

Oregon OSHA – Adopted Changes

Penalties and other rules in Division 1, General Administrative Rules

Oregon OSHA Administrative Order 2-2012, adopted May 11, 2012, effective July 1, 2012

Text removed is in [~~brackets with line through~~].

Text added is in **bold and underlined**.

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 – **Any supervisor or person in charge or control of the work or place of employment including, but not limited to, any manager, superintendent, foreperson, or lead worker.** [~~The manager, superintendent, foreperson, or other person in charge or control of all or part of the place of employment.~~]

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~~]**Oregon OSHA**, 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~~]**Oregon OSHA** 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~~]**Oregon OSHA** employee [~~whose responsibility is to conduct~~]**responsible for conducting** inspections or investigations;~~[to identify]~~ **identifying** possible violations and hazards;~~[and to propose]~~ **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~~[s]~~ 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.

Consultant – A designated [Division]**Oregon OSHA** 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]**Oregon OSHA** 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:

- (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.

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).

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.

(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.

Order to correct – A written ~~Division~~ **Oregon OSHA** 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.

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

(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 an **Oregon OSHA**~~[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.

~~[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.]~~

Substantially similar – As it relates to a repeat violation, a second violation that is closely related in substance or form to a previous violation.

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

Variance – The written authority given by ~~[the Division]~~ **Oregon OSHA** 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.

(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 ~~[of the requirements of the same statute, regulation, rule, standard, or order]~~ violation involving a substantially similar violation as the earlier violation or violations.

~~[(ii) Subsequent violations will not be considered to be a repeat when more than 36 months have elapsed and the violation has not recurred.]~~

(ii~~[i]~~) 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.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

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;
- (i) Explain that **past and present efforts will be evaluated to determine good faith penalty adjustments**~~[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~~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 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0145 Penalty for Other than Serious or Serious Violation.

(1) A penalty ~~must~~^{shall} be assessed for any serious violation and may be assessed for any other than serious violation ~~[by considering the penalty]~~ as 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.

PENALTY TABLE 1

PROBABILITY	SEVERITY	PROBABILITY	SEVERITY	
	OTHER THAN SERIOUS		SERIOUS	
			SERIOUS PHYSICAL HARM	DEATH
LOW	0	LOW	\$300	\$2,100 [1,500]
HIGH	\$300	MEDIUM	\$500	\$3,500 [2,500]
		HIGH	\$1,250	\$7,000 [5,000]

(2) Penalty adjustments will be made based on an employer's size for all violations except failure to correct. Additional adjustments for an employer's compliance history, injury and illness history, demonstrated good faith efforts and corrective action taken at the time of the inspection will be determined by the Compliance Officer and assessed as follows:

(a) Size adjustments – based on state wide peak employment

SIZE TABLE 2

<u>Number of employees</u>	<u>Percent reduction</u>
<u>1-25</u>	<u>60</u>
<u>26-90</u>	<u>40</u>
<u>91-130</u>	<u>30</u>
<u>131-175</u>	<u>20</u>
<u>176-250</u>	<u>10</u>
<u>251 or more</u>	<u>No adjustment</u>

(b) History adjustments will be based on injuries and illnesses (and trends) during the previous three years, including available information from both Workers' Compensation data and Bureau of Labor Statistics. This assessment will also include a review of the employer's violation history within the past 3 years. Adjustments will be made as follows:

- 10% reduction if the compliance officer determines that the information demonstrates a positive history overall.
- No reduction if the compliance officer determines that history is what would be expected of a typical employer.
- 10% increase if the compliance officer determines that the information demonstrates a negative history overall.

(c) Good faith adjustments will be determined by, but not limited to, review of certain criteria as follows:

- Evidence of an overall safety and health program.
- Effective communication of safety and health policies.
- Promotion of safety and health prior to the inspection.
- Employees are clearly involved in the safety and health program.
- Management's commitment at all levels is apparent.
- Worksite hazard analysis is conducted.
- Employees and managers alike are held accountable for safety and health.

