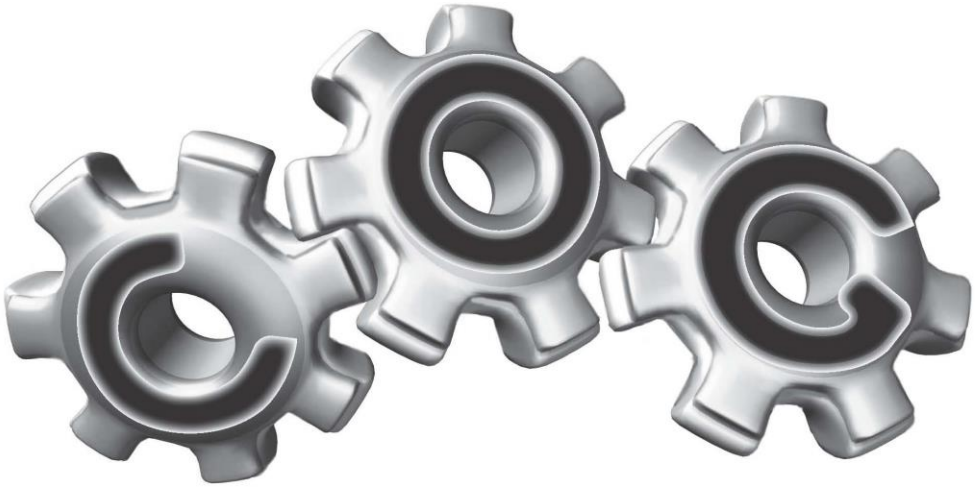
Oregon OSHA FIRM



Compliance Officer's Guide

January 2016

Oregon OSHA FIRM
Compliance Officer's Guide
(COG)

DISCLAIMER

This Field Inspection Reference Manual (FIRM) or the Compliance Officer's Guide (COG) is intended to provide instruction regarding some of the internal operations of the Oregon Occupational Safety and Health Division (Oregon OSHA), and is solely for the benefit of the State of Oregon Government. No duties, rights, or benefits, substantive or procedural, are created or implied by this manual. The contents of this manual are not enforceable by any person or entity against the Department of Consumer and Business Services.

BACKGROUND

The FIRM was originally issued by Federal OSHA September of 1994 replacing most of the previous Field Operations Manual (FOM). Since that time, Oregon OSHA has revised its own version of the FIRM once in 2003. This revision incorporates and replaces the 2003 Oregon FIRM, and is designed to be updated on a regular basis by amending chapters or sections as necessary. It provides the field staff a reference document for identifying the responsibilities associated with the majority of their inspection duties.

The Oregon OSHA FIRM or COG implements the Federal Field Operations Manual (FOM), instruction CPL 02-00-148 (effective November 9. 2009), that replaced Federal OSHA's Field Inspection Reference Manual (FIRM), instruction CPL 02-00-103, issued September 26, 1994.

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Compliance Officer's Guide
(COG)

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CHAPTER 1

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I. Oregon OSHA's Mission

In 1971, the federal Occupational Safety and Health Act of 1970 (OSHA) became part of national labor law. Two years later, Oregon passed its own occupational safety and health legislation, the Oregon Safe Employment Act (OSEAct). The OSEAct authorized Oregon OSHA to enforce the state's workplace safety and health rules under a state-plan agreement with federal OSHA. Oregon OSHA's mission is to advance and improve workplace safety and health for all workers in Oregon. This is accomplished by promulgating and enforcing standards and regulations; providing education, training, and outreach; establishing partnerships; developing comprehensive safety and health management systems; and encouraging continual improvement in workplace safety and health.

II. Oregon OSHA Sections

Oregon OSHA is divided into the following sections based on areas of responsibility:

- **Administration & Administrative Support** – Provides leadership in planning, policy making, inter-program and public communication and stakeholder outreach. Provides legislative, media and intergovernmental liaison for the division. Provides enforcement support for field operations and the public. Provides budgeting, accounting, federal grant, purchasing, and computer services for the division. (Org Chart)

- **Appeals** – Processes appealed citations, conducts informal conferences, interpret standards, and negotiate settlements agreements. The Appeals Section coordinates with other Oregon OSHA sections, the Oregon Department of Justice (DOJ), and the Workers' Compensation Board as necessary (WCB).

- **Consultation** – The goal of consultation is to assist Oregon employers in implementing and maintaining effective safety and health programs to ultimately become self-sufficient in managing their programs. This is done by providing no-cost safety, health, and ergonomic assessments. Consultations must be requested by the employer or the employer's representative. All information related to an on-site visit is kept confidential from Oregon OSHA enforcement.

- **Enforcement** –Oregon OSHA compliance safety/health officers (CSHOs) are designated Division employees whose responsibility is to conduct inspections and investigations by using a balanced approach to identify potential workplace hazards and violations, propose

citations, penalties and correction dates, and assist employers and employees with information to correct hazards and violations. CSHOs represent Oregon OSHA to the public as they enforce occupational safety and health regulations under the guidance of their field enforcement managers.

- **The Lab** – The Oregon OSHA Occupational Health Lab is an American Industrial Hygiene Association accredited lab. Samples submitted to the lab by Oregon OSHA field staff are analyzed to evaluate employee exposure to chemicals, hazardous substances and materials throughout the state of Oregon. The lab staff maintains and calibrates the equipment used by the field staff, and is available to assist field staff in developing sampling strategies.

- **Policy** – Sets the overarching policy direction in collaboration with the other sections primarily through the mechanism of the Policy Group. Federal liaison activities, the internal and external web posting and maintenance activities, ergonomic outreach, and graphic arts are also functions within the policy group.

- **Public Education and Conferences –** Provides opportunities for employers and employees to increase their knowledge and self-sufficiency of safety and health practices and programs through business workshops, on-site speaker presentations, and online classes. Oregon OSHA also co-sponsors statewide educational conferences. These conferences provide opportunities for workers and employers to share ideas about occupational safety and health with local experts and nationally recognized professionals.

- **Records Management Unit (RMU) & Citation Processing Unit (CPU)** – These two units work together to ensure citations are issued to the correct legal entity and employer name. RMU assists internal staff with adding, verifying, and/or updating employer information to the records. They process all records requests for copies of inspection, complaint, referral, and non-inspected accident files. CPU processes and issues all citations, and as necessary, reissues or amends them.

- **Resource Center** – Your source for workplace safety and health information. The only library in Oregon specializing in health and safety in the workplace. Books, journals, consensus standards, videos and DVDs can be checked out by any employer or worker in Oregon. A skilled research assistant is available to answer questions.

- **Staff Education** – Provides professional development opportunities for Oregon OSHA staff to assist in the development of the knowledge and skills needed to effectively perform their work and develop career potential.

- **Standards & Technical Resources** – Generally referred to as "Technical," this section is responsible for developing, interpreting, and publishing Oregon's workplace safety and health standards. Staff is available to assist the field staff with assistance on complex hazard assessments and abatement issues. This section also produces guidebooks, pamphlets, and other materials to help employers achieve safer and healthier workplaces. (Whom to call in Technical)

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III. Oregon OSHA Scholarship and Grant Programs

Workers' Memorial Scholarship Program

In cooperation with the Oregon Student Assistance Commission the Division administers a Workers Memorial Scholarship to assist spouses and dependents of fatally injured or permanently and totally disabled Oregon workers to further their higher education.

Occupational Safety & Health Training and Education Grant Program

The Division administers the Education and Training Grant Program to encourage the development of innovative, proactive occupational safety and health training and educational products and services usable by an entire industry or specific work processes.

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IV. Oregon OSHA Cooperative Programs

Oregon OSHA offers a number of services for businesses and organizations to work cooperatively with the agency. These services include on-site consultations that focus on safety, health, or ergonomic issues; and safety and health management program evaluation. Some consultations are comprehensive in scope, while others are limited to a specific request by an employer. During the specific consultations, consultants should take the opportunity to explain the benefits of a higher level of assistance, including safety and health program reviews. CSHO's should also discuss the various cooperative programs with employers.

Safety and Health Achievement Recognition Program (SHARP)

SHARP is designed to provide support and incentives to those employers that implement and continuously improve effective safety and health management system(s) at their worksite. The SHARP program provides and encourages:

- Self-sufficiency in safety and health management.
- Recognition of safety and health efforts of employers and employees.
- Incentives and road maps for Oregon employers to work with their employees to find and correct hazards.
- Methods for developing and implementing effective safety and health programs.
- Assistance to employers in successfully incorporating safety and health management principles into their workplaces.

SHARP approvals are for a period of one year. Continued participation in the program is achieved through an annual renewal process. Following their first successful year in SHARP and

approval for a second year, SHARP participants are exempt from an Oregon OSHA scheduled inspection. This exemption excludes imminent danger situations, fatality/catastrophe, formal complaints, or other critical inspections as determined by the Administrator.

Companies may remain in SHARP for up to five years before graduating. Employers who successfully graduate from SHARP are granted 36 months of exemption from a scheduled inspection.

Voluntary Protection Program (VPP)

VVP is a program designed to recognize and promote effective safety and health management systems. Hallmarks of the program include 1) management and labor working together to demonstrate the principles for creating a safe and healthy workplace, and 2) development and implementation of an exemplary safety and health management system. The Oregon OSHA VPP program manager must inform the applicable field enforcement manager of VPP applicants and the status of participants in the VPP. This will prevent unnecessary scheduling of programmed inspections at VPP sites and ensure the efficient use of division resources. Information to be shared with enforcement includes:

- Notification of inspection exemptions for approved VPP sites.
- Requests to remove a site from the programmed inspection list for no more than 75 days prior to on-site evaluations.
- Any date of withdrawal or termination from VPP with instructions to return the site to the programmed inspection list.

Upon receipt of a complaint or a referral from anyone other than the Oregon VPP on-site team, or notification of a fatality, catastrophe, or other event requiring an enforcement inspection at a VPP site, the field enforcement manager is to initiate the inspection process following normal Oregon OSHA procedures. The field enforcement manager must immediately notify the VPP program manager of any event that triggers enforcement activity at a VPP site. The scope of the inspection will be limited to the specific issue of the unprogrammed activity. If citations are issued as a result of the inspection, a copy of the citation will be sent to the VPP program manager with a copy of the report.

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Oregon OSHA Partnerships

Organizations can enter into partnerships with Oregon OSHA to address specific safety and health issues. Participants include Oregon Utility Safety Committee (OUSC), Oregon Fire Chiefs Association (OFCA), and Mt Hood Community College. Environmental Safety and Health Program advantages to these partnerships include:

- Extended, voluntary, cooperative relationships that may include groups of employers, employees, sector-specific groups, advisory groups, stakeholder groups and other state agencies.
- Encouragement, assistance and recognition of efforts to eliminate serious workplace hazards.
- Achievement of a higher level of employee safety and health.
- Signed agreements to focus on specific initiatives.

Alliance Program

Oregon OSHA establishes alliances with groups committed to safety and health, including businesses, trade, or professional organizations such as Employment, Education and Outreach (EMPLEO), Oregon Restaurant Association (ORA), Oregon Home Builder's Association (OHBA), Oregon Coalition for Healthcare Ergonomics (OCHE), unions, and educational institutions through the Alliance Program to:

- Combine resources and expertise to develop informational resources.
- Share information with employers and employees to help prevent injuries, illnesses, and fatalities in the workplace.
- Establish formal agreements with goals that address training and education, outreach and communication, and promote a national dialogue on workplace safety and health.

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V. Small Business Exemption

Appropriations Act (Byron Rider)

In providing funding for Federal OSHA, Congress has placed restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries.

Although Congress exempted small businesses in certain NAICs categories from scheduled safety inspections, Oregon OSHA conducts inspections of these employers using only state funds. Accordingly, Oregon OSHA will conduct inspections of Byron exempt firms as follows:

- **Safety inspections** – Any regularly scheduled inspection of a firm employing ten or fewer employees and whose NAICs is included under the Byron exemption may be conducted and such activity will be funded with 100 percent state funds. Enter code N-09-100% in OTIS under Inspection Detail>Insp Info>Related/Optional, as shown in **Table 1-1**.

- **Safety complaint inspections** - Inspection of a firm employing ten or fewer employees and whose NAICs is included under the Byron exemption, will be made and funded with 100 percent state funds. Enter the code N-09-100% in OTIS under Inspection Detail>Insp Info>Related/Optional as shown in **Table 1-1**. Evaluate according to procedures of *PD A-219 "Complaint Policies and Procedures"* and inspect.

- **Fatalities or hospitalization** – When two or more employees are involved, a place of employment may be investigated regardless of the number of employees or NAICs and such investigations will be funded in the normal manner with federal funds.

- **Accident investigations –** Excluding any fatalities or hospitalization of two or more employees, investigations may be conducted at a firm employing ten or fewer employees and whose NAICs is included under the Byron exemption. They will be funded with 100 percent state funds. Enter the code N-09-100% in OTIS under Inspection Detail>Insp Info>Related/Optional, as shown in **Table 1-1**.

- **Imminent danger inspection –** These inspections must be made and will be funded in the normal manner with federal funds. Enter the code N-09-in OTIS under Inspection Detail>Insp Info>Related/Optional, as shown in **Table 1-1**.

- **Health inspections –** All types of health inspections may be made and funded in the normal manner. However, no safety violations will be cited except with regard to imminent danger complaints, fatalities, or hospitalization of two or more employees.

NOTE: In calculating the number of employees employed by a firm for the purpose of determining if there are ten or fewer, "employees" means "employees in all operations statewide, on the day of the inspection or in the previous 12 month period." Track inspections of small employers in Byron exempt NAICs by entering the following codes in box 42, in OTIS under Inspection Detail>Insp Info>Related/Optional:

Table 1-1: Codes for OTIS Optional Information

Type	ID	Value
N	09	100%
N	09	IMMINENT

Health inspections do not require coding for Byron exemption.

The inspection scheduling list has possible Byron NAICs firms identified on it. On the day of the inspection, the CSHO determines the total number of employees employed by the firm statewide and during the preceding 12 months. The CSHO documents this information in their notes if exemptions apply, and field enforcement managers review all reports to assure the data for NAICs, employment size, and optional information is properly coded.

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VI. Enforcement Inspection Priorities

Oregon OSHA's priority system for conducting inspections is designed to allocate available resources as effectively as possible to ensure that maximum feasible protection is provided to working men and women. Generally, inspection assignments will be done recognizing the priorities listed on **Table 1-2**. To efficiently use resources, deviations from this priority list are allowed so long as they are justifiable and promote effective employee protection. Inspection scheduling deviations must be documented in the case file.

Table 1-2: Inspection Priorities

Priority	Type	Category
First	Imminent Danger	Unprogrammed
Second	Fatality/Catastrophe/Accident	Unprogrammed
Third	Complaint	Unprogrammed
Fourth	Referral	Unprogrammed
Fifth	Scheduled/Special Emphasis	Programmed
Sixth	Follow-up	Programmed

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VII. Unprogrammed Inspections

Inspections in response to alleged hazardous working conditions that have been identified at a specific work site are unprogrammed. The field enforcement managers, or designee, will act according to established inspection priority procedures when scheduling unprogrammed inspections. This type of inspection is used when the following occurs:

- **Imminent Danger:** A condition, practice, or act which exists in any place of employment and which could reasonably be expected to cause death or serious physical harm immediately. All imminent danger complaints should be responded to by inspection within 24 hours.

- **Fatality:** An employee death resulting from a work-related incident or exposure; in general, from an accident or an illness caused by or related to a workplace hazard.

- **Catastrophe:** A work-related incident or exposure in which two or more employees are fatally injured or three or more employees are admitted to a hospital or an equivalent medical facility.

- **Accident:** An unexpected (or unplanned, unwanted) work-related incident or exposure that may result in an injury or illness to an employee.

- **Complaint:** Any person may complain to Oregon OSHA of possible violations of any statute or of any lawful regulation, rule, standard, or order affecting employee safety or health at a place of employment. Serious complaints, other than imminent danger, should generally be responded to by inspection within 5 working days. Not all complaints and

referrals qualify for an inspection. Other-than-serious complaints may be responded to by inspection, letter, fax, or telephone based on the evaluation by the field enforcement manager. Those scheduled for inspection should be opened within 30 working days. *See PD A-219 "Complaint Policies and Procedures."*

- **Referral:** A referral is normally distinguished from a complaint by the source providing information on the alleged hazard. As a rule, referrals made to Oregon OSHA will be handled in a manner similar to that of complaints. Referrals may originate from Oregon OSHA's CSHOs, consultation program and technical section employees, state or local health department employees, and medical doctors or other health or safety professionals. They may also come from the Bureau of Labor or US Department of Labor; other federal, state, or local government employees; or media reports directly to Oregon OSHA or to the public through the news. They must be evaluated as thoroughly as possible, according to the guidelines for evaluating complaints, to determine whether there are reasonable grounds to believe that a safety or health hazard exists. Inspection referrals must be assigned a priority by the field enforcement manager according to the severity of the alleged hazard. When a CSHO observes an imminent danger situation, an inspection should be conducted without delay and the field enforcement manager informed as soon as possible after the inspection has been initiated. When this occurs, all serious hazards observed will be addressed and cited. The inspection will be classified as a "referral inspection" and the CSHO will complete the Referral module in OTIS that will be included in the inspection packet.

Unprogrammed Related Inspections

Inspections of employers at multi-employer work sites whose operations are not directly affected by the subject of the conditions identified in the complaint, accident, or referral are unprogrammed related. An example is a trenching inspection conducted at the unprogrammed worksite, where the trenching hazard was not identified in the complaint, accident report, or referral.

Employer Information Requests

Contacts for technical information initiated by employers or their representatives will not trigger an inspection, nor will such employer inquiries protect the requesting employer against inspections conducted according to existing policy, scheduling guidelines and inspection programs established by the agency.

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VIII. Programmed Inspections

Inspections of work sites or employers which have been scheduled from a scheduling list are programmed. Accidents discovered from a records review or during the walkaround on a programmed inspection will be handled as part of the programmed inspection. National and local emphasis program inspections are also handled as programmed inspections. The work sites are selected according to the criteria in OAR 437-001-0057 and PDs A-244 "Inspection Criteria: Scheduling Lists for Safety and Health Inspections," A-247 "Inspection Criteria: Construction and Logging Safety Inspections" and A-248 "Inspection Criteria: Criteria for Construction Inspections."

Scheduled Inspections

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.
- 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.

NOTE: Scheduling lists will be provided by the Division to its field offices, at least annually.

Scheduled Inspection Exemptions

Places of employment are exempt from a scheduled safety or health inspection if:

- A location has received a comprehensive safety inspection within the previous 36 months. A location has received a comprehensive health inspection within the previous 36 months. Safety and health comprehensive inspections are considered independent of each other.

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

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

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

- 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. *You or your manager will need to review the employer's inspection history to determine if the employer meets this exemption.*

- A location is under Oregon OSHA consultation. Comprehensive inspections will not be conducted at locations where an appointment has been scheduled with a consultant for the seven days prior to the opening visit and for 60 days after the date on the final report, 30 days for mobile sites such as logging, construction and agricultural labor housing consultations. *You must determine this during the opening conference.*

- 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. *The employer must provide this to you at the opening conference.*

- A location has a MOD rate of 0.5 and they provide evidence to that effect before the start of an inspection. *The employer must provide this to you at the opening conference.*

NOTE: Unprogrammed inspections may be initiated at locations which are exempt from scheduled comprehensive inspections.

Special Emphasis Programs

Special emphasis programs provide programmed inspections for establishments in industries with potentially high injury or illness rates that are not covered by other programmed inspection scheduling systems or, if covered, where the potentially high injury or illness rates are not adequately addressed under the specific circumstances. Special emphasis programs are based on potential exposure to health hazards or to develop and implement alternative scheduling procedures or departures from national procedures. Special emphasis programs include national emphasis programs and local emphasis programs.

The scope and purpose for special emphasis programs will be described and may be limited by geographic boundaries, size of worksite, or similar considerations. The description of a particular special emphasis program will be identified by one or more of the following:

- Specific industry
- Trade/craft
- Substance or other hazard
- Type of workplace operation
- Type/kind of equipment
- Other identifying characteristics

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National Emphasis Programs (NEPs)

Federal OSHA develops national emphasis programs to focus outreach efforts and inspections on specific hazards in a workplace such as listed on **Table 1-3**.

Table 1-3: National Emphasis Programs (NEP)

OTIS Entry	Description
PSMPQV	Process Safety Management: *See PD A-177*
SILICA	Insps – Presence of Crystalline Silica/Silicates: *See PD A-253*
TRENCH	Trenching and Excavation: *See PD A-265*
DUSTEXPL	Combustible Dust: *See PD A-268*
LEAD	Lead in General Industry and Construction: *See PD A-273*
SVEP	Severe Violator Enforcement Program: *See PD A-277*
AMPUTATE	Amputations: *See PD A-280*
NURSING	Nursing and Residential Care Facilities: *See PD A-284*
CHROME6	Hexavalent Chromium: *See A-278*
FLAVORING	Diacetyl (Flavoring Chemicals): *See PD A-275*

Click on hyperlinks for inspection procedures.

Local Emphasis Programs (LEPs)

Local emphasis programs are generally based on knowledge of local industry hazards or local industry injury/illness experience. Local emphasis programs must be developed and approved to specific industries, hazards, or other workplace characteristics. Local emphasis programs are included, but not limited to, those listed on **Table 1-4.**

Table 1-4: Local Emphasis Programs (LEP)

OTIS Entry	Description
FALL	Falls in Construction: *See PD A-239*
FIELDSAN	Field Sanitation: *See PD A-174*
LOGGING	Logging Emphasis Inspections: *See PD A-245*
PESTICIDE	Agricultural Pesticide Handling and Application: *See PD A-235*
ISOCYAN	Diisocyanates: *See PD A-256*

Click on hyperlinks for inspection procedures.

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Scheduling Construction and Logging Safety Inspections

Construction and logging scheduling lists will be used by field enforcement mangers 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 written neutral administrative standards.

Construction and logging employers will be 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 logging employers will be on another list.

The field enforcement manager will provide CSHOs the construction and/or logging list. The CSHO will make a reasonable effort to locate and inspect those employers on the construction and logging lists, however failure to inspect all employers on a list will not invalidate subsequent inspections. CSHOs must ensure that only Oregon OSHA personnel are allowed access to either list. *See PDs A-247 "Construction and Logging Safety Inspections" and A-248 "Criteria for Construction Inspections."*

Follow-Up Inspections

The primary purpose of a follow-up inspection is to determine if previously cited violations have been corrected. Normally, follow-up inspections involve no additional inspection activity unless the CSHO observes a serious hazard or the employer failed to abate a previously cited violation. They should generally be conducted within 30 days following the latest violation abatement date, or final order, whichever is later. The seriousness of the hazard(s) and the employer's response on the Letter of Corrective Action (LOCA), or lack there of, will determine the priority among follow-up inspections.

Programmed Related Inspections

Inspections of employers on multi-employer work sites whose activities were not included in the programmed assignments are programmed related inspections. An example is citing an employer not programmed for an inspection for a serious hazard observed during conduct of the programmed inspection.

Triple Zero Inspections

A Triple Zero inspection may be the end result of an attempted programmed or unprogrammed inspection, when the CSHO is unable to conduct an inspection (e.g., establishment is out of business, the employer is no longer at a mobile site, etc.). The report preparation for a Triple Zero inspection includes the completion of the Inspection Detail information in OTIS, Inspection Supplement, narrative, and field notes (if applicable).

Pre-Job Meetings

Pre-job meetings may be requested by an employer. Enforcement staff may participate in those meetings prior to the start of any work. The purpose of pre-job meetings is to identify and assess those hazards which are likely to occur. If the CSHO observes an employee exposed to a hazard while participating in a pre-job meeting, a citation will be issued. Pre-job meetings are primarily requested by employers on mobile job sites, such as construction and logging, although it is not limited to these industries. For inspection report purposes, CSHO will treat a pre-job meeting as a Triple Zero inspection.

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CHAPTER 2

Hazard Evaluation and Violation Documentation

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I. Rules and Regulations

The Oregon Safe Employment Act (OSEAct) states that "Every employer, owner, employee and other person shall obey and comply with every requirement of every order, decision, direction, standard, rule or regulation made or prescribed by the Department of Consumer and Business Services in connection with the matters specified in ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, or in any way relating to or affecting safety and health in employments or places of employment, or to protect the life, safety and health of employees in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, standard, rule or regulation." The terms rule and standard are used interchangeably.

Oregon Administrative Rules (OARs)

Oregon Administrative Rules (OARs) are the standards that state agencies promulgate to conduct business. Oregon OSHA's standards are housed in six divisions within OAR 437:

- Division 1, General Administrative Rules
- Division 2, General Occupational Safety and Health Standards
- Division 3, Construction
- Division 4, Agriculture
- Division 5, Maritime Activities (link to the federal OSHA rules)
- Division 7, Forest Activities

In Divisions 2 and 3 we have adopted Federal OSHA standards and Oregon-initiated standards. We print the Oregon-initiated standards in *italics* to easily identify if it is a federal or Oregon adopted rule. Division 5 is a federal standard adopted by reference. Because of our limited jurisdiction in maritime, we do not print this standard. Divisions 1, 4, and 7 are comprised of only Oregon-initiated standards (with one exception of the Worker Protection Standard in Division 4, Agriculture). Listed in the table below is the codification for the OARs:

Subdivision Naming Convention	Example
Chapter	437
Division	002
Rule	0107
Section	437-002-0107(3)
Subsection	437-002-0107(3)(f)
Paragraph	437-002-0107(3)(f)(A)
Paragraph	437-002-0107(3)(f)(A)(i)

Federal Rules

The specific standards and regulations are found in Title 29 Code of Federal Regulations (CFR) 1900 series. Subparts A and B of 29 CFR 1910 specifically establish the source of all the standards, which serve as the basis of violations. Standards are subdivided as follows according to the preferred Federal Register classification:

Subdivision Naming Convention	Example
Title	29
Part	1910
Subpart	D
Section	1910.23
Paragraph	1910.23(c)
Paragraph	1910.23(c)(1)
Paragraph	1910.23(c)(1)(i)

Per 1910.5(c) the most specific provision of a standard is used for citing violations.

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II. Violations of Vertical and Horizontal Rules

Definitions of Vertical and Horizontal Rules

Vertical rules - Rules that apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment, or installations.

Horizontal rules - General rules that apply to multiple industries.

Application of Vertical and Horizontal Rules

Consult your manager if you are uncertain whether to cite using a horizontal or a vertical rule. Consider the following guidelines:

- When a hazard in an industry is covered by both a vertical and a horizontal rule, the vertical rule must take precedence even if the horizontal rule is more stringent.

- In situations covered by both a vertical (specific) and a horizontal (general) rule, where the horizontal rule appears to offer greater protection, the horizontal rule may be cited only if its requirements are not inconsistent or in conflict with the requirements of the vertical rule. To determine whether there is a conflict or inconsistency between the rules, an analysis of the intent of the two rules must be performed. For the horizontal rule to apply, the analysis must show that the vertical rule does not address the precise hazard involved, even though it may address related or similar hazards.

- Use the horizontal rule in Division 2 if the industry does not have a vertical rule that covers the hazard, except for industries covered under Division 4, Agriculture.

- When determining whether a vertical rule or a horizontal rule is applicable to a work situation, determine the activity an employer is engaged in rather than on the nature of the employer's general business.

- According to OAR 437-003-0005, hazards found in construction work that are not covered by a specific Division 3 rule should be cited under a Division 2 rule when the specific type of process, equipment, or practice is not limited to the construction industry. Do not cite rules outside of Division 4 unless the standard directs you to do so.

- Contact your manager for help determining if an activity is considered "construction" for purposes of the Act.

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III. Four Major Elements of Violation Documentation

Follow the **four major element evaluation** outlined in this section when documenting hazardous conditions. You must document the following four elements:

1. **Oregon OSHA Jurisdiction**

2. **Hazard Identification**

3. **Employee Exposure**

4. **Employer Knowledge**

Element 1: Oregon OSHA Jurisdiction

Determine that you are at a place of employment where there is an employer and an employee to first establish jurisdiction.

Place of Employment Definition

Every place, whether fixed or movable or moving, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work; and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp, wherever located, provided by an employer for employees or by another person engaged in providing living quarters or shelters for employees.

NOTE: "Place of employment" does not include any place where the only employment involves non-subject workers employed in or about a private home; and 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.

Employer Definitions

- Any person who has one or more employees, or
- Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker according to ORS 656.128, or
- 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
- Any successor or assignee of an employer. A business or enterprise is substantially the same entity as the predecessor employer if both of these conditions apply:
    - A majority of the current business or enterprise is owned by the former owners or their immediate family members, and
    - 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 same 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 Responsibilities

ORS 654.010 of the OSEAct states: "Every employer shall furnish employment and a place of employment which are safe and healthful for employees therein, and shall furnish and use such devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employees." See OAR 437-001-0760(1) "Employers' Responsibilities."

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Employee Definition

Any individual, including a minor, whether lawfully or unlawfully employed, who engages to furnish services for remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS Chapter 656, whether by operation of law or by election.

Employee Responsibilities

ORS 654.022 of the OSEAct requires employees to obey and comply with Oregon OSHA rules and regulations. See OAR 437-001-0760(2) for "Employees' Responsibilities."

The OSEAct does not allow for citations or proposed penalties against employees. Employers are responsible for employee compliance with the standards. In cases where you determine that employees are systematically refusing to comply with a standard, the matter must be referred to your manager who must consult with the safety/health operations manager. Get information to see if the employer is exercising appropriate oversight of the workplace to ensure compliance with the OSEAct. Concerted refusals by employees to comply will not ordinarily bar the issuance of a citation if the employer has failed to exercise their authority to adequately supervise employees, including taking appropriate disciplinary action.

Determination of Employer/Employee Relationship

Determining the employer of employees exposed to a hazard depends on several factors, the most important being who provides direction and control over the manner in which employees perform their assigned work. The question of who pays these employees may not be the key factor. Determining the identity of the employer of exposed employees may be a complex issue, in which case the field enforcement manager may seek the advice of the Department of Justice (DOJ).

Multi-Employer Worksites

On multi-employer worksites, in all industry sectors, more than one employer may be cited for a hazardous condition that violates an Oregon OSHA standard. Identify which employers on multi-employer worksites are responsible for hazardous conditions. Document the contractual relationship and what is actually occurring between the employers working at the worksite. Cite the employers that have knowledge of the hazardous conditions and have the right to exercise direction and control over the work practices of employees who are, or you reasonably believe could have been, exposed to such conditions. It is Oregon OSHA's intent to cite only those employers responsible for violations of the OSEAct. For specific and detailed guidance, *see PD A-257 "Multi-employer Workplace Citation Guidelines."*

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Jurisdiction Guidelines

Oregon OSHA covers all state, county, municipal, and other non-federal public or private employers within the State of Oregon, who do not fall under the following exemptions and limitations:

- **Navigable waters** – Federal OSHA has jurisdiction and enforcement authority for safety and health inspections and investigations for all shipyard employment on or immediately adjacent to the navigable waters in Oregon from the front gate of the worksite to the US statutory limit. Oregon OSHA maintains jurisdiction in all other private sector shipyard and boatyard operations not located on or immediately adjacent to the navigable waters. Oregon OSHA has exclusive jurisdiction for all employees of the state and its political subdivisions on land or any waters in the state.

- **Commercial diving –** Federal OSHA has jurisdiction and enforcement authority for conducting safety and health inspections and investigations for all commercial diving activities originating from an object afloat (vessel, barge, etc.) on a navigable waterway. Oregon OSHA has exclusive jurisdiction and enforcement authority for all employees of the state and its political subdivisions on land or any waters in the state.

- **Marine construction –** Federal OSHA has jurisdiction for construction activities emanating from or on floating vessels on the navigable waters in Oregon. Oregon OSHA has exclusive jurisdiction for all employees of the state and its political subdivisions on land or any waters in the state.

