



**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 437  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

**FILED**  
07/31/2020 1:04 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amendments in General Administrative Rules to Clarify Employer's Responsibilities (Corrected)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/30/2020 5:00 PM

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

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Filed By:  
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HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 09/28/2020  
TIME: 10:00 AM  
OFFICER: Michael Wood  
ADDRESS: Oregon OSHA Portland  
Field Office  
(by webinar and appointment)  
16760 SW Upper Boones Ferry Rd  
Portland, OR 97224

SPECIAL INSTRUCTIONS:  
These hearings replace those  
scheduled for 8/20/20, 9/9/20,  
9/22/20, 9/24/20, 9/28/20, and  
9/30/20, which have been canceled.

Go to the link below under "Need for  
the rule(s)" for information on how to  
register for these hearings.

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DATE: 10/07/2020  
TIME: 7:00 PM  
OFFICER: Michael Wood  
ADDRESS: Oregon OSHA Portland  
Field Office  
(by webinar and appointment)  
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Portland, OR 97224

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9/22/20, 9/24/20, 9/28/20, and  
9/30/20, which have been canceled.

This hearing will be conducted entirely  
in Spanish.

Go to the link below under "Need for  
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register for these hearings.

NEED FOR THE RULE(S):

**EXHIBIT C**

Due to COVID-19 restrictions these hearings will be conducted by webinar and limited in person appointments, go to <https://osha.oregon.gov/rules/making/Pages/proposed.aspx> for information on how to register, which is incorporated here and by reference.

Oregon OSHA is adding two definitions and a paragraph to the Division 1 rules. The Oregon Supreme Court determined that Oregon OSHA needs to more clearly define how "reasonable diligence" and "unpreventable employee misconduct" are interpreted and applied in enforcement activities and Oregon OSHA believes that such guidance is most appropriately provided through an administrative rule. The proposed additions to the rules are to clarify in general how Oregon OSHA assesses an employer's reasonable diligence, what constitutes unpreventable employee misconduct, how Oregon OSHA assesses an employer's knowledge of a violation, and when an employer is and is not responsible for a violation that has occurred on its worksite.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Division 1 General Administrative Rules OAR 437-001-0015 and 437-001-0760  
<https://osha.oregon.gov/OSHARules/div1/div1.pdf>

Oregon Supreme Court Opinion 356 Or 577 (2014), December 26, 2014  
[https://cdm17027.contentdm.oclc.org/digital/api/collection/p17027coll3/id/328/page/0/inline/p17027coll3\\_328\\_0](https://cdm17027.contentdm.oclc.org/digital/api/collection/p17027coll3/id/328/page/0/inline/p17027coll3_328_0)

Oregon Court of Appeals Opinion 294 Or App 831 (2018), November 15, 2018  
[https://cdm17027.contentdm.oclc.org/digital/api/collection/p17027coll5/id/20615/page/0/inline/p17027coll5\\_20615\\_0](https://cdm17027.contentdm.oclc.org/digital/api/collection/p17027coll5/id/20615/page/0/inline/p17027coll5_20615_0)

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#### FISCAL AND ECONOMIC IMPACT:

See "Cost of Compliance" below.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

In relation to all employers affected by the proposed rule, Oregon OSHA believes that the proposed changes in the rule do not affect the cost of compliance. These proposals do not create any new requirements for employers. For that reason, Oregon OSHA believes that there will be no "cost of compliance" for businesses of any size or any other employer covered by the rule. Any decisions employers make in order to better position themselves to demonstrate a lack of employer knowledge in the event an apparent violation of existing rules is identified do not represent a cost of compliance with either those rules or with the guidance described in this rule. In addition, the proposed rule reflects Oregon OSHA's existing interpretation of the interrelated issues of employer knowledge and reasonable diligence (a determination that the Oregon Supreme Court described in its CBI Services decision as "one that the legislature has delegated in the first instance to the agency"). There are no new recordkeeping or administrative activities required by the rule for employers to comply with the proposed rule. However, employers may incur additional costs that are the

result of discretionary decisions not required by the rule.

