

August 4, 2011

Oregon OSHA - Proposed Changes to Division 1, General Administrative Rules

Public Hearing Scheduled for:

<u>Date</u>	<u>Time</u>	<u>Location</u>
September 12, 2011	10:00 am	Labor & Industries Building Basement – Conference Room F 350 Winter Street NE Salem, OR 97301

This rulemaking is proposed to make relatively minor adjustments to the scheduling rule changes adopted in September of 2009. First, the existing rule establishes the size of each tier based on outdated data from the workers compensation system. The department can now develop more reliable estimates of size for most industries using data from the Employment Department. Second, the proposed rule improves the ranking of industries by employing a more sophisticated statistical technique. Additionally, the rule replaces the industry tiers with the criteria that will be used to develop those tiers now and in the future.

This proposed rulemaking also amends OAR 437-001-0706 Recordkeeping for Health Care Assaults, to remove the reporting requirement. This requirement has been satisfied and no longer needs to be included in the rule.

When does this happen: Adoption will be late September 2011

To get a copy: Our web site – www.orosha.org Rules/Compliance, then Proposed Rules
Or call the Oregon OSHA Resource Center at 503-947-7447

To comment: Department of Consumer and Business Services/Oregon OSHA
350 Winter Street NE
Salem OR 97301-3882
E-mail – tech.web@state.or.us
Fax – 503-947-7461

Comment period closes: September 16, 2011

OR-OSHA contact: Claudia Marthaller, Central Office @ 503-947-7454;
or email at claudia.s.marthaller@state.or.us

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA OAR 437
Agency and Division Administrative Rules Chapter Number

Sue Joye 350 Winter Street NE Salem OR 97301-3882 503-947-7449
Rules Coordinator Address Telephone

RULE CAPTION

Proposed changes to Division 1, General Administrative Rules.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

September 12, 2011	10:00 am	Labor and Industries Building Basement – Conference Room F 350 Winter Street NE Salem OR 97301	Sue Joye
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND: OAR 437-001-0057, 437-001-0706.

ORS 654.025(2) and 656.726(4) _____
Stat. Auth. Other Authority

ORS 654.001 through 654.295
Stats. Implemented

RULE SUMMARY

This rulemaking is proposed to make relatively minor adjustments to the scheduling rule changes adopted in September of 2009. First, the existing rule establishes the size of each tier based on outdated data from the workers compensation system. The department can now develop more reliable estimates of size for most industries using data from the Employment Department. Second, the proposed rule improves the ranking of industries by employing a more sophisticated statistical technique. Additionally, the rule replaces the industry tiers with the criteria that will be used to develop those tiers now and in the future.

This proposed rulemaking also amends OAR 437-001-0706 Recordkeeping for Health Care Assaults, to remove the reporting requirement. This requirement has been satisfied and no longer needs to be included in the rule.

Please visit our web site www.orosha.org Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted, and final rules.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

/s/Michael D. Wood

Signature

September 16, 2011

Last Day for Public Comment

Michael D. Wood

Printed name

7/14/2011

Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday.

ARC 920-2005

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

Agency and Division
Number

OAR 437

Administrative Rules Chapter

In the Matter of: Amending OAR 437-001-0057, 437-001-0706.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Proposed changes to Division 1, General Administrative Rules.

Statutory Authority: ORS 654.025(2) and 656.726(4)

Stats. Implemented: ORS 654.001 through 654.295

Need for the Rule(s):

This rulemaking is proposed to make relatively minor adjustments to the scheduling rule changes adopted in September of 2009. First, the existing rule establishes the size of each tier based on outdated data from the workers compensation system. The department can now develop more reliable estimates of size for most industries using data from the Employment Department. Second, the proposed rule improves the ranking of industries by employing a more sophisticated statistical technique. Additionally, the rule replaces the industry tiers with the criteria that will be used to develop those tiers now and in the future.

This proposed rulemaking also amends OAR 437-001-0706 Recordkeeping for Health Care Assaults, to remove the reporting requirement. This requirement has been satisfied and no longer needs to be included in the rule.

Documents Relied Upon, and where they are available:

OAR 437, Division 1, General Administrative Rules

Oregon Safe Employment Act, Chapter 654 Occupational Safety and Health 2009 Edition

North American Industry Classification System (NAICS)

Data from: Department of Consumer and Business Services claim and employer files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, the Bureau of Labor Statistics Census of Fatal Occupational Injuries, and the Oregon Employment Department.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

After consulting with the Fixed Site Scheduling Advisory Committee, Oregon OSHA has concluded there is no overall fiscal impact to employers or to the agency as a result of the proposed changes to the scheduling of safety inspections for fixed places of employment procedures in Division 1. Oregon OSHA's own costs in administering the rule are limited to the rulemaking itself. To the degree the scheduling system and the enforcement activity it generates have a cost to the agency, they are costs that would have been incurred under the previous scheduling system. Although different employers may be selected for inspection based on this revision, the rules being enforced will not change nor will the total number of inspections or the manner in which they are conducted change. Therefore, the overall

impact to employers will be unchanged. The major change to the scheduling procedures is in how the calculation is completed using a statistical weighting method involving t-scores which may mean that employers may be inspected in a different order than they otherwise would have been.

All state agencies are affected by the rule in the sense that they are employers under the Oregon Safe Employment Act (OSEAct). However, state agencies other than DCBS/Oregon OSHA will have no costs under this rule other than those they would occur as an employer. Similarly, local governments are affected by this rule only in the sense that they are employers under the OSEAct. Finally, the public as a whole will be affected only to the degree that members of the public are employers and employees.

The net effect on employer costs will be neutral, with some employers experiencing a non-significant increase in costs and some employers experiencing a non-significant decrease in costs. Both cost differences experienced due to the time spent during an inspection.

Similarly, all small businesses in the state that employ workers would potentially be affected by this rule change, except those in construction and forest activities. Based on data obtained from the Employment Department, Oregon OSHA estimates that as many as 96 percent of the affected employers are small businesses with fewer than 50 employees. This procedure for compiling new lists will not represent a change in the balance of size of employers as the lists will represent the same population affected by the current rule. The rule does not require any new reporting, recordkeeping or other administrative activities of small businesses (or of other businesses). The rule does not require purchase of new equipment, supplies, labor or increased administration.

There will be no fiscal impact with amending the Recordkeeping for Health Care Assaults rule to remove the reporting requirement which has been satisfied.

How were small businesses involved in the development of this rule?

The Fixed Site Scheduling Advisory Committee met May 13, 2011. Representatives invited included members of manufacturing businesses, the construction industry, city/county services, councils and associations that speak for businesses both large and small, and union leaders.

It is not anticipated that small employers will be affected any differently than large employers.

Administrative Rule Advisory Committee consulted? Yes.

If not, why?

The Fixed Site Scheduling Advisory Committee met May 13, 2011.

/s/Michael D. Wood
Authorized Signer

Michael D. Wood
Printed name

7/14/2011
Date