- **Railroads –** Oregon OSHA has jurisdiction for railroad shops, as well as construction and repair activities (except bridges) that are not located on military bases, and do not involve long shoring and marine terminal operations. The Federal Railroad Administration (FRA) has jurisdiction over "rolling stock" (railroad equipment in operation) and railroad bridge construction per Federal Register Title 49 CFR Part 214.

- **US Postal Service –** Federal OSHA has jurisdiction and enforcement authority over all US Postal Service employees and contract employees engaged in US Postal Service mail operations. Coverage includes contractor-operated facilities engaged in mail operations and postal stations in public or commercial facilities. Oregon OSHA has jurisdiction over all other private sector contractors working on US Postal Service sites who are not engaged in US Postal Service mail operations, such as building maintenance and construction employees.

- **US Military Installations –** Federal OSHA has jurisdiction and enforcement authority for conducting safety and health inspections and investigations with the borders of all federal military installations with the State of Oregon. All establishments and reservations of the US Navy, Army, Air Force, Marine Corps, and Coast Guard are included except for private contractors working on US Army Corps of Engineer's dam construction projects, including reconstruction of docks and other appurtenances.

- **Mining operations –** The Mine Safety & Health Administration (MSHA) has jurisdiction over all mining operations and workers at mines. Oregon OSHA has authority over contractors performing work other than mining, milling or associated activities at mine sites.

- **Reservations and Tribal Trust Lands –** Federal OSHA has jurisdiction and enforcement authority for conducting safety and health inspections and investigations for all private sector employment, including tribal and Indian-owned enterprises on all Indian and non-Indian lands within the currently established boundaries of all reservations, and on lands outside of these reservations that are held in trust by the Federal government for these tribes for several Indian tribes within Oregon. Oregon OSHA retains enforcement jurisdiction over all employees of the state and its political subdivisions working on these reservations or trust lands. Businesses owned by Indians or Indian tribes that conduct work activities outside the Tribal Reservation or Trust Lands are subject to the same jurisdiction as non-Indian owned businesses.

- **Sole proprietor, Partnerships and Single Person Corporation –** Oregon OSHA does not have authority over individuals classified as a sole proprietor, a single person corporation, or a partnership unless they elect to be covered by workers' compensation insurance or there is direction and control over others.

- **Home-based worksites –** Oregon OSHA will not perform any inspections of employees' home offices. A home office is defined as office work activities in a home-based setting/worksite (i.e., filing, keyboarding, computer research, reading, writing,) and may include the use of office equipment (i.e., telephone, facsimile machine, computer, scanner, copy machine, desk, and file cabinet). Oregon OSHA will conduct inspections of other home based worksites, such as home manufacturing operations.

- **Corporate farms –** Oregon OSHA has no jurisdiction over corporate farms 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, grandchildren, foster children, stepparents and any blood relative living as a dependent of the core family whether or not they elect workers' compensation coverage.

- **Corporate officers –** Oregon OSHA does not generally have jurisdiction over corporate officers and directors who only perform corporate administrative duties.

- **Independent contractors –** Oregon OSHA rules may apply when two or more persons working together, performing the same task, claim they are independent contractors but have developed an employer/employee relationship under the Oregon Safe Employment Act as evidenced by one or more of the following:

    - One person generally controls or has the right to control the manner, means, or method in which the work is done by the other person(s).

    - The agreement for the work is usually with only one person.

- The materials for the job are purchased primarily by one person.
- One person is primarily in charge of, or responsible for, the completion and quality of the work.
- The people usually coordinate their work schedules so that they are on the job at the same time.
- Equipment is often provided, shared, or owned primarily by one person.
- The people usually work together on the same task at the same location.
- Payment for the job is usually made to one person who then pays the other(s).

NOTE: The above list is not exclusive and that while no single factor is determinative, the right to control is generally given the most weight. *See PD A-231 "Jurisdiction" for additional information.*

Oregon OSHA has established jurisdiction for locations on the scheduled programmed inspection list. You must notify your manager if an exemption or limitation listed above is identified during an inspection/investigation.

Element 2: Hazard Identification (Severity Rating)

You must be able to identify a hazardous condition that employees are exposed to.

Hazard Definition

Oregon OSHA defines a hazard as, "a danger which threatens physical harm to employees." Expanding on that basic definition we can think of a hazard as an: "unsafe workplace condition or practice (danger) that could cause injury or illness (harm) to employees."

Types of Workplace Hazards

- **Acceleration/deceleration** – When we speed up or slow down too quickly. Acceleration occurs when any object is being set in motion or its speed increased. Whiplash is a common injury as a result of an acceleration hazard. Impact hazards from deceleration, such as landing following a fall, may exist in the workplace.
- **Biological** – Hazards of harmful bacteria, viruses, fungi, and molds are becoming a greater concern at work. The primary routes of infection are airborne and bloodborne.
- **Chemical reactions** – Chemical reactions can be violent and can cause explosions, dispersion of materials, and emissions of heat. Chemical compounds may combine or break down (disassociate) resulting in chemicals with reactive properties. Corrosion is a common chemical reaction that may result in loss of strength and integrity of affected metals.

- **Electrical hazards** – Exposure to electrical current. There are six basic electrical hazards: shock, ignition, heating/overheating, inadvertent activation (unexpected startup), failure to activate, and equipment explosion.

- **Ergonomics** – The nature of the work being done may include force, posture and position of operation characteristics that require hazardous lifting, lowering, pushing, pulling, and twisting. The results are strains and sprains to muscles and connective tissues.

- **Explosives and explosions** – Explosions may result in over-exposure to released gasses, heat, noise, and light hazards. High explosives release a large amount of energy. Low explosives burn rapidly (deflagrates) but at a slower speed. Most explosive accidents are caused by explosions of combustible gases.

- **Flammability and fires** – In order for combustion to take place, the fuel, an oxidizer, and ignition source must be present in gaseous form. Accidental fires are commonplace because fuel, oxidizers and ignition sources are often present in the workplace.

- **Heat and temperature** – Temperature indicates the level of sensible heat present in a body. Massive uncontrolled flows of heat or temperature extremes can cause trauma or illness.

- **Mechanical hazards** – Tools, equipment, machinery and other objects may contain pinch points, sharp points and edges, crushing weight, rotating parts, instability, flying parts and materials, which could cause injury.

- **Pressure** – Increased pressure in hydraulic and pneumatic systems. Pressure may cause ruptures in pressure vessels or whipping hoses. Small high pressure leaks may cause serious injuries.

- **Radiation** – Electromagnetic radiation hazards vary depending on the frequency (wavelength) of the energy. Generally, the higher the frequency, the more severe the potential injury. Non-ionizing (ultra-violet, visible light) may cause burns. Ionizing radiation actually has the potential to destroy tissue by dislodging electrons from atoms making up body cells.

- **Toxics** – Materials that may cause injury to skin and internal organs is considered toxic. Toxics may enter through inhalation, ingestion, absorption or injection.

- **Vibration/Noise** – Produces adverse physiological and psychological effects. Segmental vibration and noise hazards exist when working with equipment like jack hammers.

- **Workplace Violence** – Physical violence manifested in the workplace is a hazard. We generally perceive "violence" as a physical act that may take a number of different forms.

Documentation of Hazards

Identify and document the existence of workplace hazards that a rule or the general duty clause ORS 654.010 (see Violations of the General Duty Clause) is designed to prevent. Documentation of a hazard must include, but is not limited to:

- A description of the hazard.
- Specific location of the hazard.
- Pertinent specifications and measurements:
    - Approximate measurements (height, length, width, depth, volume)
    - Amperage, volts, horsepower, rpms, psi.
- Name of manufacturer, operator's manual, safeguards, equipment or machinery type, model number, serial number
- Chemical, MSDS, pH, dB, safety and health program documents, PPE, soil class, environmental factors, training, etc.)
- Photographs or video recordings taken of all violations and abatement of hazards at the time of the inspection.
- Drawings with approximate measurements, acceptable to the employer, of hazards directly associated with trade secrets.
- How long the hazard has existed.
- Steps the employer has taken to eliminate or minimize the hazard.
- Abatement method applied by the employer at the time of the inspection.

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Classifying Severity Rating

Severity ratings of hazards will be classified as either other-than serious, serious, and death. Compliance officers must determine the severity rating for each violation based on the degree of injury or illness that is reasonably predictable. If more than one injury or illness is reasonably predictable, determine the severity based upon the most severe injury or illness. Severity rating will be based on the following criteria:

- **Other-Than-Serious**
  - **Conditions** that could cause injury or illness to an employee but would not result in serious physical harm.

    EXAMPLES: Minor cuts, bruises, recordkeeping and reporting violations, etc.

- **Serious**
  - **Injuries** that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a body part.

    EXAMPLES: Lacerations, contusions, burns, frostbite, concussions, fractures, amputations, etc.

  - **Illnesses** that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a body part, even though the effects may be cured by halting exposure to the cause or by medical treatment.

    EXAMPLE: Chemically-induced pneumonia, pulmonary edema, chronic bronchitis, hearing loss, dermatitis, etc.

- **Death**
  - **Death from acute injuries** involving cessation of vital bodily functions.

    EXAMPLE: Electrocution, asphyxiation, drowning, etc.

  - **Death from chronic, irreversible illnesses** involving cessation of vital bodily functions.

    EXAMPLE: Silicosis, asbestosis, lung cancer, HIV/HBV, etc.

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Determining the Most Serious Injury or Illness

Identify the most serious injury or illness that could reasonably be expected to result from the potential hazard exposure. Consider all factors that would affect the severity of the injury or illness that could reasonably result from the exposure to the hazard. The following are examples of determining the type of injury that could be reasonably predicted from exposure.

> **EXAMPLE:** If an employee falls from the edge of an open-sided floor 30 feet to the ground below, the employee could die, break bones, suffer a concussion, or experience other serious injuries that would substantially impair a bodily function. Consider the most reasonably predictable serious injury that could occur rather than the injury that actually occurs.
>
> **EXAMPLE:** If an employee trips on debris and suffers a "same surface" fall, the resulting injuries might be bruises or abrasions. It would be marginally predictable that an employee would suffer a substantial impairment. If, however, the area of the fall is littered with broken glass or other sharp objects, it is reasonably predictable that deep cuts requiring sutures could occur. Consider the most serious of these injuries.

Multiple Hazards – Grouped or Combined

If more than one type of hazard exists for the same violative condition, determine which hazard could reasonably be predicted to result in the most severe injury or illness, and base the classification of the violation on that hazard. The classification of a violation does not need to be completed for each instance. It should be done once for each citation, or may be done once if the violation items are **grouped** in a citation. If the citation consists of multiple instances or grouped violations, the overall classification must normally be based on the most serious item.

Severity vs. Probability

You do not need to establish the exact manner that an accident or hazard exposure could occur. The probability that an injury or illness may occur is not to be considered when determining the severity rating, however**,** you must still note all facts that could affect the probability of an injury or illness resulting from a potential accident or hazardous exposure when establishing employee exposure.

Element 3: Employee Exposure (Probability Rating)

You must establish and document employee exposure to the hazardous condition.

Types of Employee Exposure

The type of exposure to which an employee may sustain an injury or develop an illness includes, but is not limited to:

- **Struck-by** – A person is forcefully struck by an object. The force of contact is provided by the object.

- **Struck-against** – A person forcefully strikes an object. The person provides the force or energy.

- **Contact-by** – Contact by a substance or material that, by its very nature, is harmful and causes injury.

- **Contact-with** – A person comes in contact with a harmful substance or material. The person initiates the contact.

- **Caught-on** – A person or part of his/her clothing or equipment is caught on an object that is either moving or stationary. This may cause the person to lose his/her balance and fall, be pulled into a machine, or suffer some other harm.

- **Caught-in** – A person or part of him/her is trapped, or otherwise caught in an opening or enclosure.

- **Caught-between** – A person is crushed, pinched or otherwise caught between a moving and a stationary object, or between two moving objects.

- **Fall-to-same-level** – A person slips or trips and falls to the surface he/she is standing or walking on.

- **Fall-to-below** – A person slips or trips and falls to a level below the one he/she was walking or standing on.

- **Over-exertion** – A person over-extends or strains himself/herself while performing work.

- **Bodily reaction** – Caused solely from stress imposed by free movement of the body or assumption of a strained or unnatural body position.

- **Over-exposure** – Over a period of time, a person is exposed to harmful energy (noise, heat), lack of energy (cold), or substances (toxic chemicals/atmospheres).

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Establishing Employee Exposure

Employee exposure must be established through one or more of the following:

- **Observed exposure** – established when you actually witness an employee in close proximity to the hazard.

- **Unobserved exposure** – may be established through witness statements or other evidence indicating that exposure to the hazard has or may continue to occur.

- **Previous exposure** – must have occurred within six months preceding the date of the inspection to be cited as a violation. When the employer has concealed the violative condition or misled Oregon OSHA, the citation must be issued within six months (180 days) from the date when Oregon OSHA knows, or should have known, of the condition.

  Consult DOJ in cases where the 180 days is exceeded to determine if an Order to Correct should be issued.

  Previous exposures may be established and serve as the basis for a violation when the following exists:

  - The hazardous condition is still present or could be reasonably expected to recur.
  - Evidence proves that employees have been exposed in the past six months.
  - The hazardous condition is routine to the employer's operations.
  - Review of injury records reveal injuries or illnesses incurred as a result of the hazardous condition.

- **Potential exposure** – may be established if there is evidence that employees have access to a hazard and one or more of the following exists:

  - Work patterns, circumstances, or anticipated work requirements pose a danger to employees simply by their presence in an area, and it is reasonably predictable that they could be exposed during the course of the work.
  - It is reasonably predictable that an employee could use unsafe machinery or be inadvertently exposed to hazardous materials or conditions.
  - No effort has been made to eliminate or minimize a recognized hazard or to prohibit employee exposure to an unsafe condition or equipment.

NOTE: Adequately communicated <u>and</u> effectively enforced safety policy or program that would prevent or minimize employee exposure, including accidental exposure to the hazardous condition, it would not be reasonably predictable that employee exposure could occur. In such circumstances, no citation should be issued in relation to the condition.

<u>Documenting Employee Exposure</u>

You must document employee exposure by including the following information:

- **Number of exposed employees** – document the number of actual and potentially exposed employees. Include names, positions, assigned duties, etc.

- **Proximity to the hazard** – provide thorough documentation including photos, video recordings, approximate measurements, and employee interviews of actual and potential proximity of the employees to the hazard.
-
- **Frequency and duration of exposure** – determine the approximate amount of time employees are exposed to the hazard based on their work schedules. Include the number of hours, shifts and days of the week they work. Determine if they are exposed to the condition continuously or intermittently, for short periods of time or for lengthy periods. Identify their length of employment, any known employee overexposures to hazardous levels of contaminants, or other illness-producing conditions.

Additional Documentation to Consider

Other information that may play a significant role in determining employee exposure includes:

- **Supervision** – determine if supervisors or managers are failing to ensure that work is conducted in a safe and healthful manner. Determine if management has the commitment or ability to design and implement safety and health management processes.

- **Training** – document employee training as it relates to the employee exposures. Verify that training has been provided for work activities that require specific training such as fall protection, specific equipment operation, respiratory protection, hazard communication, confined space entry, lockout/tagout, etc.

- **Improper workplace design** – determine if materials or equipment used may be hazardous. Tools, equipment and machinery must be suitable for the work being conducted and be properly guarded. Work surfaces must be designed for safely carrying out duties and materials must be stored in a safe manner, etc.

- **Working conditions** – identify environmental and other factors outside the control of the employee that may contribute to the likelihood of an accident. This may include speed of operations, lighting, temperature, weather conditions, noise, housekeeping, etc.

- **Medical surveillance program** – verify that medical screening and periodic medical evaluations are being conducted for employees assigned to perform activities that may affect hearing, respiratory systems, or expose the employee to toxic or hazardous substances, etc.

- **Personal Protective Equipment (PPE)** – determine if the employer has conducted a hazard assessment of the workplace to identify the need for PPE. Document whether the employer is providing and ensuring the use of any required PPE. Observe employees to verify use of PPE.

  NOTE: The use of personal protective equipment (PPE) is appropriate only after no feasible engineering or administrative controls are identified.

Classifying Probability Rating

Determine the probability for all violations based on your employee exposure documentation. You must evaluate, as far as possible, all the documentation that may influence the likelihood of the occurrence of an injury or illness and assign a probability rating. Classify probability ratings as low, medium, or high using the following criteria:

- **Low** – If the factors considered indicate it would be unlikely that an injury or illness could occur.

- **Medium** – If the factors considered indicate it would be likely that an injury or illness could occur.

- **High** – If the factors considered indicate it would be very likely that an injury or illness could occur.

NOTE: The probability of the occurrence of an accident has no impact on determining the most reasonably predictable injury (severity). Probability only affects the likelihood of an occurrence.

Element 4: Employer Knowledge

You must establish that the employer could/should have known that the hazard existed and that employees could/would be exposed.

Types of Employer Knowledge

Employer knowledge takes the form of either actual knowledge or constructive knowledge. While actual knowledge is generally self-evident, constructive knowledge may be established through industry recognition of a hazard or by determining whether the employer exercised reasonable diligence.

Documenting Employer Knowledge

Document evidence of actual and constructive employer knowledge. Evidence may consist of written or oral statements made by the employer or other management or supervisory personnel during or before the Oregon OSHA inspection, or determined by one or more of the following:

- Employer knowledge of a hazard may be obtained by a review of company memorandums, safety work rules that specifically identify a hazard, employee handbooks, standard operating procedures, safety committee recommendations, and collective bargaining agreements. Reports of prior accidents, near misses, injuries and illnesses, or workers' compensation data may show employer knowledge of a hazard.

- Employer knowledge of a hazard may be demonstrated by prior Oregon OSHA inspection history involving the same or similar hazard.

- Employee complaints, grievances, and safety committee minutes may establish employer knowledge of a hazard. Evidence should show that the complaints were not merely infrequent or off-hand comments.

- Corrective actions taken to eliminate or minimize a hazard may serve as the basis for establishing employer knowledge. If the employer allows corrective action to lapse and the hazardous condition reoccurs, knowledge of the original condition is established.

- Employer knowledge may be established through employee interviews.

The actual or constructive knowledge of a supervisor who is aware of a violative condition or practice can usually be imputed to the employer for purposes of establishing knowledge.

Documenting Industry Recognition

A hazard is recognized if the employer's relevant industry is aware of its existence. Recognition by an industry other than the industry to which the employer belongs is generally insufficient to prove this element. Industry recognition of a hazard can be established in several ways using any of the following:

- Statements by safety or health experts who are familiar with similar conditions in industry (regardless of whether they work in the industry).

- Evidence of abatement methods to deal with the hazard by other members of the industry.

- Manufacturer warnings on equipment or in literature that is relevant to the hazard.

- Statistical or empirical studies conducted by the employer's industry that demonstrate awareness of the hazard. Evidence such as studies conducted by the employee representatives, the union, or other employees will also be considered if the employer or the industry has been made aware of them.

- State and local laws or regulations that apply in the jurisdiction where the violation is alleged to have occurred and are currently enforced against the industry in question. In such cases, however, corroborating evidence of recognition is recommended.

- Participation in the relevant industry’s committee work drafting national consensus standards such as the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), and other private standard-setting organizations can constitute industry recognition. Such private standards normally are used only as corroborating evidence of recognition. Preambles to these standards that discuss the hazards involved may show hazard recognition as much as, or more than, the actual standards. Oregon OSHA is unable to enforce the rules of these other entities, but they may be used to provide evidence of industry recognition, seriousness of the hazard, or feasibility of abatement methods.

- Government and insurance industry studies if the employer or the employer's industry is familiar with the studies and recognizes their validity.

In cases where state and local government agencies have codes or regulations covering hazards not addressed by Oregon OSHA standards, the field enforcement manager, upon consultation with the statewide safety or health manager, will determine whether the hazard is to be cited under ORS 654.025(3)(a) or referred to the appropriate local agency for enforcement. Generally speaking, a referral to the governing agency will be made.

References that may be used to supplement evidence used to demonstrate industry recognition include the following:

- NIOSH criteria documents
- EPA publications
- National Cancer Institute and other agency publications
- OSHA Hazard Alerts
- OSHA Technical Manual

Documenting Reasonable Diligence

You may satisfy the employer knowledge requirement with evidence that the employer could/should have known of the hazard through the exercise of reasonable diligence if actual knowledge does not exist. Generally, if you are able to discover a hazardous condition, you can presume that the employer could have discovered the same condition through the exercise of reasonable diligence. The use of reasonable diligence as the basis for establishing knowledge must explain what the reasonable diligence is that should have been exercised. Examples of such evidence include:

- The violation/hazard was obvious and in plain view.
- The duration of the hazardous condition was not brief.
- The employer failed to regularly inspect the workplace for readily identifiable hazards.
- The employer failed to train and supervise employees regarding the hazard

Affirmative Defense

An affirmative defense, such as employee misconduct, is a claim that if established by the employer will excuse them from a violation which has otherwise been documented by you. Affirmative defenses must be proved by the employer at the time of the hearing. It is important to document and gather evidence to rebut an employer's potential argument supporting any such defenses. Knowing what affirmative defense might be claimed will help you to gather information to be used as a rebuttal to that defense.

In cases where the employer contends that the supervisor's conduct constituted an isolated event of employee misconduct, attempt to determine if the supervisor violated an established work rule and if the supervisor was trained and supervised regarding compliance to the rule to prevent such conduct. *See "Affirmative Defenses" in chapter 9 for additional information.*

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IV. Violations of the General Duty Clause (ORS 654.010)

ORS 654.010 of the OSEAct states "Every employer shall furnish employment and a place of employment which are safe and healthful for employees therein, and shall furnish and use such devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employees."

Use the general duty clause (ORS 654.010) only when there is no a horizontal or a vertical rule that applies to the hazard, and in situations where a recognized serious hazard is created in whole or in part by conditions not covered by a standard.

Application of the General Duty Clause

You must consult your manager prior to citing the general duty clause. Consider the following guidelines:

- **Cite only hazards presenting serious physical harm or death** under the general duty clause (including willful and/or repeated violations that would otherwise qualify as serious violations). Other-than-serious citations will not be issued for general duty clause violations.

  EXAMPLE: Construction employees are exposed to a collapse hazard because of a failure to properly install reinforcing steel. Construction standards contain requirements for reinforcing steel in wall, piers, columns, and similar vertical structures, but do not contain requirements for steel placement in horizontal planes, e.g., a concrete floor. A failure to properly install reinforcing steel in a floor according to industry standards and/or structural drawings could be cited under the general duty clause.

  EXAMPLE: The powered industrial truck standard at 1910.178 does not address all potential hazards associated with forklift use. For instance, while that standard deals with the hazards associated with a forklift operator leaving his vehicle unattended or dismounting the vehicle and working in its vicinity, it does not contain requirements for the use of operator restraint systems. An employer's failure to address the hazard of a tip over by requiring operators of powered industrial trucks equipped with restraint devices or seat belts to use those devices could be cited under the general duty clause.

The general duty clause may also be applicable to some types of employment that are inherently dangerous (fire brigades, emergency rescue operations, confined space entry, etc.). Employers involved in such occupations must take the necessary steps to eliminate or minimize employee exposure to all recognized hazards that are likely to cause serious physical harm or death. These steps include an assessment of hazards that may be encountered, providing appropriate protective equipment, and any training, instruction, or necessary equipment. An employer who has failed to take such steps and allows their employees to be exposed to a hazard may be cited under the

general duty clause. The following standards must be considered carefully before issuing a general duty clause citation for a **health hazard**:

- There are a number of general standards that will be considered in situations where the hazard is not covered by a more specific standard. If a hazard not covered by a specific standard can be substantially corrected by compliance with a personal protective equipment (PPE) standard, cite the PPE standard. In general industry, OAR 437-002-0134 may be appropriate where exposure to a hazard may be prevented by the wearing of PPE.

- For a health hazard, the toxic substance standard, such as asbestos and cadmium, must be cited where appropriate. If those standards do not apply, however, other standards may be applicable; e.g., the air contaminant levels contained in OAR 437-002-0382 in general industry, in OAR 437-003-1000 for construction, and in OAR 437-004-0900 for agriculture.

- Another general standard is 1910.134(a), which addresses the hazards of breathing harmful air contaminants not covered under OAR 437-002-0382 or another specific standard, and which may be cited for failure to use feasible engineering controls or respirators.

- Violations of 1910.141(g)(2) may be cited when employees are allowed to consume food or beverages in an area exposed to a toxic material, and OAR 437-002-0134(13) where there is a potential for toxic materials to be absorbed through the skin.

Limitations of Use of the General Duty Clause

ORS 654.010 is to be used only within the guidelines given in this chapter. The field enforcement manager must evaluate the circumstances of special situations in accordance with these guidelines and consult with the statewide safety or health manager to determine whether an ORS 654.010 citation can be issued in those special cases. ORS 654.010 is not used:

- **When there is an applicable standard.** As discussed above, ORS 654.010 may not be cited if an Oregon OSHA standard applies to the hazardous working condition. If there is a question as to whether a standard applies, the field enforcement manager must consult with the statewide safety or health manager.

- **To impose a stricter requirement than that required by the standard.**

- **To impose industry specific standards from one industry to an unrelated industry.**

- **To require additional abatement methods not set forth in an existing standard.**

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Evaluation of General Duty Clause Requirements

A general duty citation must involve both the presence of a serious hazard and exposure of the cited employer's own employees. To prove a violation of the general duty clause the following elements are necessary in addition to the four-elements:

- The employer failed to keep the workplace free of a hazard to which their employees were exposed.
- The hazard was causing, or was likely to cause, death or serious physical harm.
- The hazard was recognized by industry.
- There was a feasible and useful method to correct the hazard.

NOTE: The general duty provisions are used only where there is no rule that applies to a hazard.

Procedures for Implementation of ORS 654.010 Enforcement

Gather evidence and prepare the file – Document the evidence necessary to establish each element of an ORS 654.010 violation in the file. This includes all photographs, videotapes, sampling data, witness statements, and other documentary and physical evidence necessary to establish the violation. Additional documentation includes evidence of specific and general awareness of a hazard, why it was detectable and recognizable, and any supporting statements or reference materials.

If copies of documents relied on to establish the various ORS 654.010 elements cannot be obtained before issuing the citation, these documents must be accurately cited and identified in the file so they can be obtained later if necessary.

If experts are necessary to establish any element(s) of an ORS 654.010 violation, such experts and the Department of Justice must be consulted prior to the citation being issued and their opinions noted in the file.

Pre-citation review – The field enforcement manager must review and approve all proposed ORS 654.010 citations. These citations must undergo additional pre-citation review as follows:

- The statewide safety or health manager and the Department of Justice must be consulted prior to issuing all ORS 654.010 citations where complex issues or exceptions to the outlined procedures are involved.
- If a standard does not apply and all criteria for issuing an ORS 654.010 citation are not met, yet the field enforcement manager determines that the hazard warrants some type of notification, a Hazard Letter will be sent to the employer and employee representative describing the hazard and suggesting corrective action.

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V. Citing a General Duty Clause Violation

Only serious hazards may be cited under the general duty clause. A "serious hazard" is a workplace condition or practice that creates a potential for death or serious physical harm. Serious hazards must be defined in terms of the presence of conditions or practices that present a danger to employees. It must be reasonable to expect employers to prevent them or ensure employees are adequately protected. These conditions or practices must be clearly stated in a citation to inform employers of their obligations.

Hazard Must be Reasonably Foreseeable

The hazard for which a citation is issued must be reasonably foreseeable. All of the factors that could cause a hazard don't need to be present in the same place or at the same time in order to prove foreseeability of the hazard. For example, an explosion doesn't need to be imminent.

> **EXAMPLE:** A titanium dust fire spreads from one room to another because an open can of gasoline was in the second room. An employee who usually worked in both rooms is burned in the second room as a result of the gasoline igniting. The presence of gasoline in the second room may be a rare occurrence. However, it is not necessary to demonstrate that a fire in both rooms could reasonably occur, but only that a fire hazard was reasonably foreseeable due to the presence of titanium dust.

NOTE: It is necessary to establish the reasonable foreseeability of the workplace hazard, rather than the circumstances that led to an accident/incident.

Hazard is Not the Cause of the Accident/Incident

An accident does not necessarily mean that the employer has violated ORS 654.010, although the accident may be evidence of a hazard. In some cases an ORS 654.010 violation may be unrelated to the cause of the accident. Although accident facts may be relevant and must be documented, the citation must address the hazard in the workplace that existed prior to the accident**,** not the facts that led to the accident/incident.

> **EXAMPLE**: A fire occurred in a workplace with flammable materials. No one was injured by the fire, but an employee disregarded the clear instructions of his supervisor to use an available exit, jumped out of a window, and broke a leg. The danger of fire due to the flammable materials may be a recognized hazard; causing or likely to cause death or serious physical harm, but the action of the employee may be an instance of unpreventable employee misconduct. The citation must address the underlying workplace fire hazard, not the accident/incident involving the employee.

Hazard Must Affect the Cited Employer's Employees

The employees exposed to an ORS 654.010 hazard must be the employees of the cited employer. An employer who may have created, contributed to, and/or controlled the hazard is not normally cited for an ORS 654.010 violation if their own employees are not exposed to the hazard.

In complex situations such as multi-employer worksites where it may be difficult to identify the precise employment relationship between the employer to be cited and the exposed employees, the field enforcement manager will consult with the statewide safety or health manager and/or Department of Justice to determine the sufficiency of the evidence regarding the employment relationship.

The fact that an employer denies that exposed workers are their employees is not necessarily determinative of the employment relationship issue. Whether or not exposed persons are employees of the employer depends on several factors, the most important is who controls the manner in which the employees perform their assigned work.

NOTE: The question of who pays employees in and of itself may not be the determining factor to establish a relationship.

Hazard Was Causing or Likely to Cause Death or Serious Physical Harm

This element of an ORS 654.010 violation is identical to the substantial probability element of a serious violation under the OSEAct. It can be established by showing one of the following:

- Death or serious injury resulted from the recognized hazard whether immediately prior to the inspection or at other times and places.

- If an accident/incident occurred, the likely result would be death or serious physical harm.

In the health context, establishing serious physical harm at the cited levels may be challenging if the potential for illness or harm requires the passage of a substantial period of time. In such cases, expert testimony is crucial to establish probability that long-term serious physical harm will occur. It will generally be less difficult to establish this element for acute illnesses, since the immediacy of the effects will make the causal relationship clearer. In general, the following must be shown to establish that the hazard causes, or is likely to cause, death or serious physical harm when such illness or death will occur only after time passes:

- Regular and continuing employee exposure at the workplace to the toxic substance at the measured levels could reasonably occur.

- An illness could reasonably result from such regular and continuing employee exposures.

- If illness does occur, its likely result is death or serious physical harm.

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Hazard May be Corrected by a Feasible and Useful Method

To establish an ORS 654.010 violation, the agency must also identify a measure(s) that is feasible, available, and likely to correct the hazard. Evidence regarding feasible abatement measures must indicate that the recognized hazard, rather than an accident, is controllable.

If the proposed abatement method would eliminate or significantly reduce the hazard beyond whatever measures the employer may be taking, an ORS 654.010 citation may be issued. A citation will not be issued merely because the agency is aware of an abatement method different from that of the employer, if the proposed method would not reduce the hazard significantly more than the employer's method. In some cases, only a series of abatement methods will materially reduce a hazard, and then all potential abatement methods must be listed.
An abatement note included on the AVD in OTIS would explain the abatement method chosen if the violation was abated at the time of the inspection. Examples of such feasible and acceptable means of abatement include, but are not limited to:

- The employer's abatement method, which existed prior to the inspection but was not implemented.
- The implementation of feasible abatement measures by the employer after the accident/incident or inspection.
- The implementation of abatement measures by other employers/companies.
- Recommendations made by the manufacturer addressing safety measures for the hazardous equipment involved, as well as suggested abatement methods contained in trade journals, national consensus standards, and individual employer work rules. National consensus standards will not solely be relied on to mandate specific abatement methods.

