

Oregon OSHA Administrative Order 6-2003  
Filed and Effective November 26, 2003  
Division 1, General Administrative Rules

OAR 437

437-001-0015 Definitions. The following definitions shall apply to OAR 437, unless the context requires otherwise:

**Abatement** – Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.

**Accepted Disabling Claims** – Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

**Accepted Disabling Claims Rate** – The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated ( $ADCR = \text{Number of claims times } 100 \text{ divided by the number of employees}$ ).

**Act** – The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).

**Administrator** – The Administrator of the Oregon Occupational Safety and Health Division (OR-OSHA).

**Affected employee** – An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date or variance.

**Agent of the employer** – The manager, superintendent, foreperson or other person in charge or control of all or part of the place of employment.

**Appeal** – A written request for a hearing in which to contest a citation, notice or order issued by the Division. Unless the context otherwise requires, any writing which clearly contests, objects to or seeks relief from a Division citation, notice or order shall be construed as an appeal.

**Audiometric Zero** – The lowest sound pressure level that the average, young adult with normal hearing can hear.

Board – The Workers' Compensation Board created by ORS 656.712.

Catastrophe – An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or an equivalent medical facility.

Citation – A document issued by the Division pursuant to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

Complaint – A written or oral report from an employee, employee representative or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

- (a) Imminent danger
- (b) Serious
- (c) Other than serious

Compliance Officer – A designated Division employee whose responsibility is to conduct inspections or investigations to identify possible violations and hazards and to propose citations, penalties and correction dates, and to assist employers and employees with information to correct violations and hazards.

Comprehensive Consultation – is a consultation to cover the entire establishment and entails a physical hazard assessment evaluation, reviews 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.

Consultant – A designated Division 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.

Correction order – A written Division order which directs a person to stop a violation within a given period of time. The term also includes a Red Warning Notice issued pursuant to OAR 437-001-0096.

Days Away, Restricted, or Transferred (DART) – 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).

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

Department – The Department of Consumer and Business Services.

Director – The Director of the Department of Consumer and Business Services, or the Director's designee.

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

Emphasis Program – A special program that targets Division activity to industries that, according to national or state data, have a high potential for serious injuries or illnesses.

Employee – Any individual who is currently employed or formerly employed, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a 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 exposure record – A record of monitoring or measuring which contains a qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

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

- (a) The results of medical examinations and tests;
- (b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and
- (c) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

Employee representative – A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

Employer – 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 pursuant to ORS 656.128.

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

Environmental Exposure Sampling – Sampling of the work place environment, performed for a variety of reasons including, identification of contaminants present and their sources, determination of worker exposures and checking the effectiveness of controls.

Establishment – An establishment is a single physical location doing business or offering services or with 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 offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel 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) no one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and

(D) 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, do not keep a separate 300 Log. Link employees who telecommute to one of your establishments under 437-001-0700(15)(c).

Farm operation – Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

Filed – A document shall be deemed to have been filed on the date of postmark if mailed or on the date of receipt if transmitted to OR-OSHA, DCBS, or the WCB by other means.

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

Fixed place of employment – The entire facility maintained by an employer at one general location, 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.

Hazard – A condition, practice or act which could result in an injury or illness to an employee.

Health Hazard – Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents and harmful physical stress agents.

Imminent danger – A condition, practice or act which exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately.

Injury or illness – An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.)

Inspection – An official examination of a place of employment by a Compliance Officer to determine if an employer is in compliance with the Act. An inspection may be classified as:

(a) Programmed.

(A) Routine inspection – An inspection of a place of employment which is made based principally on that place of employment's record of workers' compensation claims or Standard Industrial Classification and number of employees;

(i) Emphasis inspection – An inspection made in response to a national or state Emphasis Program.

(B) Periodic inspection – An inspection made because of a time-related factor, including, but not limited to, intermittent or seasonal employment activity;

(C) Area inspection – An inspection made because of a geographic factor;

(D) Random inspection – An inspection scheduled and conducted pursuant to written neutral administrative standards.

(b) Unprogrammed.

(A) Follow-up inspection – An inspection made to determine if a previously cited violation has been corrected or after a request for an extension, a stay of correction time or a variance has been denied;

(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; and

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

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

Lost workdays – The actual number of days after, but not including, the day of injury or illness during which the employee would have worked, but could not perform all or any part of his/her normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

Lost Workday Cases Incidence Rate (LWDCIR) (Also see DART) – The number of lost workday injury and illness cases experienced by 100 full-time workers (LWDCIR = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

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.

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.

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

Personal exposure samples – Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their

specific work exposures. Personal samplers are placed on the worker to obtain either one continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

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

Place of employment – Includes every place, whether fixed or movable, 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 provided by an employer for his/her employees or by another person engaged in providing living quarters or shelters for employees, but place of employment does not include any place where the only employment involves nonsubject workers employed in or about a private home. Any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews or grandchildren.

Record – Any recorded information regardless of its physical form or character.

Recordable occupational injuries or illnesses – Any occupational injuries or illnesses which 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 his/her normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or
- (c) Non-fatal cases, without lost workdays which result in transfer to another job or termination of employment, or 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 which are reported to the employer but are not classified as fatalities or lost workday cases.

Referral – A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.

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

Scheduling List – An electronic or paper list of places of employment or employers scheduled for inspection. Lists can be in electronic form, paper form or both.

Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

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

Standard Industrial Classification (SIC) – A classification system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget, for 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, which is determined by the value of receipts or revenue for services rendered or products produced, or in some cases by the employment or payroll. The 1987 edition of the SIC manual is used for coding.

Standard Threshold Shift (STS) – A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.

Substantial failure to comply – When an employer engaged in the production of crops intended for human consumption fails to provide acceptable and accessible toilet facilities, handwashing facilities or drinking water, and that failure exposes affected workers to a serious hazard likely to result in an injury or illness.

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

Variance – The 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. Specific types of variances are:

(a) Permanent – A variance that remains in effect until modified or revoked in accordance with OAR 437-001-0430;

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

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



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

Violation – The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard or order.

