wishes to utilize.

**EXAMPLE:** Employees doing sanding operations may be exposed to the hazard of fire caused by sparking in the presence of magnesium dust. One of the abatement methods may be training and supervision. The "hazard" is the exposure to the potential of a fire; it is not the lack of training and supervision.

**EXAMPLE:** In a hazardous situation involving high pressure gas where the employer has failed to train employees properly, has not

installed the proper high pressure equipment, and has improperly installed the equipment that is in place, there are three abatement measures which the employer failed to take; there is only one hazard (viz., exposure to the hazard of explosion due to the presence of high pressure gas) and hence only one general duty clause citation.

2 The Hazard Must Be Reasonably Foreseeable. The hazard for which a citation is issued must be reasonably foreseeable.

- a All the factors which could cause a hazard need not be present in the same place at the same time in order to prove foreseeability of the hazard; e.g., an explosion need not be imminent.

**EXAMPLE:** If combustible gas and oxygen are present in sufficient quantities in a confined area to cause an explosion if ignited but no ignition source is present or could be present, no ORS 654.010 violation would exist. If an ignition source is available at the workplace and the employer has not taken sufficient safety precautions to preclude its use in the confined area, then a foreseeable hazard may exist.

- b. It is necessary to establish the reasonable foreseeability of the general workplace hazard, rather than the particular hazard which led to the accident.

**EXAMPLE:** A titanium dust fire may have spread from one room to another only because an open can of gasoline was in the second room. An employee who usually worked in both rooms was burned in the second room from the gasoline. The presence of gasoline in the second room may be a rare occurrence. It is not necessary to prove that a fire in both rooms was reasonably foreseeable. It is necessary only to prove that the fire hazard, in this case due to the presence of titanium dust, was reasonably foreseeable.

- (b) The Hazard Must Affect the Cited Employer's Employees. The employees affected by the ORS 654.010 hazard must be the employees of the cited employer.

- (2) The Hazard Must be Recognized. Recognition of a hazard can be established on the basis of industry recognition, employer recognition, or "common sense" recognition. The use of common sense as the basis for establishing recognition shall be limited to special circumstances. Recognition of the hazard must be supported by satisfactory evidence and adequate documentation in the file as follows:

- (a) Industry Recognition. A hazard is recognized if the employer's industry recognizes it. Recognition by an industry, other than the industry to which the employer belongs, is generally insufficient to prove this element of an ORS 654.010 violation. Although evidence of recognition by the employer's specific branch within an industry is preferred, evidence that the employer's industry recognizes the hazard may be sufficient. The Safety/Health Enforcement Manager shall consult with the Manager of Enforcement on this issue.
- 1 In cases where state and local government agencies not specified in ORS 654.010 have codes or rules covering hazards not addressed by OR-OSHA rules, the Safety/Health Enforcement Manager upon consultation with the Manager of Enforcement will determine whether the hazard is to be cited under ORS 654. 010 or referred to the appropriate local agency for enforcement.
  - 2 Rules of other agencies such as nuclear regulatory agencies generally shall not be used. They raise substantial difficulties under ORS 654.010 which provides that OR-OSHA is preempted when such an agency has statutory authority to deal with the working condition in question.
- (b) Employer Recognition. A recognized hazard can be established by evidence of actual employer knowledge. Evidence of such recognition may consist of written or oral statements made by the employer or other management or supervisory personnel during or before the OR-OSHA inspection, or instances where employees have clearly called the hazard to the employer's attention.
- (c) Common Sense Recognition. If industry or employer recognition of the hazard cannot be established in accordance with (a) and (b), recognition can still be established if it is concluded that any reasonable person would have recognized the hazard. This theory of recognition will be used only in flagrant cases.
- (3) The Hazard Was Causing or Was Likely to Cause Death or Serious Physical Harm. This element of an ORS 654.010 violation is virtually identical to the substantial probability element of a serious violation under the OSEAct.
- (4) The Hazard May Be Corrected by a Feasible and Useful Method.
- (a) To establish an ORS 654.010 violation the agency must identify a method which is feasible, available and likely to correct the hazard. The information will indicate that the recognized hazard, rather than a particular accident, is preventable.
  - (b) If the proposed abatement method would eliminate or significantly

reduce the hazard beyond whatever measures the employer may be taking, a ORS 654.010 citation may be issued. A citation shall not be issued merely because the agency knows of an abatement method different from that of the employer, if the agency's method would not reduce the hazard significantly more than the employer's method. It must also be noted that in some cases only a series of abatement methods will alleviate a hazard. In such a case all the abatement methods will be mentioned.

c. Use of the General Duty Clause. The general duty provisions will be used only where there is no rule that applies to the particular hazard involved.

(1) The general duty clause may be applied in situations where a recognized hazard is created in whole or in part by conditions not covered by a rule. An example of a hazard covered only partially by a rule would be a confined space situation where an employee could be subject to an overexposure of an air contaminant covered under a specific health rule or to an atmosphere containing less than 16 percent oxygen. The latter condition could legitimately be cited under the general duty clause with the former cited under the appropriate rule.

(2) The general duty clause may be applicable to some types of employment which are inherently dangerous (fire brigades, emergency rescue operations, confined space entry, etc.). Employers involved in such occupations must take the necessary steps to eliminate or minimize employee exposure to all recognized hazards which are likely to cause death or serious physical harm. These steps include anticipation of hazards which may be encountered, provision of appropriate protective equipment, and prior provision of training, instruction, and necessary equipment. An employer who has failed to take appropriate steps on any of these or similar items and has allowed the hazard to continue to exist may be cited under the general duty clause (if not covered under a rule).

d. Limitations on Use of the General Duty Clause. ORS 654.010 is to be used only within the guidelines given in this chapter.

(1) ORS 654.010 will Not Be Used When a Rule Applies to a Hazard. Legal precedent has established that ORS 654.010 may not be used if an OR-OSHA rule applies to the hazardous working condition.

(2) ORS 654.010 Not Normally Used To Impose a Stricter Requirement Than That Required by the Rule. For example, if the rule provides for a TLV of 5 ppm, even if data establishes that a 3 ppm level is a recognized hazard, ORS 654.010 shall not be cited to require that the 3 ppm level be achieved. If the rule has only a time-weighted average permissible exposure level and the hazard involves exposure above a recognized ceiling level, the Safety/Health Enforcement Manager shall consult with

the Manager of Enforcement who will discuss any proposed citation with the Assistant Attorney General and the Administrator.

**NOTE:** An exception to this rule may apply if it can be documented that "an employer knows a particular safety or health standard is inadequate to protect his workers against the specific hazard it is intended to address." Such cases will be subject to pre-citation review.

- (3) ORS 654.010 Will Normally Not Be Used to Require an Abatement Method Not Set Forth in a Specific Rule. A specific rule is one that refers to a particular toxic substance or deals with a specific operation, such as welding. If a toxic substance rule covers engineering control requirements but not requirements for medical surveillance, ORS 654.010 shall not be cited to require medical surveillance.
  - (4) ORS 654.010 Will Not Be Used to Enforce "Should" Rule. If a rule or its predecessor, such as an ANSI standard, uses the word "should," the rule will not be cited with respect to the hazard addressed by the "should" portion of the rule.
  - (5) ORS 654.010 Shall Not Normally Be Used To Cover Categories of Hazards Exempted by a Rule. Although no hard and fast general rule can be stated concerning the use of ORS 654.010 to cover specific categories of hazards, types of machines, operations, or industries exempted from coverage by a rule, ORS 654.010 will normally not be cited if the reason for the exemption is the lack of a hazard. If, on the other hand, the reason for the exemption is that the drafters of the standard (or source document) declined to deal with the exempt category for reasons other than the lack of a hazard, the general duty clause may be cited if all the necessary elements for such a citation are present.
- e. Pre-Citation Review. The Safety/Health Enforcement Manager will inform the Manager of Enforcement of all ORS 654.010 citations issued from the field office.
- (1) The Manager of Enforcement will be consulted prior to the issuance of all ORS 654.010 citations where such consultation is required by the procedures given in the preceding paragraphs or where complex issues or exceptions to those procedures are involved.
  - (2) If a rule does not apply and all criteria for issuing an ORS 654.010 citation are not met, but the Safety/Health Enforcement Manager feels that the hazard warrants some type of notification, a letter will be sent to the employer and the employee representative describing the hazard and suggesting corrective action.