Evidence provided by expert witnesses may be used to demonstrate feasibility of abatement methods. In addition, although it is not necessary to establish that an industry recognizes a particular abatement measure; such evidence may be used if available.

Do Not Cite the Lack of a Particular Abatement Method

ORS 654.010 does not mandate a particular abatement method (action taken to reduce or eliminate the hazard), but only requires an employer to ensure the workplace is free of certain hazards by any feasible and effective means used by the employer.

In situations where a question arises regarding distinguishing between a dangerous workplace condition or practice and the lack of an abatement method, the field enforcement manager will consult with the statewide safety or health manager, technical section, and/or the Department of Justice for assistance in correctly identifying the hazard.

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EXAMPLE: Employees doing sanding operations may be exposed to burns from a fire caused by sparking in the presence of magnesium dust. One of the abatement methods suggested may be training and supervision. The "hazard" is the potential exposure to burns from a fire; it is not the lack of training and supervision.

EXAMPLE: There are three abatement measures that the employer failed to take in a hazardous situation involving high pressure gas where the employer has failed to train employees properly, has not installed the proper high pressure equipment, and has improperly installed the equipment. There is only one hazard (e.g., exposure to the hazard of explosion due to the presence of high pressure gas) and hence only one general duty clause citation.

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VI. Willful Violations

Willful violations exist under the OSEAct when an employer has demonstrated either an intentional or purposeful disregard for the requirements of the OSEAct or a plain indifference to employee safety and health. A willful violation is 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. You must first establish that a violation exists by documenting the four elements outlined in this chapter. You must then document the intent of the employer if you suspect the violation is willful. The intent must be intentional, purposeful or indifferent.

Field enforcement managers are encouraged to consult with the Department of Justice (DOJ) when developing willful citations. The following guidance and procedures apply whenever there is evidence that a willful violation may exist.

Willful by Intentional Disregard

An employer commits an intentional and knowing violation when:

- They are aware of the requirements of the OSEAct or of an applicable standard or regulation and are also aware of a condition or practice in violation of those requirements, but do not abate the hazard or take appropriate action.

- They are not aware of the requirements of the OSEAct or standards, but have knowledge of a comparable legal requirement (e.g., state or local law) and are also aware of a condition or practice in violation of that requirement.

- They know that specific steps must be taken to address a hazard, but substitutes their judgment for the requirements of the standard.

NOTE: When efforts have not been made by the employer to minimize or abate a hazard and they continue to send employees into harm's way, you may wish to consider a willful violation. In such cases, consult the field enforcement manager if a willful classification is under consideration.

Willful by Plain Indifference

An employer commits a violation with plain indifference to employee safety and health when:

- Management officials are aware of an Oregon OSHA requirement applicable to the employer's business but make little or no effort to communicate the requirement to lower level supervisors and employees.

- Company officials are aware of a plainly obvious hazardous condition but make little or no effort to prevent violations from occurring.

  EXAMPLE: The employer is aware of the existence of unguarded power presses that have caused near misses, lacerations, and amputations in the past and does nothing to abate the hazard.

Repeated citations addressing the same or similar conditions:

- An employer is not aware of any legal requirement, but knows that a condition or practice in the workplace is a serious hazard to the safety or health of employees and makes little or no effort to determine the extent of the problem or to take the corrective action. Knowledge of a hazard may be gained from such means as insurance company reports, safety committee or other internal reports, illnesses or injuries, or complaints of employees or their representatives.

NOTE: Voluntary employer self-audits that assess workplace safety and health conditions will not normally be used as a basis of a willful violation. However, once an employer's self-audit identifies a hazardous condition, the employer must promptly take appropriate measures to correct a violative condition and provide interim employee protection.

Willfulness may also be established despite lack of knowledge of a legal requirement if circumstances show that the employer would have placed no importance on such knowledge.

EXAMPLE: An employer sends employees into a deep unprotected excavation containing a hazardous atmosphere without ever inspecting for potential hazards.

It is not necessary that the violation be committed with a bad purpose or malicious intent to be deemed "willful." It is sufficient that the violation is deliberate, voluntary, or intentional as distinguished from inadvertent, accidental, or ordinary negligence.

Documenting Willful Violations

Carefully develop and record in the notes all evidence available that indicates employer awareness of the disregarded statutory or other legal obligation to protect employees against a hazardous condition. Willfulness may exist if an employer is informed by employees or employee representatives regarding an alleged hazardous condition and does not make a reasonable effort to verify or correct the hazard. Additional factors to consider in determining whether to characterize a violation as willful include:

- The nature of the employer's business and the knowledge regarding safety and health matters that could reasonably be expected in the industry.

- Any precautions taken by the employer to limit the hazardous conditions.

- The employer's awareness of the OSEAct and of its responsibility to provide safe and healthful working conditions.

- Knowledge that similar violations or hazardous conditions have been brought to the attention of the employer through prior citations, accidents, or warnings from Oregon OSHA, officials from other government agencies, or an employee safety committee regarding the requirements of a standard.

- Evidence that the nature and extent of the violations discloses a purposeful disregard of the employer's responsibility under the OSEAct.

Include facts showing that even if the employer is not consciously violating the OSEAct, they are aware that the violative condition exists and make no reasonable effort to eliminate it.

Willful vs. Repeat

A violation that has been repeated does not necessarily mean the violation is willful. A violation may appear to meet the criteria for willful, however, if willful intent cannot be sufficiently proven the violation will be considered a repeat if it meets the criteria for a repeat violation. Deciding to issue a citation for a willful or repeated violation will frequently raise difficult issues of law and policy and will require the evaluation of complex factual situations. Accordingly, a citation for a willful violation will not be issued without consulting with the Administrator, who may, as appropriate, discuss the matter with the Assistant Attorney General. In such cases the field enforcement manager will consult with the statewide safety or health manager.

Willful/Criminal Violations

ORS 654.991 of the OSEAct provides that: "Any employer who willfully violates any provision of, or any regulation, rule, standard or order promulgated pursuant to, ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, and that violation is found to have caused or materially contributed to the death of any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both."

Where a willful violation is related to a fatality, you must examine the facts to determine if there is a case for criminal negligence. If there is, you should consult with your manager before making a referral to the district attorney.

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Statewide Safety or Health Manager Coordination

The statewide safety or health manager must be consulted prior to the completion of the investigation to determine whether evidence exists and whether further evidence is necessary to establish the elements of a willful/criminal violation. The statewide safety or health manager and Assistant Attorney General (AAG) will carefully evaluate all cases involving workers' deaths to determine whether they involve criminal violation of ORS 654.991 of the OSEAct.

Criteria for Investigating Possible Willful/Criminal Violations

The following criteria will be considered in an investigation to establish a willful/criminal violation:

- The violation is willful in nature.
- The employer violates an Oregon OSHA rule. A willful/criminal violation cannot be based on a violation of ORS 654.010
- The violation of the rule or order causes the death of an employee. In order to prove that the violation of the rule causes the death of an employee, there must be evidence in the file which clearly demonstrates that the violation of the rule or order contributes to the death of an employee.

Following the investigation, if the field enforcement manager decides to recommend criminal prosecution, a memorandum containing that recommendation must be forwarded promptly to the statewide safety or health manager. Include an evaluation of the possible criminal charges, taking into consideration the greater burden of proof which requires that the State's case be proven beyond a reasonable doubt. If the correction of the hazardous condition appears to be an issue, this must be noted in the transmittal memorandum. In most cases the prosecution of a willful/criminal case delays the affirmation of the civil citation and its correction requirements.

Oregon OSHA will normally issue a civil citation according to current procedures even if the citation involves allegations under consideration for criminal prosecution. The Administrator must be notified of such cases, and they must be forwarded to the local District Attorney.

NOTE: If asked during an investigation, you should inform employers that any violation found to be willful that has caused or contributed to the death of an employee is evaluated for potential criminal referral to the Department of Justice.

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VII. Egregious Violations

Egregious or violation-by-violation citations are intended to provide extra incentive to employers to prevent safety and health violations in their workplaces and to correct such violations which exist voluntarily. Each instance of noncompliance of the same rule is considered a separate violation and penalties are applied separately. Penalties for egregious violations are to be determined by the Administrator according to OAR 437-001-0175. Your manager must examine and evaluate the documentation and other evidence supporting the violations and determine whether expert witnesses or depositions will be necessary, as well as provide sufficient time for DOJ to write a legal opinion on the merits of the case. *See PD A-158 "Egregious Violations" for additional information.*

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VIII. Repeat Violations

Cite an employer for a repeat violation if that employer's second or subsequent violation involves a substantially similar violative condition that was cited within the previous three years. Repeat violations do not necessarily require citing the same rule. Review the employer's inspection history to determine if the violative condition has been cited in the previous three years. You may need to request specific inspection report information for the previous inspection to determine if the new violative condition is substantially similar. You must document their similarities.

Where a violation of a previously cited condition is present and under appeal and not yet final, the second citation will be cited as a repeat violation. 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. See OAR 437-001-0160(4).

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 where the circumstances clearly demonstrate that the violation is based on substantially similar conditions to the previously cited violation.

> **Example:** A citation was issued within the previous three years 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.

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:** A citation was issued within the previous three years 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: A citation was issued within the previous three years 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.

Re-numbered Rules

Repeat violations will be cited when re-numbered rules are violated and the subsequent violation involves a substantially similar violative condition.

Time Limitations

Oregon OSHA administrative rules state that violations will be repeat violations if there is a recurrence within a three year period. Subsequent repeat violations may be cited as long as each repeat violation has occurred within three years of the earlier violated rule.

When measuring the time for a repeat violation, the three year period begins with the issue date of the previous citation for a violation of the same rule, regulation, standard or order.

Statewide Repeat Violations

When determining if a violation is repeated, the following will apply:

- **Fixed Places of Employment –** The entire facility is maintained by an employer at one general location, regardless of the size or number of departments or buildings in the facility. Fixed places of employment include employers engaged continuously in construction activity at a single worksite for more than 24 months. At fixed places of employment, an employer will be cited a repeat violation if they have been cited for a "high serious" or a "death" violation at any of their other locations in the state within the previous 36 months. Subsequent violations do not necessarily have to be classified as "high serious" or "death" violations to be a repeat. Repeat violations for all other violation types will be limited to the cited place of employment.

- **Non-fixed (Mobile) Place of Employment -** A non-fixed place of employment (e.g., construction sites, oil and logging operations) is interpreted to mean "all geographical sites or locations within Oregon OSHA's jurisdiction where construction, forest activities, or other movable operations are being performed by the employer." For employers at non-fixed places of employment, repeat violations will be based on earlier violative conditions occurring anywhere within the state within the previous 36 month period.

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Documenting Repeat Violations

Once you make a recommendation that a violation should be cited as a repeat violation, you and your field enforcement manager will:

- Ensure that the case file includes a copy of the previous citation describing the substantially similar violative condition that serves as the basis for the repeat citation along with any other supporting evidence. Document the basis for the repeat citation in the case file if the prior citation is not available. Include all documents showing that the citation is a final order and the date that it became final. For example:
    - The citation becomes a final order 30 calendar days from employer's receipt of the citation if not contested.
    - The citation becomes a final order once the Administrative Law Judge signs the agreement.
    - The citation becomes a final order on the 61st day following the date the Administrative Law Judge signs the order following a formal hearing. OTIS information must not be used as the sole means to establish that a prior violation has become a final order.
- Ensure that the cited employer is fully informed of the previous violations serving as a basis for the repeat citation. Note the information on the Alleged Violation Description (AVD) and on the variable language section of your draft citation using the following or similar language:

    A ____ REPEAT VIOLATION of Item _____ on Citation ____ issued.

Repeat vs. Failure to Abate

A failure to abate situation exists when equipment or a condition previously cited has not been abated and the violation still exists at a later inspection. If, however, the violation was not continuous; e.g., if it had been abated and recurred, the subsequent recurrence is a repeat violation if it occurs within a 36 month period.

IX. Failure-to-Abate Violations

Cite a Failure-to-Abate violation in situations where an employer has not abated a violation within the time frame indicated on a previously issued Oregon OSHA citation. Failure-to-Abate citations incur daily penalties. *See P&P #49 "Procedures for Notice of Failure to Correct Violation," and Chapter 7 "Failure to Abate Penalties."*

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X. Variance Violations

A **variance** is a written authority given by the Division to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Types of variances are:

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

- **Temporary** – A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule.

- **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.

- **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.

An employer may apply for a variance if they are unable to comply with the requirements of a rule or order. They must petition Oregon OSHA for the variance. The requirement to comply with a rule may be modified through granting of a variance, as outlined in ORS 654.056 and Division 1 OAR 437-001-0400. Cite a violation of Division 1 if the employer is not in compliance with the requirements of the variance. Refer to the variance provision that has not been met. Provide a copy of the citation to technical if an employer is cited for a violation of a variance. If, during an inspection, you discover that an employer has applied for a variance regarding a condition that represents a violation, the field enforcement manager will check to see if the variance request has been granted. Cite for the violative condition if the variance has not been granted.

XI. De minimis Conditions

Minimal violations of rules that have no direct or immediate relationship to safety or health are considered **de minimis conditions**. Whenever de minimis conditions are found during an inspection, they must be documented in the same way as any other violation; but no citation will be issued. The criteria for determining de minimis conditions are as followed:

- An employer complies with the clear intent of the rule but deviates from its requirements in a manner that has no direct or immediate relationship to employee safety or health.

- An employer complies with a proposed rule or amendment or a consensus rule rather than with the rule in effect at the time of the inspection when the employer's action clearly provides equal or greater employee protection.

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- An employer's workplace is considered "state-of-the-art" is technically beyond the requirements of the applicable rule, and provides equivalent or more effective employee safety or health protection but it does not meet the intent of the rule.

  EXAMPLE: 1910.217(e)(1)(ii) requires that mechanical power presses be inspected and tested at least weekly. If the machinery is seldom used, inspection and testing prior to each use is adequate to meet the intent of the standard. The intent of the rule is not being met but the failure to do so does not pose a hazard. No citation would be issued under these circumstances.

NOTE: De minimis conditions must be documented in your narrative. Provide information to support not writing a citation. The field enforcement manager must ensure that all minimal violations meet the criteria set out above.

XII. Administrative Violations

Issue **posting** violations of OAR 437-001-0275 through OAR 437-001-0280 and **recordkeeping** and **reporting** violations of OAR 437-001-0700 through OAR 437-001-0742 as other-than-serious violation. They must be documented and cited when an employer is not in compliance.

XIII. Common Health Violations

Violations of the Noise Standard

Current enforcement policy regarding 1910.95(b)(1) (and equivalent standards in agriculture (OAR 437-004-0630); construction and forest activities refer back to 1910.95) allows employers to rely on personal protective equipment (PPE) and a hearing conservation program, rather than engineering and administrative controls. Hearing protectors can effectively attenuate the noise to which employees are exposed to acceptable levels. *(See Tables G-16 or G-16a of the standard).*

Citations for violations of 1910.95(b)(1) will be issued when technologically and economically feasible engineering and administrative controls have not been implemented; and

- Employee exposure levels are so elevated that hearing protectors alone may not reliably reduce noise levels received to levels specified in Tables G-16 or G-16a of the standard. (e.g., Hearing protectors which offer the greatest attenuation may reliably be used to protect employees when their exposure levels border on 100 dBA); or

- The costs of engineering and administrative controls are less than the cost of an effective hearing conservation program.

When an employer has an ongoing hearing conservation program and the results of audiometric testing indicate that existing controls and hearing protectors are adequately protecting employees, no additional controls may be necessary. In making this assessment, factors such as exposure levels present, number of employees tested, and duration of the testing program will be considered.

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When employee noise exposures are less than 100 dBA but the employer does not have an ongoing hearing conservation program, or results of audiometric testing indicate that the employer's existing program is inadequate, you must consider whether:

- Reliance on an effective hearing conservation program would be less costly than engineering and/or administrative controls.
- An effective hearing conservation program can be established or improvements made in an existing program which could bring the employer into compliance with Tables G-16 or G-16a.
- Engineering and administrative controls are both technically and economically feasible.

If noise workplace levels can be reduced to the levels specified in Tables G-16 or G-16a by means of hearing protectors along with an effective hearing conservation program, a citation for any missing program elements will be issued rather than for lack of engineering controls. If improvements in the hearing conservation program cannot be made or, if made, cannot reasonably be expected to reduce exposures, but feasible controls exist to address the hazard, then 1910.95(b)(1) will be cited.

When hearing protection is required but not used and employee exposures exceed the limits of Table G-16, 1910.95(i)(2)(i) will be cited and classified as serious whether or not the employer has instituted a hearing conservation program.

NOTE: Citations of 1910.95(i)(2)(ii)(B) will be classified as serious.

Where an employer has instituted a hearing conservation program and a violation of one or more elements (other than 1910.95(i)(2)(ii)(B)) is found, citations for the deficient elements of the noise standard will be issued if exposures equal or exceed an 8-hour time-weighted average (TWA) of 85 dB.

If an employer has not implemented a hearing conservation program and employee exposures equal or exceed an 8-hour TWA of 85 dB, a citation for 1910.95(c) only will be issued.

- Hearing protection is not utilized or is not adequate to prevent overexposures; or
- There is evidence of hearing loss that could reasonably be considered:
  - To be work related, and
  - To have been preventable, if the employer had been in compliance with the cited provisions.

No citation will be issued where, in the absence of feasible engineering or administrative controls, employees are exposed to elevated noise levels, but effective hearing protection is being provided and used, and the employer has implemented a hearing conservation program.

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Violations of Air Contaminant Standards

Requirements under OAR 437-002-0382(1) through (4) (or equivalent standards in construction, OAR 437-003-1000 or agriculture (OAR 437-004-9000) provide ceiling values and 8-hour TWAs applicable to employee exposure to air contaminants. OAR 437-002-0382(5) provides that to achieve compliance with paragraphs (1) through (4), administrative or engineering controls **must first be determined and implemented whenever feasible**. Use protective equipment or other protective measures to keep the exposure of employees to air contaminants within the limits prescribed in OAR 437-002-0382 when other controls are not feasible to achieve full compliance. Any equipment and technical measures used for this purpose must be approved for each particular use by a competent industrial hygienist or other technically qualified person.

Whenever respirators are used, the employer must comply with 1910.134 or equivalent standards in construction (1926.103, agriculture (OAR 437-004-1041) or forest activities (OAR 437-007-0345). *See PD A-233 "Respiratory Protection: General Guidelines" for additional information.* Issue a citation for exceeding the air contaminant standard where employees are exposed to a toxic substance in excess of the PEL established by Oregon OSHA standards (without regard to the use of respirator protection). Classify the violation as serious or other-than-serious based on whether respirators are being used accordingly. Classification of these violations is dependent upon the determination that an illness is reasonably predictable at the measured exposure level. Exposure to regulated substances will be characterized as serious if exposures could cause impairment to the body.

- In general, substances that are carcinogenic will be considered as posing a serious health hazard at any level above the Permissible Exposure Limit (PEL).

- Substances causing mild, temporary irritation to the eyes, nose, throat or skin will be considered other-than-serious up to levels at which "moderate" irritation could be most likely.

- For a substance having both serious and other-than-serious health effects (e.g., cyclohexanol), a classification of other-than-serious is appropriate up to levels where serious health effect(s) could be likely to occur.

- For a substance having an ACGIH Threshold Limit Value (TLV) or a NIOSH recommended value, but no Oregon OSHA PEL, a citation for exposure in excess of the recommended value may be considered under the general duty clause (ORS 654.010) of the OSEAct. Prior to citing an ORS 654 violation under these circumstances, it is essential that you document that a hazardous exposure is occurring or has occurred at the workplace, not just that a recognized occupational exposure recommendation has been exceeded.

- If an employee is exposed to concentrations of a substance below the PEL, but in excess of a recommended value (e.g., ACGIH TLV or NIOSH recommended value), citations will not normally be issued.

- For a substance having an 8-hour PEL with no ceiling PEL and the hazard involves exposure above a recognized ceiling level, the case must be reviewed with the health statewide health manager before making a decision to issue a citation. If no citation is issued, you will advise employers that a ceiling value is recommended.

  NOTE: An exception to this may apply if it can be documented that an employer knows that a particular safety or health standard fails to protect his workers against the specific hazard it is intended to address.

When a mixture of air contaminants is known to have an additive effect and, therefore, results in a greater probability/severity of risk when found in combination with each other, the formula found in OAR 437-002-0382(4)(b)(i) and shown below will be used to evaluate the exposure. Use of this formula requires that exposures have an additive effect on the same body organ or system. An employer will compute the equivalent exposure as follows:

$$\mathbf{Em = (C1 \div L1) + (C2 \div L2) + \ldots (Cn \div Ln)}$$

Where:
Em is the equivalent exposure for the mixture.
C is the concentration of a particular contaminant.
L is the exposure limit for that substance specified in Subpart Z of 29 CFR Part 1910.
The value of **Em** must not exceed unity (1).

If you suspect that synergistic effects are possible you must consult with your field enforcement manager who will then refer the question to the statewide health manager. If a synergistic effect of the cited substances is determined to be present, violations will be grouped to accurately reflect severity and probability.

Violations for Improper Personal Hygiene Practices

Issue **ingestion hazard** citations using 1910.141(g)(2) and (4) where there is reasonable probability that, in areas where employees consume food or beverages (including drinking fountains), a significant quantity of a toxic material may be ingested and subsequently absorbed. Cite the most vertical rule in cases that involve specific substances (i.e., asbestos, lead, cadmium, etc.). Collect wipe samples to establish the potential for a serious hazard. In agriculture, use OAR 437-004-1105(7)(a) or (c).

Issue **absorption hazard** citations for exposure to materials that may be absorbed through the skin or can cause a skin effect (i.e., dermatitis) where appropriate personal protective clothing is necessary, but is not provided or worn. When a serious skin absorption or dermatitis hazard exists that cannot be eliminated with protective clothing, a general duty (ORS 654.010) citation may be considered. Engineering or administrative (including work practice) controls may be required in these cases to prevent the hazard.

NOTE: In general, wipe samples, not measurements for air concentrations, will be necessary to establish the presence of a toxic substance posing a potential ingestion or absorption hazard. *(See Oregon OSHA Technical Manual for sampling procedures).* The ingestion or absorption of

chemicals through means other than the consumption of contaminated food or drink, (i.e., smoking materials contaminated with a toxic substance), a serious citation will be considered under the General Duty Clause ORS 654.010.

Consider the following criteria prior to issuing a citation for ingestion or absorption hazards:

- A health risk exists as demonstrated by one of the following:
  - A toxic substance that may be potentially ingested or absorbed through the skin is present.
  - A potential for an illness or a condition such as dermatitis is present.
- The potential for employee exposure by ingestion or absorption may be established by taking both qualitative and quantitative wipe samples. The substance must be present on surfaces that employees contact (e.g., lunch tables, water fountains, work areas, etc.) or on other surfaces which, if contaminated, present the potential for ingestion or absorption.
- The sampling results must reveal that the substance has properties and exists in quantities that pose a serious hazard.

NOTE: During the course of an inspection activity, you may encounter employees exhibiting or complaining of symptoms potentially related to exposures at their workplace. You may also be aware that an exposure could be present at that workplace. You are advised not to diagnose worker illness or symptoms. This does not preclude you from informing employees that certain symptoms or illnesses may result from a particular exposure(s), and that workers having questions or concerns may best contact a qualified medical source. Further questions can be referred to the State Board of Medical Examiners.

Biological Monitoring

You must evaluate the results of the employer's biological monitoring. These results may assist in determining whether a significant quantity of the toxic substance is being ingested or absorbed through the skin.

Hazard Communication

Division 2, Subdivision Z, 1910.1200; Division 3, Subdivision D, 1926.59 (construction standard refers back to 1910.1200), and Division 4, Subdivision Z, OAR 437-004-9800 require chemical manufacturers and importers to evaluate chemicals produced in their workplaces or imported by them to classify the chemicals. For each chemical, the chemical manufacturer or importer must determine the hazard classes, and where appropriate, the category of each class that apply to the chemical being classified. Violations of this standard by manufacturers or importers must be documented and cited, irrespective of any employee exposure at the manufacturing or importing location. The standard also requires employers to implement and maintain a written hazard communication program that includes labeling and other forms of warning, safety data sheets, and employee information and training. *See PDs A-150 "Hazard Communication" and A-216 "Citation: Paperwork and Written Program Violations."*

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XIV. Order to Correct

An **Order to Correct** is issued to require correction of a hazardous condition when a citation cannot be issued. An Order to Correct is the appropriate document to issue when a citation is not issued within 180 days of Oregon OSHA becoming aware of a violation. The criteria for proving and upholding an Order to Correct is the same as the criteria for a citation with penalty. Abatement verification is required when an Order to Correct has been issued. A Failure to Abate citation, with penalties, can be issued for non-abatement of an Order to Correct. A repeat violation can also be issued during subsequent inspections based on an Order to Correct. An Order to Correct citation can be appealed by the employer. *See P&P "Order to Correct" procedures for additional information.*

NOTE: You must document the rationale for issuing an Order to Correct in the inspection report narrative/summary.

XV. Hazard Letters

To reduce the number of workplace injuries suffered by employees, the scope of safety/health inspections should include all workplace hazards, whether or not they are violations of the OSEAct. To address hazardous conditions where you are unable to document exposure either through observation or witness statements, or you encounter a hazardous condition not covered by rules, issue a **hazard letter** to inform the employer and employees of concerns. Information supplied to employers through a hazard letter can be used to support employer knowledge in future citations that relate to the conditions addressed in the letter. *See "Hazard Letter Processing" for OTIS instructions.*

Types of Hazard Letters

1. **Non-rule related hazard letters** address one of the following:

    - Hazards or hazardous conditions not currently addressed by a rule.
    - Information on impending rule changes or new rules to be implemented.
    - Suggested ways to improve an employer's safety and health program.

2. **Rule-related hazard letters** address one of the following:

    - Hazards or conditions where a specific rule applies, but there is insufficient evidence to support a violation.
    - Measured samples are taken at the time of inspection and exposures are just below established acceptable limits.

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CHAPTER 3

Conducting Inspections

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I. Scopes of Inspections

Conducting effective inspections requires the identification, evaluation, and documentation of safety and health conditions and practices. Inspections may vary considerably in scope and detail depending on the circumstances of each case. Inspections, either programmed or unprogrammed, fall into one of two categories: comprehensive or partial, depending on the scope of the inspection.

Comprehensive Inspections

A comprehensive inspection is a substantially complete and thorough inspection of all potentially hazardous areas of the establishment, and includes review of all required safety and health programs. An inspection may be deemed comprehensive even though, as a result of professional judgment, not all potentially hazardous conditions or practices within those areas are inspected. Some hazardous conditions may need to be referred to a health compliance officer, while other hazardous conditions may need to be referred to a safety compliance officer.

Partial Inspections

A partial inspection's focus is 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 that you determine necessary. A partial inspection may be expanded based on information you gathered during the inspection process that identifies employee exposure to potentially serious hazards or your observation of a serious hazard. Partial inspections will not be expanded for other-than-serious hazards.

Expanding Partial Inspections

The scope of a partial inspection may be expanded under any of the following circumstances, which must be documented in the case file:

- The establishment is listed on a current field office safety or health inspection scheduling list and it is reasonably anticipated that a scheduled inspection would occur by years end.
- Oregon OSHA inspection records for the establishment, or for the employer in the case of a mobile work site, indicate a history of significant violations.
- You observe serious hazards which are not within the scope of the original inspection.

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II. Preparing for an Inspection

You must adequately prepare for conducting an effective inspection. Preparation begins in the office by reviewing a number of documents that are identified below.

Office Preparation

Depending on the type of inspection, your office preparation activities may include but are not limited to the following:

- **Print and review the employer's Location Detail Report or Oracle Employer Activity report.** Check for the following when applicable:
    - Inspection history
    - Previous violations
    - Comments
    - Workers' Compensation Claims
    - Hospitalizations
    - Variances
    - Previous warrants
    - Recordkeeping exemptions
    - Statewide DART rate.
- **Review office inspection files and reference materials**. Safety inspection files are maintained at the field offices for 3 years, while health inspection files are maintained for 5 years. Verify employer information, review previous cited violations, if any, and read the inspection narrative. Great care will be taken to ensure that documents which are not disclosable are kept confidential.
- **Determine if the fixed location is exempt from a comprehensive inspection**. If so, notify your manager. For all complaints, referrals, fatalities, catastrophes and accidents, the field enforcement manager must notify the VPP program manager immediately. *See Scheduled Inspection Exemptions in Chapter 1 for a list of exemptions.*
- **Obtain the required forms and documentation for the type(s) of inspection to be conducted.** Forms are available at your field office. *See "Required Inspection Forms and Documentation" in Chapter 8.*
- **For all complaints, referrals, fatalities, catastrophes and accidents, check to see if the establishment is on the current scheduling list.** If so, a comprehensive inspection may be conducted at the same time. If you only conduct a partial inspection, be certain not to mention that the employer is on the scheduling list for a comprehensive inspection. This would be considered giving advance notice.
- **Determine the need for a side-by-side inspection.** Attempt to coordinate a side-by-side inspection when a location is scheduled for both a safety and health comprehensive inspection. This is to limit disruption of the employer's work operations and use agency resources more efficiently.

- **Identify the need for an interpreter**. Arrange for an interpreter when an employer's inspection history indicates one is needed. *See "Obtaining an Interpreter" in this Chapter*.

- **Personal security clearance.** Some establishments have areas that contain material or processes that are classified by the U.S. Government in the interest of national security. The field enforcement manager must consult with the safety and health operations manager who will decide the procedure to follow when an establishment has these classified areas.

- **Determine if expert assistance is needed.** Arrange with your manager for a specialist from within Oregon OSHA to assist you in an inspection or investigation when the need for such expertise is identified. Your manager may contact the central office to arrange for the services of qualified outside experts when Oregon OSHA specialists are not available. Expert assistance may be helpful for identifying engineering or administrative controls when addressing hazards e.g., noise levels, air contaminants, complicated machine guarding, and construction issues. Oregon OSHA specialists may accompany you or perform their tasks separately. Accompany outside experts, and have them sign confidentiality agreements to protect trade secrets when applicable. Oregon OSHA specialists and outside experts should be briefed on the purpose of the inspection and necessary personal protective equipment (PPE). (OAR 437-001-0065(5). All data, conclusions, and recommendations from specialists must be made part of the inspection report.

- **Obtain a current copy of the construction and logging scheduling lists**. The safety enforcement manager will provide certain safety compliance officers a construction and/or logging inspection list. *See Scheduling Construction and Logging Inspections*.

- **Ensure you have adequate supplies, tools, and equipment** e.g., clipboard, camera, video recorder, extra batteries, measuring tape, voltage sensor, binoculars, accident investigation kit, and sampling and collecting equipment. Sampling equipment will be calibrated and maintained according to the Oregon OSHA Technical Manual.

- **Review any applicable program directive (PD).** The program directive system was developed to unify all health and safety policies, procedures, orders, and information dissemination.

- **Wear proper attire.** Your clothing should be appropriately professional for the establishment you are inspecting. Your safety may be impacted by your chosen attire.

- **Ensure you have the appropriate PPE to conduct the inspection.** Take appropriate, approved PPE to an establishment to use during on-site activities where you can reasonably anticipate hazards requiring PPE to be encountered.

