

Summary of Comments and Agency Decisions

Title: Safety Committee Preamble

Administrative Order Number: AO 9-2008

Adopted Date: 9-19-08

Effective Date: 1-1-09 with the exception of those employers with 10 or fewer employees other than those in construction. The effective date for those employers is 9-19-09.

Safety Committee/Safety Meeting Preamble

The change in requirements for establishing and administering a safety committee that allows certain employers to involve employees in promoting safety and health through less formal safety meetings was prompted by House Bill (HB) 2222 passed into law by the 74th Oregon Legislative Assembly – 2007 Regular Session.

Prior to the adoption of HB 2222 every public or private employer of more than 10 employees had to establish and administer a safety committee. In addition, some employers, with 10 or fewer employees, had to establish and administer a safety committee when the company's Days Away, Restricted, or Transferred (DART) rate reached the top 10 percent of all rates for employers in the same industry; or, the employer was not an agricultural employer and their workers' compensation premium classification assigned to the greatest portion of the payroll for the employer was a premium rate in the top 25 percent of premium rates for all classes.

Intending to clarify and simplify safety committee rules, the final rule follows the revised statute in requiring every public or private employer to establish and administer an effective safety committee, or hold effective safety meetings, to communicate and evaluate safety and health issues in the workplace.

Many suggestions, concerns and issues were raised by a variety of interested parties during this rule writing process and some were incorporated into the rule while this document explains why some were not. There were suggested flow charts and side-by-side comparisons presented. The final rule is intended to be clear enough that such charts (other than the simple table near the beginning of the rule) are not needed.

HB 2222 required the Director of the Department of Consumer and Business Services to adopt safety committee and safety meeting rules that address membership, frequency of meetings, maintenance of written records, and compensation for employee's time spent in training and attendance. The Director was also required to prescribe the duties and functions that would include procedures for workplace safety inspections; investigations for all safety incidents, accidents, illnesses and deaths; guidelines for the training of safety committee members; and *prescribe alternate forms of safety committees and safety meetings to meet the special needs of small employers, agricultural employers and employers with mobile worksites.*

Another House Bill from the 2007 Regular Session, 2702, also applied to the creation of the new safety committee/safety meetings rules. This bill was enacted to ensure that written documents produced by executive department agencies conform to plain language standards. Written documents conform to plain language standards when the document uses everyday words that convey meanings clearly and directly, uses the present tense and the active voice, uses short and simple sentences, defines only those words that cannot be properly explained or qualified in the text, uses type of a readable size, and uses layout and spacing that separate the paragraphs and sections of the document from each other. Although Oregon OSHA would have set out to write the rules using such a style in any event, HB 2702 gives such a goal statutory weight.

To begin the process of rule writing, Oregon OSHA gathered a group of stakeholders representing small businesses, city service groups, home builders, large and small construction contractors, special district groups, specialty contractors, the restaurant industry, injured workers, temporary and leasing agencies, food and commercial workers, operating engineers, well drillers and the dental industry. This group's ideas were instrumental in developing the current text of the final proposal and may be reviewed in the minutes of those meetings. *At the February 4, 2008 public hearing it was commented that creating other options is a positive step and represents what the industry has been experimenting with for some time. The reduction in paperwork is appreciated. Several other comments were made during public hearings that supported the changes in the rule. At least one commenter pointed out that for their company, the option of holding safety meetings would ease the financial burden put upon them by the previous requirement for safety committees.*

Summary and Explanation of the Final Standard

OAR 437-001-0765 Safety Committee and Safety Meeting

Safety committee and safety meeting rules require employers to establish and administer a safety committee, or conduct safety meetings, to effectively communicate and evaluate safety and health issues in the workplace.

Purpose

The purpose of the final rule is essentially the same as the previous rule and states: The purpose of safety committees and safety meetings is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in workplaces. Safety committees and safety meetings are designed with the intent to effectively assist you in making collaborative recommendations for continuous improvement of your safety and health programs.

Scope

This rule applies to public or private employers in Oregon, subject to Oregon OSHA jurisdiction, with some exceptions. Oregon OSHA jurisdiction is based on the section of the Oregon Safe Employment Act that defines employers and employees. *It was suggested that the scope should read: Every public and private employer operating in the state of Oregon, regardless of their size, who are subject to OR-OSHA jurisdiction are required to have either a safety committee or hold safety meetings.* Upon further review, the phrase “regardless of their size” seemed redundant since every public and private employer was to be included in the rule. The scope of the final rule reads “This rule applies to public or private employers in Oregon subject to Oregon OSHA jurisdiction, except as listed below.” A list of those employers who will not be expected to comply with this rule has been included in the document.