- f. Reporting Hazards Not Covered by a Rule. The Safety/Health Enforcement Manager shall evaluate all alleged general duty clause violations to determine whether they should be referred to the central office for the development of new or revised rules. Those violations considered to be candidates for development or revision of a rule should be forwarded by the Safety/Health Enforcement Manager to the Manager of Enforcement who should include appropriate comments, recommendations, and supporting documentation with the transmittal to the Administrator and technical section.

4. Writing Citations.

- a. General. The OSEAct controls the writing of citations.

- (1) ORS 654.071(1). ". . . the director or his authorized representative . . . shall with reasonable promptness issue to such employer a citation." The time which has elapsed from the completion of the inspection or investigation until the issuance of citation(s) shall be closely monitored and kept as short as possible by the Safety/Health Enforcement Manager.

- (2) ORS 654.071(3). "No citation or notice of proposed civil penalty may be issued under this section after the expiration of 180 days following the start of the inspection, but this shall not prevent the issuance, at any time, of an order to correct that violation or the issuance of a citation for a subsequent violation." Where the actions or omissions of the employer concealed the existence of the violation, the time limitation is suspended until such time that OR-OSHA learns or could have learned of the violation. The Department of Justice may be consulted.

- b. Alternative Rules.

- (1) The same factual situation may present a possible violation of more than one rule. For example, the facts which support a violation of 1910.28(a) may also support a violation of 1910.132(a) if no scaffolding is provided when it should be and safety belts are not required by the employer.

- (2) Where it appears that more than one rule is applicable to a given factual situation and that compliance with any of the applicable rules would effectively eliminate the hazard, it is permissible to cite alternative rules using the words "in the alternative." A reference in the citation to each of the rules involved will be accompanied by a separate Alleged Violation Description (AVD) which clearly alleges all of the necessary elements of a violation of that rule.

5. Grouping and Combining of Violations.

- a. Combining. Violations of a single rule having the same classification found during the inspection of an establishment or work site generally will be

- combined into one alleged violation. Each instance of the violation will be separately set out within that item of the citation. Other-than-serious violations of a rule will not be combined with serious violations of the same rule, and all violations must have the same abatement date. Repeat violations can be combined.
- b. Grouping. When a source of a hazard is identified which involves interrelated violations of different rules, the violations can be grouped into a single item.
- (1) Grouping Related Violations. When the S/HCO believes that violations classified either as serious or as other-than-serious are so closely related as to constitute a single hazardous condition, the violations can be grouped into one citation item.
  - (2) Grouping Other-Than-Serious Violations Where Grouping Results in a Serious Violation. When two or more individual violations are found which, if considered individually represent other-than-serious violations, but if grouped create a substantial probability of death or serious physical harm, the violations can be grouped and alleged as a single serious violation.
  - (3) Where Grouping Results in a Higher Probability Other-Than-Serious Violation. Where the S/HCO finds during the course of the inspection that a number of other-than-serious violations are present in the same piece of equipment which, considered in relation to each other affect the overall probability of possible injury resulting from an accident involving the combined violations, then they can be grouped. The violations can be grouped in a manner similar to that indicated in the preceding paragraph, although the resulting citation will be for an other-than-serious violation.
  - (4) Violations of Posting and Recordkeeping Requirements. Violations of the posting and recordkeeping requirements which involve the same document; e.g., OSHA-300 Form was not posted or maintained, will be grouped for penalty purposes.
  - (5) Penalties for Grouped Violations. If penalties are to be proposed for grouped violations, the penalty will be written across from the first violation item appearing on the citation.
- c. When Not to Group. There are times when grouping is normally inappropriate.
- (1) Multiple Inspections. Only violations discovered in a single inspection of a single establishment or work site will be grouped. An inspection in the same establishment or at the same work site will be considered a single inspection even if it continues for a period of more than one day or is discontinued with the intention of resuming it after a short period of time if only one OR-OSHA-1 is completed.

- (2) Separate Establishments of the Same Employer. Where inspections are conducted, either at the same time or different times, at two establishments of the same employer and instances of the same violation are discovered during each inspection, the employer will be issued separate citations for each establishment.
  - (3) Egregious Violations. Violations which are proposed as instance-by-instance will not normally be combined or grouped.
  - (4) Repeat Violations. Violations which are a repeat from a previous citation will not normally be grouped.
6. Multi-employer Worksites. Refer to "Multi-employer Workplace Citation Guidelines" effective January 1, 2003.
  7. Employer/Employee Responsibilities.
    - a. ORS 654.022 of the OSEAct. "Every employer, owner, employee and other persons shall obey and comply with every requirement of every order, decision, direction, standard, rule or regulation made or prescribed by the department . . . ." The OSEAct does not provide for the issuance of citations or the proposal of penalties against employees. Employers are responsible for employee compliance with the rules.
    - b. The manager, superintendent, foreperson or other person in charge or control of all or part of the place of employment is considered to be an agent of the employer.
    - c. Under no circumstances is the S/HCO to become involved in an on-site dispute involving labor-management issues or interpretation of collective-bargaining agreements. The S/HCO is expected to obtain enough information to understand whether the employer is using all appropriate authority to ensure compliance with the Act. Concerted refusals by the employees to comply with the OSEAct will not bar the issuance of an appropriate citation where the employer has failed to exercise full authority to the maximum extent reasonable, including discipline and discharge, to ensure compliance with the OSEAct.
  8. Affirmative Defenses.
    - a. Definition. An affirmative defense is any matter which, if established by the employer, will excuse the employer from a violation which has otherwise been proved by the S/HCO.
    - b. Burden of Proof. Although affirmative defenses must be proved by the employer at the time of the hearing, OR-OSHA must be prepared to respond whenever the employer is likely to raise or actually does raise an argument supporting such a defense. The S/HCO, therefore, should keep in mind the

potential affirmative defenses that the employer can make and, when appropriate, attempt to gather contrary evidence.

- c. Explanations. The following are explanations of the more common affirmative defenses with which the S/HCO should become familiar. There are other affirmative defenses besides these, but they are less frequently raised or are such that the facts which can be gathered during the inspection are minimal.

(1) Unpreventable Employee Misconduct or "Isolated Event." The violative conduct was:

(a) Unknown to the employer; and

(b) In violation of an adequate work rule which was effectively communicated and uniformly enforced.

**EXAMPLE:** An unguarded table saw is observed. The saw, however, has a guard which is reattached while the S/HCO watches. Facts which the S/HCO document may include: Who removed the guard and why? Did the employer know that the guard had been removed? How long or how often had the saw been used without guards? Did the employer have a work rule that the saw guards not be removed? How was the work rule communicated? Was the work rule enforced?

(2) Impossibility. Compliance with the requirements of a rule is:

(a) Functionally impossible or would prevent performances of required work; and

(b) There are no alternative means of employee protection.

**EXAMPLE:** During the course of the inspection an unguarded table saw is observed. The employer states that the nature of its work makes a guard unworkable. Facts which the S/HCO document may include: Would a guard make performance of the work impossible or merely more difficult? Could a guard be used part of the time? Has the employer attempted to use guards? Has the employer considered alternative means or methods of avoiding or reducing the hazard?

(3) Greater Hazard. Compliance with a rule would result in greater hazards to employees than noncompliance and:

(a) There are no alternative means of employee protection; and:

(b) An application of a variance would be inappropriate.

**EXAMPLE:** The employer indicates that a saw guard had been removed

because it caused particles to be thrown into the operator's face. Facts which the S/HCO shall consider may include: Was the guard used properly? Would a different type of guard eliminate the problem? How often was the operator struck by particles and what kind of injuries resulted? Would safety glasses, a face shield, or a transparent shelf attached to the saw prevent injury? Was operator technique at fault and did the employer attempt to correct it? Was a variance sought?