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Personal Protective Equipment

Take the PPE necessary to protect you from exposure to hazards during the course of your field activities. PPE may include hard hat, safety glasses, hearing protection, safety-toed boots or shoes, high visibility garments, fall protection equipment, respirator, personal flotation devices, and chemical protective gloves and clothing. Wear safety equipment or clothing required by the employer. Employees must be trained to correctly use and maintain PPE before they wear it. Do not use unapproved, damaged, or defective PPE; notify your manager of such equipment immediately. *See P&P #28 "PPE policy for OR-OSHA staff" for additional information.*

Consideration should be given to those establishments where **respirator protection** is required. *See P&P #44 "OR-OSHA Respiratory Protection Policy" for procedures*.

When respiratory protection is required, you must do the following:

- Conduct a pre-inspection evaluation for potential exposure to chemicals.
- Obtain a list of hazardous substances and air monitoring results during the opening conference. Determine if you have the appropriate respirator to protect against chemicals present at the worksite.
- Wear and maintain respirators according to the training provided.
- Notify your manager or the respiratory protection program administrator when any of the following occurs:
    - A respirator doesn't fit well.
    - You encounter any respiratory hazards during inspections or on-site visits that you believe have not been previously or adequately addressed during the site visit.
    - There are any concerns regarding the respiratory program.

III. Field Staff Safety and Health

The safety and security of Oregon OSHA staff is of the utmost importance. You must contact your manager prior to performing any task you believe may compromise your safety.

Threats, Threatening Behavior, or Acts of Violence

Threats, threatening behavior, or acts of violence against Oregon OSHA field staff are not acceptable. While such situations can occur, Oregon OSHA has no expectation that staff will normally be subjected to threats, threatening behavior, or acts of violence. If you feel threatened, you should leave the situation as quickly and safely as possible and notify your manager. Staff will complete the **Workplace Violence Incident Form SAF-04a** (from DCBS Policy SAF-04) and send it to the DCBS safety risk manager within 48 hours. All incidents of verbal or physical assault by difficult employers toward any staff member will be entered on the Assault Log by the enforcement analysts or designee. Do not return to the work site until the incident has been reported and it has been determined how to safely complete the work process. *See P&P #10 "Field Staff Safety" for additional information.*

Working in Remote Locations

When working in remote locations**,** make certain your office is aware of where you may be conducting inspections. Include your route to the inspection site, your estimated time of arrival, and the time you expect to complete the inspection. This is to ensure the field office can check on your whereabouts if you do not return to your office in a timely manner. Follow your office policies for location notifications.

Drive Safely

When operating a state vehicle, you should remember that your driving habits reflect on all state employees. State vehicles must be used legally, courteously, and safely. You are strongly encouraged to plan mini-breaks every two hours during long periods of driving. All employees must drive within posted speed limits and observe all traffic safety rules. Drivers must use and require appropriate safety restraints to be worn by all occupants. All state vehicles will be equipped with an accident report packet with forms and instructions. You must immediately notify your manager of any accident, collision, vandalism, or mechanical issues.

Personal Hygiene Practices

Occupational exposure to communicable diseases is possible whenever contact with infectious individuals, animals, or other sources occur. Oregon OSHA staff experience a wide variety of circumstances where these interactions can occur. "Waterless" disinfectant hand sanitizer, hand wipes, or similar items allow for better personal hygiene where cleaning facilities may not be readily available. *See P&P "Best Practices for Personal Safety: Infectious Agents" and P&P #54 "Bloodborne Pathogens – Exposure Control Plan" for additional information.*

NOTE: *Follow P&P "Hydrofluoric Acid (HF) & Calcium Gluconate Gell" when conducting inspection activities where HF is involved.*

Special Entry Restrictions

Do not enter any area where special entrance restrictions apply until you have taken the required precautions. You must notify your manager of any special entrance restrictions you encounter during your inspection. It is your manager's responsibility to determine that an inspection may be conducted without exposing you to hazardous situations and to procure whatever materials and equipment are needed for a safe inspection.

IV. Advance Notice

Advance notice exists when an agent of Oregon OSHA or any other person informs the owner, employer, agent, or employee that an inspection is going to be conducted prior to Oregon OSHA arriving on site to conduct the inspection. Advance notice of an inspection cannot be given without authority of the Director of the Department of Consumer and Business Services (DCBS) or the designees of the Director. The penalty for doing so is prescribed in ORS 654.991(2) of the Oregon Safe Employment Act (OSEAct). The OSEAct regulates many conditions that are subject to speedy alteration and disguise by employers. To get a more accurate account of normal work site conditions, the act in ORS 654.067(1) & (2) and the rule in Division 1, OAR 437-001-0060 prohibits unauthorized advance notice without authority of the Director or the designees of the Director.

NOTE: Advance notice generally does not include non-specific indications of a potential future inspection.

Advance Notice Exceptions

There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are rare exceptions to the statutory prohibition against advance notice. Advance notice of inspections may be given only with approval of the Director or designee and only in the following situations:

- In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible.
- When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary.
- To ensure the presence of employer and employee representatives or other appropriate personnel who, as determined by the field enforcement manager, are needed to aid in the inspection.
- When giving advance notice would enhance the probability of an effective and thorough inspection (e.g., in complex fatality investigations).

Advance Notice Procedure

If the field enforcement manager approves a request for advance notice of an inspection, the following must occur:

- The notice must not be given more than 24 hours in advance.
- It is not considered advance notice to advise a federal or state agency of a proposed inspection in order to avoid duplicate inspections or to facilitate enforcement.
- When advance notice is given to the employer, the employer must immediately notify the employee representative of the proposed inspection. In the absence of an employee representative, the employer must immediately post a notice in a sufficient number of locations in the place of employment. Any employer who fails to notify employees by posting the proposed inspection will be assessed a penalty not to exceed $1,000 under ORS 654.086(1)(f).
- Any person who gives advance notice of any safety or health inspection without authority from the Director or their designee can be punished, upon conviction, with a penalty not to exceed $1,000 or be imprisoned for not more than 6 months, or both, under ORS 654.991(2).

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NOTE: Documentation explaining the conditions requiring advance notice and the procedures followed must be included in the case file.

Advance Notice Delays

Any delays conducting the inspection must be kept to an absolute minimum. Lengthy or unreasonable delays must be brought to the attention of your manager. In unusual circumstances, the field enforcement manager may decide that a delay is necessary. In those cases, you or the employer must notify affected employee representatives, if any, of the delay and must keep them informed of the status of the inspection.

V. Conditions that May Delay the Inspection

Right to Inspect

ORS 654.067 of the Oregon Safe Employment Act (OSEAct) provides that you may enter without delay, and at reasonable times, any establishment covered under the OSEAct to conduct an inspection. There may be occasions, however, when employers take steps to delay the process.

Inspections Where Employer Seeks Delay

The statute envisions inspection without delay. The purpose is so that employers cannot correct unsafe conditions before an inspection walkthrough takes place, which is also the reason that no one may give advance notice of an inspection without authority from the Director. When you encounter employers using delaying tactics, you may get a warrant (ORS 654.067(3), 654.202 to 654.216).

If you anticipate delaying tactics, there is evidence of denied entry in previous inspections, you know that a job will only last a short time, or you know that job processes will be changing rapidly, you should go to the site with a warrant. In cases where you anticipate significant resistance, you should obtain assistance from the sheriff or other law enforcement officials.

It is more complicated if the employer or employer representative requests the presence of an employer representative. If the employer representative can be available within a reasonable period of time (**not to exceed 45 minutes**), you should wait for them to arrive, preferably where you are able to observe the workplace. Otherwise, if an employer, owner, or agent is available, the inspection should proceed.

Another complication may occur when an employer requests that you speak with the employer's attorney. Tell the employer that their attorney is free to call the assistant attorney general who represents Oregon OSHA, but you should not discuss or debate with the attorney who represents the employer.

Unless the circumstances constitute a recognized exception to the warrant requirement (e.g., consent, third party consent, plain view, open field, public place, or imminent danger), an employer has a right to require that you seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant. *See P&P "Inspections where employers seeks delay" for additional information.*

Refusal of Entry or Inspection

Do not argue concerning refusal. When the employer refuses to permit entry upon presentation of proper credentials or allows entry but then refuses to permit or hinders the inspection, make a tactful attempt to obtain as much information as possible about the establishment.

- If the employer refuses to allow an inspection of the establishment to proceed, leave the premises and immediately report the refusal to your manager, who will notify the central office of the refusal in cases that may have significant impact on Oregon OSHA.

- If the employer raises an objection to the inspection of portions of the workplace, consider this a refusal of entry and after contacting your manager, seek an inspection warrant.

In either case, advise the employer that the refusal will be reported to your manager, and that the agency may take further action, which may include obtaining legal process.

NOTE: On multi-employer work sites, valid consent can be granted by the owner, or another employer with employees at the worksite, for site entry.

Employer Inspection Interference

Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, immediately contact the field enforcement manager for instructions on whether or not to consider this action a refusal. Examples of interference include refusals to permit walkarounds, record examination, photography and/or videography, inspections of a particular part of the premises, employee interviews, or attaching sampling devices.

You may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. If disruption or interference occurs, use professional judgment as to whether to suspend the walkaround or take other action. The field enforcement manager must be consulted if the walkaround is to be suspended.

Forcible Interference with Conduct of Inspection or Other Official Duties

Whenever an Oregon OSHA official or employee encounters forcible resistance, opposition, interference, or is assaulted or threatened with assault while engaged in official duties, all inspection activity must cease. It is a Class A misdemeanor under ORS 162.235 to physically obstruct governmental administration. If you are assaulted while attempting to conduct an inspection, you must contact the proper authorities, such as local police, and immediately notify your manager. *See "Threats, Threatening Behavior, or Acts of Violence" section of this chapter for additional information.*

Access to Records

If the employer refuses to allow access to the injury or illness records to determine if the employer is in compliance with recordkeeping rules, proceed as a refusal of entry.

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Bankrupt or Out of Business (Triple Zero)

If you find the establishment scheduled for inspection has ceased business and there is no known successor, Triple Zero the inspection, complete the Inspection Detail information and add a short narrative. If an employer, although bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection must proceed. An employer must comply with the OSEAct until the day the business actually ceases to operate.

Strike or Labor Dispute

Plants or establishments may be inspected regardless of labor disputes, such as work stoppages, strikes, or picketing. You must make every effort to ensure that your actions are not interpreted as supporting either side in a labor dispute. Consult your manager, or designee, before you make any contact. Inspections may proceed as follows:

- **Programmed Inspections** may be deferred during a strike or labor dispute, either between a recognized union and the employer or between two unions competing for bargaining rights in the establishment.

- **Unprogrammed Inspections** (complaints, fatalities, referrals, etc.) will be performed during strikes or labor disputes. However, the credibility and veracity of any complaint must be thoroughly assessed by your field enforcement manager, or designee, prior to scheduling an inspection.

Interference with Employee Right to Participate

Advise the employer that ORS 654.067(4) of the OSEAct authorizes a representative of the employees the opportunity to accompany the inspector during the inspection of any place of employment. Determine as soon as possible whether the employees at the work site are represented. If they are, ensure that employee representatives are given the opportunity to participate in all phases of the workplace inspection. If an employer interferes with the employee representatives participation in an inspection, and you cannot resolve it, the continued resistance must be construed a refusal to permit the inspection. When an employee representative cannot reasonably be identified, employee interviews may suffice to obtain employee input. Do not select an employee to represent the employees.

NOTE: For the purpose of this chapter, the term "employee representative" refers to: (1) a bargaining unit representative; or if none, (2) an employee member of a safety and health committee who has been chosen by employees; or (3) an individual selected by employees, who serves as their spokesperson.

Release for Entry

Do not sign any form, release, or waiver. This includes any employer forms concerned with trade secret information. You may get a pass, sign a visitor’s register, or sign any other form used by the establishment to track visitors on their premises. Such signature must not constitute a release or waiver of prosecution of liability under the OSEAct.

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VI. Inspection Warrants

If it is determined that a warrant will be sought, it must be obtained from the appropriate local court and be served as quickly as possible. *See P&P "Inspection Warrants" for additional information.*

Pre-inspection Warrant

Although the agency generally does not seek warrants without evidence that the employer is likely to refuse entry, the field enforcement manager may seek a warrant in advance when its desirable or necessary based on the circumstances. Some examples of such circumstances include, but are not limited to the following:

- When the employer's past, either implicitly or explicitly, puts Oregon OSHA on notice that a warrantless inspection will not be allowed.

- When an inspection is scheduled far from the local office and getting a warrant prior to leaving to conduct the inspection would save time and resources in case there is a refusal to enter.

- When an expert or special equipment is needed to properly conduct the inspection, and getting a warrant prior to an attempt to inspect would better utilize the equipment or expert.

Obtaining a Warrant

The three of the four documents that make up a warrant are drafted in the field office are: an **Affidavit**, the **Warrant**, and a **Return of Inspection Warrant**. The Department of Justice (DOJ) participates in the warrant process by reviewing these documents and making necessary changes and drafting the fourth document that makes up the warrant; the **Motion & Application for Inspection Warrant**. The following is the procedure for Oregon OSHA to obtain an inspection warrant:

- The support staff, or you, will draft the affidavit in support of the warrant, making certain that the warrant identifies the scope of the inspection. In those cases where a warrant is being obtained for an unprogrammed inspection, you must have an expanded warrant if the employer is also on a list for a programmed inspection.

- The support staff, or you, must then contact DOJ to find out which of the Assistant Attorney Generals (AAG) is available and then fax the draft Affidavit and Warrant form to that AAG for review.

- The AAG will promptly review and return to the support staff, or you, by fax or e-mail, comments regarding the draft Affidavit and Inspection Warrant along with a Motion and Application for Inspection Warrant (Motion).

- You must take the executed Affidavit and the Inspection Warrant, revised as necessary per the AAG's comments, to the court along with the faxed Motion.

- The original Motion is sent to the court for filing along with the original executed Inspection Warrant and the Return of the Warrant.

- A copy of the executed Affidavit, Motion, Inspection Warrant, and Return of Warrant must be sent to the DOJ at the same time that the originals are sent to the courthouse.

Serving the Warrant

When you get a warrant requiring an employer to allow an inspection, you are authorized to conduct the inspection according to the provisions of the court order or warrant. All questions from the employer concerning reasonableness of any aspect of the inspection may be referred to the field enforcement manager. With a warrant, you may promptly enter the place of employment and do the following:

- Present appropriate credentials to the person in charge at the site.

- Show the original copy of the warrant to the employer, occupant, or owner, noting the time, place, and name, title, and affiliation to the owner of the individual in charge. You must give the employer, occupant, or owner a copy of the warrant.

- Enter on the Return of Warrant the exact date of the inspection. After completing the inspection, return the original warrant to the court using the Return of Warrant. Copies of the Return of Warrant, Affidavit, and Warrant must be included in the inspection packet.

- Subpoena the employer for records when the walkaround is limited by the warrant or an employer's consent to specific conditions or practices. The records specified in the subpoena could include (but are not limited to) injury and illness records, exposure records, the written hazard communication program, the written lockout-tagout program, and records relevant to the employer's safety and health management program, such as safety and health manuals or minutes from safety meetings or safety committee meetings.

Following Serving the Warrant

The original **Motion**, along with the original **Warrant**, **Affidavit**, and **Return of Warrant** must be filed with the court after executing the Warrant. In addition, a complete copy of the executed Warrant, Motion, Affidavit, and Return of Warrant must be sent to our attorney at DOJ when you return the originals to the court for filing.

Police Assistance

If you or your manager anticipates physical resistance or interference by the employer, your manager will ask that a state, county, or local police officer accompany you when executing the warrant.

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VII. Opening Conference

Time of Inspection

Inspections must be made during regular working hours of the establishment, except when special circumstances indicate otherwise. You and your manager, or designee, must determine if alternate work schedules are necessary in order to enter an inspection site during other than normal working hours.

First Impression

A good first impression is of utmost importance to the creation of an atmosphere of cooperation, and is essential to the successful completion of the inspection. Such an impression can be created by careful planning. Dress appropriate to the type of establishment to be inspected.

Presenting Credentials

At the beginning of the inspection, introduce yourself to the owner representative, operator, or agent in charge at the workplace and present your credentials. When the person in charge is not present at the beginning of the inspection, identify the top official present at the site. This person may be the foreman, lead person, gang boss, or senior member of the crew. On construction sites, this will most often be the representative of the general contractor. On multi-employer sites, you will ask the representative of the general contractor, superintendent, project manager, or other representative of the general or prime contractor to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations.

When neither the person in charge nor a management representative is present, you must request the presence of the owner, operator, or management representative. The inspection must not be delayed unreasonably to wait for the employer representative. Any delay should normally not exceed **45 minutes**. When you are waiting for the employer representative, the workforce may begin to leave the jobsite. In this situation, you should contact your manager, or designee, for guidance.

If the person in charge at the workplace cannot be determined, record the extent of the inquiry in the notes and proceed with the physical inspection. If the person in charge arrives during the inspection, hold an abbreviated opening conference, and inform the person of the status of the inspection and include them in the continued walkaround. Try to contact the owner or management representative after the inspection to conduct a closing conference. *See P&P #33 "Courtesy Closing for Employers" for additional information.*

Conducting an Opening Conference

You must, prior to beginning the walkaround (physical inspection), conduct an opening conference. If possible, conduct a joint opening conference with an employer representative and an employee representative. Keep the opening conference brief, normally not to exceed an hour. Conditions of the worksite should be noted upon arrival, as well as any changes that may occur

during the opening conference. The employer and the employee representatives must be informed of the opportunity to participate in the walkaround of the workplace.

Abbreviated Opening Conference

An abbreviated opening conference may be conducted whenever you believe that the circumstances at the place of employment dictate that the walkaround begin as promptly as possible. In such cases, the opening conference could be limited to a simple introduction, a showing of your identification, and an explanation for the purpose of the visit. **Cover the remainder of the opening conference as soon as possible.**

Attendance at Opening Conference

If possible, conduct a joint opening conference with the employer representatives and employee representatives, if any, unless either party objects. **If either party chooses not to have a joint conference,** separate conferences may be held for the employer and the employee representatives. Make a written summary of each conference and attach to the firm file. A copy of the written summaries will be available from central files upon request by the employer or the employee representative. If separate conferences will unacceptably delay observation or evaluation of the workplace safety or health hazards, keep each conference brief and, if appropriate, reconvene after the physical inspection.

Form Completion

Obtain available information for the Inspection Detail information, OR-OSHA Inspection Supplement and other appropriate forms, and complete applicable sections during the opening conference. *See "Required Inspection Forms and Documentation."*

Oregon OSHA Consultation Exemption

Determine during the opening conference whether an Oregon OSHA consultation is in progress, or scheduled to start within 7 days. If so, you must contact your manager for verification. An employer will be exempt from the following:

- A programmed inspection of a fixed site from **7 days** prior to the scheduled date of the consultation to **60 days** after receipt of the written consultation report.

- A programmed inspection of a mobile site or Agriculture Labor Housing site from **7 days** prior to the scheduled date of the consultation to **30 days** after receipt of the written consultation report.

If the programmed inspection is scheduled for a multi-employer worksite, such as a construction site, and the general contractor invited the consultant on site, determine the scope of the consultation and contact your manager.

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OHSAS 18001 Certification Exemption

The British Standards Institute's OHSAS 18001 (Occupational Health and Safety Management Systems) is an internationally recognized assessment specification for occupational health and safety management systems. You must determine if the location has received certification for meeting the OHSAS 18001 standards. Evidence of certification must be provided before the start of an inspection. If so, consult with your manager to discontinuing the inspection.

Experience Modification Rate Exemption

The Experience Modification Rate (MOD) compares an establishment's workers' compensation claims experience to other employers of similar size operating in the same type of business. You must determine if the location has a MOD rate of 0.5. Evidence must be provided before the start of an inspection. If so, consult with your manager to discontinuing the inspection.

Voluntary Compliance Programs Exemptions

If the establishment is a participant of a Voluntary Compliance Program, such as SHARP or VPP, obtain current status information from the employer. Contact your manager to verify if status is exempted from a programmed inspection. The employer will be exempt if any of the following is true:

- The location is in its second year, or later, of SHARP
- The location has graduated from SHARP. Locations are exempt from inspection for 36 months after graduation.
- The location has received VPP status.

NOTE: Imminent danger, fatality/catastrophe/accident, complaint or referral inspections will not be deferred for locations that qualify for exemptions; but, the scope is limited to those areas required to complete the purpose of the inspection. You must also comply with the provisions for a partial inspection, except to the extent that those items are being addressed by the consultant.

Scope of Inspection

Outline in general terms the scope of the inspection (partial or comprehensive) to the employer and the employee representatives, which may include private employee interviews, physical inspection of records and the workplace, possibility of expanding the scope, and the closing conference(s). You must do the following:

- Explain that a records review is standard procedure on all inspections and that the calculation of the establishment's Days Away, Restricted, or Transferred rate (DART) will be done.
- Explain that previously issued citations, if any within the previous three years, may also be included as part of this investigation as a follow-up or to monitor abatement progress.
- Advise the employer and the employee representatives whenever the scope of an inspection is expanded.

Trade Secrets

Trade secrets are matters that are not usually general knowledge. A trade secret is any confidential formula, pattern, process, equipment, list, blueprint, device, or compilation of information used in the employer's business which gives an advantage over competitors who do not know about it or use it. Determine during the opening conference if trade secrets exist within the establishment. It is essential to the effective enforcement of the OSEAct, that you and Oregon OSHA staff preserve the confidentiality of all information and investigations that might reveal a trade secret. *See P&P #17 "Classification & Handling of Data & Physical Items Acquired from Employers," for additional information.*

When the employer identifies an operation or condition as a trade secret, it must be treated as follows:

- Information obtained in such areas, including all negatives, photographs, videotapes, and Oregon OSHA documentation forms must be labeled:

"ADMINISTRATIVELY CONTROLLED INFORMATION
RESTRICTED TRADE INFORMATION"

- Keep all information that contains or might reveal a trade secret confidential. Such information must not be disclosed except to other Oregon OSHA officers or employees of the department or other state agencies.

Title 18 of the United States Code, Section 1905, referenced in ORS 654.120 (3), provides criminal penalties for employees who disclose such information. These penalties include fines of up to $1,000 or imprisonment of up to one year, or both, and removal from office or employment.

Unauthorized Personnel in Trade Secret Areas

Determine if the employee representative is authorized to enter any trade secret area(s). If not, interview a reasonable number of employees who work in the area.

Photographs and Videotapes of Trade Secrets

If the employer objects to taking photographs and/or videotapes because trade secrets may be disclosed, advise the employer of the protection against such disclosure afforded by ORS 654.120(3) and P&P #17 "Classification & Handling of Data & Physical Items Acquired from Employers." A drawing omitting undisclosable items may be satisfactory to the employer. If the employer still objects, contact your manager.

Photographs, Videotapes and Audio Recorders

Inform participants that a photograph/video camera and/or an audio recorder may be used to provide a visual and/or audio record, and that the videotape and audiotape may be used in the same manner as handwritten notes and photographs in Oregon OSHA inspections. Determine if any photosensitive equipment or processes are at the location when applicable.

Collecting Samples

Inform the employer representative that samples may be collected. Determine as soon as possible after the start of the inspection whether sampling is required based on information collected during the pre-inspection review and the walkaround. If either the employer or the employee representative requests sampling results, summaries of the results must be provided to the requesting representative as soon as practicable after consulting your manager.

Employee Participation through Interviews

A free and open exchange of information between you and employees is essential to an effective inspection. Interviews provide an opportunity for employees or other individuals to point out hazardous conditions and, in general, provide information regarding violations of the act that may exist and what abatement action should be taken. During the opening conference, inform the employer representative that employee interviews will be conducted during the inspection.

Allowable Penalty Adjustments

Explain to employers that there are penalty adjustments that may be given during an inspection. An employer may receive one or more of the following penalty adjustments when appropriate:

- Employer Size
- Employer History
- Employer Good Faith
- Immediate Correction of Violation

See "Penalty Assessment" in chapter 7 for additional information.

NOTE: Only a size adjustment may be applied for violations that contributed to injury or death, and repeat violations.

Employees of Other Employers

During the opening conference, determine whether the employees of other employers are working at the establishment. If there are such employees and questions arise whether their employers should be included in the inspection, contact your manager to see if you should conduct additional inspections and what limitations there may be to such inspection activity.

If additional inspections are initiated, invite both employer and employee representatives of the other employers to the opening conference. Do not delay the inspection to wait for these employer or employee representatives longer than reasonably necessary. For multi-employer sites, such as construction, determine during the opening conference who is responsible for providing common services available to all employees on site (e.g., flush toilets, sanitation, first aid, handrails).

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VIII. Records Review

Injury and Illness Records

Review and collect data from the employer's injury and illness records for three prior years. This must be done for all general industry, construction, forest activities, and agriculture inspections and investigations. This data will be used to calculate the Days Away, Restricted, or Transferred (DART) rate and to observe trends, potential hazards, types of operations, and work-related injuries.

You should request copies of the Oregon OSHA-300 Logs, the total hours worked, the average number of employees for each year, and a roster of current employees. If questions arise about a specific case on the log, request the associated DCBS 801, or equivalent form, for that case. Check to see if the establishment has an on-site medical facility or the location of the nearest emergency room where employees may be treated. Recording criteria includes new work-related injuries and illnesses that meet one or more of the general recording criteria, or meet the recording criteria for specific types of conditions, as follows:

- Death
- Days away from work
- Restricted work
- Transfer to another job
- Medical treatment beyond first aid
- Loss of consciousness
- Diagnosis of a significant injury or illness
- Needlestick/sharps injuries and work-place tuberculosis cases.

If there is evidence of deficiencies or inaccuracies in the employer's records that impair the ability to assess hazards, injuries and/or illnesses at the workplace, conduct a comprehensive records review. *See PD A-249 "Recordkeeping Policies and Procedures Manual (300 Log)," for more information.*

NOTE: Do not request access to the Bureau of Labor Statistics survey questionnaire (OSHA-300S) or even ask if the employer has participated in the survey program.

Construction Injury and Illness Records

For construction inspections/investigations, only the OSHA-300 information for the prime/general contractor need be recorded where such records exist and are maintained. It will be left to you and your manager whether OSHA-300 data should also be recorded for any of the subcontractors.

DART Rate Calculation

Calculate the DART Rates on site. The DART rate includes cases involving days away from work, restricted work activity, and transfers to another job. *See PD A-249 for procedures for determining DART rate.*

Use the following formula to calculate DART rate:

(N/EH) x (200,000) where:

N is the number of cases involving days away and/or restricted work activity and job transfers.

EH is the total number of hours worked by all employees during the calendar year; and ***200,000*** is the base number of hours worked for 100 full-time equivalent employees.

NOTE: The total hours worked **(EH)** and the average number of employees for each year can be found on the OSHA-300A for all past years.

Posting Requirements

Determine if posting requirements are met according to administrative rules. These include, but are not limited to the following:

- OSEAct - Oregon OSHA poster informing employees of their rights and obligations under the Act.
- Summary of Work-Related Injuries and Illnesses. (OSHA form 300A, to be posted February 1 to April 30 each year.)
- Current citations.
- Extension of abatement dates.

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Safety & Health Program Review

The employer's safety and health program must be evaluated to determine the degree to which the employer is aware of potential hazards in the workplace and identify what actions have been taken to minimize the hazards. The review will also provide you with information to determine the employer's good faith effort prior to the inspection. Safety & health programs may include, but are not limited to, hazard assessment, safety committee, hazard communication, process safety management, control of hazardous energy (lockout/tagout), emergency evacuation, and permit-required confined space.

Obtain a copy of the employer's written certification that a hazard assessment has been performed by the employer in accordance with OAR 437-002-0134(1)(b). Ask the person who signed the certification, when available, about potential worksite exposures. Select, and use appropriate personal protective equipment for the walkaround portion of the inspection.

Workplace Violence Prevention Program Review

When conducting inspections of employers who are in an industry associated with a high risk for workplace violence (such as late-night retail, social service and health-care settings, and correctional facilities), you should be familiar with and follow the inspection guidelines in *PD A-283 "Workplace Violence Incidents-Enforcement Procedures for Investigating or Inspecting."*

Determine if such employers have a workplace violence prevention program. If such a program exists, ask the person responsible for the program to describe all the potential workplace hazards. If there is no workplace violence prevention plan, determine the potential workplace violence hazards from sources such as the OSHA 300 log of injuries and illnesses and other relevant records.

NOTE: If training is provided to employees on workplace violence, you should conduct the inspection with an employee who has received the training. At anytime during the inspection you do not deem that the existing protections are sufficient to protect you from harm, do not enter or leave the facility or area within the facility that you consider dangerous.

You must notify your manager if you experience or witness any incident of workplace violence. *See Chapter 3 (Threats, Threatening Behavior, or Acts of Violence) for additional information*.

Screening for Process Safety Management (PSM) Coverage

Request a list of the chemicals on site and their respective maximum intended inventories if applicable. Review the list of chemicals and quantities, and determine if there are highly hazardous chemicals (HHCs) or flammable liquids or gases at or above the specified threshold quantity. You may ask questions, conduct interviews, or conduct walkaround inspections to confirm the information on the list of chemicals and maximum intended inventories.

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If there is an HHC present at or above threshold quantities, use the following criteria to determine if any exemptions apply:

- Confirm that the facility is not a retail facility; oil, gas, well drilling, or servicing operation; or normally unoccupied remote facility. If the facility is one of these types of establishments, PSM does not apply.

- If management believes that the process is exempt, ask the employer to provide documentation or other information to support that claim.

A process could be exempt if the employer can demonstrate that the covered chemicals are either of the following:

- Hydrocarbon fuels used solely for workplace consumption as a fuel (e.g., propane used for comfort heating, gasoline for vehicle refueling), if such fuels are not a part of a process containing another highly hazardous chemical covered by the standard, or

- Flammable liquids stored in atmospheric tanks or transferred, which are kept below their normal boiling point without the benefit of chilling or refrigeration.

See PD A-177 "Process Safety Management of Highly Hazardous Chemicals" for inspection procedure.

Classified and Trade Secret Information

The collection of any classified or trade secret information and the number of staff with access to it will be limited to the minimum necessary for the conduct of the compliance activities. Identify all such information in the firm file. *See P&P #17*, "*Confidential Material and Trade Secret handling" for additional information*.

Minimize Irrelevant Information

Make every effort to minimize irrelevant information in your inspection packet. Attempt to review an employer's programs on site so that only pertinent information is obtained. Return to the site if additional information becomes available, or have the employer contact you before they mail or fax the information to ensure that only the specific information is provided.

IX. Walkaround Inspection

The purpose of the walkaround (physical) inspection is to identify safety and health hazards in the workplace, and discuss effective safety and health practices with the walkaround representatives. When doing so, avoid or minimize personal exposure to hazards as much as possible.

Walkaround Representatives

Those representatives designated to accompany you during the walkaround are considered walkaround representatives. They may include the following:

- **Employer Representatives:** A representative of the employer must be given an opportunity to accompany you during the physical examination of the place of employment for purposes of aiding such inspection.

- **Establishments with Multi-Employer/Employee Representatives**: At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer and/or employee representative may accompany the CSHO throughout or during any phase of an inspection if the CSHO determines that such additional representatives will aid, and not interfere with, the inspection.

- **Employee Representatives**: A representative of the employees, if one exists, must be given an opportunity to accompany you during the physical examination of a place of employment for purposes of aiding such inspection.

- **Employees Represented by a Certified or Recognized Bargaining Agent**: During the opening conference, the highest ranking union official or union employee representative may designate who (employee representative) will participate in the walkaround.

- **No Certified or Recognized Bargaining Agent**: Where employees are not represented by an authorized representative, there is no established safety committee, or employees have not chosen or agreed to an employee representative for Oregon OSHA inspection purposes (regardless of the existence of a safety committee), you should determine if other employees would suitably represent the interests of employees on the walkaround.

- **Safety Committee**: The employee members of an established safety committee may have predetermined an employee representative for Oregon OSHA inspection purposes, or at the time of the inspection, agreed to accept an employee representative to accompany you during an inspection.

