

October 5, 2009

Oregon OSHA - Adopted Changes Division 1, General Administrative Rules

The rule being adopted for scheduling fixed site safety enforcement activity changes the previous approach in several ways. First, it eliminates the separate lists based on size, as well as the separate agriculture lists, replacing them with a single targeting system that divides all places of employment in the state into 10 tiers, distinguished by the risk of particular industries in recent years. Using a variety of data about injury and fatality rates on both the state and national level, Oregon OSHA has (in consultation with an *ad hoc* advisory group formed for the purpose of the scheduling rule) developed a ranked list of industries (using the North American Industrial Classification System, or NAICS, Code) and then subdivided that list into 10 separate layers, or tiers.

The highest hazard tier will receive the greatest enforcement presence, while the lowest hazard tiers will receive a minimal enforcement presence.

In this way, Oregon OSHA will focus its safety enforcement resources in those fixed places of employment that have been determined to be the most unsafe. Within each tier, Oregon OSHA's focus will be further sharpened by completely excluding certain places of employment from scheduled safety inspections based on their demonstration by one or more of several specified methods that they are likely to be significantly safer than the norm within their industry. In selecting places of employment *within each industry tier* after such exclusions have been made, the new rule dictates a random selection process.

At its most basic level, the new fixed site safety enforcement scheduling rule eliminates the previous rule's reliance on whether a disabling claim has occurred at the worksite as the trigger for a worksite's presence on the list and shifts the focus (for the most part) away from employer-specific and location-specific claims data. Oregon OSHA has concluded that such data is not sufficiently reliable from a statistical standpoint as an indicator for the vast majority of worksites in the state, and is largely unavailable in any case for places of employment operated by employers who have multiple locations. In its place, the rule identifies places of employment based on industry, and then bases the likelihood of inspection largely, but not entirely, on the nature of the industry's risk of injury or death.

The new fixed site health scheduling system replaces the current system with a system based on industry risk. Beginning with the work of an expert panel of industrial hygienists and other occupational health professionals, and following an analysis of claims history and violation history within various NAICS codes, Oregon OSHA identified a group of industries where the risk of serious illness or of a health hazard-related death has been determined to be the greatest. In further evaluating both risk and the distribution of inspections following the original proposal, Oregon OSHA decided to divide the industries into three tiers, rather than the two proposed in the original filing. Within those industries, and following the same basic exclusions as those identified for the safety rule, the department will randomly identify and rank places of employment for inspection, with the percentage of locations identified in each industry tier.

In addition to the previously described changes in the fixed site scheduling systems for health and safety enforcement visits, the rule includes several clarifications and technical adjustments to definitions and selected other provisions. However, none of these changes represent a substantive change in Oregon OSHA's application of these terms or business practices.

This is Oregon OSHA Administrative Order 10-2009, **adopted and effective October 5, 2009.**

Please visit Oregon OSHA's web site www.orosha.org for proposed, adopted, and final rules, as well as current publications, training opportunities, and much more.

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Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on October 5, 2009 by the
Date prior to or same as filing date

Department of Consumer & Business Services/Oregon Occupational Safety & Health Division 437
Agency and Division Administrative Rules Chapter Number

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to become effective October 5, 2009 as OR-OSHA Administrative Order 10-2009.
Date upon filing or later

Rulemaking Notice was published in the July 2009 *Oregon Bulletin*.**
Month and Year

RULE CAPTION

Adopt changes to Division 1, General Administrative Rules.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

AMEND: OAR 437-001-0015, 437-001-0055, 437-001-0057, 437-001-0420.

ORS 654.025(2), 656.726(4)
Stat. Auth.

ORS 654.001 through 654.295
Stats. Implemented

RULE SUMMARY

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