## APPENDIX "A"

### SAVEs and AVDs

- A. General. The proper writing of citations is an essential part of the enforcement process. Specific instructions on how to complete the Citation and Notification of Penalty are contained in the Integrated Management Information System (IMIS) Forms Manual.
- B. SAVEs. The Standard Alleged Violation Elements (SAVEs) are incorporated into the NCR system that is part of the automated citation processing procedures.
1. Purpose. The SAVEs are designed to achieve the following goals:
    - a. Improve the quality of alleged violation descriptions.
    - b. Establish uniformity through standardized wording in Alleged Violation Descriptions (AVDs).
    - c. Promote uniform interpretation and application of rules.
    - d. Ensure legal adequacy of alleged violation descriptions.
    - e. Decrease lag time between inspection and citation.
    - f. Reduce S/HCO and clerical time on firm file preparation.
    - g. Reduce typographical and grammatical errors in citations.
  2. Scope. The term SAVE is used to describe that portion of an alleged violation description which can be stored within an automatic typing system and retrieved as needed. As it appears in the citation, an AVD is a complete description of an alleged violation consisting of a SAVE and other necessary variable elements applicable to a specific violation.
    - a. The SAVEs system does not include variable information. It lists the needed items of variable information in memory-jogger form under the SAVE.
    - b. If the inspection is a fatality/catastrophe investigation or other "after-the-fact" investigation, the AVD must include the date and time of employee exposure.
    - c. For multi-step abatements, the variable information must include a description of each step type there with the date by which that step must be completed. These will appear on the citation.

Note: The SAVEs system is not to be used as a substitute for the rules/regulations.

3. General Instructions. S/HCOs using the SAVEs system shall:
  - a. Determine from the OR-OSHA safety and health rules/regulations which specific rule/regulation is to be cited.
  - b. Search the SAVEs system for a corresponding SAVE. If one is listed, ensure that it is appropriate for the apparent violation noted. This is accomplished by comparing the SAVE with the rule/regulation.
  - c. Select the appropriate SAVE.
  - d. Record the variable information required to complete the AVD. Include the date that the violation was observed if the inspection took more than one day to complete.

4. SAVEs Options. A SAVE option identifies a different requirement within a single rule/regulation.
  - a. If more than one requirement is covered by a single rule/regulation, these may be listed as options in the SAVEs system. Two or more options for the same rule/regulation will not be listed on a citation as separate violations.
  - b. SAVEs have not been drafted for all possible combinations of violations of a rule. The options given may be combined in either of two ways:
    - (1) One method is to write a new SAVE including all the required information.
    - (2) The preferred method is to combine the applicable options by listing each such option as an individual subitem of a single alleged violation. The item number is listed as 1a, 1b, etc.

NOTE: The S/HCO shall not confuse this combining procedure with the instructions for grouping violations.

5. Violations Without SAVEs. If there is not a SAVE that covers the alleged violation, the S/HCO is required to develop the alleged violation description using the following format:
  - a. Past tense in all wording.
  - b. Plural wording; e.g., operator(s).
  - c. Use (a), (b), (c), etc., for sub-locations
  - d. Positive factual statements (eliminate "failed to" and "employer failed to").

C. Examples. The following are some examples of how the SAVEs are properly used or written:

1. SAVE for 1910.213(n)(3). This SAVE is not in the word processing system.

a. As it should be written to appear in the SAVEs system.

29 CFR 1910.213(n)(3): Feed rolls were not guarded by a hood and/or suitable guard to prevent the hands of the operator(s) from coming in contact with the in-running rolls at any point and/or the guard(s) was not fastened to the frame carrying the rolls so as to remain in adjustment for any thickness of stock:

(a) Location, ID specific operations and/or conditions, describe hazard as needed.

Note: Indicate whether planing, molding, sticking, and/or matching machines are to be cited.

b. SAVE for 1910.22(a)(2). As it appears in SAVE system.

29 CFR 1910.22(a)(2): Floors of workrooms were not maintained in a clean and so far as possible, dry condition:

(a) Location, identify specific operation(s) and/or conditions, describe hazard(s) where necessary.

c. What the S/HCO Must Specify.

(1) Enter appropriate variable information: Machine shop, east end--water on floor around the "Dumas" injection machine.

(2) Describe the hazard: Resulting in a slippery condition.

d. Completed AVD as It Appears on the Citation.

29 CFR 1910.22(a)(2): Floors of workrooms were not maintained in a clean and, as far as possible, a dry condition:

(a) Machine shop, east end--water on floor around the "Dumas" injection machine resulting in a slippery condition.

2. SAVE for a Rule with a General Requirement.

a. As It Appears in the SAVEs system.

29 CFR 1910.132(a): Protective equipment was not provided and/or used to prevent injury or occupational illness whenever hazards from processes or environment could not be contained or eliminated at their source:

- (a) Location, identify specific operations and/or conditions, describe hazard(s) where necessary.
  - b. What the S/HCO Must Specify.
    - (1) Identify type of protective equipment needed; e.g., wire mesh gloves.
    - (2) Enter appropriate variable information: Deboning Department, main deboning table, wire mesh gloves were not used.
    - (3) Describe the hazard: Cuts to hands or body or employees cutting themselves (if necessary).
  - c. Completed AVD as It Appears on the Citation.

29 CFR 1910.132(a): Protective equipment was not provided and/or used to prevent injury or occupational illness whenever hazards from processes or environment could not be contained or eliminated at their source:

    - (a) Deboning Department, main deboning table, wire mesh gloves were not used.
3. SAVE for a Rule Incorporated by Reference.
- a. As It Appears in the SAVEs system.

29 CFR 1910.101(b): Compressed gas cylinders were not secured in an upright or horizontal position or stored upright where they would not be knocked over as required by Compressed Gas Association Pamphlet P-1-1965.

    - (a) Location, identify specific operation(s) and/or condition(s), describe hazard(s) where necessary

Note: Applies to cylinders only, not to welding, cutting, and brazing.
  - b. What the S/HCO Must Specify.
    - (1) Insert the appropriate name of the adopted rule and its section number; e.g., 1910.101(b) Compressed Gas Association Pamphlet P.1.1965.
    - (2) Enter appropriate variable information: Main cylinder filling station, east end, adjacent to rampway used by powered industrial trucks.
  - c. Completed AVD as It Appears on the Citation.

29 CFR 1910.101(b) Compressed gas cylinders were not secured in an upright or horizontal position or stored upright where they would not be

knocked over as required by Compressed Gas Association Pamphlet P-1-1965.

(a) Main cylinder filling station, east end, adjacent to rampway used by powered industrial trucks.

4. An Example of Combining SAVEs.

a. 29 CFR 1910.215(a)(4) Grinding machinery was not used with work rest(s) to support off-hand grinding work:

(1) Northwest corner of machine shop Black & Decker bench grinder, S/N 24693.

(2) Northwest corner of machine shop Shopcraft stand grinder, S/N 10096, work rest one inch from wheel (left wheel).

5. An Example of Grouping SAVEs.

THE ALLEGED VIOLATIONS BELOW HAVE BEEN GROUPED BECAUSE THEY INVOLVE SIMILAR OR RELATED HAZARDS THAT MAY INCREASE THE POTENTIAL FOR (INJURY RESULTING FROM AN ACCIDENT) OR (ILLNESS).

a. 29 CFR 1910.107(b)(5)(i): The average air velocity over the open face of the paint spray booth(s) was less than 100 linear feet per minute:

(1) Paint shop, paint spray booth, 60 linear feet per minute.

b. 29 CFR 1910.107(b)(5)(i): There were no visible gauges(s), audible alarm(s), or pressure activated device(s) installed on paint spray booth(s) to indicate or ensure that the required air velocity was maintained:

(1) Paint Shop, paint spray booth.