Adjustments will be made as follows:

- 20% reduction in penalties if the compliance officer determines that the information demonstrates a better than average effort to comply with the law and rules.
- No adjustment if the compliance officer determines that the information demonstrates an employer's good faith effort is at the norm.
- May increase penalties by 20% if the compliance officer determines that the information demonstrates a poorer than normal effort to comply with the law and rules.

(d) A 10% reduction will be provided for immediate corrections of violations or other unsafe conditions identified during the inspection provided that such corrective action is substantial and not temporary or superficial.

~~[(2) Penalty adjustments may be made based upon the employer's previous calendar year's 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 percent 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 nonfixed places the lost workday cases incidence rate is based upon the employer's rate statewide.

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

(c) A penalty reduction of 10 percent 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) Penalty adjustments, except for size, will not be applied to repeat violations, willful violations or to any violation which the compliance officer determines contributed to an injury, illness or death of an employee. Adjustments will not reduce the penalty to less than the mandatory minimum penalty which has been established by rule or statute or increase them beyond the maximum penalty established by statute.

(4[3]) The adjusted penalty for a serious violation will not be less than \$100.

(5[4]) [The p]Penalties[y] for combined violations [of the same rule shall]will 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.]**taking the number of violations into account when assessing probability. Severity will be determined by identifying the most severe reasonably predictable injury or illness that could occur.**

(6[5]) The penalty for grouped violations of different rules is[shall be] calculated by determining the probability and severity for the entire group.

(7[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) and 656.726([3]4).

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.

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. 9-20-84, ef. 11-1-84.

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.

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 7-1995, f. 7/5/95, ef. 7/5/95.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0160 Penalty Criteria – Repeat Violation. Oregon OSHA will [assess penalties for]**identify** repeat violations as follows:

(1) An employer's second or subsequent violation involving a substantially similar violation, cited within the previous three years, will be cited as a repeat violation as described below.

(2) When citing an identical standard for a violation of a previously cited statute, regulation, rule, standard or order it will be presumed to be a repeat violation. That presumption can be disproven only if the circumstances clearly demonstrate that the violation is not substantially similar to a previously cited violation.

Example: Previously a citation was issued for a violation of 1910.212(a)(1) for not guarding in-going nip points. A recent inspection of the same establishment revealed a citation of 1910.212(a)(1) for not guarding against flying chips and sparks. Although the same standard was cited, the hazardous conditions are clearly not substantially similar and a repeat violation would not be appropriate.

(3) When citing a different standard, in some circumstances, substantially similar conditions can be demonstrated. In such cases, if the violations found are substantially similar a repeat violation would be appropriate even though the standards are different.

Example #1: Previously a citation was issued for a failure to install appropriate scaffold guardrails under the Division 3 Construction standards. A recent inspection of the same employer found a violation for a failure to install appropriate scaffold guardrails, but this time the operation involved activities covered by the Division 2 General Industry standard. Although two different standards are cited, the violations are substantially similar and would therefore be treated as a repeat.

Example #2: Previously a citation was issued for failure to have a respirator program in a Division 2 General Industry situation where exposure to asbestos would require one. A recent inspection of the same employer found a violation for not requiring employees to wear respirators while performing lead related tasks in the Lead, Division 3 Construction standard that requires respiratory protection. Although two different standards are cited, the violations are substantially similar and would therefore be treated as a repeat.

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

~~(4[2])~~ Where a previously cited violation is under appeal and not yet final:

~~(a)~~ The second violation will be cited as a repeat violation; and

~~(b)~~ Such citation will state that the earlier violation is under appeal and the repeat classification of the current violation will be rescinded if the earlier violation does not become final.

~~(5[3])~~ 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.

