

Title 380 DEPARTMENT OF LABOR

Chapter 40 Oklahoma Occupational Health and Safety Standards Act Rules*

Subchapter

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*The attached document contains the Department of Labor's revised Oklahoma Occupational Health Safety Standards Act Rules for public sector employers. The official rules text is the text accepted by the Oklahoma Secretary of State for publication in the Oklahoma Register and the Oklahoma Administrative Code. The official rules are on file with the Secretary of State.

380:40-1-1. Purpose

The purpose of the rules in Chapter 40 is to set forth general policies for enforcement of the inspection and citation provisions of 40 O.S. § 401 et seq., the Oklahoma Occupational Health and Safety Standards Act ("the Act"). This rule adopts regulations and national consensus standards, requirements for record keeping and updating of equipment as mandated by state law.

380:40-1-2. Applicable national standards

(a) The Federal Occupational Safety and Health Standards for General Industry (29 CFR 1910) and the Construction Industry (29 CFR 1926) shall be automatically adopted by incorporation as currently published and as hereafter may be revised in the Code of Federal Regulations subject to the following exceptions:

- (1) That the definition of an "employer" as set forth in 29 CFR 1910.2(c) is deleted and the term is hereby defined in accordance with the definition in Title 40 O.S. Section 402(1) for "employer".
- (2) That the Hazard Communication Standard as set forth in 29 CFR 1910.1200 is deleted and the Hazard Communication Standard adopted in the Oklahoma Department of Labor Rules shall apply.
- (3) The definition of "action level" in the General Industry Standard for asbestos (29 CFR 1910.1001(b)) is deleted.
- (4) The section on permissible exposure limit (PEL) in the General Industry Standard for asbestos (29 CFR 1910.1001 (c)) is deleted and hereby replaced with: Permissible exposure limit (PEL). The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.01 fibers per cubic centimeter of air.
- (5) For purposes of compliance with 29 CFR 1910.134(g)(4), it is permissible for the employer to enlist the aid of firefighters from other municipal jurisdictions, or political subdivisions, in order to ensure that enough personnel are present at the site to fulfill the requirements of the "two in, two out" rule. The employer must insure that the firefighters from the other municipal jurisdictions, or political subdivisions are in compliance with 29 CFR 1910.134.

(b) The currently published National Fire Protection Association (NFPA 1971) Standard Protective Ensemble for Structural Fire Fighting, referenced in the Federal Occupational Safety and Health Standards for General Industry (29 CFR 1910) shall be automatically adopted by incorporation as published and as may hereafter be revised in the NFPA Standards.

380:40-1-3. National standards on file

A copy of currently published standards and regulations incorporated by reference in this rule shall be on file at the Oklahoma Department of Labor Office in Oklahoma City.

380:40-1-4. Updating of equipment

Updating of personal protective equipment in accordance with NFPA Standards shall be made as existing equipment is replaced.

380:40-1-5. Recordkeeping

The currently published Federal Occupational Safety and Health Standard 29 CFR 1904 shall be automatically adopted by incorporation as published in the Code of Federal Regulations and as may hereafter be revised in the Code of Federal Regulations with the following exceptions:

- (1) that Subpart B (1904.1, 1904.2, 1904.3 and Appendix A), 1904.37, 1904.38, 1904.39, 1904.40, 1904.41, 1904.42, 1904.45, and, in 1904.7(b)(2), the sentence stating, "You must also report any work-related fatality to OSHA within eight (8) hours, as required by '1904.39" shall not be included;
- (2) that the definition of "Act" pursuant to 29 CFR 1904 means the Oklahoma Occupational Safety and Health Act of 1970 Title 40 O.S. Section 401 et seq.;
- (3) that all references in 29 CFR 1904 to the Assistant Commissioner or Regional Commissioner of the Bureau of Labor Statistics be changed to Oklahoma Department of Labor;
- (4) that all references in 29 CFR 1904 to OSHA No. 300 shall be changed to OK 300; all references to OSHA 300A shall be changed to OK 300A; and references to OSHA No. 301 shall be changed to OK 301;
- (5) the definition of "you" in 29 CFR 1904.46 shall mean "employer" as defined in 40 O.S. 402.