(a) Specific classifications of violations are:

(A) Serious violation – A violation in which there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which 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 of the presence of the violation;

(B) Other than serious violation – A violation which is other than a serious or minimal violation; and

(C) Minimal violation – A violation which 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 of the requirements of the same statute, regulation, rule, standard or order.

(ii) Subsequent violations shall not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, Repeat, Repeated and Repeatedly are used as synonyms.

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

(E) Egregious – Those conditions which normally constitute a flagrant violation of the OSE Act or OR-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 which 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 which have been combined as one violation to indicate an increase in the severity of the violation.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

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

WCD Admin. Order, Safety 7-1979, f. 8-20-79, ef. 9-1-79.

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

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

WCD Admin. Order, Safety 9-1983, f. 11-15-83, ef. 11-15-83.

WCD Admin. Order, Safety 2-1984, f. 3-2-84, ef. 3-15-84.

WCD Admin. Order, Safety 12-1984, f. 9-20-84, ef. 11-1-84.

WCD Admin. Order, Safety 9-1986, f. 10-7-86, ef. 12-1-86.

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

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

OR-OSHA Admin. Order 10-1990, f. 5/31/90, ef. 5/31/90 (temp).

OR-OSHA Admin. Order 24-1990, f. 10/10/90, ef. 10/10/90 (perm).

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

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

OR-OSHA Admin. Order 2-1996, f. 6/13/96, ef. 6/13/96.

OR-OSHA Admin. Order 5-1998, f. 10/15/98, ef. 10/15/98.

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

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

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

OR-OSHA Admin. Order 11-2001, f. 9/14/01, ef. 1/1/02.

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

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

437-001-0096 Red Warning Notice.

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

(2) When action is necessary to preclude or eliminate exposure of employees to a condition which, if such exposure occurred or continued, would constitute a violation of any statute or of any lawful regulation, rule, standard or order, affecting employee safety or health at a place of employment, a Compliance Officer shall obtain permission to post a Red Warning Notice. The

notice shall be posted in plain view of any person likely to use the place of employment, machine, device, apparatus or equipment that constitutes the hazard.

(3) Any place of employment, machine, device, apparatus or equipment on which a Red Warning Notice has been posted shall not be operated or used by any person until:

(a) The condition has been made safe and healthful; and

(b) The Red Warning Notice has been removed by the Division; however,

(c) Nothing in this section prohibits an employer from using any place of employment, or operating any machine, device, apparatus or equipment, exclusively for the purpose of remedying the violation, pursuant to the instructions on the Red Warning Notice.

(4) No person shall deface or destroy a Red Warning Notice, or remove it without authorization from the Division.

(5) The Red Warning Notice will be removed after:

(a) Notification from the employer that the condition has been corrected; and

(b) A follow-up inspection or other information confirms that the condition has been corrected.

(6) Any person who violates or directs another to violate OAR 437-001-0096(3) or (4) shall be assessed a civil penalty of not less than \$100 and not more than \$5000 for each such violation.

(7) Any employer who violates or directs an employee to violate OAR 437-001-0096(3), and the violation is determined to be a willful violation, may be assessed a civil penalty of not less than \$5,000 and not more than \$70,000.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

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

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

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

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

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

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

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

437-001-0171 Determination of Penalty – Failure to Register a Farm Labor Camp/ Facility. If an operator, employer or contractor fails to register a Farm Labor Camp or facility with Oregon OSHA as required in Division 4/J, 437-004-1120(5)(b), a penalty of not less than \$250 nor more than \$7,000, shall be assessed.

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

Stats. Implemented: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810 and 658.825.

Hist: OR-OSHA Admin. Order 10-1995, f. 11/29/95, ef. 11/29/95.

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

437-001-0203 Determination of Penalty – Relating to Violations Which Have No Probability and Severity.

(1) Safety and Health Protection on the Job Poster. If the employer has not displayed the poster, a minimum penalty of \$100 may be assessed.

(2) Annual Summary – If an employer fails to post the summary portion of the OSHA 300 Form no later than February 1 of the year following the year covered by the records and keep it posted until April 30 in accordance with 437-001-0700(17)(d)(A), a minimum penalty of \$200 may be assessed.

(3) Citation – If an employer fails to post the citation after receipt, a minimum penalty of \$200 may be assessed.

(4) OSHA 300 and DCBS 801 Forms – If the employer does not maintain the Log and Summary of Occupational Injuries and Illnesses, OSHA 300 Form, and the Supplementary Record, DCBS Form 801 or equivalent, a minimum penalty of \$100 may be assessed for each OSHA form not maintained.

(5) Access to Records – If the employer fails upon request to provide records for inspection and copying by any authorized representative of OR-OSHA or by any employee, former employee, or authorized representative of employees, a minimum penalty of \$100 may be assessed for each form not made available.

(6) Flush Toilets/Warm Water Hand Washing Facilities – If an employer fails to provide flush toilets or warm water hand washing facilities on a construction site according to OAR 437-003-0020 in OAR 437, Division 3, Construction, a penalty of not less than \$200, nor more than \$2,500, shall be assessed.

(7) Safety Committees – If an employer fails to establish a safety committee as required by OAR 437-001-0765 in OAR 437, Division 1, General Provisions, a minimum penalty of \$100 shall be assessed.

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

Stats. Implemented: ORS 654.086.

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

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

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

OR-OSHA Admin. Order 9-1995, f. 11/29/95, ef. 11/29/95.

OR-OSHA Admin. Order 11-2001, f. 9/14/01, ef. 1/1/02.

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

437-001-0265 Amendment, Reissue or Withdrawal of Citation.

(1) When the Division identifies an error or errors in the citation, the Administrator may, for good cause, amend, reissue or withdraw a citation provided:

(a) Such action will not reduce the occupational safety and health protection of affected employees;

(b) No appeal has been filed with the Board to contest the citation;

(c) The time for filing an appeal has not expired; and

(d) The employee representative, if any, has been notified of the proposed amendment.

(2) The employer receiving an amendment or withdrawal shall post the document as required by OAR 437-001-0275(2).

(3) An amendment or withdrawal of an appealed citation or order shall be made in accordance with the Board's rules (OAR 438) for contested cases. The administrator shall notify the employee representative of any proposed settlement or withdrawal made according to OAR 438.