All state agencies are affected by the rule in the sense that they are employers under the Oregon Safe Employment Act (OSEAct) and may be subject to penalties in the event violations are identified and cited. State agencies other than DCBS/Oregon OSHA will have no costs under this rule other than those that they would incur as an employer. As noted, the cost of compliance for employers would not be changed by this rule. Similarly, local governments are affected by this rule only in the sense that they are employers under the OSEAct and may be subject to penalties in the event violations are identified and cited. Finally the public as a whole will be affected only to the degree that members of the public are employers or employees (who may benefit from increased compliance with workplace health and safety rules as a result of increased employer compliance with existing rules). None of these entities will experience any fiscal impact due to changes in the cost of complying with this proposed rule.

## 2. Cost of compliance effect on small business (ORS 183.336):

As noted, there would be no change in the cost of compliance, for either small businesses or large businesses.

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

As previously noted, this rule has no anticipated fiscal impact on compliant employers. As also noted above, there are no new recordkeeping or administrative activities required by the rule for employers to comply with the proposed rule. However, employers may incur additional costs that are the result of discretionary decisions not required by the rule. Those businesses affected by citations in the event of non-compliance would include employers of all sizes. In Oregon more than 90% of all employers are small businesses, employing more than half of the state's workforce.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

There are no new recordkeeping or other administrative activities required for employers to comply with the proposed rules. Any decisions to change such practices are the result of discretionary decisions not required by the rule.

c. Equipment, supplies, labor and increased administration required for compliance:

There are no equipment, supplies, labor or increased administration required for employers to comply with the proposed rules.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses and others were involved in the development of this rule insofar as their representatives were

represented on the Oregon OSHA Partnership Committee, the Oregon OSHA Construction Advisory Committee, and other Oregon OSHA stakeholder groups. Those interested have also had the opportunity to comment on several preproposal drafts, and they are also invited to make comments in response to the rule proposal.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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HOUSING IMPACT STATEMENT:

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

See attached Notice of Proposed Rulemaking Hearing.

Description of the need for, and objectives of the rule:

See attached Notice of Proposed Rulemaking Hearing.

List of rules adopted or amended:

AMEND: OAR 437-001-0015, 437-001-0760

Materials and labor costs increase or savings:

None.

Estimated administrative construction or other costs increase or savings:

None.

Land costs increase or savings:

Oregon OSHA does not foresee any effect on land costs.

Other costs increase or savings:

Oregon OSHA does not foresee any additional costs.

\*Typical-Single story 3 bedrooms, 1 1/2 bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

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PREPARER'S NAME: Sky Wescott

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RULES PROPOSED:

437-001-0015, 437-001-0760

AMEND: 437-001-0015

RULE SUMMARY: Added two definitions to paragraph (15).

Note: This summary statement is the same as the statement previously filed.

CHANGES TO RULE:

437-001-0015

Definitions ¶¶

The following definitions shall apply to OAR 437, unless the context requires otherwise:¶¶

- (1) Abatement - Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.¶¶
- (2) Accepted disabling claims - Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.¶¶
- (3) Accepted disabling claims rate - The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).¶¶
- (4) Act - The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).¶¶
- (5) Administrator - The Administrator of the Oregon Occupational Safety and Health Division (Oregon OSHA).¶¶
- (6) Affected employee - An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date, or variance.¶¶
- (7) Agent of the employer - Any supervisor or person in charge or control of the work or place of employment including, but not limited to, any manager, superintendent, foreperson, or lead worker.¶¶
- (8) Appeal - A written request for a hearing to contest a citation, notice or order, a proposed assessment of civil penalty, and the period of time fixed for correction of a violation, or any of these, by filing with Oregon OSHA, within 30 days after receipt of the citation, notice or order, a written request for a hearing before the Workers' Compensation Board. Such a request need not be in any particular form, but must specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.¶¶
- (9) Audiometric zero - The lowest sound pressure level that the average young adult with normal hearing can hear.¶¶
- (10) Board - The Workers' Compensation Board created by ORS 656.712.¶¶
- (11) 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.¶¶
- (12) Citation - A document issued by Oregon OSHA according to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.¶¶
- (13) Complaint - A written or oral report from an employee, employee representative, or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:¶¶
  - (a) Imminent danger:¶¶
  - (b) Serious:¶¶
  - (c) Other than serious:¶¶
- (14) Compliance officer - A designated Oregon OSHA employee responsible for conducting inspections or investigations; identifying possible violations and hazards; proposing citations, penalties, and correction dates; and assisting employers and employees with information to correct violations and hazards.¶¶
- (15) Comprehensive consultation - A consultation to cover the entire establishment and entails a physical hazard

assessment evaluation and a review of records, written programs, and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.¶¶