D. Citing Health Violations. In general, health citations are structured in the same manner as illustrated in the examples given in C.1. through C.5. Health citations have certain characteristics that need to be highlighted.

1. Citations. Health citations will have item numbers identifying each rule violated. Within each item cited, instances observed which relate to that item will be listed.

a. When two or more employees are exposed to different contaminants, separate items will describe the violations of the different contaminants. For example, over-exposure to iron oxide fume on a welder and zinc oxide fume on a ladle operator would result in two separate items and two separate penalties on one serious citation.

- b. When more than one employee is exposed to the same hazard, the operations would be listed as separate instances for the same item.
  - c. When one or more employees are over-exposed to several contaminants covered by different rules, but exposures are due to one process or could be controlled by one administrative or engineering control measure, the items will be grouped unless separation is necessary for clarity. For example, a grinder's over-exposure to silica, cadmium, and nickel dust would be one item, as one process is involved. However, if the grinder was also over-exposed to lead, the lead exposure can be cited separately as it can be grouped with other lead-related items.
2. Specific Instructions. When using SAVEs for health citations, the S/HCO must include certain additional information in the alleged violation description over and above that required for safety citations in general such as the exposure levels found during sampling for hazardous substances or for physical hazards.
- E. Examples of Health SAVE's. The use of health SAVEs is illustrated in the following examples:
- 1. SAVE for a Rule with a General Requirement.
    - a. As It Appears in the SAVEs system.

29 CFR 1910.132(a): Protective equipment was not provided and used to prevent injury or occupational illness wherever hazards from processes or environment could not be contained or eliminated at their source.

(a) Location, identify specific operation(s) and/or conditions, describe hazard(s) where necessary.
    - b. What the S/HCO Must Specify.

An employee working in the fluidizer room handling Scotch Brand Resin 5230, which is a serious skin irritant and sensitizer, was wearing cotton gloves which were not impervious to the resin and did not protect the wrists and lower arms.
    - c. Completed AVD as It Appears on the Citation.

29 CFR 1910.132(a): Protective equipment was not provided and used to prevent injury or occupational illness whenever hazards from processes or environment could not be contained or eliminated at their source.

(a) An employee working in the fluidizer room handling Scotch Brand Resin 5230, which is a serious skin irritant and sensitizer, was wearing cotton gloves which were not impervious to the resin and did not protect the wrists and lower arms.

2. SAVE for a Noise Violation.

a. As it Appears in the SAVEs system.

29 CFR 1910.95(b)(1): Employees at the following locations were exposed to noise at intensities and time periods in excess of the permissible noise dose of 100 percent (an eight-hour time-weighted average of 90 dB) and all feasible engineering or administrative controls had not been implemented to reduce noise exposure to within permissible limits:

(a) (Location/position) (Exposure dose and equivalent sound level)

29 CFR 1910.95(i)(2)(i): Hearing protectors were not worn by all employees exposed to noise levels exceeding an eight-hour time-weighted average of 90 dB.

(a) (Location)(Job Title)(Exposure levels)

Note: Abatement normally will be multi-step SAVE as it appears on the citation.

One of the following must be accomplished by the correction date:

The employer must implement feasible administrative and/or engineering control methods which reduce employee exposures to within permissible levels;

OR

The employer must submit an engineering control plan along with a request for additional time in which to achieve compliance. The plan must be designed to reduce exposures to within permissible limits and shall include dates for the final implementation of controls and details of required interim personal protection measures.

b. What the S/HCO Must Specify.

An employee performing grinding on castings at booth 3 in the cleaning room was exposed to continuous noise levels at 196 percent of the allowable 8-hour time weighted average sound level. The equivalent dBA level of the 196 percent is approximately 97 dBA.

c. Completed AVD as It Appears on the Citation.

(1) 29 CFR 1910.95(b)(1): Employees in the following locations were exposed to noise at intensities and time periods in excess of the permissible noise dose of 100 percent (an eight-hour time-weighted average of 90 dB) and all feasible engineering or administrative controls had not been implemented to reduce noise exposures to within permissible limits:

- (a) An employee performing grinding on castings at booth 3 in the cleaning room was exposed to continuous noise levels at 196 percent of the allowable 8-hour time weighted average sound level. The equivalent dBA level of the 185.5 percent is approximately 97 dBA.

One of the following must be accomplished by the correction date:

The employer must implement feasible administrative and/or engineering control methods which reduce employee exposures to within permissible levels;

OR

The employer must submit an engineering control plan along with a request for additional time in which to achieve compliance. The plan must be designed to reduce exposures to within permissible limits and shall include dates for the final implementation of controls and details of required interim personal protection measures.

Note: Violations of the hearing conservation amendment (1910.95(c) through 1910.95(m)) shall normally not be grouped with citations resulting from over-exposure to the levels given in Table 121-1 except for violations of 1910.95(i)(2)(i) or 1910.95(a), hearing protection, but rather shall be grouped together in a separate general violation .

- d. 29 CFR 1910.95(i)(2)(i): Hearing protectors were not worn by all employees who were exposed to noise at a time-weighted average of 85 dB or greater and who had experienced a significant threshold shift.

(a) (LOCATION)(JOB TITLE) (EXPOSURE LEVEL)

OR

29 CFR 1910.95(i)(2)(i): Hearing protectors were not worn by all employees exposed to noise levels exceeding an eight-hour time-weighted average of 90 dB.

(a) (LOCATION)(JOB TITLE) (EXPOSURE LEVELS)

One of the following must be accomplished by the correction date:

The employer must implement feasible administrative and/or engineering control methods which reduce employee exposures to within permissible levels;

OR

The employer must submit an engineering control plan along with a request for additional time in which to achieve compliance. The plan must be designed to reduce exposures to within permissible limits and shall include dates for the final implementation of controls and details of required interim personal protection measures.

## CHAPTER 4

### POST-INSPECTION PROCEDURES

#### A. Abatement.

1. Period. The abatement period will be the shortest interval within which the employer can reasonably be expected to correct the violation. When abatement is witnessed by the S/HCO during the inspection, the abatement period will be complied with (c/w). Abatement periods will be assigned in the multiples of 7-day periods (e.g., 7, 14, 21, 28 days) or immediately upon receipt of the citation.
2. Reasonable Abatement Date. The establishment of an abatement date requires the exercise of maximum professional judgment on the part of the S/HCO.

**NOTE:** Abatement periods exceeding 28 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where additional time is required (e.g., a condition where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 28 calendar days). When an abatement date is granted that is in excess of 28 calendar days, an explanation for this action will be placed in the official file. Initial abatement dates in excess of 60 days may not be granted by the Safety/Health Enforcement Manager without prior approval of the Manager of Enforcement.

3. Verification of Abatement. The S/HCO is responsible for determining if abatement has been accomplished. When abatement is not accomplished at the time of the inspection or the employer does not notify OR-OSHA by letter of corrective action of the abatement, verification will be determined by telephone contact or by follow-up inspection. When abatement is verified by telephone, documentation will be included in the firm file describing the specific corrective action taken for each violation cited and the approximate date of correction.
4. Effect of Contest Upon Abatement Period. In situations for other-than-serious violations where an employer contests either (1) the period set for abatement, or (2) the citation itself, the abatement period will be considered not to have begun until there has been an affirmation of the citation and abatement period.
  - a. Where the Hearings Division or a court has altered the abatement period, the abatement period as altered will be the applicable abatement period.
  - b. Where an employer has contested only the amount of the proposed penalty, the abatement period continues to run unaffected by the appeal.
  - c. Where the employer does not contest, he or she must abide by the date set forth in the citation, even if such date is within the 20 calendar day notice of