NOTE: The right to accompany under ORS 654.067(4) during the physical examination of the place of employment does not mean that the representatives of either the employees or the employer must be present during all aspects of the physical examination of the place of employment.

Disruptive Conduct

Deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection, which includes any activity not directly related to conducting an effective and thorough physical inspection of the workplace. If disruption or interference occurs, use professional judgment as to whether to suspend the inspection or take other action. Your manager must be consulted if the inspection is to be suspended. The employee representative must be advised that, during the inspection, matters unrelated to the inspection will not be discussed.

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Documenting Facts Pertinent to a Violation

Safety and health violations must be brought to the attention of employer and employee representatives at the time they are discovered. Document at a minimum the following:

- Hazard to which the employee is exposed.
- Location of the hazard.
- Identity of the exposed employee.
- Employee's proximity to the hazard.
- Employer's knowledge of the condition.
- Approximate measurements with photographs and/or drawings.
- How long the condition existed.
- Record the method of abatement if the violation is abated by the end of the physical inspection.

See "Four Major Elements of Violation Documentation" in Chapter 2 for additional information.

Taking Photographs or Videotapes

Photographs or video recordings should be taken to provide pictorial documentation of all violations, corrective actions and Red Tag Notices. Determine if any equipment, processes, or products are photosensitive to prevent property damage. Photos and videotape containing trade secret information must be handled according to P&P #25. If the employer objects to taking photographs or videotapes because trade secrets may be disclosed, advise the employer of the protection against such disclosure afforded by Oregon OSHA procedures in P&P #17. If the employer still objects, contact your manager.

Testifying in Hearings

You may be required to testify under oath in hearings on Oregon OSHA's behalf and must be mindful of this fact when documenting observations during inspections. The case file must reflect conditions observed in the workplace as accurately and detailed as possible.

Violations of Laws Enforced by other Government Agencies

If you observe violations of laws enforced by other government agencies, discuss it with your manager. Referrals must be made using appropriate field office procedures**.**

NOTE: Workers' Compensation referrals must include a copy of the Oregon OSHA Inspection Supplement. *See P&P #38 "Referral to Workers' Compensation Division" for additional information.*

Employer Abatement Assistance

Offer abatement assistance during the walkaround regarding elimination of workplace hazards and violations. The information must provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance. Information provided by Oregon OSHA to assist the employer in identifying possible methods of abatement for alleged violations must be provided to the employer as it becomes available or necessary. The employer must be informed of all the following:

- They are not limited to the abatement methods suggested by Oregon OSHA.
- The methods explained are general and may not be effective in all cases.
- They are responsible for selecting and carrying out an appropriate abatement method.

Right to Interview Employees

ORS 654.067(1)(b) of the OSEAct authorizes you to question any non-managerial employee privately during regular working hours in the course of an inspection, regardless of employer preference. The purpose of such interviews is to obtain whatever information you deem necessary or useful in carrying out the inspection effectively. Such interviews, however, must be conducted in a reasonable manner and must be kept as brief as possible.

Individual interviews are authorized even when there is an employee representative. Document interview statements in a thorough and accurate manner, including names, dates, times, locations, type of materials, positions of pertinent articles, witnesses, etc. The following information should be given consideration when conducting interviews:

- **Employee's right of complaint** - Even when employees are represented on the walkaround, you may consult with any employee who desires to discuss a possible violation. After getting the information, investigate the alleged violations, where possible, and document the findings.
- **Time and location of interviews**-Interviews normally will be conducted during the walkaround; however, they may be conducted at any time during an inspection. If you believe it necessary, conduct interviews at locations other than the workplace after consulting your manager. Where appropriate, Oregon OSHA has the authority to subpoena an employee to appear at the field office for an interview.
- **Privacy during interviews –** Employers must be informed that employee interviews will be conducted in private. The mandate to interview employees in private is Oregon OSHA's right. Interference with your ability to conduct private interviews with non-managerial employees includes, but is not limited to, attempts by management officials or representatives to be present during interviews. Any employer objection to private interviews with employees will be construed as a refusal of entry and handled as such.

- **Obtaining an interpreter –** Particular sensitivity is required when interviewing a non-English speaking employee. In such instances, initially determine whether the employee's comprehension of English is sufficient to permit conducting an effective interview. When you must interview a non-English speaking employee, identify the language spoken by the employee, document the employee's name and job title, complete the walkaround, and conduct the interview once an interpreter is available. Oregon OSHA staff members, who are designated interpreters, may assist you or you may use an interpreting service. *See* "*Procedure for Obtaining an Interpreter*."

  DO NOT RELY ON THE EMPLOYER, EMPLOYER REPRESENTATTIVE, OR EMPLOYEE AS AN INTERPRETER.

- **Recording contacts with individuals who have limited English proficiency on Inspection Detail tabs -** Contacts made through enforcement visits will be recorded in Inspection Detail>Insp Info>Related /Optional tab S-04 "Language – number" (with "language" being the language spoken by the contact and "number" being the number of contacts speaking that language). A new S-04 code will be entered for each different language encountered during an inspection. For indigenous languages, the entry should record the actual language such as "Indigenous – Mixteco" whenever possible. *See P&P #55 for procedure.*

- **Employee refuses to be interviewed** – If an employee refuses to be interviewed, use professional judgment in consultation with your manager, in determining the need for the statement.

Conducting Employee Interviews

At the beginning of the interview, identify yourself by showing your credentials and providing the employee with a business card. Explain to employees that the reason for the interview is to gather information relevant to a safety and health inspection. It is not appropriate to assume that employees already know or understand the agency's purpose.

Inform employees that Oregon OSHA has the right to interview them in private and of the protections under the OSEAct. In the event an employee requests that a representative of the union be present, make a reasonable effort to honor the request. If an employee requests that their personal attorney be present during the interview, honor the request and, before continuing with the interview, consult with your manager for guidance.

On rare occasions, an attorney for the employer may claim that individual employees have also authorized the attorney to represent them, which creates a potential conflict of interest. Ask the affected employees whether they have agreed to be represented by the attorney. If the employees indicate that they have, consult with your manager.

Every employee interviewed should be asked to provide his or her name, home address, and phone number. Request identification and make clear the reason for asking for this information. When conducting the interview keep the following tips in mind:

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- **Put the person at ease**. Make an effort to conduct interviews in private to provide the employee the opportunity to speak freely.

- **Explain the purpose of the interview**. You are asking the employee to help you identify the types of hazards that exist in their work area. To reduce any reluctance to participate in the interview, clearly explain the purpose and your role in the process.

- **Stress the importance of giving accurate information.** It may help eliminate hazards that have the potential to kill, injure, or produce illness. Information given may also help to make the work procedure more efficient.

- **Be friendly, understanding, and open minded.** Keep the interview informal. Your approach is important. Make sure they sense that you care about their health and safety.

- **Be calm and unhurried.** If you're agitated or in a hurry to get the interview over, you'll be sending a negative message that the employee may sense.

- **Let the individual talk.** Don't interrupt while they are talking. It's easy to think you have all the information, but many important facts may not be uncovered if you cut them off.

- **Ask background information.** This information is necessary in the event you need to contact the employee at a later date. It also reveals the level of experience of the employee. You may use this information to transition into the interview. Exchanging small talk will help to put the employee at ease.

- **Obtaining information by asking questions.** Ask the employee to tell you about the hazards they are aware of. Phrase your questions in a manner that requires detailed answers. Ask open ended questions that begin with the words how, what, when, where, etc. Avoid asking questions that may be answered by “yes” or “no.”

- **Don't ask leading questions.** They are not on trial. This is an interview, not an interrogation.

- **Ask follow-up questions.** This will help to clarify particular areas or get specific details.

- **Do not put the person on the defensive.** Avoid questioning the employee in a manner that might accuse or blame them of wrong doing.

- **Listen actively.** Repeat back the information given. Paraphrase and verify the information communicated.

- **Take notes.** Notes should be taken very carefully and as accurately as possible. Let the individual read them if they want.

- **Use a tape recorder.** Always get permission from the employee before recording any interview. Offer to give them a copy of the tape if they are hesitant.

- **Thank the employee.** Conclude the interview with a statement of appreciation for their contribution.

- **Employer's knowledge.** Determine the extent of the employer's knowledge of the workplace conditions or work practices that were in effect before and during the inspection.

- **Be available.** Provide the employee with your telephone number and ask them to contact you if they think of anything else.

Interview Statements

Obtain interview statements of employees or other persons if you think it would be useful in documenting potential violations. Interviews will normally be documented or tape recorded, preferably in the first person, in English, and, if possible, in the language of the individual. Employees will be encouraged to sign and date the statement and to initial any corrections or changes. The interview form or notes must include the following statements:

- **"I request my statement be held confidential to the extent allowed by law."**

- **"I have read the above, and it is true to the best of my knowledge."**

If the person making the declaration refuses to sign, note the refusal on the statement. Read the statement to the person in an attempt to obtain agreement and note in the case file. If necessary, a transcription of the recorded statement will be made. If a management employee requests a copy of their interview statement, one must be given to them.

Confidentiality

Oregon OSHA is allowed to withhold the identity of individuals who provide information about law violations, including Oregon OSHA rules and regulations. Inform employees that their statements will remain confidential to the extent permitted by law. However, each employee giving a statement must be informed that disclosure of his or her identity may be necessary in connection with enforcement or court actions.

NOTE: Whenever you inform the person giving the statement that their identity will be protected as part of an investigation, the pledge must be in writing and included in the case file.

The privilege also protects the contents of statements to the extent that disclosure reveals the witness's identity. When the contents of a statement will not disclose the identity of the informant, (i.e., does not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the individual's identity) the privilege does not apply. Interviewed employees must be told that they are under no legal obligation to inform anyone, including employers, that they provided information to Oregon OSHA. Interviewed employees must also be informed that if they voluntarily disclose such information to others, it may impair the agency's ability to invoke the privilege.

Administrative Subpoena

An administrative subpoena may be issued by the Administrator, or designee, whenever there is a reasonable need for records, documents, testimony, and other supporting evidence necessary for completing an inspection. The subpoena must be scheduled according to a current and approved inspection scheduling system or an investigation of any matter properly falling within the statutory authority of the agency.

X. Closing Conference

Participants

At the conclusion of an inspection, a joint closing conference must be held with the employer and the employee representatives whenever practicable. Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference (multi-employer worksites), a separate closing conference may be held, and a written summary of each conference must be made and attached to the firm file. Make a copy of the field enforcement manager's written summaries available to the employer or the employee representative. The closing conference may be conducted on site or by telephone as deemed appropriate.

NOTE: When conducting separate closing conferences for employers and labor representatives (where the employer has declined to have a joint closing conference with employee representatives), hold the conference with employee representatives first, unless the employee representative requests otherwise. This procedure will ensure that worker input is received before employers are informed of violations and proposed citations.

Employer Refuses Closing Conference

If the employer refuses to allow a closing conference, document the circumstances of the refusal in the inspection narrative and process the case as if a closing conference has been held. A courtesy closing letter may be issued.

Courtesy Closing for Employers

Conduct courtesy closings with employers when an employer or employer representative was not present at the conclusion of the inspection. Attempt to make contact with the employer representative if they were not present during the inspection to conduct a closing conference. Attempt to contact the employer three times by phone within a week, and document each call and conversation in the report.

If you are unable to contact the employer by phone, send the **Closing Conference Letter** to the employer. The letter is a MS Word template in the Enforcement tab titled "ClosingConfLtr.dot." *See P&P #33, "Courtesy Closing for Employers" for additional information.*

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Closing Conference Discussion Items

Discuss the alleged violations and other pertinent issues found during the inspection and note relevant comments, including input for establishing correction dates.

Discuss the results of your assessment of the applicable penalty adjustment factors.

Discuss the strengths and weaknesses of the employer's occupational safety and health management system and any other applicable programs, and advise the employer of the benefits of an effective program. Review effective safety and health management principles with the employer to explain the following benefits:

- **Accountability** – Supervisors and employees are held accountable for following safe and healthful work practices.
- **Employee involvement** – Employees are involved in the day-to-day effort to maintain a safe and health workplace.
- **Hazard identification** – Supervisors and employees know how to identify hazards.
- **Hazard control** – Supervisors and employees know how to eliminate or reduce exposures to hazards.
- **Accident and incident investigation** – Accidents and near misses are investigated and their causes prevented from happening again.
- **Training** – Supervisors and employees learn safe and healthful work practices through classroom and on-the-job training and instruction.
- **Evaluation** – Business owners and managers evaluate their business safety and health goals at least annually, and use the evaluation to set new goals.

Discuss the employer and employee representative's legal rights to request, in writing, an informal conference and/or appeal a citation. Advise them that an informal conference will provide them an opportunity to do the following:

- Request an informal conference when a citation is issued. The request does not extend the 30 working days for filing contest.
- Participate in an informal conference. Under rules of the Hearings Division, if the employer requests an informal conference, the employees have a right to elect "party status" and participate.
- Resolve disputed citations and penalties without the need for litigation which can be time consuming and costly.
- Obtain a more complete understanding of the specific safety or health standards that apply.

- Discuss ways to correct the violations.
- Discuss issues concerning proposed penalties.
- Discuss proposed abatement dates.
- Discuss issues regarding employee safety and health practices, and learn more of other Oregon OSHA programs and services.

NOTE: Verbal disagreements or intent to contest a citation, penalty, or abatement date during an informal conference does not replace the required written Notice of Intent to Contest.

Employee representatives have the right to participate in informal conferences or negotiations between Oregon OSHA and the employer according to the guidelines given in Chapter 9 "Informal Conferences."

Penalty Assessment

Calculate and inform the participants of the proposed civil penalty, if any. Explain that penalties are due within 30 working days after the employer receives a citation and notification of penalty if the citation is not contested. If, however, an employer contests the citation and/or the penalties, penalties become due within 20 days of the final order date. *See "Penalty Assessment" in chapter 7 for additional information.*

Abatement Assistance

Discuss control methodology with the employer, when appropriate, to include the following:

- **Engineering Controls -** Consists of substitution, isolation, ventilation, and equipment modifications.
- **Administrative Controls -** Any procedure that significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.
- **Work Practice Controls -** A type of administrative control where the employer changes the way the employee performs assigned work, often improving work habits or sanitation and hygiene practices. Such modification may result in reducing exposure to hazards.
- **Technical Feasibility -** The technical knowledge about materials and methods available, or adaptable to specific circumstances, that can be applied to a cited violation with a reasonable possibility that employee exposure to occupational hazards will be reduced or eliminated.
- **Economic Feasibility -** The employer is financially able to undertake the measures necessary to abate the citations received.

Feasibility - Abatement measures required to eliminate or control a hazard are feasible when they can be accomplished by the employer. Following current directions and guidelines, you must inform the employer, where appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.

Documenting Claims of Infeasibility

Document the underlying facts that give rise to an employer's claim of infeasibility to correct a violation. When the employer claims economic infeasibility, inform the employer that the cost of corrective measures will be taken into consideration, but it will generally not be considered a factor in issuing a citation. It may be considered during an informal conference or during settlement negotiations.

Abatement Method Disclaimer

The employer should be informed of the following:

- The employer is not limited to the abatement methods suggested by Oregon OSHA;
- the methods explained are general and may not be effective in all cases; and
- the employer is responsible for selecting and carrying out an appropriate abatement method.

Concluding the Closing Conference

Discuss how Oregon OSHA Public Education classes provide information on occupational safety and health requirements in Oregon at no cost. Inform them our instructors introduce the values of safety and health management to those responsible for occupational safety and health in their workplace. Employers and employees are encouraged to register for workshops or take an online course. Provide applicable Oregon OSHA informational handouts, or inform participants that they may access the information on the Oregon OSHA's website at:

www.orosha.org

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CHAPTER 4

Complaint and Referral Inspections

I. Safety and Health Complaints

Complaint

Notification of an alleged safety or health hazard (under Oregon OSHA's jurisdiction) or a violation of the OSEAct, submitted by a current employee or an employee representative.

Formal Complaint

A complaint is formal when made by a current employee or employee representative and meets both of the following requirements:

- Asserts that an imminent danger, a violation of the OSEAct, or a violation of an Oregon OSHA standard exposes employees to potential physical or health harm in the workplace, and,
- Be written or submitted on an Oregon complaint form (see below) or Oregon OSHA Complaint Intake form.

Non-formal Complaint

Any complaint alleging a safety or health violation that does not meet the requirements of a formal complaint as identified above and does not come from one of the sources identified under the definition of referral.

Employee Representative

An employee representative may include the following:

- An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
- An employee's attorney.
- Any person acting in a bona fide representative capacity, including but not limited to clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon an employee's specific complaints or injuries.

NOTE: Determine the representative capacity of the person filing complaints on behalf of another unless it's already clear. In general, the affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.

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Complaint Intake Form

Complaints can be received by telephone, e-mail, mail, fax or online by the complainant, and must be documented on the OSHA Complaint Intake form with as much detail as possible. After receiving a complaint, the field enforcement manager (or designee) will evaluate all available information to determine if there are reasonable grounds to believe that a violation or hazard exists. When an inspection is planned, a copy of the complaint will be provided to the compliance officer, with all confidential information omitted. The compliance officer will enter the findings for each complaint item on the form and include a copy in the inspection report. *See P&P "Complaint," and PD A-219 "Complaint Policies and Procedures" for additional information.*

Complaints Received by Telephone

Obtain the following information when taking a complaint by telephone:

- Caller's status as a current employee or an employee representative.
- Caller's wishes to keep, or not keep, their identity confidential.
- Employer's name, address, e-mail address, telephone and fax numbers, as well as the type of business and the name of a contact person at the worksite.
- Exact nature of the alleged hazards, location, and the basis of the caller's knowledge. Determine, to the extent possible, whether the information received describes an apparent violation of the OSEAct or Oregon OSHA standards.
- Name, address, telephone number, and e-mail address of any union or employee representative at the worksite.
- Employer's knowledge of the condition as well as whether or not the safety committee or another governmental agency has knowledge.
- Identify any action taken, and by who, aimed at correcting the condition.

Provide the caller, as appropriate, with the following information:

- A description of the complaint process, the differences between "**inquiry**" and "**inspection**," as well as the relative advantages of each.
    - **Inquiry** – When a complaint does not meet one of the identified inspection criteria, the procedure is for Oregon OSHA to advise the employer of the alleged hazard(s) or violations by telephone, fax, e-mail, or letter. The employer is required to submit a response, and Oregon OSHA will notify the complainant of that response by any means appropriate.
    - **Inspection** – An official examination of a place of employment by a compliance officer to determine if an employer is in compliance with the OSEAct.
- When the caller is a current employee or an employee representative, explain the distinction between a formal complaint and a non-formal complaint, and the rights and protections that accompany filing a formal complaint. These rights and protections include the following:

- Requesting an on-site inspection.
- Receiving written notification from Oregon OSHA if an inspection is deemed unnecessary because there are no reasonable grounds to believe that a violation or danger exists.
- Submitting a written request questioning the decision not to inspect. The employee can send or fax a signed copy of the information, request that an complaint form be sent, or sign the information at the closest field office.

- Information received by telephone from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information.
- Complaints sent using the online version of the complaint form will be considered the same as a signed copy.

Electronic Complaints

Electronic complaints may be submitted using Federal OSHA's public Web page or Oregon OSHA's public Web page:

- **Using Federal OSHA Public Web Site** – Electronic complaints submitted using the Federal OSHA public Web site are automatically forwarded by e-mail to a designated area office in the appropriate state. For employers in Oregon, complaints are forwarded to the Federal OSHA Portland area office and to Oregon OSHA's Technical Section at their Tech-Web site. The complaint is e-mailed to a member of the statewide safety or health manager's staff who will forward it to the appropriate Oregon OSHA field enforcement manager, or designee, who will ensure the complaint is acted upon.

- **Using Oregon OSHA Public Web Site** – Electronic complaints submitted using the Oregon OSHA public Web site are forwarded by e-mail to the appropriate field office. The field office will also be notified by phone to ensure the electronic complaint was received.

Procedures for Handling Complaints Filed in Multiple Field Offices

When Oregon OSHA determines that multiple offices have received the same complaint, forward all complaints to the field office that presides over the location of the complaints where they may be consolidated into one complaint.

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II. Safety and Health Referrals

Incoming Referrals

There are three types of **incoming referrals**: **internal referrals**, **external referrals**, and **self referrals**. Referrals are handled in a manner similar to complaints, but are distinguished from complaints by the source providing the information. *See P&P "Referral" for procedure*.

- **Internal Referrals** – Any time you observe a hazardous condition that does not fall under your area of expertise (safety/health) and/or that you do not feel qualified to adequately address, you may make an internal referral.

- **External Referrals** – Referrals can be received from BOLI, other federal, state or local government agencies, local building inspectors, fire marshal, or the media (radio, TV, and newspaper) including items reported in the media as well as hazards reported directly to Oregon OSHA by the media.

- **Self Referrals** – When you observe a hazardous condition in the field that is deemed to be Imminent Danger or Serious, call your field enforcement manager or designee before you stop to initiate an inspection.

Outgoing Referrals

You may generate **outgoing referrals** to other agencies or entities by telephone. Referrals to other agencies can be made when you observe hazardous conditions or illegal activities that are not under Oregon OSHA's jurisdiction, if you are aware of who has jurisdiction.

NOTE: For referrals to Workers' Compensation Division must include a copy of the inspection supplement if applicable. *See P&P #38 "Referral to Workers' Compensation Division" for additional information.*

III. Criteria Warranting an Inspection for Complaints or Referrals

Complaint and Referral Inspections

When the information received is classified as a complaint or a referral, an inspection of a workplace is normally warranted when at least one of the conditions is met:

- A complaint is submitted on a complaint form, signed by the complainant, and states the reason for the inspection request with reasonable detail. Additionally, there are reasonable grounds to believe there is a violation of the OSEAct or an Oregon OSHA standard exposing employees to hazards, or that an imminent danger of death or serious injury exists. When the complaint is taken by telephone, a letter accompanying the complaint form is sent to the complainant for signature.

- Information received alleges that a **permanent disabling injury or illness** has occurred as a result of a hazard(s) in the workplace, and there is reason to believe that the hazard or related hazards still exist.

  Permanent Disabling Injury or Illness- An injury or illness that results in permanent disability or an illness that is chronic or irreversible. Permanent disabling injuries or illnesses might include, but are not limited to, amputations, blindness, standard threshold shifts in hearing, lead or mercury poisoning, paralysis and third-degree burns.

- Information received alleges an **imminent danger** situation exists.

- Information received concerns an establishment and an alleged hazard covered by a local or national **emphasis program**.

- Employer fails to provide an adequate response to an inquiry or the individual who provided the original information gives more evidence that the employer's response is false or does not adequately address the hazard(s).

- A complaint or referral that is normally handled by inquiry is received during a scheduled or ongoing inspection. At the field enforcement manager's discretion, incorporate the complaint or referral into the scheduled or ongoing inspection. Send the complainant a written response addressing the complaint items when such a complaint is formal.

IV. When a Complaint or Referral May Not Warrant an Inspection

- The field enforcement manager may determine that an inspection is not necessary when the establishment named in the complaint or referral has a history of egregious, willful, failure-to-abate, or repeated citations within the field office's jurisdiction during the past three years and the employer has previously submitted adequate documentation for the same violations demonstrating they were corrected and programs have been implemented to prevent a recurrence of those hazards.

- When an employee alleges they were discriminated against for complaining about safety or health conditions in the workplace, refusing to perform an allegedly dangerous job or task, or engaging in other activities related to occupational safety or health, refer them to BOLI. BOLI may refer back to us to inspect based on the claim of hazardous conditions in the workplace.

- When information received gives reasonable grounds to believe that an employee under 18 years of age is exposed to a serious violation of a safety or health standard or a serious hazard, refer to BOLI.

NOTE: The information does not need to allege that a child labor law has been violated.

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CHAPTER 5

Imminent Danger, Investigations and Emergency Response

I. Imminent Danger

OAR 437-001-0015 defines **imminent danger** as a condition, practice, or act that exists in any place of employment and that could reasonably be expected to cause death or serious physical harm immediately.

Identifying Imminent Danger

A hazard becomes an imminent danger when the following situations are evident:

- Threat of death or serious physical harm must exist. Serious physical harm is impairment of the body such as to render the affected part of the body functionally useless or substantially reduced in efficiency.
- For a health hazard to exist there must be a reasonable expectation that toxic substances or other health hazards are present. Exposure to them may shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.
- The threat must be immediate or imminent. Imminent danger is present when it is reasonable to believe that death or serious physical harm could occur within a short time.

Imminent Danger Inspections

Immediately open an inspection or expand the scope of an inspection/investigation for all imminent danger situations you discover or are brought to your attention. Resolve the imminent danger condition without delay before any additional inspection activity takes place. Inform your manager of the situation as soon as possible. Classify the inspection as a Referral Inspection and complete a referral that will be included in the inspection packet.

Field Office Notification

When an imminent danger report is received by the field office:

- The field enforcement manager, or designee, will evaluate an imminent danger report, determine the inspection requirements, and assign the inspection.
- Make every effort to conduct the imminent danger inspection on the same day that the report is received. Conduct the inspection no later than the day after receipt of the report.
- When an immediate inspection cannot be made, the field enforcement manager, or designee, will immediately contact the employer to obtain as many pertinent details as possible about the situation and attempt to have any employee(s) affected by the imminent danger voluntarily removed.
- Include in the case file a record of what steps, if any, the employer intends to take in order to eliminate the danger.

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NOTE: This notification is considered an advance notice of inspection to be handled according to the advance notice procedures described below.

Advance Notice for Imminent Danger

Give advanced notice of an impending inspection to the employer, at the direction of your field enforcement manager, when an immediate inspection cannot be made after the field office is alerted to an imminent danger condition and advance notice will speed the elimination or control of the hazard.

When advance notice of an inspection is given to an employer, also give notice to the authorized employee representative, if present. When the inspection is in response to a formal complaint, inform the complainant of the inspection unless it will cause a delay in the elimination of the hazard.

Procedures for Inspection

Conduct every imminent danger inspection as expeditiously as possible. Offer the employer and employee representatives the opportunity to participate in the worksite inspection, unless the imminency of the hazard makes it impractical to delay the inspection to allow time to reach the area of the alleged imminent danger.

Inform the employer of the hazard as soon as reasonably practicable after discovering the existing conditions or practices constituting an imminent danger. Ask the employer to notify affected employees and to remove them from exposure. Encourage the employer to voluntarily take appropriate abatement measures to promptly eliminate the danger. **Voluntary elimination of the hazard occurs when the employer accomplishes all of the following:**

- Immediately removes affected employees from the danger area.

- Immediately removes or abates the hazardous condition.

- Gives satisfactory assurance that the dangerous condition will remain abated before permitting employees to return to work in the area. Satisfactory assurance includes any of the following:
    - Initiating immediate corrective action designed to bring the dangerous condition, practice, means, method of operation, or process into compliance, which will permanently eliminate the dangerous condition when completed.
    - A good faith representation by the employer that permanent corrective action will be taken as soon as possible, and that affected employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected.
    - A good faith representation by the employer that permanent corrective action will be taken as soon as possible. Where personal protective equipment can eliminate the imminent danger, such equipment will be issued and its use strictly enforced until the condition is permanently corrected.

NOTE: Through onsite observations, determine if representations from the employer that an imminent danger has been abated are accurate, and document in the inspection report the method of abatement.

Hazard is Voluntarily Eliminated

When an employer completely voluntarily eliminates the imminent danger without unreasonable delay, an appropriate citation(s) and notice(s) of penalty will be proposed with an appropriate notation on the Alleged Violation Description (AVD) in OTIS to document corrective actions.

Refusal to Eliminate an Imminent Danger

Consult your manager when the employer does not or cannot voluntarily eliminate the hazard or remove affected employees from exposure, and the danger is immediate. Obtain permission to complete and post a **Red Warning Notice (red tag)** immediately according to OAR 437-001-0096. Contact the statewide safety or health manager if your manager is not available.

If it is not feasible to post a Red Warning Notice, or if after posting the notice the imminent danger is not eliminated, the field enforcement manager will immediately notify the statewide safety or health manager and appropriate action will be taken, including the initiation of court action.

NOTE*:* The Agency has no authority to order the closing of a worksite or to order affected employees to leave the area of the imminent danger or the workplace.

Red Warning Notice (Red Tag) Posted

The Red Warning Notice does not constitute a citation of an alleged violation or a notice of proposed penalty. It is a notice that an imminent danger is believed to exist and that Oregon OSHA is warning the employer that employees should not be permitted to work in the area of the danger until it is eliminated.

- Sign and post the Red Warning Notice at or near the area in which the exposed employees are working. When there is not a suitable place for posting the Red Warning Notice, the employer(s) will be asked to provide a means for posting.

- Photograph all posted Red Warning Notices.

- Notify affected employees and the employee representative that a Red Warning Notice has been posted. Advise them of the discrimination protections under the OSEAct. Advise employees they have the right to refuse to perform work in the area where the imminent danger exists.

- Advise the employer and affected employees that according to OAR 437-001-0096(4) no one can deface, destroy, or remove any posted Red Warning Notice.

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Reporting the Posting of a Red Warning Notice

Promptly notify your field enforcement manager once a Red Warning Notice is posted. In addition, the field enforcement manager will promptly notify the statewide safety or health manager. The following items will be reported:

- Name and address of establishment.
- Number of employees affected.
- Violation/Hazard.
- Date and time posted.
- Reason for posting.

Removal of Red Warning Notice

Remove the Red Warning Notice when the hazard has been eliminated. Document the removal in your report if the inspection is still open. If the inspection has been closed, open a new inspection to document the removal of the Red Warning Notice. This is an incompliance inspection if no additional serious hazards are observed during the removal. Report the removal of the Red Warning Notice to the central office.

Post Imminent Danger Inspection

In some cases, evidence may not support finding an imminent danger at the time of the inspection. Imminent danger may be found after further evaluation of the case file or appearance of additional information. Consult your manager and, if appropriate, post a Red Warning Notice at the time the citation is delivered or even after the notice of an appeal is filed.

Inform affected employees, or their authorized representative(s), once the imminent danger is corrected, that an imminent danger existed and has been eliminated. Inform them of any steps taken by the employer to eliminate the hazardous condition.

II. Conducting Investigations

Investigations are a more thorough form of inspection. They are conducted when there are job related fatalities, catastrophes and accidents as thoroughly and expeditiously as resources and other priorities permit.

According to OAR 437-001-0704, fatalities and catastrophes must be reported to Oregon OSHA within 8 hours of occurrence or employer knowledge of the event. Accidents or injuries resulting in employee in-patient hospitalization with medical treatment (including first aid), the loss of an eye, and an amputation or avulsion that result in bone and/or cartilage loss, must be reported by the employer within 24 hours of occurrence or employer knowledge of the event. *See P&P "Penalty for Failure to Report a Fatality/Catastrophe or Accident" for additional information*.

The following definitions apply for purposes of this section:

> **Fatality –** An employee death resulting from a work-related incident or exposure; in general, from an accident or an illness caused by or related to a workplace hazard.

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.

Accident – An unexpected or unplanned work-related incident or exposure that may result in an injury or illness to an employee.

Hospitalization – Formal admission as an in-patient to a hospital or equivalent medical facility for medical treatment, including first aid.

Field enforcement manager must report fatalities and catastrophes directly and immediately to the statewide safety or health manager or designee.

Fatality/Catastrophe Report Form

Complete the Fatality/Catastrophe Report Form for all **fatalities** or **catastrophes** unless knowledge of the event occurs during an inspection at the establishment involved. Forward the completed Fatality Intake Form (available in MS Word) to the statewide safety or health manager's executive assistant who will complete a Fatality/Catastrophe Report Form within **3 working days** of the initial report of the incident. *See P&P #31 "Accident Reporting Procedures" for additional information.*

After the initial report, when the field office becomes aware of information that affects the decision to investigate, update the Fatality/Catastrophe Report Form. Do not update it if the additional information does not affect the decision to investigate, or the investigation has been initiated or completed. Resubmit the Fatality/Catastrophe Report Form if updating occurs.

