

MODEL RULES OF PROCEDURE / NOTICE TO INTERESTED PERSONS OF RULEMAKING

OAR 437, DIVISION 1

GENERAL ADMINISTRATIVE RULES

RULES FOR THE ADMINISTRATION OF THE OREGON SAFE EMPLOYMENT ACT

GENERAL INFORMATION

437-001-0001 Model Rules of Procedure. The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0100, in effect on January 1, 2008, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act, are adopted as the rules of procedure for rulemaking actions of the Oregon Occupational Safety and Health Division.

Stat. Auth.: ORS 654-025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: OR-OSHA Admin. Order 3-1991, f. 2/25/91, ef. 2/25/91.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 2-1996, f. 6/13/96, ef. 6/13/96.
OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.
OR-OSHA Admin. Order 11-2000, f. 12/12/00, ef. 12/12/00.
OR-OSHA Admin. Order 2-2002, f. 3/12/02, ef. 3/12/02.
OR-OSHA Admin. Order 6-2004, f. 12/30/04, ef. 12/30/04.
OR-OSHA Admin. Order 1-2006, f. 2/14/06, ef. 2/14/06.
OR-OSHA Admin. Order 8-2008, f. 7/14/08, ef. 7/14/08.

437-001-0002 Notice to Interested Persons of Rulemaking.

(1) Except when adopting 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 by:

(a) Publishing notice of the proposed action in the Secretary of State's Oregon Bulletin at least 21 days prior to the effective date of the action.

(b) Notifying interested persons and organizations on the Division's notification lists of proposed rulemaking actions under ORS 183.335. The same information is also posted on the OR-OSHA web site at www.orosha.org. The Division will send the notice to those on OR-OSHA's e-mail notification list, and mail paper copies to those on the hard-copy notification list. Both subscription methods are available on the web site listed above or call the Oregon OSHA Resource Center at 503-378-3272.

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

Stats. Implemented: ORS 654.001 through 654.295.

Hist: OR-OSHA Admin. Order 9-1991, f. 4/25/91, ef. 4/25/91.
OR-OSHA Admin. Order 6-1994, f. 9/30/94, ef. 9/30/94.
OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.
OR-OSHA Admin. Order 7-2006, f. 9/6/06, ef. 9/6/06.

AUTHORITY AND APPLICABILITY OF RULES

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 ORS 656.726(4).

(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 436, Division 46, Rules 436-46-005 through 436-46-750) were first adopted by WCB Admin. Order 19-1974; filed 6-5-74; **effective 7-1-74**. Amendments were made by:

WCB Admin. Order 33-1974, f. 9-5-74, ef. 9-26-74.
WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 7-1979, f. 8-20-79, ef. 9-1-79.
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
WCD Admin. Order, Safety 12-1982, f. 6-28-82, ef. 8-1-82.
WCD Admin. Order, Safety 3-1983, f. 1-31-83, ef. 2-1-83.
WCD Admin. Order, Safety 9-1983, f. 11-15-83, ef. 11-15-83.
WCD Admin. Order, Safety 2-1984, f. 3-2-84, ef. 3-15-84.
WCD Admin. Order, Safety 12-1984, f. 9-20-84, ef. 11-1-84.
WCD Admin. Order, Safety 9-1986, f. 10-7-86, ef. 12-1-86.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 5-1988, f. 5-16-88, ef. 5-16-88.

OAR 436, Division 46, Rules for the Administration of the Oregon Safe Employment Act, **was redesignated as OAR 437, Division 1**, by APD Admin. Order 7-1988, filed 6/17/88. **Its effective date remains 7/1/74.**

(Note: See **Historical Notes** on Page 1 for more complete list of amendments.)

Stat. Auth.: ORS 654-025(2) and 656.726(4).
Stats. Implemented: ORS 654.001 to 654.295.
Hist: OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 8-2008, f. 7/14/08, ef. 7/14/08.

PURPOSE AND SCOPE OF RULES / DEFINITIONS

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 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) and 656.726(3).

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

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

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

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

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

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

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

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

Accepted 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.

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).

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

Administrator – The Administrator of the Oregon Occupational Safety and Health Division (Oregon OSHA).

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

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

DEFINITIONS

Appeal – A written request for a hearing to contest a citation, notice or order, a proposed assessment of civil penalty, and the period of time fixed for correction of a violation, or any of these, by filing with the Department of Consumer and Business Services, within 30 days after receipt of the citation, notice or order, a written request for a hearing before the Workers' Compensation Board. Such a request need not be in any particular form, but must specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

Audiometric zero – The lowest sound pressure level that the average young adult with normal hearing can hear.

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

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

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

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

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

Compliance officer – A designated Division employee responsible for conducting inspections or investigations; identifying possible violations and hazards; proposing citations, penalties, and correction dates; and to assist employers and employees with information to correct violations and hazards.

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

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

DEFINITIONS

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.

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

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

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

Department – The Department of Consumer and Business Services.

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

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

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

Employee – Any individual, including a minor, whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise and who is subject to the direction and control of an employer, and includes:

Salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts, and other public corporations.

Any person provided with workers' compensation coverage as a subject worker under ORS Chapter 656, whether by operation of law or by election.

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

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

DEFINITIONS

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

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

Employer -

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

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

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

Substantially the same type of business or enterprise.

