

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.

PRIORITY OF INSPECTION / SCHEDULING INSPECTIONS

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

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

(2) Fatality, catastrophe or accident – An inspection, if appropriate, should be made as soon as possible after the Division becomes aware of a fatality, catastrophe, or accident.

(3) Complaint – An inspection may be initiated when the Division receives a complaint, based on the nature and credibility of the allegations.

(4) Referral – An inspection may be made if safety or health violations were observed and referred by a Division employee; federal, state, or local government representative, or the media, based on the nature and credibility of the allegations.

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

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

(a) The employer requests removal of a red warning notice.

(b) A variance has been denied.

(c) An extension of time has been denied.

(d) The Division believes the employer may not be in compliance with a previously cited violation, or needs monitoring as they progress towards correction of a violation.

(e) The employer is issued an order for one or more violations that if cited could be considered serious.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Scheduling lists will be provided by the Division to its field offices, at least annually.

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

An employer will be exempt from a programmed inspection of a construction, forest activities or Agriculture Labor Housing site from seven days prior to the scheduled date of an Oregon OSHA consultation to 30 days after receipt of the written consultation report.

(4) Scheduling Safety Inspections for Fixed Places of Employment.

(a) The scheduling lists are compiled, using an electronic scheduling system, for safety enforcement managers to schedule inspections at fixed places of employment for each compliance officer. Written neutral administrative standards (the seven criteria listed below) are standardized using a statistical weighting method involving t-scores. These weighted scores are averaged across the seven criteria to create a composite score. This composite score is used to determine the position of each industry (using the 4-digit NAICS code) on the list from most to least hazardous.

Source type	Data source	Weighting factor
Oregon total case incidence rate	Bureau of Labor Statistics	1.5
Oregon DART rate	Bureau of Labor Statistics	1.5
Federal total case incidence rate	Bureau of Labor Statistics	0.5
Federal DART rate	Bureau of Labor Statistics	0.5
Federal fatal case rate	Census of Fatal occupational injuries	1
Oregon compensable fatality claims rate	Oregon Worker Compensation	1
Oregon accepted disabling claims rate	Oregon Worker Compensation	1

Lists are divided into 10 tiers. Places of employment are randomly selected for inspection within each tier using the following percentages whenever a list is generated. The percentages will not be affected by the places of employment excluded in (4)(b) unless the number of exclusions makes it impossible to meet the target percentage. When that occurs, all remaining eligible places of employment will be selected. The scheduling lists will be sorted by field office.

(A) 30 percent of places of employment under the NAICS identified as Tier A.

(B) 25 percent of places of employment under the NAICS identified as Tier B.

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- (C) 20 percent of places of employment under the NAICS identified as Tier C.
- (D) 15 percent of places of employment under the NAICS identified as Tier D.
- (E) 12.5 percent of places of employment under the NAICS identified as Tier E.
- (F) 10 percent of places of employment under the NAICS identified as Tier F.
- (G) 7.5 percent of places of employment under the NAICS identified as Tier G.
- (H) 5 percent of places of employment under the NAICS identified as Tier H.
- (I) 2.5 percent of places of employment under the NAICS identified as Tier I.
- (J) No more than 0.05 percent of places of employment under the NAICS not otherwise identified in Tiers A through I.

(b) Places of employment will be exempt from programmed inspections if any of the following conditions apply:

- (A) A location has received a comprehensive safety inspection within the previous 36 months.
- (B) A location has received Voluntary Protection Program (VPP) status.
- (C) A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).
- (D) A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.
- (E) A location has received two consecutive comprehensive safety inspections with no serious, willful, or egregious violations, and with no inspections of any type resulting in serious, willful, or egregious violations since the date of the first of the two consecutive comprehensive inspections.
- (F) A location has received certification as meeting the British Standards Institute's OHSAS 18001 standards (Occupational Health and Safety Management Systems). Evidence of certification must be provided before the start of an inspection.
- (G) A location has a MOD rate of 0.50 and they provide evidence to that effect before the start of an inspection.

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

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(5) Scheduling Safety Inspections for Construction and Forest Activities.

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

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

(B) Forest Activities List – The following written neutral administrative standards will be used to select and rank employers on this list. Forest activities employers that have one or more accepted disabling claims in the first 12 of the previous 18 months and are ranked in the top 50 forest activities employers. The employers on this list will be ranked statewide using violation history, weighted claims rate, and weighted claims count as described in subsection (b) of this section. The 50 employers with the most points will be placed on a list.

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

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

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

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

NOTE: The selected claims and the points assigned to the selected claims will be identified by the agency in a program directive.

(c) The field office manager will provide selected compliance officers the construction and/or forest activities lists. The compliance officers will make a reasonable effort to locate and inspect those employers on the construction and forest activities lists, however failure to inspect all employers on a list will not invalidate subsequent inspections.

(6) Scheduling Health Inspections of Fixed Places of Employment.

(a) The scheduling lists are designed as an electronic scheduling system used by health enforcement managers to schedule inspections at fixed places of employment for each compliance officer. Places of employment will be listed by NAICS and randomly selected within each tier using the following percentages whenever a list is generated. The scheduling lists will be sorted by field office.

(A) 7.5 percent of places of employment under the NAICS identified as Tier A.

(B) 2.5 percent of places of employment under the NAICS identified as Tier B.

(C) Not more than 0.05 percent of places of employment under NAICS not identified in Tiers A and B.

(b) Places of employment will be exempt from programmed inspections if any of the following conditions apply:

(A) A location has received a comprehensive health inspection within the previous 36 months.

(B) A location has received Voluntary Protection Program (VPP) status.

(C) A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).

(D) A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.

