

**OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

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**PROGRAM DIRECTIVE**

Program Directive: A-304  
Issued: January 19, 2024

**SUBJECT:** Programmed Inspection for Cause

**AFFECTED STANDARDS/DIRECTIVES**

This program directive provides additional information regarding the application of OAR 437-001-0055 Priority of Inspections; 437-001-0057 Scheduling Inspections; and 437-001-0099 Closing Conference.

**PURPOSE**

This directive establishes Oregon OSHA's enforcement policy and provides guidance for Oregon OSHA personnel on procedures regarding 'programmed inspection for cause' inspections.

**SCOPE**

This directive applies Oregon OSHA wide. It is not a standard, regulation, or any other type of substantive rule. No statement in this instruction should be construed to require the regulated community to adopt any practices, means, methods, operations, or processes beyond those which are already required.

**BACKGROUND**

During the 2023 Legislative Session, Senate Bill 592 (SB 592) was signed into law, requiring Oregon OSHA to complete a comprehensive inspection when specific violative history is met by an employer. Oregon OSHA adopted rules on November 22, 2023 in response to this legislation. As part of the rulemaking, a new type of inspection was created, titled, "programmed inspections for cause." Programmed inspections for cause are prioritized along with the other types of inspections and will be conducted after referrals and before scheduling lists.

Programmed inspection for cause must be opened when:

- An accident investigation revealed that a violation has caused or contributed to a work-related fatality,
- Three or more willful violations occur at a place of employment within a 12-month period; or
- Three or more repeat violations occur at a place of employment within a 12-month period
- An employer has a history of non-compliance and the Administrator deems a comprehensive inspection is necessary for the protection of employees.

This program directive covers enforcement procedures applicable in cases where a programmed inspection for cause is required.

In all respects, such cases are handled in accordance with the Field Inspection Reference Manual (FIRM).

### **ACTION: GUIDANCE**

A. Programmed inspection for cause lists will be maintained and assigned by statewide enforcement managers and field office managers. Programmed inspections for cause result from application of OAR 437-001-0057 – Scheduling Inspections. Additional resources for tracking and comparisons to other scheduling lists may be available in OTIS in the future.

B. Programmed inspection for cause must be opened within one year of the closing conference that triggers this type of inspection. This requirement is applicable when the programmed inspection for cause is triggered when an employer has 3 repeat violations within one year, 3 willful violations within one year, and whenever an inspection of an accident reveals that a violation caused or contributed to a work-related death. There is no timeframe associated with programmed inspection for cause triggered by an employer with a history of non-compliance and the Administrator deems a comprehensive inspection is necessary for employee protection.

If the compliance officer is aware at the time of the closing conference that a programmed inspection for cause will be triggered, the compliance officer should notify the employer during the closing conference. Providing information to the employer that a programmed inspection for cause has been triggered does not constitute advanced notice to the employer because the date of the programmed inspection for cause is not provided to the employer.

Programmed inspection for cause does not change the criteria identified in OAR 437-001-0160 Penalty Criteria - Repeat Violations. To initiate a programmed inspection for cause, the repeat violation must be the same or substantially similar rule. Willful violations do not have to be the same or substantially similar rule.

See Appendix A for examples of programmed inspection for cause initiated by repeat violations. See Appendix B for examples of programmed inspection for cause initiated by willful violations.

Compliance officers should communicate with their supervisor when, based on their professional judgement, an employer has a violation history that should be considered for a programmed inspection for cause. Once CSHO, their manager, or Statewide Enforcement Manager consult, the factors leading to the recommendation will be shared with the Administrator to determine if these factors warrant adding the employer to the programmed inspection for cause list. Among other factors, the Administrator will consider the employer's violation history; complaint or referral history that resulted in violations from the allegations; and/or indications that the employer is not implementing abatement methods across locations or worksites statewide.

A history of non-compliance is identified with violations from complaints, referrals, or accident investigations. This type of inspection trigger is intended to be applied when an employer's violation history reflects a habitual occurrence that requires a more comprehensive approach than the traditional targeting methods that were in effect prior to this rule adoption (such as scheduling lists, complaints, referrals, emphasis programs, etc.).