Investigation Tab

Complete an Investigation Summary Report for all accident investigations within **5 working days** of the opening conference. The investigation summary report can be found on either the inspection module in OTIS or the Accident module in OTIS. *See screen help instruction in OTIS for additional information.*

Submit only one Investigation summary report for an event, regardless of how many inspections take place. If a subsequent event occurs during the course of an inspection, submit a new Investigation summary for that event.

Investigation Procedures

Thoroughly investigate fatalities, catastrophes and accidents in an attempt to determine the cause of the event. Determine whether a violation of Oregon OSHA safety and health standards, regulations, or the general duty clause occurred, and what effect, if any, the violation had on the incident.

Open the investigation as soon as possible after receiving an initial report of the incident. Ideally, the field enforcement manager will assign an appropriately trained and experienced CSHO to investigate within one working day. The field enforcement manager will determine the scope of

the fatality/catastrophe/accident investigation. Complete all investigations in a timely manner. Documentation and gathering evidence using video recordings and photographs when conducting investigations is required.

Use appropriate personal protective equipment and take all necessary precautions to avoid and/or prevent your exposure to potential hazards when conducting investigations.

Secure the Scene

Oregon OSHA may inspect and require that all material evidence be marked and remain at the scene of the accident. The easiest way to do this is to place yellow warning tape around the area. If tape is not available, warning signs or guards may be required.

Chain of Custody

Tag each piece of evidence. Include any items, pieces of property, samples, except for photographs, video or audio tapes etc., in the possession of Oregon OSHA that can be used to substantiate alleged violations or support investigative findings. Fill out an **Evidence Chain of Custody form** (available as an enforcement MS Word macro) at the scene. Identify physical, testimonial, or documentary items to be used as evidence including, but not limited to, item(s) being removed, location of the item(s) when confiscated, persons removing item(s) from the scene, and date of removal. *See P&P #52 "Chain of Custody Procedures" for additional information.*

Interview Procedures

When an employee representative is actively involved in the inspection, they can serve as a valuable resource by assisting you in identifying employees who might have information relevant to the investigation.

Identify and interview all persons with firsthand knowledge of the incident, including first responders, police officers, medical responders, and management, as early as possible in the investigation. The sooner a witness is interviewed, the more accurate and candid will be the witness statement. Conduct employee interviews privately, outside the presence of the employer. Notify employees that they are not required to inform their employer that they provided a statement to Oregon OSHA. Follow these steps when interviewing:

- Document the contact information of all parties because follow-up interviews with a witness are sometimes necessary.

- Reduce interviews to writing, when appropriate. Transcribe video and audio-taped interviews and have the witness sign the transcription as needed.

- Read the statement to the witness, attempt to obtain agreement, and have the witness sign the statement. Note any witnesses' refusal to sign or initial their statement.

- Ask the interviewee to initial any changes or corrections made to their statement.

- Advise interviewee of Oregon OSHA whistleblower protections. ORS 654.062 makes it unlawful for any person to bar or discharge anyone from employment or otherwise discriminate against any employee, or prospective employee, because the employee, or prospective employee, has done any of the following:
    - Opposed any practice forbidden by the OSEAct.
    - Made any complaint, instituted or caused any proceeding related to the OSEAct, or testified or is about to testify in any such proceeding.
    - Exercised on behalf of the employee, prospective employee, or others any right afforded by the OSEAct.
- Advise interviewee that you may conduct follow-up interview if more questions surface.

See "Conducting Employee Interviews" in Chapter 3 for additional information.

Confidentiality

When asked, you may withhold the identity of individuals who provide information about law violations, including Oregon OSHA rules and regulations. Keep the identity of witnesses confidential to the extent possible. **Inform each witness that disclosure of their identity may eventually be necessary in connection with enforcement or court actions**.

When asked, keep the contents of statements confidential to the extent that disclosure would reveal the witness' identity. Confidentiality does not apply and statements may be released when the contents of a statement will not disclose the identity of the informant (i.e., statements that do not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the individual's identity).

Inform each witness that their interview statements may be released if they authorize such a release or they voluntarily disclose the statement to others, resulting in a waiver of the right to confidentiality.

False Statements

Inform witnesses in a tactful and nonthreatening manner that making a false statement during the course of an investigation could be a criminal offense. Conviction for making a false statement is punishable by up to $10,000 or six months in jail, or both.

Thorough Documentation of Investigation

Be thorough with your documentation when conducting investigations, especially during investigations involving a fatality, or when the victim is otherwise unable to recount the conditions and work practices that contributed to the incident. Gather the necessary information to reasonably reconstruct the circumstances that led to the incident. Information may include the following:

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- **Personal Data (Victim) –** Personal information to document includes: name, address, e-mail address, telephone number, age, sex, nationality, job title, date of employment, time in position, job performed at time of the incident, training for job performed at time of the incident, employee deceased/injured, nature of injury e.g., fracture or amputation, and prognosis of injured employee if known.

- **Incident Data –** Additional information to be documented includes: ideas, knowledge and reasons the incident occurred; the physical layout of the worksite; sketches/drawings; measurements; video/audio/photos to identify sources; and whether the incident was work-related.

- **Equipment or Process Involved –** Equipment information to be documented includes: equipment type, manufacturer, model, manufacturer's instructions, type of process, condition, misuse, maintenance program, equipment inspection (logs or reports) warning devices (detectors), tasks being performed, frequency of use, energy sources and disconnecting means identified, and supervision or instruction provided to employees involved in the accident.

- **Safety and Health Program –** Program information to be documented includes: contents of the employer's safety and/or health program if one exists, types of hazards identified by the program to include the hazard responsible for the fatality/catastrophe/accident/, and specific methods of implementing the elements of the program at the worksite.

- **Witness Statements** – Potential witnesses include: the public, coworkers; management, emergency responders (e.g., police department or fire department, etc.), and medical personnel (e.g., medical examiner, etc.).

- **Multi-Employer Worksite** – Describe the contractual and actual relationships of the employer with other employers involved in work at the worksite.

- **Records Request** – Obtain copies of records to include: the employer's accident investigation report, OSHA 300 Log, disciplinary records, training records, maintenance records, safety committee or safety meeting minutes, and next of kin information.

NOTE: Gather next of kin information as soon as possible to ensure that condolence letters are sent in a timely manner.

Families of Victims

Contact family members of employees involved in fatal or catastrophic occupational incident early in the investigation and give them the opportunity to discuss the circumstances of the injuries and/or illness. Exercise tact and good judgment in these discussions.

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Information Letter to Emergency Contact

Identify victims and their current addresses, along with the names of individual(s) listed in the employer's records as next of kin or person(s) to contact in the event of an emergency as soon as practicable after opening the investigation.

NOTE: In some circumstances, it may not be appropriate to follow these exact procedures, e.g., in the case of a small business or when the owner or supervisor is a relative of the victim. Modify the form letter to take any special circumstances into account or do not send the letter, as appropriate.

Send the standard information letter to the individual(s) listed as the emergency contact on the victim's employment records (if available) and/or the otherwise determined next of kin within 10 calendar days of determining the victim's identity. Verify the proper address where the field operation's manager or designee will send communications. *Follow the additional guidelines in PD A-287 "Victim's Family Communication: Oregon OSHA Fatality Inspection Procedures."*

Interviewing the Family

Explain the interview will be handled the same as witness interviews when taking a statement from families of the victim(s). Sensitivity and professionalism are required during these interviews. Carefully evaluate the information and attempt to corroborate it during the investigation. Maintain follow-up contact with key family members or other designated contact persons so that these parties can be kept up-to-date on the status of the investigation.

Release of Case File Information

Maintain contact with key family members or other contact persons so that they can be kept up to date on the status of the investigation. Do not mislead the family about how quickly they can get a copy of the case file. The employer's rights must be protected. Make the case file available to family members or their legal representatives once the U.S. Postal Service Certified Mail Receipt (green card) has been signed, demonstrating that the employer has received the citation.

When requested to do so, the records management unit (RMU) will provide the victim's family a copy of all citations resulting from the accident investigation within 5 working days of the employer receiving their citation.

Public Information Policy

The Oregon OSHA public information policy regarding response to fatalities and catastrophes explains Oregon OSHA's interaction with the news media. It is not to provide a continuing flow of facts or to issue periodic updates on the progress of the investigation. The public information officer, or the statewide safety or health manager, will normally handle responses to media inquiries. They will contact the Administrator for advice and guidance with particularly sensitive investigations or difficult information requests.

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Pre-Citation Review

Cases involving a fatality may result in civil or criminal enforcement actions; the statewide safety or health manager will review all case files for fatality and catastrophe investigations.

Criminal Charges

ORS 654.991(1) provides for criminal penalties for an employer who is convicted of having willfully violated the OSEAct when that violation causes or materially contributes to the death of any employee. Consult your field enforcement manager and the statewide safety or health manager as soon as possible in this type of an investigation. Such cases will be handled by the Department of Justice (DOJ) who may refer the case to the proper authorities.

Abatement Verification

Oregon OSHA will normally conduct a follow-up inspection within **30 days** of issuing a citation with serious violations when the employer fails to return the Letter of Corrective Action (LOCA).

Due to the transient nature of some worksites where fatalities occur, or because the worksite may be destroyed by a catastrophic event, it may be impossible to conduct a follow-up inspection. In these cases, the field enforcement manager will attempt to obtain abatement verification from the employer, along with assurance that appropriate safety and health programs have been implemented to prevent the hazard(s) from recurring.

While site closure due to the completion of the cited project is an acceptable method of abatement, it can only be accepted as abatement when you witness the closure or the employer is able to provide evidence of the closure. Do not conduct a follow-up inspection if you verified abatement during the inspection or if the employer provided other proof of abatement.
See "Abatement" in Chapter 9 for additional information.

III. Relationship of Investigations to other Programs and Activities

Investigations of Employers on the Scheduling List

When a fatality/catastrophe/accident investigation arises with an establishment that is in the current programmed inspection cycle, the investigation and the inspection may be conducted either concurrently or separately.

Investigations of Employers in Cooperative Programs

When a fatality or catastrophe occurs at a Voluntary Protection Program (VPP) or Safety and Health Achievement Recognition Program (SHARP) site, the field enforcement manager must immediately notify the VPP/SHARP program manager. The investigation will be limited to the specific issue of the unprogrammed activity. Send a copy of the citation to the VPP/SHARP program manager when citations are issued as a result of the inspection.

IV. Special Issues Related to Investigations

Death by Natural Causes

Work related motor vehicle fatalities and workplace fatalities caused by natural causes, including heart attacks, must be reported by the employer. The field enforcement manager will then decide whether to investigate the incident.

Workplace Violence

Fatalities caused by workplace violence must be reported to Oregon OSHA by the employer. The field enforcement manager will determine whether or not the incident will be investigated. CSHOs should follow the inspection guidelines in *PD A-283 "Workplace Violence Incidents-Enforcement Procedures for Investigating or Inspecting."*

Investigations Involving Homeland Security

Generally, Oregon OSHA will provide technical assistance and consultation to coordinate the protection of emergency response worker's and recovery worker's safety and health. Whether Oregon OSHA conducts a formal fatality or catastrophe investigation in such a situation is determined on a case-by-case basis.

V. Rescue Operations and Emergency Response

Direction of Rescue Operations

Oregon OSHA has no authority to direct rescue operations. The responsibility lies with the employer or local political subdivisions or state agencies. Oregon OSHA may monitor and inspect working conditions of covered employees engaged in rescue operations to ensure compliance with standards that protect rescuers, and to provide technical assistance where appropriate.

Voluntary Rescue Operations Performed by Employees

Oregon OSHA recognizes that employees may choose to place themselves at risk to save the lives of others. The following provides guidance on citation policy toward employers whose employees perform, or attempt to perform, rescues of individuals in life-threatening (imminent danger) situations. Do not issue a citation to an employer because of a rescue activity undertaken by their employee with respect to an individual in imminent danger unless you confirm one of the following circumstances:

- Such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment.

- Such employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment.

- Such employees are employed in a workplace that requires them to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as operations where employees are in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water. When the employer fails to instruct these employees who are not assigned to assist or perform rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment, and such employee voluntarily elects to rescue such an individual.

Emergency Response

While it is Oregon OSHA's policy to respond as quickly as possible to significant events that may affect the health or safety of employees, the agency has no authority to direct emergency operations. During catastrophic events, Oregon OSHA will coordinate with other state agencies and act as an active and forceful protector of employee safety and health during the response, cleanup, removal, storage, and investigation phases of these incidents, while maintaining a visible but limited role during the initial response phase. *See PD A-160 "Hazardous Waste Operations and Emergency Response: Post-Emergency Response Operations" for additional information.*

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CHAPTER 6

Specialized Inspection Procedures

I. Agriculture

Special situations in the agriculture industry, regulated under Division 4, Agriculture, are discussed in this chapter. "Agricultural employer" means any person, corporation, association, or other legal entity who does one or more of the following:

- Owns or operates any agricultural establishment.
- Contracts with the owner or operator of an agricultural establishment before production for the purchase of a crop and exercises substantial control over production.
- Recruits and supervises employees or is responsible for the management and condition of an agricultural establishment.

Division 4, Agriculture, applies only to employers with the following Standard Industrial Classifications (SIC) or North American Industrial Classification System (NAICS) codes. This includes all of major groups and sub-groups as listed below:

All SIC and NAICS in these major groups:

SIC	NAICS
01	111
02	112

All SIC and NAICS in these subgroups:

SIC	NAICS	Description
0711	115112	Soil Preparation Services
0721	115112	Crop Planting, Cultivating, and Protection
0722	115113	Crop Harvesting, Primarily by Machine
0723	115114	Crop Preparation Services for Market: Except Cotton Ginning
0761	115115	Farm Labor Contractors and Crew Leaders
0762	115116	Farm Management Services
0811	111421	Christmas Tree Growing and Harvest

NOTE: *See P&P "Agriculture vs. Processing and Wholesale"* to determine appropriate Standard Industrial Classification (SICs) and North American Industrial Classification System (NAICS) codes.

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Small Agriculture Employer Exemption

OAR 437-001-0057(12) gives agricultural employers with 10 or fewer permanent, year-round employees, both full-time and part-time, a conditional exemption from scheduled inspections when they meet the following requirements (agricultural employers with more than 10 employees have the same exemptions as other fixed site employers):

- No valid complaint has been filed pursuant to ORS 654.062.

- No accident resulting in death, no injury or illness resulting in an overnight hospital admission for medical treatment, or no more than 3 days of lost work has occurred at the employer's establishment within a 2-year period preceding the proposed inspection date.

- The employer and principal supervisors of the agricultural establishment have completed at least four hours of instruction on agriculture safety or health rules and procedures annually. The employer must have documentation that includes the date of training, name and signature of the provider, length of training, and the subjects covered in the training. The time period begins to run when the instruction is received.

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.

- The employer has had a comprehensive consultation within the last four years by an individual acting in a public or private consultant capacity. The time period begins when the consultation is received.

- The consultation has been completed and the agricultural employer has corrected violations noted in the consultation report within 90 days of 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, stepchildren, foster children, and any blood relative living as a dependent of the core family.

See PD A-214 "Inspection Exemption for Agricultural Small Employers" for additional information.

Inspections Not Subject to Small Agriculture Employer Exemption

The small agricultural employer exemption does not include valid complaints, fatality/catastrophe or accident investigations, local emphasis programs (LEP's) such as the Pesticide Emphasis Program, agricultural labor housing inspections, and field sanitation inspections.

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Spray Drift Precautions

Agricultural spraying is usually performed in the early morning hours or at night while wind speed is at it lowest. The potential for spray drift is increased during daytime spraying. Spray drift is the movement of spray droplets outside the intended field or crop (target site) prior to deposition at the time of application. Droplet size is the most important factor affecting the potential for spray drift. Nozzle type and capacity, spray pressure, temperature, and relative humidity all affect droplet size. Nozzle orientation and aircraft speed are important for aerial application.

Take the following precautions when conducting inspections in areas of agriculture operations:

- Be alert to aerial applicators, orchard blasters, or general spray equipment when driving on country roads. Roll up windows and turn off vents while driving, or while parked, when you observe such equipment.
- Do not enter any areas under a restricted-entry interval (REI).
- Watch where you walk. Leather footwear cannot be decontaminated to remove pesticides.
- Leave the area immediately and document the following information if drift contacts you or your vehicle. Drift is not allowed from a treated area. Report the following information to your manager immediately:
    - Location and time.
    - Type of equipment and crop.
    - Color of airplane or helicopter if applicable.
- Do not enter fields during and immediately after treatment to speak with the applicator.
- Shower and change your clothing if you come in contact with spray drift as soon as possible. Contact the Oregon Department of Agriculture to take a wipe sample from contaminated vehicles. Wash vehicle after sampling.
- Make a referral to the Department of Agriculture. Do not attempt to open an inspection with the individual. Drift from a treated area falls within the jurisdiction of the Oregon Department of Agriculture.

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Biosecurity Practices for Livestock & Poultry Operations

Biosecurity practices are intended to protect animals from coming in contact with pathogens that you, as a visitor, could introduce onto a farm. Footwear and clothing kept free of manure is the primary control method for maintaining biosecurity.

Cows are susceptible to diseases that can be transmitted through the fecal/oral route: foot and mouth disease (FMD), Johne's (pronounced Yo-nees) disease, salmonellosis and coliform. Avian influenza occurs naturally among wild birds. The H5N1variant is deadly to domestic fowl and can be transmitted from birds to humans. A H5N1 vaccine was approved in 2007 according to the FDA website.

Observe the following procedures when conducting any Oregon OSHA activities involving visits to farms with dairy cattle, pigs and other cloven-hoofed animals, and poultry operations. These procedures are designed with dairy operations in mind, but are equally applicable to other livestock and poultry operations.

Disinfection practices are an essential preventative technique for items such as footwear, clothing, and vehicles. Enter and exit a farm "clean" using the biosecurity kits made available to each field office.

- **Footwear** – Wellington-style (rubber) boots are preferred. Put your boots on and sanitize your footwear immediately upon arrival at a farm. A tub filled with 1-gallon of water and 2-ounces of bleach will provide effective sanitation. Scrub your boots clean using a brush. Leave the solution in the tub for use when exiting the farm. Cover the container to prevent domestic animals such as dogs from drinking bleached water.

  Clean all organic matter off your boots, preferably with water provided by the employer, at the conclusion of your activity. Use the leftover sanitizing solution to brush any remaining material from your boots. Discard used solution in the driveway or other approved location and immediately enter your vehicle.

  Follow the methods provided by the operator of the farm when other disinfection solutions are preferred.

- **Clothing** – Coveralls or disposable Tyvek™-type suits provide a handy means to protect your street clothes from possible fecal contamination. If coveralls become contaminated, they must be contained upon leaving the farm until they can be laundered. Use kitchen garbage bags with draw-strings for this purpose. Do not wear soiled clothing apart from the location where the contamination happens.

- **Disposable Booties or Coveralls** – You may use boot covers as an appropriate alternative to the disinfection procedures when visits preclude entry into animal holding or handling areas. Disposable boot covers usually will not hold up for any length of time, especially when walking on gravel, and you should only use them for very limited or brief applications. Torn boot covers and soiled shoes/boots are a problem. Footwear needs to be checked for fecal contamination, and disinfection procedures followed if footwear is contaminated.

Keep extra booties and coveralls available in your vehicle for easy means of protection when needed.

- **Vehicles** – Use one point of entry and exit during your visit, minimize driving around on the farm as much as possible, and avoid animal handling or holding areas where fecal contamination may occur, in the interest of biosecurity.

NOTE: Your attention to these procedures will assure the farm operator of Oregon OSHA's interest in working with them to protect their livestock from inadvertent introduction of pathogens onto their operation.

II. Labor Housing and Related Facilities

Labor housing and related facilities include any place where there are living areas, manufactured or prefabricated structures, or other housing provided by a farmer, farm labor contractor, agricultural employer, or other person connected to recruiting workers on an agricultural establishment. OAR 437-004-1120(5)(b) requires the employer or operator to register most housing with Oregon OSHA each year at least **45 days** before occupancy. *See PD A-222 "Guidelines for Scheduling and Conducting Inspections of Agriculture Labor Housing" for additional information.*

NOTE: Temporary labor camps set up under circumstances of emergencies or natural disasters are not covered by the labor camp standards in either Division 2 or 4.

Labor Housing Inspections

All inspections (scheduled, complaint, or referral) will include, but are not limited, to the following actions:

Pre-Inspection:

- Evaluate the best time for conducting the inspection, taking into consideration the crop or activity season, type of operation, occupancy period if available, and the time of day to ensure the presence of any occupants.

- Evaluate the need for and availability of an interpreter to be used during interviews with occupants and communication with the owner or camp operator. *See "Conducting Employee Interviews" in Chapter 3 for additional information.*

DO NOT RELY ON EMPLOYER, EMPLOYER REPRESENTATIVE, OR EMPLOYEE AS AN INTERPRETER

- Evaluate the need for inspection assistance based on size of facility, history of facility, time of visit, or any other applicable considerations.

  NOTE: Oregon OSHA internal interpreters and an external interpreter service are available to you during all Oregon OSHA activities with non-English speaking individuals. Work with your manager, or designees, to coordinate. The best use of resources will be considered.

During Inspection:

- Conduct inspections according to all applicable rules, directives, and procedures outlined in Chapter 3, "Conducting Inspections."

- Document the housing and working relationship among property owner, camp operator and occupants.

- You may arrive onsite and find the housing no longer occupied due to the transitory nature of agricultural work. In these circumstances, if you can substantiate exposure and employer knowledge by asking the same questions asked on any other type of inspection, you should continue with the inspection. If you are not able to substantiate these items, and still have concerns about the hazards identified, you should continue to document the hazards and work with your manager to write either a hazard letter or an "Order to Correct."

  NOTE: *You must work with your field enforcement manager, or designee, to determine actions in the above situations.*

- Collect pertinent information necessary to make adequate referrals to other agencies and sections (e.g., identification of public water systems for referral to the Oregon Health Division or spray records for possible Oregon OSHA pesticide referral).

- Conduct interviews with occupants using an interpreter if necessary.

- Inspect a sample number of each type of sleeping place to assess the condition of a camp with a large number of sleeping places.

- Use the inspection checklist and provide a copy to the employer. (Publication 440-1876 (English version) and 440-1876s (Spanish version) are available from the Oregon OSHA Web site and Resource Center).

Post-Inspection:

- Complete paperwork according to all applicable rules and directives.

- Complete the Inspection Information tab in OTIS , with the following additional instructions:
  - Inspections conducted as a result of discovery during an inspection of an agriculture operation will be recorded as either "Programmed Related" or "Unprogrammed Related."

  - Identify all agricultural worker housing inspections on the Insp Info>Visit Data tab in OTIS with the following:

    1. Check the "Migrant" checkbox
    2. Use the "Fixed" radial button
    3. Enter the "Walk Around Name"
    4. Enter "N- 09 TLC" on the Insp Info>Related/Optional tab for Temp Labor camp only for small exempt farms

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Labor Housing Closure

ORS 658.790(1) states when agricultural worker housing is ordered vacated by any government agency authorized to enforce building, health, or safety standards because the housing is not habitable, the housing operator will provide lodging without charge that meets Oregon OSHA standards for seven days or until the housing is made habitable, whichever is less.

Consult your manager, or designee, when you believe that housing should be closed because it is not habitable. They must approve closing the housing. Post a "**Housing Closure Notice**" at the site and issue an "**Order to Provide Lodging**" to the housing operator when you close housing because it is not habitable. Report the posting of a "Housing Closure Notice" to the central office using the same procedures as for reporting a "Red Warning Notice."

NOTE: *Temporary Labor Housing or Camps are covered in Division 4/J OAR 437-004-1120.*

III. Field Sanitation

Look for field hand-labor operations when in rural areas where such operations are expected to be in progress if you perform agricultural safety and health inspections. Per ORS 654.067 and OAR 437-001-0065, Oregon OSHA has the right to inspect any place of employment (excluding federal jurisdiction) in the State of Oregon, including agricultural and farming operations except family farms. *See PD A-231 "Jurisdiction: independent contractors, limited liability companies (LLCs), partnerships, corporate officers and corporate family farms" for additional information.*

IV. Multi-Employer Worksite

On multi-employer worksites, in all industry sectors, owners, general contractors, subcontractors may each be cited for hazardous conditions that violate Oregon OSHA standards. *See PD A-257 "Multi-employer Workplace Citation Guidelines" for specific and detailed guidance.*

Multi-Employer Worksite Inspection

In addition to conducting applicable inspection activities discussed in Chapter 3, "Conducting Inspections," you must determine the following:

- **The creating employer** – Employers in a multi-employer worksite that create a hazardous condition may be cited if they have knowledge of the hazard and there is a reasonable likelihood that employees, over whose work practices they have direction and control, or the right to exercise direction and control, could be exposed to the hazardous condition.
- **The exposing employer** – Employers in a multi-employer workplace may be cited if they expose employees over whose work practices they have direction and control, or the right to exercise direction and control, to hazards that they have knowledge of.

- **The controlling employer** – Employers with sufficient control over a multi-employer workplace to instruct that hazardous conditions be abated may be cited for failing to do so if they have knowledge of the hazard and there is a reasonable likelihood that employees over whose work practices they have direction and control could be exposed to the hazardous conditions.

  EXCEPTION: Sufficient control to abate violations cannot be based solely on an employer's right to terminate or suspend work to correct unsafe working conditions or on an employer's authority to remove another employer's employee from the site for nonconformance with Oregon OSHA regulations, other safety plans, or obligations.

In complex situations where it may be difficult to identify the precise employment relationship between the employer to be cited and the exposed employees, the field enforcement manager will consult with the statewide safety or health manager and the Department of Justice to determine the sufficiency of the evidence regarding the employment relationship.

Employer Knowledge

The identified employers may be cited if they have "knowledge" of the hazardous conditions and exercise, or have the right to exercise, direction and control over the work practices of employees who could reasonably have been exposed to such conditions.

EXCEPTION: Under no circumstances will a controlling employer be determined to have knowledge of hazards related to violations unique to another employer's specialty occupation unless the controlling employer had knowledge of the hazardous condition for a reasonable period.

Order to Correct

Oregon OSHA may issue an "Order to Correct" based on ORS 654.071(1) requiring an employer that was not cited to take reasonable steps to abate an existing hazard and avoid the reoccurrence of a hazard. Failure to comply with such an order will subject the employer to citation based on ORS 654.071(4). For example, when more than 180 days has passed since Oregon OSHA became aware of a hazard and a citation was not issued timely, an "Order to Correct" can be issued requiring the employer to abate the hazard. *See P&P "Order to Correct" for additional information.*

Closing Conference

Conduct a closing conference according to OAR 437-001-0099 prior to issuing a citation relating to an inspection of a multi-employer workplace.

At the employer's request, a second conference will be held, either in person or by phone, within a reasonable time, so long as this conference does not impact the timeliness of a citation. A designated manager, knowledgeable in the application of Oregon OSHA's multi-employer workplace citation guidelines, will conduct the second conference. Participants in the second conference will include you, your manager, an employer representative, and an employee representative (if available).

V. Whistleblower

Oregon OSHA will provide BOLI with safety and health technical assistance, provide referrals to the Ombudsman for Injured Workers, audit BOLI files, and initiate enforcement activities where safety and health violations may have occurred following the guidelines in *PD A-288 "Whistleblower 11(c) Investigations Manual."*

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CHAPTER 7

Penalty Assessment

I. General Penalty Policy

The penalty structure implemented under the OSEAct and Division 1, General Administrative Rules, is not designed as a punishment for violations of the Act or as a source of income for the Agency. Penalties are designed mostly to provide an additional incentive for employers to prevent or correct violations voluntarily.

II. Penalties Based on Probability/Severity Ratings

Primary factors in determining the base penalties for violations classified as other-than-serious, serious and death are the probability and severity rating of each violation. Assess the **severity** of the violation by following the guidelines outlined in Chapter 2 *"Element 2: Hazard (Severity Rating)."* Assess the **probability** of the violation by following the guidelines in Chapter 2 "*Element 3: Employee Exposure (Probability Rating)."*

Other-Than-Serious Violations

Employers receiving a citation for an alleged other-than-serious violation may be assessed a civil penalty of not more than $7,000, by the Administrator, for each violation. Generally, an other-than-serious violation or an administrative violation would not have a proposed penalty, unless the violation is assigned a mandatory penalty or is a repeat violation that had no original penalty.

Serious Violations

Violations resulting in or having the potential to cause serious physical harm or death are rated as serious. Employers receiving a citation for an alleged serious violation will be assessed a civil penalty of an adjusted amount not less than $100 and not more than $7,000 for each non-repeat or non-willful violation, including grouped and combined violations.

Penalty Schedule

A civil penalty will be assessed for any serious violation and may be assessed for any other-than-serious violation by determining the base penalty established by the intersection of the probability rating and severity rating on the Penalty Schedule (Table 5-1). In cases where probability and severity are not the only considerations, a civil penalty may be assessed by considering the facts of the violation.

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PENALTY SCHEDULE 5-1

PROBABILITY	SEVERITY		
	Other-than-serious	Serious	Death
Low	**$0**	**$300**	**$2,100**
Medium	**N/A**	**$500**	**$3,500**
High	**$300**	**$1,250**	**$7,000**

III. Standard Penalty Adjustment Factors

You may adjust the base penalty during the inspection for one or more of the following adjustment factors:

- Employer Size
- Employer History
- Employer Good Faith
- Immediate Correction of Violation

NOTE: Inspection reports must include justifications for each adjustment factor.

When adjusting the base penalty, calculate the total amount of all adjustment factors first, and then apply the total adjustment amount to the base penalty in Table 5-1. **Only adjust a penalty one time.** Take a copy of Table 5-2 on your inspection to assist you.

ADJUSTED PENALTY TABLE 5-2

ADJUSTMENT	PENALTY IN DOLLARS					
+30%	390	650	1,625	2,730	4,550	7,000
+20%	360	600	1,500	2,520	4,200	7,000
+10%	330	550	1,375	2,310	3,850	7,000
Base penalty	**300**	**500**	**1,250**	**2,100**	**3,500**	**7,000**
-10%	270	450	1,125	1,890	3,150	6,300
-20%	240	400	1,000	1,680	2,800	5,600
-30%	210	350	875	1,470	2,450	4,900
-40%	180	300	750	1,260	2,100	4,200
-50%	150	250	625	1,050	1,750	3,500
-60%	120	200	500	840	1,400	2,800
-70%	90/100*	150	375	630	1,050	2,100
-80%	60/100*	100	250	420	700	1,400
-90%	30/100*	50/100*	125	210	350	700
-100%	100*	100*	100*	100*	100*	100*

***The minimum adjusted penalty for a serious violation is $100.**

Employer Size

Apply the appropriate penalty adjustment in Table 5-3 based on the number of employees an employer has within Oregon during peak employment for the previous 12 months.

SIZE ADJUSTMENT TABLE 5-3

NUMBER OF EMPLOYEES	PENALTY ADJUSTMENT
1-25	-60%
26 - 90	-40%
91 - 130	-30%
131 - 175	-20%
176 - 250	-10%
251 or more	None

Employer size is the only adjustment factor allowed for willful violations, repeat violations, or violations that caused or materially contributed to a serious injury, illness, or death of an employee.

Employer History

Apply the appropriate penalty adjustment in Table 5-4 based on your assessment of the employer's history for the previous three years. History adjustments will be based on both the employer's injury/illness history and violation history; however, a positive, typical or negative assessment may be based only on one set of history facts when the other does not exist.