380:40-1-6. Phase-in period [REVOKED]

380:40-1-7. Posting of notice

(a) Each employer shall post and keep posted a notice or notices, to be furnished by the PEOSH Unit of the Oklahoma Department of Labor, informing employees of the protections and obligations provided for in the 40 O.S. § 401 et seq. and that for assistance and information, including copies of specific safety and health standards, employees should contact the Oklahoma Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(b) Reproductions or facsimiles of such State posters shall constitute compliance with the posting requirements where such reproductions or facsimiles are at least 8 ½ inches by 14 inches, and the printing size is at least 10 pt. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, not less than 36 pt.

(c) "Establishment" means a single physical location where agency business is conducted or

where services or operations are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as technicians, engineers, etc., notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (a) of this section.

(d) Any employer failing to comply with the provisions of this section shall be subject to citation in accordance with the provisions of 40 O.S. § 410 (D).

380:40-1-8. Authority for inspection

Employees designated by the Oklahoma Department of Labor as PEOSH Inspectors are authorized by the Commissioner of Labor to enter without delay and at reasonable times any plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, vehicles, apparatus, devices, equipment and materials therein; to question privately any employer or employee; and to review records required by 40 O.S. § 401 et seq. and regulations referenced in this chapter, and other records which are directly related to the purpose of the inspection.

380:40-1-9. Objection to inspection

(a) Upon a refusal to permit the PEOSH Inspector, in exercise of this official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, operator, agent, or employee, in accordance with 380:40-1-8 or to permit a representative of employees to accompany the PEOSH Inspector during the physical inspection of any workplace in accordance with 380:40-1-12(a), the PEOSH Inspector shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The PEOSH Inspector shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Director, OSHA Division, hereafter referred to as "Director." If in the Director's opinion, such refusal is without good cause, the same shall be considered a violation of the Act and these Rules, and may subject the employer to citation. The Director shall consult with the Legal Division, who shall take appropriate action, including obtaining an emergency Order from the Commissioner, pursuant to 40 O.S. § 410(F), if necessary.

(b) A subpoena or Order of the Commissioner, may be obtained in advance of an attempted inspection or investigation if, in the judgment of the Director and the Legal Division, circumstances exist which make such pre-inspection process necessary. Some examples of circumstances in which it may be necessary to seek such an Order in advance of an attempted to inspect or investigate include (but are not limited to):

- (1) When the employer's past practice either implicitly or explicitly puts the Oklahoma Department of Labor on notice that an inspection will not be allowed, absent specific Order of the Commissioner;
- (2) When an inspection is scheduled far from the local office and procuring a subpoena or other Order of the Commissioner prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain an Order, and return to the work site;
- (3) When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring an Order prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(c) For purposes of this section, the term "Order of the Commissioner" shall mean the institution of any appropriate action, including subpoena or "ex parte" application for an Emergency Order or its equivalent.

(d) Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. PEOSH Inspectors are not authorized to grant any such waiver.

380:40-1-10. Advance notice of inspections

(a) Advance notice of inspections may not be given, except in the following situations:

- (1) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
- (2) in circumstances where the inspection can most effectively be conducted after regular business hours where special preparations are necessary for an inspection;
- (3) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and
- (4) in other circumstances where the Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the Director, except that in cases of apparent imminent danger, advance notice may be given by the PEOSH Inspector without such authorization if

the Director is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. Upon the request of the employer, the PEOSH Inspector will inform the authorized representative of employees of the inspection, provided that the employer furnishes the PEOSH Inspector with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with obligations under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the PEOSH Inspector promptly to inform such representative of the inspection, may be subject to citation pursuant to the provisions of 40 O.S. § 410 (D).

380:40-1-11. Conduct of inspections

(a) Inspections shall take place at such times and in such places of employment as the Director or the PEOSH Inspector may direct. At the beginning of an inspection, PEOSH Inspectors shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records they wish to review. However, such designation of records shall not preclude access to additional records as necessary.