- contest period. Therefore, when the abatement period designated in the citation is 20 days or less and a notice of contest has not been filed, a follow-up inspection of the work site may be conducted for purposes of determining whether abatement has been achieved within the time period set forth in the citation. A failure to abate citation may be issued on the basis of the S/HCO's findings.
- d. Where the employer has filed an appeal for an other-than-serious violation to the initial citation within the proper appeal period, the abatement period does not begin to run until the entry of an informal conference settlement agreement or a final Hearings Division order. Under these circumstances, any follow-up inspection within the contest period will be discontinued and a failure to abate citation will not be issued.
  - e. Appealing a serious violation or the reasonableness of the correction date does not automatically extend or stay the correction date. An employer can request an extension of the correction date through OR-OSHA or request that the workers' compensation board hearings division, for good cause, conduct an expedited hearing.
5. Long-Term Abatement Date for Implementation of Feasible Engineering Controls. Situations may arise where it will be difficult to set a specific abatement date when the citation is originally issued, such as where an employer chooses to implement feasible engineering controls and uncertainty exists as to when the necessary equipment may be available. The S/HCO will discuss the problem with the employer at the closing conference and, in appropriate cases, will encourage the employer to seek a future extension from the Safety/Health Enforcement Manager when further information is available.
- a. Final Abatement Date. The S/HCO and the Safety/Health Enforcement Manager will make their best judgment as to a reasonable abatement date. A specific date for final abatement will not permit the employer to submit a plan where he is allowed to set his own abatement date(s). At a later time, if necessary, an appropriate extension request may be made by the employer to the Safety/Health Enforcement Manager to modify the abatement date.
  - b. Employer Abatement Plan. The employer is required to submit an abatement plan outlining the anticipated long-term abatement procedures.
- NOTE:** A statement agreeing to provide the affected field office with written periodic progress reports will be part of the long-term abatement plan.
6. Feasible Administrative, Work Practice, and Engineering Controls in Health Inspections. Where applicable, the S/HCO should discuss control methodology with the employer during the closing conference.

a. Definitions.

- (1) Engineering Controls. Engineering controls consist of substitution, isolation, ventilation, and equipment modification.
- (2) Administrative Controls. Any procedure which significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.
- (3) Work Practice Controls. Work practice controls are a type of administrative controls by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
- (4) Feasibility. Abatement measures required to correct a citation item are feasible when they can be accomplished by the employer. The S/HCO, following available directions and guidelines, will inform the employer that a determination will be made as to whether engineering or administrative controls are feasible.
  - (a) Technical Feasibility. Technical feasibility is the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to cited violations with a reasonable possibility that employee exposure to occupational health hazards will be reduced.
  - (b) Economic Feasibility. Economic feasibility means that the employer is financially able to undertake the measures necessary to abate the citations received. The S/HCO will inform the employer that, although the cost of corrective measures to be taken will generally not be considered as a factor in the issuance of a citation, it will be considered during an informal conference or during settlement negotiations.

**NOTE:** If an employer's level of compliance lags significantly behind that of its industry, allegations of economic infeasibility will not be accepted.

- b. Reducing Employee Exposure. Wherever feasible engineering, administrative, or work practice controls can be instituted, even though they are not sufficient to reduce exposure to or below the PEL, nonetheless, they shall be required in conjunction with personal protective equipment to reduce exposure to the lowest practical level.

B. Citations.

1. Issuing Citations.

- a. Sending Citations to the Employer. Citations will be sent by certified mail; hand delivery of citations to the employer or an appropriate agent of the employer may be substituted for certified mailing if it is believed that this method would be more effective. A signed receipt will be obtained whenever possible; otherwise the circumstances of delivery will be documented in the file.
- b. Sending Citations to the Employee. Citations will be mailed to employee representatives no later than one day after the citation is sent to the employer. Citations will also be mailed to any employee upon request.
- c. Follow-up Inspections. Follow-up inspections may be conducted during the 20-day notice of contest period provided the employer has not actually filed such a notice. Normally, however, only those conditions considered serious will be subject to being scheduled for follow-up during the contest period. If such a follow-up inspection reveals a failure to abate, and the time specified for abatement was passed, a Notification of Failure to Abate Alleged Violation may be issued immediately without regard to the contest period of the initial citation.

2. Amending or Withdrawing Citation and Notification of Penalty in Part or In Its Entirety.

- a. Citation Revision Justified. Amendments to or withdrawal of a citation will be made when information is presented to OR-OSHA which indicates a need for such revision under certain conditions which may include:
  - (1) Administrative or technical error.
    - (a) Citation of an incorrect rule.
    - (b) Incorrect or incomplete description of the alleged violation.
  - (2) Additional facts establish a valid affirmative defense.
  - (3) Additional facts establish that there was no employee exposure to the hazard.
  - (4) Additional facts establish a need for modification of correction date, penalty or reclassification of citation items.
- b. Citation Revision Not Justified. Amendments to or withdrawal of a citation will not be made by the Safety/Health Enforcement Manager under certain conditions which include:

- (1) Valid notice of contest received.
  - (2) The 20 calendar days for filing a notice of contest has expired and citation has become a final order.
  - (3) Employee representatives have not been given the opportunity to present their views unless the revision involves only an administrative or technical error.
- c. Procedures for Amending or Withdrawing Citations. The following procedures are to be followed in amending or withdrawing citations:
- (1) Withdrawal of or modifications to the citation and notification of penalty, will normally be accomplished by means of an informal settlement agreement. Examples of exceptions are changes initiated by the Safety/Health Enforcement Manager without an informal conference. In such cases the procedures given below will be followed.
    - (a) If proposed amendments to citation items change the classification of the items; e.g., serious to other-than-serious, the original citation items will be withdrawn and new, appropriate citation items issued.
    - (b) The amended citation and notification of penalty form (OR-OSHA-2) will clearly indicate that:
      - 1 The employer is obligated under the OSEAct to post the amendment to the citation along with the original citation until the amended violation has been corrected or for 3 working days, whichever is longer.
      - 2 The period of contest of the amended portions of the OR-OSHA-2 (Citation) will begin from the day following the date of receipt of the amended citation and notification of penalty, and
      - 3 The contest period is not extended as to the unamended portions of the original citation.
    - (c) When circumstances warrant it, a citation may be withdrawn in its entirety upon consultation with the Manager of Enforcement. Justifying documentation will be placed in the firm file. If a citation is to be withdrawn, the following procedures apply:
      - 1 A letter withdrawing the citation and notification of penalty will be sent to the employer. The letter will refer to the original citation and penalty, state that they are withdrawn and direct that the letter be posted by the employer for 3 working days in those locations where the original citation was posted.

- 2 When applicable to the specific situation (e.g., an employee representative participated in the walkaround inspection, the inspection was in response to a complaint signed by an employee or an employee representative, or the withdrawal resulted from an informal conference or settlement agreement in which an employee representative exercised the right to participate), a copy of the letter will also be sent to the employee or the employee representative as appropriate.

C. Penalties.

1. General Policy. The Oregon Occupational Safety/Health Program (OR-OSHA) has always taken the position that the penalty structure implemented under the OSEAct and Division 1, General Administrative Rules, was not designed as a punishment for violations nor as a source of income for the Agency. Rather, the penalty is designed primarily to provide an incentive toward correcting violations voluntarily, not only to the offending employer but also to other employers who may be guilty of the same infractions of the rules.
2. Civil Penalties.
  - a. Statutory Authority. The Oregon Safe Employment Act provides the Director or the authorized representative of the Director with the statutory authority to assess civil penalties for violations of the OSEAct.
    - (1) Any employer who receives a citation for an alleged violation of the OSEAct which is determined to be of a serious nature shall be assessed a civil penalty of up to \$7,000 for each violation.
    - (2) When the violation is specifically determined not to be of a serious nature, a proposed civil penalty of up to \$7,000 may be assessed for each violation.
    - (3) When a violation of a posting requirement is cited, a civil penalty of up to \$1,000 may be proposed.
  - b. Type of Violation as a Factor. In proposing civil penalties for violations, a distinction is made between serious violations and all other violations. There is no statutory requirement that a penalty be proposed when the violation is not serious; but a penalty must be proposed when the violation is serious.
  - c. Minimum Penalty. The following guidelines apply:
    - (1) The proposed penalty for any willful violation will not be less than \$5,000. The \$5,000 penalty is a statutory minimum and not subject to administrative discretion.
    - (2) The proposed, adjusted, penalty for any serious violation will not be less than \$100.