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

(17) Consultant - A designated Oregon OSHA employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees, and other agency staff with information, advice, and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices, and development of safety and health programs.¶¶

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

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

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

(20) Department - The Department of Consumer and Business Services.¶¶

(21) Director - The Director of the Department of Consumer and Business Services, or the director's designee.¶¶

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

(23) Emphasis Program - A special program that targets Oregon OSHA activity to industries that have a high potential for serious injuries or illnesses, according to national or state data.¶¶

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

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

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

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

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

(a) The results of medical examinations and tests;¶¶

(b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and¶¶

(c) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.¶¶

(27) Employee representative - A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.¶¶

(28) Employer: -¶¶

(a) Any person who has one or more employees, or¶¶

(b) Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker according to ORS 656.128, or¶¶



(c) Any corporation in relation to the exposure of its corporate officers except for corporations without workers' compensation coverage under ORS 656.128 and whose only employee is the sole owner of the corporation, or ¶  
(d) Any successor or assignee of an employer. For purposes of this definition and ORS 654.005(5)(c), a business or enterprise is substantially the same entity as the predecessor employer if: ¶

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

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

(i) Substantially the same type of business or enterprise. ¶

(ii) Similar jobs and working conditions. ¶

(iii) A majority of the machinery, equipment, facility, or methods of operation. ¶

(iv) Similar product or service. ¶

(v) A majority of the same supervisory personnel. ¶

(vi) A majority of the same officers and directors. ¶

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

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

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

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

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

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

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

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

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

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

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

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

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

(32) Farm operation - Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry. ¶

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

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

(35) Fixed place of employment - The entire facility maintained by an employer at one general location, and operations provided from that facility, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations, fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months. Forest activities are excluded as are construction sites established for a period of 24 months or less.¶¶

(36) Hazard - A condition, practice, or act that could result in an injury or illness to an employee.¶¶

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

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

(39) Injury or illness - An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, skin disease, respiratory disorder, or poisoning.¶¶

**NOTE Note:** Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.¶¶

(40) Inspection - An official examination of a place of employment by a compliance officer to determine if an employer is in compliance with the Act.¶¶

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

(b) Unprogrammed.¶¶

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

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

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

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

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

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

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

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

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

(46) Order to correct - A written Oregon OSHA order that directs an employer to abate a violation within a given period of time.¶¶

(47) Owner - Every person having ownership, control, or custody of any place of employment or of the construction, repair, or maintenance of any place of employment.¶¶



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

(49) Person - One or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.¶¶

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

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

(52) Place of employment: - ¶¶

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

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

(c) Includes every place where there is any process, operation, or activity related, either directly or indirectly, to an employer's industry, trade, business, or occupation, including a labor camp provided by an employer for their employees or by another person engaged in providing living quarters or shelters for employees.¶¶

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

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

(53) Reasonable diligence - For purposes of ORS 654.086(2), a standard of care where the employer identifies and anticipates hazards and violations that could occur in the workplace and then takes measures through the use of devices, safeguards, rules, procedures, or other methods that eliminate or safely control such hazards or prevent such violations.¶¶

(54) Record - Any recorded information regardless of its physical form or character.¶¶

(545) Recordable occupational injuries or illnesses - Any occupational injuries or illnesses that result in:¶¶

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

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

(c) Nonfatal cases without lost workdays that result in transferring to another job or terminating employment, require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses that are reported to the employer but are not classified as fatalities or lost workday cases.¶¶

(556) Referral - A notification made to the responsible agency of safety or health violations observed by an Oregon OSHA employee, other federal, state or local government representatives, or the media.¶¶

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

(578) Scheduling list - An electronic or paper list of places of employment or employers scheduled for inspection.¶¶