Similar jobs and working conditions.

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

Similar product or service.

A majority of the same supervisory personnel.

A majority of the same officers and directors.

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

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

DEFINITIONS

Environmental exposure sampling – Sampling of the workplace environment performed for a variety of reasons including identifying contaminants and their sources, determining worker exposures, and checking the effectiveness of controls.

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

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

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

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

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

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

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

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

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

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

DEFINITIONS

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

Filed – A document is considered to have been filed on the date of postmark if mailed, or on the date of receipt, if transmitted by other means to Oregon OSHA, DCBS, or the WCB.

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

Fixed place of employment – The entire facility maintained by an employer at one general location, and operations provided from that facility, 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. Forest activities are excluded as are construction sites established for a period of 24 months or less.

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

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

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

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

Inspection – An official examination of a place of employment by a compliance officer to determine if an employer is in compliance with the Act.

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

(b) Unprogrammed.

(A) Follow-up inspection – An inspection to determine if a previously identified violation has been corrected.

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

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

DEFINITIONS

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

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

Lost workdays – The actual number of days after, but not including, the day of injury or illness when the employee would have worked, but could not perform all or any part of their normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

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

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

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

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

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

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

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.

DEFINITIONS

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

Physician or other licensed health care professional – A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

Place of employment –

(a) Includes every place that is fixed or movable; indoors, outdoors, or underground; and the premises and structures appurtenant thereto.

(b) Includes every place where an employee works or intends to work either temporarily or permanently.

(c) Includes every place where there is 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 their employees or by another person engaged in providing living quarters or shelters for employees.

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

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

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

Recordable occupational injuries or illnesses – Any occupational injuries or illnesses that result in:

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

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

DEFINITIONS

(c) Nonfatal cases without lost workdays that result in transferring to another job or terminating employment, 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 that are reported to the employer but are not classified as fatalities or lost workday cases.

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

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

Scheduling list – An electronic or paper list of places of employment or employers scheduled for inspection.

Serious physical harm:

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

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

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

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

DEFINITIONS

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

Suspended penalty – A penalty that is determined but not assessed.

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

(a) **Permanent** – A variance that remains in effect until modified or revoked according to OAR 437-001-0430;

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

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

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

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

(a) Specific classifications of violations are:

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

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

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

(b) Specific types of the above classifications are:

(A) **Willful violation** – A 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.

DEFINITIONS

(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 will not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, repeat, repeated and repeatedly are used synonymously.

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

(E) Egregious – Those conditions that normally constitute a flagrant violation of the Oregon Safe Employment Act, or Oregon 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 that have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard, or order.

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

(A) To indicate an increase in the severity or probability of the violation, or

(B) Recordkeeping and posting requirements involving the same document, or

(C) The violations are so closely related as to constitute a single hazardous condition.

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

Stats. Implemented: ORS 654.001 through 654.326, 654.412 through .423, 654.991.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OR-OSHA Admin. Order 10-2009, f. 10/5/09, ef. 10/5/09.

AUTHORITY TO ADMINISTER / LIBERAL CONSTRUCTION / USE OF GENDER & NUMBER

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) and 656.726(3).

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 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) and 656.726(3).

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
APD Admin. Order 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 the other gender, the singular includes the plural and the plural includes the singular.

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

Stats. Implemented: ORS 654.001 through 654.295.
Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.

OCCUPATIONAL SAFETY & HEALTH RULES / ADOPTION, AMENDMENT OR REPEAL OF RULES

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, National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), employers, employees, employee representatives and the Division's occupational safety and health experience.

Stat. Auth.: ORS 654.025(2) and 656.726(3).
Stats. Implemented: ORS 654.001 through 654.295.
Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.

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 rulemaking 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 rulemaking proceedings.

**ADOPTION, AMENDMENT OR REPEAL OF RULES /
VOLUNTARY COMPLIANCE PROGRAM, GENERAL /
ENFORCEMENT PROGRAM, GENERAL**

(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) and 656.726(3).

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

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

APD Admin. Order 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 new 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) and 656.726(3).

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

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

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 the 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 catastrophies;

ENFORCEMENT PROGRAM, GENERAL / PRESERVING PHYSICAL EVIDENCE AT THE SCENE OF AN ACCIDENT

- (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) and 656.726(3).
Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

437-001-0053 Preserving Physical Evidence at the Scene of an Accident.

- (1) Employers, their representatives, or others shall not disturb the scene of a fatality or catastrophe other than to conduct the rescue of injured persons or mitigate an imminent danger until authorized by the Administrator (or designee), or directed by a recognized law enforcement agency.
- (2) In order to preserve physical evidence at the scene of a fatality or catastrophe, the Administrator is authorized to limit the number of employer representatives or employee representatives accompanying the compliance officer during the documentation of the scene. The employer representative and employee representative must be provided an opportunity to document the scene prior to disturbance or removal of physical evidence.
- (3) If an employer, their representative or others disturb the scene of a fatality or catastrophe other than to conduct the rescue of injured person(s) or mitigate an imminent danger before authorized by the Administrator or directed by a recognized law enforcement agency, a minimum penalty of \$200 may be assessed.

Stat. Auth.: ORS 654.025(2) and 656.726(3).
Stats. Implemented: ORS 654.001 through 654.295.
Hist: OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.