- d. Probability/Severity of Violation. The probability/severity of the violation is the primary factor in determining penalty amounts. It will be the basis for calculating the basic penalty for both serious and other-than-serious violations.
- (1) To determine the penalty of a violation the following two assessments will be made:
- (a) The severity of the injury or illness which is reasonably predictable.
  - (b) The probability of an accident which could result in an injury or illness.
- (2) The size of the business, effort made during the inspection to correct violations, and the employer's previous calendar year's DART rate will be taken into account in deciding whether and the extent to which the penalty will be reduced.
- e. Severity Factor. The classification of the alleged violations as serious or other-than-serious in accordance with the instructions in Chapter 3 is based on the severity of the injury or illness which could result from the violation. This classification constitutes the first step in determining the severity of the violation. If more than one injury or illness is reasonably predictable, the S/HCO will determine the severity based upon the most severe injury or illness. Severity ratings will be selected from the following schedule:
- (1) Other-Than-Serious - Conditions that could cause significant injury or illness to employees, but would not involve serious physical harm.
- (2) 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.
  - (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.
- (3) Death.
- f. Probability Assessment. The probability of the occurrence of an accident has no role in determining the action or severity of a violation. Probability does affect the amount of the penalty to be proposed.

- (1) The probability rating is:
  - (a) Low - If the factors considered indicate it would be unlikely that an injury or illness could occur.
  - (b) Medium - If the factors considered indicate it would be likely that an injury or illness could occur.
  - (c) High - If the factors considered indicate it would be very likely that an injury or illness could occur.
- (2) Determination. The S/HCO, using professional judgment, will identify and evaluate, as far as possible, all of the factors influencing the likelihood of the occurrence of an injury or illness and will assign them a probability accordingly.
- (3) Safety Violations. The factors to be considered (and documented in the firm file) in determining a probability rating may include, as applicable:
  - (a) The number of employees exposed.
  - (b) The frequency and duration of exposure.
  - (c) The proximity of employees to the point of danger.
  - (d) Factors, which require work under stress.
  - (e) Lack of proper training and supervision or improper workplace design.
  - (f) Other factors which may significantly affect the degree of probability of injury or illness such as:
    - 1 Working conditions including environmental and other factors (e.g., speed of operations, lighting, temperature, weather conditions, noise, housekeeping, etc.) which may influence the likelihood of an accident resulting in injury.
    - 2 If there are mitigating circumstances such as specific safety instructions, effective training program, existence of a comprehensive safety and health program, evidence of correction underway, warning signs, mandated use of protective gear, or mandatory controls providing some, though less than full protection, assign a lower probability.
    - 3 If there are additional contributing factors such as inappropriate safety instructions, inadequate training, poor or non-existent safety and health program, faulty equipment, etc., these factors may raise the probability.

- (4) Health Violations. The following circumstances will normally be considered (and documented in the firm file) when violations likely to result in illness are involved:
- (a) Number of workers exposed to the hazardous conditions, both at the same time and sequentially.
  - (b) Duration of employee overexposures to hazardous levels of contaminants or other illness-producing conditions, ranging from relatively short exposures of less than one hour to continuous daily exposures.
  - (c) Use of appropriate personal protective equipment (PPE): whether, for example, such equipment is utilized by all exposed employees. Has the employer developed a program and conducted and certified a hazard assessment. Are employees aware of the program requirements and appropriate PPE to be used while conducting the task.
  - (d) Medical surveillance program is in place as appropriate and effectively protects the employees, a defective program which only partially and inadequately protects them, or no medical surveillance program is in effect.
- (5) Other factors: There are other factors which may affect significantly the probability that the hazard will produce an injury or illness and they should also be considered (and documented):
- (a) Mitigating circumstances, such as specific safety or health instructions, effective training programs, a comprehensive safety and health program, evidence of correction underway, warning signs and labels or special procedures, or mandatory administrative controls providing some, though not complete protection, should be documented and considered in the final evaluation of probability.
  - (b) Similarly, contributing circumstances, such as inappropriate or inadequate safety or health instructions, inadequate or no training, a poor or nonexistent safety and health program, or widespread hazardous conditions or faulty equipment, with little or no attempt to control them, should be documented and considered in the final evaluation of probability.
- (6) Final Probability Assessment. If, in the opinion of the S/HCO, any of the above factors do not significantly influence the probability of the accident, that factor will not be entered into in the probability rating.
- (a) If, on the other hand, consideration of a factor would tend to dilute the penalty excessively, that factor will not be considered in the penalty

calculation. For example, in a confined space where there is insufficient oxygen to support life, and when only one or two employees are exposed, it would not be appropriate to rate the probability as low.

- g. Probability/Severity-based Penalty. The probability/severity-based penalty is the unadjusted penalty and is calculated in accordance with OAR437-01-145 (see Table 1).

(1) The unadjusted penalty amount shall be assessed by finding the intersection of probability and severity in Table 1 below.

**PENALTY TABLE 1**

	PROBABILITY		SEVERITY	
	Other Than Serious	Serious Physical Harm	Death	
Low	\$0	\$300	\$1,500	
Medium	NA	\$500	\$2,500	
High	\$300	\$1,250	\$5,000	

(2) If the Administrator determines that it is appropriate to achieve the necessary deterrent effect, a penalty of \$7,000 for a serious or other-than-serious violation may be imposed.

- h. Calculations for combined or grouped violations. The following procedures apply to the calculation of penalties for combined and grouped violations:

(1) Combining: When there is more than one violation of the same rule for a serious or other-than-serious item(s) during the inspection, those violations may be combined to make one violation.

(a) When assigning the penalty for a combined violation of the same rule, each individual instance will have the penalty computed. These penalties will be added to form a total penalty for that violation. The total penalty will then be rounded down to the nearest \$5.

(b) When combining like violations of the same rule, combine the serious violations and the other-than-serious violations separately.

(c) All combined violations must have the same abatement date.

(2) Grouping: When the source of a hazard is identified which involves interrelated violations of different rules, the violations may be grouped into a single item.

- (a) The penalty for grouped violations of different rules will be calculated by determining the probability and severity for the entire group.
- (b) One penalty will be assessed for the entire group.
- i. Penalty Adjustment Factors. The probability/severity-based penalty may be reduced depending upon if the employer corrects the violation before the end of the inspection, current DART rate, or when employer employed no more than 50 employees at any time in the previous 12 months, including the day of inspection. No downward penalty adjustments will be allowed for willful, failure to correct violations, repeat violations, or violations which caused or materially contributed to the injury, illness, or death of an employee.
  - (1) A penalty reduction of 30 percent for each violation when the employer corrects the violation before the end of the physical inspection of the firm or closing if closing takes place immediately after the physical inspection. (OAR437-01-145(2)(b)).
  - (2) A penalty reduction of 35 percent for each violation when the employer's DART rate for the previous calendar year is below the current published statewide average rate for that employer's Standard Industrial Classification. For fixed places of employment, the DART rate is based upon the rate for that place of employment. For nonfixed places, the DART rate is based upon the employer's rate statewide. If OSHA 300 or 801 records are not made available, a reduction will not be allowed. (OAR437-01-145(2)(a)).
  - (3) A penalty reduction of 10 percent may be given when the employer employed no more than 50 employees (within the state) at any time in the previous 12 months, including the day of the inspection. (OAR437-01-145(2)(c)).
  - (4) The penalty for combined violations of the same rule will be calculated by computing the penalty and possible adjustment for each instance making up the violation and adding these to establish a total penalty for the violation.
  - (5) The penalty for grouped violations for different rules will be calculated by determining the probability and severity for the entire group.
  - (6) An employer's ability to pay a penalty will not be investigated or considered in determining the penalty reduction. If an employer appeals and indicates their inability to pay a penalty the person holding the informal will refer them to the Fiscal Section of the Business Administration Division to work out a payment plan.