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

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(F) A location has received certification as meeting the British Standards Institute's OHSAS 18001 standards (Occupation Health and Safety Management Systems). Evidence of certification must be provided before the start of an inspection.

(G) A location has a MOD rate of 0.50 and they provide evidence to that effect before the start of an inspection.

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

(7) Scheduling Health Inspections for Nonfixed Places of Employment – An inspection may be scheduled from information such as recognized health hazards known to be associated with certain processes are reasonably thought to exist at a place of employment

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

(9) Emphasis Inspections – An inspection may be made if the place of employment is included in a national or local safety or health emphasis program. Emphasis programs are established by identifying the most hazardous industries and processes through information obtained from the Department of Consumer and Business Services claim files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, the Oregon Employment Department, and knowledge of recognized hazards associated with certain processes. Program directives will be issued to establish and describe emphasis programs and the written neutral administrative standards that will be used to schedule the inspections.

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

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

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

- (a)** A valid complaint has been filed according to ORS 654.062, or
- (b)** Within the preceding two year period, an accident at the employer's agricultural resulted in death a serious or disabling injury from a violation of the Oregon Safe Employment Act or rule adopted under the act, or
- (c)** The employer and principal supervisors of the agricultural establishment have not annually completed at least four hours of instruction on agricultural safety or health rules and procedures. This instruction must be documented.

(A) Instruction includes any instruction conducted or accepted by Oregon OSHA or instruction related to agricultural safety and health that is offered or approved by any public or private college, university, or governmental agency. The employer must maintain documentation of the instruction. The documentation must include the date, provider, subject, and duration of the instruction, and the signature of the person completing the instruction.

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

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

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

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

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

HEALTH INSPECTIONS FOR FIXED PLACES OF EMPLOYMENT

(13) Evaluation of Enforcement Scheduling:

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

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

NOTE: See [Safety by NAICS](#), [Safety by Tier/Rank](#), [Health by NAICS](#), to review safety and health scheduling lists of employers identified by NAICS codes and their placement in appropriate tiers. These supplementary documents are available at the above links and on our web site at www.orosha.org then Rules/Compliance, Final Rules, Division 1, following 437-001-0057.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

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

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

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

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

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

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

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

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

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

OR-OSHA Admin. Order 2-2011, f. 9/29/11, ef. 10/1/11.

437-001-0060 Advance Notice.

- (1) No person shall give advance notice of an inspection without authority of the Director, subject to penalties as prescribed 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 6 months, or both, as prescribed in ORS 654.991(2).

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.

437-001-0065 Right of Entry.

- (1) A Compliance Officer 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) **Right of Entry.** A compliance officer is authorized to document an accident scene reported pursuant to OAR 437-001-0700(21) prior to an opening conference when it is likely that the accident scene cannot be preserved and after a reasonable attempt is made to contact an employer or employer representative.
- (3) A Compliance Officer shall present his/her credentials to an employer or employer's representative to establish the Compliance Officer's right of entry.

RIGHT OF ENTRY / INSPECTION WARRANTS / OPENING CONFERENCE

(4) The Compliance Officer shall not sign any form of liability release or agree to waive any rights of the Department.

(5) The Compliance Officer shall have the right to enter and inspect any place of employment accompanied or assisted by outside engineers or specialists who have signed confidentiality agreements, agreeing to protect the inspected parties' trade secrets.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

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

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

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

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

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

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

437-001-0070 Inspection Warrants. If a Compliance Officer is denied entry, the OR-OSHA Division may institute action to obtain an inspection warrant, as provided for in ORS 654.202 to 654.216.

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.

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.

437-001-0075 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) Obtain the name of the employee representative, if any, and give that person the opportunity to accompany the Compliance Officer on the inspection;

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

(g) Determine if there are trade secrets to be protected;

(h) Inform the employer that sampling may be done and photographs may be taken;

OPENING CONFERENCE / INSPECTION WITHOUT EMPLOYER OR EMPLOYER REPRESENTATIVE

(i) 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.

(j) Determine what personal protective equipment is required in the place of employment and arrange to have and use such equipment; and

(k) 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) 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.

437-001-0080 Inspection Without Employer or Employer Representative.

(1) A 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) 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.

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.

EMPLOYEE REPRESENTATION ON INSPECTION TEAM / INSPECTION PROCEDURES

437-001-0085 Employee Representation on Inspection Team.

- (1) An employee representative has the right to accompany a 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) 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.
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.

437-001-0090 Inspection Procedures. During an inspection a Compliance Officer is authorized to:

- (1) Inspect without unreasonably disrupting operations in a place of employment all required records, conditions, structures, machines, 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 employer and 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;

INSPECTION PROCEDURES / RED WARNING NOTICE

- (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 employees and correct the imminent danger, and post a Red Warning Notice according to OAR 437-001-0096, if the employer or the employer representative refuses to protect the employees from the imminent danger.

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.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.

437-001-0096 Red Warning Notice.

- (1) The Red Warning Notice shall be authorized by either the Director, Administrator, Manager of Enforcement, or Field Office Supervisors. For purposes of this rule, a Camp Closure Notice is a Red Warning Notice.
- (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

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(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 OAR 437-001-0096(3) or (4) shall be assessed a civil penalty of not less than \$100 and not more than \$5000 for each such violation.

(7) Any employer who violates or directs an employee to violate OAR 437-001-0096(3), 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) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

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

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

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

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

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

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

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

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

437-001-0099 Closing Conference.

(1) The Compliance Officer 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);

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- (j) Of appeal rights contained in ORS 654.078 and OAR 438-85-006 to 438-85-870;
- (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 437-001-0460);
- (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) 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.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.