For example, a fixed employer who receives multiple violations across multiple facilities and abatement who appears to be limited to the locations inspected, or complaint or referral activity indicate that abatement methods are not implemented statewide or maintained.

Compliance officers will not be able to inform employers of the potential of a programmed inspection for cause when it is initiated by a history of violations at any place of employment as they are following repeat violations, willful violations, or a work-related fatality investigation.

C. Programmed inspections for cause will be assigned either a health or safety inspection based on the type that will be most protective for workers in terms of anticipated hazards of the business. It's not a requirement for the compliance officer who was part of the initial inspection that triggered the programmed inspection for cause to be assigned to the subsequent inspection.

D. In the event that consultation has an open consultation with an employer and a programmed inspection for cause inspection is initiated by enforcement, the compliance officer will notify their supervisor, who will notify the appropriate consultation manager, and the consultation will immediately stop consultation activity. Consultation activity can resume after enforcement activity has concluded—including compliance inspection, final order of citation, and abatement.

E. Programmed inspection for cause inspections that are initiated because the employer has had either 3 repeat or 3 willful violations in one year will reset the violation count for programmed inspection for cause inspections. Any subsequent violations will only be counted after the comprehensive inspection is completed and a citation is issued—or no violations were identified. If an employer has a second programmed inspection for cause within a year, the statewide enforcement manager should be informed prior to the inspection.

Programmed inspections for cause that are initiated because the employer had either 3 repeat or 3 willful violations in one year does not eliminate a programmed inspection for cause inspection in the event an accident investigation is found to have caused or contributed to a work-related fatality. In this case, a second comprehensive inspection would be initiated.

Resetting the violation count to initiate a programmed inspection for cause does not reset the criteria for repeat violations in OAR 437-001-0160 Penalty Criteria - Repeat Violation.

F. Programmed inspections for cause do not use the neutral standard concept for other scheduled inspections explained in OAR 437-001-0057(1). Programmed inspections for cause are initiated by violations. For the purposes of programmed inspections for cause, Oregon OSHA will not send notifications to employers based on their NAICS code as identified in OAR 437-001-0057(12) that they're subject to this type of inspection.

Programmed inspections for cause do not appear on an annually generated list like other scheduled inspection lists as explained in OAR 437-001-0057(3), and will not be subject to the exclusions from an inspection identified in OAR 437-001-0057(4).

The programmed inspection for cause list does not have a start or end date. Employers on this list appear on this list for one year after the closing conference that triggered the inspection, or until the programmed inspection for cause inspection is completed.

Following a programmed inspection for cause, the employer will be removed from other scheduled inspection list(s) for that year as identified in OAR437-001-0057. However, the employer can be subject to additional programmed inspections for cause based on their future violation history.

G. Programmed inspections for cause can be opened anytime after the closing conference. Opening a programmed inspection for cause close to the closing conference that initiated the programmed inspection for cause should be considered when, in the professional judgment of the compliance officer, there is an urgency to inspect a specific location.

F. Programmed inspections for cause can be initiated regardless of the employer's appeal of the citations that initiated the inspection.

#### **ACTION: DOCUMENTATION**

All inspections For Cause must be entered as inspection type "Programmed Planned." The scope must be "Comprehensive." The optional code "S-32 For Cause" must be entered under the related/optional tab in optional information.

#### **Appendix A:** Examples of programmed inspection for cause initiated by repeat violations.

Repeat violations must meet the criteria in OAR 437-001-0160 Penalty Criteria - Repeat Violations

#### **Example 1**

2024	2025	2026	2027	2028
First instance violation closing conference: 6/1/2024				
First repeat violation closing conference: 8/1/2024 Inspection for cause: 1				
Second repeat violation closing conference: 12/1/2024 Inspection for cause: 2				
	Third repeat violation closing conference: 7/1/2025 Inspection for cause: 3	<i>Initiates Programmed Inspection for Cause to be opened before 7/1/2026</i>		
	Fourth repeat violation closing conference: 12/1/2025 Inspection for cause: 4	<i>Included in Programmed Inspection for Cause to be opened before 07/01/2025</i>		

		<b>Oregon OSHA opens Programmed Inspection for Cause: 1/30/2026</b>		
		Fifth repeat violation closing conference: 6/1/2026 Inspection for cause: 1		

Example 1 – Programmed inspection for cause initiated.