**PENALTY TABLE 2**

% REDUCTION	PENALTY IN DOLLARS					
0	\$300	\$500	\$1,250	\$1,500	\$2,500	\$5,000
10%	\$270	\$450	\$1,125	\$1,350	\$2,250	\$4,500
30%	\$210	\$350	\$875	\$1,050	\$1,750	\$3,500
35%	\$195	\$325	\$810	\$975	\$1,625	\$3,250
40%	\$180	\$300	\$750	\$900	\$1,500	\$3,000
45%	\$165	\$275	\$685	\$825	\$1,375	\$2,750
65%	\$105	\$175	\$435	\$525	\$875	\$1,750
75%	<b>\$75/*\$100</b>	\$125	\$310	\$375	\$625	\$1,250

**\* The minimum penalty for a serious violation is \$100.**

j. Failure to Abate. A Notification of Failure to Abate Alleged Violation (OR-OSHA-2B) shall be issued in cases where violations have not been corrected as required.

(1) Failure to abate penalties will be applied when an employer has not corrected a violation which has been cited when the citation has become a final order, or when a serious violation has passed the abatement date or has become a final order.

(2) An effort, even though unsuccessful, to abate the violation will be taken into consideration when determining the appropriate penalty amount.

(3) Calculation of Additional Penalties. A penalty for unabated violations is to be calculated for failure to abate violations on the basis of the facts noted upon reinspection. This recalculated penalty, however, will not be less than that proposed for the item when originally cited.

(a) In those instances where no penalty was initially proposed, an appropriate penalty will be determined after consulting with the Safety/Health Enforcement Manager. The penalty will not be less than \$50 per day for other-than-serious and \$250 per day for serious.

(b) The daily proposed penalty will be multiplied by the number of working days that the violation presented continued exposure or potential exposure to employees. The number of working days unabated will be counted from the day following the abatement date specified in the citation or the final order to the date of reinspection, excluding the date of reinspection, and normally will not exceed 10 days. Normally the total proposed penalty for failure to abate a particular violation will not exceed 30 times the amount of the daily penalty.

- (c) In unusual circumstances, such as where the probability and severity of the violation is especially high or the employer through lack of diligence failed to abate the violation or in the event of a second failure to abate, higher penalties will be proposed. In such situations the penalty and factors involved will be approved by the Manager of Enforcement.
- (4) Partial Abatement. When a violation has been only partially abated the daily penalty will take this into consideration.
- (a) When a violation consists of a number of instances (grouped or combined) and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily penalty will be on the unabated instances for that violation. The S/HCO must estimate or recalculate the original penalty of the instance based on only the unabated instances. That recalculated penalty will be the basis for the unabated penalty.
  - (b) In multi-step correction items, only the failure to comply with substantive (rather than procedural) requirements will generally incur a full failure to abate penalty.
  - (c) On rare occasions, when the Safety/Health Enforcement Manager decides to issue a failure to abate notice for failure to comply with procedural requirements, the calculation of the daily penalty will consider the extent to which a violation has been substantially abated with the daily penalty reduced accordingly.
- (5) Good Faith Effort to Abate. When the S/HCO believes that the employer has made good faith efforts to correct the violation and had good reason to believe that it was fully abated, the Safety/Health Enforcement Manager may reduce the daily penalty that would otherwise be justified.
- k. Repeated Violations. The OSEAct provides that, for a repeated violation, an employer may be assessed a civil penalty of not more than \$70,000 for each violation. (See ORS 654.086(1)(c) and OAR437-01-165(2)).
- (1) Probability/Severity and Penalty Factors. Each violation will be classified as serious or other-than-serious. A penalty will then be calculated for repeated violations based on facts noted during the current inspection. No penalty adjustments are allowed for repeat violations.
  - (2) Penalty Increase Factors. The penalty for a repeat violation will be computed by multiplying the penalty for the current violation by the following factors:

Repeat	
1st Repeat	x 2
2nd Repeat	x 5
3rd Repeat	x 10
4th Repeat	Discretion of Administrator

- (3) No Initial Penalty. For a repeated other-than-serious violation and a regulatory violation that otherwise would have no initial penalty, a penalty of \$200 will be assessed for the first repeated violation, \$500 if the violation has been cited twice before, and \$1,000 for a third repetition. (See OAR 437-1-165(3).)
- (4) Regulatory Violations. The penalty for repeated regulatory violations when there was an initial penalty is figured based on the above table for repeat violations.
- I. Willful Violations. The OSEAct provides that, for a willful violation of the act, an employer will be assessed a civil penalty of not less than \$5,000 and not more than \$70,000 for each violation. (See OAR437-1-175).
  - (1) Probability/Severity and Penalty Factors. Each violation will be classified as serious or other-than-serious. After determining the severity of the violation, the inspection package is referred to the administrator through the manager of Enforcement for penalty assessment.
  - (2) Mixed Violations. Repeated violations for which there is evidence of willfulness will be cited as repeated with the penalty calculated as if they were willful when it appears that OR-OSHA would have difficulty proving the element of willfulness. In such cases, the Safety/Health Enforcement Manager will refer the inspection packet to the Administrator through the Manager of Enforcement for penalty assessment.
- m. Violation of Regulatory Requirements. The OSEAct provides that an employer who violates any of the posting or recordkeeping requirements may be assessed a civil penalty of up to \$1,000 for each violation. (See ORS 654.086(1)(f)). For egregious violations, the penalty may be applied to each instance of a violation, in accordance with the procedures set forth in Program Directive A-158.
  - (1) General Application. The procedures that follow will be used in determining proposed penalties for violations of regulatory requirements.
  - (2) Posting Requirements. There may be a penalty of up to \$1,000 proposed for violations of the following posting requirements:
    - (a) "Safety and Health Protection on the Job" Poster. If the employer has not displayed the poster, an other-than-serious citation may be issued.

- (b) Summary of Work-Related Injuries and Illnesses. If an employer fails to post the summary portion of the OSHA-300A Form from February 1 to April 30, an other-than-serious citation will be issued.
  - (c) Citation. If an employer received a citation which has not been posted, an other-than-serious citation may be issued.
- (3) Reporting and Recordkeeping Requirements. The OSEAct provides that violations of the recordkeeping and reporting requirements may be assessed civil penalties of up to \$1,000 for each violation.
- (a) OSHA-300 and 801 Forms. If the employer does not maintain the "Log and Summary of Occupational Injuries and Illnesses," OSHA-300 Form, and the "Supplementary Record," 801 Form (or equivalent), an other-than-serious citation may be issued.

**NOTE:** When no recordable injuries or illnesses have occurred, these forms will be considered as being maintained, even though no entries appear in them.

- (b) Reporting. Employers are required to report either orally or in writing to the nearest office of the Department within 8 hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the hospitalization of three or more employees, and 24 hours of any serious occupational accident resulting in hospitalization, over night with medical treatment. An other-than-serious citation will be issued for failure to report such an occurrence and a penalty of not less than \$100 nor more than \$1,000 will be assessed.
- (4) Access to Records. If the employer fails upon request to provide records for inspection and copying by any authorized representative of OR-OSHA or by any employee, former employee, or authorized representative of employees, a citation may be issued.
- (5) Notification Requirements. When an employer has received advance notice of an inspection and fails to notify the authorized employee representative, an other-than-serious citation may be issued with an unadjusted penalty of up to \$1,000. OAR437-1-060(2)(b)).
- (6) Violations Where Probability and Severity Are Not Appropriate Considerations.
- (a) OAR 437-01-145(1) states, "In a case where probability and severity are not appropriate considerations, a penalty may be imposed by considering the facts of the violation."

- (b) The following standard penalties have been set by the Administrator for violations where probability and severity are not appropriate

considerations:

- 1 Failure to provide flush toilets on construction sites--an other-than-serious violation. A minimum penalty of \$200 and not more than \$2,500 shall be assessed. (OAR437-1-203(6)).
- 2 Failure to establish a safety committee as required by OAR437-40-045, an other-than-serious violation. The minimum penalty shall be \$100. (OAR437-1-203(7)).

