

**DIVISION 1**

**RULES FOR THE ADMINISTRATION OF THE OREGON SAFE EMPLOYMENT ACT**

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**DIVISION 2**

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<b>437-002-0107</b>	Spray Finishing
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**437-002-0133** Oregon Rule for Air Quality in Respirators  
**437-002-0135** Oregon Rules for Head Protection  
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**Medical and First Aid**

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**Fire Protection**

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**437-002-0182** Oregon Rules for Firefighters

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- 437-002-0200** Adoption by Reference

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- 437-002-0210** Additional Oregon Rules for Compressed Air and Compressed Gas Equipment

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- 437-002-0221** Additional Oregon Rules for Handling Materials  
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- 437-002-0256** Oregon Rules for Refuse Collection and Compaction Equipment

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- 437-002-0260** Adoption by Reference

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- 437-002-0262** Additional Definitions in Oregon  
**437-002-0264** Additional General Requirements for Hand Tools  
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- 437-002-0280** Adoption by Reference

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**Division 2/Z**

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**437-003-0730** Equipment Housing  
**437-003-0735** Chipper Tables  
**437-003-0740** Equipment Repair  
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**437-003-0750** Chipper Operation Crew  
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**437-003-0760** Eye Protection  
**437-003-0765** No Foreign Objects

**Underground Lines and Confined Spaces****Street Openings**

**437-003-0770** Barriers, Guards, Warning Signs  
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**DIVISION 81**

**AGRICULTURAL OPERATIONS AND FARMING**

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**DIVISION 1**

**RULES FOR THE ADMINISTRATION OF THE OREGON SAFE EMPLOYMENT ACT**

[ED NOTE: OAR 436, Division 046, Rules for the Administration of the Oregon Safe Employment Act, was redesignated as OAR 437, Division 001, by APD Admin. Order 7-1988, filed 6/17/88. Its effective date remains 7/1/74.]

**437-001-0001  
Model Rules of Procedure**

Pursuant to rulemaking in ORS 656.726(3), and in accordance with ORS 183.341, the Director adopts by reference the **Attorney General's Model Rules of Procedure** under the Administrative Procedures Act which became effective on September 9, 1995.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Occupational Safety and Health Division.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 3-1991, f. & cert. ef. 2-25-91; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 2-1994, f. & cert. ef. 5-19-94; OSHA 2-1996, f. & cert. ef. 6-13-96

#### **437-001-0002**

##### **Notice to Interested Persons of Rulemaking**

Except when acting in an emergency to adopt a temporary rule, in accordance with ORS 183.335(5), the Director will give prior notice of the proposed adoption, amendment or repeal of an administrative rule:

(1) By causing notice of the proposed action to be published once, in the Secretary of State's bulletin referred to in ORS 183.360, prior to the effective date of the adoption, amendment or repeal of the rule as provided in ORS 183.335.

(2) By mailing a copy of Notice to persons on the Oregon Occupational Safety and Health Division's mailing list established pursuant to ORS 183.335(7);

(3) By mailing or delivering a copy of the Notice to any person upon request; and

(4) By mailing copies of the Notice to persons that may have an interest in the subject matter of the proposal, and to organizations and publications that may provide notice to persons who may have an interest, such as the following, depending on the subject matter of the proposal:

- (a) Workers' Compensation Insurers;
- (b) Self-Insured Employers;
- (c) News Organizations;
- (d) Labor Unions;
- (e) Employer Groups and Associations;
- (f) Interested Parties;
- (g) State Advisory Council on Occupational Safety and Health;

(h) Employers and Employees;

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 9-1991, f. & cert. ef. 4-25-91; OSHA 6-1994, f. & cert. ef. 9-30-94

#### **General Information**

#### **437-001-0005**

##### **Authority and Applicability of Rules**

(1) These rules are promulgated under the Director's authority contained in ORS 654.025(2) and 656.726(3).

(2) Adoption Procedures: These rules for the Administration of the Oregon Safe Employment Act (OAR 437, Division 1) are adopted in accordance with ORS Chapter 183 and the Director's Rules of Practice and Procedure Applicable to Rule Making Functions.

(3) History: Prior "**Rules for the Administration of the Oregon Safe Employment Act**" (OAR Chapter 436, Division 46, OAR 436-046-0005 through 436-046-0750) were first adopted by WCB Admin. Order 19-1974; filed 6-5-74; **effective 7-1-74**. Amendments were made by:

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 33-1974, f. 9-5-74, ef. 9-26-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 12-1982, f. 6-28-82, ef. 8-1-82; WCD 3-1983, f. 1-31-83, ef. 2-1-83; WCD 9-1983, f. 11-15-83, ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86;

APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 5-1988, f. 5-16-88, ef. 5-16-88; APD 7-1988, f. 6-17-88, cert. ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, f. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

#### **437-001-0010**

##### **Purpose and Scope of Rules**

(1) These rules provide procedures by which the Division shall implement and enforce the Director's authority and responsibilities under the Act.

(2) The Director adopts OAR Chapter 437, Division 1, to assure, as far as possible, safe and healthful working conditions for every employee in Oregon, to preserve our human resources and to reduce the substantial burden which is created by occupational injury and disease.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, f. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

#### **437-001-0015**

##### **Definitions**

The following definitions shall apply to OAR 437, unless the context requires otherwise:

(1) "Accepted Disabling Claims" – Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

(2) "Accepted Disabling Claims Rate" – The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).

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

(4) "Administrator" – The Administrator of the Oregon Occupational Safety and Health Division (OR-OSHA).

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

(6) "Agent of the employer" – The manager, superintendent, foreperson or other person in charge or control of all or part of the place of employment.

(7) "Appeal" – A written request for a hearing in which to contest a citation, notice or order issued by the Division. Unless the context otherwise requires, any writing which clearly contests, objects to or seeks relief from a Division citation, notice or order shall be construed as an appeal.

(8) "Board" – The Workers' Compensation Board created by ORS 656.712.

(9) "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.

(10) "Citation" – A document issued by the Division pursuant to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

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

(a) "Imminent danger" – Complaints alleging imminent danger; or

(b) "Formal" – Those complaints from employees or their representatives; or

(c) "Nonformal" – Those complaints from other than



employees or their representatives.

(12) "Compliance Officer" – A designated Division employee whose responsibility is to conduct inspections or investigations to identify possible violations and hazards and to propose citations, penalties and correction dates, and to assist employers and employees with information to correct violations and hazards.

(13) "Comprehensive Consultation" – is a consultation to cover the entire establishment and entails a physical hazard assessment evaluation, reviews of records, written programs and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

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

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

(16) "Department" – The Department of Consumer and Business Services.

(17) "Director" – The Director of the Department of Consumer and Business Services, or the Director's designee.

(18) "Division" – The Oregon Occupational Safety and Health (OR-OSHA) Division of the Department of Consumer and Business Services.

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

(20) "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.

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

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

(a) The results of medical examinations and tests;

(b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(c) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

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

(24) "Employer" – Any person who has one or more employees, or any sole proprietor or member of a partnership who elects workers compensation coverage as a subject worker pursuant to ORS 656.128.

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

(26) "Environmental Exposure Sampling" – Sampling of the work place environment, performed for a variety of reasons including, identification of contaminants present and their sources, determination of worker exposures and checking the effectiveness of controls.

(27) "Establishment" – For the purpose of recordkeeping, a single physical location where business is conducted or where services or industrial operations are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate establishment.

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

(29) "Filed" – A document shall be deemed to have been filed on the date of postmark if mailed or on the date of receipt if transmitted to OR-OSHA, DCBS, or the WCB by other means.

(30) "First aid" – Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters or similar injuries which do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though provided by a physician or registered professional personnel. (formerly 46-700(5))

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

(32) "Hazard" – A condition, practice or act which could result in an injury or illness to an employee.

(33) "High hazard, Safety" – For the purpose of a safety inspection:

(a) Any fixed place of employment which has one or more accepted disabling claims; or

(b) Any fixed place of employment which has no accepted disabling claims but is in an industry group with a lost workday cases incidence rate above the current national average.

(c) Any non-fixed place of employment in an industry group with a lost workday cases incidence rate above the national average.

(34) "High hazard, Health" – For the purpose of a health inspection, a place of employment in which health hazards are reasonably thought to exist as determined by recognized hazards associated with certain processes. Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents and harmful physical stress agents.

(35) "Imminent danger" – A condition, practice or act which exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act.

(36) "Inspection" – An official examination of a place of employment by Compliance Officer to determine if an employer is in compliance with the Act. An inspection may be classified as:

(a) "Routine inspection" – An inspection of a place of employment which is made based principally on that place of employment's record of workers' compensation claims or Standard Industrial Classification and number of employees.

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

(c) "Area inspection" – An inspection made because of a geographic factor;

(d) "Follow-up inspection" – An inspection made to determine if a previously cited violation has been corrected or after a request for an extension, a stay of correction time or a variance

has been denied;

(e) "Complaint inspection" – An inspection made in response to a complaint; and

(f) "Accident investigation" – An inspection made to determine the cause of an accident;

(g) "Emphasis inspection" – An inspection made in response to a national or state Emphasis Program.

(37) "Labor camp" – Any place, area or piece of land where sleeping places or housing sites are provided by an employer for employees or by another person, including a camp operator, who is providing such accommodations for employees.

(38) "Lost workdays" – The actual number of days after, but not including, the day of injury or illness during which the employee would have worked, but could not perform all or any part of his/her normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

(39) "Lost Workday Cases Incidence Rate (LWDCIR)" – The number of lost workday injury and illness cases experienced by 100 full-time workers (LWDCIR = Number of lost workday cases times 200,000 divided by the number of employee hours worked). Refer to Appendix B for instructions on computing Lost Workday Case Incidence Rate.

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

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

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

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

(44) "Place of employment" – Includes every place, whether fixed or movable, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp provided by an employer for his/her employees or by another person engaged in providing living quarters or shelters for employees, but place of employment does not include any place where the only employment involves nonsubject workers employed in or about a private home.

(45) "Record" – Any recorded information regardless of its physical form or character.

(46) "Recordable occupational injuries or illnesses" – Any occupational injuries or illnesses which result in:

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

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

(c) Non-fatal cases, without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported

to the employer but are not classified as fatalities or lost workday cases.

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

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

(49) "Serious physical harm":

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

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

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

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

(52) "Suspended penalty" – A penalty which is determined but not assessed.

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

(a) "Permanent" – A variance that remains in effect until modified or revoked in accordance with OAR 437-001-0430;

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

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

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

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

(a) Specific classifications of violations are:

(A) "Serious violation" – A violation in which 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 a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation;

(B) "Other than serious violation" – A violation which is other than a serious or minimal violation; and

(C) "Minimal violation" – A violation which does not have a direct or immediate relationship to the safety or health of employees.

(b) Specific types of the above classifications are:

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

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

(C) "Repeat violation":

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

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

(iii) In these rules, Repeat, Repeated and Repeatedly are used as synonyms.

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

(E) "Egregious" – Those conditions which normally constitute a flagrant violation of the OSEAct or OR-OSHA standards or regulations such that each instance of the violation is cited separately.

(c) "Combined violation" – Multiple violations of the same statute, regulation, rule, standard or order within an establishment which have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard or order. (formerly OAR 437-001-015(32)(a))

(d) "Grouped violation" – Multiple violations of different statutes, regulations, rules, standards or orders, within an establishment which have been combined as one violation to indicate an increase in the severity of the violation. (formerly OAR 437-001-0015(32)(b))

[ED NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Agency.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD , 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 9-1983, f. & ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, F. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 5-1998, f. & cert. ef. 10-15-98

#### **437-001-0020**

##### **Authority to Administer**

(1) The Administrator is hereby granted authority to do whatever is reasonably necessary or incidental to accomplish the purposes of the act and these rules.

(2) The Administrator shall administer the Voluntary Compliance Program separately from the enforcement activities. The Voluntary Compliance Program includes but is not limited to, education, consultations, demonstration programs and research.

(3) The Administrator shall name employees or classifications of employees who shall have authority to carry out the voluntary compliance and enforcement provisions of the Oregon Safe Employment Act.

(4) The official acts of the Administrator in administering and enforcing the Oregon Safe Employment Act, and the acts of

those designated by the Administrator, shall be considered the official acts of the Director.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0025**

##### **Liberal Construction**

The Act, other rules adopted thereunder, and these rules shall be liberally construed to accomplish the preventative purposes expressed in the Act.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0030**

##### **Use of Gender and Number**

For the purpose of these rules, each gender includes both genders, the singular includes the plural and the plural includes the singular.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0035**

##### **Occupational Safety and Health Rules**

(1) The Division shall propose occupational safety and health rules for adoption by the Director. Proposed rules shall be:

(a) Reasonable;

(b) Mandatory;

(c) Designed to protect the life, safety and health of employees; and

(d) At least as effective as occupational safety and health rules adopted by the U.S. Department of Labor.

(2) In proposing rules for adoption, the Division may consider recommendations from national standards-setting organizations, the U.S. Department of Labor, U.S. Department of Health, Education and Welfare, employers, employees, employee representatives and the Division's occupational safety and health experience.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0045**

##### **Adoption, Amendment or Repeal of Rules**

(1) Rules will be adopted, amended or repealed in accordance with ORS Chapter 183 and the Director's rules of practice and procedure applicable to rule-making functions.

(2) Any person may request the adoption, amendment or repeal of a rule.

(3) A request for adoption, amendment or repeal of a rule shall:

(a) Be in writing, addressed to the Administrator, OR-OSHA Division, Labor and Industries Building, Salem, Oregon 97310;

(b) Identify the rule proposed for adoption, amendment or repeal and include reasons for the change.

(4) Upon receipt of the request the Division shall within 30 days, either deny the request or initiate rule-making proceedings.

(5) If the request to adopt, amend or repeal a rule is denied, the Division shall state its reasons for the denial in writing. A copy shall be mailed to the person making the request and all other persons upon whom a copy of the request was served.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74



**437-001-0047****Voluntary Compliance Program, General**

(1) The Division shall provide a coordinated program to encourage voluntary compliance with occupational health and safety laws, rules and codes and to promote more effective workplace health and safety programs.

(2) The program shall be designed to assist employers achieve voluntary compliance and shall be administered to preclude issuance of citations and penalties except when an employer fails to correct serious violations identified.

(3) The program shall include but is not limited to:

(a) Health and safety consultative services;

(b) Worker and employer training and education;

(c) Research projects including: Causes and prevention of industrial accidents and diseases; trends demonstrating the need for licensing, certification, or need or revised rules;

(d) Demonstration projects utilizing new or innovative processes or procedures to assist workers and employers in preventing occupational injury or disease, whatever the cause;

(e) Publication and general distribution of training and accident prevention materials.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0050****Enforcement Program, General**

The Division shall provide an effective program to enforce statutes, regulations, rules, standards or orders for the protection of life, safety and health of employees. This program shall include, but is not limited to:

(1) The inspection of places of employment;

(2) The investigation of industrial accidents, fatalities or catastrophes;

(3) Issuing citations for violations;

(4) Identifying safety and health hazards which may or may not be violations and bringing them to the attention of employers and employees;

(5) Issuing reasonable correction orders;

(6) Assisting employers and employees in safety and health matters;

(7) Assessing and collecting civil monetary penalties for violations;

(8) Holding informal conferences with employers or employees to discuss citations, penalties or correction orders and other safety and health matters without limiting or extending the employer's appeal rights; and

(9) Granting or denying extensions of the times set by correction orders.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0052****Reporting an Occupational Fatality, Catastrophe, or Accident**

Employers shall inform the Administrator (or designee) of all fatalities or catastrophes within eight (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.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

**437-001-0053****Preserving the Fatality or Catastrophe Scene**

Employers, their representatives, or others shall not disturb the scene of a fatality or catastrophe other than to conduct the rescue of injured persons until authorized by the Administrator (or designee), or directed by a recognized law enforcement agency.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

**Inspections****437-001-0055****Priority of Inspections**

Inspections shall be made according to the following priorities:

(1) Imminent danger — An inspection shall be made as soon as possible after the Division is notified.

(2) Fatality, catastrophe or accident — An investigation may be made as soon as possible after the Division is notified of a fatality, catastrophe or accident.

(3) Complaint — An inspection may be initiated when the Division receives a complaint and the nature of the information indicates the complaints probable validity.

(4) Referral — An inspection may be made if safety or health violations were observed by a Division employee or other federal, state or local governmental representative and the nature of the information indicates the referral's probable validity.

(5) Follow-up — An inspection:

(a) Shall be initiated when the employer requests removal of a Red Warning Notice; or

(b) Shall be initiated when a stay of correction or a variance has been denied; or

(c) May be initiated when an extension of time has been denied or the Division believes the employer is not in compliance or to monitor progress towards correction of a violation; or

(d) May be initiated when the employer is issued a citation with a correction order for one or more serious violations.

(6) Routine, Periodic, Area Inspections — An inspection may be made by following the schedule provided in OAR 437-001-0057.

(7) Emphasis Inspection — An inspection may be made if the place of employment is included in a national or state safety and health emphasis program.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

**437-001-0057****Scheduling Inspections**

(1) Scheduling and Selection of Routine, Periodic, and Area Safety Inspections:

(a) The Division shall schedule routine, periodic, and area safety inspections according to a priority system;

(b) The Division shall identify the most hazardous industries and places of employment through information obtained from the Department of Consumer and Business Services claim and employer files, the **Bureau of Labor Statistics Occupational Injury and Illness Survey**, and knowledge of recognized hazards associated with certain processes. This information shall be provided by the Division to its field offices, at least on an annual basis;

(c) Agricultural employers with 10 or fewer permanent, year-round employees, both full time and part-time, shall be subject to scheduled safety inspections as defined in 437-001-0057 only if any of the following has occurred:

(A) A valid complaint has been filed pursuant to ORS 654.062; or

(B) Within a 2 year period preceding the proposed inspection date, an accident at the agricultural employer's establishment has resulted in death or an injury or illness resulting in an overnight



hospital admission for medical treatment or more than 3 days of lost work; or

(C) The employer and principal supervisors of the agricultural establishment have not completed annually at least 4 hours of instruction on agricultural safety or health rules and procedures. This instruction must be documented as noted in 437-001-0057(1)(c)(C)(i):

(i) The instruction required pursuant to 437-001-0057(1)(c)(C) of this section, will include any conducted or accepted by OR-OSHA. Instruction related to agricultural safety and health that is offered or approved by any public or private college or university or governmental agency will be deemed to be automatically accepted. Documentation of instruction must be maintained by the employer. Such documentation must include the date, provider and duration of the instruction, the subject covered and the signature of the person completing the instruction;

**NOTE: Certified Applicator Training Core A and B** offered by the Oregon Department of Agriculture, will satisfy a portion of the required training in 437-001-0057 (1)(c)(C) above. One hour credit will be allowed annually for this training.

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

(D) Within the preceding 4 year period the agricultural establishment has not had a comprehensive consultation by an individual acting in a public or private consultant capacity.

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

(E) If the consultation in 437-001-0057(1)(c)(D) was done, the agricultural employer has failed to correct violations noted in the consultation report within 90 days of receipt of the report.

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

(d) The following criteria shall be used to establish safety scheduled inspection lists:

(A) Routine Inspections - High Hazard:

(i) Fixed places of employment shall be placed on three lists as described below and shall be placed in the following descending order:

(I) The place of employment employs 11 or more employees and had one or more accepted disabling claims filed at that place of employment;

(II) The place of employment employs 10 or fewer employees and had one or more accepted disabling claims filed at that place of employment;

(III) The place of employment is in an industry group which has a lost workday cases incidence rate above the current national average lost workday cases incidence rate (LWDCIR) for all employers. Industry group means the employer's three-digit **Standard Industrial Classification** except for the manufacturing industries which are recorded by the four-digit **Standard Industrial Classification**.

(ii) Non-fixed Places of Employment - an inspection may be scheduled when the place of employment is within an industry group which has a lost workday cases incidence rate above the national average rate for all employers, according to the current **U.S. Bureau of Labor Statistics Survey**. Industry group means the employer's three-digit **Standard Industrial Classification** except for manufacturing industries which are recorded by the four-digit **Standard Industrial Classification**. Those places of employment scheduled according to OAR 437-001-0057(1)(c)(A)(ii) above, shall be selected when the Division determines the location of a worksite. After the first inspection has been made, additional routine in-spections may be made when operations or processes at the site have changed or the location is different.

(B) Periodic Inspections:

(i) Fixed places of employment shall be placed on the scheduling list when the high hazard place of employment has had no routine, periodic or area safety inspection in the previous 36-month period;

(ii) Non-fixed places of employment may be scheduled when the place of employment is within an industry group which has a lost workday cases incidence rate below the national average rate for all employers, according to the current **U.S. Bureau of Labor Statistics Survey** and no inspection has been made at the site. Industry group means the employer's three-digit **Standard Industrial Classification** except for manufacturing industries which are recorded by the four-digit **Standard Industrial Classification**. Those places of employment scheduled according to OAR 437-001-0057(1)(c)(B)(ii) above, shall be selected when the Division determines the location of a worksite at which no inspection has yet been made.

(e) The inspection lists received at the field office shall be combined by the Field Office Supervisor prior to distribution to the Compliance Officers to make efficient use of resources. Employers may be added to the high hazard scheduling list based on knowledge of recognized hazards associated with certain processes;

(f) The Field Office Supervisors shall provide each Compliance Officer with a list of inspections on a periodic basis and the Compliance Officer shall make a reasonable effort to inspect each employer on that list prior to receiving another list. The list shall generally be followed in descending order but may be inspected in any order to utilize the Compliance Officer's time efficiently. Consideration for change of order will be for geographic location and size of firm.