HISTORY ADJUSTMENT TABLE 5-4

HISTORY ASSESSMENT	PENALTY ADJUSTMENT
Positive	-10%
Typical	None
Negative	+10%

When assessing the employer's previous three years of injury/illness, review the OSHA 300 Log of Work-Related Injuries and Illnesses (or equivalent) and the annual OSHA 300A Summary of Work-Related Injuries and Illnesses for non-exempt employers, and the DCBS 801forms for all employers with employees covered by workers' compensation insurance.

Identify any positive or negative trends of OSHA recordable injury/illnesses cases. Use the Days Away, Restricted, or Transferred (DART) rate calculation below to also determine the employer's DART rate trend, and how it compares with the statewide average for their industry. *See PD A-249 "Recordkeeping Policies and Procedures Manual (300 Log)" for additional procedures for determining DART rate.*

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DART Rate Calculation

(N/EH) x (200,000) = DART Rate, where:

N is the number of cases involving days away and/or restricted work activity and job transfers.

EH is the total number of hours worked by all employees during the calendar year; and ***200,000*** is the base number of hours worked for 100 full-time equivalent employees.

NOTE: The total hours worked **(EH)** and the average number of employees for each year can be found on the OSHA-300A.

When assessing the employer's previous three year violation history, review the employer's Location Detail Report for a programmed inspection, or the Oracle Employer Activity report for an unprogrammed inspection.

Once you have assessed both the injury/illness history and violation history, use the information and your professional judgment to determine the employer's overall history.

Employer Good Faith

Apply the appropriate penalty adjustment in Table 5-5 based on your assessment of the employer's level of effort to provide a safe and healthful workplace for employees prior to the inspection.

GOOD FAITH ADJUSTMENT TABLE 5-5

GOOD FAITH ASSESSMENT	PENALTY ADJUSTMENT
Above average	-20%
Normal	None
Poorer than normal	+20%

A penalty reduction is permitted in recognition of an employer's efforts to provide a better than average level of safe and health in the workplace. No adjustment will be applied where the employer's efforts are at the norm. A penalty increase is permitted when the employer has demonstrated a poorer than normal effort in providing a safe and healthful workplace for its employees.

Good faith adjustments are determined by, but not limited to, review of the following:

- 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 programs.
- Management's commitment at all levels is apparent.
- Worksite hazard analysis is conducted.
- Employees and managers alike are held accountable for safety and health.

Immediate Correction of Violation

Apply the penalty adjustment in Table 5-6 based on your assessment of whether or not the employer's corrective action to abate a violative condition was substantial and not temporary or superficial.

IMMEDIATE CORRECTION ADJUSTMENT TABLE 5-6

VIOLATION CORRECTED	PENALTY ADJUSTMENT
Yes	-10%
No	None

The immediate correction penalty adjustment is only applied when you have determined that the employer's effort to correct the violation was substantial and not temporary or superficial. If you determine that the violative condition existed due to the employer's lack of interest in compliance prior to the inspection, or that the correction was not genuine and will not ensure future compliance, do not apply the adjustment.

When preparing your inspection report, remember that an "immediate correction" is not the same as "complied with." An employer can comply with a violation at the time of the inspection; however, based on your assessment they may not receive an immediate correction penalty adjustment. In any case, however, an immediate correction will always satisfy the requirements for a violation that has been complied with.

IV. Mandatory Penalties

In most cases, a civil penalty is not assessed for other-than-serious violations; however, there are some other-than-serious violations that carry a mandatory civil penalty. S*ee Mandatory Penalties for a current list of other-than-serious violations with mandatory penalties.*

Posting Requirements

A penalty of up to $1,000 may be proposed for violations of the following posting requirements:

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

- **Annual Summary of Work-Related Injuries and Illnesses** – If an employer fails to post the summary portion of the OSHA 300A Form by February 1st of the year following the year covered by the records and keep it posted until April 30 according to OAR 437-001-0700(17)(e), a minimum penalty of $200 may be assessed. A citation will not be issued if the Summary that is not posted reflects no injuries or illnesses, and no injuries or illnesses actually occurred. Verify that there were no recordable injuries or illnesses by interviews, or by review of workers' compensation or other records, including medical records.

- **Citation Posting** – Assess a minimum penalty of $200 if an employer fails to post the citation upon receipt for a minimum of three working days or until the violation(s) have been abated, whichever occurs last.

Reporting and Recordkeeping Requirements

The OSEAct provides that an employer who violates any of the posting or recordkeeping requirements may be assessed a civil penalty of up to $1,000 for each violation. *See ORS 654.086(1)(f)*.

OSHA-300 and 801 Forms

If a non-exempt employer does not maintain the "Log and Summary of Occupational Injuries and Illnesses" (OSHA Form 300) or equivalent, or the "Supplementary Record" (801 Form) or equivalent, you may issue an other-than-serious citation with a minimum penalty of $100. *See PD A-249 "Recordkeeping Policies and Procedures Manual (300 Log)" for procedures on addressing recordkeeping violations.*

NOTE: Forms must be maintained even when no recordable injuries or illnesses have occurred. The log must be signed by the highest ranking manager at the location where the log is kept. Failure to maintain a 300 Log for previous years that incurred no OSHA recordable injuries or illnesses will be considered a de minimus condition.

Reporting Fatalities, Catastrophes and Accidents

According to OAR 437-001-0704, employers are required to report to Oregon OSHA all occupational **fatalities, catastrophes,** and **accidents resulting in in-patient hospitalization** with medical treatment (including first aid), the loss of an eye, and an amputation or avulsion that result in bone and/or cartilage loss within:

- **8 hours of occurrence or employer knowledge of the event** - Any on-the-job fatality of an employee, or any accident that results in the hospitalization of three or more employees (catastrophe).

- **24 hours of occurrence or employer knowledge of the event** - Any on-the-job accident resulting in an employee in-patient hospitalization with medical treatment (including first aid), the loss of an eye, or an amputation or avulsion that results in bone and/or cartilage loss. Report in-patient hospitalizations only if they occur within 24 hours of the incident that caused the hospitalization. In-patient hospitalization for observation only is not reportable.

If prior to the lapse of the applicable reporting period, Oregon OSHA becomes aware of an incident required to be reported through means other than an employer report, there is no violation for failure to report.

Issue an other-than-serious citation for failure to report such an occurrence and assess the penalty at $2,500. Adjust the penalty up or down ($250 - $7,000) based on the specific circumstances of the situation. Document the justification for the adjustment. Consider the following when making penalty adjustments:

- Type and seriousness of injury.
- Quality of the internal investigation by the employer.

- Amount of time passed since the fatality/catastrophe or accident occurred.
- Size of the company.
- Past Oregon OSHA inspection history.
- Employer knowledge of requirement to report.
- Length of time the employer was aware of the fatality/catastrophe or accident.

Evaluate late reporting and determine a penalty based on circumstances relating to the report such as, the lateness of the report, who was responsible for the reporting, when were they aware of the event, or was the event reported to the wrong entity or department (Federal OSHA vs. Oregon OSHA).

NOTE: *See P&P Penalty for Failure to Report a Fatality, Catastrophe or Accident for additional information.*

Access to Records

When an employer who is required to maintain injury, illness and fatality records fails to provide such records for inspection when requested to do so by any employee, former employee, or authorized representative of Oregon OSHA, you may issue a citation. A minimum penalty of $100 may be assessed for each form not made available. *See PD A-266 "Medical Records Access by Oregon OSHA" for additional information.*

Notification Requirements

When an employer has received advance notice of an inspection and fails to notify the authorized employee representative, you may issue an other-than-serious citation with an unadjusted penalty of up to $1,000. *See OAR 437-001-0060(2)(b).*

Red Tag Violation

Persons violating Red Tag (red warning notice) restrictions, as explained under the provisions of OAR 437-001-0180 will be assessed a civil penalty of not less than $100 and not more than $5,000 for each such violation.

Making False Statement, Representation or Certification

Employers knowingly making any false statement, representation or certification regarding the correction of a violation will be assessed a civil penalty of not less than $100 and not more than $2,500.

Violations with no Probability and Severity

OAR 437-001-0145(1) states, "In a case where probability and severity are not appropriate considerations, you may impose a penalty by considering the facts of the violation." The Administrator sets the following standard penalties for violations where probability and severity are not appropriate considerations:

- **Safety and Health Protection on the Job Poster –** If the employer has not displayed the poster, a minimum penalty of $100 may be assessed

- **Failure to provide flush toilets on construction sites –** Assess an other-than-serious violation with a minimum penalty of $200 and not more than $2,500. *See OAR 437-001-0203(6)*.

- **Sanitation facilities for workers harvesting food crops; employer to post notice; rules** Employers failing to comply with ORS 654.174(2) will be assessed a civil penalty of not less than $250 and not more than $2,500 for each such violation.

V. Penalties for Combined or Grouped Violations

COMBINE SAME – GROUP DIFFERENT

Combining Violations

Combining multiple violations of the same statute, regulation, rule, standard, or order into one violation is allowed to indicate an overall lack of compliance. Severity will be determined by identifying the most reasonably predictable injury or illness that could occur. Determine the probability rating of the violation by assessing the combined instances. Typically, combining violations will increase the probability rating. Apply all appropriate penalty adjustments.

EXAMPLE: Five bench grinders are missing a tongue guard. Rather than citing each of the five violations, combined all five violative conditions of the same rule into one violation.

When combining multiple violations

- The final abatement date will be the latest date for all combined instances.
- You may combine repeat violations; however, only a size adjustment factor may be applied.

Grouping Violations

Grouping multiple violations of different statutes, regulations, rules, standards, or orders into one violation is allowed when the hazard of one violation directly contributes to the probability and severity of a hazard to a different violation. Calculate the base penalty for grouped violations of different rules by determining the most reasonably predictable probability and severity of injury or illness for the entire group. Apply all appropriate penalty adjustments.

EXAMPLE: A table saw is observed in use with no hood guard, no anti-kickback fingers, and no spreader. These violations each have their own rule but they are all on the same piece of equipment so they may be grouped.

- **Grouping Related Violations – Group the violations into one citation item w**hen you believe that violations classified as serious or as other-than-serious are so closely related as to constitute a single hazardous condition.

- **When Grouping Other-Than-Serious Violations Results in a Serious Violation –** Group violations as a single serious violation **w**hen you find two or more individual violations, that if considered individually represent other-than-serious violations, but if grouped will create a substantial probability of serious physical harm.

- **When Grouping Other-Than-Serious Violations Results in a Higher Probability –** Group violations when you find a number of other-than-serious violations, present in the same piece of equipment or process, if those violations considered in relation to each other affect the overall probability of incurring an injury. Grouping other-than-serious violations may result in a penalty being applied but will have no impact on the severity rating.

- **Violations of Posting and Recordkeeping Requirements –** Group violations of the posting and recordkeeping requirements that involve the same document, e.g., the OSHA-300 form not posted or maintained, for penalty purposes.

Grouping is normally not done under the following circumstances:

- **Multiple Inspections –** Group only those violations discovered in a single inspection of a single establishment or worksite. Consider it a single inspection if it is in the same establishment, or at the same worksite, even if the inspection continues for more than one day or is discontinued with the intention of resuming after a short period of time, and you complete only one Inspection.

- **Separate Establishments of the Same Employer –** Issue separate citations for each establishment when conducting inspections, either at the same time or different times, at two establishments of the same employer, if you discover the same violation.

- **Egregious Violations –** Do not normally group or combine violations that are proposed as violation-by-violation. *See PD A-158 "Citations: Egregious Violations" for additional information.*

- **Repeat Violations –** Do not normally group individual violations that are a repeat from a previous citation if they were not grouped in the original citation.

VI. Failure to Abate Penalties

Notification of Failure to Abate Alleged Violation

Issue a Notification of Failure to Abate Alleged Violation citation in cases where violations have not been corrected as required. Apply failure to abate penalties when an employer has not corrected an other-than-serious violation that has been cited and the citation has become a final order, or when a serious violation has passed the abatement date, or has become a final order. Take into consideration an employer's effort, even though unsuccessful, to abate the violation when determining whether there is actually a failure to abate situation.

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Calculation of Failure to Abate Violation Penalties

Determine the penalty for failure to abate violations by considering the probability and severity rating of the original violation and its' adjusted penalty, any effort by the employer to correct the violation, and any reasonable factors which delayed the employer in correcting the violation. Document your findings in such cases and consult your manager. The penalty, if reduced based on these factors, will not be less than the original penalty.

- The starting point for the daily accrued penalty will be the proposed penalty from the original inspection, including the original standard penalty adjustments. The penalty can only be reduced farther for partial abatement or good intended attempt to abate the violation. No standard penalty adjustments will be applied.
- You may propose higher penalties when the probability or severity rating of the original violation has significantly increased by the time of the follow-up inspection, or in the event of a second failure to abate. No standard penalty adjustments will be applied.
- If the failure to correct the violation results from the employer's lack of diligence, the minimum daily penalties will be $50 per day for an other-than-serious violation and a minimum daily penalty of $250 per day for a serious violation.
- Multiply the originally proposed penalty by the number of working days that the violation led to continued actual or potential exposure to employees. The number of unabated working days will be counted from the working day following the abatement date specified in the citation or the final order date to the date up to, but not including, the abatement date.

Partial Abatement

When a violation has been only partially abated, the daily penalty will take this into consideration:

- When a violation consists of a number of instances (grouped or combined) and a follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily penalty will be on the non-abated instances for that violation. You must estimate or recalculate the original penalty of the instance based on only the non-abated instances. That recalculated penalty will be the basis for the non-abated penalty.
- In multi-step correction items, only the failure to comply with substantive (rather than procedural) requirements will generally incur a full failure to abate penalty. For example, an employer develops a lockout procedure (procedural) without purchasing lockout devices (substantive). You would cite the violation for not having provided locks.
- On rare occasions, when the field enforcement manager decides to issue a failure to abate notice for failure to comply with procedural requirements, the calculation of the daily penalty will consider the extent to which a violation has been substantially abated with the daily penalty reduced accordingly.

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Good Faith Attempt to Abate

When the employer has made a good faith attempt to abate a violation and had reason to believe the violation was fully abated, the field enforcement manager may recommend a reduction of the daily penalty that would otherwise be justified. No standard penalty adjustment would apply.
NOTE: *See P&P #49 "Procedures for Notice of Failure to Correct" for additional information.*

VII. Repeat Violation Penalties

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. The OSEAct provides that for a repeat violation, an employer may be assessed a civil penalty of not more than $70,000 for each violation. Classify each violation as serious or other-than-serious. Calculate base penalties for repeat violations on facts noted during the current inspection. Only a size adjustment factor will be allowed before the repeat multipliers are applied. *(See ORS 654.086(1)(c) and OAR 437-001-0165(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 where the circumstances clearly demonstrate that the violation is based on substantially similar conditions to the previously cited violation.

Example: A citation was issued within the previous three years 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.

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: A citation was issued within the previous three years 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: A citation was issued within the previous three years 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.

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Initial Penalty Repeats

Calculate penalties for repeat violations with initial penalties by multiplying the penalty for the current violation by the appropriate multiplication factor in Table 5-7:

REPEAT VIOLATION WITH AN INITIAL PENALTY TABLE 5-7

REPEAT OCCURENCE	MULTIPLICATION FACTOR
1st Repeat	X 2
2nd Repeat	X 5
3rd Repeat	X 10
4th Repeat	X 15
5th Repeat	X 20
Additional repeats	Discretion of Administrator

Not to exceed $70,000 maximum.

No Initial Penalty Repeats

Assess penalties for repeated other-than-serious violations and violations that otherwise would have no initial penalty (*see OAR 437-001-0165(3)*) as shown in Table 5-8:

REPEAT VIOLATION WITH NO INITIAL PENALTY TABLE 5-8

REPEAT OCCURENCE	PENALTY
1st Repeat	$200
2nd Repeat	$500
3rd Repeat	$1,000
Additional repeats	Discretion of Administrator

VIII. Additional Penalty Assignments

Willful Violations

A willful violation is committed when an employer or supervisory employee intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard or order. A willful violation exists under the OSEAct where evidence shows either an intentional violation of the OSEAct or plain indifference to its requirements.

The OSEAct provides that for a willful violation of the Act, an employer will be assessed a civil penalty of not less than $5,000 and not more than the statutory maximum of $70,000 for each violation. Willful violations are to be determined by the Administrator in accordance with OAR 437-001-0175. The base penalty or adjusted penalty will normally be multiplied by 25 for willful violations. Only a size adjustment factor may be allowed before applying the multiplier.

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Egregious Violations

Egregious or violation-by-violation citations are intended to provide an incentive to employers to prevent safety and health violations in their workplaces and to correct such violations which do exist voluntarily. The Administrator may assess a separate penalty for each instance of a violation in accordance with OAR 437-001-0175.

IX. Criminal Penalties

Section 654.991 of the OSEAct and the Oregon Revised Statutes provide for criminal penalties to be assessed by the courts following a trial when:

- Death occurs as a result of a willful violation.
- Unauthorized advance notice is given.
- False information is given.

X. Self-Insured and Group Self-Insured Employer

Self-Insured and Group Member Inspections

During the course of scheduled comprehensive safety or health inspections, determine if the employer is self-insured or a member of a self-insured group. If so, conduct a separate inspection to verify the employer's compliance with ORS 656.097 and OAR 437-001-1050 through 437-001-1060 by ensuring the following:

- The self-insured employer or group member has established and implemented a written occupational health and safety loss prevention program for each establishment.

- Managers and workplace locations are informed of the availability and the process for requesting loss prevention assistance.

- The self-insured employer or group member has implemented a loss prevention effort for each location, which identifies and controls all reasonably discoverable occupational safety and health hazards and items not in compliance with occupational safety and health laws, rules and standards.

See *PD A-292 "Insurers, Self-Insured Employers and Self-Insured Group Inspections"* for additional information.

The loss prevention effort must include the following:

1. Management commitment to health and safety.
2. An accountability system for employer and employees.
3. Training practices and follow-up.
4. A system for hazard assessment and control.

5. A system for investigating all recordable occupational injuries and illnesses that includes corrective action and written finings.
6. A system for evaluating, obtaining, and maintaining personal protective equipment.
7. On-site routine industrial hygiene and safety evaluations to detect physical and chemical hazards, and the implementation of engineering or administrative controls.
8. Evaluation of workplace design, layout and operation, and assistance with job site modifications utilizing an ergonomic approach.
9. Employee involvement in the health and safety effort.
10. An annual evaluation of the employer's loss prevention activities based on the location's current needs.

Penalty Criteria

ORS 654.086(1)(i) states, "Any insurer or self-insured employer who violates any provision of ORS 654.097, or any rule or order carrying out ORS 654.097, will be assessed a civil penalty of not more than $2,000 for each violation or $10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, will be considered separate offense."

Recommend penalty amounts after reviewing the findings of the inspection based on the following criteria:

- Violations of registration by an insurer or self-insured employer, OAR 437-001-1020(1) through (4). $250 for first instance, $500 for second instance, $2,000 for third instance.

- Violations of availability of loss prevention, loss control, or related records, OAR 437-001-1020(5). $500 for first instance, $1,000 for second instance, $2,000 for third instance.

- Violations of notification of services, OAR 437-001-1025. When no notification of services were provided, $500 for first instance, $1,000 for second instance, $2,000 for third instance. When elements of 1025(1)(a) through (e) are lacking or omitted, the penalty will be $250 for first instance violations.

- Violations of request for services, OAR 437-001-1030. $500 for first instance, $1,000 for second instance, $2,000 for third instance.

- Violations for loss prevention services, OAR 437-001-1035. For violations of 1035(1), (3), (4), and (5) $500 for first instance, $1,000 for second instance, $2,000 for third instance. For violations of 1035(2)(a) through (j), $100 for first instance, $500 for second instance, $1,000 for third instance.

- Violations for required loss prevention services, OAR 437-001-1040. $500 for first instance, $1,000 for second instance, $2,000 for third instance.

- Violations of self-insured and group self-insured loss prevention assistance, OAR 437-001-1050. $500 for first instance, $1,000 for second instance, $2,000 for third instance.

- Violations of self-insured and group self-insured employer loss prevention programs, OAR 437-001-1055. $500 for first instance, $1,000 for second instance, $2,000 for third instance.

- Violations of self-insured and group self-insured employer loss prevention effort, OAR 437-001-1060. For each element of the program lacking, (1) through (9), $100 for first instance, $500 for second instance, $2,000 for third instance. For the annual review, 1060(10), $250 for first instance, $500 for second instance, and $2,000 for third instance. For groups maintaining records, 1060(11), $500 for first instance, $1,000 for second instance, $2,000 for third instance.

SELF-INSURED/GROUP SELF-INSURED PROGRAM PENALTY TABLE 5-9

Rule	First Instance	Second Instance	Third Instance
437-001-1020(1)-(4)	$250	$500	$2,000
437-001-1020(5)	$500	$1,000	$2,000
437-001-1025	$500	$1,000	$2,000
437-001-1025(1)(a)-(e)	$250	$500	$2,000
437-001-1030	$500	$1,000	$2,000
437-001-1035(1), (3)-(5)	$500	$1,000	$1,000
437-001-1035(2)(a)-(j)	$100	$500	$1,000
437-001-1040	$500	$1,000	$2,000
437-001-1050	$500	$1,000	$2,000
437-001-1055	$500	$1,000	$2,000
437-001-1060(1)-(9)	$100	$500	$1,000
437-001-1060(10)	$250	$500	$2,000
437-001-1060(11)	$500	$1,000	$2,000

All penalty amounts are used as a guide. You may recommend a different penalty amount. You must document the reason and get approval from the program manager. Rules which are violated but not listed in this guide will have the penalty established by the program manager with your recommendation.

NOTE: You may recommend to the Administrator revoking or suspending certifications as self-insured employers or workers' compensation insurers if repeated violations continue or if you establish no intent to comply. First, discuss any recommendation to revoke or suspend certification with the field enforcement manager

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CHAPTER 8

Inspection Report Preparation

I. Introduction

Obtain information relative to cited violations during your inspection. When preparing an inspection report, include written documentation, field notes, audio/videotapes, photographs, samples, employer and employee interviews, and employer maintained records. Develop detailed information to establish the specific **four-element evaluation** of each violation.

II. Required Inspection Forms and Documentation

Oregon OSHA Inspection Supplement

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS)

Fill out the Oregon OSHA Inspection Supplement form completely for all inspections. Use the form to document current employer information and:

- Dates and times of inspection activities.
- Names and titles of employer representatives and employee representatives participating in the opening and closing conferences.
- Names and titles of those accompanying you on the walk-around inspection.
- Mailing addresses where additional citation copies must be sent.
- Penalties and abatement times.
- Referrals

Location Detail Report

(USED FOR ALL SCHEDULED SAFETY & HEALTH INSPECTIONS)

The Location Detail Report is not a part of the inspection packet but it provides you with essential employer information such as:

- Inspection scheduling data.
- Location and employer information.
- Inspection and violation history.
- Summary of claims.

Oregon OSHA Opening/Closing Conference Form (440-2318)

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS)

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Use the Oregon OSHA Opening and Closing Conference form when you conduct the opening and closing conferences with employer/employee representatives to ensure proper notification and exchange of pertinent information.

Accident Reporting Form (440-2348)

(USED FOR ALL SAFETY & HEALTH ACCIDENT INVESTIGATIONS)

Complete a detailed Oregon OSHA Accident Report form when receiving an accident notification by phone. The field enforcement manager, or designee, will evaluate all accident notifications as soon as possible to ensure a quick response. Include a copy of the form in the accident investigation report. *See P&P "Accident Intake" for additional information.*

Complaint Intake Form (440-1902A)

(USED FOR ALL SAFETY & HEALTH COMPLAINT INSPECTIONS)

Complaints can be received by telephone, e-mail, mail, fax, or online by the complainant, and must be documented on the OSHA Complaint Intake form with as much detail as possible. After receiving a complaint, the field enforcement manager (or designee) will evaluate all available information to determine if there are reasonable grounds to believe that a violation or hazard exists. When an inspection is planned a copy of the complaint will be provided to the compliance officer, with all confidential information omitted. The compliance officer will enter the findings for each complaint item on the form and include a copy in the inspection report. *See "Complaints and Referrals Inspections" (Chapter 4), P&P "Complaint," and PD A-219 "Complaint Policies and Procedures" for additional information.*

Red Tag Warning Notice (440-810)

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS WHERE A RED TAG WARNING IS POSTED)

Issue and post a Red Tag Warning Notice at the workplace if an employer does not eliminate an imminent danger, or give satisfactory assurance that the danger will be voluntarily eliminated. You must take a photo of the posted Red Tag Warning Notice for the inspection report. *See "Red Warning Notice (Red Tag) Posted" in Chapter 5 for additional information.*

Notice of Failure to Correct (440-1251)

(USED FOR ALL SAFETY & HEALTH INSPECTIONS WHERE THERE IS A FAILURE TO ABATE)

Complete and post a Notice of Failure to Correct at the workplace when you find that an employer has not fully corrected a violation issued on a previous Oregon OSHA citation. Include a copy of the issued notice in the inspection report. *See "Failure to Abate" in Chapter 9 for additional information.*

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Alleged Violation Description (AVD)

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS WITH VIOLATIONS)

Use the Alleged Violation Description (AVD) worksheet to document pertinent violation information including:

- Inspection number.
- Optional report number.
- Firm name.
- Date of inspection and violation.
- Class of violation (S / W / R / O / G).
- Group and item number.
- Probability rating (L / M / H).
- Severity rating (OTS / S / D).
- Adjustments factors (size, history, good faith, immediate correction).
- Adjusted penalty.
- Rule violated.
- Repeat violation reference (if applicable). Include a copy of the previous citation(s) on which the repeat classification is based and documentation of the final order date of the original citation in the file.
- Explanation of the hazard(s) or hazardous condition(s).
- Specific location of the hazard.
- Identification of the machinery or equipment (such as equipment type, manufacturer, model number, serial number).
- Employee(s) approximate proximity to the hazard, approximate measurements taken, approximate duration of time the hazard existed, and frequency of employee exposure to the hazard.
- All facts that establish employer knowledge of the hazardous condition.
- Abatement time or complied with (C/W) date. The abatement period is the shortest interval that the employer can reasonably be expected to correct the violation. Abatement periods exceeding 28 days will not normally be offered, particularly for simple safety violations.

Establish a **willful violation** when your documentation shows either that the employer knows the legal requirements and **intentionally** violates them or that the employer shows **plain indifference** to employee safety or health. Include facts showing that when the employer is not consciously or intentionally violating the OSEAct, the employer is acting with such plain indifference for employee safety that even if the employer knew of the standard, they probably would not have complied. Include as evidence instances where an employer is aware of employee exposure to an obviously hazardous condition(s) and makes no reasonable effort to eliminate it.

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Field Notes

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS)

Include all information pertinent to the alleged violation that is not recorded on the AVD in the inspection field notes such as:

- A description of hazard, location, process, and approximate measurements.
- Employer knowledge.
- Supervision and training information.
- Employee(s) exposure.
- Type of injury most likely to occur.
- Stress factors at time of inspection (weather, noise).
- Justifications for probability and severity rating.
- Justifications for penalty adjustment factors.
- Corrective action taken, if any, at the time of inspection.

Maintain in your case file all documentation pertinent to your inspection. Call logs, emails, faxes, any hand written notes detailing your activities associated with the inspection are all to be included in the file. Summarize all actions relating to a case, especially those not noted elsewhere in the case file such as contacts made by phone. Entries should be clear, concise and legible and should be dated in chronological order to reflect a timeline of the case development. Information provided should include, at a minimum, the date of the action or event, persons involved, and a brief description of the action or event.

NOTE: Do not include any attorney/client privileged information (e.g., emails from DOJ, Legal Case Evaluations, etc.) in your inspection packet.

Inspection Narrative and Investigation Synopsis

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS)

An inspection report narrative provides the reader with an informative background of the employer, the site, and any problems associated with the inspection, (e.g., difficulty in locating site, hostile employer, delayed entry, and actions taken by you). Provide information beneficial to conducting future inspections. Provide an accurate, concise accounting of what transpired during the inspection process in the event of judicial proceedings. Do not use the narrative to restate violations already identified in the Alleged Violation Description (AVD) worksheet(s). Synopses for investigations are generally longer than an inspection narrative because they require more detail.

Narratives must include:

- Reasons for initiating the inspection, (e.g., imminent danger, complaint, referral, failure to abate (FTA)). Include the specific situation prompting the inspection if it is initiated due to an imminent danger situation.
- Size and type of business and processes associated with it.
- Your reception by the employer.

- Results of inspection, (e.g., citations issued, triple zero, in-compliance. Include the reason in the event of a triple zero inspection).
- Information on failure to abate (FTA) inspections describing what was done to correct the hazard(s), the date corrected, and how compliance was verified.

Additional information, when applicable**,** includes:

- Name of trainee or anyone accompanying you on a monitored inspection.
- Project costs of construction inspections.
- ARRA funding.
- Safety and health programs reviewed.
- Reason inspection may not have been initiated in a timely manner.
- Reason a warrant was obtained if one was required.
- Actions taken by you such as a records review, sampling, referrals, etc.
- Overall condition of the site.
- Best time to inspect for optimum inspection conditions.
- Method used to address safety & health program management with employer and employees.

Information specific to health inspections includes reasons why:

- Overexposure/lack of engineering controls was not cited.
- Sampling was less than eight hours.
- Screening was or was not done.
- Labs or sampling irregularities exist.
- Carcinogens or highly toxic chemicals have been identified at their location.

Information specific to investigation synopses includes:

- Specific processes.
- Specific work being performed at the time of the accident/catastrophe.
- Detailed description of the accident/catastrophe.
- Post fatality/catastrophe/accident activities performed by the employer.
- List of employer and employee representatives interviewed.
- Findings and justifications for alleged violations.
- Mandatory corrective actions.

Industrial Hygiene Information Request Checklist

(REQUIRED FOR HEALTH INSPECTIONS/INVESTIGATIONS)

You must use the IH Information Request checklist when requesting safety and health program information from the employer.

CSHO Sample Entry Form and Laboratory Analysis Report

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS WHEN SAMPLES ARE SUBMITTED TO OREGON OSHA LABORATORY)

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Samples submitted to the Oregon OSHA Laboratory must have information entered into the CSHO Sample Entry form in the Laboratory Information Management System (LIMS). Submit samples to the lab on the Sample Submittal form produced by the LIMS. Print a Laboratory Analysis Report from the LIMS when the analysis is complete. Include copies of the submittal form and analysis in the inspection report.

Chain of Custody Form

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS WHEN EVIDENCE IS OBTAINED)

Tag each piece of evidence. Include any items, pieces of property, samples, except for photographs, video or audio tapes etc., in the possession of Oregon OSHA that can be used to substantiate alleged violations or support investigative findings. Fill out an **Evidence Chain of Custody form (**available as an enforcement MS Word macro) at the scene. Identify physical, testimonial, or documentary items to be used as evidence including, but not limited to, item(s) being removed, location of the item(s) when confiscated, persons removing item(s) from the scene, and date of removal. *See P&P #52 "Chain of Custody Procedures" for additional information.*

Photo Identification Form

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS WHEN PHOTOGRAPH MOUNTING IS NECESSARY)

Photo mounting is generally done for formal hearings. Complete the photo identification form in detail. Locate the form in MS Word, under the Enforcement tab.

Employer Information Update Form

(USED FOR ALL SAFETY & HEALTH INSPECTIONS/INVESTIGATIONS WHEN THE EMPLOYER INFORMATION IS INCORRECT)

Use this form when the employer information on the Location Detail Report or Oracle is still incorrect at the time you submit your report, and is available in MS Word under the Enforcement tab. Provide specific, detailed information, and include a copy of the form in the case file.