3. Criminal Penalties.

- a. The OSEAct and the Oregon Revised Statutes provide for criminal penalties in the following cases: (ORS 654.991)
  - (1) Willful violations causing death.
  - (2) Giving unauthorized advance notice.
  - (3) Giving false information.
- b. Criminal penalties are imposed by the courts after trials and not by OR-OSHA.

D. Post-Citation Process.

1. Informal Conferences.

- a. General. Pursuant to OAR 437-01-255(1), the employer, any affected employee, or the employee representative may request an informal conference.
- b. Participation by OR-OSHA Officials. The inspecting S/HCO(s) will also be notified and, if practicable, participate in the informal conference. They shall be advised of any change made by the Appeals Specialist or Safety/Health Enforcement Manager in the event that they were unable to participate in the informal conference.

2. Extension of Abatement. OAR 437-01-240 governs the disposition of extensions of abatement. If the employer requests additional abatement time after the 20-calendar day contest period has passed, the following procedures for extension are to be observed:

- a. Filing Date. An extension of abatement date request must be postmarked no later than the close of the date on which abatement was originally required. A late request must be accompanied by the employer's statement of exceptional circumstances explaining the delay. Such a late request will only

be granted after authorization by the Manager of Enforcement.

- b. Requirements for an Extension. If a letter is received from an employer requesting an extension of abatement date, the Safety/Health Enforcement Manager will ensure that all of the following requirements are set forth in detail in the employer's petition.
  - (1) All steps taken by the employer and the dates of such action in an effort to achieve compliance during the prescribed abatement period.
  - (2) The specific additional abatement time estimated to achieve compliance.
  - (3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
  - (4) Interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
  - (5) A statement that a copy of the request has been posted in a conspicuous place near the location where the violation occurred or where all affected employees will have notice thereof. The request must remain posted for at least 10 working days and, if appropriate, served on the authorized representative of affected employees. Such certification must include the date upon which such posting and service was made.
- c. Failure to Meet All Requirements. If the letter does not meet all the above requirements, a letter or telephone call spelling out these requirements and specifying the missing elements should be sent/made to the employer within 10 days, specifying a reasonable amount of time for the return of the completed request. If no response is received, or if the information returned is still insufficient, a second attempt should be made. The employer will be informed of the consequences of a failure to respond adequately, namely, that the request may not be granted and the employer may, consequently, be found in failure to abate upon follow-up inspection.
- d. Field Office Position on the Extensions. Within 15 working days following receipt of the request for extension of abatement, the Safety/Health Enforcement Manager shall grant or deny the extension request. The following action shall be taken:
  - (1) If the extension requests an abatement date which is one year or less from the issuance date of the citation, the Safety/Health Enforcement Manager has the authority to approve or deny the request.
  - (2) Any extension requesting an abatement date which is more than one year

from the issuance date of the citation requires the approval of the Manager of enforcement.

- (3) If the extension is approved, the Safety/Health Enforcement Manager will notify the employer and the employee representatives by letter.
  - (4) If after a second contact with the employer, the information required continues to be substantially insufficient, the Safety/Health Enforcement Manager shall deny the extension request.
  - (5) If supporting evidence justifies it (e.g., employer has taken no meaningful abatement action at all or has otherwise exhibited bad faith), the Safety/Health Enforcement Manager may deny the extension request. Both the employer and the employee representatives will be notified of this action by letter, with return receipt requested.
    - (a) When appropriate, a failure to abate notification may be issued if the violation is not abated after the denial of extension and verified by a follow-up inspection.
- e. Employee Objections. Affected employees or their representatives may file an objection in writing to an employer's request for an extension with the Administrator within 10 days of the date of posting of the request for an extension by the employer or its service upon an authorized employee representative.
- (1) Failure to file such a written objection within the 10 day period constitutes a waiver of any further right to object to the request for an extension.
  - (2) If an employee or an employee representative objects to the extension of the abatement date, all relevant documentation will be sent to the Administrator.
  - (3) Notice of hearing will be given by the Administrator to affected persons containing the time, place and nature of the hearing.
3. Services Available to Employers. Employers requesting assistance will be informed that the S/HCO can normally provide abatement assistance. The abatement assistance must be conducted prior to the correction date(s). Otherwise, the employer shall be advised by the S/HCO that Oregon OSHA Consultative or Technical Services, Workers' Compensation Services, and/or Private Consultative Services can be used to assist them on occupational safety and health issues.

## CHAPTER 5

### DISCLOSURE

#### A. Policy and Procedures.

1. Policy. OR-OSHA's policy regarding the disclosure of documents in investigation and other files is governed by the Oregon Public Records Law and the attorney general's public meetings and records manuals. Specific guidelines for the application of this policy to OR-OSHA files are set forth in Section 2. OR-OSHA policy is to disclose all documents to which the public is entitled under the Oregon Public Records Law and the other state regulations. At the same time, great care shall be taken to ensure that documents which are not disclosable are kept confidential since disclosure of such documents may seriously prejudice the prosecution of cases and the entire OR-OSHA law enforcement program.
2. Procedures. The OR-OSHA Records Custodian shall perform the duties described in the regulations and in current OR-OSHA directives.

#### B. Specific Guidelines.

1. Enforcement Proceedings. OR-OSHA policy is to disclose all information contained in a firm file other than confidential information whether the citation is under contest or not. Nothing is disclosable under current OR-OSHA policy prior to the conclusion of the inspection/investigation until OR-OSHA has received notification that the firm has received the citation, or by closing the case because the company has been found to be in compliance, see ORS 192.501(17).
2. Disclosable Records. Generally, the disclosability of records must be determined on a case-by-case basis. However, there are certain records, such as OR-OSHA Program Directives, Standard Operating Procedures, and the Field Inspection Reference Manual, which are clearly disclosable in full to the public upon request.
  - a. The following firm file records are disclosable to the public in full upon request after they have been received by the employer concerned.
    - (1) Notification of citation and proposed penalty issued to employers;
    - (2) Notification of failure to abate violations and of any proposed additional penalty which has been issued to an employer;
    - (3) Notices of alleged imminent danger situations issued to employers.
    - (4) Inspection/Investigation firm files.
  - b. Many firm file records are not OR-OSHA forms; for example, correspondence, photographs and negatives, electronic software, audio/

visual tapes, personal interview statements, material safety data sheets, minutes of safety and health committee meetings, and other material supplied by the employer. All these items are disclosable as part of the firm file unless held as confidential material or a trade secret.

3. Requests for Records. In accordance with departmental guidelines, requests for records will be granted, partially denied, or denied altogether. The assistant attorney general will be consulted if there is any questions as to whether the requested records or parts of records are disclosable.
4. Disclosable Information on the Notes and OR-OSHA Firm File Forms. Information contained in the file is normally factual and must be disclosed under the Oregon Public Records Law.
5. Nondisclosable Information. Information obtained in confidence is either required by statute to be kept confidential or is exempted from disclosure.
6. Disclosure of Witnesses Statements.
  - a. Witness statements must be disclosed when they are used to substantiate a violation on a citation.
  - b. Any information provided in confidence which contains or might reveal the identify of a complainant will remain confidential.
7. Disclosure of Complaint Information. Confidential complaint information as it pertains to the identity of the complainant is confidential and shall not be disclosed.
8. Medical Records. OAR437-02 Subdivision C governs the transfer and public disclosure of employee medical records. (See 1910.20(c)(3) and 1910.20(e))
9. Disclosure of Medical Examiner Reports. ORS 146.035(5) governs the disclosure of any medical examiner's report, autopsy report, or laboratory test report ordered by a medical examiner. Oregon OSHA will not disclose this information to anyone. Requesters of these reports will be referred to the Medical Examiner's Office with jurisdiction over the investigation.
10. It is OR-OSHA policy to waive fees when providing copies of disclosable portions of the accident investigation files to surviving family members.