

Safety and Health Protection on the Job It's The Law!

The Public Employment Risk Reduction Act ensures safe and healthy working conditions for Ohio's public employees.

Public employers shall provide a place of employment free from recognized hazards and be in compliance with the Public Employment Risk Reduction Program (PERRP) occupational safety and health standards, rules and regulations.

Public employees shall comply with the PERRP occupational safety and health standards, rules and regulations.

Complaints

- Any public employee or employee representative has the right to file a complaint with PERRP via fax or letter that describes unsafe or unhealthy conditions in his/her workplace. Names of public employees filing complaints will be kept confidential.

Refusal to Work

- A public employee acting in good faith has the right to refuse to work under conditions he or she reasonably believes present an imminent danger of death or serious harm. This applies if the condition does not normally exist or is not reasonably expected to occur during the course of the employee's regular duties. A public employee who refuses to work under such conditions **must** follow these steps.
 - Notify his or her immediate supervisor that the condition poses imminent danger.
 - Submit a written statement of the imminent danger to PERRP as soon as practical.

There is, however, no right under the PERRP Act for an employee to refuse to work, unless the danger is one that a reasonable person under the circumstances would conclude an imminent danger exists.

Enforcement

- PERRP investigates job sites for unsafe and unhealthy conditions and practices at the request of a public employee, public employee representative or public employer.
- It issues citations requiring public employers to correct safety and health violations.
- A PERRP investigator may privately question a representative sample of employees and management about safety and health conditions in the workplace.

Citations

- If the investigation verifies a violation, PERRP will issue a citation. The public employer must then prominently post this citation in a conspicuous place where they customarily post such notices to their employees.

Reporting Fatalities/Multiple Hospitalizations

- A public employer must contact PERRP *within eight hours* of:
 - Death of any employee from a work-related incident;
 - Inpatient hospitalization of three or more employees from a single work-related incident.

Access to Records

- Employees have the right to copies of their medical records, and records of their exposures to toxic and harmful substances or conditions.

Discrimination

- Employers cannot discharge or otherwise discriminate against employees in any manner for filing a complaint or instituting any provision of the Act. Employees or their representatives may file discrimination complaints with the State Personnel Board of Review within 60 days of the discriminatory act.

Recordkeeping

- Public employers are required to maintain a PERRP 300P Log of injuries and illnesses.
- Public employers are required to submit a PERRP 300AP Summary of Work-Related Injuries and Illnesses to PERRP by Feb. 1 for the previous calendar year.
- Public employers must keep separate records for each establishment. On Feb. 1 of each year, the employer must post the PERRP 300AP at each establishment through April 30.

For More Information Contact:

Public Employment Risk Reduction Program (PERRP)
13430 Yarmouth Drive
Pickerington, Ohio 43147
Phone: 800-671-6858

Hearing Impaired: TTY/TDD 1-800-750-0750
Fax: 614-644-3133
Ohiobwc.com

Board of Directors Executive Summary

Five Year Rule Review: Public Employment Risk Reduction Program (PERRP) Rules O.A.C. Chapter 4167

Background: Five-Year Rule Review

R.C. 119.032 requires BWC to conduct a five-year rule review for each of its rules subject to the R.C. Chapter 119 rulemaking process. In conducting the review, the agency must consider the following criteria (enumerated in the statute):

- (1) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;
- (2) Whether the rule needs amendment or rescission to give more flexibility at the local level;
- (3) Whether the rule needs amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether such incorporation meets standards set forth in the Revised Code;
- (4) Whether the rule duplicates, overlaps with, or conflicts with other rules; and
- (5) Whether the rule has an adverse impact on businesses, and whether any such adverse impact has been eliminated or reduced.

In reviewing the rule, the agency is directed by statute to consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

The PERRP rules are due for five year rule review no later than October 1, 2013. The rules adopting OSHA standards as the standards for the PERRP program, found in Rules 4167-3-04 through 4167-3-04.1, are exempt from five year rule-review.

Background: Public Employment Risk Reduction Program

The PERRP program is established by the Public Employment Risk Reduction Act, found in Ohio Revised Code Chapter § 4167.04. The mission of PERRP is to ensure public employees in Ohio have safe and healthy working conditions. PERRP is distinct from the program operated by the federal Occupational Safety and Health Administration (OSHA), which covers only private sector employees. The PERRP program provides compliance assistance to public employers, and investigates reports of unsafe working conditions.

PERRP provides safety and health protection to approximately 600,000 public employees across Ohio. Public Employers include the state and its instrumentalities, as well as political subdivisions and their instrumentalities, including any county, county or state hospital, municipal corporation, city, village, township, park district, school district, state institution of higher learning, public or special district, state agency, authority, commission, or board;

By statute, the following public employees are exempted from PERRP's general jurisdiction:

- Firefighters, EMTs and police officers, whether employed by a public employer or a nonprofit company that contracts with a public employer;

- Correctional officers in county and municipal facilities;
- Individuals contracted to provide services to a public employer without compensation; and
- Forest officers, park officers, watercraft officers, wildlife officers, or preserve officers.

PERRP has limited jurisdiction over firefighters and EMTs for safety issues related to bloodborne pathogens and needlestick incidents.