(2) Scheduling and Selection of Routine, Periodic, and Area Health Inspections:

(a) The Division shall schedule routine, periodic, and area health inspections according to a priority system;

(b) The Division shall identify the most hazardous industries and places of employment through information obtained from the Department of Consumer and Business Services claims and employer files, the **Bureau of Labor Statistics Occupational Injury and Illness Survey**, and knowledge of recognized health hazards associated with certain processes. Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, harmful physical stress agents and biological agents. This information shall be provided by the Division to its field offices, at least on an annual basis;

(c) Agricultural employers with 10 or fewer permanent, year-round employees, both full time and part-time, shall be subject to scheduled health inspections as defined in 437-001-0057 only if any of the following has occurred:

(A) A valid complaint has been filed pursuant to ORS 654.062; or

(B) Within a 2 year period preceding the proposed inspection date, an accident at the agricultural employer's establishment has resulted in death or an injury or illness resulting in an overnight hospital admission for medical treatment or more than 3 days of lost work; or

(C) The employer and principal supervisors of the agricultural establishment have not completed annually at least 4 hours of instruction on agricultural safety or health rules and procedures. This instruction must be documented as noted in 437-001-0057(2)(c)(C)(i):

(i) The instruction required pursuant to 437-001-0057(2)(c)(C) of this section, will include any conducted or accepted by OR-OSHA. Instruction related to agricultural safety and health that is offered or approved by any public or private college or university or governmental agency will be deemed to be automatically accepted. Documentation of instruction must be maintained by the employer. Such documentation must include the date, provider and duration of the instruction, the subject covered and the signature of the person completing the instruction;

**NOTE: Certified Applicator Training Core A and B** offered by the Oregon Department of Agriculture, will satisfy a portion of the required training in 437-001-0057(2)(c)(C) above. One hour credit will be allowed annually for this training.

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

(D) Within the preceding 4 year period the agricultural establishment has not had a comprehensive consultation by an individual acting in a public or private consultant capacity. For purposes of these sections, the time period begins to run when the consultation is received, or

(E) If the consultation in 437-001-0057(2)(c)(D) was done, the agricultural employer has failed to correct violations noted in the consultation report within 90 days of receipt of the report.

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

(d) The following criteria shall be used to establish health scheduled inspection lists:

(A) Routine Inspections - High Hazard:

(i) Fixed places of employment shall be placed on two lists as described below and shall be placed in the following descending order:

(I) The place of employment employs 11 or more employees and from information available to the Division, recognized health hazards known to be associated with certain processes are reasonably thought to exist at the place of employment;

(II) The place of employment employs 10 or fewer employees and from information available to the Division, recognized health hazards known to be associated with certain processes are reasonably thought to exist at the place of employment.

(ii) Non-fixed Places of Employment - An inspection may be scheduled when from information available to the Division, recognized health hazards known to be associated with certain processes, are reasonably thought to exist at the place of employment, and the Division determines the location of a worksite.

(B) Periodic Inspections:

(i) Fixed places of employment shall be placed on the scheduling list when the high hazard place of employment has had no routine, periodic or area health inspection in the previous 36-month period;

(ii) Non-fixed places of employment may be scheduled when no inspection has been made at that worksite.

(d) The inspection lists received at the field office shall be combined by the Field Office Supervisor prior to distribution to the Compliance Officers to make efficient use of resources. Employers may be added to the high hazard scheduling list based on knowledge of recognized hazards associated with certain processes;

(e) The Field Office Supervisors shall provide each Compliance Officer a list of inspections on a periodic basis and the Compliance Officer shall make a reasonable effort to inspect each employer on that list prior to receiving another list. The list shall generally be followed in descending order but may be inspected in any order to utilize the Compliance Officer's time efficiently. Consideration for change of order will be for geographic location and size of firm.

(3) Area - A safety or health inspection may be made to coincide with other inspections being made in a given area.

(4) No more than one complete safety and one complete health routine inspection shall be made at any particular high hazard fixed place of employment in any 12-month period unless the place of employment has five or more accepted disabling claims or has processes or operations which vary within the 12-month period.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 10-1995, f. & cert. ef. 11-29-95; OSHA 2-1996, f. & cert. ef. 6-13-96

#### **437-001-0060 Advance Notice**

(1) No person shall give advance notice of an inspection without authority of the Director, subject to penalties as pre-

scribed in ORS 654.991(2).

(2) If the Director approves a request for advance notice of an inspection:

(a) The notice shall not be given more than 24 hours in advance; and

(b) When advance notice is given to the employer, the employer shall, without delay, notify the employee representative of the proposed inspection, or in the absence of an employee representative, immediately post a notice in a sufficient number of locations in the place of employment to reasonably inform employees of the planned inspection. Any employer who fails to notify the employees, through posting, of the proposed inspection shall be assessed a penalty not to exceed \$1,000 as prescribed in ORS 654.086(1)(f).

(3) It will not be considered advance notice to advise a federal or state agency of a proposed inspection in order to avoid duplicate inspections or to facilitate enforcement.

(4) Any person who gives advance notice of any safety or health inspection without authority from the director or his designee shall be punished, upon conviction, by being assessed a penalty not to exceed \$1,000 or be imprisoned for not more than six months, or both, as prescribed in ORS 654.991(2).

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0065 Right of Entry**

(1) An OSS/OHS has the right to enter and inspect any place of employment during working hours or at other reasonable times, within reasonable limits, and in a reasonable manner.

(2) An OSS/OHS, if possible, shall present his/her credentials to an employer or employer's representative to establish the OSS/OHS right of entry.

(3) The OSS/OHS shall not sign any form of liability release or agree to waiver any rights of the Department.

(4) The OSS/OHS shall have the right to enter and inspect any place of employment accompanied or assisted by outside engineers or specialists.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0070 Inspection Warrants**

If an OSS/OHS is denied entry, the APD may institute action to obtain an inspection warrant, as provided for in ORS 654.202 to 654.216.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0075 Opening Conference**

(1) The Compliance Officer shall, if possible, conduct a joint opening conference with the employer or a representative, and a representative of the employees, if any, and shall:

(a) Present credentials as a means of identification;

(b) Explain the purpose, nature and intended scope of the inspection;

(c) Request the records which need to be examined;

(d) Obtain the name of the employer representative, if any, and give that person the opportunity to accompany the Compliance Officer on the inspection;

(e) Explain that employee participation may be accomplished through random interviews;

- (f) Determine if there are trade secrets to be protected;
  - (g) Inform the employer that sampling may be done and photographs may be taken;
  - (h) Explain that all violations which would normally be assessed a penalty and which are corrected prior to the end of the inspection will result in penalty reductions;
  - (i) Determine what personal protective equipment is required to have and use such equipment; and
  - (j) Explain that a closing conference will be held with both the employer or a representative, and a representative of the employees, if any.
- (2) Where the Compliance Officer decides it is not practical to hold a joint conference, separate conferences shall be held for the employer or a representative, and a representative of the employees, if any. Notes shall be taken by the Compliance Officer during the separate conferences; these will be available upon request.
- (3) Where separate conferences are necessary, the Compliance Officer shall determine if their conduct will delay observation or evaluation of workplace safety or health hazards. In such cases, the conferences shall be brief and, if appropriate, reconvened after the Compliance Officer's inspection of the place of employment.
- (4) Where the holding of an opening conference will prevent timely evaluation of the workplace, it may be abbreviated to a simple introduction and identification of the Compliance Officer. The remainder of the opening conference will be covered as soon as possible.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0080**

##### **Inspection Without Employer or Employer Representative**

- (1) An Compliance Officer may make an inspection without an opening or closing conference if the employer or employer representative is absent or declines to participate.
- (2) If the employer, employer representative or employee representative is absent from the place of employment, following the inspection the Compliance Officer shall make at least one attempt on each of two different days to advise the employer, employer representative or employee representative concerning the inspection.
- (3) No inspection will be made if neither the employer, employer representative, nor employees are present at the place of employment, except when executing an inspection warrant as provided in ORS 654.216(2) or when posting a Red Warning Notice as provided for in ORS 654.082.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1974, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0085**

##### **Employee Representation on Inspection Team**

- (1) An employee representative has the right to accompany an Compliance Officer during an inspection of the place of employment.
- (2) If there is no employee representative during an inspection, the Compliance Officer shall interview, if practicable, a reasonable number of employees about safety and health in the place of employment.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0090**

##### **Inspection Procedures**

- During an inspection an Compliance Officer is authorized to:
  - (1) Inspect without unreasonably disrupting operations in a place of employment all required records, conditions, structures, materials and methods for compliance with statutes, regulations, rules, standards and orders, and identify and document hazards;
  - (2) Photograph or video tape unsafe acts, practices, procedures or physical hazards;
  - (3) Take environmental and personal exposure samples;
  - (4) Allow a different employer representative or employee representative to accompany the Compliance Officer during separate phases of the inspection if this will facilitate the inspection;
  - (5) Resolve all disputes as to who is the representative authorized by the employees to accompany the Compliance Officer on the inspection.
  - (6) Deny the right to participate to any person whose conduct interferes with a fair and orderly inspection;
  - (7) Inform the employer representative and employee representative of any apparent violations, and hazards;
  - (8) Collect, including but not limited to, information for the purpose of classifying any apparent violations as minimal, other than serious, or serious and collect data for the purpose of calculating penalty assessment;
  - (9) Interview privately a reasonable number of employees about safety and health in the place of employment;
  - (10) Receive information in confidence from an employee or employee representative; and
  - (11) Stop the inspection if a situation involving imminent danger is observed, request the employer or the employer representative to advise affected employee and correct the imminent danger, and post a Red Warning Notice according to OAR 436-046-0096, if the employer or the employer representative refuses to protect the employees from the imminent danger.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

#### **437-001-0096**

##### **Red Warning Notice**

- (1) The Red Warning Notice shall be authorized by either the Director, Administrator, Manager of Enforcement, Chiefs of Safety and Health, or Field Office Supervisors.
- (2) When action is necessary to preclude or eliminate exposure of employees to a condition which, if such exposure occurred or continued, would constitute a violation of any statute or of any lawful regulation, rule, standard or order, affecting employee safety or health at a place of employment, a Compliance Officer shall obtain permission to post a Red Warning Notice. The notice shall be posted in plain view of any person likely to use the place of employment, machine, device, apparatus or equipment that constitutes the hazard.
- (3) Any place of employment, machine, device, apparatus or equipment on which a Red Warning Notice has been posted shall not be operated or used by any person until:
  - (a) The condition has been made safe and healthful; and
  - (b) The Red Warning Notice has been removed by the Division; however,
  - (c) Nothing in this section prohibits an employer from using any place of employment, or operating any machine, device, apparatus or equipment, exclusively for the purpose of remedying the violation, pursuant to the instructions on the Red Warning Notice.
- (4) No person shall deface or destroy a Red Warning Notice, or remove it without authorization from the Division.
- (5) The Red Warning Notice will be removed after:
  - (a) Notification from the employer that the condition has been corrected; and
  - (b) A follow-up inspection or other information confirms that



the condition has been corrected.

(6) Any person who violates or directs another to violate sections (3) or (4) of this rule shall be assessed a civil penalty of not less than \$100 and not more than \$5,000 for each such violation.

(7) Any employer who violates or directs an employee to violate section (3) of this rule, and the violation is determined to be a willful violation, may be assessed a civil penalty of not less than \$5,000 and not more than \$70,000.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

#### **437-001-0099**

##### **Closing Conference**

(1) The OSS/OHS shall, if practicable, conduct a joint closing conference with the employer or a representative, and a representative of the employees, if any, and shall advise these representatives:

(a) Of any violation(s) as a result of the inspection and of any hazards which at this time may not be a violation;

(b) Of the right to present any pertinent information regarding the violation(s);

(c) That a citation shall be issued for all other than serious or serious violations even if the violations were corrected at the time of the inspection;

(d) That penalties may be imposed for other than serious violations and shall be imposed for serious violations;

(e) That a reasonable time for correction of each alleged violation shall be proposed;

(f) That further correspondence separate from the citation regarding the inspection will be received detailing the nonviolation hazards observed during the inspection;

(g) Of all posting requirements contained in OAR 437-001-0275 and 437-001-0280;

(h) That if the employer fails to correct any violation by the date indicated on the citation, additional penalties may be imposed for each day the violation(s) remains uncorrected (see OAR 437-001-0235);

(i) Of employee protection against discrimination (see OAR 437-001-0295);

(j) Of appeal rights contained in ORS 654.078 and OAR 438-085-0006 to 438-085-0870;

(k) Of rights to an informal conference (see OAR 437-001-0255);

(l) Of extension procedures (see OAR 437-001-0240);

(m) Of consultative services available through the Department and workers' compensation insurance carriers (see OAR 437-001-0450 through 437-001-0465);

(n) Of variance procedures (see OAR 437-001-0400 through 437-001-0435);

(o) Of the possibility of follow-up inspections;

(p) That if any safety or health condition was encountered which was beyond the expertise of the Compliance Officer, that condition will be considered a referral and may be addressed by another representative of the OR-OSHA Division;

(q) Of the availability of return visits by the Compliance Officer to assist the employer in obtaining compliance.

(2) Where the Compliance Officer decides it is not practical to hold a joint conference, separate conferences shall be held for the employer or a representative, and a representative of the employees, if any. Notes shall be taken by the Compliance Officer during the separate conferences; these will be available upon request.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

## **Violations and Penalties**

#### **437-001-0135**

##### **Evaluation of Probability to Establish Penalties**

(1) The probability of an accident which could result in an injury or illness from a violation shall be determined by the Compliance Officer and shall be expressed as a probability rating.

(2) The factors to be considered 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; or

(f) Other factors which may significantly affect the degree of probability of an accident occurring.

(3) The probability rating is:

(a) Low — If the factors considered indicate it would be unlikely that an accident could occur;

(b) Medium — If the factors considered indicate it would be likely that an accident could occur; or

(c) High — If the factors considered indicate it would be very likely that an accident could occur.

(4) The probability rating may be adjusted on the basis of any other relevant facts which would affect the likelihood of injury or illness.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 16-1990(Temp), f. & cert. ef. 7-26-90; OSHA 25-1990(Temp), f. & cert. ef. 10-31-90

#### **437-001-0140**

##### **Evaluation of Severity to Establish Penalties**

(1) A severity rating for each violation shall be determined by the Compliance Officer on the basis of the degree of injury or illness which is reasonably predictable. If more than one injury or illness is reasonably predictable, the Compliance Officer will determine the severity based upon the most severe injury or illness. Severity ratings will be selected from the following schedule:

(a) Other than Serious — Conditions that could cause injury or illness to employees but would not include serious physical harm;

(b) Serious Physical Harm; or

(c) Death.

(2) The severity rating may be adjusted on the basis of any other relevant facts which would affect the severity of the possible injury or illness.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 16-1990(Temp), f. & cert. ef. 7-26-90; OSHA 18-1990(Temp), f. & cert. ef. 8-15-90; OSHA 25-1990(Temp), f. & cert. ef. 10-31-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

#### **437-001-0145**

##### **Penalty for Other than Serious or Serious Violation**

(1) A penalty shall be assessed for any serious violation and may be assessed for any other than serious violation by considering the penalty established by the intersection of the probability rating and severity rating on the penalty schedule (**Table 1**). In a case where probability and severity are not appropriate considerations, a penalty may be assessed by considering the facts of the violation.

(2) Penalty adjustments may be made based upon the



employer's previous calendar years lost workday cases incidence rate, if available, and efforts made during the inspection to correct violations. Penalty adjustments shall not be applied to repeat, willful or failure to correct violations or to any violation which contributed to an injury, illness or death of an employee. Adjustments shall not reduce the penalty to less than the mandatory minimum penalty which has been established by rule or statute. Adjustments are:

(a) A penalty reduction of 35% for each violation for an employer's lost workday cases incidence rate for the previous calendar year, if below the current published statewide average rate for that employer's Standard Industrial Classification. For fixed places of employment the lost workday cases incidence rate is based upon the rate for that place of employment. For non-fixed places the lost workday cases incidence rate is based upon the employer's rate statewide;

(b) A penalty reduction of 30% for each violation, when the employer corrects the violation before the end of the inspection;

(c) A penalty reduction of 10% may be given when the employer employed no more than 50 employees at any time in the previous 12 months, including the day of the inspection.

(3) The adjusted penalty for a serious violation will not be less than \$100.

(4) The penalty for combined violations of the same rule shall be calculated by computing the penalty and possible adjustment for each subpart making up the combination and adding these to establish a total penalty for the combination.

(5) The penalty for grouped violations of different rules shall be calculated by determining the probability and severity for the entire group.

Table 1

## Penalty Schedule

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

(6) The Administrator may assess a penalty of up to \$7,000 for any serious or other than serious violation after considering the facts.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 12-1982, f. 9-20-84, ef. 11-1-84; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 5-1988, f. 5-16-88, ef. 5-16-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 7-1995, f. & cert. ef. 7-5-95

## 437-001-0155

## Determination of Penalty — Failure to Correct

(1) A citation shall be issued for an employer's nonabatement of a violation.

(2) Penalties of not more than \$7,000 per day for failure to correct a violation:

(a) May be assessed for each work day, or part of a day, that the violation results in continued exposure after the ordered correction date;

(b) Shall be determined by considering the probability and severity of the original violation, the efforts of the employer to

correct the violation, and factors which delayed the employer in correcting the violation; and

(c) If failure to correct the violation results from the employer's lack of diligence, the penalty shall not less than \$50 for other than serious violations, and not less than \$250 for serious violations, for each day or part of a day, during which the violation remains uncorrected.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

## 437-001-0160

## Penalty Criteria — Repeat Violation

Penalties may be assessed for repeat violations as follows:

(1) A violation of any statute, regulation, rule, standard or order shall be cited as repeated when, upon reinspection, another violation of the previously cited statute, regulation, rule, standard or order is found.

(2) Where a violation of a previously cited statute, regulation, rule, standard or order is present and that first violation has been appealed but not yet become final by operation of law:

(a) The second violation shall be cited as a repeated violation; and

(b) Such citation shall state that the prior violation has been appealed and the repeat classification of the current violation will be rescinded if the prior violation does not become final by order of law.

(3) For purposes of considering whether a violation is a repeat violation at fixed places of employment, "high serious" and "death" rated violations will be issued as repeat violations at all of an employer's places of employment in the state. Repeat violations for all other violation types will be limited to the cited place of employment.

(4) For employers at non-fixed places of employment, repeat violations shall be based on prior violations occurring anywhere within the state.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74; APD 7-1989(Temp), f. & ef. 5-1-89; APD 10-1989, f. & cert. ef. 7-7-89; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94

## 437-001-0165

## Determination of Penalty — Repeat Violation

(1) The penalty for a repeat violation shall be computed by multiplying the penalty for the current violation by the following factors:

(a) 1st repeat — X 2

(b) 2nd repeat — X 5

(c) 3rd repeat — X 10

(d) 4th repeat — Discretion of Administrator

(2) The total penalty for a repeat violation shall be not less than \$200 nor more than \$70,000.

(3) For a repeated other than serious violation that otherwise would have no initial penalty, a penalty of \$200 shall be assessed for the first repeated violation, \$500 if the violation has been cited twice before, and \$1,000 for a third repeat.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 9-1-76; WCB 33-1974, f. 9-5-74, ef. 9-26-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74; APD 7-1989(Temp), f. & cert. ef. 5-1-89; APD 10-1989, f. & cert. ef. 7-7-89; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

## 437-001-0170

**Determination of Penalty — Failure to Report an Occupational Fatality, Catastrophe, or Accident**

If an employer fails to report an occupational fatality, catastrophe or accident as provided in OAR 437-001-0052 a penalty of not less than \$250 nor more than \$7,000 shall be assessed.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

**437-001-0171**

**Determination of Penalty - Failure to Register a Farm Labor Camp/Facility**

If an operator, employer or contractor fails to register a Farm Labor Camp or facility with Oregon OSHA as required in Division 2/J, 437-002-0142(6), a penalty of not less than \$250 nor more than \$7,000, shall be assessed.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 315.164, ORS 658.750, ORS 658.755, ORS 658.780, ORS 658.785, ORS 658.805, ORS 658.810 & ORS 658.825

Hist.: OSHA 9-1995, f. & cert. ef. 11-29-95

**437-001-0175**

**Determination of Penalty — Willful or Egregious Violation**

For a willful violation, the Administrator, after considering the facts of the violation, may assess a penalty of not less than \$5,000 nor more than \$70,000. For egregious violations, the Administrator may assess a separate penalty for each instance of a violation.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 8-1985, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

**437-001-0176**

**Determination of Penalty — Failure to Notify Employees of Advance Notice**

The Administrator, after considering the related facts, may assess a penalty not to exceed \$1,000 for each violation of the employer's failure to give notification by posting to employees of advanced notice.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0180**

**Determination of Penalty — Relating to Red Warning Notice**

The Administrator, after considering the related facts, shall assess a penalty of not less than \$100 and not more than \$5,000 for each violation of the restrictions imposed by a Red Warning Notice (see OAR 437-001-0096(3) or (4)).

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0201**

**Determination of Penalty — Relating to Field Sanitation**

The Administrator shall assess a civil penalty of not less than \$250 and not more than \$2,500 to employers of workers who are engaged in field activities for the growing and harvesting of food crops intended for human consumption, who substantially fail to comply with OAR 437-081-2950 through 437-081-2990 in Division 81, Agricultural Operations and Farming.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0203**

**Determination of Penalty - Relating to Violations Which Have No Probability and Severity**

(1) **Safety and Health Protection on the Job Poster.** If the employer has not displayed the poster, a minimum penalty of \$100 may be assessed.