(589) Serious physical harm:¶¶

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either

temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.¶

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

~~(5960)~~ Standard threshold shift (STS) - A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.¶

(601) Substantially similar - As it relates to a repeat violation, a second violation that is closely related in substance or form to a previous violation.¶

~~(612)~~ Suspended penalty - A penalty that is determined but not assessed.¶

~~(623)~~ Unpreventable employee misconduct - Where an employee intentionally violates or does not use the devices, safeguards, rules, procedures, or other methods provided, developed, and implemented by the employer to safely accomplish the work; and does so in a manner that the employer could not have prevented. To establish unpreventable employee misconduct, the employer must demonstrate all of the following elements:¶

(a) The employer had devices, safeguards, rules, procedures, or other methods in place to eliminate or safely control the hazard or prevent the violation.¶

(b) The employer had effectively communicated to employees the methods established under (a).¶

(c) The employer had provided employees with the necessary training, equipment, and materials to use and comply with the methods established under (a).¶

(d) The employer had developed and implemented measures that identified any violation of the methods established under (a).¶

(e) The employer had taken effective correction action when a violation was identified under (d).¶

(64) Variance - The written authority given by Oregon OSHA to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:¶

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

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

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

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

~~(635)~~ Violation - The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard, or order.¶

(a) Specific classifications of violations are:¶

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

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

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

(b) Specific types of the above classifications are:¶

(A) Willful violation - A violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard, or order.¶

(B) Unabated violation - A violation that has not been fully corrected by the date ordered.¶

(C) Repeat violation: ¶

(i) An employer's second or subsequent violation involving a substantially similar violation as the earlier violation or violations. ¶

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

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

(E) Egregious - Those conditions that normally constitute a flagrant violation of the Oregon Safe Employment Act, or Oregon OSHA standards, or regulations such that each instance of the violation is cited separately. ¶

(c) Combined violation - Multiple violations of the same statute, regulation, rule, standard, or order within an establishment that have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard, or order. ¶

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

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

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

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

Statutory/Other Authority: ORS 654.025(2), 656.726(4)

Statutes/Other Implemented: ORS 654.001 - 654.326, 654.412 - 654.423, 654.991

AMEND: 437-001-0760

RULE SUMMARY: Language added clarifying reasonable diligence in new paragraph (1)(f).

Note: This summary statement is the same as the statement previously filed.

CHANGES TO RULE:

437-001-0760

Rules for All Workplaces ¶¶

(1) Employers' Responsibilities.¶¶

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

(b) The employer must take all reasonable means to require employees:¶¶

(A) To work and act in a safe and healthful manner;¶¶

(B) To conduct their work in compliance with all applicable safety and health rules;¶¶

(C) To use all means and methods, including but not limited to, ladders, scaffolds, guardrails, machine guards, safety belts, and lifelines, that are necessary to safely accomplish all work where employees are exposed to a hazard; and¶¶

(D) Not to remove, displace, damage, destroy, or carry off any safety device, guard, notice, or warning provided for use in any employment or place of employment while such use is required by applicable safety and health rules.¶¶

(c) Every employer is responsible for providing the health hazard control measures necessary to protect the employees' health from harmful or hazardous conditions and for maintaining such control measures in good working order and in use.¶¶

(d) Every employer must inform the employees regarding the known health hazards to which they are exposed, the measures which have been taken for the prevention and control of such hazards, and the proper methods for utilizing such control measures.¶¶

(e) Every agent of the employer is responsible for:¶¶

(A) The safe performance of the work under the agent's supervision or control;¶¶

(B) The safe conduct of all employees under the agent's supervision or control;¶¶

(C) The safety of all employees working under the agent's supervision or control.¶¶

(f) The employer must exercise reasonable diligence to identify, evaluate, and control the employment activity and place of employment to ensure it is safe and healthful for all employees. ¶¶

(A) The employer is responsible for violations unless neither the employer nor any agent of the employer knew or with the exercise of reasonable diligence could have known about the violation. Exception: An agent's actual knowledge of his or her own violative conduct is not attributed to the employer if the only employee exposed to the violation is the agent. In such cases, the agent will be considered only an employee and not an agent of the employer for purposes of this rule. This exception does not apply if any employee other than the agent is also exposed as a result of the violation. ¶¶