Recommendations

This recommendation consists of a substantial restructuring of the PERRP rules to eliminate duplicative and conflicting provisions, clarify confusing provisions, and make the program's rules more user-friendly for public employers.

To allow easier review of the changes being proposed, existing provisions of Chapter 4167 are presented in this packet in black, with additions or changes to existing provisions redlined to allow easier review. The rule concordance on page 3 of this packet shows the location of existing rules in the proposed rules.

The five-year rule review process resulted in a recommendation for four operational changes to the PERRP program. Those changes are as follows:

- Eliminate the conflicting PERRP standard for traffic control devices and conforms the PERRP standard to the rules promulgated by the Ohio Department of Transportation. The previously adopted OSHA standard and Ohio Revised Code § 4511.09 regarding traffic control devices were not consistent.
- Eliminate the annual reporting requirement for employers meeting certain conditions. Public employers with fewer than five employees are no longer required to submit an annual summary to the Division of Safety & Hygiene if they did not have a reportable injury for that year.
- Specify that the Superintendent shall determine which risk reduction standards apply in conducting inspections and investigations. This change eliminates ambiguity where multiple risk reduction standards could be argued to apply to an employer.
- Specify that where the Superintendent finds substantial probability that a worksite condition or practice could result in death or serious physical harm, the Superintendent must consult with the Administrator prior to issuing an order to the public employer to cease operations at that worksite. This change conforms BWC rule to ORC 4167.10(B)(4).

The remaining changes proposed to the rules do not impact operation of the PERRP program, but are made to enhance simplicity, clarity, and consistency in the rules.

Rule changes will be effective ten days after final filing.

Changes to current PERRP program operation highlighted in **orange**.

Rule Provisions	Existing Location	Proposed Location	Comment
Definitions	OAC 4167-1-01	Same	<ul style="list-style-type: none"> • No change in program operation. <ul style="list-style-type: none"> ○ Link certain definitions to their Ohio Revised Code definition. ○ Update statutory references to Public Employment Risk Reduction Act. ○ Eliminate definitions appearing only once or in specific rules.
Official Address	OAC 4167-1-02	Rescinded	<ul style="list-style-type: none"> • No change in program operation. <ul style="list-style-type: none"> ○ Rule is not necessary as the PERRP poster that every employer must post at its locations provides contact information for the program, and any required forms indicate the manner in which they should be filed.
Filing of Documents	OAC 4167-1-16	Rescinded	<ul style="list-style-type: none"> • No change in program operation. <ul style="list-style-type: none"> ○ These provisions are duplicated in the hearing provisions or outline basic hearing procedures that need not be outlined in rule.
Continuances	OAC 4167-1-17		
Stipulations	OAC 4167-1-18		
Exhibits	OAC 4167-1-19		
Refusal to Work Procedures	OAC 4167-2-01	Consolidated into OAC 4167-2-01	<ul style="list-style-type: none"> • No change in program operation.
Employee Rights	OAC 4167-2-02		
Employer Rights	OAC 4167-2-03		
Inspection and Enforcement Procedure	OAC 4167-2-04		
Incorporation by Reference	OAC 4167-3-01	Consolidated into OAC 4167-3-01	<ul style="list-style-type: none"> • No change in program operation.
Adoption of Standards	OAC 4167-3-02		
Adoption of Standards	OAC 4167-3-03		
Amending of Existing Standards	OAC 4167-3-04	Consolidated into OAC 4167-3-03	<ul style="list-style-type: none"> • Resolved conflict in previously adopted OSHA standard and Ohio Revised Code § 4511.09 regarding traffic control devices (language rescinding OSHA standard, which conflicts with provisions promulgated by the Ohio Department of Transportation is added to OAC 4167-3-03(B)(17)). • No additional change in program operation.
Amending of Existing Standards by the BWC division of Safety & Hygiene	OAC 4167-3-04.1		
Amending of Standards	OAC 4167-3-04.2		

Changes to current PERRP program operation highlighted in **orange**.

Rule Provisions	Existing Location	Proposed Location	Comment
Ohio Specific Safety Standards	OAC 4167-3-05	Same	<ul style="list-style-type: none"> ● Resolved conflict in previously adopted OSHA standard and Ohio Revised Code § 4511.09 regarding traffic control devices ● No additional change in program operation. <ul style="list-style-type: none"> ○ Consolidate duplicative language in radiation standards provisions ○ Incorporate existing ORC requirements regarding bloodborne pathogens into rule.
Safe Needle Standards	OAC 4167-3-06	OAC 4167-6-11	<ul style="list-style-type: none"> ● No change in program operation.
Notification to Employees	OAC 4167-4-01	Same	<ul style="list-style-type: none"> ● No change in program operation. <ul style="list-style-type: none"> ○ Consolidate duplicative provisions into single set of guidelines for public employers ○ Poster set forth in Appendix A is still required to be published and posted, but is no longer codified in rule – the Superintendent must make the poster available through BWC’s website.
Abatement Dates	OAC 4167-5-01	Same	<ul style="list-style-type: none"> ● No change in program operation.
Undue Hardship	OAC 4167-5-02	Same	<ul style="list-style-type: none"> ● No change in program operation.
Petition for a Modification of Abatement Date	OAC 4167-5-03	Same	<ul style="list-style-type: none"> ● No change in program operation.
Recording and Reporting Occupational Injuries and Illnesses	OAC 4167-6-01	Consolidated into OAC 4167-6-01	<ul style="list-style-type: none"> ● Public employers with fewer than five employees are no longer required to submit an annual summary to the Division of Safety & Hygiene if they did not have a reportable injury for that year. ● No additional change in program operation.
Log and Summary of Work-Related Injuries and Illnesses	OAC 4167-6-02		
Supplementary Record	OAC 4167-6-03		
Annual Summary	OAC 4167-6-04		
Falsification and Failure to Keep Records or Reports	OAC 4167-6-05		
Retention of Records	OAC 4167-6-07		
Access to Records	OAC 4167-6-08		