(4) Any withdrawal, or amendment of an appealed citation that reduces the penalty or extends the correction times of an alleged serious or willful violation shall not be made without written approval of the Director.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

WCB Admin. Order, Safety 8-1975 f. 8-5-75, ef. 9-1-75.

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

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

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

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

437-001-0270 Discretion If There is No Timely Appeal.

(1) The Director may refer a matter arising under this rule to the Hearings Division of the Board for a hearing before a referee, who will provide the Director with proposed findings and recommendations. Persons whose rights may be affected, including affected employees, shall be given reasonable notice of such a hearing and an opportunity to participate as parties.

(2) To prevent a manifest injustice, the Administrator, at the Administrator's own discretion or upon request from the Division or an adversely affected person, may vacate or amend a Division citation, notice or order.

(3) If the Administrator proposes to vacate or amend a Division citation, notice or order, an opportunity to be heard will be given to persons, including affected employees, whose rights may be affected.

(4) All requests for reconsideration based on a manifest injustice shall contain a statement indicating the following:

- (a) The request has been posted as required by OAR 437-001-0275(2);
- (b) The request has been served on the authorized representative of affected employees, if appropriate;
- (c) The date the request was posted or service was made; and
- (d) All affected employees have been advised of their right to comment.

(5) No decision shall be made on a manifest injustice request until ten days after the date of posting or service.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

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

WCD Admin. Order, Safety 3-1983, f. 1-31-83, ef. 2-1-83.

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

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

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

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

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

(a) Request from the employer, an affected employee or an employee representative which may be in writing, the request shall contain:

- (A) The name and address of the applicant;
- (B) A description of the relief which is sought;
- (C) A statement setting forth with particularity the grounds for relief;
- (D) If the applicant is an employer, a certification that the applicant has informed affected employees of the application by:
  - (i) Giving a copy thereof to their authorized representative;
  - (ii) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full

application may be examined (or, in lieu of the summary, posting the application itself); and

(iii) Other appropriate means.

(E) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(F) Any request for a hearing, as provided for in these rules.

(b) Notification and confirmation that the alternative methods or safeguards required by the variance are not fully complied with; or

(c) A Division review.

(2) The Division shall publish the proposed modification or revocation for one day in at least one daily newspaper with general circulation throughout Oregon. Exception: A revocation based on a company being out of business or no longer needed does not need to be published. The notice shall include:

(a) The name of applicant;

(b) The rule, also identified by number, from which the variance had been granted;

(c) A brief description of the variance and why relief is sought;

(d) Notice of opportunity for public comment and hearing and that a request for hearing shall be made within 20 days of publication;

(e) Information on how interested persons may learn of the Division's decision on the variance; and

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

(3) The Division may conduct an on-site review of the equipment or processes involved in the proposed, revoked or modified variance.

(4) The employer and affected employees shall be advised in writing of modification or revocation of the variance. The modification or revocation order shall state:

(a) The name and address of the employer;

(b) The address and location of the place of employment involved;

(c) The rule, identified by number, from which the variance was granted;

(d) The type of variance issued;

(e) The reasons for modification or revocation of the variance; and

(f) The employer's and affected employees appeal rights.

(5) Any request for a hearing shall be made within 20 days of publication and shall include a short and plain statement of:

- (a) How the proposed modification or revocation would affect the requesting party; and
- (b) What the requesting party would seek to show on the subjects or issues involved.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

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

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

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

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

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

#### 437-001-0700 Recordkeeping and Reporting.

(1) Purpose. This rule requires employers to record and report work-related fatalities, injuries and illnesses.

Note: Recording or reporting a work-related injury, illness, or fatality does not assign fault to anybody, does not prove the violation of an OSHA rule, nor establish the employee's eligibility for workers' compensation or other benefits.

(2) Scope. This standard covers all employers covered by the Oregon Safe Employment Act. However, most employers do not have to keep OR-OSHA injury and illness records unless the Director informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OR-OSHA injury and illness records.

(3) Partial Exemptions.

(a) If your company never had more than ten (10) employees during the last calendar year, you do not need to keep OR-OSHA injury and illness records unless the Director informs you in writing that you must keep records. However, all employers covered by the Oregon Safe Employment Act must report to OR-OSHA any workplace fatality, the hospitalization of three or more employees, or overnight hospitalizations. (See (21) below)

(A) The partial exemption for size is based on the number of employees in the entire company.

(b) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OR-OSHA injury and illness records unless your business is in a specific low hazard retail, service, finance, insurance or real estate industry in Table 1. If so,



you do not need to keep OR-OSHA injury and illness records unless the government asks you to keep the records under 437-001-0700(23).

(c) If one or more of your company’s establishments are classified in a nonexempt industry, you must keep OR-OSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under 437-001-0700(3)(a). If a company has several business establishments engaged in different classes of business activities, some of the company’s establishments may be required to keep records, while others may be exempt.

(4) Alternate or Duplicate Records. If you create records to comply with another government agency’s injury and illness recordkeeping requirements, those records meet OR-OSHA’s recordkeeping requirements if OR-OSHA accepts the other agency’s records under a memorandum of understanding with that agency, or if the other agency’s records contain the same information as this standard requires you to record. Contact your nearest OR-OSHA office for help in determining if your records meet OR-OSHA’s requirements. Table 1 - Partially Exempt Industries