(2) **Annual Summary** - If an employer fails to post the summary portion of the **OSHA 200 Form** during the month of February, a minimum penalty of \$200 may be assessed.

(3) **Citation** - If an employer fails to post the citation after receipt, a minimum penalty of \$200 may be assessed.

(4) **OSHA 200 and OSHA 101 Forms** - If the employer does not maintain the **Log and Summary of Occupational Injuries and Illnesses, OSHA 200 Form**, and the **Supplementary Record, OSHA 101 Form** (or equivalent), a minimum penalty of \$100 may be assessed for each OSHA form not maintained.

(5) **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 minimum penalty of \$100 may be assessed for each form not made available.

(6) **Flush Toilets/Warm Water Hand Washing Facilities** - If an employer fails to provide flush toilets or warm water hand washing facilities on a construction site according to OAR 437-003-0020 in OAR 437, Division 3, Construction, a penalty of not less than \$200, nor more than \$2,500, shall be assessed.

(7) **Safety Committees** - If an employer fails to establish a safety committee as required by OAR 437-001-0765 in OAR 437, Division 001, General Provisions, a minimum penalty of \$100 shall be assessed.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.086

Hist.: APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 10-1995, f. & cert. ef. 11-29-95

**Citations and Correction**

**437-001-0205**

**Citation and Notice of Penalty**

(1) If the Division concludes from the review of an inspection report that a rule or order was violated, a citation will be issued to the employer which shall:

(a) State the name of the employer, place of employment, and date of inspection. If the violation occurred on other than the inspection date, the date of the violation will be included;

(b) Describe factually the nature and location of the violation;

(c) State the type of violation, if other than general;

(d) Identify the rule or order violated;

(e) Fix a time for the correction of each violation not corrected at the time of inspection;

(f) State the penalty for each violation;

(g) Identify which, if any, penalties are suspended;

(h) State the total dollar amount of assessed penalties;

(i) Inform the employer of the right to appeal the citation, the civil penalty or the period of time fixed for correction of the violation to the Board;

(j) Inform affected employees of their right to appeal the time fixed for correction of the violation; and

(k) Notify the employer that the citation becomes a final order if an appeal is not filed within 20 days of receipt of the citation by the employer.

(2) The citation shall be served on the employer by certified mail or in person.

(3) Each employee representative shall be sent a copy of all citations and notices of penalties issued.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### 437-001-0215

##### Employer Response to Citation and Notice of Penalty

- (1) After receipt of a citation, the employer shall:
  - (a) Promptly post the citation for employees' information for three days or until the violation is corrected, whichever occurs last;
  - (b) Assure that any amendments or withdrawals to a citation are posted with the original citation for three days or until the violation is corrected, whichever occurs last;
  - (c) Correct each violation by the date ordered; and
  - (d) If no appeal is filed, remit any penalty by the 21st calendar day following receipt of the citation.
- (2) The above requirements shall not limit an employer's appeal rights.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### 437-001-0220

##### Payment of Penalties

- (1) All civil penalties become due and owing after the citation becomes a final order.
- (2) If payment is not received within ten (10) days after the order becomes final, it may be docketed as a judgment as provided by ORS 654.086(3).

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### 437-001-0225

##### Penalty for Falsification

- (1) An employer who knowingly makes any false statement, representation or certification regarding the correction of a violation shall be assessed a civil penalty of not less than \$100 and not more than \$2,500.
- (2) An employer who knowingly makes any false statement, representation or certification regarding the correction of a violation, and that violation is found to have caused or materially contributed to the death of any employee, shall be penalized according to the provisions of ORS 654.991(3). In such cases, the Administrator shall contact the appropriate local district attorney for assistance and possible prosecution.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### 437-001-0230

##### Correction of Violation

- (1) The employer shall correct any violation the employer has been ordered to correct except when:
  - (a) A general violation has been appealed;
  - (b) A stay of the correction date has been ordered by the Hearings Division on an appealed serious violation;
  - (c) An extension has been granted in accordance with OAR 437-001-0240.
- (2) If the violation is corrected at the time of inspection, the correction shall be noted in the Compliance Officer's inspection report and used as the basis of possible penalty reduction. However, such correction shall not provide immunity from the issuance of a citation for the violation.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### 437-001-0235

##### Failure to Correct Violation

If a subsequent inspection reveals that a violation was not corrected, or was only partially corrected, by its correction date, a notice shall be issued to the employer which:

- (1) Gives the date and number of the citation which first alleged the violation;
- (2) Identifies the uncorrected violation and the date by which it was ordered to be corrected;
- (3) Advises the employer of the nonabatement days accumulated to the date of notice;
- (4) Advises the employer that daily penalties shall continue to accumulate until the violation is corrected; and
- (5) Notifies the employer to advise the indicated region office immediately upon correction of the violation.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### 437-001-0240

##### Extension of Correction Date — Application

- (1) An employer may apply for an extension of the date for correction a violation.
- (2) An application for extension of the correction date shall be in writing to the OR-OSHA Division, 350 Winter St. NE, Salem, Oregon 97310, or received by any office of the Department.
- (3) The application for extension must include:
  - (a) The name and address of the employer;
  - (b) The location of the place of employment;
  - (c) The citation number;
  - (d) The item number of the violation for which the extension is sought;
  - (e) The reason for the request;
  - (f) Facts which show that the employer has made an effort to correct the violation by the date set for correction, but was unable to do so because of factors beyond the employer's control;
  - (g) All available interim steps being taken to safeguard employees against the cited hazard during the requested extended correction period;
  - (h) The date by which the employer proposes to complete the correction; and
  - (i) A statement that a copy of the request for extension has been posted as required by OAR 437-001-0275(2)(d) and (h) or for at least ten (10) days, whichever is longer, and, if appropriate, served on the authorized representative of affected employees, and certification of the date upon which posting or service was made;
  - (j) Any employee who feels a posted request for an extension is unjust may contact the Administrator for a review of the matter.
- (4) The application shall be postmarked or received by the Department no later than the correction date of the violation for which the extension is requested. For good cause, the Administrator may approve exceptions to this rule.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### 437-001-0245

##### Extension of Correction Date — Decision

- (1) A request for extension of the correction date shall be granted or denied on the basis of information in the application, information from employees and any other relevant information.
- (2) If the request for extension is granted, a notice of extension of correction date shall be sent to the employer. The notice shall:
  - (a) Include notice of the right of affected employees or their representative to appeal the extension; and
  - (b) Be posted for employee's information until the violation is corrected.
- (3) If the request for extension is denied, the Administrator



shall, with reasonable promptness, inform the employer in writing of the reasons for such denial, and of the employees' and employer's rights to appeal the Administrator's decision.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0250****Extension of Correction Date — Revocation**

The Administrator may, for good cause, revoke an extension of correction date.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0251****Extension of Correction Date — Hearing on the Application**

Affected employees or the employee representative shall be given the opportunity to request a hearing on an application for an extension of the correction date:

(1) Requests for hearings shall be made in the following manner:

(a) The request shall be made within ten (10) days of posting the application;

(b) A request shall be made to the Administrator and shall contain:

(A) A concise statement of facts showing how the employee(s) would be affected by the extension of correction date;

(B) A statement opposing the extension of the correction date and a concise summary of the evidence supporting the opposition; and

(C) Any views or arguments on any issue of fact or law presented.

(2) Notice of hearing shall be given by the Administrator to affected persons and shall contain:

(a) Time, place and nature of hearing;

(b) Legal authority under which the hearing will be held; and

(c) The issues to be discussed.

(3) The hearing shall be conducted by the Administrator in a manner which will allow all affected persons to submit information on the application.

(4) At any hearing conducted to determine the merits of an extension request, the person requesting the extension of compliance time shall have the burden of proof regarding the request.

(5) The Administrator shall evaluate all information submitted at the hearing and make a determination on the merits of the application.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 3-1983, f. 1-31-83, ef. 2-1-83; APD 7-1988, f. 6-17-88, ef. 7-1-74

**Informal Conferences****437-001-0255****Informal Conference**

(1) The Administrator shall provide an opportunity for the employer and employees to discuss informally with the Division any matter affecting occupational safety and health in the place of employment.

(2) An informal conference may be used to:

(a) Clarify statements of observed violations;

(b) Discuss safety and health requirements;

(c) Discuss abatement dates;

(d) Explain the penalty system;

(e) Improve employer/employee understanding of the Oregon Safe Employment Act;

(f) Correct errors;

(g) Narrow issues; or

(h) Negotiate a statewide settlement agreement.

(3) An informal conference concerning a citation shall not extend the 20 days allowed for filing an appeal with the Board.

(4) In those cases where an informal conference concerns a citation, the Division shall contact the employer and require them to notify the employees or their representatives of the opportunity to attend the informal conference.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

**437-001-0260****Request for Informal Conference**

A request for an informal conference:

(1) May be requested by either the employer or employee;

(2) Need not be in any particular form;

(3) Shall be addressed to the Administrator; and

(4) Shall clearly state the subject to be discussed.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0265****Amendment or Withdrawal of Citation**

(1) The Administrator may, for good cause, amend or withdraw a citation provided:

(a) Such action will not reduce the occupational safety and health protection of affected employees;

(b) No appeal has been filed with the Board to contest the citation;

(c) The time for filing an appeal has not expired; and

(d) The employee representative, if any, has been notified of the proposed amendment.

(2) The employer receiving an amendment or withdrawal shall post the document as required by OAR 437-001-0275(3).

(3) An amendment or withdrawal or an appealed citation or order shall be made in accordance with the Board's rules (OAR 438) for contested cases. The administrator shall notify the employee representative of any proposed settlement or withdrawal made according to OAR 438.

(4) Any withdrawal, or amendment of an appealed citation that reduces the penalty or extends the correction times of an alleged serious or willful violation shall not be made without written approval of the Director.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0270****Discretion if There is no Timely Appeal**

(1) The Director may refer a matter arising under this rule to the Hearings Division of the Board for a hearing before a referee, who will provide the Director with proposed findings and recommendations. Persons whose rights may be affected, including affected employees, shall be given reasonable notice of such a hearing and an opportunity to participate as parties.

(2) To prevent a manifest injustice, the Director, at the Director's own discretion or upon request from the Division or an adversely affected person, may vacate or amend a Division citation notice or order.

(3) If the Director proposes to vacate or amend a Division citation, notice or order, an opportunity to be heard will be given to persons, including affected employees, whose rights may be affected.

(4) All requests for reconsideration based on a manifest injustice shall contain a statement indicating the following:

(a) The request has been posted as required by OAR 437-



001-0275(2);

(b) The request has been served on the authorized representative of affected employees, if appropriate;

(c) The date the request was posted or service was made; and

(d) All affected employees have been advised of their right to comment.

(5) No decision shall be made on a manifest injustice request until ten days after the date of posting or service.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist. WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 3-1983, f. 1-31-83, ef. 2-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

## Posting

### 437-001-0275

#### Posting Requirements.

(1) Where OAR 437, Division 1, requires an employer to inform affected employees by posting, copies of the unedited notice or other document shall be posted promptly upon receipt in one or more places where it will readily be observable by affected employees (for example, a location where employees report each day or at a location from which the employees operate to carry out their activities).

(2) The following documents shall be posted as specified:

(a) The **Safety and Health Protection on the Job** poster shall be posted permanently;

(b) A copy of any citation received by the employer shall be posted for three days or until the violation(s) is corrected, whichever occurs last;

(c) A copy of any amendment or withdrawal of a citation shall be posted with the original citation for three days or until the violation(s) is corrected, whichever occurs last;

(d) A copy of any notice of extension of correction date shall be posted until the violation(s) is corrected;

(e) A copy of any settlement shall be posted for ten days or until all violations have been corrected, whichever occurs last;

(f) A copy of any **Notice of Hearing** issued by the Hearings Division shall be posted until the hearing date;

(g) A copy of the variance application shall be posted until a final variance order is issued and posted;

(h) A copy of any variance order shall be posted for 20 days;

(i) A copy of any interim order relating to a variance shall be posted as long as it is in effect;

(j) A copy of any request for extension of correction date shall be posted until the Administrator informs the employer the extension has been granted or denied;

(k) A copy of a request for reconsideration of a citation, notice or order under the manifest injustice provision of OAR 437-001-0270 shall be posted along with the citation until the request has been granted or denied; and

(l) A copy of any feasibility determination relating to engineering controls shall be posted for 20 days for review by employees;

(m) A **Field Sanitation Notice** (available from the Department of Consumer and Business Services, OR-OSHA Division) shall be posted permanently by affected employers engaged in the production of food crops intended for human consumption. (See OAR Chapter 437, Division 81, Agricultural Operations and Farming, OAR 437-081-2985.)

(n) An informational notice of the farm worker camp registration provided by the Department.

(3) If the employer fails to comply with the requirements of OAR 437-001-0275(2), the Administrator may assess a civil penalty of not more than \$1,000 for each violation.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 315.164, ORS 654.086, ORS 658.750, ORS 658, ORS 755, ORS 658.780, ORS 658.785, ORS 658.805, ORS 658.810 & ORS 658.825

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81;

WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 3-1983, f. 1-31-83, ef. 2-1-82; WCD 9-1998, f. 10-7-86, ef. 12-1-86; APD 5-1988, f. & ef. 5-16-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 9-1995, f. & cert. ef. 11-29-95; OSHA 10-1995, f. & cert. ef. 11-29-95

### 437-001-0280

#### Posting on Selected Multi-Employer Jobsites

At a multi-employer jobsite, the owner or the owner's designated prime contractor may be directed to post a notice in a conspicuous manner in a sufficient number of locations throughout the jobsite to reasonably inform the Compliance Officer and the affected employees of the following:

(1) The name and usual jobsite location of each employer and employer representative, on each work shift, who is designated to accompany the Compliance Officer during a safety or health inspection of the jobsite; and

(2) The employee's right to report a hazard to the employer's designated representative.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

## Complaints

### 437-001-0285

#### Form and Content of a Complaint

Any person may complain to the Administrator of possible violations of any statute or of any lawful regulation, rule, standard or order affecting employee safety or health at a place of employment. A complaint, whether oral or written, should specify:

(1) The name of the employer;

(2) The location of the place of employment;

(3) Where the condition or practice occurs in the place of employment;

(4) The nature and frequency of the hazard;

(5) The number of employees affected by the condition or practice;

(6) The way in which the complaint is affected by the condition or practice; and

(7) Whether the complainant desires the complainant's name and address to be kept confidential.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

### 437-001-0290

#### Division Action on Complaints

(1) At the complainant's request, in writing, their identity shall be kept in confidence. Any employee of the Department who fails to maintain that confidence is subject to disciplinary action.

(2) Complaint inspections shall be scheduled as provided for in OAR 437-001-0055(3).

(3) Any person making a complaint to the Division shall receive written notice of the Division's action if the complainant's address is provided.

(4) Any complainant who feels that the complaint was not adequately investigated by the Division may contact the Administrator for a review of the matter.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

### 437-001-0295

#### Discrimination Complaint

(1) An employee or prospective employee may file a complaint as provided in ORS 654.062(5) if the employee believes discrimination has occurred because:

(a) The employee opposed a practice forbidden by, or

engaged in a practice provided for, in the Oregon Safe Employment Act; or

(b) The employee refused in good faith to be subjected to imminent danger provided the employer refused to correct the hazard or it was not possible to notify the employer of the danger and the employee has notified the OR-OSHA Division or other appropriate agency, of the hazard, unless excused on the basis of insufficient time or opportunity as stated in OAR 839-006-0020, Bureau of Labor and Industries rules.

(2) The complaint shall be filed with the Commissioner of the Bureau of Labor and Industries, 1400 SW 5th Avenue, Portland, Oregon 97201, within 30 days after the employee had reasonable cause to believe discrimination occurred.

(3) The complaint may also be filed in any Circuit Court of the State of Oregon, or the U.S. Department of Labor, 3056 Federal Office Building, Seattle, Washington 98174.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75;

WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81;

APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

### **Variances**

#### **437-001-0400**

##### **Application for a Variance**

(1) Any employer may apply for a variance from any rule which specifically affects working conditions. This application may be submitted:

(a) On a form provided by the Division; or

(b) In any written form that includes all information required by section (2) and (3) of this rule.

(2) An application for a variance must contain:

(a) The name and address of the employer;

(b) The address and location of the place of employment;

(c) The rule, identified by number, from which the variance is sought;

(d) The type of variance desired (see OAR 437-001-0015 (52));

(e) The means by which employees will be protected from the hazard until final action is taken on the variance request;

(f) A description of the means proposed to be used to provide employment which is as safe and healthful as that obtained by compliance with the rule;

(g) Certification that all affected employees have been informed of the application and of their right to comment on it by:

(A) Giving a copy of the variance application to the authorized employee representative;

(B) Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

(C) By other appropriate means;

(h) A description of how employees have been informed of the application and of their right to comment on it to the Administrator, OR-OSHA Division, 350 Winter St. NE, Salem, Oregon, before it becomes a final order;

(i) A statement of whether the employer has previously filed application for a similar variance with any state or federal agency.

(3) If the employer is applying for a research variance, the application shall contain the following additional information:

(a) The purpose and contribution of the intended research;

(b) A discussion of the research methods;

(c) The research schedule, including the projected completion date;

(d) A description of the hazards to which employees may be exposed and the steps to be taken to protect the employees' safety and health;

(e) Biographical information to indicate the competence of the research staff;

(f) Assurances that the project shall be funded adequately; and

(g) Assurances that the Division shall be given a copy of the research report prepared under the variance. However, no trade secret, patented or patentable material or data need be submitted by the employer.

(4) If the employer is applying for a temporary variance, the application shall contain the following additional information:

(a) A statement of facts why the applicant is unable to comply with the rule by the effective date which is supported by representations from qualified persons having firsthand knowledge of the facts represented, and include data on:

(A) Unavailability of professional or technical personnel; or

(B) Unavailability of materials and equipment needed; or

(C) Inability to complete the construction or alteration of facilities by the effective date.

(b) An effective program including a timetable for complying with the rule; and

(c) The specific steps taken to protect employees against the hazard.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75;

WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81;

WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0405**

##### **Interim Order Relating to a Variance**

(1) An employer applying for a variance may request an interim order to be effective until final action is taken on the variance application. The request for an interim order:

(a) May be included in the variance application;

(b) Shall include all information required by OAR 437-001-0400(2); and

(c) Must state the reasons why the interim order should be granted.

(2) The Administrator shall decide whether to issue an interim order on the basis of information provided in the application.

(3) If an interim order is granted, it shall be sent to the employer. The employer shall inform affected employees by posting a copy of the interim order for as long as the order is in effect.

(4) If an interim order is granted, the action shall be published in the manner required by OAR 437-001-0410(1).

(5) If the interim order is denied, the employer shall be given prompt written notice of, and the reasons for, the denial.

(6) An interim order or a written denial shall include notice of the employer's and employees' appeal rights as contained in ORS 654.056 and OAR 438-085-0006 through 438-085-0870.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-

78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82;

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

#### **437-001-0410**

##### **Administrative Action on Variance Application**

(1) After a variance request is determined to be complete and procedurally adequate, as provided in OAR 437-001-0400, the Division shall publish the request for one day in at least one daily newspaper with general circulation throughout Oregon. The notice shall include:

(a) The name of the applicant;

(b) The rule, also identified by number, from which the variance is sought;

(c) A brief description of the variance request;

(d) Notice of opportunity for public comment and hearing;

(e) Information on how interested persons may learn of the Division's decision on the variance application; and

(f) The address of the Division office from which further information may be obtained.

(2) The Division may conduct an on-site review of the equipment or processes involved in the requested variance.

(3) A variance, if granted, shall have no retroactive effect. It shall not be the basis for amending or withdrawing a citation.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 33-1974, f. 9-5-74, ef. 9-26-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0411****Hearings for Variance Applications**

Affected employers or employees shall be given the opportunity to request a hearing on an application:

(1) Request for hearings must be made in the following manner:

(a) The request must be made within 20 days of publication of the application;

(b) A request must be made to the Administrator and must contain:

(A) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

(B) A statement opposing any or all portions of the application, and a concise summary of the evidence supporting each item opposed; and

(C) Any views or arguments on any issue of fact or law presented.

(2) Notice of hearing shall be given by the Administrator to affected persons and shall contain:

(a) Time, place and nature of hearing;

(b) Legal authority under which the hearing will be held; and

(c) The issues to be discussed.

(3) The hearing shall be conducted by the Administrator in a manner which will allow all affected persons to submit information on the application.

(4) The Administrator shall evaluate all information submitted at the hearing and make a determination in the merits of the application.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD 67-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0415****Criteria for Variance Approval**

(1) An application for a permanent variance shall be granted only if the applicant demonstrates, and the Division determines which includes the consideration of employee or the public comments, that the conditions, practices, operations or processes proposed to be used by the applicant shall provide employment which is as safe and healthful as that obtained by compliance with the rule.

(2) An application for a temporary variance shall be granted only if the applicant demonstrates, and the Division determines which includes the consideration of employee or the public comments, that the applicant is unable to comply with a new rule by its effective date, that the applicant has an effective program for complying with the rule by the agreed upon timetable and that all available steps are being taken in the interim to safeguard employees against the hazard covered by the rule.