You do not have to comply with this rule if you are:

There are entities in Oregon who, based on public hearing comments and discussions in the stakeholders meetings, will not be required to comply with these rules.

The sole owner, who is the only employee of a corporation, will not be required to comply. When companies are incorporated, every member of that corporation is considered an employee as defined in ORS 654.005. It is necessary for all employees to be provided safe and healthful work places. However, Oregon OSHA is not requiring single person corporations to comply.

Persons serving as board members and commissions, not involved in everyday operations, are generally subject to Oregon OSHA jurisdiction. These boards and commissions usually meet regularly and their members are covered by worker's compensation insurance. The typical duties for those board members are administrative in nature. Members of boards and commissions not involved in everyday operations of the business of the employer will not be considered employees for the purposes of determining the application of this rule.

Additional groups not having to comply with this rule include those industries that have more specific rules like an agricultural employer who must comply with Division 4, Subdivision C, and forest activities employers who must comply with Division 7, Subdivision B.

One other employer group in Oregon that has specific requirements for individual safety committees is the fire service industry. Division 2, Subdivision L OAR 437-002-0182(7) requires employers with work locations that include fire service activities to establish a separate fire service safety committee. Previous rules required that they establish and administer a safety committee in accordance with the requirements of OAR 437-001-0765 in Division 1, General Administrative Rules. And when applicable, the representation on the safety committee would include both career and volunteer fire fighters.

The final rule states employers with work locations (for example cities, towns or counties that have fire departments, police, city hall and utilities under one employer) that include fire service activities, the fire department or fire service must establish a separate Fire Service Safety Committee or conduct safety meetings. The intent is to allow those fire service activities that are small (10 or fewer) the option to conduct separate safety meetings rather than establish safety committees with the idea that smaller groups may be able to manage safety and health equally as effective as the more formal safety committees.

OAR 437-001-0765(1)

You must establish and administer an effective safety committee or hold effective safety meetings as defined by these rules.

You can choose a committee or meetings.

HB 2222 allows Oregon OSHA to prescribe alternate forms of safety committees and safety meetings to meet the special needs of small employers, agricultural employers and employers with mobile worksites. Agricultural employers are covered in the Division 4 rules.

The original proposal, dated December 19, 2007, said that every public or private employer with more than 10 employees at a location must establish and administer an effective safety committee unless they meet certain criteria that will allow them to conduct safety meetings. *At the August 28, 2008 public hearing a commenter wanted to know who would be responsible for defining the word “effective” when used in the rule.* OR-OSHA believes that when determining the definition of “effective” one will need to talk with employers and employees to determine levels of involvement and knowledge about the company’s commitment to safety, look at accident/illness records for trends developing or being diminished, and view the overall condition of a worksite.

A table was developed to identify the criteria to be used in deciding which option employers might choose. The table did not clearly spell out specific criteria to be used and, as a result, the language for (1) was rewritten. *Based on some of the concerns about the interpretation of the language, it was suggested that a definition section be added to the rule. It was determined that rather than add a definition section, it made more sense to clearly state what was the intent of the rule. Two terms in particular were brought into question. Oregon OSHA agreed to replace phrases like “majority of the year” with “more than half of the year” as explained in the following narrative and eliminated “engaged in office work”.*

One criterion indicated that an employer with 10 or fewer employees, including seasonal and temporary employees, a majority of the year, could conduct safety meetings. “A majority of the year” language raised some issues. Similar ambiguity exists for some readers in language using “a majority of their employees.” Comments were made that “if this means at least 50% then it would likely be best stated that way”. Consistent with the strict meaning of the term “majority”, the rule proposal did not mean “at least 50%, but “*more than*. The language was changed to use the term “more than half of the year”.

Another criteria stated that if more than half of your employees report to construction sites you may have a safety committee or hold meetings. There were no objections to this language.

No objections were voiced to criteria stating that when more than half of your employees are mobile or move frequently between sites you may have a safety committee or hold safety meetings. This criterion was developed for use by businesses such as plumbing, electrical or delivery firms where employees are dispatched to various worksites throughout the day.