(b) PEOSH Inspectors shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, operator, agent or employee of an establishment. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

(c) In taking photographs and samples, PEOSH Inspectors shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. PEOSH Inspectors shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, the PEOSH Inspectors shall confer with the employer or representative and informally notify them of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the PEOSH Inspector any pertinent information regarding conditions in the workplace.

380:40-1-12. Representatives of employers and employees

(a) PEOSH Inspectors shall be in charge of inspections and questioning of persons. A representative of the employer and an authorized employee representative shall be given an opportunity to accompany the PEOSH Inspector during the physical inspection at any workplace for the purpose of aiding such inspection. Different employer and employee representatives may accompany the PEOSH Inspector during each different phase of an inspection provided that it does not interfere with the conduct of the inspection.

(b) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the PEOSH Inspector, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the during the inspection.

(c) PEOSH Inspectors may consult and are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection.

380:40-1-13. Consultation with employees

PEOSH Inspectors may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, employees shall be afforded an opportunity to bring any violation of the Act which they have reason to believe exists in the workplace to the attention of the PEOSH Inspector.

380:40-1-14. Complaints by employees

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Oklahoma Department of Labor. Any such notice shall be submitted in writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided to the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy.

(b) If upon receipt of such notification, it is determined that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists, the Director shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this

section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the PEOSH Inspector in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this section.

(d) If it is determined by the Oklahoma Department of Labor that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint, the complaining party shall be notified in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position to the Commissioner and, at the same time, provide the complaining party with a copy of such statement. Upon the request of the complaining party or the employer, the Commissioner, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Commissioner shall affirm, modify, or reverse the determination of the Director and furnish the complaining party and the employer a written notification of this decision and the reasons therefore. The decision of the Commissioner shall be final and not subject to further review.

(e) If it is determined that an inspection is not warranted because the requirements of this section have not been met, the complaining party shall be notified in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of subsection (a) above.

380:40-1-15. Imminent danger

Whenever and as soon as a PEOSH Inspector concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, the affected employees and employers shall be informed of the danger and that a civil action is recommended to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of the Act. Appropriate citations may be issued with respect to an imminent danger when though, after being informed of such danger by the PEOSH Inspector the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

380:40-1-16. Citations

(a) Upon determination that the employer has violated a standard, rule or order promulgated

pursuant to the Act, or of any substantive rule published in this chapter, the PEOSH Inspector shall issue to the employer a citation.

(b) An appropriate citation shall be issued even though after being informed of an alleged violation by the PEOSH Inspector, the employer immediately abates, or initiates steps to abate, such alleged violation. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation.

(c) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, or regulation, alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(d) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger.

380:40-1-17. Request for extensions of abatement date(s)

(a) An employer may file a request for extension of abatement date(s) when a good faith effort to comply with the abatement requirements of a citation has been attempted, but such abatement has not been completed because of factors beyond the employers reasonable control.

(b) A request for extension of abatement date(s) shall be in writing and shall include the following information:

- (1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.
- (2) The specific additional abatement time necessary in order to achieve compliance.
- (3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
- (4) Available interim steps are being taken to safeguard the employees against the cited hazard during the abatement period.

(c) A request for extension of abatement date(s) shall be filed with the PEOSH unit of the Oklahoma Department of Labor no later than the close of the next working day following the date on which abatement was originally required. A later filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

380:40-1-18. Failure to correct a violation for which a citation has been issued

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for correction, the employer may be commanded to appear before the Commissioner or her designee for hearing on the citation. The Director shall notify the employer by certified mail of the time and place of such hearing.

(b) At the hearing, the employer will be given an opportunity to show cause why the employer has failed to correct the violation(s), or to show that the citation was invalid, or that the alleged violation(s) do not in fact exist.

380:40-1-19. Abatement verification

(a) Abatement certification.

- (1) Within 10 calendar days after the abatement date, the employer must certify to the Oklahoma Department of Labor-PEOSH unit that each cited violation has been abated.
- (2) The employer's certification that abatement is complete must include, for each cited violation, the date and method of abatement.

(b) Abatement documentation.

- (1) The Oklahoma Department of Labor may require along with the information on abatement certification, additional documentation demonstrating that abatement is complete.
- (2) Additional documentation may include, but is not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(c) Abatement plans.