(3) An application for a research variance shall be granted only if the applicant demonstrates, and the Division determines which includes the consideration of employee or public comments, that the conditions, practices, operations or processes used shall adequately safeguard employees against the hazards covered by the rule, while demonstrating or validating new or improved safety or health techniques or products.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCD (Safety) 5-1978, f. 6-22-78, cert. ef. 8-15-78; WCD (Safety) 4-1981, f. 5-22-81, cert. ef. 7-1-81; WCD (Safety) 6-1982, f. 6-28-82, cert. ef. 8-1-82; APD 7-1988, f. 6-17-88, cert. ef. 7-1-74

**437-001-0420****Decision on Variance Request**

(1) If a variance is granted, an order of variance shall be

issued. The order shall:

(a) State the name of the employer to whom the variance is granted;

(b) Identify the place of employment at which the variance is applicable;

(c) State the type of variance granted;

(d) State the specific rule to which the variance applies;

(e) Describe the alternative methods or safeguards to be used by the employer while the variance is in effect;

(f) Advise that the employer may be cited for any violation of the conditions established by the variance;

(g) Inform affected employees of their right to appeal the variance decision; and

(h) Inform affected persons that if no appeal is filed within 20 days of receipt of the order, the variance approval becomes a final order of the Director and subject to review only as specified in OAR 437-001-0430.

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

The notice shall:

(a) Give the reasons for the denial;

(b) Notify the employer and employees of their appeal rights;

(c) Inform affected persons that if no appeal is filed within 20 days of receipt of the notice, the variance denial becomes a final decision without affecting the employer's right to submit another application; and

(d) Advise the employer that a compliance inspection shall be made within 30 days.

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

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

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0425****Employer's Duty to Meet Variance Terms**

(1) A variance is not effective until the employer has complied with its terms and requirements.

(2) An employer may be cited for violating the terms of a variance. (See ORS 654.022)

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0430****Modification or Revocation of a Variance**

(1) A variance may be modified or revoked after it has been in effect six months or longer upon:

(a) Request from the employer, an affected employee or an employee representative which may be in writing, the request shall contain:

(A) The name and address of the applicant;

(B) A description of the relief which is sought;

(C) A statement setting forth with particularity the grounds for relief;

(D) If the applicant is an employer, a certification that the applicant has informed affected employees of the application by:

(i) Giving a copy thereof to their authorized representative;

(ii) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

(iii) Other appropriate means.

(E) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and



(F) Any request for a hearing, as provided for in these rules.  
(b) Notification and confirmation that the alternative methods or safeguards required by the variance are not fully complied with; or

(c) A Division review.

(2) The Division shall publish the proposed modification or revocation for one day in at least one daily newspaper with general circulation throughout Oregon. The notice shall include:

(a) The name of applicant;

(b) The rule, also identified by number, from which the variance had been granted;

(c) A brief description of the variance and why relief is sought;

(d) Notice of opportunity for public comment and hearing and that a request for hearing shall be made within 20 days of publication;

(e) Information on how interested persons may learn of the Division's decision on the variance; and

(f) The address of the Division office from which further information may be obtained.

(3) The Division may conduct an on-site review of the equipment or processes involved in the proposed, revoked or modified variance.

(4) The employer and affected employees shall be advised in writing of modification or revocation of the variance. The modification or revocation order shall state:

(a) The name and address of the employer;

(b) The address and location of the place of employment involved;

(c) The rule, identified by number, from which the variance was granted;

(d) The type of variance issued;

(e) The reasons for modification or revocation of the variance; and

(f) The employer's and affected employees' appeal rights.

(5) Any request for a hearing shall be made within 20 days of publication and shall include a short and plain statement of:

(a) How the proposed modification would affect the requesting party; and

(b) What the requesting party would seek to show on the subjects or issued involved.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0435**

##### **Effect of a Variance Granted by the U.S. Secretary of Labor**

(1) If an employer requesting a variance from an Oregon rule submits proof that a variance from an equivalent federal rule has been granted by the U.S. Secretary of Labor, the federal variance shall be accepted in lieu of the information required by OAR 437-001-0400, Application for a Variance.

(2) If an employer is cited for violating an Oregon rule equivalent to a federal rule for which a variance has been granted by the U.S. Secretary of Labor, and all conditions of that variance are being met, the Administrator shall consider the federal variance as a possible defense against the citation.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **Consultative Services for Public and Private Sector Employers**

#### **437-001-0450**

##### **Voluntary Compliance Consultative Services**

(1) The Administrator shall provide consultative services to assist employers in preventing occupational injury and disease, whatever the cause.

(2) Consultative services may include providing technical information, but shall not intrude into the business of engineering firms or professional consultants.

(3) When federal funds are utilized to conduct consultative services, the provisions contained in **29 CFR 1908, Consultation Agreement**, shall apply.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1974, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. n7-1-74; OSHA 1-1991(Temp), f. & cert. ef. 1-28-91; OSHA 5-1991, f. & cert. ef. 3-18-91

#### **437-001-0455**

##### **Application for Consultative Services**

Employers may make a verbal or written request for consultative services. A request must:

(1) Be made by an employer to a representative of the Division;

(2) Identify the employer and the location where the consultation is desired; and

(3) Define the specific problem or hazard, or other reason for the request.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0460**

##### **Consultation**

When a consultant responds to a request for a consultative service, the employer shall be advised:

(1) Of the purpose of the visit;

(2) Of the Administrative Rules and Standard Operating Procedures pertaining to consultative services; and

(3) That the consultation need not be limited to the specific problems or hazards contained in the request for consultative service, but may also include, at the request of the employer, assistance in developing a plan to correct hazardous conditions, and other services including but not limited to:

(a) Health and safety program assessments;

(b) Training on specific health and safety issues; and

(c) Other assistance designed to promote more effective workplace health and safety programs.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. n7-1-74; OSHA 1-1991(Temp), f. & cert. ef. 1-28-91; OSHA 5-1991, f. & cert. ef. 3-18-91

#### **Recordkeeping and Reporting**

#### **437-001-0700**

##### **Recording and Reporting Requirements**

OAR 437-001-0700 and 437-001-0750, hereafter called "this part", implement ORS 654.120(2) and (5). This part provides for recordkeeping and reporting by employers covered under the Act as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational injuries and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics. (See OAR 437-001-0015 for definitions pertaining to this section.)

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0701**

##### **Employers Exempt from Recordkeeping**



(1) An employer who had no more than ten employees at any one time during the calendar year preceding the current calendar year need not comply with OAR 437-001-0705, 437-001-0715, or 437-001-0720, except as provided for in sections (3) and (5) of this rule.

(2) An employer whose establishment is classified in Standard Industrial Classifications 52-89 (excluding 52-54, 70, 75, 76, 79, and 80), need not comply for such establishment with OAR 437-001-0705, 437-001-0715, or 437-001-0720, except as provided for in sections (3), (4), and (5) of this rule.

(3) Sections (1) and (2) of this rule shall not apply when an employer has been advised by the Director that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses. If so selected, the employer shall comply with OAR 437-001-0705 and 437-001-0710. The employer shall also make reports in accordance with OAR 437-001-0735 for the period of time specified in the notice.

(4) When an establishment has two or more accepted disabling claims during the preceding year and the employer is notified by the Director, the exemption of section (2) of this rule shall not apply.

(5) Employers exempt from recordkeeping under sections (1) and (2) of this rule shall have available at each establishment a copy of DEF Form 801 for any occupational injury or illness for that establishment which may result in a compensable claim. The DIF Form 801 shall be available within six working days after notice or knowledge of the occupational injury or illness.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 9-1983, f. and ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0702**

##### **Location of Recordkeeping**

Records required by OAR 437-001-0001 to 437-001-0750 shall be kept at each establishment, except as provided for in OAR 437-001-0750.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0703**

##### **Employee Exposure and Medical Records**

Each employer shall keep and preserve any employee exposure records or employee medical records which they make or maintain or to which they have access.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCD 7-1979, f. 8-20-79, ef. 9-1-79; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0705**

##### **Log and Summary of Occupational Injuries and Illnesses**

(1) Except as provided in section (2) of this rule, each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, and enter each recordable injury or illness on the log and summary as early as practicable but no later than six working days after receiving information that a recordable case has occurred. For this purpose, OSHA Form No. 200, or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions of OSHA Form No. 200.

(2) Any employer may maintain the log and summary of all recordable occupational injuries and illnesses at a place other than the establishment or by means of data processing equipment, or both, if there is available at the place where the log and summary are maintained sufficient information to complete the log and summary to a date within six working days after receiving information that a recordable case has occurred, and at each of the

employer's establishments there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to within 45 calendar days.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0710**

##### **Period Covered**

Records shall be established on a calendar year basis.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0715**

##### **Supplementary Record**

In addition to the log and summary of occupational injuries and illnesses provided for under OAR 437-001-0705, each employer shall have available at each establishment within six working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying OSHA Form No. 101 or DCBS Form No. 801. Insurance or other reports are acceptable alternative records if they contain the information required by OSHA Form No. 101 or DCBS Form No. 801. If no acceptable alternative record is maintained for other purposes, OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 656.726(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

#### **437-001-0720**

##### **Annual Summary**

(1) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the "Totals" line, and the form must be posted.

(2) The summary shall be completed no later than one month after the close of each calendar year.

(3) Each employer, or officer or employer of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete by affixing his/her signature at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the summary is true and complete.

(4) Each employer shall post a copy of the establishment's summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report for work at a single establishment or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0725****Retention of Records**

Records provided for in OAR 437-001-0701(5), 437-001-0705, 437-001-0715, and 437-001-0720 (including OSHA Form 200 and its predecessors, OSHA Form 100 and 102) shall be retained in each establishment for five years following the end of the year to which they relate.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 9-1983, f. & ef. 11-15-83, WCD 2-1984, f. 3-2-84, ef. 3-15-84; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0730****Access to Records**

Records provided for in OAR 437-001-0703, 437-001-0705, 437-001-0715 and 437-001-0720 shall, upon request, be provided to an employee or employee representative pursuant to OAR Chapter 437, Division 2, Subdivision C, Employee Access to Exposure and Medical Records, an Compliance Officer during an inspection, a representative of the Director charged with responsibility for statistical compilation or records validation or any other person authorized by the Administrator of the Oregon Occupational Safety and Health Division to inspect or copy the records.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0735****Participation in the Occupational Injuries and Illnesses Survey**

Upon receipt of an Occupation Injuries and Illnesses Survey form, the employer shall promptly complete and return the form in accordance with the instructions contained therein.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0740****Falsification or Failure to Keep and Post Records or Make Reports**

An employer who fails to maintain the records, post the summaries or make the reports required by OAR 437-001-0700 to 437-001-0735 shall be cited for having committed an other than serious violation and shall be assessed a penalty of not less than \$100 and not more than \$1,000 for each violation.

[NOTE: ORS 654.991(3) provides that "whoever knowingly makes a false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to ORS 654.001 to 654.295, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or both". In addition, a civil penalty is provided for falsification of a document by ORS 654.086(1)(e).]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 6-1994, f. & cert. ef. 9-30-94

**437-001-0742****Recordkeeping Variances and Exceptions**

In order to achieve a uniform system for the recordkeeping and reporting of occupational injuries and illnesses, the State of Oregon and the U.S. Department of Labor have agreed that as

applied to employers, as defined by subsections 3(5) of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 81 STAT 1950), the state shall not grant any variances or exceptions to the recordkeeping and reporting regulations of this part without prior approval of the U.S. Bureau of Labor Statistics.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0745****Change of Ownership**

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which that employer owned such establishment. However, in the case of any change in ownership, the new employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under OAR 437-001-0725.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0750****Employers not in Fixed Establishments**

Employers engaged in physically dispersed operations such as occur in logging, construction, installation, repair or service activities and whose employees do not report to any fixed establishment on a regular basis, but are subject to common supervision, may satisfy the provisions of OAR 437-001-0703, 437-001-0705, 437-001-0715 and 437-001-0720 by:

- (1) Maintaining the required records for each operation in an established central place;
- (2) Having the address and telephone number of the central place available at each worksite; and
- (3) Having personal available at the central place during normal business hours to provide information from the records maintained there by telephone and mail.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.120(2) & ORS 654.120(5)

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 7-1979, f. 8-20-79, ef. 9-1-79; APD 7-1988, f. 6-17-88, ef. 7-1-74

**437-001-0760****Rules for All Workplaces**

- (1) Employer's Responsibilities:

(a) The employer shall see that workers are properly instructed and supervised in the safe operation of any machinery, tools, equipment, process, or practice which they are authorized to use or apply. This rule shall not be construed to require a supervisor on every part of an operation nor to prohibit workers from working alone;

(b) The employer shall take all reasonable means to require employees:

- (A) To work and act in a safe and healthful manner;

(B) To conduct their work in compliance with all applicable safety and health rules;

(C) To use all means and methods, including but not limited to, ladders, scaffolds, guardrails, machine guards, safety belts and lifelines, that are necessary to safely accomplish all work where employees are exposed to a hazard; and

(D) Not to remove, displace, damage, destroy or carry off any safety device, guard, notice or warning provided for use in any employment or place of employment while such use is required by applicable safety and health rules.

(c) Every employer shall be responsible for providing the health hazard control measures necessary to protect the employees' health from harmful of hazardous conditions and for maintaining such control measures in good working order and in use;

(d) Every employer shall inform the employees regarding the known health hazards to which they are exposed, the measures

which have been taken for the prevention and control of such hazards, and the proper methods for utilizing such control measures.

(2) **Employee's Responsibilities:**

(a) Employees shall conduct their work in compliance with the safety rules contained in this code;

(b) All injuries shall be reported immediately to the person in charge or other responsible representative of the employer;

(c) It is the duty of all workers to make full use of safeguards provided for their protection. It shall be a worker's responsibility to abide by and perform the following requirements:

(A) A worker shall not operate a machine unless guard or method of guarding is in good condition, working order, in place, and operative;

(B) A worker shall stop the machine or moving parts and properly tag-out or lock-out the starting control before oiling, adjusting, or repairing, except when such machine is provided with means of oiling or adjusting that will prevent possibility of hazardous contact with moving parts;

(C) A worker shall not remove guards or render methods of guarding inoperative except for the purpose of adjustment, oiling, repair, or the setting up of a new job;

(D) Workers shall report to their supervisor any guard or method of guarding that is not properly adjusted or not accomplishing its intended function;

(E) Workers shall not use their hands or any portion of their bodies to reach between moving parts or to remove jams, hangups, etc. (Use hook, stick, tong, jig or other accessory.);

(F) Worker shall not work under objects being supported that could accidentally fall (such as loads supported by jacks, the raised body of a dump truck, etc.) until such objects are properly blocked or shored;

(G) Workers shall not use defective tools or equipment. No tool or piece of equipment should be used for any purpose for which it is not suited, and none should be abused by straining beyond its safe working load.

(d) Workers shall not remove, deface, or destroy any warning, danger sign, or barricade, or interfere with any other form of accident prevention device or practice provided which they are using, or which is being used by any other worker;

(e) Workers shall not work underneath or over others exposed to a hazard thereby without first notifying them and seeing that proper safeguards or precautions have been taken;

(f) Workers shall not work in unprotected, exposed, hazardous areas under floor openings;

(g) Long or unwieldy articles shall not be carried or moved unless adequate means of guarding or guiding are provided to prevent injury;

(h) Hazardous conditions or practices observed at any time shall be reported as soon as practicable to the person in charge or some other responsible representative of the employer;

(i) Workers observed working in a manner which might cause immediate injury to either themselves or other workers shall be warned of the danger;

(j) Before leaving a job, workers shall correct, or arrange to give warning of, any condition which might result in injury to others unfamiliar with existing conditions.

(3) **Investigations of Injuries:**

(a) Each employer shall investigate or cause to be investigated every lost time injury that workers suffer in connection with their employment to determine the means that should be taken to prevent recurrence. The employer shall promptly install any safeguard or take any corrective measure indicated or found advisable;

(b) At the request of authorized Department representatives, it shall be the duty of employers, their superintendents, supervisors and employees to furnish all pertinent evidence and names of known witnesses to an accident and to give general assistance in producing complete information which might be used in preventing a recurrence of such accident. At the request of the Department, persons having direct authority shall preserve and mark for identification, materials, tools or equipment necessary to the proper investigation of an accident;

(c) Any supervisors or persons in charge of work are held to

be the agents of the employer in the discharge of their authorized duties, and are at all times responsible for:

(A) The execution in a safe manner of the work under their supervision; and

(B) The safe conduct of their crew while under their supervision;

(C) The safety of all workers under their supervision.

(4) **Intoxicating Liquor and Drugs.** The use of intoxicating liquor on the job is strictly prohibited. Anyone whose ability to work safely is impaired by alcohol, drugs, or medication shall not be allowed on the job while in that condition.

(5) **Horseplay.** There must be no horseplay, scuffling, practical jokes, or any other activity of similar nature.

(6) **Extraordinary Hazards.** When conditions arise that cause unusual or extraordinary hazards to workers, additional means and precautions shall be taken to protect workers or to control hazardous exposure. If the operation cannot be made reasonably safe, regular work shall be discontinued while such abnormal conditions exist, or until adequate safety of workers is ensured.

(7) **Inspections:**

(a) All places of employment shall be inspected by a qualified person or persons as often as the type of operation or the character of the equipment requires. Defective equipment or unsafe conditions found by these inspections shall be replaced or repaired or remedied promptly;

(b) Wherever required in this safety code, a written and dated report, signed by the person or persons making the inspection, shall be kept.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: WCB 1-1967, f. 1-12-67, ef. 1-15-67; WCB 3-1997, f. 10-6-75, cert. ef. 11-1-75; WCD 11-1976, f. & ef. 5-5-76; WCB 15-1976, f. 7-6-76, cert. ef. 8-1-76; WCD 10-1982, f. & ef. 7-30-82; OSHA 6-1994, f. & cert. ef. 9-30-94; Renumbered from 437-040-0020, 437-040-0025, 437-040-0030, 437-040-0035, 437-040-0040, 437-040-0050, 437-040-0055 & 437-137-0010(1) & (2)

### **437-001-0765**

#### **Rules for Workplace Safety Committees**

(1) **Purpose.** The purpose of a safety committee is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in each workplace. A safety committee assists the employer and makes recommendations for change.

(2) **General:**

(a) Every public or private employer of 11 or more employees shall establish and administer a safety committee;

(b) Every public or private employer of 10 or fewer employees shall establish and administer a safety committee if the employer:

(A) Has a **Lost Workday Case Incidence Rate (LWDCIR)** in the top 10 percent of all rates for the employers in the same industry; or

(B) The employer is not an agricultural employer and the workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a premium rate in the top 25 percent of premium rates for all classes as approved by the Director pursuant to ORS 737.320(3).

(c) In making the determination of employment levels under sections (a) and (b) of this rule, the employer shall count all permanent, contract, temporary, and/or seasonal workers under the employer's direction and control, and shall base the number on peak employment;

(d) Temporary services employers and labor contractors shall establish safety committees based upon the total number of workers over which the employer or contractor exercises direction and control;

(e) Employers who hire only seasonal workers shall meet the intent of these rules by holding crew safety meetings prior to the commencement of work at each job site. Such meetings shall promote discussions of safety and health issues. All workers shall be informed of their rights to report workplace hazards, and shall be encouraged to make such reports during the meetings;



(f) Employers in the logging industry may meet the intent of these rules by complying with OAR 437, Division 6, Forest Activities.

(3) Locations:

(a) Safety committees shall be established at each of the employer's primary places of employment. For the purpose of these rules, a primary place of employment shall mean a major economic unit at a single geographic location, comprised of a building, group of buildings, and all surrounding facilities. (Examples of primary places of employment would include a pulp or lumber mill, a manufacturing plant, a hospital complex, bank, a farm/ranch, a school district, or a state agency.) As a primary place of employment the location would have both management and workers present, would have control over a portion of a budget, and would have the ability to take action on the majority of the recommendations made by a safety committee:

(b) An employer's auxiliary, mobile, or satellite locations, such as would be found in construction operations, trucking, branch or field offices, sales operations, or highly mobile activities, may be combined into a single, centralized committee. This centralized committee shall represent the safety and health concerns of all the locations;

(c) In addition to locating safety committees at each primary place of employment, an employer with work locations which include fire service activities shall establish a Fire Service Safety Committee as required by OAR 437-002-0182(7) in OAR 437, Division 2/L, Oregon Rules for Fire Fighters.

(4) Innovation. Upon application, the division may approve safety committees which are innovative or differ in form or function, when such committees meet the intent of these rules.

(5) Safety Committee Formation and Membership:

(a) The safety committees required by OAR 437-001-0765(2) shall:

(A) Be composed of an equal number of employer and employee representatives. Employee representatives shall be volunteers or shall be elected by their peers. When agreed upon by workers and management, the number of employees on the committee may be greater than the number of employer representatives. Seasonal workers shall not be counted for the purpose of determining the number of members who will serve on the committee;

(B) Consist of:

(i) No fewer than two members for each employer with twenty or less employees, or

(ii) No fewer than four members for each employer with more than twenty employees.

(C) Have a chairperson elected by the committee members.

(b) Employee representatives attending safety committee meetings required by OAR 437-001-0765(2) or participating in safety committee instruction or training required by OAR 437-001-0765(7) shall be compensated by the employer at the regular hourly wage;

(c) Employee representatives shall serve a continuous term of at least one (1) year. Length of membership shall be alternated or staggered so that at least one experienced member is always serving on the committee;

(d) Reasonable efforts shall be made to ensure that committee members are representative of the major work activities of the firm.