The next listed criteria stating, “when your employees are mostly engaged in office work” received some criticisms. One commenter said, “It is not clear how employers or employees might interpret “mostly engaged in” as a quantifiable measurement. Is it based on number of employees working in an office environment? Is it based on square footage of the building used for office space? Or, is there another measure to consider”? Public hearings following the first proposal provided Oregon OSHA several comments based on the proposed language, “mostly engaged in” to define the criteria for employees doing office work. Comments pertaining to “mostly engaged in office work” were discussed throughout the rule making process from the first stakeholders meeting to the end of the public comment period. From the beginning, the intent was to allow those employers that are truly in the lowest hazard environments the option to hold meetings or to continue administering safety committees regardless of the number of employees. Previous rules stated quarterly safety committee meetings might be substituted for monthly meetings where the committee’s sole area of responsibility involves low hazard work environments such as is found in offices. Over time, there have been questions about which employers fit in the category of low hazard work environment. We asked representatives on the stakeholder group to identify those industries. Most efforts created further confusion. Hopefully, by conveying in the rule, and giving explanations in this document, it is understood “if you have employees who do not regularly work outside an office environment” and injuries (reasonably speaking) that may occur are limited to paper cuts, tripping over file cabinets or the stress of office politics you will be considered to have a low hazard work environment and will be able to administer a safety committee or hold safety meetings. Following review of these comments, Oregon OSHA rewrote the criteria and used plain language to convey the intent clearly and directly. It now reads, “If most employees do not regularly work outside an office environment” you may have a safety committee or hold safety meetings.

The next criteria was not objected to and it reads, “you have more than 10 employees at a location and none of the above criteria applies you can have a safety committee but you cannot have safety meetings”. This means that if you have eleven (or more) employees at one location and more than half of them do not report to construction sites, or more than half of them are not mobile or moving frequently between sites (like one would expect of plumbing firms or electrical firms doing remodel or repair work that is not considered construction, or businesses such as book mobiles, mobile dental or x-ray units, etc.) or most of your employees regularly work outside of an office environment, you must form a safety committee. You would not be able to satisfy the intent of this rule by conducting safety meetings. If any of the criteria in the table below, other than the criteria in fifth box, would apply to your company you may establish a safety committee or hold safety meetings.

The final criterion is if “you have satellite or auxiliary offices with 10 or fewer employees at a location” you may establish a safety committee or hold safety meetings at those offices. The table for determining which option to choose is in its final form below.

IF	Your option is a safety committee	Your option is safety meetings
You have 10 or fewer employees more than half of the year (including seasonal & temporary)	Yes	Yes
More than half of your employees report to construction sites	Yes	Yes
More than half of your employees are mobile or move frequently between sites	Yes	Yes
Most employees do not regularly work outside an office environment	Yes	Yes
You have more than 10 employees at a location, and none of the above applies	Yes	No
You have satellite or auxiliary offices with 10 or fewer employees at each location	Yes	Yes

Once an employer decides how they will supplement their safety and health program, either by establishing and administering a safety committee or holding safety meetings, they can follow the specific requirements in each category. There is no intent to make significant changes to the safety committee rules. The rules applying to safety meetings are all new.

Safety Committees

The following information addresses requirements for establishing and administering Safety Committees.

OAR 437-001-0765(2)

If you have 20 or fewer employees you must have a minimum of 2 members. If you have more than 20 employees you must have a minimum of 4 members.

OAR 437-001-0765(3)

You must have an equal number of employer-selected members and employee-elected or volunteer members. *A concern was expressed that it is sometimes impossible to solicit volunteers due to the extra work required. Employees generally find they are doing preparation work for meetings away from work and are not compensated for their time. In the restaurant business, for example, employees are not earning tips if they are spending time in meetings so they may be reluctant to volunteer. The suggestion was made to allow management to select members when not enough employees volunteer. That idea was rejected because the intent is to involve employees without having the appearance that management is influencing committee's decisions by having chosen the safety committee members.* If both parties agree, the committee may have more employee-elected or volunteer members. A **NOTE** was added to these parameters that would allow management to **select** a supervisor to represent them and employees to **elect** a supervisor to represent them. This note prompted some strong comments. *“Allowing supervisors to act as employee representatives will dilute the effectiveness of committees in Oregon and allow employers to “stack” committees with supervisors. This will happen in places where management is not pro-employee. I believe this is an extremely bad idea.”* The reason this language is written as it is stems from concerns of the advisory group pointing out that it is often difficult to obtain volunteers or anyone who will agree to be nominated and elected to serve on a safety committee. Often times, in particular fields of industry, especially in the trades, an employee may be a supervisor on one job and not on another. The consensus was that employees who were in those circumstances should not be barred from serving on the committee. Allowing employee groups the opportunity to elect a supervisor or working foreman to represent them on the safety committee is a change. It was pointed out that some work environments have working foremen or supervisors that effectively direct and manage safety and health programs. Employee groups comfortable with their foreman or supervisors representing them on the safety committee may now elect them to do so. That election or appointment would be a deliberate decision made by the represented employees. This option may potentially expand participation, and concerns over

the rule of supervisors in certain places of employment should not prohibit employees in other places of employment from freely choosing supervisors as their representatives. The key is not the status of the individual, but the status of the person (or people) choosing that individual to serve.