~~(6[4]) [For employers a]~~At nonfixed places of employment, repeat violations will be based on earlier violations occurring anywhere within the state. **Where the Administrator, or designee, determines in his or her discretion that the span of control and nature of activity for a portion of the state is more readily comparable to fixed location activity, repeat violations will be handled in a manner consistent with fixed places of employment.**

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 7-1988, f. 6-17-88, ef. 7-1-74.
 APD Admin. Order 7-1989, f. 5-1-89, ef. 5-1-89 (temp).
 APD Admin. Order 10-1989, f. 7-7-89, ef. 7-7-89 (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 2-2009, f. 1/27/09, ef. 2/3/09.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0165 Determination of Penalty – Repeat Violation.

(1) The penalty for a repeat violation **will be calculated**~~[shall be computed]~~ by multiplying the penalty for the current violation by the following factors:

Penalties for Repeat Violations	
1 st repeat	X 2
2 nd repeat	X 5
3 rd repeat	X 10
4 th repeat	<u>X 15</u> [Discretion of Administrator]
<u>5th repeat</u>	<u>X 20</u>
<u>Additional repeats</u>	<u>Discretion of Administrator</u>

(2) The total penalty for a repeat violation **will not be**~~[shall be not]~~ less than \$200, nor more than **the statutory maximum of** \$70,000.

(3) For a repeated other than serious violation that otherwise would have no initial penalty, a penalty of \$200 **will**~~[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) and 656.726(~~3~~4).
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 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 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 7-1988, f. 6-17-88, ef. 7-1-74.
 APD Admin. Order 7-1989, f. 5-1-89, ef. 5-1-89 (temp).
 APD Admin. Order 10-1989, f. 7-7-89, ef. 7-7-89 (perm).
 OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

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, or more than \$70,000. **The base penalty will normally be**

multiplied by 25. For egregious violations, the Administrator may assess a separate penalty for each instance of a violation.

Stat. Auth.: ORS 654.025(2) and 656.726([3]4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: 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 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0230 Correction of Violation.

(1) The employer **must**~~shall~~ correct any violation the employer has been ordered to correct except when:

(a) **The abatement date of an other than serious** ~~[A general]~~ violation has been appealed;

(b) 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) and 656.726([3]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 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 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0255 **Requesting an Appeal and an** Informal Conference.

(1) **In order to appeal a citation, a written request for appeal must be filed with the Department of Consumer and Business Services and must be directed to the Oregon Occupational Safety and Health Division at 350 Winter ST NE, Room 430, Salem, Oregon 97310, or with any permanently staffed office of the Workers' Compensation Board or Oregon OSHA. The appeal must be filed within 30 days of receiving a citation, notice or order, if the employer intends to contest any proposed assessment of civil penalty, the time fixed for correction of a violation or the violative condition cited. The request must clearly state the item(s) to be contested. An employee appeal of the time fixed for correction of a violation must also be filed within 30 days of the employer's receipt of the citation, notice or order.**~~[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]~~**requested by either the employer or employee and used to discuss informally with Oregon OSHA any matter affecting occupational safety and health in the place of employment including, but not limited 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 settlement agreement **with an employer** to resolve disputed citations **that have not become a final order**. Notwithstanding any other rule in this division, proposed civil penalties may be reduced as part of a settlement agreement resolving disputed claims.

(3) A request for an informal conference alone will not be considered as an appeal to the Workers' Compensation Board (although the same document may both request an informal conference and serve notice of an appeal, provided that it includes the required elements). An informal conference concerning a citation ~~will~~^{shall} not extend the 30 days allowed for filing an appeal with the Board.

(4) Informal conferences scheduled to negotiate settlement agreements require that the employer notify employees or their representatives of the opportunity to attend. ~~[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.]~~

(5) When both a request for an informal conference and an appeal have been submitted, the appeal request will be forwarded to the Workers' Compensation Board to be scheduled for a formal hearing if issues are not resolved at the informal conference.

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~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.
 APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

~~[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) 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.]~~

437-001-0400 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 **Oregon OSHA**~~[the Division]~~; or
- (b) In any written form that includes all information required by OAR 437-001-0400(2) and (3).

(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);
- (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, **Oregon** ~~[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 **must**~~[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 will~~shall~~ be funded adequately; and
- (g) Assurances that **Oregon OSHA**~~the Division~~ will~~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 must~~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) and 656.726(~~3~~4).