(6) Safety Committee Duties and Functions.

(a) Management commitment to workplace health and safety:

(A) The committee shall develop a written agenda for conducting safety committee meetings. The agenda shall prescribe the order in which committee business will be addressed during the meeting;

(B) The safety committee shall hold regular meetings at least once a month except months when quarterly workplace safety inspections are made. This does not exclude other months from safety committee meetings if more frequent safety inspections are conducted;

(C) Quarterly safety committee meetings may be substituted for monthly meetings where the committee's sole area of responsibility

involves low hazard work environments such as offices;

(D) Small farms of five or fewer full time employees may substitute quarterly meetings for monthly meetings during the farms' off season. The off season shall mean that period of time when only routine farm upkeep is being done.

(b) Written records:

(A) Minutes shall be made of each meeting which the employer shall review and maintain for three years for inspection by the Division. Copies of minutes shall be posted or made available for all employees and shall be sent to each committee member;

(B) All reports, evaluations, and recommendations of the safety committee shall be made a part of the minutes of the safety committee meeting.

(C) A reasonable time limit shall be established for the employer to respond in writing to all safety committee recommendations.

(c) Employee involvement:

(A) The committee shall establish a system to allow the members to obtain safety-related suggestions, reports of hazards, or other information directly from all persons involved in the operations of the workplace. The information obtained shall be reviewed at the next safety committee meeting, and shall be recorded in the minutes for review and necessary action by the employer.

(d) Hazard assessment and control:

(A) The safety committee shall assist the employer in evaluating the employer's accident and illness prevention program, and shall make written recommendations to improve the program where applicable. Additionally, the safety committee shall:

(i) Establish procedures for workplace inspections by the safety committee inspection team to locate and identify safety and health hazards;

(ii) Conduct workplace inspections at least quarterly; and

(iii) Recommend to the employer how to eliminate hazards and unsafe work practices in the workplace.

(B) The inspection team shall include employer and employee representatives and shall document in writing the location and identity of the hazards and make recommendations to the employer regarding correction of the hazards;

(C) Quarterly inspections of satellite locations shall be conducted by the committee team or by a person designated at the location;

(D) Mobile work sites or locations and activities which do not lend themselves to a quarterly schedule shall be inspected by a designated person as often as Oregon occupational safety and health rules require and/or the committee determines is necessary;

(E) The person designated to carry out inspection activities at the locations identified in sections (C) and (D) of this rule shall be selected by the employer and shall receive training in hazard identification in the workplace.

(e) Safety and health planning. The safety committee shall establish procedures for the review of all safety and health inspection reports made by the committee. Based on the results of the review, the committee shall make recommendations for improvement of the employer's accident and illness prevention program;

(f) Accountability. The safety committee shall evaluate the employer's accountability system and make recommendations to implement supervisor and employee accountability for safety and health;

(g) Accident investigation. The safety committee shall establish procedures for investigating all safety-related incidents including injury accidents, illnesses and deaths. This rule shall not be construed to require the committee to conduct the investigations.

(7) Safety and Health Training and Instruction:

(a) The following items shall be discussed with all safety committee members:

(A) Safety committee purpose and operation;

(B) OAR 437-001-0760 through 437-001-0765 and their application; and

(C) Methods of conducting safety committee meetings.



(b) Committee members shall have ready access to applicable Oregon Occupational Safety and Health Codes which apply to the particular establishment and verbal instructions regarding their use;

(c) All safety committee members shall receive training based upon the type of business activity. At a minimum, members shall receive training regarding:

(A) Hazard identification in the workplace; and

(B) Principles regarding effective accident and incident investigations.

(8) Effective Date. The effective date for OAR 437-001-0765 is March 1, 1991.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.176

Hist.: WCD 10-1982, f. & ef. 7-30-82; OSHA 12-1990(Temp), f. & cert. ef. 6-18-90; OSHA 28-1990, f. 12-18-90, cert. ef. 3-1-91; OSHA 6-1994, f. & cert. ef. 9-30-94; Renumbered from 437-040-0044, 437-040-0045, 437-040-0046, 437-040-0047, 437-040-0048 & 437-040-0049; OSHA 10-1995, f. & cert. ef. 11-29-95

### **Occupational Safety and Health Grant Program**

#### **437-001-0800**

##### **Application Procedures**

(1) The Division may solicit applications for Occupational Safety and Health Grants to develop innovative, proactive occupational safety and health training, educational programs or materials.

(2) Any labor consortium, employer consortium, educational institution that is affiliated with a labor organization or employer group, or other nonprofit entity, may apply for an Occupational Safety and Health Grant as provided in ORS 654.189 and 654.191, and in accordance with OAR 437-001-0800 through 437-001-0810.

(3) An applicant for a grant shall submit the grant application during the period of time specified in the application procedure. An application shall be in writing on the application forms and procedures provided by the Division and shall contain at a minimum:

(a) The name, address and telephone number of each applicant;

(b) The name address and telephone number of the project director;

(c) The amount of the request;

(d) An impact statement including the type and number of employees or employers targeted; the problem to be addressed, and the impact the project will have on occupational safety and health in Oregon;

(e) A description of the manner in which the grant will be used, including:

(A) Anticipated financial expenditures;

(B) A developmental plan that states goals and how they will be accomplished;

(C) Proposed completion date;

(D) Proposed in-kind services;

(E) Targeted audience; and

(F) Intended measurement of results; and

(f) Any other information included in the application forms and procedures.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 3-1989, f. & cert. ef. 12-1-89

#### **437-001-0805**

##### **Application Review**

(1) The Division shall review all applications and request any additional information needed to assure applications are relevant and complete.

(2) After an application is determined to be complete and in compliance with the intended goals of the program by the Division, it shall be forwarded to the Safe Employment Education and Training Advisory Committee (SEETAC) for review and possible

recommendation for grant approval.

(3) In reviewing grant applications for possible recommendations for approval to the Director, the committee shall consider at least the following elements:

(a) The amount of available funds in the Occupational Safety and Health Grant account;

(b) The impact statement details;

(c) The innovativeness of the grant request;

(d) The feasibility of the developmental plan;

(e) The amount of in-kind services;

(f) The stability of other funding sources; and

(g) The administrative costs and/or responsibilities imposed on the Division in connection with the grant project.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 3-1989, f. & cert. ef. 12-1-89

#### **437-001-0810**

##### **Grant Awards**

(1) The Division shall notify applicants, in writing, of the approval or disapproval of the grant request.

(2) The applicant shall execute documents required by the Division for evidence of the type and amount of grant given, performance criteria and reporting requirements, and any other terms and conditions agreed to in connection with the awarding of a grant.

(3) Grant recipients shall make available to the Division all records and materials necessary to monitor the grant award.

(4) If the terms and conditions under which the grant was approved are not met, the Division may, upon written notice, take one or more of the following actions:

(a) Immediately revoke approval of the use of Occupational Safety and Health Grant funds; or

(b) Require repayment of all or a portion of any funds advanced; or

(c) Any other appropriate legal action necessary.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 3-1989, f. & cert. ef. 12-1-89

### **Farmworker**

#### **437-001-0905**

##### **Purpose and Objectives**

(1) The rules of OAR 437-001-0905 through 437-001-0940 are established to define and carry out the provisions of ORS 315.164 through .167 as amended by 1995 Legislation (the Act), as they pertain to the Department of Consumer and Business Services ("Department"). The purpose of the program is to encourage the rehabilitation of existing housing and the construction or placement of additional seasonal or permanent housing for farm workers. The Department's objectives are to specify the beginning date for the filing of applications, how to acquire the form(s) for filing, define the information that is required, and to specify how the Department will consider, evaluate, and approve applications for farm worker housing projects that are ready to proceed in the current calendar year.

(2) Individuals, as identified in ORS 316, or a corporation, as identified in ORS 317, who file applications and receive approval will be issued letters of credit approval to allow the individuals or corporations to claim a tax credit against Oregon taxes as provided in the Act. The letter of credit approval also certifies that approved projects fall within the annual cap on the total estimated eligible costs identified in ORS 315.167(4); and designates by its date of issuance the earliest tax year in which the tax credit may be claimed for a completed project.

(3) The duty of administering the farm worker housing tax credit program and determining compliance with these rules and ORS 315.164-.167 is delegated from the Director of the Department to the Administrator of the Occupational Safety and Health Division (OR-OSHA) and his designees. The OR-OSHA Administrator may delegate any of these duties to the Deputy Admin-

istrator or other management staff.

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

### **437-001-0910**

#### **Definitions**

All terms used in OAR 437-001-0905 through 437-001-0940 are as provided in the Act and as further specified in these rules:

(1) "Application" means application form(s) and the attached information, prescribed by the Department in OAR 437-001-0915, and as the Department may specify in an Annual Notice, which have been signed by an Owner requesting approval of a project in a given year.

(2) "Apply" means to complete an application and file it with the Department.

(3) "Approval" means the Department, having considered and evaluated the information provided in the application, has reached a decision the application is appropriate for approval, and has issued a letter of credit approval. Applications shall be approved in chronological order until the entire cap is awarded.

(4) "Cap" means the maximum amount of tax credits as set by the Legislature in ORS 315.167(4).

(5) "Chronological Order" means after the Department announces the initial date that applications may be filed, all applications will be considered in the order filed. Because not all methods of filing can be fairly or equitably given a specific time of arrival on a given day, all applications filed on single day will be considered filed at the same time. Multiple applications filed on a given day will be considered and further evaluated to establish an order for processing based on the chronological order of the projected date of completion. Should this fail to establish a specific order, the remaining order will be based on the estimated eligible cost, with the lower request going first. Applications submitted before the initial application date will not be considered and will be returned.

(6) "Condition of Habitability" means a condition that is in compliance with:

(a) The applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder; or

(b) If determined on or before December 31, 1995, section 12 and 13, chapter 964, Oregon Laws 1989.

(7) "Considered" means the application packages filed with the Department pursuant to ORS 315.167(2), these administrative rules shall be considered in chronological order. Non-compliant applications shall not be considered until and unless cured.

(8) "Department" means the Department of Consumer and Business Services, State of Oregon.

(9) "Eligible Costs" includes finance costs, construction costs, excavation costs, installation costs and permit costs but excludes land costs.

(10) "Estimated Eligible Costs" are a forecast of the actual eligible costs, or a lesser amount the owner/taxpayer is requesting for approval for a specific project. A voluntary ceiling for the estimated eligible costs requested for large projects may be announced in the Annual Notice.

(11) "Evaluate" means the Department may either directly or through agreements with others examine, judge, appraise or estimate the specific information provided in an application to reasonably assure the project is appropriate for approval, under the cap, for a given year. In the evaluation process the Department may determine the qualifying status of the taxpayer, the proposed project and the costs included in the estimates of eligible costs; applications must also include and will be evaluated on the readiness of the project to proceed, and the anticipated occupancy date.

(12) "Filed with the Department" means applications sent by mail are filed on the date of the USPS postmark; applications sent electronically by facsimile (FAX) will be considered filed on the date printed out on Department devices on which they arrive; and, hand delivered applications are filed on the date they are stamped in at any OR-OSHA office of the Department. Applications sub-

mitted before the initial date applications may be filed will not be considered and will be returned.

(13) "Firm Commitment of Financing" means an agreement to make funds available to a specific owner on a specific property and which will contain all of the terms and conditions that the Owner has to satisfy. Payment of a commitment fee by the Owner to the lending institution may be required as a condition precedent to issuance of such an agreement.

(14) "Owner" is an individual, corporation, a nonprofit corporation, state or local government entity including but not limited to a housing authority, which may be a controlling general partner in a limited partnership, who holds legal title to the project and will develop and manage the project in accordance with the OAR, statutes, federal regulations and any other requirements as set forth by the Department.

(15) "Project" means one or more units of housing which will be occupied or rented by farm workers and their immediate families.

(16) "Rehabilitation" means to restore and reinstate a building to a Condition of Habitability.

(17) "Relative" means a brother or sister (whether by the whole or by half blood), spouse, ancestor (whether by law or by blood), or lineal descendant of an individual.

(18) "Seasonal FARM WORKER" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another in the production of farm products or in the planting, cultivating or harvesting of seasonal agricultural crops or in the forestation or reforestation of lands, including but not limited to planting, transplanting, tubing, pre-commercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(19) "Seasonal FARM WORKER housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months of the year.

(20) "Seasonal FARM WORKER housing project" means construction, installation or rehabilitation of seasonal FARM WORKER housing.

(21) "Tenant" is a person or a renter (including any family members) who occupies or will occupy a unit in a Project.

(22) "Year-round FARM WORKER housing" means housing:

(a) Limited to occupancy by farm workers and their immediate families;

(b) No dwelling unit of which is occupied by a relative of the owner or operator of the FARM WORKER housing; and

(c) Consisting, if located in an exclusive farm use zone, of housing that is in compliance with any applicable local zoning ordinance and that is:

(A) A manufactured dwelling, as that term is defined in ORS 446.003; or

(B) Any other dwelling unit, if the project for which credit under this section is being claimed consists of the rehabilitation of existing FARM WORKER housing.

(23) "Year-round FARM WORKER housing project" means construction, installation or rehabilitation of FARM WORKER housing.

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

### **437-001-0915**

#### **Program Description and Application Requirements**

(1) The Department may approve applications for the FARM WORKER Housing Tax Credit Program, solely for projects that provide housing for the exclusive use of farm workers and their families, subject to availability of Eligible Costs in any one year of the program. Relatives of the owner or operator may not occupy any dwelling unit. Applicants are encouraged to read ORS 315.164-.167, the Annual Notice, and the General Information regarding this program. This information will be provided along

with application forms, upon request to:

Farm Worker Housing Tax Credit Program  
OR-OSHA, DCBS  
350 Winter Street N.E., Rm 430  
Salem, Oregon 97310

(2) The Department reserves the right to establish the initial date on which applications may be filed in any year, the application form(s) and supporting documentation, and to establish evaluation criteria. The Department also reserves the right to request additional information and to request applicants with large projects to follow a voluntary ceiling on the estimated eligible costs included in their applications.

(3) At the time an application may be filed, the Owner shall submit a written application for approval in the manner prescribed by the Department. The Application shall provide information, including, but not limited to:

(a) Name, address, taxpayer identification number, and telephone number of the Owner;

(b) Location of the proposed FARM WORKER housing;

(c) A description of the Project, including:

(A) The type of housing (seasonal farm worker housing project, or year around farm worker housing project);

(B) Number and type of housing units to be provided and the projected occupancy and square footage per unit.

(d) An estimate of the eligible costs of the project, broken down by cost type, (note the Annual Notice may request that large projects voluntarily limit the amount of these costs requested in the application); and

(e) Any other information as the Department may require, including but not limited to:

(A) Information on the current zoning of the proposed site, including at a minimum, an accompanying letter signed by the respective community development or planning agency indicating the current zoning designation and that the proposed project complies with the allowable uses for the zone designation, to confirm both the eligibility of the project proposed and its ability to proceed;

(B) Information on the source of funds, including at a minimum an accompanying letter or form specifying the sources of funds, and for funds not from sources in the owners name, a firm commitment of financing for all outside sources of funds;

(C) Information on the readiness of the project to proceed to construction in the current year:

(i) Projected date on-site construction activity will begin or permits will be secured; and

(ii) The projected construction time.

(D) Information on the projected occupancy date;

(E) Information on the projected life of the project for farm worker housing purposes;

(F) A letter or forms committing to the timely completion of the project, including at a minimum a commitment, by signing of the application form, that the project will be completed and ready for occupancy in the calendar year of the approval; or a specific letter of commitment stating the project will proceed to construction in the calendar year of approval and will be completed and ready for occupancy during the following calendar year; and

(G) Any other information the Department may specify in an Annual Notice.

(4) Once an application has been filed, an Owner may begin construction and incur costs at their own risk. Projects that have started construction after an application has been filed and have not been awarded tax credits will not be eligible for future tax credits after December 31 of the year construction began.

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

#### **437-001-0920**

##### **Filing, Consideration and Evaluation of Applications**

(1) Applications may be filed after 8:00 am, January 2 in a given year. The Department shall consider applications in chrono-

logical order. The Department shall evaluate, or cause an evaluation to be conducted of all applications and decline/approve/partially approve up to the cap or approve for standby, each application within 60 calendar days of filing.

(2) The Department's evaluation of applications for approval, may include, but is not limited to, the following criteria:

(a) Completeness, level of detail and accuracy of the information included in the application (see 437-001-0910 Definitions, and 437-001-0915 Application requirements);

(b) The Owner's readiness to proceed as evidenced by:

(A) Estimated time to complete the project following approval;

(B) Projected date the project will be completed and ready for occupancy.

(c) Financial feasibility as evidenced by the existence of funds for the project including:

(A) Sources of funds for the project;

(B) Firm commitments of financing for fund sources not in the owner's name.

(d) Other criteria as may be established in the Application form(s) and announced in the Annual Notice.

(3) The Department may:

(a) Return applications determined in the evaluation process to not include specific or substantial information as not filed;

(b) Request the owner to provide within 15 calendar days any minor information deemed missing, and if such information is not timely returned, the application may be returned as not filed; and

(c) Upon determining applications have successfully met the evaluation criteria, the applications will be further processed for approval in the chronological order filed.

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

#### **437-001-0925**

##### **(RESERVED)**

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

#### **437-001-0930**

##### **Standby Applications**

(1) Applications filed under 437-001-0905 through 437-001-0930 requesting approval for estimated eligible cost amounts in excess of the eligible cost cap must be declined unless the owner elects to reduce the estimated eligible cost to an amount that would not exceed the cap, or asks to be placed on a standby list.

(2) The Department will maintain applications on the standby list in the chronological order filed if they are otherwise determined in the evaluation process to be appropriate for approval.

(3) When for any reason estimated eligible costs amounts become available after the cap was initially reached in a given year, a standby application will be selected for approval of tax credits based on the earliest filing date, and the Department shall notify the applicant and allow a reasonable time for the applicant to update their Application to reflect current conditions.

(4) All unfunded standby Applications shall expire on December 31 of the current calendar year. If an application expires, a new application must be submitted for the next calendar year. If construction began in the calendar year the application was placed on standby, then the project will be unable to apply for credits in the next calendar year.

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

#### **437-001-0935**

##### **Approval of Eligible Projects**

(1) When the requirements of ORS 315.164-.167, OAR 437-



001-0905 through 437-001-0930 and any requirement announced in an Annual Notice are met the Department shall provide a letter of tax credit approval to the Owner/taxpayer on the application. The letter of credit approval indicates:

(a) A tax credit may be claimed based on the estimated eligible costs specified in the letter, or actual costs, whichever are lower, following the completion of the project and a pre-occupancy inspection.

(b) That other criteria apply and must be met for the full term of the tax credit to assure continued eligibility for claiming the tax credit by the owner, taxpayer, or finance institution.

(c) The estimated eligible costs for all approved projects comply with the Cap.

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist.: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

#### **437-001-0940**

##### **Monitoring**

If, after the Certification and during the term the tax credits are being used, the Owner or operator of a Project is found to be out of compliance with the requirements of the statute, ORS 315.164 through 315.167, these administrative rules, OAR 437-001-0905 through 437-001-0940, or the commitments contained in the Application, the Department shall promptly notify the Department of Revenue, who will notify the owner or taxpayer and take any appropriate action based on Department of Revenue laws, rules and procedures.

Stat. Auth.: ORS 654.025(2), ORS 656.726(3) & ORS 705.135

Stats. Implemented: ORS 315.164 - ORS 315.167

Hist.: OSHA 1-1997, f. 1-31-97, cert. ef. 2-1-97; OSHA 10-1997, f. & cert. ef. 12-31-97

#### **Rules for the Administration of Loss Prevention Activities by Insurers/Self-Insured Employers**

##### **General**

#### **437-001-1005**

##### **Authority and Applicability of Rules**

(1) OAR 437-001-1005 through 437-001-1065 are promulgated under the Director's authority contained in ORS 654.097.

(2) The Director of the Department of Insurance and Finance delegates the Administrator of the Accident Prevention Division the authority to enforce these rules.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 7-1992, f. & cert. ef. 7-31-92

#### **437-001-1010**

##### **Purpose and Scope**

(1) Nothing in these rules is intended to impose a duty upon the insurer or to transfer from the employer to the insurer responsibility set forth in ORS 654.001 to 654.991, or to impose liability other than these rules upon the insurer for failure to identify any unsafe conditions or occupational health and safety hazard.

(2) The purpose of these rules is to promote workplace health and safety by:

(a) Establishing mandatory insurer and self-insured employer loss prevention services designed to advise employers on regulations, laws, means and methods for improving health and safety at their places of employment; and

(b) Providing for the evaluation of insurers' and self-insured employers' loss prevention activities by the OR-OSHA Division to ensure compliance with the law and these rules.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88

#### **437-001-1015**

##### **Definitions**

(1) "Establishment" — A single physical location where business is conducted or where services or industrial operations are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate establishment.

(2) "Insured employer" — An employer insured with a workers' compensation carrier.

(3) "Insurer" — The State Accident Insurance Fund (SAIF) Corporation or any insurance company authorized or regulated under ORS Chapter 731 to issue workers' compensation guaranty contracts in Oregon.

(4) "Loss prevention effort" — An ongoing effort by the self-insured employer to integrate health and safety into the workplace in such a manner that occupational injuries and illnesses are reduced.

(5) "Loss prevention plan" — A plan developed by the employer with the assistance of the insurer with the primary emphasis on reduction of workplace injuries and illnesses.