OAR 437-001-0765(4)

Your Safety committee members must:

Have a majority agree upon a chairperson.

There are specific requirements for committee members. These requirements have not changed much in the final rule. The previous rule required the committee to elect a chairperson while the final rule allows them to **agree** upon a chairperson. The reason being that the person running the meetings, organizing the details, and following up on issues may be the person who can effectively direct the committee and it may not take an election to recognize that fact. Committee members must agree on whom to select. The change in process is intended to be less formal and ultimately make more sense.

Serve a minimum of one year, when possible.

Safety committee members must serve a minimum of one year when at all possible. This is essentially the same as in the previous rule and it is clearly understood that in some industries it is difficult to keep a safety committee member for a year due to the constant turnover. The language “when at all possible” has been added in recognition of this problem. The previous rule required that members stagger their time to allow for at least one experienced member remaining on the committee as others complete their one-year obligation. The stakeholders group suggested the requirement be removed to promote additional participation on the committee. As a group, they agreed that staggering the membership was a good idea, however, requiring staggering is not a regulatory concern that the committee felt was necessary. Oregon OSHA agreed and removed that specific requirement.

Be compensated at their regular rate of pay.

Safety committee members must be compensated at their regular rate of pay. This is the same as the previous rule, which read; *Employee representatives attending safety committee meetings or participating in safety committee instruction or training shall be compensated by the employer at the regular hourly rate.*

A discussion around identifying an employee’s rate of pay versus their regular hourly wage focused on how payment for attending meetings on overtime would be made. Oregon OSHA believes that if an employer schedules these meetings after hours the members should receive those wages that they would normally

receive if they were on overtime. The rate of pay that someone receives in most circumstances when figuring overtime is time and a half. The previous rule gives employers room to claim that the member's regular hourly wage is limited to what they normally or regularly would receive, not including overtime considerations. It is the intent of the previous and the final rule that members will receive applicable wages. Scheduling meetings after hours for production purposes should not allow the company to pay regular wages when employees are actually working overtime. It is intended that members be paid for attendance at all related committee activities such as meetings, training, inspections or investigations.

Have training in the principles of accident and incident investigations for use in evaluating those events.

Safety committee members must be trained in the principles of accident and incident investigations for use in evaluating those events. **They must also have training in hazard identification.** The previous rule required that all safety committee members receive training, based upon the type of business activity, regarding hazard identification in the workplace and principles regarding effective accident and incident investigations. The reason for that training is to make certain the committee members who review records, such as safety and health inspections and incident and accident investigations, are better informed and understand the issues when making recommendations for improvement. The intent of the final rule remains unchanged but is more clearly stated. *At the August 28, 2008 public hearing, one commenter asked whether members were to be trained in the investigation of an accident or in the evaluation of an investigation.* The intent of this rule is that safety committee members be trained in the principles of accident and incident investigation so that they may effectively evaluate those events. It may be difficult to get to the root cause of an accident without understanding those principles. The same principle applies to the requirement for training in hazard identification. Employees on the safety committee providing any type of assistance to the employer as a member of the committee must be able to recognize hazards associated with their place of business.

The final rule omits another training requirement that required training to be based upon the type of business activity. The advisory committee felt it should/would be obvious that hazard recognition training needed to be related to the type of hazards associated with the business activities being performed. In addition, the previous rules under the heading of Safety and Health Training and Instruction, required the committee members to discuss the purpose and operation of a safety committee and to establish methods for conducting safety committee meetings. The stakeholder group briefly discussed the rationale for these

requirements. Based on comments from those meeting, and the fact that the rules have been in effect for nearly twenty years, the group felt that in most cases this language was no longer necessary.

An additional requirement was that committees have ready access to applicable Oregon Occupational Safety and Health Codes, which apply to the particular establishment, and verbal instructions regarding their use. Both Oregon OSHA and the stakeholders felt that although those ideas were pertinent for forming an effective safety committee, they are not necessary as a requirement of the rule and that language was omitted.

Be provided with meeting minutes.