Employers need not keep OR-OSHA injury and illness records for any establishment in the following Standard Industrial Classification (SIC) codes, unless OR-OSHA or the Department of Consumer and Business Services asks them in writing to do so.			
SIC Code	Industry Description	SIC Code	Industry Description
525	Hardware Stores	726	Funeral Service and Crematories
542	Meat and Fish Markets	729	Miscellaneous Personal Services
544	Candy, Nut, and Confectionery Stores	731	Advertising Services
545	Dairy Products Stores	732	Credit Reporting and Collection Services
546	Retail Bakeries	733	Mailing, Reproduction, & Stenographic Services
549	Miscellaneous Food Stores		
551	New and Used Car Dealers	737	Computer and Data Processing Services
552	Used Car Dealers	738	Miscellaneous Business Services
554	Gasoline Service Stations	764	Reupholstery and Furniture Repair
557	Motorcycle Dealers	78	Motion Picture
56	Apparel and Accessory Stores	791	Dance Studios, Schools, and Halls
573	Radio, Television, & Computer Stores	792	Producers, Orchestras, Entertainers
58	Eating and Drinking Places	793	Bowling Centers
591	Drug Stores and Proprietary Stores	801	Offices & Clinics Of Medical Doctors
592	Liquor Stores	802	Offices and Clinics Of Dentists
594	Miscellaneous Shopping Goods Stores	803	Offices Of Osteopathic Physicians
599	Retail Stores, Not Elsewhere Classified	804	Offices Of Other Health Practitioners
60	Depository Institutions (banks & savings institutions)	807	Medical and Dental Laboratories
61	Nondepository Institutions (credit institutions)	809	Health and Allied Services, Not Elsewhere Classified
62	Security and Commodity Brokers	81	Legal Services
63	Insurance Carriers	82	Educational Services (schools, colleges, universities and libraries)
64	Insurance Agents, Brokers, & Services		
653	Real Estate Agents and Managers	832	Individual and Family Services
654	Title Abstract Offices	835	Child Day Care Services
67	Holding and Other Investment Offices	839	Social Services, Not Elsewhere Classified
722	Photographic Studios, Portrait	841	Museums and Art Galleries
723	Beauty Shops	86	Membership Organizations
724	Barber Shops	87	Engineering, Accounting, Research, Management, and Related Services
725	Shoe Repair and Shoeshine Parlors	899	Services, not elsewhere classified

(5) Recording Criteria and Forms. This describes the work-related injuries and illnesses that an employer must enter on the OR-OSHA records and explains the OR-OSHA forms that employers must use to record work-related fatalities, injuries, and illnesses.

(a) Each employer required to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(A) is work-related; and

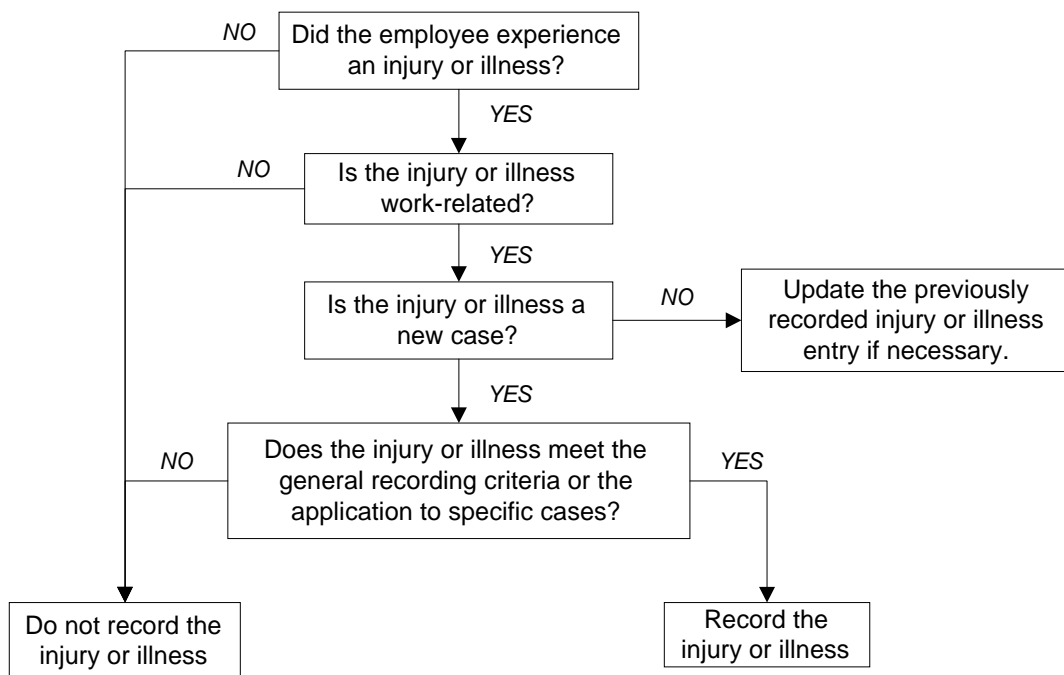
(B) is a new case; and

(C) meets one or more of the general recording criteria of OAR 437-001-0700(8) or the application to specific cases of OAR 437-001-0700(9) through (13).

Table 2 - Related rules

This table indicates which sections of the rule address each topic.	
(i) Determination of work-relatedness.	See 437-001-0700(6)
(ii) Determination of a new case.	See 437-001-0700(7)
(iii) General recording criteria.	See 437-001-0700(8)
(iv) Additional criteria. (Needlestick and sharps injury cases, tuberculosis cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases)	See 437-001-0700(9) through (13).

The decision tree for recording work-related injuries and illnesses below shows the steps involved in making this determination.



(6) Work Related. An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. You presume work-relatedness for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Table 3 specifically applies.

NOTE: OR-OSHA defines the work environment as the establishment and other locations where one or more employees work or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of their work. Injuries occurring during travel are work related if the employee was engaged in work activities in the interest of the employer and it is not one of the exceptions in Table 4. If it is not obvious where the precipitating event occurred you must evaluate the employee’s work duties and environment to decide whether events or exposures in the work environment either caused or contributed to the condition or significantly aggravated a pre-existing condition.

(a) A pre-existing injury or illness is significantly aggravated when an event or exposure in the work environment results in any of the following:

(A) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the occupational event or exposure.

(B) Loss of consciousness, provided that the preexisting injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

(C) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

(D) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

Table 3
An injury or illness occurring in the work environment that falls under one of the following exceptions is not work-related, and is not recordable.
Do not record injuries and illnesses if . . .
At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.
The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.
The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.
The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer’s premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer’s establishment, the case is not work-related.
Note: If the employee becomes ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case is work-related.
The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee’s assigned working hours.

The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted.
The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.
The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are work-related if the employee is infected at work).
The illness is a mental illness. Mental illness is not work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a work-related mental illness.