(6) "Loss prevention services" — Services designed to advise and assist employers in the identification, evaluation, and control of existing and potential causes of accidents and occupational health and safety problems whether initiated by an employer request or by the insurer or by the Division.

(7) "Loss prevention services program" — A program intended to promote occupational health and safety, and to help eliminate work hazards to employees.

(8) "Self-insured employer" — An employer certified under ORS 656.430 as meeting the qualifications of a self-insured employer set out by ORS 656.407.

(9) "Substantial failure to comply" — The failure by an insurer or self-insured employer to respond or make available timely on-site services; failure to respond or make available in a timely manner specialized consultative services, or:

(a) If an insurer fails to identify and advise of in a timely manner reasonably discoverable serious or life-threatening hazards within the scope of the services requested or provided; or

(b) If a self-insured employer fails to identify and control in a timely manner reasonably discoverable serious or life-threatening hazards within the scope of the services requested or provided.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; Administrative Correction 8-5-97

#### **437-001-1020**

##### **General Requirements**

(1) The insurer or self-insured employer shall, within 60 days after the effective date of these rules, submit to the Administrator the following information:

(a) The name of the insurer or self-insured employer;

(b) The insurer's or self-insured employer's Oregon business address where records are kept; and

(c) The name or title, business address, and telephone number of the representative who will act as liaison with the Division in all matters pertaining to loss prevention services.

(2) After the first 60 days these rules are in effect, each new insurer shall comply with section (1) of this rule at the time of application for the authority to issue guaranty contracts in Oregon.

(3) After the first 60 days these rules are in effect, each self-insured employer shall submit the information required in section (1) of this rule at the time the employer submits its application to the Compliance Section of the Workers' Compensation Division for self-insurance.

(4) Each insurer or self-insured employer shall notify the Division, in writing, of any change in the information in subsection (1)(a) through (c) within 30 days of that change.

(5) Each insurer shall make available, at the request of the director and in the form prescribed by the director, its annual expenditures for safety and health loss control activities for the prior year and its budget for safety and health loss control activities for the following year.

(6) When requested by the Division, each insurer and self-



insured employer shall make available with reasonable promptness copies of loss prevention, loss control and related records.

(7) The duty of compliance with OAR 437-001-1005 through 437-001-1070 is that of the insurer or self-insured employer regardless whether the insurer or self-insured employer contracts for assistance for the required services.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 8-1991, f. 4-25-91, cert. ef. 5-1-91; Administrative Correction 8-5-97

### **Insurers' Programs**

#### **437-001-1025**

##### **Notification of Services**

(1) When an insurer writes a workers' compensation policy for an employer, and annually thereafter, the insurer shall inform the employer at the employer's Oregon main office of the loss prevention services that are available. The information shall include at least the following:

(a) A description of all loss prevention services that the insurer is required to offer, and other loss prevention services the insurer provides;

(b) A description of the availability of and process for obtaining loss prevention services;

(c) An offer, by the insurer, of an on-site evaluation of the loss prevention service needs of the insured;

(d) An explanation of the employer's responsibility to provide a safe and healthful workplace as required by the Oregon Safe Employment Act (ORS 654.001 to 654.295 and 654.991); and

(e) A statement of the employer's right to make a complaint to the OR-OSHA Division if an insurer fails to respond to a request from one of its insured employers for loss prevention services or otherwise fails to provide services as offered or required.

(2) An insurer shall provide sufficient copies of the material described in section (1) of this rule for all of the employer's fixed places of employment, and instructions that the employer distribute this material to these locations.

(3) When notified by the Division that an employer is required to have loss prevention services as defined in OAR 437-001-1040(1), the insurer shall make the material described in section (1) of this rule available to each fixed place of employment of the insured.

(4) If the employer does not maintain an Oregon main office, then the insurer shall mail the material described in section (1) of this rule to each of the employer's fixed places of employment in Oregon.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88

#### **437-001-1030**

##### **Requests for Services**

(1) An insurer shall acknowledge all requests for services by insured employers which do not involve alleged hazards by contacting the employer within 30 days of the request by scheduling a date to begin providing services.

(2) Any request by an insured employer regarding an imminent danger hazard shall be responded to with loss prevention services as soon as possible by the insurer.

(3) Any other requests regarding alleged hazards other than imminent danger shall be responded to with loss prevention services as soon as practicable, but not longer than 30 days following the date of the request.

(4) All service requests shall be recorded on the insurer's service log, and a copy of the report maintained in the insurer's file. This file must be kept for three calendar years.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88

#### **437-001-1035**

##### **Loss Prevention Services**

(1) Each insurer shall make occupational health and safety loss prevention services available to all its insured employers and shall provide certain other services as required by this rule.

(2) At a minimum, loss prevention services and personnel providing the services must meet the needs of the particular place of employment, special industry, or process, and shall include at least the following:

(a) Evaluation of the employer's loss prevention needs;

(b) Assistance in evaluating records that may be pertinent to the firm's illness and injury experience;

(c) An explanation to the employer of the Oregon Safe Employment Act and rules that apply to the particular place of employment;

(d) Provision of partial or complete on-site health and safety surveys, which identify all reasonably discoverable occupational safety and health hazards and items not in compliance with the federal and the Division's occupational safety and health laws, rules and standards within the scope of the survey scheduled;

(e) Assistance with industrial hygiene and safety evaluations to detect physical and chemical hazards of the workplace, and implementation of engineering or administrative controls;

(f) Assistance with evaluating, obtaining, and maintaining personal protective equipment;

(g) Evaluation of workplace design, layout and operation, and assistance with job site modifications utilizing an ergonomic approach;

(h) Assistance in evaluating and improving an employer's safety management practices;

(i) Assistance in identifying health and safety training needs and available resources; and

(j) An offer to provide follow-up services for evaluating the effectiveness of the service provided.

(3) Loss prevention services shall include a written report with an agreed upon implementation schedule.

(4) If, when providing loss prevention services, a condition of imminent danger is observed (see OAR 437-001-0015(35)), the insurer shall advise the employer of the hazard and the need to immediately correct it.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88

#### **437-001-1040**

##### **Required Loss Prevention Services**

(1) An insurer shall assist in developing a loss prevention plan with each of its employers who has three or more accepted disabling workers' compensation claims and an accepted disabling claims rate equal to or greater than the statewide claims rate per 100 workers during the previous calendar year; or with any employer with 20 or more accepted disabling claims during the previous calendar year. The plan shall promote self-sufficiency on the part of the employer to reduce injuries and illnesses, and shall identify and control all reasonably discoverable occupational health and safety hazards and items not in compliance with the federal and the Division's occupational safety and health laws, rules and standards.

(2) Within 90 days after the Division notifies an insurer that an employer is determined to require mandatory service, the insurer shall:

(a) Analyze the employer's loss prevention needs by conducting a safety and health hazard survey and completing a needs assessment worksheet that includes at a minimum the elements in **Appendix A**;

**NOTE:** Alternative worksheets may be used by the insurer if submitted to the Department of Insurance and Finance and approved in advance of their use.

(b) For the purposes of conducting the safety and health hazard surveys required by subsection (2)(a) of this rule:

(A) The insurer shall conduct an on-site survey at each of the employer's locations with three or more disabling claims, and at

each worksite representative of those locations performing a distinctly different activity; or

(B) If none of the employer's locations have three or more claims, the insurer shall conduct an on-site survey at a location which is representative of the similar multiple locations, and at each location performing a distinctly different activity.

(c) Assist the employer in preparing a written loss prevention plan that is based upon the results of the hazard survey and worksheet and includes at a minimum the following:

(A) Management commitment to health and safety;

(B) An accountability system for employer and employees;

(C) Training practices and follow-up;

(D) A system for hazard assessment and control;

(E) A system for investigating all recordable occupational injuries and illnesses that includes written findings and corrective action;

(F) A system for evaluating, obtaining, and maintaining personal protective equipment;

(G) Evaluation of workplace design, layout and operation, and assistance with job site modifications utilizing an ergonomic approach; and

(H) Employee involvement in the health and safety effort.

(d) Tailor the plan to meet the needs of the employer for reduction of injuries and illnesses.

(3) The insurer shall assist the employer in implementation of the loss prevention plan.

(4) The plan shall promote self-sufficiency on the part of the employer to reduce injuries and illnesses toward the goal that the employer will no longer be required by the Division to receive mandatory services.

(5) Upon renewal of the employer's guaranty contract the employer and insurer shall jointly evaluate and update the plan according to the employer's progress in lowering the employer's injury and illness rate.

(6) The insurer's obligation to assist in the development of a loss prevention plan shall terminate if the employer refuses to cooperate.

(7) The insurer shall maintain all records regarding assistance provided for required loss prevention service, including refusals, in the loss prevention service file.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, f. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

#### **437-001-1045**

##### **Loss Prevention Service Log**

(1) Every insurer shall maintain a loss prevention service request log. The log shall also include employers requiring mandatory service as defined in OAR 437-001-1040(1). The log shall show:

(a) The date of each request;

(b) The name and address of each insured employer, and whether or not they require mandatory service;

(c) Name and title of the person making the request;

(d) Type of business;

(e) Whether each request was submitted in writing, in person, or by telephone;

(f) The nature of each request or a reference to the particular safety or health rule involved;

(g) The location of each workplace involved;

(h) The date of each response and action taken on the request; and

(i) For employers requiring mandatory service, the date their loss prevention plan was developed.

(2) The log shall be maintained at the Oregon business address where records are kept for Division personnel's review. Each log must be maintained for not less than three years following the date service was requested.

(3) All insurers shall maintain complete files of all loss prevention services provided at the locations designated by the insurer

for Division personnel's review and must be maintained for not less than three years following the date the service was provided.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88

#### **Self-Insured and Group Self-Insured Employers' Programs**

##### **437-001-1050**

##### **Self-Insured and Group Self-Insured Employer Loss Prevention Assistance**

(1) A self-insured employer and each self-insured group shall make available to each of its workplace or group locations occupational safety and health loss prevention assistance.

(2) A self-insured employer or group shall acknowledge all requests for services which do not involve alleged hazards from any of its locations within 30 days by schedule a date to begin providing services.

(3) Any request from locations of the self-insured employer or group regarding imminent danger an alleged hazard shall be responded to as soon as possible with loss prevention services.

(4) All other requests regarding alleged hazards other than imminent danger shall be responded to with loss prevention services as soon as practicable, but not longer than 30 days following the date of the request.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 8-1991, f. 4-25-91, cert. ef. 5-1-91

##### **437-001-1055**

##### **Self-Insured and Group Self-Insured Employer Loss Prevention Programs**

Each self-insured employer and each member of a group self-insured program shall establish and implement a written occupational health and safety loss prevention program for each establishment. As a minimum requirement, the program shall:

(1) Provide for a loss prevention effort within the normal functions of the business for prevention or reduction of health and safety injuries and illnesses; and

(2) Inform its managers and workplace locations of the availability and the process for requesting loss prevention assistance.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 8-1991, f. 4-25-91, cert. ef. 5-1-91

##### **437-001-1060**

##### **Self-Insured and Group Self-Insured Employer Loss Prevention Effort**

Each self-insured employer and each member of a group self-insured program shall implement a loss prevention effort for each of its locations, which identifies and controls all reasonably discoverable occupational safety and health hazards and items not in compliance with the federal or the division's occupational safety and health laws, rules and standards. The self-insured group shall assist each member of the group in developing and implementing the loss prevention effort. This loss prevention effort shall include at least the following:

(1) Management commitment to health and safety;

(2) An accountability system for employer and employees'

(3) Training practices and follow-up;

(4) A system for hazard assessment and control;

(5) A system for investigating all recordable occupational injuries and illnesses that includes corrective action and written findings;

(6) A system for evaluating, obtaining, and maintaining personal protective equipment;

(7) On-site routine industrial hygiene and safety evaluations to detect physical and chemical hazards of the workplace, and the implementation of engineering or administrative controls;

(8) Evaluation of workplace design, layout and operation,

and assistance with job site modifications utilizing an ergonomic approach;

(9) Employee involvement in the health and safety effort; and

(10) An annual evaluation of the employer's loss prevention activities based on the location's current needs.

(11) The group shall maintain records which document the assistance provided to each member of the group.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 8-1991, f. 4-25-91, cert. ef. 5-1-91

### **Assessment of Civil Penalties**

#### **437-001-1065**

##### **Penalty Provisions for Insurers**

(1) For insurers who fail to comply with the law and the requirements of OAR 437-001-1005 through 437-001-1065, the Administrator:

(a) Shall assess a civil penalty in accordance with ORS 654.086(i); and

(b) May send a notice to an insurer, in accordance with ORS 656.447, of the Director's intent to request the Administrator of the Insurance Division to suspend or revoke the insurer's certificate of authority.

(2) For self-insured employers who fail to comply with the law and the requirements of OAR 437-001-1005 through 437-001-1065, the Administrator shall assess a civil penalty in accordance with ORS 654.086(i).

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

### **APPENDIX A**

(See OAR 437-001-1040(2)(a))

#### **Mandatory Loss Prevention Plan Worksheet**

This worksheet is provided to analyze the employer's loss prevention needs, and shall be completed jointly by the insurer and the employer. The information is for use by the employer in developing a comprehensive, written loss prevention plan to assist in lowering the employer's occupational injury and illness rate. The insurer is required to assist the employer in developing a loss prevention plan. A copy of this worksheet, including the results from the hazard assessment survey(s) completed by the insurer, must be provided to the employer.

**Note:** Insurers may use alternate worksheets to document the development of employer loss prevention plans, if they have been approved in advance by the Department of Consumer and Business Services.

Please attach any additional information if space provided is inadequate.

**Date**

**Employer**

**Insurer**

**Name of Employer Representative**

**Name of Insurer Representative**

1. Did the employer agree to develop a loss prevention plan? Yes/No? If not, how is this confirmed by the insurer?

2. Is management committed to occupational safety and health? How is this communicated to employees and supervisors?

3. Explain in detail how supervisors and employees are held accountable for occupational safety and health.

4. How are training programs and practices developed? How

are training needs determined? What recordkeeping system is used to determine which employees have had training? What follow-up measures will be used to determine if training is effective?

5. Explain the employer's system for hazard assessment and control. Who is in charge of this system? How will the employer document the system's implementation and use?

6. Describe the employer's system for investigating accidents. Who investigates the accidents and analyzes results? How are findings communicated and to whom?

7. What personal protective equipment do employees need? Describe the employer's system for evaluating, obtaining and maintaining all personal equipment. Who keeps what types of records on maintenance of personal protective equipment?

8. Explain and provide specifics on evaluation of the employer's workplace design, layout, and operation from an ergonomic approach. What assistance will the insurer provide to the employer for job site modifications from an ergonomic approach?

9. How is employee involvement in the occupational safety and health effort demonstrated? How is the opportunity for involvement communicated to employees? If meetings are held, how often? What is the scope of the meetings and who attends them? Who takes the minutes of the meetings? How are meeting results communicated?

10. A hazard assessment survey must be conducted. (See ORS 656.451(3): "Such services shall include the conduct of workplace surveys to identify health and safety problems)." What are the specific findings of this survey? How will hazards identified or suspected be addressed in tailoring the plan to meet specific needs of the employer? How will hazards be corrected?

11. After completing this analysis of the employer's loss prevention management plan, who will be responsible for writing the plan: the insurer, the employer, or both? In what time frame will this plan be written?

12. The insurer must assist the employer in implementing the loss prevention plan. Has the employer requested such assistance? If so, when will the insurer meet again with the employer to assist in this ongoing effort?

This form is provided as a service to workers' compensation insurers by the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division (OR-OSHA). Photocopying is permitted.

### **APPENDIX B**

#### **Instructions for Computing Lost Workday Case Incident Rates (LWDCIR) for and Individual Firm**

Incidence rates for an individual establishment or firm may be calculated by employers by using the same formula used to calculate industry-wide incidence rates from the annual Occupational Injury and Illness Survey. An employer may then compare her/his own work injury and illness experience to the overall experience in her/his industry in Oregon or the nation.

The formula requires: (a) the number of lost workday cases, and (b) the number of hours actually worked by all employees during the reference period. To produce an overall incidence rate:

(a) Determine the number of lost workday cases by adding the totals for columns 2 and 9 of the Occupational Injuries and Illnesses Log (OSHA No. 200).

(b) Total the number of hours actually worked during the



year by all employees from payroll or other time records. The hours worked figure should not include any non-work time even though paid, such as vacations, sick leave, holidays, etc. (If actual hours worked are not available for employees paid on commission, salary, by the mile, etc., hours worked may be estimated on the basis of scheduled hours or 8 hours per workday.)

The formula for computing the incidence rate is as follows:

$$\begin{array}{l} \text{(a) Number of lost workday cases} \times 200,000 \\ \hline \text{= Lost Workday} \\ \text{(b) Employee hours worked} \quad \text{Case Incidence} \\ \text{Rate} \end{array}$$

This rate represents the number of lost workday cases occurring per 200,000 hours of work exposure or 100 full-time equivalent workers. The same base is used in computing the occupational injury and illness rates for Oregon and for the nation.

## **DIVISION 2**

### **GENERAL OCCUPATIONAL SAFETY AND HEALTH RULES**

#### **General**

#### **437-002-0005**

##### **Adoption by Reference**

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/96, and any subsequent amendments published in the **Federal Register** as listed below:

- (1) **29 CFR 1910.1**, Purpose and scope; published 6/27/74, **Federal Register**, vol. 39, no. 125, pg. 23503.
- (2) **29 CFR 1910.2**, Definitions; published 6/27/74, **Federal Register**, vol. 39, no. 125, pg. 23503.
- (3) **29 CFR 1910.3**, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, **Federal Register**, vol. 39, no. 125, pg. 23503.
- (4) **29 CFR 1910.4**, Amendments to this part; published 6/27/74, **Federal Register**, vol. 39, no. 125, pg. 23503.
- (5) **29 CFR 1910.5**, Applicability of standards; published 6/27/74, **Federal Register**, vol. 39, no. 125, pp. 23503-23504; amended 6/30/93, **FR** vol. 58, no. 124, p. 35308.
- (6) **29 CFR 1910.6**, Incorporation by reference; published 6/27/74, **Federal Register**, vol. 39, no. 125, pg. 23504; amended 2/10/84, **FR** vol. 49, no. 29, pg. 5321; amended 3/7/96, **FR** vol. 61, no. 46, p. 9231.
- (7) **29 CFR 1910.7**, Definition and requirements for a Nationally Recognized Testing Laboratory; published 4/12/88, **Federal Register**, vol. 53, no. 70, pp. 12120-12125; and amended 5/11/88, **FR** vol. 53, no. 91, pg. 16838.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 17-1988, f. & ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97

#### **Oregon Amendments**

#### **437-002-0006**

##### **General Oregon Definitions**

For the purposes of administration of the Oregon Safe Employment Act, the following terms mean:

- (1) "Act" means the Oregon Safe Employment Act, ORS Chapter 654.
- (2) "Agency" means the Occupational Safety and Health Division, Department of Insurance and Finance.

(3) "Assistant Secretary" means the Administrator of the Occupational Safety and Health Division or designated representative.

(4) "Assistant Secretary of Labor for Occupational Safety and Health" means the Administrator of the Occupational Safety and Health Division or designated representative.

(5) "Office of the Solicitor of Labor" means Legal Counsel for the Occupational Safety and Health Division.

(6) "Occupational Safety and Health Administration" or "OSHA" means the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services.

(7) "Standards" mean any occupational safety and health standard which has been adopted and promulgated by a nationally-recognized standards-producing organization, the federal government, or the State of Oregon and shall have the same meaning as, and include, the term "code(s)" and "rule(s)".

(8) "Administrative Rules" means OAR Chapter 437, Division 001, Rules for the Administration of the Oregon Safe Employment Act, and ORS Chapter 183.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 17-1988, f. & ef. 11-10-88

#### **437-002-0007**

##### **Testing and Certification**

By adopting these rules, the Department does not establish a testing and certification program separate from the federal OSHA Testing and Certification Program. The Department will accept as valid for compliance with its rules, the Testing and Certifications of Laboratories issued by federal OSHA.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 17-1988, f. & ef. 11-10-88

#### **Adoption and Extension of Established Federal Standards**

#### **437-002-0010**

##### **Adoption by Reference**

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/97, and any subsequent amendments published in the **Federal Register** as listed below:

- (1) **29 CFR 1910.11** Scope and Purpose, published 6/27/74, **Federal Register**, vol. 39, no. 125, p. 28504.
- (2) **29 CFR 1910.12** Construction work, published 6/27/74, **Federal Register**, vol. 39, no. 125, p. 28504.
- NOTE: 29 CFR 1910.13** Ship repairing, and **1910.14** Shipbuilding, were removed 6/30/93, **Federal Register**, vol. 58, no. 124, p. 35308.
- (3) **29 CFR 1910.15** Shipyard Employment, published 6/27/74, **Federal Register**, vol. 39, no. 125, p. 28505; amended 6/30/93, **FR** vol. 58, no. 124, p. 35308.
- (4) **29 CFR 1910.16** Longshoring, published 6/27/74, **Federal Register**, vol. 39, no. 125, p. 28505; amended 7/5/83, **FR** vol. 48, pg. 30908; 7/25/97, **FR** vol. 62, no. 143, p. 40141.
- (5) **29 CFR 1910.17** Effective dates, published 6/27/74, **Federal Register**, vol. 39, no. 125, p. 28505; 3/7/96, **FR** vol. 61, no. 46, p. 9235.
- (6) **29 CFR 1910.18** Changes in established federal standards, published 6/27/74, **Federal Register**, vol. 39, no. 125, p. 28505.
- (7) **29 CFR 1910.19** Special provisions for air contaminants, published 6/30/78, **Federal Register**, vol. 43, p. 28473; amended 10/3/78, **FR** vol. 43, p. 45809; 11/14/78, **FR** vol. 43, p. 53007; 1/26/79, **FR** vol. 44, p. 5447; 6/19/81, **FR** vol. 46, p. 25796; 12/13/85, **FR** vol. 50, p. 51173; 6/20/86, **FR** vol. 51, p. 22733; 10/17/86, **FR** vol. 51, p. 37004; 9/11/87, **FR** vol. 52, p. 34562; 12/4/87, **FR** vol. 52, p. 46291; 8/10/92, **FR** vol. 57, no. 154, pp. 35666-35681; 9/14/92, **FR** vol. 57, no. 178, pp. 42388-42453; 8/10/94, **FR** vol. 59, no. 153, p. 41057.