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Rule Provisions	Existing Location	Proposed Location	Comment
Records for Substances Required to be Monitored or Measured	OAC 4167-6-09	Same	<ul style="list-style-type: none"> No change in program operation.
Reporting of Fatality or Multiple Hospitalization Accidents	OAC 4167-6-10	Same	<ul style="list-style-type: none"> No change in program operation.
Variances from Ohio Public Employment Risk Reduction Standards	OAC 4167-7-01	Same	<ul style="list-style-type: none"> No change in program operation. <ul style="list-style-type: none"> Incorporate existing Revised Code provisions relating to application and granting of variances to eliminate redundancy in rules.
Inspection Procedures	OAC 4167-8-01(A) & (B) (inspection provisions)	OAC 4167-8-01	<ul style="list-style-type: none"> Specify that the Superintendent shall determine which risk reduction standards apply in conducting inspections and investigations. No additional change in program operation.
	OAC 4167-8-01(C) (complaint provisions)	OAC 4167-2-02	<ul style="list-style-type: none"> No change in program operation.
	OAC 4167-8-01(D)& (F) (imminent danger provisions)	OAC 4167-8-02	<ul style="list-style-type: none"> Specify that where the Superintendent finds substantial probability that a worksite condition or practice could result in death or serious physical harm, the Superintendent must consult with the Administrator prior to issuing an order to the public employer to cease operations at that worksite. <ul style="list-style-type: none"> This change conforms rule to ORC 4167.10(B)(4). No additional change in program operation.
	OAC 4167-8-01(E) (citation provisions)	OAC 4167-8-03	<ul style="list-style-type: none"> No change in program operation.
Discrimination	OAC 4167-9-01	Same	<ul style="list-style-type: none"> No change in program operation.
Protection of Trade Secrets and Confidential Information	OAC 4167-10-01	OAC 4167-10-01 & OAC 4167-10-02	<ul style="list-style-type: none"> No change in program operation. <ul style="list-style-type: none"> Update references to material safety data sheets and chemical inventory forms to reflect OSHA's most recent standards on hazard communications.
Emergency Temporary Standard	OAC 4167-11-01	OAC 4167-3-02	<ul style="list-style-type: none"> No change in program operation.

Changes to current PERRP program operation highlighted in **orange**.

Rule Provisions	Existing Location	Proposed Location	Comment
Abatement Verification	OAC 4167-13-01	Same	<ul style="list-style-type: none"> • No change in program operation.
Contests of Citations	OAC 4167-14-01	OAC 4167-10-01 & OAC 4167-8-03	<ul style="list-style-type: none"> • No change in program operation. <ul style="list-style-type: none"> ○ Shift provisions regarding employer’s ability to request an informal conference to OAC 4167-8-03 to clarify that a formal contest of a citation need not be filed to request conference with the Division of Safety & Hygiene.
Hearings and Appeals	OAC 4167-14-02	Same	<ul style="list-style-type: none"> • No change in program operation. <ul style="list-style-type: none"> ○ Clarify that the Superintendent may have a hearing in determining the appropriateness of the hearing officer’s decision.
Appeals to the Court	OAC 4167-14-03	Same	<ul style="list-style-type: none"> • No change in program operation.
Exemption Application Requirements	OAC 4167-15-01	Rescind	<ul style="list-style-type: none"> • No change in program operation. <ul style="list-style-type: none"> ○ Exemptions remain available to public employers, however the provisions of ORC § 4167.19 relating to the exemption of an employer from the PERRP program are self-executing; BWC exercises no discretion in administering these Revised Code Provisions.
Exemption May be Revoked	OAC 4167-15-02		

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

4167-1-01 Definitions.

As used in this chapter:

- (A) [“Employment risk reduction standard,” “Ohio employment risk reduction standard,” “public employee,” “public employee representative,” and “undue hardship” have the same meaning as defined in section 4167.01 of the Revised Code.](#)
- (B) “Act” means the Public Employment Risk Reduction Act codified [in Chapter 4167 of the Revised Code.](#)
- (C) “Administrator” means administrator of the bureau of workers' compensation.
- (D) [“Compliance safety and health officer” or “compliance officer” means a representative of the division designated by the superintendent to conduct inspections under this chapter.](#)
- (E) [“Division” means the division of safety and hygiene.](#)
- (F) “Establishment” means a single physical location where business is conducted or where services or industrial operations are performed.
- (G) “Imminent danger” means a condition or practice in any place of employment, where such a danger exists, which reasonably can be expected to cause death or serious physical harm, immediately or before the danger's imminence can be eliminated through the inspection procedures provided by section 4167.10 of the Revised Code.
- (H) “Public employee” or “employee” has the same meaning as public employee in section 4167.01 of the Revised Code.
- (I) “Public employer” or “employer” has the same meaning as public employer in section 4167.01 of the Revised Code.
- (J) “Superintendent” means superintendent of the division, [or the superintendent’s designee.](#)

**PROPOSED RULE
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concordance)
[Change proposed in 5 yr. review](#)
[Provisions moved within same rule](#)

4167-2-01 Refusal to work.