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;
 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 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

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) **Must**~~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, **or designee, will** ~~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 **will**~~shall~~ be sent to the employer. The employer **must**~~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 **will**~~shall~~ be published in the manner required by OAR 437-001-0410(1).

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

(6) An interim order or a written denial **must**~~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) and 656.726(~~3~~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 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

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, **Oregon OSHA will**~~the Division shall~~ publish the request for one day in at least one daily newspaper with general circulation throughout Oregon. The notice **will**~~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 **Oregon OSHA's**~~the Division's~~ decision on the variance application; and

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

(2) **Oregon OSHA**~~[The Division]~~ may conduct an on-site review of the equipment or processes involved in the requested variance.

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

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~4).

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 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 4-1981, f. 5-22-81, ef. 7-1-81.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0411 Hearings for Variance Applications. Affected employers or employees **will**~~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 **30**~~[20]~~ days of publication of the application;

(b) A request must be made to **Oregon OSHA**~~[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) **An**~~N~~ notice of hearing **will**~~shall~~ be given ~~[by the Administrator]~~ to affected persons **that**~~and shall~~ contains:

(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 **will**~~shall~~ be conducted ~~[by the Administrator]~~ in a manner **that**~~which~~ will allow all affected persons to submit information on the application.

(4) ~~[The Administrator shall evaluate a]~~ **All** information submitted **will be evaluated** at the hearing and ~~[make]~~ a determination **made on**~~[in]~~ the merits of the application.

Stat. Auth.: ORS 654.025(2) and 656.726(~~3~~4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0415 Criteria for Variance Approval.

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

(2) An application for a temporary variance will be granted only if the applicant demonstrates, and **Oregon OSHA**~~the Division~~ determines, ~~which includes the~~**including** 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 ~~will~~**shall** be granted only if the applicant demonstrates, and **Oregon OSHA**~~the Division~~ determines, ~~which includes the~~**including** 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) and 656.726(~~3~~**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 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0420 Decision on Variance Request.

(1) If a variance is granted, an order of variance ~~will~~**shall** be issued. The order **will include**~~shall~~:

- (a) ~~State~~**t**The name of the employer to whom the variance is granted;
- (b) ~~Identify~~**t**The place of employment **where**~~at which~~ the variance is applicable;
- (c) ~~State~~**t**The type of variance granted;
- (d) ~~State~~**t**The specific rule to which the variance applies;
- (e) ~~Describe~~**t**The alternative methods or safeguards to be used by the employer while the variance is in effect;
- (f) ~~Advise~~**Notice** that the employer may be cited for any violation of the conditions established by the variance;
- (g) **Information of** ~~affected~~employees' ~~of their~~ right to appeal the variance decision; and

(h) **Information** ~~[affected persons]~~ that if no appeal is filed within **30**~~[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 **will**~~[shall]~~ be issued. The notice **will include**~~[shall]~~:

(a) ~~[Give t]~~**The** reasons for the denial;

(b) ~~[Notify the e]~~**E**mployer and employee ~~[of their]~~appeal rights;

(c) **Information** ~~[affected persons]~~ that if no appeal is filed within **30**~~[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]~~**Information advising** the employer that a compliance inspection may 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, may be followed by a compliance inspection within 30 days.

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 4-1981, f. 5-22-81, ef. 7-1-81.

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

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

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

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

(1) A variance may be modified or revoked after it has been in effect 6 months or longer upon:

(a) **Receiving a r**~~[R]~~request from the employer, an affected employee or an employee representative ~~[which may be in writing, the request shall]~~**containing**:

(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, **they must provide a copy of the application** ~~[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) **An Oregon OSHA**~~[Division]~~ review.