[Publications: The publication(s) referred to or incorporated by reference in



this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 16-1988, f. & ef. 11-10-88; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 9-1997, f. & cert. ef. 12-31-97

### Access to Employee Exposure and Medical Records

#### 437-002-0015

##### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/96, and any subsequent amendments published in the **Federal Register** as listed below: **29 CFR 1910.20** Access to Employee Exposure and Medical Records has been redesignated to **29 CFR 1910.1020**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.] Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 3-1989, f. & ef. 3-1-89; OSHA 4-1997, f. & cert. ef. 4-2-97

### Walking-Working Surfaces

#### 437-002-0020

##### Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/96, and any subsequent amendments published in the **Federal Register** as listed below:

(1) **29 CFR 1910.21** Definitions, published 6/27/74, **Federal Register**, vol. 39, no. 125, pp. 23505-23508.

(2) **29 CFR 1910.22** General Requirements, published 6/27/74, **FR** vol. 39, no. 125, p. 23508.

(3) **29 CFR 1910.23** Guarding Floor and Wall Openings and Holes, published 6/27/74, **FR** vol. 39, no. 125, pp. 23508-23510; amended 10/24/78, **FR** vol. 43, p. 49744; amended 2/10/84, **FR** vol. 49, p. 5321.

(4) **29 CFR 1910.24** Fixed Industrial Stairs, published 6/27/74, **FR** vol. 39, no. 125, pp. 23510-23511; amended 10/24/78, **FR** vol. 43, p. 49744; amended 2/10/84, **FR** vol. 49, p. 5321.

(5) **29 CFR 1910.25** Portable Wood Ladders, published 6/27/74, **FR** vol. 39, no. 125, pp. 23510- 23511; amended 10/24/78, **FR** vol. 43, p. 49744; amended 2/10/84, **FR** vol. 49, p. 5321.

(6) **29 CFR 1910.26** Portable Metal Ladders, published 6/27/74, **FR** vol. 39, no. 125, pp. 23517- 23519; amended 10/24/78, **FR** vol. 43, p. 49745; amended 2/10/84, **FR** vol. 49, p. 5321; amended 8/6/90, **FR** vol. 55, no. 151, pp. 32016-32020.

(7) **29 CFR 1910.27** Fixed Ladders, published 6/27/74, **FR** vol. 39, no. 125, pp. 23519-23522.

(8) **29 CFR 1910.28** Safety Requirements for Scaffolding, published 6/27/74, **FR** vol. 39, no. 125, pp. 23522-23529; amended 10/24/78, **FR** vol. 43, p. 49746; amended 2/10/84, **FR** vol. 49, p. 5321; amended 4/12/88, **FR** vol. 53, p. 12121.

(9) **29 CFR 1910.29** Manually Propelled Mobile Ladder Stands and Scaffolds (Towers), published 6/27/74, **FR** vol. 39, no. 125, pp. 23529-23530.

(10) **29 CFR 1910.30** Other Working Surfaces, published 6/27/74, **FR** vol. 39, no. 125, p. 23530; amended 2/10/84, **FR** vol. 49, p. 5322; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

(11) **29 CFR 1910.31** Source of Standards, published 6/27/74, **FR** vol. 39, no. 125, p. 23530; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

(12) **29 CFR 1910.32** Standards Organizations, published 6/27/74, **FR** vol. 39, no. 125, p. 23530; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 4-1990, f. & cert. ef. 1-23-90; OSHA 4-1997, f. & cert. ef. 4-2-97

#### 437-002-0022

##### Additional Oregon General Requirements.

###### (1) Barriers.

(a) Protective barriers or suitable guards shall be erected when covers over openings are removed or excavations made in places accessible to vehicular or pedestrian traffic. Warning lights or flares shall be displayed if work is being done at night. These protective measures shall be maintained until permanent or adequate covers or barricades are in place or the hazard removed.

(b) A watchperson shall be stationed where temporary conditions do not permit safeguarding of employees through the use of warning signs, lights, protective barriers, or covers.

###### (2) Plant Arrangement.

(a) Provisions for safety (such as adequate work and storage space for the full needs of raw, in-process, and finished materials, and for machinery, equipment and operations) shall be included in plant design, layout, and operation.

(b) A vertical clearance of not less than 6-1/2 feet shall be provided over work areas. Where it is otherwise impractical to secure adequate head room, overhead obstructions may be padded or may be indicated by means of contrasting paint, telltales, or similar means, if such means will furnish adequate protection.

(c) Work platforms provided shall be of sufficient width to provide a safe working space.

###### (3) Aisles, Passageways, Walkways, Inclines.

(a) Aisles, passageways, and walkways shall be of adequate width for their intended or actual use, and in no event shall they be less than 22 inches wide. Passageways which are elevated more than 4 feet above the ground or floor level shall be provided with standard railings.

(b) Walkways or passageways equipped with standard handrails shall be provided for oilers and other workers who are regularly required to go to elevated or other hazardous locations. Whenever space will permit, they shall be not less than 22 inches wide.

(A) Fixed inclined walkways shall be not less than 22 inches wide, equipped with handrails on each open side, inclined at no greater angle than 24 degrees, and they shall be securely fastened at the top and bottom.

(B) Moveable inclined walkways which extend to floats or floating equipment (except to vessels under Federal jurisdiction) shall be not less than 20 inches wide, and shall be secured at the upper end only with clear space provided for the lower end to adjust automatically with the heights of water.

(d) An adequate anti-slip surface shall be applied to inclined walkways whenever the gradient so warrants. Adequate cleats secured at uniform intervals not to exceed 18 inches, and extending the full width of the walkway when practical, may be used for this purpose.

(e) Inclines extending from floor to floor which are used instead of stairways shall have standard railings in accordance with the requirements for stairways.

(f) Aisles, passageways, walkways, and inclines shall be kept in good repair and shall be free of holes, unevenness, loose boards, protruding nails, or any other unnecessary obstructions or debris.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90; OSHA 6-1994, f. & cert. ef. 9-30-94; Renumbered from 437-002-0022

#### 437-002-0025

##### Extension Ladders

The following Oregon-initiated rule relate to 29 CFR 1910.25, **Portable Wood Ladders**: Extension ladders shall be equipped with necessary guide irons, locks, and hooks and have

the sections assembled so that the sliding (upper) section shall be on top of the base (lower) section.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]  
Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

**437-002-0028****Guardrails and Toeboards**

Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

**437-002-0030****Floors**

The following Oregon-initiated rule relates to 29 CFR 1910.30, **Other Working Surfaces**:

(1) Floors, floor supports, and required appurtenances shall be well maintained and kept in good repair. Defects should be remedied as soon as observed. Unless repaired immediately, hazardous floor openings and holes shall be fenced off or otherwise suitably guarded, and shall remain fenced off or guarded until properly repaired.

(2) Floors subject to slipping hazards due to conditions or processes of an operation or materials to which they will be exposed shall be of material and/or design which will effectively control slippery conditions.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]  
Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90; OSHA 6-1994, f. & cert. ef. 9-30-94

**437-002-0031****Provisions for Window Cleaners**

(1) Every window so constructed that a worker must stand on the outside sill or ledge to clean the window and having a sill more than ten feet above the ground or adjoining surface, shall have a sill at least six inches wide with a slope not greater than one to six, and shall have a securely fastened at each side of the window, at a height not less than 42 inches or more than 51 inches, a safety anchorage to which may be fastened a window cleaner's safety belt. Such anchorage shall be of a metal having a corrosion resistance of 60 percent as compared to copper. The anchor shall be machined from bar stock or forged and heat-treated, and shall be capable of supporting a pull of 6,000 pounds without fracture applied in the direction which the anchor must withstand in service should a person fall.

(2) Anchor clearance shall be not less than one inch at either side and not less than five inches above or below the anchor.

(3) All anchors and anchor fastenings shall be provided with means to prevent them from turning, backing off or becoming loose.

(4) Anchor fittings having a single threaded section which is merely screwed into reinforcing plates are prohibited.

(5) Following are acceptable methods of installing anchors in various types of construction. Other methods excepting those specifically prohibited, may be permitted, provided that they furnish at least the equivalent strength and safety:

(a) In wood construction, two through bolts of not less than 3/8 inch diameter shall pass through the entire window frame or mullion to secure each anchor, securely fastened by a washer and nut, the ends of bolts upset to prevent the nuts from loosening or being removed. The use of lag screws is specifically prohibited;

(b)(A) In hollow metal frame construction, the anchor shall be attached by two 3/8 inch diameter bolts which shall pass through the face of the frame and through a 3/8 inch thick steel back-up plate, 3/4 inch wide extending from five inches above the

upper bolt to two inches below the lower one. Bolts shall be secured by means of nuts and lock washers or equivalent means. If impractical to provide nuts and lock washers, the reinforcing plate may be tapped to receive the 3/8 inch bolts, which must pass completely through the plate and be secured with lock washers. If the threaded bolt is an integral part of the anchor, it shall be at least 1/2 inch in diameter and be secured by a nut and lock washer or equivalent means. All screws or bolts used shall have the threads terminate far enough from the head to prevent weakening due to undercutting;

(B) In either solid or hollow aluminum frames, the reinforcing plate and bolts shall be heavily coated with a bituminous paint, and a plastic gasket shall be placed between the anchor and the aluminum metal as a means of preventing electrolytic action between unlike metals; or another acceptable means which will prevent such action may be used.

(c) In solid metal frame construction, anchors shall be attached by two 3/8 inch diameter bolts passed through the frame and secured by nuts and washers on the inside, ends of bolts upset. When this method cannot be used, it will be permissible to drill and tap the metal frame to a depth of at least 3/8 inch and install the anchor with at least two 3/8 inch screws, which shall have the threads terminate far enough from the head to prevent weakening due to undercutting. If the threaded bolt is an integral part of the anchor, it shall be at least 1/2 inch in diameter and be secured by a nut and lock washer, or equivalent means;

(d) In masonry construction, the anchor shall be either a single bolt at least 1/2 inch in diameter, or two 3/8 inch diameter bolts. Such bolt or bolts shall have a head on the inner end and shall be imbedded not less than eight inches in solid masonry, or extend through the wall or mullion and be secured by a nut and lock washer or equivalent means. The use of masonry anchors consisting of flat metal embedded in mortar joints between brick or concrete blocks or stone is prohibited in new or existing buildings.

(6) Where sills are less than six inches wide, auxiliary or portable sills or other means providing equivalent safety may be permitted.

(7) Window cleaners' anchorages shall be inspected regularly and any defects found shall be remedied before workers are permitted to use them.

(8) For buildings constructed, remodeled or renovated on or after the adoption date of this rule the provisions of ANSI/ASME A39.1-1987 shall apply.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]  
Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

**437-002-0032****Ramps and Runways**

(1) Ramps and runways shall be substantially constructed, and shall be maintained in safe condition.

(2) Ramps and runways for vehicles shall have adequate width and evenness for safe operation of equipment and they shall be provided with timber guards of not less than nominal six-inch by six-inch material set on nominal three inch blocks, or the equivalent, placed parallel to and secured to the sides of the ramp or runway.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

**437-002-0033****Piers and Wharves**

(1) Open sides of piers and wharves, more than four feet above ground or water level, shall be provided with a shear or guard timber (bull rail) of not less than six-inch by six-inch wood material set on nominal three-inch blocking, or material of equal strength and of minimum height securely attached. Except for areas where vessels' mooring lines are handled, the open sides not

used for loading or unloading purposes shall be provided with standard handrails in addition to shear timbers.

(2) Ladders or other means of access reaching from low water mark to the dock floor shall be provided for each 400 feet or portion thereof of the water side of all wharves and piers. Where portable ladders are used, a secure method of fastening them shall be provided.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

### Means of Egress

#### 437-002-0040

##### Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/96, and any subsequent amendments published in the **Federal Register** as listed below:

(1) **29 CFR 1910.35** Definitions, published 6/27/74, **Federal Register**, vol. 39, no. 125, pp. 23530-23531; amended 9/12/80, **FR** vol. 45, p. 60703; amended 4/12/88, **FR** vol. 53, p. 12121.

(2) **29 CFR 1910.36** General Requirements, published 6/27/74, **FR** vol. 39, no. 125, p. 23531.

(3) **29 CFR 1910.37** Means of Egress - General, published 6/27/74, **FR** vol. 39, no. 125, pp. 23531-23533; amended 9/12/80, **FR** vol. 45, p. 60703.

(4) **29 CFR 1910.38** Employee Emergency Plans and Fire Prevention Plans, published 9/12/80, **FR** vol. 45, p. 60703.

(5) **29 CFR 1910.39** Sources of Standards, published 6/27/74, **FR** vol. 39, no. 125, pp. 23533; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

(6) **29 CFR 1910.40** Standards Organizations, published 6/27/74, **FR** vol. 39, no. 125, p. 23533; amended 4/28/75, **FR** vol. 40, p. 18426; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 4-1990, f. & cert. ef. 1-23-90; OSHA 4-1997, f. & cert. ef. 4-2-97

### General

#### 437-002-0044

##### Access and Egress

All counterweights located on or dangerously near passageways or work areas shall be enclosed with a guard which shall extend from the floor or working level to at least midpoint of the counterweight when it is in its highest position, or shall be otherwise guarded to afford equivalent protection; or the area directly below the counterweight shall be effectively barricaded:

(1) Overhead counterweights which cannot be enclosed or barricaded shall be provided with substantial safety chains or cables, or otherwise secured against falling.

(2) Safe and adequate access to and egress from all parts of an establishment or operation shall be provided. Means of access or egress shall:

(a) Provide a positive protection from or be protected against adjacent hazards by the use of handrails, enclosures, barriers, roofs, or other effective means;

(b) Provide a secure treading and supporting surface free from impairment to safe passage (such as slipping, tripping, debris, obstructions, projections);

(c) Provide adequate clearance, vertical and lateral, based on potential or actual traffic and use;

(d) Be sufficiently illuminated by either natural or artificial sources to render an adequate degree of visibility.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented:

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

#### 437-002-0048

##### Cold Storage Rooms

Every walk-in refrigerator, cooler or freezer designed and constructed to allow persons to enter into it shall have the door latch equipped with hardware which can be opened from the inside at any time without the use of a key or any special knowledge or effort.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

### Bins, Bunkers, Hoppers, Tanks and Vats

#### 437-002-0050

##### General Requirements

(1) Employees shall not enter bins, bunkers, or hoppers unless they are so constructed and arranged that the employees will not be subject to the hazards of collapsing materials.

(2) No person shall be permitted to enter bins, bunkers, hoppers, or similar areas containing loose materials (such as chips, sand, grain, gravel, sawdust, etc.) without having a safety belt with lifeline attached, secured to his or her body, and a helper to attend the lifeline, except where no hazard exists.

(3) Material gates, hopper doors, and similar devices for removing contents on all bins, bunkers, and hoppers shall be so arranged that they may be operated in a safe manner.

(4) Open bins, bunkers, and hoppers which have upper edges extending less than 36 inches above the floor or other working level shall be equipped with standard hand rails and toeboards, or have their tops covered by a grille or grating of sufficient strength to withstand any load to be imposed upon them, and with openings small enough to prevent a person from falling through.

(5) Where automotive equipment or other wheeled equipment is used to move materials into open bins, bunkers, and hoppers, guide rails shall be provided along each side of the runway, and a substantial stop not less than nine inches high provided when necessary.

(6) If persons are required to work from the top of bins, bunkers, or hoppers, a platform or walkway equipped with standard railings shall be provided near the top.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

#### 437-002-0051

##### Fuel Bins

(1) Fuel bins shall be provided with adequate exits and all necessary devices to provide safety for employees authorized to enter them.

(2) Sentry stations or substantially constructed tunnels near the bottom conveyor may be erected for the use of employees in stoking down congested fuel through convenient openings. Pneumatic bottoms, mechanical agitators or scrapers, and similar devices are permitted when properly and safely constructed.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

#### 437-002-0052

##### Tanks and Vats

(1) The sides of open vats and soaking pits containing hazardous liquids, and the sides of all open vats and soaking pits more than four feet in depth shall extend to a height of not less than 42 inches above the floor, working platform or ground level:

(a) The installations which do not meet these requirements shall have standard handrails around them;

(b) The floor around each such pit or vat shall be of non-slip construction with cleated, corrugated, or rough abrasive surface which will retain its non-slip characteristics.

(2) Large vats and soaking pits divided into sections shall be provided with substantial walkways between each section. Each walkway shall be provided with standard railings, removable if



necessary.

(3) Elevated tanks, vats, and similar equipment shall be constructed with foundations which are accessible for inspection.

(4) Where employees are required to ascend to elevated platforms on tanks, vats, and similar vessels, or are required to go to the top of such vessel when sides are four feet or more above the ground or other surface, fixed ladders or other means of safe access shall be provided.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

#### **437-002-0053**

##### **Entering Tanks, Vats and Similar Confined Spaces**

(1) "Atmospheres Immediately Dangerous to Life" are defined as those which contain less than 19.0 percent oxygen by volume, or which by reason of high toxicity of the containment, would endanger the life of a person breathing them for even a short period of time.

(2) No person shall enter or work in any tank, or confined space in which the atmosphere is immediately dangerous to life, except under the following conditions:

(a) They shall wear a supplied air or self-contained air breathing apparatus;

(b) He or she shall wear a safety belt with lifeline attached, where practical. Another person, equipped as required in subsection (a) of this section, and with safety belt and lifeline attached, shall be stationed at the opening with adequate help available to remove the person if necessary, and he or she shall hold the safety line when used;

(c) Failure of the person within the enclosure to respond to agreed upon signals shall require immediate rescue action by a person or persons equipped as required in subsections (a) and (b) of this rule;

(d) Air supplied to hose masks and positive pressure air helmets shall be free from harmful dusts, fumes, mists, vapors, or gases to the extent that the inhalation of such air shall not constitute harmful exposure. The air intake to the blower fan or compressor shall be so located as to prevent contamination of the air by carbon monoxide or other hazardous materials or gases;

(e) Supplied air respiratory equipment shall be equipped with an automatic pressure relief valve, and shall be connected through a pressure reduction valve in the supply line. Maximum allowable pressure, unless otherwise specifically approved, shall be 25 pounds per square inch;

(f) The standard of safety when using positive-pressure air respiratory equipment is the maintenance of positive pressure within the equipment. The minimum volume of air delivered to the user shall not be less than four cubic feet of air per minute for face mask and six cubic feet of air per minute for hoods or helmets.

(3) Oxygen Deficient Atmospheres. The atmosphere in any tank, vat, manhole, vault, blowpit, digester, or similar vessel which has been sealed or unventilated shall be considered as an atmosphere immediately dangerous to life. No person shall enter such enclosure unless:

(a) All requirements for safety equipment and safety procedures required in section (2) of this rule are complied with; or

(b) The atmosphere therein has been tested immediately prior to such entry by a competent person with an oxygen indicator or other suitable device to ensure that it contains sufficient oxygen to sustain life; or

(c) Until mechanical ventilation to provide at least one complete change of uncontaminated air has been provided immediately prior to entry, and is continued during the time the person is inside the enclosure. A safety watcher equipped as required in section (2) of this rule shall be stationed at the entry.

(4) Toxic Atmospheres. No person shall enter any tank or other confined area which has been sealed or unventilated and which contains or has contained toxic materials or gases, unless:

(a) All requirements for safety equipment and safety procedures required in section (2) of this rule are complied with, or the

atmosphere has been tested by a competent person using an instrument or method designed for the purpose and has been found to contain contaminants below the threshold limit values of the particular material or gas;

(b) If the atmosphere is found to contain concentrations of hazardous contaminants not immediately dangerous to life, but which is above the threshold limit values for the toxic material, the person entering the enclosure shall wear respiratory protective equipment approved by the National Institute of Occupational Safety and Health, or recommended by the U.S. Department of Agriculture for the existing exposure.

(5) Flammable or Explosive Atmospheres. The atmosphere in any tank or other confined area which has been sealed or unventilated and which contains or has contained combustible or flammable materials or gases shall be considered as an atmosphere immediately dangerous to life:

(a) No person shall enter such enclosure unless all requirements for safety equipment and safety procedures required in section (2) of this rule are complied with, or the atmosphere therein has been tested by a competent person using an instrument or method designed to determine if a flammable or explosive atmosphere is present;

(b) If the atmosphere is found to contain flammable or explosive vapors in concentrations at or above 20 percent of their lower explosive limit, the space shall be ventilated sufficiently to bring the concentration below 20 percent of the lower explosive limit, or only persons equipped and protected in conformity with the requirements of section (3) of this rule shall be permitted to enter the enclosure for the purpose of emergency work, which shall include preparatory work or work involving the setting up of equipment necessary for the gas-freeing operations.