This rule is promulgated pursuant to division (A) of section 4167.06 of the Revised Code.

(A) A public employee acting in good faith has the right to refuse work under conditions that the employee reasonably believes present an imminent danger of death or serious harm to the employee if all of the following conditions are met:

- (1) The working conditions are not as normally exists or reasonably might be expected to occur in the normal and regular duties of the employee.
- (2) There is insufficient time to eliminate the danger through the inspection and enforcement procedures provided by section 4167.10 of the Revised Code.
- (3) The working conditions are such that a reasonable person would conclude an imminent danger exists.
- (4) The employee has requested that their immediate supervisor or other supervisory representative of the employer ~~to have correct~~ the hazardous condition ~~corrected~~, but the supervisor or representative declines to correct the hazardous condition.

(B) Notice to superintendent required.

An employee who exercises his right to refuse work under this rule must or notify the superintendent in a written statement, as soon as practical, of the working conditions under which the employee has refused to work. [An employee may provide initial notice to the superintendent via telephone if the employer declines to correct the hazardous working conditions.](#)

(C) Inspection by superintendent.

Upon receipt of the notice, the superintendent shall immediately contact the public employer and inform the employer of the notification. The superintendent shall also inform the employer that a compliance officer will immediately inspect the premises of the employer, [pursuant to rule 4167-8-01 of the Administrative Code. If, upon inspection, the superintendent finds any condition or practice which presents an imminent danger to the safety and health of a public employee, shall issue a "notice of imminent danger" pursuant to rule 4167-8-02 of the Administrative Code.](#)

(D) Public employee rights.

A public employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the public employer shall, in addition to retaining a right to continued employment, receive full compensation for the tasks that would have been performed. If the public employer reassigns the public employee, the public employer shall pay the public employee's full compensation as if the public employee were not reassigned.

(E) Public employer rights.

A public employee who refuses to perform assigned tasks under paragraph (A) of this rule and fails to meet all of the conditions set forth in that paragraph for the refusal is subject to any disciplinary action provided by law or agreement between the public employer and public employee for a refusal to work, including, but not limited to, suspension, nonpayment of wages for the duration of the refusal to work, and discharge.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules (location may have changed; see concordance) Change proposed in 5 yr. review Provisions move d within same rule
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4167-2-02 Complaint by public employee.

- (A) Any public employee or public employee representative who believes that a violation of an Ohio employment risk reduction standard exists that threatens physical harm may request an inspection by giving written, dated notice to the superintendent of the violation.
- (1) The notice shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the public employee or public employee representative. The names of the public employee making the notice or any employees referred to in the notice shall not appear in the copy provided to the public employer and shall be kept confidential.
 - (2) The notice shall include:
 - (a) A description of the hazard to include, if applicable or possible, the date(s) and time(s), the location, and/or the pieces of equipment involved.
 - (b) The names of the public employee(s) or duties of the public employee(s) who are affected.
- (B) If, upon receipt of a notification, the superintendent determines that there are no reasonable grounds to believe that a violation or danger exists, the superintendent shall inform the public employee or public employee representative in writing of his determination.
- (1) The complaining party may request reconsideration of such determination by submitting a written statement of position to the superintendent. The superintendent shall submit a copy of such statement, with confidentiality of the complainant maintained, to the employer.
 - (2) The employer may submit an opposing written statement of position with the superintendent.
 - (3) The superintendent, at his or her discretion, may hold informal conferences in which the complaining party and the employer may orally present their views.
 - (4) After considering all written and oral views presented, the superintendent shall affirm, modify, or reverse the original determination and furnish the complaining party and the employer a written notification of the decisions and the reasons thereof. Such determination shall be without prejudice to the filing of a new complaint correcting any deficiencies in the original complaint that may be identified by the superintendent.
- (C) If, upon receipt of a notification, the superintendent determines that there are reasonable grounds to believe that a violation or danger exists, the superintendent shall, within five business days after receipt of the notification, notify the public employer, by certified mail, return receipt requested, of the alleged violation or danger.
- (1) The notice provided to the public employer or his agent shall:
 - (a) Contain a copy of the notice provided to the superintendent by the public employee or the public employee representative;
 - (b) Inform the public employer of the alleged violation or danger; and
 - (c) Notify the employer that that the superintendent will investigate and inspect the public employer's workplace as provided in rule 4167-8-01 of the Administrative Code.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
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[Change proposed in 5 yr. review](#)
~~[Provisions move d within same rule](#)~~