(2) **Oregon OSHA will post the proposed modifications or revocations on the Oregon OSHA web site at www.orosha.org for 30 days.** ~~[The Division shall publish the proposed modification or revocation for one day in at least one daily newspaper with general circulation throughout Oregon. Exception: A revocation based on a company being out of business or no longer needed does not need to be published.]~~ The **posting**~~[notice]~~ will 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 **will**~~[shall]~~ be made within 20 days of publication;

(e) Information on how interested persons may learn of **Oregon OSHA's**~~[the Division's]~~ decision on the variance; and

(f) The address of the **Oregon OSHA**~~[Division]~~ office from which further information may be obtained.

(3) **Oregon OSHA**~~[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 **will**~~[shall]~~ be advised in writing of modification or revocation of the variance. The modification or revocation order **will**~~[shall]~~ include:

(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 will~~[shall]~~ be made within 30~~[29]~~ days of publication and must~~[shall]~~ include a short and plain statement of:

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

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

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.

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

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

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

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 will~~[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 will~~[shall]~~ consider the federal variance as a possible defense against the citation.

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

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

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

437-001-0760 Rules for all Workplaces.

(1) Employers' Responsibilities.

(a) The employer must see that workers are properly instructed and supervised in the safe operation of any machinery, tools, equipment, process, or practice that they are authorized to use or apply. This rule does not require a supervisor on every part of an operation nor prohibit workers from working alone.

(b) The employer must~~[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 ~~is~~**shall be** responsible for providing the health hazard control measures necessary to protect the employees' health from harmful or hazardous conditions and for maintaining such control measures in good working order and in use.

(d) Every employer ~~must~~**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.

(e) **Every agent of the employer is responsible for:**~~[Any supervisors or persons in charge of work are the agents of the employer in the discharge of their authorized duties, and are responsible for:]~~

(A) The safe performance of the work under **the agent's**~~[their]~~ supervision **or control**; ~~and~~

(B) The safe conduct of **all employees**~~[the crew]~~ under **the agent's**~~[their]~~ supervision **or control**; ~~and~~

(C) The safety of all **employees working**~~[workers]~~ under **the agent's**~~[their]~~ supervision **or control**.

(2) Employees' Responsibilities.

(a) Employees ~~must~~**shall** conduct their work in compliance with the safety rules contained in this code.

(b) All injuries ~~must~~**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 ~~is the~~**shall be a** worker's responsibility to abide by and perform the following requirements:

(A) A worker ~~must~~**shall** not operate a machine unless guard or method of guarding is in good condition, working order, in place, and operative.

(B) A worker ~~must~~**shall** stop the machine or moving parts and properly tagout or lockout 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 **must[shall]** not remove guards or render methods of guarding inoperative except for the purpose of adjustment, oiling, repair, or the setting up a new job.

(D) Workers **must[shall]** report to their supervisor any guard or method of guarding that is not properly adjusted or not accomplishing its intended function.

(E) Workers **must[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) Workers **must[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 **must[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 **must[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 must 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 **must[shall]** not work in unprotected, exposed, hazardous areas under floor openings.

(g) Long or unwieldy articles **must[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 **must[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 **must[shall]** be warned of the danger.

(j) Before leaving a job, workers **must[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 **must[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 **must[shall]** promptly install any safeguard or take any corrective measure indicated or found advisable.

(b) At the request of authorized Department representatives, it **is[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 **must[shall]** preserve and mark for identification, materials, tools or equipment necessary to the proper investigation of an accident.

(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 **must[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 a 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 **must[shall]** be discontinued while such abnormal conditions exist, or until adequate safety of workers is ensured.

(7) Inspections.

(a) All places of employment **must[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 **must[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, **must[shall]** be kept.

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

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB No. 1-1967, f. 1/12/67, ef. 1/15/67.

WCB No. 3-1975, f. 10/6/75, ef. 11/1/75.

WCB Admin. Order, Safety 11-1976, f. 5/5/76, ef. 5/5/76.

WCB Admin. Order, Safety 15-1976, f. 7/6/76, ef. 8/1/76.

WCD Admin. Order, Safety 10-1982, f. 7/30/82, ef. 7/30/82.

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

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

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.