(6) Sufficient natural and/or mechanical means of ventilation shall be provided to maintain the atmosphere within the limits permissible for explosive or toxic materials and gases at all times while persons are inside the enclosure.

(7) When conditions in any tank or other confined area are such that there is a possibility of explosive or toxic materials being released from residues or other sources, additional testing shall be carried on as necessary to determine that the atmosphere has not become immediately dangerous to life. If such conditions do arise, persons shall immediately leave the contaminated area until the atmosphere has again been made safe for persons wearing the respiratory protective equipment being used.

(8) No person shall enter any tank, vat, or similar confined space which contains power-driven machinery until the provisions of 1910.147 have been complied with.

(9) Intake pipelines which convey hazardous commodities into tanks, vessels, vats, and similar containers shall be adequately blinded or disconnected and disaligned before workers are permitted to enter such enclosures. Blinds, if used, shall clearly indicate whether the line is open or closed. Valves in such lines nearest the containers shall be closed, locked, and warning tags attached thereto. Cold water and air lines need not be blinded or disconnected and disaligned, provided they are equipped with positive control valves conveniently located near the container, and the valves are closed, locked, and properly tagged.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

##### **Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms**

#### **437-002-0060**

##### **Adoption by Reference**

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/96, and any subsequent amendments published in the **Federal Register** as listed below:

(1) **29 CFR 1910.66** Powered Platforms for Building



Maintenance, published 6/27/74, **Federal Register**, vol. 39, no. 125, pp. 23533-23537; amended 10/24/78, **FR** vol. 43, p. 49746; amended 2/10/84, **FR** vol. 49, p. 5322; amended 7/28/89, **FR** vol. 54, no. 144, pp. 31456-31477; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

(2) **29 CFR 1910.67** Vehicle-Mounted Elevating and Rotating Work Platforms, published 6/27/74, **FR** vol. 39, no. 125, p. 23537; amended 3/26/75, **FR** vol. 40, p. 13439; amended 8/6/90, **FR** vol. 55, no. 151, pp. 32016-32020; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

(3) **29 CFR 1910.68** Manlifts, published 6/27/74, **FR** vol. 39, no. 125, pp. 23537-23540; amended 10/24/78, **FR** vol. 43, p. 49746; amended 9/29/86, **FR** vol. 51, p. 34560; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

(4) **29 CFR 1910.69** Sources of Standards, published 6/27/74, **FR** vol. 39, no. 125, pp. 23540; 3/7/96, **FR** vol. 61, no. 46, p. 9235.

(5) **29 CFR 1910.70** Standards Organizations, published 6/27/74, **FR** vol. 39, no. 125, p. 23540; amended 3/26/75, **FR** vol. 40, p. 13440; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 4-1990, f. & cert. ef. 1-23-90; OSHA 4-1997, f. & cert. ef. 4-2-97

### **Vehicle-Mounted Elevating and Rotating Work Platforms**

#### **437-002-0067**

##### **Extensible and Articulating Boom Platforms**

Clearly visible flashing warning lights shall be operating on all vehicles when using aerial equipment exposed to traffic.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

### **Proximity to Overhead High Voltage Lines and Equipment**

(These Regulations do not Apply to Underground Installations)

#### **437-002-0069**

##### **General**

No employer shall require or permit any employee to enter or to perform any function in proximity to high-voltage lines, unless danger from accidental contact with said high-voltage lines has been effectively guarded against.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

#### **437-002-0071**

##### **Clearance or Safeguards Required**

(1) The operation, erection, or transportation of any tools, equipment, or any part thereof capable of movement; the handling, transportation, or storage of any materials; or the moving of any building, near high-voltage lines, is prohibited, if at any time it is possible to bring such object within ten feet of high-voltage lines.

(2) For equipment in transit, on smooth surfaces, the clearance shall be a minimum of four feet for voltages less than 50 kV, ten feet for voltages over 50 kV, up to and including 345 kV, and 16 feet for voltages up to and including 750 kV.

(3) A person shall be designated to observe clearance and give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by visual means.

(4) The ten-foot requirement shall not be reduced by movement due to any strains impressed upon the structures supporting the high-voltage line and upon any equipment, fixtures, or attachments thereon.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

#### **437-002-0073**

##### **Warning Signs Required**

The employer shall post and maintain in plain view of the operator on each crane, derrick, power shovel, drilling rig, hay loader, hay stacker, pile driver, or similar apparatus, any part of which is capable of vertical, lateral, or swinging motion, a durable warning sign legible at 12 feet reading "Unlawful to operate this equipment within 10 feet of high-voltage lines".

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

#### **437-023-0075**

##### **Notification to Power Company and Responsibility for Safeguards**

(1) When any operations are to be performed, tools or materials handled, equipment is to be moved or operated within ten feet of any high-voltage line, the person or persons responsible for the work to be done shall promptly notify the operator of the high-voltage line of the work to be performed, and shall be responsible for the completion of the safety measures as required before proceeding with any work which would impair the aforesaid clearance.

(2) This section when applied to railway systems, shall be construed as permitting operation of standard rail equipment, which is normally used in the transportation of freight and/or passengers, and the operation of relief trains, or other equipment in emergencies, at a distance of less than ten feet from any high-voltage conductor; but shall be construed as prohibiting normal repair or construction operations at a distance of less than ten feet from any high-voltage conductor by other than properly qualified and authorized persons or employees under the direct supervision of any authorized person who is familiar with the hazards involved, until the safety provisions of the foregoing sections have been complied with.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90

### **Occupational Health and Environmental Control**

#### **437-002-0080**

##### **Adoption by Reference**

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations**, **29 CFR** 1910, revised as of 7/1/97, and any subsequent amendments published in the **Federal Register** as listed below:

(1) **29 CFR 1910.94** Ventilation, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 5/28/75, **FR** vol. 40, p. 24522; 6/9/75, **FR** vol. 40, p. 24522; 10/24/78, **FR** vol. 43, p. 49746; 2/10/84, **FR** vol. 49, p. 5322; 8/6/90, **FR** vol. 55, no. 151, p. 32015; 6/30/93, **FR** vol. 58, no. 124, p. 35308; 3/7/96, **FR** vol. 61, no. 46, p. 9236; 1/8/98, **FR** vol. 63, no. 5, p. 1269.

(2) **29 CFR 1910.95** Occupational Noise Exposure, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 1/16/81, **FR** vol. 46, p. 4161; 12/29/81, **FR** vol. 46, p. 62845; 3/8/83, **FR** vol. 48, p. 9776; 6/28/83, **FR** vol. 48, p. 29687; 6/7/89, **FR** vol. 54, p. 24333; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

**NOTE: 29 CFR 1910.96** Ionizing radiation, has been redesignated to **29 CFR 1910.1096**.

(3) **29 CFR 1910.97** Nonionizing radiation, published 6/27/74, **Federal Register**, vol. 39, p. 23502; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

(4) **29 CFR 1910.98** Effective dates, published 6/27/74, **Federal Register**, vol. 39, p. 23502.

(5) **29 CFR 1910.99** Sources of standards, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 5/28/75, **FR** vol. 40, p. 23073; 6/11/82, **FR** vol. 47, p. 25323; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

(6) **29 CFR 1910.100** Standards organization, published

6/27/74, **Federal Register**, vol. 39, p. 23502; amended 4/18/75, **FR** vol. 40, p. 18426; 6/30/93, **FR** vol. 58, no. 124, p. 35309; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 2-1992, f. 2-6-92, cert. ef. 5-1-92; OSHA 4-1993, f. 4-1-93, cert. ef. 5-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98

## Ventilation

### 437-002-0081

#### Oregon Ventilation Regulations

In addition to, and not in lieu of 29 CFR 1910.94, the following rules pertaining to ventilation apply in Oregon:

(1) Definitions:

(a) "Administrative Control" means the reduction of employee exposure to physical or chemical agents by control of the time of exposure to some period less than eight hours in length;

(b) "Harmful" or "Hazardous" as applied to the health effects of dusts, fumes, vapors, mists, gases, or any environmental condition, means any mechanical, infectious, toxic, or other action which is likely to produce medically determined injury or disease of exposed workers;

(c) "Health Hazard Control Measure" means the equipment or working arrangements designed to prevent the exposure of employees to harmful or hazardous situations. Such control measures may include, but are not limited to:

(A) Ventilation systems;

(B) Energy absorption system;

(C) Personal protective equipment;

(D) Air contaminant monitoring; and

(E) Human biological monitoring.

(d) "Local Exhaust System" means a system of hoods, booths, or enclosures designed to remove contaminants at points of generation or release into the atmosphere connected by means of piping to airflow or suction producing equipment;

(e) "Occupational Health Hazard" means those materials, processes, and atmospheric contaminants or energy concentrations which during normal or abnormal working conditions are likely to result in injury or illness to the unprotected employee;

(f) "Ventilation, Dilution" means ventilation provided to dilute the concentration of atmospheric contaminants in the atmosphere in all or part of the place of employment;

(g) "Ventilation, General" means the provision of fresh air at the place of employment;

(h) "Ventilation, Local Exhaust" means that the type of ventilation in which suction is applied at the point of generation or release of atmospheric contaminants;

(i) "Ventilation, Natural" means ventilation designed to depend wholly upon relative air density, and includes the use of openable doors, windows, and other building apertures.

(2) Recirculation. No air from any local exhaust system shall be recirculated, unless:

(a) The inert dust contained therein has a Permissible Exposure Limit (PEL) equal to or greater than ten milligrams per cubic meter as listed in Tables Z-1, Z-2, or Z-3 in OAR Chapter 437, Division 2, Subdivision Z, 1910, OAR 437-002-0382, Oregon Rules for Air Contaminants. The inert dust concentration in such recirculated air shall not exceed five milligrams per cubic meter; or

(b) The contaminant contained therein has a Permissible Exposure Limit (PEL) equal to or greater than 100 parts per million as listed in Tables Z-1, Z-2, or Z-3 or OAR Chapter 437, Division 2, Subdivision Z, OAR 437-002-0382, Oregon Rules for Air Contaminants. The contaminant concentration in such recirculated air shall not exceed 25 percent of its PEL; or

(c) The concentrations of contaminants in recirculated air do not exceed 25 percent of unity as calculated by the formula given in Division 2, Subdivision Z, OAR 437-002-0382(4)(b), Oregon

Rules for Air Contaminants.

(3) Make-Up Air. Outside air equal in amount to the air removed by local exhaust systems shall be provided to replace air removed by an exhaust ventilation system.

(4) Air Contamination from Exhaust System. The discharge from any exhaust system shall be such that no air contamination therefrom will enter any window, door, or other opening of any work area in quantities sufficient to create a harmful or hazardous work atmosphere.

(5) Use of Salamanders and Fuel-Burning Heating Devices. Salamanders and other fuel-burning heating devices shall not be used in enclosed or inadequately ventilated spaces in which workers are employed unless such heating device is provided with a proper pipe, chimney, or enclosure to carry hazardous gases to the outside atmosphere.

(6) Local Exhaust Ventilation. The capacity of a local exhaust system shall be calculated on the basis of all hoods, booths, and enclosures connected to the system being open, except where the system is so interlocked that only a portion of it can be operated at a given time, in which case the capacity shall be calculated on the basis that all the hoods in the group requiring the greatest volume rate of exhaust are open.

(7) Exhausting More Than One Substance. Two or more operations involving more than one substance shall not be connected to the same exhaust system when a combination of the substances removed may constitute a fire hazard, or otherwise dangerous mixture.

(8) Exhausting Materials with Flammable Properties. Those processes or operations which require local exhaust ventilation and generate materials with flammable properties shall be protected from sources of ignition.

(9) Removal of Collected Materials. Collected materials shall be removed when necessary so as to maintain effective operation of the local exhaust system at all times.

(10) Disposal of Collected Materials. Collected materials shall be disposed of in a manner which will not result in a hazard.

(11) Requirements for Reduction of Air Contaminant Concentrations. A local exhaust system shall be in operation until all contaminants are reduced to concentrations at or below the Threshold Limit Values when any person is at risk.

(NOTE: 1910.94(a)(6) was NOT adopted by OR-OSHA. In Oregon, OAR 437-002-0081(12) (which references a more current ANSI standard) applies.)

(12) Air supply and air compressors. The air for abrasive-blasting respirators shall be free of harmful quantities of dusts, mists, or noxious gases, and shall meet the requirements for air purity set forth in ANSI Z9.2-1979, Fundamentals Governing the Design and Operation of Local Exhaust Systems. The air from the regular compressed air line of the plant may be used for the abrasive-blasting respirator if:

(a) A trap and carbon filter are installed and regularly maintained to remove oil, water, scale, and odor;

(b) A pressure reducing diaphragm or valve is installed to reduce the pressure down to requirements of the particular type of abrasive-blasting respirator; and

(c) An automatic control is provided to either sound an alarm or shut down the compressor in case of overheating.

(NOTE: Oregon did not adopt 1910.94(a)(6), which references an out-dated ANSI standard. Instead, the following Oregon-initiated rule applies. This rule is identical, except that the current ANSI standard is referenced.)

(13) Blasting Nozzles. In addition to and not in lieu of the provisions of 1910.94(a)(7), blasting nozzles shall be equipped with a deadman switch or other effective means to prevent hose and nozzle from whipping. A support shall be provided on which the nozzle may be mounted when not in use.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: OSHA 2-1992, f. 2-6-92, cert. ef. 5-1-92

**NOTE:** 1910.95(g)(3) was NOT adopted by OR-OSHA because in Oregon, only CAOH- certified technicians, audiologists, otolaryngologist or physicians may perform audiometric examinations. In Oregon, OAR 437-002-0095 applies:

**437-002-0095**

**Audiometric Testing in Oregon**

Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other physician, or by a technician who is certified by the Council of Accreditation in Occupational Hearing Conservation. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or physician.

**NOTES:**

-1- Technicians currently certified by OR-OSHA may continue to use their Oregon certificates until they expire, or until July 1, 1996, whichever occurs first.

-2- In Oregon, free on-site assistance may be obtained from the Consultative Section, Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services, 350 Winter St NE, Salem, OR 97310. Telephone (503) 378-3272.  
Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 4-1993, f. 4-1-93, cert. ef. 5-1-93

**NOTES:**

-1- The following Oregon-initiated rule, OAR 437-002-0098, relates to 29 CFR 1910.96, Ionizing Radiation.

-2- The provisions of OAR 437-002-0080(3) and 437-002-0098 will be enforced by the Department of Human Resources, Health Division, under an Interagency Agreement with the Department of Insurance and Finance, Occupational Safety and Health Division (OR-OSHA). Copies are available from OR-OSHA and the Health Division.

**437-002-0098**

**Additional Applicability**

In addition to, and not in lieu of **1910.1096**, the rules and regulations specified in ORS 453.605 to 453.745, Control of Radiation, administered by the Department of Human Resources, Oregon Health Division, shall apply to all employees working with or near ionizing radiation sources.

**NOTE:** §**1910.1096**, Ionizing Radiation, is enforced in Oregon by the Department of Human Resources, Health Division, under an Interagency Agreement with the Department of Consumer and Business Services, OR-OSHA Division. Oregon-initiated Rule 437-002-0098 also applies and is enforced by the Health Division. Copies are available from OR-OSHA and the Health Division.  
Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)  
Stats. Implemented: ORS 654.001 - ORS 654.295  
Hist.: OSHA 2-1992, f. 2-6-92, cert. ef. 5-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 4-1997, f. & cert. ef. 4-2-97

**Hazardous Materials**

**437-002-0100**

**Adoption by Reference**

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/97, and any subsequent amendments published in the **Federal Register** as listed below:

(1) **29 CFR 1910.101** Compressed gases (General requirements), published 6/27/74, **Federal Register**, vol. 39, p. 23502; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

(2) **29 CFR 1910.102** Acetylene, published 6/27/74, **Federal Register**, vol. 39, p. 23502; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

(3) **29 CFR 1910.103** Hydrogen, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 10/24/78, **FR** vol. 43, p. 49746; 4/12/88, **FR** vol. 53, p. 12121; 8/6/90, **FR** vol. 55, no. 151, p. 32015; 6/30/93, **FR** vol. 58, no. 124, p. 35309; 3/7/96, **FR** vol. 61, no. 46, p. 9236.

(4) **29 CFR 1910.104** Oxygen, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 10/24/78, **FR** vol. 43, p. 49746; 3/7/96, **FR** vol. 61, no. 46, p. 9237.

(5) **29 CFR 1910.105** Nitrous oxide, published 6/27/74, **Federal Register**, vol. 39, p. 23502; 3/7/96, **FR** vol. 61, no. 46, p. 9237.

(6) **29 CFR 1910.106** Flammable and combustible liquids, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 1/27/75, **FR** vol. 40, p. 3982; 6/2/75, **FR** vol. 40, p. 23743; 10/24/78, **FR** vol. 43, p. 49746; 11/7/78, **FR** vol. 43, p. 51759; 9/7/82, **FR** vol. 47, p. 39164; 9/12/86, **FR** vol. 51, p. 34560; 4/12/88, **FR** vol. 53, p. 12121; 8/6/90, **FR** vol. 55, no. 151, p. 32015; 3/7/96, **FR** vol. 61, no. 46, p. 9237.

(7) **29 CFR 1910.107** Spray finishing using flammable and combustible materials, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 9/12/80, **FR** vol. 45, p. 60704; 2/10/84, **FR** vol. 49, p. 5322; 4/12/88, **FR** vol. 53, p. 12121; 3/7/96, **FR** vol. 61, no. 46, p. 9237.

(8) **29 CFR 1910.108** Dip tanks containing flammable or combustible liquids, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 9/12/80, **FR** vol. 45, p. 60704; 2/10/84, **FR** vol. 49, p. 5322; 4/12/88, **FR** vol. 53, p. 12121; 3/7/96, **FR** vol. 61, no. 46, p. 9237.

(9) **29 CFR 1910.109** Explosives and blasting agents, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 10/24/78, **FR** vol. 43, p. 49747; 9/12/80, **FR** vol. 45, p. 60704; 4/12/88, **FR** vol. 53, p. 12122; 2/24/92, **FR** vol. 57, no. 36, p. 6403; 3/29/93, **FR** vol. 58, no. 58, p. 16496; 6/30/93, **FR** vol. 58, no. 124, p. 35309; 3/7/96, **FR** vol. 61, no. 46, p. 9237.

(10) **29 CFR 1910.110** Storage and handling of liquefied petroleum gases, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 10/24/78, **FR** vol. 43, p. 49747; 2/10/84, **FR** vol. 49, p. 5322; 4/12/88, **FR** vol. 53, p. 12122; 6/20/90, **FR** vol. 55, p. 25094; 8/6/90, **FR** vol. 55, no. 151, p. 32015; 3/19/93, **FR** vol. 58, no. 52, p. 15089; 6/30/93, **FR** vol. 58, no. 124, p. 35309; 3/7/96, **FR** vol. 61, no. 46, p. 9237.

(11) **29 CFR 1910.111** Storage and handling of anhydrous ammonia, published 6/27/74, **Federal Register**, vol. 39, p. 23502; amended 10/24/78, **FR** vol. 43, p. 49748; 2/10/84, **FR** vol. 49, p. 5322; 4/12/88, **FR** vol. 53, p. 12122; 3/7/96, **FR** vol. 61, no. 46, p. 9238; 1/8/98, **FR** vol. 63, no. 5, p. 1269.

(12) Reserved for **29 CFR 1910.112** (Reserved).

(13) Reserved for **29 CFR 1910.113** (Reserved).

(14) **29 CFR 1910.114** Removed. Published 3/7/96, **Federal Register**, vol. 61, no. 46, p. 9238.

(15) **29 CFR 1910.115** Removed. Published 3/7/96, **Federal Register**, vol. 61, no. 46, p. 9238.

(16) **29 CFR 1910.116** Removed. Published 3/7/96, **Federal Register**, vol. 61, no. 46, p. 9238.

(17) **29 CFR 1910.119** Process safety management of highly hazardous chemicals, published 2/24/92, **Federal Register**, vol. 57, no. 36, pp. 6403-6417; amended 3/4/92, **FR** vol. 57, no. 43, p. 7847; 6/1/92, **FR** vol. 57, no. 105, pp. 23060-1. (NOTE: Excepted rules adopted by reference by OR-OSHA by Admin. Order 6-1994 on 9/30/94.) Amended 3/7/96, **FR** vol. 61, no. 46, p. 9238.

(18) **29 CFR 1910.120** Hazardous waste operations and emergency response, Interim Final Rules published 12/19/86, **Federal Register**, vol. 51, no. 244, pp. 45663-45675; and amended 5/5/87, **FR** vol. 52, no. 85, pp. 16241-16243. Final Rules were published 3/6/89, **FR** vol. 54, no. 42, pp. 9294-9335; amended 4/13/90, **FR** vol. 55, no. 72, pp. 14072-14075; 4/18/91, **FR** vol. 56, no. 75, pp. 15832-15833; amended 8/22/94, **FR** vol. 59, no. 161, pp. 43270-43275; 3/7/96, **FR** vol. 61, no. 46, p. 9238.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001 - ORS 654.295

Hist.: APD 19-1988, f. & ef. 11-17-88; APD 12-1989, f. & ef. 7-14-89; OSHA 22-1990, f. 9-28-90, cert. ef. 10-1-90; OSHA 3-1992, f. & cert. ef. 2-6-92; OSHA 3-1993, f. & cert. ef. 2-23-93; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98



























































































































































































































































































































































































































































































































