- (2) The public employer must respond to the superintendent concerning the alleged violation or danger within thirty days after receipt of the notice.
- (a) If the public employer does not correct the violation or danger within the thirty-day period or if the public employer fails to respond within that time period, the superintendent shall investigate and inspect the public employer's workplace as provided in rule 4167-8-01 of the Administrative Code.
- (b) The superintendent shall not conduct any inspection prior to the end of the thirty-day period unless requested or permitted by the public employer.
- (i) If the employer requests such inspection, the superintendent shall not issue a citation with respect to any findings during the inspection prior to the close of the thirty-day period during which the employer is permitted to respond to the notice of alleged violation or danger.
- (ii) If the employer successfully abates all violations or dangers identified during the inspection prior to the close of the thirty-day period during which the employer is permitted to respond to the notice of alleged violation or danger, the superintendent shall not issue a citation for the violations or dangers alleged in the complaint.
- (D) The authority of the superintendent to investigate and inspect premises pursuant this rule is not limited to the alleged violation or danger contained in the notification.
- (1) The superintendent may investigate and inspect any other area of the premises where they have reason to believe that a violation or danger exists.
- (2) If the superintendent detects any obvious or apparent violation at any temporary place of employment while en route to the premises to be inspected or investigated, and that violation presents a substantial probability that the condition or practice could result in death or serious physical harm, the superintendent may use any of the enforcement mechanisms provided in this section to correct or remove the condition or practice.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
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[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

4167-3-01 Employment Risk Reduction Standards.

Pursuant to section 4167.07 of the Revised Code, the following occupational safety and health standards promulgated by the United States secretary of labor are adopted as Ohio employment risk reduction standards:

- (A) The “Occupational Safety and Health Act of 1970,” 84 Stat. 1590, 29 U.C.S.A. 651 as amended.
- (B) The Code of Federal Regulations, Title 29, Subtitle b, Chapter XVII, Part 1910 occupational safety and health standards Subpart C to and including Subpart T and Subpart Z.
- (C) The standards of Part 1926, Subpart C to and including Subpart X, with the exclusion of standards 29 CFR 1910.96, 1910.97, 1926.53, and 1926.54.
- (D) The Code of Federal Regulations, Title 29, Subtitle B, Chapter XVII, Part 1910 occupational safety and health standards 1910.132, 1910.133, 1910.135, 1910.136, and 1910.138.
- (E) The Code of Federal Regulations, Title 29, Subtitle B, Chapter XVII, Part 1928 occupational safety and health standards.

**PROPOSED RULE
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[Change proposed in 5 yr. review](#)
[Provisions moved within same rule](#)

4167-3-02 Emergency temporary standards.

- (A) An emergency temporary Ohio employment risk reduction standard shall be issued if the superintendent finds both of the following:
- (1) Public employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
 - (2) The emergency standard is necessary to protect employees from the danger.
- (B) The emergency standard shall take effect immediately upon publication in newspapers of general circulation in Cleveland, Columbus, Cincinnati, and Toledo.
- (1) Such emergency standard shall be in effect no longer than fifteen days, unless the administrator approves the standard, in which case the standard shall be in effect no longer than one hundred twenty days after issuance by the superintendent.
 - (2) The superintendent may renew an emergency standard approved by the administrator for a time period not to exceed one hundred days if the conditions prompting the emergency standard continue to exist.
- (C) The administrator, with the advice and consent of the board of directors, shall adopt a permanent Ohio public employment risk reduction standard to replace the emergency standard on or before the final expiration date of the temporary emergency standard if the conditions prompting the emergency standard are expected to persist.

**PROPOSED RULE
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[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

4167-3-03 Amending of existing standards

- (A) The administrator, with the advice and consent of the bureau of workers' compensation board of directors, has the authority to amend Ohio employment risk reduction standards.
- (B) The Ohio employment risk reduction standards are amended as referenced by:
- (1) U.S. department of labor [OSHA, 1994] “29 CFR 1910 and 1926; safety standards for fall protection in the construction industry; final rule.” Federal register, vol. 59, no. 152., pages 40729 through and including 40753, August 10, 1994.
 - (2) U.S. department of labor [OSHA, 1994] “29 CFR 1910 and 1926; occupational exposure to asbestos; final rule.” Federal register, vol. 59, no. 153., pages 41057 through and including 41162, August 10, 1994.
 - (3) U.S. department of labor [OSHA, 1994] “29 CFR 1910, 1926, and 1928; retention of D.O.T. markings, placards, and labels; final rule.” Federal register, vol. 59, no. 137., pages 36695 through and including 36700, July 19, 1994.
 - (4) U.S. department of labor [OSHA, 1994] “29 CFR 1910.120 and 1926.65; hazardous waste operations and emergency response; final rule.” Federal register, vol. 59, no. 161., pages 43270 through and including 43280, August 22, 1994.
 - (5) U.S. department of labor [OSHA, 1994] “29 CFR 1910 and 1928; logging operations; final rule.” Federal register, vol. 59, pages 51672 through and including 51748, October 12, 1994.
 - (6) U.S. department of labor [OSHA, 1996] “29 CFR 1910 and 1926;” safety standards for scaffolds used in the construction industry, final rule” Federal register, vol. 61, no. 170, pages 46104 through and including 46131, August 30, 1996.
 - (7) U.S. department of labor [OSHA, 1996] “29 CFR 1910 and 1926; occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rule: corrections” Federal register, vol. 61, no. 165, pages 43456 through and including 43459, August 23, 1996.
 - (8) U.S. department of labor [OSHA, 1996] “29 CFR 1910, et al. Occupational Exposure to 1, 3-butadiene; final rule:” Federal register, vol. 61, no. 214, pages 56831 through and including 56856, November 4, 1996.
 - (9) U.S. department of labor [OSHA, 1997] “29 CFR 1910, 1915, 1926, et al. Occupational exposure to methylene chloride; final rule.” Federal register, vol. 62, no. 7, pages 1601 through and including 1619, Friday, January 10, 1997.
 - (10) U.S. department of labor [OSHA, 1998] “29 CFR 1910.134 and 1926.103 changed designation to 1910.139; respiratory protection; final rule.” Federal register vol. 63, pages 1152 through and including 1300, April 8, 1998.
 - (11) U.S. department of labor [OSHA, 1998] “29 CFR 1910.1052; 1910.1025; 1910.1047 and 1910.1048. Methylene chloride; final rule.” Federal register, vol. 63, pages 50711-50732. September 22, 1998.
 - (12) U.S. department of labor [OSHA, 1998] “29 CFR 1910.141; 1910.142; 1910.145; 1910.146; 1910.147. Permit required confined space; final rule.” Federal register, vol. 63, no. 230, pages 66018 through and including 66040, December 1, 1998.