The previous rule stated that copies of minutes should be posted or made available for all employees and should be sent to each committee member. The intent of this requirement was to give employees the ability to communicate and understand the safety and health issues within the company and their individual work areas. The idea was to promote safety and health awareness and involve other employees to create a broader view of safety in the workplace. With those same intentions in mind, accessibility and posting of the minutes are still requirements as is the requirement to provide all safety committee members copies.

Represent major activities of your business.

The intent of this requirement is maintained in content but changed in format and text. The reason for having representatives of all major activities is to capture safety issues for all work disciplines within a company, and to increase the numbers of involved employees while maintaining the minimum membership requirement based on the size of the company at peak employment for the year. There are other areas that promote employee involvement such as the requirement to have a system that allows all persons involved in the operations of the workplace an opportunity to report hazards and make safety related suggestions. This concept in the rule is unchanged.

OAR 437-001-0765(5)

Your safety committee must meet on company time as follows:

Quarterly in situations where employees do mostly office work.

Monthly for all other situations (except the months when quarterly worksite inspections are performed)

Generally, your safety committee must meet monthly on company time, except months when quarterly worksite inspections are held. The rule covers two requirements; meetings and inspections. First, the committee has to meet monthly

and secondly, the required quarterly safety and health inspections can be used as a monthly meeting. Other time frames for safety committee meetings may be used for companies that have very few or low hazard exposures such as found in office environments. Those companies are required to meet at least quarterly. The proposal once read “if staff is mostly engaged in office work” you could hold quarterly safety committee meetings. The language was changed, based on comments offered, to say “if you have employees that do mostly office work”, you may have quarterly safety committee meetings. The intent of the current rule is not changed, but the final rule provides additional clarification as to who can meet less often due to the type of work being performed. This rule generated some strong comments. *At least one person interpreted it to mean that construction companies would now only meet monthly which would be a step backwards from the daily or weekly toolbox meetings.* The rule requires that they meet at least monthly. It does not prevent employers from continuing their daily and weekly toolbox meetings. *The general feeling was that most construction companies, because they have staff reporting to a variety of locations, would move to safety meetings rather than safety committees, but the rule does not require them to do so – it allows them to do so.* Employers in construction holding safety meetings must do so prior to the start of any job lasting more than a week and at least monthly. This would mean that under some circumstances, a construction firm might have multiple safety meetings in a month. The group was in agreement on the frequency of meetings.

OAR 437-001-0765(6)

You must keep written records of safety committee meetings for three years that include:

Similar to the current rule, the final rule requires written records of safety committee meetings that must be maintained for three years. Those records must include, names of attendees, meeting date, all safety and health hazards discussed that relate to tools, equipment, work environment and safe work practices, recommendations for corrective action and a reasonable date by which management agrees to respond, person responsible for follow up on any recommended corrective actions and all reports, evaluations and recommendations made by the committee. *A concern was expressed that identified the importance of including the above information to provide continuity and a record of discussions.* Some of the documentation being required differs from the current rule. *In the first draft, the language stated that the minutes must include recommendations for corrective action and a date by which management must respond. A comment was made that suggested this language allows the employees to provide direction to management and may create an adversarial relationship.* The language was changed to read that the minutes must include recommendations for corrective

action and a reasonable date by which management agrees to respond. Thus, management retains the right to agree on a response date and the committee, which is comprised of both management and employees alike, will determine the reasonableness of that date. *Another comment received stated that the one-year proposal for keeping minutes was not nearly long enough. Sometimes an issue may take longer than a year to resolve. If kept for one year, it would be easy to cover-up management's failure to act, how many recurrences there are of a hazard and evidence that monthly meetings are being held would be gone. The commenter strongly urged the committee to retain the three-year retention requirement for safety committee meeting minutes.* Oregon OSHA agreed to the three-year retention of safety committee minutes.

OAR 437-001-0765(7)

Safety committee must establish procedures for conducting workplace safety and health inspections. Persons trained in hazard identification must conduct inspections as follows:

The safety committee must establish procedures for conducting workplace safety and health inspections. *It was suggested by at least one person that there should be semi-annual inspections rather than annual inspections of work places. The rationale for the suggestion was that the inspection process is the only time that hazards are recognized and reported.* The reality is that hazards should be and are identified in a number of ways besides during the inspection process. The persons who conduct those inspections must be trained in hazard recognition. The inspection team must include employer and employee representatives, and the rule intends that they must document the location and identity of the hazards and document recommendations for corrective action. Inspections must be conducted at primary fixed locations each quarter. Office environments must be inspected at least quarterly. Auxiliary and satellite offices may be inspected quarterly by the inspection team or a designated person who has been trained in hazard recognition. Mobile work locations, infrequently visited sites and sites that do not lend themselves to quarterly inspections may be inspected by the inspection team or a designated person as often as the safety committee determines is necessary. It is the intent of this rule that all establishments under the control of an employer must be inspected at the above-mentioned intervals. You may not inspect one location one quarter and another location the next quarter. A table of inspection frequency has been included in the rule.