OSHA Technical Information System (OTIS)

The OSHA Technical Information System (OTIS) is a system for collecting and storing state and Federal OSHA information. This information is transferred nightly to the national database. All program and unprogrammed related information must be entered into OTIS. This includes:

- Inspection documentation
- Complaints
- Referrals
- Accidents/fatalities
- Timekeeping
- Establishment/Employer information

See specific instructions for each of these areas in "Screen Help" in OTIS

Inspection Packet Order

Organize the contents to efficiently manage and process inspection reports and citations as outlined in the "Inspection Packet Order" instructions.

III. Case File Documentation Levels

Determine the minimum level of written inspection documentation needed based on the following firm file levels. Obtain necessary information relative to violations during the inspection, using any appropriate means, e.g., notes, audio/videotapes, interviews, photographs, and employer records. The following paragraphs indicate the minimum documentation required for each of the four levels.

Level I

No on-site inspection conducted:

- Complete the Inspection Detail information tab in OTIS.
- Complete the Oregon OSHA Inspection Supplement.
- Write a brief narrative expanding on the reason for not conducting an inspection.
- Explain why an inspection was not conducted when responding to a complaint or referral.

Level II

In-compliance inspection:

- Complete the Inspection Detail information tab in OTIS
- Complete the Oregon OSHA Inspection Supplement.
- Include records obtained during the inspection.
- Write a brief narrative of inspection activities and observations.
- Document your findings for all complaint or referral items addressed in the inspection.

Level III

Inspection conducted and a citation is to be issued:

- Complete the Inspection Detail information tab in OTIS.
- Complete the Oregon OSHA Inspection Supplement.
- Include records obtained during the inspection.
- Complete the Violation tabs in OTIS. Include your inspection field notes.
- Document your findings for all complaint or referral items addressed in the inspection.

NOTE: Document information related to employee exposure in the inspection field notes.

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Level IV

Citations are contested:

- Handle photos and videotapes according to P&P #25, *"Film, Video, Audio Cassette Management"* for contested citations.

NOTE: The difference between level III and IV is format and organization only. A Level III Firm file does not necessarily involve less documentation.

IV. Other Inspection Considerations

Document Potential Exposure

Document all relevant information concerning potential exposure(s) to chemical substances or physical agents including applicable safety data sheets (SDS), symptoms experienced by employees, duration and frequency of exposures to the hazard, employee interviews, sources of potential health hazards, types of engineering or administrative controls implemented by the employer, and personal protective equipment (PPE) provided by the employer and used by employees.

Employer's Occupational Safety and Health System

Request and evaluate information on the following elements of the employer's occupational safety and health system as it relates to the scope of the inspection.

- **Monitoring –** The employer's system for monitoring safety and health hazards in the establishment should include a self-inspection program. Discuss the employer's maintenance schedules and inspection records. Obtain additional information concerning activities such as sampling and calibration procedures, ventilation measurements, preventive maintenance procedures for engineering controls, and laboratory services. Determine compliance with the monitoring requirements of any applicable substance-specific health standards.

- **Medical –** Determine if the employer provides the employees with pre-placement and periodic medical examinations. Request the medical examination protocol to determine the extent of the medical examinations and compliance with the medical surveillance requirements of any applicable substance-specific health standards.

- **Records Program –** Examine the elements of the employer's records program to determine if records pertaining to employee exposure, and medical records, are being maintained according to 1910.1020.

- **Engineering Controls –** Identify any engineering controls present, including substitution, isolation, general dilution and local exhaust ventilation, and equipment modification.

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- **Work Practice and Administrative Controls –** Identify any control techniques including personal hygiene, housekeeping practices, employee job rotation, and employee training and education. Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure.

- **Personal Protective Equipment –** Determine if there is an effective PPE program for the location. Document a detailed evaluation of the program to determine compliance with specific standards.

- **Regulated Areas –** Investigate compliance with requirements for regulated areas as specified in certain standards. Regulated areas must be clearly identified and known to all appropriate employees. The regulated area designation must be maintained according to the prescribed criteria of the applicable standard.

- **Emergency Action Plan –** When standards require specific emergency procedures, you must evaluate the employer's plan, and determine if potential emergency conditions are included in the written plan, emergency conditions are explained to employees, and there is a training program to protect affected employees that includes PPE use and maintenance.

NOTE: Employee rotation is not permitted as a control under some standards.

V. Affirmative Defenses

Burden of Proof

Employers have the burden of proving any affirmative defenses at the time of a hearing. Anticipate that an employer is likely to raise an argument supporting such a defense. Be mindful of potential affirmative defenses and attempt to gather contrary evidence, particularly when an employer makes an assertion that would indicate raising a defense or excuse against the violation(s). Bring all documentation of hazards and facts related to possible affirmative defenses to the attention of the field enforcement manager.

An affirmative defense is a claim that is established by the employer and, if confirmed by you, may excuse the employer from a citation that has otherwise been documented. This defense may be expressed in a number of ways. Refer these claims to your field enforcement manager. This is not a decision made in the field. The following are explanations of common affirmative defenses that you should be familiar with. Other affirmative defenses exist, but they are less frequent or require minimal effort to gather the facts.

NOTE: Oregon OSHA bears the burden of proof of all violations except when employers argue an affirmative defense.

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Unpreventable Employee or Supervisory Misconduct or "Isolated Event"

To establish this defense, employers must show all the following elements:

- The violative conduct is unknown to the employer.
- A work rule is in place to adequately prevent the violation.
- The rule is effectively communicated to employees.
- Methods for discovering violations of work rules have been developed.
- The employer is effectively and uniformly enforcing the rules.

Document whether these elements are present. Include evidence that the established work rule complies with the requirements of the standard addressing the hazardous condition.

EXAMPLE: You see an unguarded table saw. The saw, however, has a guard which is reattached while you watch. Facts you should document include:

- The name of the person who removed the guard and the reason.
- Employer knowledge that the guard had been removed.
- The number of times and for how often the saw been used without the guard.
- Names of supervisors in the area while the saw was operated without a guard.
- The work rule stating that the saw only be operated with a guard.
- Means used by the employer to communicate the rule to employees.
- Method employer used to monitor compliance with the rule.
- Method used by the employer to enforce the rule when noncompliance was discovered.

NOTE: Make certain that whenever a guard is reattached on equipment or machinery during an inspection, all necessary hazardous energy control measures are followed.

Impossibility/Infeasibility of Compliance

On occasion, compliance with the requirements of a rule is functionally impossible or would prevent required work. The employer must take reasonable alternative steps to protect employees. Occasionally, there are no alternative means of employee protection available. Ask questions and document the answers similar to the following:

EXAMPLE: You see an unguarded table saw. The employer tells you that a guard would interfere with the nature of the work.

- Would a guard make the work impossible or merely more difficult?
- Could a guard be used some of the time or for some of the operations?
- Has the employer attempted to use a guard?
- Has the employer considered any alternative means of avoiding or reducing the hazard?

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Greater Hazard

A **greater hazard** may exist when compliance with a standard would result in a greater hazard to employees than would noncompliance. The employer may take reasonable alternative protective measures when possible, or there may not be an alternative means of employee protection. Ask questions and document the answers similar to the following:

> **EXAMPLE:** The employer indicates to you that a saw guard was removed because it caused the operator to be struck in the face by particles thrown from the saw. Facts you should document include:
>
> - Was the guard properly installed and used initially?
> - Would a different type of guard eliminate the problem?
> - How often was the operator struck by particles and what kind of injuries resulted?
> - Would PPE such as safety glasses or a face shield worn by the employee solve the problem?
> - Was the operator's work practice causing the problem?
> - Has the employer attempted to correct the problem?
> - What corrective measures, if any, have been taken?

VI. Interview Statements

Interview Statements in General

Obtain interview statements of employees or other individuals to adequately document a potential violation. Take accurate notes whenever possible during management interviews as these tend to be more credible than later general recollections.

Obtain written statements when:

- Actual or potential controversy exists with material facts concerning a violation.
- Employee statements conflict or differ in facts.
- There is a potential willful or repeated violation.
- During an accident investigation, you believe potential violations may have existed at the time of the accident.

Language and Statement Wording

Write interview statements in the first person and in the language of the individual when feasible. (Statements taken in a language other than English will be subsequently translated.) Statements must be understandable to the individual and reflect only the information that has been given in the interview.

Ask the individual to initial any changes or corrections to the statement. Do not modify the statement in any way. End the statement with the wording: "**I have read the above, or the statement has been read to me, and it is true to the best of my knowledge**." Include the following when appropriate: "**I request that my statement be held confidential to the extent allowed by law**." Only the interviewee may later waive the confidentiality of the statement. Ask the individual to sign and date the interview statement. Sign the statement as a witness.

Refusal to Sign Statement

Read the statement to the interviewee and attempt to obtain an agreement. Note on the statement if the interviewee refuses to sign. Transcribe recorded statements whenever possible.

Video and Audio Taped Statements

Interview statements may be videotaped or audio taped, with the consent of the interviewee. Reduce the statement to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate, and other significant cases so it may be signed. Produce the written statement for correction and signature, and identify the transcriber as soon as possible.

Administrative Depositions

When necessary to document or develop investigative facts, a management official, or other individual, may be administratively deposed to provide out-of-court testimony under oath.

VII. Paperwork and Written Program Requirements

Violations of rules requiring employers to have a written program that addresses a hazard or includes a written certification, e.g., hazard communication, PPE, permit required confined spaces are sometimes considered **paperwork deficiencies**. However, in some circumstances, violations of such rules may have an adverse impact on employee safety and health. See PD A-216 for guidance.

VIII. Using Videotapes and Audiotapes for Case File Documentation

Use videotaping as a method of documenting violations and gathering evidence for inspection case files when possible. Certain types of inspections, such as fatalities, imminent danger, and ergonomics will include videotaping. Use handwritten notes, audio taping, and photographs when they add to the quality of the evidence and when videotaping equipment is not available

IX. Citations

Writing Citations

The proper writing of citations is an essential part of the enforcement process. Describe in writing for each citation the specific nature of the violation. Include a reference to the provision of the OSEAct, standard, rule, regulation, or order alleged to have been violated. Include a description of the violation, and when applicable, the penalty amount, and a fixed reasonable time for the abatement of the violation.

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Using SAVEs

The Standard Alleged Violation Elements (SAVEs) are used to describe that portion of an alleged violation description which is stored in the OSHA Technical Information System (OTIS), and retrieved as needed. An alleged violation on a citation includes SAVE language and other necessary variable elements applicable to a specific violation.

SAVEs are a part of the OTIS system that is used in the automated citation process. They are to achieve the following goals:

- Improve the quality of alleged violation descriptions.
- Establish uniformity through standardized wording on citations.
- Promote uniform interpretation and application of rules.
- Ensure legal adequacy of alleged violation descriptions.

When using the SAVEs system you must:

- Select from the Oregon OSHA safety and health standards which specific standard is to be cited.
- Search the SAVEs system for a corresponding SAVE. If one is listed, ensure that it is appropriate for the apparent violation noted. This is accomplished by comparing the SAVE with the rule/regulation. Some rules may have more than one SAVE.
- Select the appropriate SAVE.
- Record the variable information required to describe the particulars of the violation.

SAVEs Options

A **SAVE option** identifies a different requirement within a single standard. If more than one requirement is covered by a single standard, these may be listed as options in the SAVEs system. SAVEs have not been drafted for all possible combinations of violations of a rule. The options given may be combined in either of two ways:

- One method is to request a new SAVE be written, including all the required information. Do not write your own SAVE. Contact the safety or health enforcement analyst in the central office for language.

- The preferred method is to combine the applicable options by listing each option as an individual sub-item of a single alleged violation. The item number is listed as 1a, 1b, etc.

NOTE: Do not confuse this combining procedure with the instructions for grouping violations.

Issuing Citations

Deliver all citations by certified mail. Hand deliver citations to the employer, or an appropriate agent of the employer, or use a mail delivery service other than the United States Postal Service, in addition to certified mail if it is believed that these methods would effectively give the employer notice of the citation. Obtain a signed receipt whenever possible.

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Statute of Limitations

Don't issue a citation when the alleged violation occurred 6 months (180 days) or more before the date the citation will be signed, dated, and served by certified mail. Where the actions or omissions of the employer conceal the existence of the violation, the 180 day issuance limitation begins when Oregon OSHA learns or could have learned of the violation.
Consult the Department of Justice in such cases. In some cases, particularly those involving fatalities or accidents, the 180 day period begins to run from the date we are notified of the incident; not from the opening conference date.

Citation Copies

Mail copies of the citation to the employee representative as indicated on the Oregon OSHA Inspection Supplement form, and to all labor unions that represent affected employees. Mail a copy of the citation to any employee upon request. When a fatality has occurred, provide the family of the victim a copy of the citation and/or complete copy of the report (at no charge) upon their request to the Records Management Unit (RMU) in Central Office.

NOTE: Recipients of citation copies, other than the employer, will be entered on line 28 of the OR-OSHA Inspection Supplement form, which will include their names and addresses.

X. Inspection Records

Inspection records include any records you make that are part of any inspection or are a part of the performance of any official duty. Make all official forms and notes constituting the basic documentation of a case a part of the inspection records (case file). Maintain all original field notes that are part of the inspection record in the file. Inspection records also include photographs (including digital photographs), negatives of photographs, videotapes, DVDs and audiotapes. Inspection records are the property of the State of Oregon and are not to be retained or used for any private purpose.

Release of Inspection Information

Information obtained during an inspection is confidential, but may become disclosable or non-disclosable based on criteria established in the Oregon Public Records Law ORS 192. The Records Management Unit (RMU) processes direct requests for release of inspection information.

NOTE: Attorney/client privilege information is non-disclosable.

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Classified and Trade Secret Information

Trade secrets are matters that are not meant for public or general knowledge. Limit collection of such information and the number of personnel with access to the minimum necessary. Identify any classified and trade secret information in the case file. Ensure that all confidential material is maintained according to the following:

- The identity of a complainant and any information that contains or might reveal the identity of a complainant is to remain confidential when requested. Without a written request for confidentiality, the division will still oblige itself in good faith to not disclose their identity.
- Treat any medical examiner's report, autopsy report, or laboratory test report ordered from a medical examiner as confidential. Refer requests of these reports to the medical examiner's office with jurisdiction over the investigation.
- Information deemed by an employer as sensitive or proprietary for public safety or business purposes such as, but not limited to, building floor plans of correctional facilities, evidence lockers, ventilation layouts, chemical inventories and quantities that may serve as precursors to illegal drug manufacture, or employer declarations of specialty manufacturing chemicals/processes. Document that information in the case file when critical to the inspection or investigation.

Any classified or trade secret information and/or personal knowledge of such information by agency personnel must be handled according to Oregon OSHA policy. *See P&P #17 "Confidential Materials and Trade Secret Handling" for additional information.*

CHAPTER 9

Post-Citation Procedures

I. Employer Notification of Appeal Rights

Appeal Rights

Employers have the legal right to appeal a citation. As discussed in Chapter 3 "Conducting Inspections," inform the employer during the closing conference that they may appeal any violation, penalty, or abatement date. 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 Oregon OSHA at 350 Winter St NE, Room 430, Salem, OR 97310, or with any permanently staffed office of the Workers' Compensation Board or Oregon OSHA office. 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. If the employer does not appeal the citation, it becomes a final order of the Department of Consumer and Business Services.

NOTE: Oregon OSHA has no authority to modify the 30 day appeal request period.

Timeliness of Appeal

Appeal requests for Oregon OSHA citations are forwarded to the appeals coordinator who verifies that the appeal has been requested within 30 days of the employer's receipt of the citation. The employer acknowledges they received the citation with their signature on the U.S. Postal Service Certified Mail Receipt, known as the "green card." Timely appeals are scheduled for an informal conference if one is requested, while untimely appeals are no longer under Oregon OSHA jurisdiction. Untimely appeals are forwarded to the Workers' Compensation Board (WCB) and Department of Justice (DOJ). These appeals are normally dismissed and stand as issued.

Abatement of Violations Pending the Outcome of an Appeal

Appealing a serious violation or the reasonableness of an abatement date does not automatically extend the abatement date. Contact the field enforcement manager if grounds exist for considering the request. The employer must submit a written request for an extension of the abatement date through the field enforcement manager or request an expedited hearing on the issue of the abatement date with WCB Hearings Division detailing the reason for the request. When the employer doesn't apply for an extension, the employer must correct all serious violations including any serious violations within the assigned abatement period pending appeal. The abatement period for other-than-serious violations will not begin until all appealed items become a final order. The citation becomes a final order when the Administrative Law Judge (ALJ), the employer, and Oregon OSHA sign the settlement agreement.

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II. Extension Requests

OAR 437-001-0240 governs requests for extensions of abatement dates. Employers may apply for an extension of the date for abating a violation. When an employer requests additional abatement time beyond the 30 calendar day appeal request period, observe the following procedures for an extension.

Filing Date

A request for an extension of the abatement date must be postmarked no later than the date on which abatement was originally required. The employer must include an explanation of circumstances for the delay with their extension request, which will only be granted after authorization by the statewide safety or health manager.

Requirements for an Extension

The field enforcement manager will ensure that the employer's petition for an extension of the abatement date includes all of the following requirements.

- Employer name and address.
- Inspection number, optional report number and violation number.
- Documented dates and actions taken by the employer to achieve compliance during the prescribed abatement period.
- Additional abatement time estimated to achieve compliance.
- Reasons additional time is necessary, including the unavailability of professional or technical personnel, materials, equipment, or if construction or alteration of facilities cannot be completed by the original abatement date.
- Interim steps to safeguard the employees against the cited hazard during the abatement period.
- Statement that a copy of the request is posted in a conspicuous place near the location where the violation occurred or where all affected employees will have access. The request must remain posted for at least 10 working days and, if appropriate, served on the authorized representative of affected employees. Such certification must include the date the posting and service was made.

Failure to Meet All Requirements

When the employer doesn't meet all the requirements, write or call the employer within 10 days to review these requirements and specify the missing elements. Give a reasonable amount of time for the employer to return the completed request. If the employer doesn't respond or if the information is still insufficient, make a second attempt to contact the employer. Inform the employer that if they fail to respond adequately, the request may be denied, and consequently they may be issued a failure to abate a citation upon a follow-up inspection.

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Field Office Handling of Extensions

Within 15 working days after receiving the request for extension of the abatement date, the field enforcement manager will:

- Approve or deny the request when the extension request is for an abatement date that is one year or less after the citation was issued.
- Refer to the statewide safety or health manager any extension requesting an abatement date that is more than one year from the date the citation was issued.
- Notify the employer and the employee representatives by letter of an approval or denial.
- Deny the request if after a second contact with the employer, the required information continues to be substantially insufficient.
- Deny the request when you have supporting evidence to do so (e.g., employer has taken no meaningful abatement action at all or has otherwise exhibited bad faith). Notify the employer and the employee representatives of this action by letter and request a return receipt.

Employee Objections

Affected employees, or their representatives, may file an objection in writing to an employer's request for an extension. They must file with the Administrator within 10 days of the posting date of the extension request.

- Failure to file a written objection within the 10-day period waives any further right to object to the request for an extension.
- When an employee or employee representative objects to the extension of the abatement date, all relevant documentation will be sent to the Administrator.
- The Administrator, or designee, will give the notice of hearing to affected persons. The notice will contain the time, place, and nature of the hearing.

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

Correspondence

Correspondence with the public will not normally be conducted by CSHOs except as necessary to conduct inspection/investigation activities. This does not mean that you cannot answer questions regarding the OSEAct, the administrative rules, or enforcement rules if asked, either during an inspection or over the telephone. Submit written correspondence with the public to your manager for approval and signature.

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III. Informal Conferences

Informal Conferences

OAR 437-001-0255(1) requires the Administrator to provide an opportunity to informally discuss with Oregon OSHA any matter affecting occupational safety and health in the workplace. An informal conference may be requested by either the employer or employee. It may be used to discuss informally any matter affecting occupational safety and health in the place of employment including, but not limited to:

- Clarify statements of observed violations.
- Discuss safety and health requirements.
- Discuss abatement dates.
- Explain the penalty system.
- Improve employer/employee understanding of the Oregon Safe Employment Act.
- Correct errors.
- Narrow issues, or
- Negotiate a settlement agreement with an employer to resolve disputed citations that have not become a final order. Proposed civil penalties may be reduced as part of a settlement agreement resolving disputed claims.

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). Requests for an informal conference must be in writing and forwarded to the central office either by mail, fax, or e-mail. Emphasize to the employer representative that oral requests do not satisfy the requirement to give written notification requesting an informal conference. The request must include the employer's name, address, telephone number, and signature (when possible). Include the optional report number on the citation and each item appealed. An employer's request must also clearly state what is specifically being appealed, the subject to be discussed, and the reason for each appeal. The request must identify the contested item(s) of the citation, penalty, abatement date, or any combination of these. An informal conference concerning a citation will not extend the 30 days allowed for filing an appeal with the Board.

Explain to the employer representative that a request for an informal conference and/or an appeal can also be submitted through Oregon OSHA's website by visiting www.orosha.org/appeals.html.

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. *See* Appeals Processing *policy for additional information.*

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Informal Conference Participants

When the employer or employee requests an informal conference to negotiate settlement agreements each must notify the other of the opportunity to attend. If any party objects to the other party attending, or the appeals specialist believes that a joint informal conference would not be productive, separate informal conferences may be held.

Make yourself available and prepared to participate in the informal conference. You will be notified of the request and advised of any change in scheduling or other pertinent information given by the appeals specialist, appeals support coordinator, or respective administrative specialist. You will be given a copy of the appeal, informing you of the contested item(s). Due to the potential elapsed time from the date of the inspection to the date of the informal conference, review the case file to prepare for the conference.

Informal Conference Settlements

The appeals specialists, along with you and your manager, may amend the citation by reclassifying the severity of violations, modifying or withdrawing a penalty, citation, or a citation item, when evidence established during the informal conference justifies the action. When a settlement is reached during the informal conference, the appeals specialist has the authority to draw up a settlement agreement for the employer's signature. When settlements are reached at the informal conference, no formal hearing will be scheduled and the citation becomes a final order when the employer signs the settlement agreement.

State-Wide Settlement Agreement

State-wide agreements are used to document employer recognition of specific hazards and their obligation to abate those hazards at all their workplaces under their control in Oregon. *See PD A-163 "State-wide Settlement Agreements" for additional information.*

Amending or Withdrawing Citations

Oregon OSHA may amend or withdraw a citation any time up to 30 calendar days from the day the citation is issued on its' own motion if the citation is not appealed. If the citation is appealed timely, withdrawal of or modifications to the citation and notification of penalty, will normally be accomplished by means of the appeals process. Examples of exceptions are changes initiated by the field enforcement manager without an informal conference. In such cases the procedures given below will be followed:

- If proposed amendments to citation items change the classification of the items; e.g., serious to other-than-serious, the original citation items will be withdrawn and new, appropriate citation items issued. The amended citation and notification of penalty form will clearly indicate that:
    - The employer is obligated under the OSEAct to post the amendment to the citation along with the original citation until the amended violation has been corrected or for 3 working days, whichever is longer.

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- The period of contest of the amended Citation will begin from the day following the date of receipt of the amended citation and notification of penalty.

- When circumstances warrant it, a citation may be withdrawn in its entirety upon consultation with the statewide safety or health manager at any time through **manifest justice**. Justifying documentation will be placed in the case file. If a citation is to be withdrawn, the following procedures apply:
  - A letter withdrawing the citation and notification of penalty will be sent to the employer. The letter will refer to the original citation and penalty, state that they are withdrawn and direct that the letter be posted by the employer for 3 working days in those locations where the original citation was posted.
  - When applicable to the specific situation (e.g., an employee representative participated in the walkaround inspection, the inspection was in response to a complaint signed by an employee or an employee representative, or the withdrawal resulted from an informal conference or settlement per OAR 437-001-0275 a copy of the settlement agreement "shall be posted for ten days or until all violations have been corrected, whichever occurs last.

NOTE: Coordinate amendments of appealed citations with the Department of Justice (DOJ). The DOJ attorney will forward the amended citation to the Administrative Law Judge.

IV. Formal Hearings

In those cases when the employer is not satisfied with the outcome of the informal conference and has submitted their request for an appeal in writing, the appeals unit will transfer the case to the WCB Hearings Division. The case will be scheduled for hearing before an Administrative Law Judge (ALJ). The Department of Justice (DOJ) represents Oregon OSHA in contested case hearings before the WCB. Employers may retain an attorney or choose to represent themselves. Be prepared to testify at the formal hearing as the compliance safety or health officer who conducted the inspection under appeal. Preparation for the formal hearing will normally include a legal case evaluation (LCE)**.** You, your manager, the policy or technical manager, the appeals specialist, and the assigned legal council from DOJ will meet to review and discuss the details of the case. It is important that you review the file and be prepared for the LCE.

Depositions for Formal Hearing

A deposition may be part of the pre-trial discovery (fact-finding) process. It is the testimony of a person under oath to tell the truth before the formal hearing and is held out of court with no judge present. Lawyers for each party may ask questions. Questions and answers are recorded. When a person is unavailable to testify at the formal hearing, their deposition may be used. You may be subject to being deposed at the request of the employer's attorney or assist the DOJ attorney during the deposition of a witness. In any case, an attorney from DOJ, representing Oregon OSHA, will be present.

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V. Abatement

Abatement is the action by an employer to comply with a cited standard or regulation, or to eliminate a recognized hazard identified by Oregon OSHA during an inspection/investigation. Oregon OSHA will open an employer specific case file for each inspection except follow-up inspections. Keep the case file open throughout the inspection process until the agency is satisfied that abatement has occurred.

Abatement Period

The abatement period will be the shortest interval that the employer can reasonably be expected to correct the violation. When you witness abatement during the inspection, the abatement period will be noted as having been complied with (c/w). Abatement periods will be assigned in multiples of 7-day periods (e.g., 7, 14, 21, 28 days) or immediately (Imm) upon receipt of the citation.

Reasonable Abatement Date

Exercise professional judgment when establishing an abatement date. Abatement periods exceeding 28 calendar days will not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where additional time is required (e.g., a condition where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 28 calendar days).

When an abatement date is granted that is in excess of 28 calendar days, place an explanation in the company's file. Initial abatement dates in excess of 60 days may not be granted by the field enforcement manager without prior approval of the statewide safety or health manager.

Abatement Assistance

Offer abatement assistance during the inspection regarding elimination of workplace hazards and violations or at any time when asked to do so by the employer. You may help the employer develop acceptable abatement methods or seek appropriate professional assistance. Provide information to assist the employer in identifying possible methods of abatement for alleged violations as it becomes available or necessary. Doing so will not delay issuing citations. Inform the employer that they are not limited to abatement methods that you suggest. Explain that you are providing them with general methods and they need to consider whether or not those methods are effective. They are responsible for selecting and carrying out an appropriate abatement method.

Abatement Verification

Employers receive a **Letter of Corrective Action** (LOCA) with their citation. The LOCA must be returned to Oregon OSHA to identify the corrective actions taken to comply with the violations that were not corrected at the time of the inspection. If the LOCA is not returned, you may either phone the employer to ask for verification of abatement or you may schedule a **follow-up inspection**. You are responsible for determining if abatement has been accomplished.

When abatement is verified by telephone, documentation must be included in the company's file, describing the corrective action for each violation cited and the approximate date of correction.

Long-Term Abatement Date for Feasible Engineering Controls

Situations may arise that will make it difficult to set a specific abatement date when the citation is originally issued, such as when an employer chooses to implement feasible engineering controls and when they don't know when the necessary equipment may be available. Discuss the problem with the employer at the closing conference and, in appropriate cases, encourage the employer to seek an extension from the field enforcement manager when more information is available.

- **Final Abatement Date** – You and your manager will use your best judgment to determine a reasonable abatement date. The employer is not allowed to set their own abatement date(s). Later, if necessary, the employer may send a written request to extend the abatement date to the field enforcement manager to modify the abatement date.

- **Employer Abatement Plan** – The employer is required to submit an abatement plan outlining the anticipated long-term abatement procedures.

NOTE: A statement agreeing to provide the affected field office with written periodic progress reports will be part of the long-term abatement plan.

Reducing Employee Exposure

Wherever feasible engineering, administrative, or work practice controls can be implemented, even though they are not sufficient to reduce exposure to or below the Permissible Exposure Limit (PEL), they must be required in conjunction with personal protective equipment to reduce exposure to the lowest practical level.

Follow-Up Inspections

The primary purpose of a follow-up inspection is to determine if previously cited violations have been corrected. Normally, follow-up inspections involve no additional inspection activity unless you observe a serious hazard or the employer failed to abate a previously cited violation. Follow-up inspections should generally be conducted within **30 days** following the latest violation abatement date, or final order, whichever is later. The seriousness of the hazard(s) and the employer's response on the Letter of Corrective Action (LOCA), or lack there of, will determine the priority among follow-up inspections. You must include photographs or video recording of either abated or unabated violations in your case file.

Failure to Abate

A failure to abate condition exists when an employer has 1) failed to abate an other-than-serious violation that was not contested and the final abatement date has passed or 2) a serious violation has not been abated and the final abatement date has passed.

When it is determined that an employer has failed to abate a violation, inform the employer and complete a Notice of Failure to Correct Violation to be posted on site. Inform the employer that they will continue to accrue additional daily penalties until the violation is abated.

When the employer has not called within 10 days to inform you the violation has been abated, conduct a second follow-up inspection. If the second follow-up reveals the employer still has not corrected the original violation(s), issue a second Notification of Failure to Abate Alleged Violation with additional daily penalties. If a Notification of Failure to Abate Alleged Violation and additional daily penalties are not proposed, the field enforcement manager must immediately contact the statewide safety or health manager detailing the circumstances. *See "Calculation of Failure to Abate Violation Penalties" section of Chapter 7 and P&P #49 "Procedures for Notice of Failure to Correct" for additional information.*

Good Faith Effort to Abate

When the employer makes a good faith effort to correct a violation and has reason to believe the violation is fully abated, the field enforcement manager may recommend a reduction of the daily penalty that would otherwise be justified.

VI. Disclosure

Oregon OSHA's policy regarding the disclosure of documents in investigation and other files is governed by the Oregon Public Records Law and the attorney general's public meetings and records manuals. Oregon OSHA policy is to disclose all documents to which the public is entitled under the Oregon Public Records Law and the other state regulations. Great care must be taken to ensure that documents which are not disclosable are kept confidential since disclosure of such documents may seriously prejudice the prosecution of cases and the entire Oregon OSHA enforcement program.

Disclosable Records

The disclosability of records will be determined on a case-by-case basis. There are certain records, such as Oregon OSHA Program Directives and the Field Inspection Reference Manual which are clearly disclosable to the public upon request. Case file records are disclosable to the public upon request once the citation has been received by the employer. The Records Management Unit (RMU) processes requests for release of inspection information.

Many case file records contain documents other than Oregon OSHA forms. Examples include correspondence, photographs and negatives, electronic software, audio/visual tapes, personal interview statements, material safety data sheets, minutes of safety committee or safety meetings, and other materials supplied by the employer. All these items are disclosable as part of the case file unless identified as confidential material or trade secrets.

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Disclosure of Witnesses Statements

Inform witnesses that their statements may be disclosed when they are used to substantiate a violation on a citation. Any information provided in confidence which contains or might reveal the identity of a complainant will remain confidential to the extent possible.

Complainant Confidentiality

Any information that would identity the complainant must not be disclosed to the employer.

Employee Medical Records

Employee medical records should not be included in your case files. Disclosure of employee medical records is governed by HIPPA rules. Consult your manager if there is a request for employee medical records.

Disclosure of Medical Examiner Reports

ORS 146.035(5) governs the disclosure of any medical examiners report, autopsy report, or laboratory test report ordered by a medical examiner. Requesters of these reports will be referred to the Medical Examiners Office with jurisdiction over the investigation.

NOTE: It is Oregon OSHA's policy to waive fees when providing copies of disclosable portions of the accident investigation file to surviving family members or their representative.

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