



INTEROFFICE MEMORANDUM
Oregon Occupational Safety & Health Division

September 30, 2009

TO: Interested Parties
FROM: Oregon OSHA
SUBJECT: Amended Rule Filing

Oregon OSHA used an advisory group in this Division 1 rulemaking process, therefore, by Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) we are given authority to file an amended Statement of Need and Fiscal Impact.

The attached document reflects a minor amendment to the original proposal filed with the Secretary of State on June 15, 2009, regarding the Division 1 fixed site enforcement scheduling rules. The amendment makes technical corrections to the fiscal impact statement included in the original rule filing, primarily by describing the reasons behind the statement in somewhat greater detail. However, the conclusion of the fiscal impact statement – that there is no overall fiscal impact – has not been changed in any way.

The comment period on the proposed Division 1 fixed site enforcement scheduling rules closed on August 21, 2009. That proposal, as well as when the final rules are adopted, can be accessed on our web site www.oroSHA.org by selecting Rules/Compliance from the menu on the left, then choose which rule activity from the menu on the right.

Questions concerning this amendment to the Statement of Need and Fiscal Impact may be directed to:

Sue Joye, Administrative Rules Coordinator
Oregon OSHA
Department of Consumer and Business Services
503-947-7449
Sue.c.joye@state.or.us

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

OAR 437

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Amending OAR 437-001-0015, 437-001-0055, 437-001-0057, 437-001-0420.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Proposed changes to Division 1, General Administrative Rules.

Statutory Authority: ORS 654.025(2) and 656.726(4)

Stats. Implemented: ORS 654.001 through 654.295

Need for the Rule(s):

After examining the current scheduling system and historical data on inspections it was determined that the system did not adequately focus our resources in industries considered to be the most hazardous. The current method of using workers compensation claims as the prime indicator of where inspections should be conducted is not a reliable indicator of where the risk of injury is the highest.

Documents Relied Upon, and where they are available:

OAR 437, Division 1, General Administrative Rules

2007 Oregon Legislative Regular Session, House Bill 2702, Plain Language

Oregon Safe Employment Act, Chapter 654 Occupational Safety and Health 2007 Edition

Workers' Compensation Division – Experience Rating Plan Manual – 2003 Edition

North American Industry Classification System (NAICS)

Oregon OSHA FIRM – January 2003

Data from: Department of Consumer and Business Services claim and employer files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, the Bureau of Labor Statistics Census of Fatal Occupational Injuries, and the Oregon Employment Department.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

After consulting with the advisory group assembled for the purposes of developing the changes to the fixed site enforcement scheduling rules, Oregon OSHA has concluded that there is no overall fiscal impact of the rule.

Oregon OSHA's own costs in administering the rule are limited to the rulemaking itself. To the degree the scheduling system and the enforcement activity it generates have a cost to the agency; they are costs that would have been incurred under the previous scheduling system. The rule does not change the number of inspections or the essential manner in which they are conducted – it only modifies those places of employment most likely to be inspected.

All state agencies are affected by the rule in the sense that they are employers under the Oregon Safe Employment Act. However, state agencies other than DCBS/Oregon OSHA will have no costs under the rule other than those they incur as employers. Similarly, units of local government are affected by the rule only in the sense that they are employers under the Oregon Safe Employment Act. Finally, the public as a whole will be affected only to the degree that members of the public are employers and employees.

In relation to these groups, the effect of the rule will be to change, to some degree, those employers and places of employment being inspected. But the net effect on employer costs will be neutral, with some employers experiencing a non-significant increase in costs (due to the minimal costs resulting from the time spent during an inspection) and some employers experiencing a non-significant decrease in costs (for the same reason).

Similarly, all small businesses in the state that employ workers are affected by the rule changes, except those in construction and forest activities. Based on data obtained from the Employment Department regarding non-farm employment, Oregon OSHA estimates that as many as 96 percent of the affected employers are small businesses (fewer than 50 employees). Oregon OSHA has identified an estimated 108,000 places of employment affected by this rule. Applying the 96 percent figure to that number, Oregon OSHA estimates that as many as 103,680 small businesses may be affected by the rule at the time of adoption. However, the same population is affected by the current rule. The rule does not require any new reporting, recordkeeping or other administrative activities of small businesses (or of other businesses). The rule does not require any new equipment, supplies, labor or increased administration. To the degree that inspections themselves involve a cost, Oregon OSHA believes the net effect on small employer costs also will be neutral, with some employers experiencing a non-significant increase in costs (due to the minimal costs resulting from the time spent during an inspection) and some employers experiencing a non-significant decrease in costs (for the same reason).

How were small businesses involved in the development of this rule?

Oregon OSHA convened an advisory committee, specifically for this rulemaking effort, to reach across a broad spectrum of industries. The Fixed Site Scheduling Advisory Committee met numerous times beginning in July 2008 including one meeting with health experts to develop the criteria for high hazard industries for health inspections. They met on seven different occasions to discuss the Division 1 scheduling rules and suggested changes. Representatives included members of manufacturing businesses, the construction industry, city/county services, councils and associations that speak for businesses both large and small, and union leaders.

Administrative Rule Advisory Committee consulted? Yes.

If not, why?

The Fixed Site Scheduling Advisory Committee held seven meetings beginning July 7, 2008 and ending May 22, 2009.

Michael D. Wood
Authorized Signer

Michael D. Wood 9/29/2009
Printed name Date