(B) The employer is not responsible for a violation when no agent of the employer had actual knowledge of the presence of the violation and¶¶

(i) The violation was both isolated and unpredictable; or¶¶

(ii) The violation was the result of unpreventable employee misconduct.¶¶

(2) Employees' Responsibilities.¶¶

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

(b) All injuries must be reported immediately to the person in charge or other responsible representative of the employer.¶¶

(c) It is the duty of all workers to make full use of safeguards provided for their protection. It is the worker's responsibility to abide by and perform the following requirements:¶¶

(A) A worker must not operate a machine unless guard or method of guarding is in good condition, working order,

in place, and operative.¶

(B) A worker must stop the machine or moving parts and properly tagout or lockout the starting control before oiling, adjusting, or repairing, except when such machine is provided with means of oiling or adjusting that will prevent possibility of hazardous contact with moving parts.¶

(C) A worker must not remove guards or render methods of guarding inoperative except for the purpose of adjustment, oiling, repair, or the setting up a new job.¶

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

(E) Workers must not use their hands or any portion of their bodies to reach between moving parts or to remove jams, hangups, etc. (Use hook, stick, tong, jig, or other accessory.)¶

(F) Workers must not work under objects being supported that could accidentally fall (such as loads supported by jacks, the raised body of a dump truck, etc.) until such objects are properly blocked or shored.¶

(G) Workers must not use defective tools or equipment. No tool or piece of equipment should be used for any purpose for which it is not suited, and none should be abused by straining beyond its safe working load.¶

(d) Workers must not remove, deface, or destroy any warning, danger sign, or barricade, or interfere with any other form of accident prevention device or practice provided which they are using, or which is being used by any other worker.¶

(e) Workers must not work underneath or over others exposed to a hazard thereby without first notifying them and seeing that proper safeguards or precautions have been taken.¶

(f) Workers must not work in unprotected, exposed, hazardous areas under floor openings.¶

(g) Long or unwieldy articles must not be carried or moved unless adequate means of guarding or guiding are provided to prevent injury.¶

(h) Hazardous conditions or practices observed at any time must be reported as soon as practicable to the person in charge or some other responsible representative of the employer.¶

(i) Workers observed working in a manner which might cause immediate injury to either themselves or other workers must be warned of the danger.¶

(j) Before leaving a job, workers must correct, or arrange to give warning of, any condition which might result in injury to others unfamiliar with existing conditions.¶

### (3) Investigations of Injuries.¶

(a) Each employer must investigate or cause to be investigated every lost time injury that workers suffer in connection with their employment, to determine the means that should be taken to prevent recurrence. The employer must promptly install any safeguard or take any corrective measure indicated or found advisable.¶

(b) At the request of authorized Department representatives, it is the duty of employers, their superintendents, supervisors, and employees to furnish all pertinent evidence and names of known witnesses to an accident and to give general assistance in producing complete information which might be used in preventing a recurrence of such accident. At the request of the Department, persons having direct authority must preserve and mark for identification, materials, tools, or equipment necessary to the proper investigation of an accident.¶

(4) Intoxicating Liquor and Drugs. The use of intoxicating liquor on the job is strictly prohibited. Anyone whose ability to work safely is impaired by alcohol, drugs, or medication must not be allowed on the job while in that condition.¶

(5) Horseplay. There must be no horseplay, scuffling, practical jokes, or any other activity of a similar nature.¶

(6) Extraordinary Hazards. When conditions arise that cause unusual or extraordinary hazards to workers, additional means and precautions shall be taken to protect workers or to control hazardous exposure. If the operation cannot be made reasonably safe, regular work must be discontinued while such abnormal conditions exist, or until adequate safety of workers is ensured.¶

### (7) Inspections.¶

(a) All places of employment must be inspected by a qualified person or persons as often as the type of operation or the character of the equipment requires. Defective equipment or unsafe conditions found by these inspections must be replaced or repaired or remedied promptly.¶



(b) Wherever required in this safety code, a written and dated report, signed by the person or persons making the inspection, must be kept.

Statutory/Other Authority: ORS 654.025(2), 656.726(4)

Statutes/Other Implemented: ORS 654.001 - 654.295