OAR 437-001-0765(8)

In addition to the above requirements, your safety committee must:

Work with management to establish, amend or adopt accident investigation procedures that will identify and correct hazards

Assessment and control of hazards is a major area where safety committees can provide assistance to the employer to improve the company safety and health program and prevent accidents and illnesses. Many companies have accident investigation procedures in place and the safety committee may recommend adopting or reviewing and amending those as appropriate. For companies without developed accident investigation procedures, the safety committee will work with the employer in their development. This is a new requirement of the safety committee rules and no significant objections were raised once the language was written to establish that the committee would work with the employer rather than take sole responsibility for the development of the procedures.

Have a system that allows employees an opportunity to report hazards and safety and health related suggestions.

The safety committee must devise a system for encouraging employees to report hazards. They must also devise a system for employees to make suggestions for improvement to the company safety and health program. Employees must be made to feel comfortable with the reporting procedures so that no one is reluctant to report hazards or make suggestions. Every eye on safety and health will enhance the employer's ability to make improvements and take corrective action from a proactive position rather than a reactive position.

Establish procedures for reviewing inspection reports and for making recommendations to management.

Monthly and quarterly workplace inspection reports must be reviewed and recommendations made to management for corrective actions.

The safety committee must establish procedures for ensuring this process will occur timely. The procedures should identify who will be reviewing the reports, who will be making recommendations to management and what a reasonable time frame will be for management to respond. The entire safety committee could assume responsibility for reviewing the reports and making the recommendations or they could appoint a subcommittee with that responsibility.

Evaluate all accident and incident investigations and make recommendations for ways to prevent similar events from recurring.

Once the procedures for conducting accident investigations have been established, adopted or amended, the committee must be prepared to evaluate all accident and incident investigations. They must then make recommendations to management that address ways to prevent similar accidents from occurring. This activity will employ the training the committee members received on the principles of accident and incident investigations. It will also heighten employees understanding of the root causes of accidents.

Make safety committee meeting minutes available for all employees to review.

The safety committee must make certain that their discussions are captured and shared with all employees. Minutes may be posted in conspicuous places such as electronic bulletin boards, or regular bulletin boards where employees congregate or distributed to all employees with their paychecks, for example. This requirement has not changed from the previous rule.

Evaluate management's accountability system for safety and health, and recommend improvements.

Employers generally have some form of an accountability system. For managers, accountability is often tied to salary and compensation packages. For employees, accountability systems often take the form of disciplinary actions and incentive programs. The committee must be active in evaluating whatever accountability system is in place to determine whether or not the system is effectively controlling hazards. This part of the safety committee rule is not new. Over the years, employers and employees alike have asked what the previous rule meant where it was written that the committee should evaluate the accountability system and make recommendations. The accountability system should be designed to hold management, and employees alike, accountable for their behaviors in the workplace that impact their safety and health. *A concern was raised that the language is an extremely narrow view of accountability systems. The most important part of an accountability system has to do with line supervisors and foremen (who work directly with employees) being held accountable to enforce the company safety and health program. To suggest that accountability systems are limited to disciplinary and incentive programs is dangerous.* The previous rule contained this requirement. The final rule provides the examples of a disciplinary plan or an incentive program. There is no intent to limit what the employer might view as an accountability program. The two ideas mentioned are merely to help employers define what elements might be included in an accountability program.

OAR 437-001-0765(9)