Table 4	
Do not record injuries or illnesses that occur when the employee is on travel status if they meet one of the exceptions listed below.	
If the employee . . .	You may use the following to determine if an injury or illness is work-related.
checked into a hotel or motel for one or more days.	When a traveling employee checks into a hotel, motel, or other temporary residence, they establish a “home away from home.” You must evaluate the employee’s activities after they check into the hotel, motel, or other temporary residence for their work-relatedness in the same manner as you evaluate the activities of a non-traveling employee. When the employee checks into the temporary residence, they have left the work environment. When the employee begins work each day, they re-enter the work environment. If the employee has established a “home away from home” and is reporting to a fixed worksite each day, you also do not consider injuries or illnesses work-related if they occur while the employee is commuting between the temporary residence and the job location.
took a detour for personal reasons.	Injuries or illnesses are not work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel (e.g., took a side trip for personal reasons).

(b) Work at home. Injuries and illnesses that occur while an employee works at home, including work in a home office, is work-related if the injury or illness relates directly to the work rather than to the general home environment or setting.

(7) New Cases. An injury or illness is a “new case” if:

(a) the employee has no previous recorded injury or illness of the same type that affects the same part of the body, or

(b) the employee previously had a recorded injury or illness of the same type that affected the same part of the body but recovered completely (all signs and symptoms disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

(A) For occupational illnesses where the signs or symptoms may recur or continue in the absence of a workplace exposure, record the case only once. Examples include occupational cancer, asbestosis, byssinosis and silicosis.

NOTE: You are not required to seek the advice of a physician or other licensed health care professional. If you do seek such advice, you must follow their recommendation about whether the case is a new case or a recurrence.

(8) General Recording Criteria. An injury or illness meets the general recording criteria, and is recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must

record a case if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

NOTE: OR-OSHA believes that most significant injuries and illnesses will result in one of the events listed below. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

Table 5	
Record a work-related injury or illness if it results in one or more of the following:	
(i) Death,	See 437-001-0700(8)(a)
(ii) Days away from work,	See 437-001-0700(8)(b)
(iii) Restricted work or transfer to another job,	See 437-001-0700(8)(c)
(iv) Medical treatment beyond first aid,	See 437-001-0700(8)(d).
(v) Loss of consciousness,	See 437-001-0700(8)(e).
(vi) A significant injury or illness diagnosed by a physician or other licensed health care professional.	See 437-001-0700(8)(f).

(a) You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to OR-OSHA within eight (8) hours.

(b) When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(A) Begin counting days away on the day after the injury occurred or the illness began.

(B) End the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work. This applies regardless of whether the employee returns earlier or later than recommended. If there is no recommendation from the physician or licensed health care professional, enter the actual number of days the employee is off work.

(C) You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Include weekend days, holidays, vacation days or other days off in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(D) You may stop tracking of the number of calendar days away from work once the total reaches 180 days away from work and/or days of job transfer or restriction. Entering 180 in the total days away column is adequate.

(E) If the employee leaves your company for a reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(F) You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log that you prepare for the year in which the incident occurred. If the time off extends into a new year, estimate the number of days for that year and add that amount to the days from the year of occurrence. Do not split the days between years and enter amounts on the logs for two different years. Use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the 180-day cap.

(c) When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted workdays column.

(A) Restricted work occurs when, as the result of a work-related injury or illness:

(i) you keep the employee from performing one or more of the routine functions of their job, or from working the full day that they would otherwise work; or

(ii) a physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of their job, or not work the full workday that they would otherwise work.

NOTE: For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.

(iii) A recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job.

(iv) A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(v) Record job transfer and restricted work cases in the same box on the OSHA 300 Log.

(vi) You count days of job transfer or restriction in the same way you count days away from work. The only difference is that, if you permanently assign the injured or ill

employee to a job modified or permanently changed to eliminate the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is permanent. You must count at least one day of restricted work or job transfer for such cases.

(d) If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the employee received medical treatment but remained at work without transfer or restriction and the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for other recordable cases.

NOTE: You must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(A) "Medical treatment" is the management and care of a patient to combat disease or disorder. For this rule, medical treatment does not include:

(i) visits to a physician or other licensed health care professional solely for observation or counseling;

(ii) the conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(iii) "First aid" as in (B) below.

(B) First Aid is:

(A)	Using a nonprescription medication at nonprescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is medical treatment for recordkeeping purposes);	(H)	Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
(B)	Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, is medical treatment);	(I)	Using eye patches;
(C)	Cleaning, flushing or soaking wounds on the surface of the skin;	(J)	Removing foreign bodies from the eye using only irrigation or a cotton swab;
(D)	Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc. are medical treatment);	(K)	Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
(E)	Using hot or cold therapy;	(L)	Using finger guards;
(F)	Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are medical treatment for recordkeeping purposes);	(M)	Using massages (physical therapy or chiropractic treatment are medical treatment for recordkeeping purposes); or
(G)	Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.).	(N)	Drinking fluids for relief of heat stress.

This is a complete list of all first aid treatments for this standard. These treatments are considered first aid regardless of the professional status of the person providing the treatment.

(e) You must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time they remain unconscious.

(f) Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of occurrence.

(9) Needlestick and Sharps Injury Recording Criteria.

(a) When an injury is diagnosed later as an infectious bloodborne disease, you must update the classification on the 300 log to reflect the new status or classification.

(b) You must record all work-related needlestick injuries and cuts from sharp objects contaminated with another person's blood or other potentially infectious material (as defined by OAR 437-002-1910.1030). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, do not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in OAR 437-001-0700(14)(a) through (14)(i).

(10) Medical Removal Recording Criteria. If another OR-OSHA standard requires the medical removal of an employee, you must record the case on the OSHA 300 Log.

(a) You must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how you decide to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, you must enter the case on the OSHA 300 Log by checking the "poisoning" column.

(A) If the case involves voluntary medical removal before reaching the medical removal levels required by an OR-OSHA standard, do not record the case on the OSHA 300 Log.

(11) Occupational Hearing Loss Recording Criteria.