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[Provisions moved within same rule](#)

- (13) U.S. department of labor [OSHA, 1998] “29 CFR 1910.178; and 1926.602. Powered industrial truck operator training; final rule.” Federal register, vol. 63, no. 230, pages 66238 through and including 66274, December 1, 1998.
- (14) U.S. department of labor [OSHA, 1999] “29 CFR 1910.103, 1910.16 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911. Dipping and coating operations; final rule.” Federal register, vol. 64, no. 55, pages 13909 through and including 13912, March 23, 1999.
- (15) U.S. department of labor [OSHA, 2001] “29 CFR part 1910; occupational exposure to bloodborne pathogens; needlesticks and other sharps injuries; final rule.” Federal register, vol. 66, no. 12, pages 5324 and 5325, January 18, 2001.
- (16) U.S. department of labor [OSHA, 2001] “29 CFR 1926-amended; changes to subpart M and subpart R; steel erection.” Federal register, vol. 66, no. 12, pages 5265 through and including 5280, January 8, 2001.
- (17) U.S. department of labor [OSHA, 2002] “29 CFR 1926.200; 1926.201; 1926.202; and 1926.203, safety standards for signs, signals, and barricades; final rule: “Federal register, vol. 67, no.177, pages 57722 through and including 57736, Thursday, September 12, 2002, [except 29 CFR 1926.200\(g\)\(2\) and 29 CFR 1926.202.](#)”
- (18) U.S. department of labor [OSHA, 2002] “29 CFR 1910.33 through 1910.39, and 1910.119; 1910.120; 1910.157; 1910.268; 1910.272; 1910.1047; 1910.1050 and 1910.1051, exit routes, emergency action plans, and fire prevention plans; final rule: “Federal register, vol. 67, no.216, pages 67949 through and including 67965, Thursday, November 7, 2002.
- (19) U.S. department of labor [OSHA, 2004] “29 CFR 1910.401; 1910.402; 1910.424; and 1910.430. Commercial Diving Operations; final rule.” Federal register, vol. 69, no.31, pages 7351 through and including 7366, February 17, 2004.
- (20) U.S. department of labor [OSHA, 2007] 29 CFR 1910 - amended; changes to subpart S Electrical. Federal Register, vol. 72, No. 30, pages 7136 through and including 7221, February 14, 2007.
- (21) U.S. department of labor [OSHA, 2007] “29 CFR Parts 1910; 1915; 1917; 1918; and 1926 employer payment for personal protective equipment; final rule.” Federal Register, vol. 72, no. 220, pages 64341 through and including 64430, November 15, 2007.
- (22) U.S. department of labor [OSHA, 2009] “29 CFR Parts 1910; 1915; 1917; 1918; - amend; Cutting and brazing, Eye and face protection, Foot protection, Head protection, Incorporation by reference, Ventilation, and Welding; Final rule.” Federal Register, vol. 74, no. 173, pages 46350 through and including 46361, September 9, 2009.
- (23) U.S. department of labor [OSHA, 2009] “29 CFR Parts 1910; Revising Standards Referenced in the Acetylene Standard. Final rule.” Federal Register, vol 74, no 216, pages 57883 through and including 57884, November 10, 2009.
- (24) U.S. department of labor [OSHA, 2010] “29 CFR Parts 1926; Revising the cranes and derricks standard. Final rule.” Federal register, vol 75, no 215, pages 68429 through and including 68430, November 8, 2010.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

- (25) U.S. department of labor [OSHA, 2011] “29 CFR Parts 1910; 1910.6; 1910.102, Revising Standards Referenced in the Acetylene Standard. Final rule.” Federal Register, vol. 76, no. 233, pages 75782 through and including 75786, December 5, 2011.
- (26) U.S. department of labor [OSHA, 2012] “29 CFR 1910; 1915; 1926; Hazard Communication. Final Rule.” Federal register, vol. 77, no. 58, pages 17574 through and including 17896, March 26, 2012.
- (27) U.S. department of labor [OSHA, 2012] “29 CFR 1910, 1915, 1917, 1918, and 1926, Updating OSHA Standards Based on National Consensus Standards; Head Protection. Direct final rule.” Federal register, vol. 77, no. 121, pages 37587 through and including 37600, June 22, 2012.
- (28) U.S. department of labor [OSHA, 2013] “29 CFR 1910, 1915, and 1926, Hazard Communication; Corrections and Technical Amendment. Final rule.” Federal register, vol.78, no. 27, pages 9311 through and including 9315, February 8, 2013.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

Change proposed in 5 yr. review

Provisions moved within same rule

4167-3-05 Ohio specific safety standards.