- (1) The Oklahoma Department of Labor may require an employer to submit an abatement plan for each cited violation when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.
- (2) The employer must submit an abatement plan for each cited violation within 25 calendar days from the final date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to be the condition in the interim until abatement is complete.

(d) Progress reports.

- (1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:
 - (A) That periodic progress reports are required and the citation items for which they are required;
 - (B) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;
 - (C) Whether additional progress reports are required; and
 - (D) The date(s) on which additional progress reports must be submitted.
- (2) For each violation, the progress reports must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

(e) Transmitting abatement documents.

- (1) The employer must include, in each submission required by this section, the following information:
 - (A) The employer's name and address;
 - (B) The citation and item numbers to which the submission relates;
 - (C) A statement that the information submitted is accurate; and
 - (D) The signature of the employer or the employer's authorized representative.

(2) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Agency receives the document is the date of submission.

380:40-1-20. Consultation procedures

(a) Experiences with OSHA consultation in the private sector have shown that employers who make a management commitment to safety and health and involve employees in the development and implementation of a safety and health program show far greater results toward the long term reduction of accidents, injuries and illnesses in the workplace. The Oklahoma Department of Labor recognizes that voluntary compliance and a pro-active approach to safety and health with emphasis on a holistic safety and health program is more effective than traditional enforcement methods. Therefore, it is the intent of the PEOSH unit to not only enforce safety standards and regulations, but to assist public employers with voluntarily implementing effective safety and health programs.

(b) PEOSH Inspectors, at the request of the employer, may conduct on-site consultation visits for the purposes of providing information, literature and guidance to the employer on requirement or safety and health standards, implementation of safety and health program elements, record keeping assistance and written program requirements. However, if during a consultation visit, a PEOSH Inspector identifies violation(s) of the referenced federal standards, national consensus standards, or state law, a citation shall be issued in accordance with section 380:40-1-16.

380:40-1-21. Authority over volunteers

Volunteer fire departments that exist as a subdivision of a larger municipal organization are within Oklahoma Department of Labor jurisdiction if that larger municipal organization employs one or more paid workers. In such cases, the inspection and enforcement jurisdiction of ODOL extends to all duties performed by any worker or volunteer on behalf of the Volunteer Fire Department.

380:40-1-22. Safety programs

(a) Definitions

- (1) "Safety training" means instruction in safety and/or health and includes, but is not limited to videos, audio tapes, books, brochures, handouts, slides, classroom instruction or lectures, and in-service training such as tailgate sessions.
- (2) "Safety coordinator" means an employee who has been designated by an employer to coordinate all safety programs of the employer.
- (3) "Safety programs" means those employer activities that:
 - (A) Implement management, leadership, and employee involvement;
 - (B) Implement procedures for identifying and controlling workplace hazards;
 - (C) Develop and communicate safety plans, rules and work procedures; and
 - (D) Conduct or provide for training for all employees in safe and healthful work practices.
- (4) "Type or class of employee" means the occupation, activity, standard industry designation or other characteristic of employees that has a bearing on the nature or extent of workplace hazards to which they are or may be exposed.

(b) The safety coordinator shall be designated by letter, memorandum, job description or other notice. Duties must include responsibility for the four key elements of a safety program described in 380:40-1-22(3). Employers may designate more than one employee to assist by fulfilling specific functions, but the safety coordinator must have ultimate responsibility for implementing the safety programs. Additionally, this employee may be assigned other job duties deemed necessary by the employer which are not related to being the safety coordinator.

(c) Written safety programs shall be developed which are appropriate to the worksite(s) and

the nature of hazards encountered by the employees and which meet requirements of the standards adopted in 380:40. This includes all required program reviews and documentation required by these standards.

(d) Appropriate safety training shall be provided to all employees, including management, no less than quarterly. Documentation of training shall include, but not be limited to, date(s), location, course information, course provider/trainer and a list of employees in attendance. Any additional information required by any specific standard shall also be included. Provisions must be made to arrange for make-up sessions for those employees who were not able to attend the scheduled training.