(a) Hearing loss must be recorded on the OSHA 300 Log by checking the hearing loss column when:

(A) An annual audiogram reveals a Standard Threshold Shift (STS) in either or both ears; and

(B) The hearing level in the same ear is 25 dB above audiometric zero.

(b) In determining whether an STS has occurred, you may correct for the age of the employee. Use the appropriate table in Appendix A to determine the age adjustment. If the STS is 10 dB or more after the age correction, it still meets the criteria for recordability.

(c) If you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss



case within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the noise standard (OAR 437-002-1910.95) indicates that an STS is not persistent, you may erase, delete, or line-out the recorded entry.

(d) If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, the case is not work-related. Do not record it on the OSHA 300 Log.

(12) Tuberculosis Reporting Criteria. If any of your employees has an occupational exposure to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, you must record the case on the OSHA 300 Log by checking the “respiratory condition” column.

(a) Do not record a pre-employment positive skin test because the exposure was not in your workplace.

(b) Line out or erase a recorded case if you prove that:

(A) the worker lives in a household with a person diagnosed with active TB;

(B) the Public Health Department identifies the worker as a contact of an individual with a case of active TB unrelated to the workplace; or

(C) a medical investigation shows that the employee’s infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

(13) Removed.

(14) Forms. You must use OSHA 300, 300-A, and DCBS Form 801 or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the DCBS Form 801 or equivalent is the Worker’s and Employer’s Report of Occupational Injury or Disease.

(a) Even if your are exempt from recordkeeping, you must have at each establishment, a copy of DCBS Form 801 or equivalent for each occupational injury or illness that may result in a compensable claim.

(b) You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

(c) You must complete a DCBS Form 801 or equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(d) You must enter each recordable injury or illness on the OSHA 300 Log and DCBS Form 801 or equivalent within seven (7) calendar days of receiving information that a recordable injury or illness has occurred.

(e) An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the DCBS Form 801, or supplement an insurance form by adding any additional information required by OSHA.

(f) Use a computer to keep your records if it can produce equivalent forms when needed.

(g) If you have a “privacy concern case,” do not enter the employee’s name on the OSHA 300 Log. Instead, enter “privacy case” in the space normally used for the employee’s name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative has access to the OSHA 300 Log. You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(h) The following injuries or illnesses are privacy concern cases:

(A) An injury or illness to an intimate body part or the reproductive system;

(B) An injury or illness resulting from a sexual assault;

(C) Mental illnesses;

(D) HIV infection, hepatitis, or tuberculosis;

(E) Needlestick injuries and cuts from sharp objects contaminated with another person’s blood or other potentially infectious material; and

(F) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.

NOTE: This is a complete list of all injuries and illnesses that are privacy concern cases.

(i) If you reasonably believe that information describing the privacy concern case may be personally identifiable even though the employee’s name is omitted, use discretion in describing the injury or illness on both the OSHA 300 and DCBS 801 Forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, describe a sexual assault case as “injury from assault,” or an injury to a reproductive organ could be described as “lower abdominal injury”.

(j) If you voluntarily disclose the forms to persons other than government representatives, employees, former employees or authorized representatives, you must remove or hide the employees’ names and other personally identifying information, except for the following cases:

(A) To an auditor or consultant hired by the employer to evaluate the safety and health program;

(B) To the extent necessary for processing a claim for workers' compensation or other insurance benefits; or

(C) To a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR.164.512.

(15) Multiple Business Establishments. You must keep a separate OSHA 300 Log for each establishment that you expect to operate for one year or longer.

(a) You may keep one OSHA 300 Log that covers all of your short-term establishments. You may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(b) You may keep the records for an establishment at your headquarters or other central location if you can:

(A) transmit information about the injuries and illnesses from the establishment to the central location within seven (7) calendar days of receiving information that a recordable injury or illness has occurred; and

(B) produce and send the records from the central location to the establishment within the time frames required by OAR 437-001-0700(20) and OAR 437-001-0700(22) when you are required to provide records to a government representative, employees, former employees or employee representatives.

(c) You must link each employee with one of your establishments, for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short-term establishment.

(d) If the injury or illness occurs at one of your establishments, you must record the injury or illness on the OSHA 300 Log of the establishment where the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment where the employee normally works.

(16) Covered Employees. You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

(a) Record the injuries and illnesses to workers from temporary help agencies or employee leasing services only if you supervise these employees on a day-to-day basis.

(b) If a contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

(c) You and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to make sure that each injury and illness is recorded only once: either on your OSHA 300 Log (if you provide day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(17) Annual Summary. At the end of each calendar year, you must:

(a) review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any problems;

(b) use the OSHA 300A or equivalent form to create an annual summary of injuries and illnesses from the OSHA 300 Log;

(c) certify that one of the following examined the OSHA 300 log and believe, based on knowledge of the process by which the information was recorded, that it is correct and complete.

(A) The highest ranking manager at the location where the log is compiled.

(B) If there is no management at the compiling location, any manager with jurisdiction over that location.

(d) You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

(A) You must post the summary no later than February 1 of the year following the year covered by the records and keep it posted until April 30.

(18) Paperwork Retention and Updating. You must save the OSHA 300 Log, the privacy case list (if any), the annual summary, and the DCBS Form 801 or equivalent forms for five (5) years following the end of the calendar year that they cover.

(a) During the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

(b) You must save your copies of the old OSHA 200 and 801 forms for five years following the year to which they relate and continue to provide access to the data as if these forms were the new forms. You do not need to update your old 200 and 801 forms.

NOTE: For more information on retention of medical and exposure records, see OAR 437-002-1910.1020.

(19) Change of Business Ownership. If your business changes ownership, you must record and report work-related injuries and illnesses only for the time you owned the establishment. You must transfer the records to the new owner. The new owner must save all records of the establishment kept by the prior owner, but need not update or correct the records of the prior owner.

(20) Employee Involvement. You must involve your employees and their representatives in the recordkeeping system.

(a) Inform each employee of how they are to report an injury or illness to you.

(b) Provide limited access to your injury and illness records for your employees and their representatives.

(A) Your employees, former employees, their personal representatives, and their authorized collective bargaining representatives have the right to access the OSHA injury and illness records, with some limitations, as below.