(A) Radiation standards

(1) ~~1910.96~~ Ionizing radiation: Any ~~utilization-use~~ of ionizing radiation is to comply with the standards for protection against radiation promulgated by the United States nuclear regulatory commission set forth in 10 C.F.R. 20, the exposure limits recently updated by the nuclear regulatory commission (NRC). For purposes of this section, radiation includes alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other atomic particles, but ~~such term~~ does not include sound or radio waves, visible light, infrared or ultraviolet light.

(2) ~~1910.97~~ Nonionizing radiation:

Any ~~utilization-use~~ of nonionizing radiation, specifically electromagnetic radiation, is to comply with the recommended standards of the American conference of governmental industrial hygienists (ACGIH).

~~(3) 1926.53 Ionizing radiation~~

~~(a) In construction and related activities involving the use of sources of ionizing radiation, regulations of the nuclear regulatory commission (NRC) incorporated in 10 CFR 20 shall apply.~~

~~(b) Any activity which involves the use of regulated radioactive materials or radiation producing devices, shall be performed by competent persons trained in the proper and safe operation of such equipment.~~

~~(4) 1926.54 Nonionizing radiation~~

~~Any construction and related activities involving the use of nonionizing radiation, is to comply with the recommended standards of the American conference of governmental industrial hygienists (ACGIH).~~

(B) Traffic control standards

Any use of traffic control devices by a public employer must comply with the Ohio manual of uniform traffic control devices promulgated by the Ohio department of transportation pursuant to section 4511.09 of the Revised Code.

(C) Bloodborne pathogen standards

Each public employer of health care workers shall do the following:

(1) Include as a part of the employer's engineering and work practice controls, needleless systems, sharps that are manufactured with engineered sharps injury protection, and other devices that comply with the United States occupational safety and health administration's bloodborne pathogen standards as set forth in 29 C.F.R. 1910.1030.-

(2) Develop and implement a written exposure control plan that is consistent with the employment risk reduction standards for bloodborne pathogens as set forth in rules 4167-3-01 and 4167-3-03 of the Administrative Code, and update such plan at least once a year.

(3) Ensure that all public health care workers are trained in the use of engineering and work practice controls before undertaking any task with potential for exposure incidents.

(4) Maintain accurate records of health care exposure incidents, as required by Rule 4167-6-11 of the Administrative Code.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

4167-4-01 Notice to employees.

- (A) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided under the act. [The superintendent shall post a list of required notices and the form of those notices on http://www.ohiobwc.com.](#)
- (B) Any notice required by this rule shall be posted by the employer in each establishment operated by the employer in a conspicuous place 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.
- (1) [Where distinctly separate operations of the public employer are performed at a single physical location, each activity shall be treated as a separate establishment for purposes of this rule. Separate operations include, but are not limited to, multiple agencies of a public employer located within a single building.](#)
 - (2) Where employees are engaged in activities that are not ordinarily conducted in an establishment of the public employer, the required notice or notices shall be posted at the location to which employees report each day.
 - (3) Where employees do not report to a physical location, [the employer shall provide such employees individual copies of the notice on an annual basis.](#)

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

Change proposed in 5 yr. review

Provisions moved within same rule

4167-5-01 Abatement dates.

- (A) ~~The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation, and abatement date shall be set forth in the citation as a specific date, not a number of days.~~
- (B) In establishing the time limits in which a public employer must abate a violation under this ~~section~~chapter, the superintendent shall consider the following:
- (1) The costs to the ~~public~~-employer;
 - (2) The size and financial resources of the ~~public~~-employer;
 - (3) The severity of the violation;
 - (4) The technological feasibility of the ~~public~~-employer's ability to comply with requirements of the citation;
 - (5) The possible present and future detriment to the health and safety of any public employee for failure of the ~~public~~-employer to comply with requirements of the citation; and
 - (6) ~~Such o~~Other factors as the superintendent determines appropriate.
- (B) ~~(C)~~ After considering the factors in paragraph (B) of this rule, the superintendent shall fix the abatement period to be the shortest interval within which the employer can reasonably be expected to correct the violation, but not more than two years. The abatement date shall be set forth in the citation as a specific date, not a number of days.
- (C) ~~Where the superintendent determines it is appropriate, the may give the employer up to two years to comply with a violation and superintendent may grant a one year extension to the abatement period. extend that period an additional one year if determined appropriate.~~

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)
[Change proposed in 5 yr. review](#)
[Provisions moved within same rule](#)

4167-5-02 Undue hardship.

(A) In the event that a rule or order issued by the superintendent would cause undue hardship upon a public employer, the employer may request an exclusion from such a rule or order.