The employer had three violations in the same year from the date of the closing conferences, but only two repeat violations because the first violation (June 1, 2024) was not a repeat but rather a “first instance.” The third repeat violation, on July 1, 2025 will initiate a programmed inspection for cause. Repeat and willful violations between the closing conference that initiates the programmed inspection for cause and the opening of the comprehensive for cause inspection will be included in the count of violations for that inspection. After the programmed inspection for cause, the count to initiate an subsequent programmed inspection for cause begins again.

### Example 2

2024	2025	2026	2027	2028
First instance violation closing conference: 6/1/2024				
First repeat violation closing conference: 8/1/2024 Inspection for cause: 1				
Second repeat violation closing conference: 12/1/2024 Inspection for cause: 2				
	Third repeat violation closing conference: 9/1/2025 Inspection for cause: 1			
		Fourth repeat violation closing conference: 1/1/2026 Inspection for cause: 2		

Example 2 – No programmed inspection for cause initiated.

The employer had three violations in the same year from the date of the closing conferences, but only two repeat violations because the first violation (June 1, 2024) was not a repeat but rather a “first instance” violation. The third repeat violation on September 1, 2025 will not initiate a programmed inspection for cause because it is outside of the year period from the closing conference on June 1, 2024. A programmed inspection for cause would be initiated if the employer had two more repeat violations closing conference within one year of the September 2025 violation, but as displayed in the example, this did not occur.

**Appendix B:** Examples of programmed inspection for cause initiated by willful violations. Willful violations must meet the criteria identified in OAR 437-001-0175 - Determination of Penalty Willful or Egregious Violation.

**Example 1**

2024	2025	2026	2027	2028
First instance willful violation closing conference: 6/1/2024 Inspection for cause: 1				
Second willful violation closing conference: 8/1/2024 Inspection for cause: 2				
Third willful violation closing conference: 12/1/2024 Inspection for cause: 3	<i>Initiates Programmed Inspection for Cause to be opened before 12/1/2025</i>			
	Fourth willful violation closing conference: 8/1/2025 Inspection for cause: 4	<i>Included in Programmed Inspection for Cause to be opened before 12/1/2025</i>		
	<b>Oregon OSHA opens Programmed Inspection for Cause 9/1/2025</b>			

Example 1 – Programmed inspection for cause initiated. The employer had three willful violations in the same year from the date of the closing conferences. The third willful violation closing conference on December 1, 2024 will initiate a programmed inspection for cause. Repeat and willful violations between the closing conference that initiates the programmed inspection for cause and the opening of the comprehensive for cause inspection will be included in the count of violations for that inspection. After the programmed inspection for cause, the count to initiate an subsequent programmed inspection for cause begins again.

### Example 2

2024	2025	2026	2027	2028
First willful violation closing conference: 6/1/2024 Inspection for cause: 1				
Second willful violation closing conference: 8/1/2024 Inspection for cause: 2				
	Third willful violation closing conference: 7/1/2025 Inspection for cause: 2			
	Fourth willful violation closing conference: 9/1/2025 Inspection for cause: 2			
		Fifth willful violation closing conference: 1/1/2026 Inspection for cause: 2		

Example 2 – No programmed inspection for cause initiated. The employer did not have 3 willful violations in the same year of the closing conferences at any point. A programmed inspection for cause would be initiated if the employer had two more willful violations within one year of the September 2025 violation closing conference, but as displayed in the example this did not occur.

### Example 3

2024	2025	2026	2027	2028
First willful violation closing conference: 6/1/2024 Inspection for cause: 1				
Second willful violation closing conference: 6/1/2024 Inspection for cause: 2				
Third willful violation closing conference: 6/1/2024 Inspection for cause: 3	<i>Initiates Programmed Inspection for Cause to be opened before 6/1/2025</i>			

Example 3 – Programmed inspection for cause initiated. The employer had three willful violations in the same inspection. The third willful violation closing conference on June 1, 2024 will initiate a programmed inspection for cause.