(i) A personal representative is anybody designated in writing by the employee or former employee. It also is the legal representative of a deceased or legally incapacitated employee.

(c) When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(A) You must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, do not record the employee's name on the OSHA 300 Log for certain "privacy concern cases".

(d) When an employee, former employee, or personal representative asks for a copy of the DCBS Form 801 or equivalent describing an injury or illness to that employee or former employee, you must give the requester a copy of the DCBS Form 801 or equivalent containing that information by the end of the next business day.

(e) When an authorized employee representative asks for copies of the DCBS Form 801 or equivalent for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the releasable part of the DCBS Form 801 or equivalent section titled "Tell us about the case" or a similar section. You must remove all other information from the copy of the DCBS Form 801 or equivalent form that you give to the authorized employee representative.

(f) You may not charge for these copies the first time. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(21) Reporting Fatalities and Hospitalizations to Oregon OSHA. You must report the following to Oregon OSHA at 1-800-922-2689 or 503-378-3272 within the given time limits:

(a) Fatalities 8 hours after occurrence or employer knowledge

(b) Catastrophe 8 hours after occurrence or employer knowledge

NOTE: You must report a fatality caused by a heart attack at work. The local OR-OSHA field office safety or health manager will decide whether to investigate the incident, depending on the circumstances of the heart attack.

Report the following to the nearest Oregon OSHA field office (Portland, Salem, Bend, Eugene or Medford).

(c) Overnight Hospitalization 24 hours after occurrence or employer knowledge

NOTE: Oregon OSHA Field Office locations, telephone and Fax numbers are:

Salem Central Office  
350 Winter Street NE, Room 430  
Salem OR 97301-3882  
(503) 378-3272  
Toll Free: (800) 922-2689  
Fax: (503) 947-7461

Eugene  
1140 Willagillespie, Suite 42  
Eugene OR 97401-2101  
(541) 686-7562  
Fax: (541) 686-7933

Portland  
Fremont Place, Building I  
1750 NW Naito Parkway, Suite 112  
Portland OR 97209-2533  
(503) 229-5910  
Fax: (503) 229-6492

Bend  
Red Oaks Square  
1230 NE Third Street, Suite A-115  
Bend OR 97701-4374  
(541) 388-6066  
Fax: (541) 388-6203

Salem  
DAS Building, 1st Floor  
1225 Ferry Street SE, Suite U110  
Salem OR 97301-4282  
(503) 378-3274  
Fax: (503) 378-4921

Medford  
1840 Barnett Road, Suite D  
Medford OR 97504-8250  
(541) 776-6030  
Fax: (541) 776-6246

Pendleton  
721 SE Third Street, Suite 306  
Pendleton OR 97801-3056  
(541) 276-9175  
Fax: (541) 276-6869

NOTE: Overnight hospitalization if for medical treatment only. Hospitalization for observation is not reportable, nor is emergency room treatment. See the definitions section for “catastrophe”.

NOTE: Do not report injuries resulting from motor vehicle accidents that happen on public streets, roads or highways unless it is in a construction work zone.

NOTE: Report a fatality only if it occurs within thirty (30) days of the accident.

(22) Providing Records to Government Representatives. When an authorized government representative asks for the records you keep in compliance with this standard, you must provide copies of the records within four (4) business hours.

(a) Authorized government representatives are:

(A) a representative of the Oregon Department of Consumer and Business Services.

(B) a representative of the Secretary of Labor conducting an inspection or investigation under the Act.

(C) a representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health - NIOSH) conducting an investigation under Section 20(b) of the Act.

(23) Requests from the Bureau of Labor Statistics or DCBS. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, or a request for data from the Oregon Department of Consumer and Business Services, you must promptly complete the form and return it following the instructions on the survey form.

(24) Prohibition against discrimination. Oregon Revised Statute 654.062(5) prohibits discrimination against an employee for reporting a work-related fatality, injury or illness. It also protects the employee who files a safety and health complaint, asks for access to this rule, records, or otherwise exercises any rights afforded by law or rule.

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

Stats. Implemented: ORS 654.001 through 654.295.

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

WCD Admin. Order, Safety 7-1979, f. 8-20-79, ef. 9-1-79.

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

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

OR-OSHA Admin. Order 11-2001, f. 9/14/01, ef. 1/1/02.

OR-OSHA Admin. Order 2-2002, f. 3/12/02, ef. 3/12/02.

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

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

## 437-001-0765 Rules for Workplace Safety Committees.

(1) Purpose. The purpose of a safety committee is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in each workplace. A safety committee assists the employer and makes recommendations for change.

(2) General.

(a) Every public or private employer of 11 or more employees shall establish and administer a safety committee.

(b) Every public or private employer of 10 or fewer employees shall establish and administer a safety committee if the employer:

(A) Has a Lost Workday Case Incidence Rate (LWDCIR) in the top 10 percent of all rates for the employers in the same industry; or

(B) The employer is not an agricultural employer and the workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a premium rate in the top 25 percent of premium rates for all classes as approved by the Director pursuant to ORS 737.320(3).

(c) In making the determination of employment levels under sections (a) and (b) of this rule, the employer shall count all permanent, contract, temporary, and/or seasonal workers under the employer's direction and control, and shall base the number on peak employment.

(d) Temporary services employers and labor contractors shall establish safety committees based upon the total number of workers over which the employer or contractor exercises direction and control.

(e) Employers who hire only seasonal workers shall meet the intent of these rules by holding crew safety meetings prior to the commencement of work at each job site. Such meetings shall promote discussions of safety and health issues. All workers shall be informed of their rights to report workplace hazards, and shall be encouraged to make such reports during the meetings.

(f) Employers in the logging industry may meet the intent of these rules by complying with OAR 437, Division 7, Forest Activities.

(3) Locations.

(a) Safety committees shall be established at each of the employer's primary places of employment. For the purpose of these rules, a primary place of employment shall mean a major economic unit at a single geographic location, comprised of a building, group of buildings, and all surrounding facilities (Examples of primary places of employment would include a pulp or lumber mill, a manufacturing plant, a hospital complex, bank, a farm/ranch, a school district, or a state agency.) As a primary place of employment the location would



have both management and workers present, would have control over a portion of a budget, and would have the ability to take action on the majority of the recommendations made by a safety committee.