Employers with multiple locations may choose centralized committees

An employer choosing a centralized safety committee must make certain that the committee represents the safety and health concerns of all locations. Centralized safety committees must meet the same requirements as safety committees. The previous rule allowed for centralized committees as follows: “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 locations.” The previous rule also identified the differences between primary places of employment and auxiliary or satellite locations. Primary places of employment were defined as those places of employment where 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 the safety committee. The final rule does not define primary versus auxiliary or satellite locations. It simply states that if an employer has multiple locations, they may opt to establish a centralized safety committee. In doing so, they must also have a written safety and health policy that represents management’s commitment to the committee, requires and describes effective employee involvement, describes how the company will hold employees and managers accountable for safety and health, explains the specific methods to be used for identifying and correcting safety and health hazards at each location and includes an annual written comprehensive review of the committees’ activities to determine effectiveness. *At the February 4, 2008 public hearing, a request for clarification of this rule was requested.* The previous rule provided some explanation about who could have a centralized committee based on the type of “location” they were. It also defined what elements needed to be present in order to qualify for a centralized safety committee. The final rule simply allows for a centralized safety committee if the employer has multiple locations. The final rule adds the requirement for a written safety and health policy that outlines management’s commitment to the committee, describes how employees will effectively be involved in the committee, describes an accountability system, explains specific methods for identifying and correcting hazards at each location, and includes an annual written comprehensive review of the committee’s activities to determine the effectiveness of the committee. *There was a general belief that a written comprehensive plan would be necessary if all interests were to be effectively represented by a centralized committee with responsibility for representing multiple locations.* Oregon OSHA agreed to include the requirement for a written safety and health policy that includes the suggested elements.

NOTE: Two or more employers at a single location may combine resources to meet the intent of these rules.

The previous rule only allowed for employers to establish safety committees for their particular employees although there were several innovative safety committees using this concept. New to the final rule is this note that will allow different employers at the same location, i.e. building for example, to form a safety committee that represents the safety and health interests of all employees at the location regardless of who their employer might be. This will allow small employers to combine their resources to meet the intent of these rules by forming one safety committee to represent all employees in the building or at the location. They must comply with all of the requirements for safety committees.

Safety Meetings

The previous rule did not allow for safety meetings. Small employers were given the option as a result of a pilot conducted under the auspice of the innovative process. The final rule allows for holding safety meetings. Safety meetings are an alternate form of safety committee designed to meet the special needs of small employers and employers with mobile worksites.

OAR 437-001-0765(10)

Safety meetings must:

Include all available employees

Employers must make certain that in scheduling their safety meetings they do so on dates that will optimize the number of employees in attendance. Questions may be asked about employees who regularly are not in attendance. Some employees may be expected to rearrange their schedules so as to attend the safety meetings. The intent in allowing safety meetings was not to have a few core employees be the decision makers for the safety and health of all employees. It is intended that all employees be involved in the safety and health meetings to provide input and to make suggestions or recommendations for improvement when appropriate. The employer may decide the format and the operating procedures for conducting the meetings.

Include at least one employer representative authorized to ensure correction of safety and health issues.

The employer must make certain that at least one management representative with authority to make decisions on safety and health issues is in attendance at each meeting. It is important to note that decisions may need to be made at the meetings rather than be put off to a later date. At the very least, the authorized management representative would be able to present the issue to other levels of management for a final decision.

Be held on company time and attendees paid at their regular rate of pay.

This requirement is the same as the similar requirement for safety committees. Employees must be compensated for their time spent in meetings at the appropriate rate of pay. For example, if they are on over-time they should be paid at the over-time rate.

OAR 437-001-0765(11)

Hold safety meetings with the following frequency if:

You employ construction workers.

Employers with employees engaged in the construction industry must meet at least monthly and before the start of each job that lasts more than a week. The rationale for this is that it is important for employees to have a discussion addressing hazards at each work location as they change locations. Keeping in mind that many of the hazards may be similar in nature, meetings do not necessarily have to be held prior to the beginning of each new job. For example, let's just imagine that in one month you report to five different jobs, with the first job lasting 8 days, the second, third and fourth jobs lasting 3 days each and the final job lasting 9 days. You would be required to have a safety meeting prior to the start of the first job because it was going to last more than a week. You would not be required to meet prior to the start of the second, third or fourth jobs because they lasted less than a week. You would be required to have a meeting prior to the start of the fifth and final job that month because it also lasted more than a week. You would have been required to hold two safety meetings that month. In the next month, if your first job lasted 14 days for example, and the rest of the jobs that month each lasted less than a week, you could have one safety meeting prior to the start of the first job. In the following month, if your first, second and third jobs each lasted less than a week and the fourth job lasted for the remainder of the month, you would have at least one safety meeting that month. The point is that there may be some months where only one safety meeting is required and other months where more than one safety meeting is required. Compliance will require some advance planning and estimating of the length of jobs.

Your employees do mostly office work.

Employers with employees mostly engaged in office work must meet with all available employees at least quarterly. This is due to the low hazard nature of the jobs.

All other employers.

All other employers who choose to hold safety meetings, rather than establish and administer a safety committee, must meet at least monthly.

OAR 437-001-0765(12)

Safety meetings must include discussions of:

The safety meetings for all employers, regardless of size, must include discussions of safety and health issues and accident investigations to include the cause and any suggested corrective measures to be taken to prevent similar accidents from recurring.

OAR 437-001-0765(13)

Employers in construction, utility work and manufacturing must document, make available to all employees, and keep for three years a written record of each meeting that includes the following:

All hazards related to tools, equipment, work environment and unsafe work practices must be identified, discussed and documented during the meeting. These discussions must be documented with specific enough detail that the topic is identifiable. The document must also include the date the meeting occurred and the names of those in attendance. *Originally, there was no language in the final rule for safety meetings that required those meetings to be documented. It was understood that the emphasis was to make the safety meeting rules “less of a burden” on employers who, in the past, were not required to have safety and health meetings. The advisory committee was concerned that meetings would not be effective without some form of documentation for a number of reasons. One concern was that without a record, employees and managers would be forced to rely on recall to track progress made on safety and health topics discussed.*

Hence, language was added to require documenting meetings in most industries. In order to determine what employers were considered as working in construction, utility work or manufacturing, one may rely on the North American Industry Classification System (NAICS). Those employers listed in NAICS sector 22 are designated as utilities; those employers listed in NAICS sector 23 are designated as construction; and those employers listed in NAICS sectors 31-33 are designated as manufacturing. Employers listed in those NAICS sectors would be required to maintain minutes of safety meetings. *Another comment was that we would be*

*exempting a huge number of employers from having to keep meeting records if we exempted anyone who was not engaged in construction, utility or manufacturing activities. The employers exempted by this rule, for the most part, would be those employers engaged in low hazard industry. Employers engaged in real estate, banking, insurance sales would not have to keep a record of their meetings but only if **all** employees were in attendance. If all employees were not in attendance then a record would need to be kept. We also removed the word “affected” from the language of the original proposal and stated that no record must be kept if all employees attend the meetings. Concerns were expressed at the February 4, 2008 public hearing that the original draft did not require that there be a record kept of who was in attendance at safety meetings or that minutes be kept beyond discussions about hazards that had been identified.*

All other employers do not need to keep these records if all employees attend the safety meeting.

If employees are absent from the meeting, discussions must be documented so they may be shared with those not attending. An additional concern about the absence of a requirement for documentation was raised because of the caveat that all available employees be required to attend safety meetings. The fear was expressed that there would again be a lack of continuity in who attended the meetings and any hope of progress on topics discussed would become lessened. The importance of being able to share accurately information with those not in attendance was discussed. A consensus was that requiring documentation established a level of accountability. In addition, the absence of documentation has a potential for making enforcement of this rule extremely difficult.

OAR 437-001-0765(14)

Multi-employer worksites

If you are a subcontractor on a multi-employer worksite, your employees may attend the prime contractor safety meeting. You may keep the minutes from those meetings to satisfy the requirement for all available employees attending meetings and to satisfy the need for documentation. Include the minutes from prime contractor meetings with the records of your meetings. *A question was raised asking for clarification about what would happen if the prime contractor did not hold meetings or if the subcontractor employees decided not to attend on those instances where the prime contractor did hold safety meetings. The answer is that the employer would have the responsibility to make certain their employees attended a safety meeting according to the requirements of the rule. If your employees are involved in accidents, the details must be discussed with all of your employees. This means that the attendance at prime contractor safety meetings of*

your employees does not satisfy the requirement for discussing accidents with all of your employees. A separate meeting may need to be held with all employees to discuss the details of any accident.

OAR 437-001-0765(15)

Innovation. An employer may apply for an innovative safety committee or safety meetings if they are unable to comply with the rule yet are able to meet the intent of the rule with whatever procedures they are implementing. This has not changed from the previous rule, however, it would seem that there would be far less a need for innovation with the addition of holding safety meetings as part of the rule. *At the August 28, 2008 public hearing one commenter expressed that he felt employers should be able to establish innovative safety committees or meetings without anyone's approval as long as they were meeting the intent of the rule.* Oregon OSHA does not agree with this position. Allowing this to occur would basically let employers establish whatever method they wanted to address safety and health in their workplaces. Having a rule that specifically requires approval for innovative safety committees or meetings will ensure a degree of uniformity in the establishment of those types of committees or meetings and will help in determining whether or not the intent of the rule is being met.

OAR 437-001-0765(16)

Effective dates. The effective date for compliance with this rule is January 1, 2009. An exception to this is the effective date for compliance with this rule for employers with 10 or fewer employees, other than those in construction. Their effective date is September 19, 2009. *During the public hearing on January 23, 2008, it was suggested that four to six months should be allowed to come into compliance with the final rule once it becomes final.*