(b) An employer's auxiliary, mobile, or satellite locations, such as would be found in construction operations, trucking, branch or field offices, sales operations, or highly mobile activities, may be combined into a single, centralized committee. This centralized committee shall represent the safety and health concerns of all the locations.

(c) In addition to locating safety committees at each primary place of employment, an employer with work locations which include fire service activities shall establish a Fire Service Safety Committee as required by OAR 437-002-0182(7) in OAR 437, Division 2/L, Oregon Rules for Fire Fighters.

(4) Innovation. Upon application, the division may approve safety committees which are innovative or differ in form or function, when such committees meet the intent of these rules.

(5) Safety Committee Formation and Membership.

(a) The safety committees required by OAR 437-001-0765(2) shall:

(A) Be composed of an equal number of employer and employee representatives. Employee representatives shall be volunteers or shall be elected by their peers unless there is a provision in their collective bargaining agreement that addresses the selection of employee representatives. When agreed upon by workers and management, the number of employees on the committee may be greater than the number of employer representatives. Seasonal workers shall not be counted for the purpose of determining the number of members who will serve on the committee.

(B) Consist of:

- (i) No fewer than two members for each employer with twenty or less employees, or
- (ii) No fewer than four members for each employer with more than twenty employees.

(C) Have a chairperson elected by the committee members.

(b) Employee representatives attending safety committee meetings required by OAR 437-001-0765(2) or participating in safety committee instruction or training required by OAR 437-001-0765(7) shall be compensated by the employer at the regular hourly wage.

(c) Employee representatives shall serve a continuous term of at least one (1) year. Length of membership shall be alternated or staggered so that at least one experienced member is always serving on the committee.

(d) Reasonable efforts shall be made to ensure that committee members are representative of the major work activities of the firm.

(6) Safety Committee Duties and Functions.

(a) Management commitment to workplace health and safety.

(A) The committee shall develop a written agenda for conducting safety committee meetings. The agenda shall prescribe the order in which committee business will be addressed during the meeting.

(B) The safety committee shall hold regular meetings at least once a month except months when quarterly workplace safety inspections are made. This does not exclude other months from safety committee meetings if more frequent safety inspections are conducted.

(C) Quarterly safety committee meetings may be substituted for monthly meetings where the committee's sole area of responsibility involves low hazard work environments such as offices.

(D) Small farms of five or fewer full time employees may substitute quarterly meetings for monthly meetings during the farms' off season. The off season shall mean that period of time when only routine farm upkeep is being done.

(b) Written records.

(A) Minutes shall be made of each meeting which the employer shall review and maintain for three years for inspection by the Division. Copies of minutes shall be posted or made available for all employees and shall be sent to each committee member.

(B) All reports, evaluations, and recommendations of the safety committee shall be made a part of the minutes of the safety committee meeting.

(C) A reasonable time limit shall be established for the employer to respond in writing to all safety committee recommendations.

(c) Employee involvement.

(A) The committee shall establish a system to allow the members to obtain safety-related suggestions, reports of hazards, or other information directly from all persons involved in the operations of the workplace. The information obtained shall be reviewed at the next safety committee meeting, and shall be recorded in the minutes for review and necessary action by the employer.

(d) Hazard assessment and control.

(A) The safety committee shall assist the employer in evaluating the employer's accident and illness prevention program, and shall make written recommendations to improve the program where applicable. Additionally, the safety committee shall:

(i) Establish procedures for workplace inspections by the safety committee inspection team to locate and identify safety and health hazards;

(ii) Conduct workplace inspections at least quarterly; and

(iii) Recommend to the employer how to eliminate hazards and unsafe work practices in the workplace;

(B) The inspection team shall include employer and employee representatives and shall document in writing the location and identity of the hazards and make recommendations to the employer regarding correction of the hazards.

(C) Quarterly inspections of satellite locations shall be conducted by the committee team or by a person designated at the location.

(D) Mobile work sites or locations and activities which do not lend themselves to a quarterly schedule shall be inspected by a designated person as often as Oregon occupational safety and health rules require and/or the committee determines is necessary.

(E) The person designated to carry out inspection activities at the locations identified in sections (C) and (D) of this rule shall be selected by the employer and shall receive training in hazard identification in the workplace.

(e) Safety and health planning. The safety committee shall establish procedures for the review of all safety and health inspection reports made by the committee. Based on the results of the review, the committee shall make recommendations for improvement of the employer's accident and illness prevention program.

(f) Accountability. The safety committee shall evaluate the employer's accountability system and make recommendations to implement supervisor and employee accountability for safety and health.

(g) Accident investigation. The safety committee shall establish procedures for investigating all safety-related incidents including injury accidents, illnesses and deaths. This rule shall not be construed to require the committee to conduct the investigations.

#### (7) Safety and Health Training and Instruction.

(a) The following items shall be discussed with all safety committee members:

(A) Safety committee purpose and operation;

(B) OAR 437-001-0760 through 437-001-0765 and their application; and

(C) Methods of conducting safety committee meetings.

(b) Committee members shall have ready access to applicable Oregon Occupational Safety and Health Codes which apply to the particular establishment and verbal instructions regarding their use.

(c) All safety committee members shall receive training based upon the type of business activity. At a minimum, members shall receive training regarding:

(A) Hazard identification in the workplace; and

(B) Principles regarding effective accident and incident investigations.

(8) Effective Date. The effective date for OAR 437-001-0765 is March 1, 1991.

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

Stats. Implemented: ORS 654.176.

Hist: WCD Admin. Order, Safety 10-1982, f. 7/30/82, ef. 11/1/82.

OR-OSHA Admin. Order 12-1990, f. 6/18/90, ef. 6/18/90 (temp).

OR-OSHA Admin. Order 28-1990, f. 12/18/90, ef. 3/1/91 (perm).

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

OR-OSHA Admin. Order 9-1995, f. 11/29/95, ef. 11/29/95.

OR-OSHA Admin. Order 8-2001, f. 7/13/01, ef. 7/13/01.

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