(B) The superintendant shall not grant any undue hardship exclusion request that is:

(1) Requesting [exclusion from an order issued in conjunction with a finding of imminent danger under rule 4167-8-02 of the Administrative Code.](#)

(2) ~~unless an action is required to prevent imminent danger of death or serious harm to a public employee.~~

(B) ~~An exclusion request on the basis of an undue hardship may not be~~ Made on behalf of a group of public employers.

(C) An exclusion request on the basis of an undue hardship may be granted by the superintendent when ~~there is not an imminent danger of death or serious harm to a public employee and any requirement imposed under the provisions of section 4167.01 of the Revised Code or~~ a rule or order issued ~~thereunder under this chapter~~ would require a public employer to take action with significant difficulty or expense when considered in light of, but not limited to, all of the following factors:

- (1) The nature and cost of the action required by a rule or an order issued under this chapter;
- (2) The overall financial resources of the public employer;
- (3) The number of persons employed by the public employer at the particular location where the action may be required;
- (4) The effect on expenses and resources or the impact otherwise of the action required upon the operations of the public employer at the location where the action may be required;
- (5) The overall size of the public employer with respect to the number of its public employees;
- (6) The number, type, and location of the public employer's operations, including the composition, structure, and functions of the work force of the public employer;
- (7) The geographic separateness, administrative, or fiscal relationship of the public employer's operations to the whole public employer.

(D) A public employer's ~~request for an undue hardship~~ exclusion ~~request on the basis of undue hardship~~ must be in writing and include the following information:

- (1) The name and address of the public employer and the name, title, and telephone number of a contact person for the employer in regard to the exclusion request;
- (2) The address of the place or places of employment involved;
- (3) A clear and specific statement as to the order, standard or regulation for which ~~an~~ the exclusion is requested;
- (4) A statement that the exclusion does not involve an order, regulation or action which is required to prevent imminent danger or death or serious harm to a public employee;

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TO BE ADOPTED**

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Change proposed in 5 yr. review

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- (5) A statement by the public employer supported by statements from qualified persons with firsthand knowledge of facts represented, that the public employer is unable to comply with the order, standard, or regulation due to an undue hardship for the factors outlined in paragraph (C) of this rule;
- (6) A statement of the steps the public employer has taken and will take, ~~(with specific dates)~~, to protect its public employees or others who may be affected;
- (7) A certification that the public employer has informed its employees of the undue hardship exclusion request by taking one or more of the following steps:
- (a) Giving a copy of the undue hardship exclusion request to the public employee representatives, if any;
 - (b) Posting at a location or locations where public notices to employees are normally posted, a summary of the undue hardship exclusion request, such a summary shall include the means by which a complete copy of the undue hardship exclusion request may be examined.;
- ~~(8) The certification required under this paragraph of notice to the employees must contain a description of how ~~the~~ employees have been ~~informed~~ notified of the undue hardship exclusion request.~~
- (E) Upon receipt and review of a request for an undue hardship exclusion ~~request on the basis of an undue hardship~~, the public employer must provide the superintendent any additional information ~~requested~~ required to make a decision on the request.
- (F) An undue hardship exclusion will be granted only if the superintendent finds, upon weighing the factors of paragraph (C) of this rule such exclusion is appropriate and the requirements of paragraph ~~(C)~~(D) of this rule are met. ~~and only after the employer could not abate the violation within the time limits set in paragraph (C) of rule 4167-5-01 of the Administrative Code.~~
- (G) If one or more of the factors ~~have changed~~ that resulted in the initial granting of the exclusion change, ~~these~~ the superintendent shall review the changed circumstances to factors will be reviewed to determine if the undue hardship exclusion shall remain in effect.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
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concordance)

[Change proposed in 5 yr. review](#)

[Provisions move d within same rule](#)

4167-5-03 Petition for a modification of abatement date.

- (A) An employer may file a petition for modification of abatement date when the employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's ~~reasonable~~ control.
- (B) A petition for modification of abatement date 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) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
 - (5) A verification that a copy of the petition has been posted, and if appropriate, served on the authorized representative of affected employees, in accordance with paragraph (C)(1) of this rule and a verification of the date upon which such posting and service was made.
- (C) A petition for modification of abatement date shall be filed with the superintendent 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.
- (1) A copy of such petition shall be posted in a conspicuous place where all affected employees shall have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of fourteen calendar days. Where affected, employees are represented by an authorized representative, said representative shall be served with a copy of such petition.
 - (2) Affected employees or their representatives may file an objection in writing to such petition with the superintendent. Failure to file such objection within fourteen calendar days of the date of posting of such petition or of service upon an authorized representative shall ~~constitute a waiver of~~ any further right to object to said petition.
 - (3) The superintendent ~~or superintendent's designee~~ shall have the authority to approve any petition for modification of abatement date filed pursuant to the rule.
 - (4) The superintendent ~~or superintendent's designee~~ shall not exercise approval power until the expiration of fourteen calendar days from the date the employer posted the petition ~~was posted~~ or served the petition upon an authorized representative pursuant to paragraphs (C)(1) and (C)(2) of this rule ~~by the employer~~.
- (D) When any petition is objected to by the superintendent or affected employees, the petition, citation, and any objections shall be forwarded to a hearing officer within three working days after the expiration of the fourteen calendar day period set out in paragraph (C)(4) of this rule.
- (E) Hearings and appeals will be conducted in accordance with rule 4167-14-02 of the Administrative Code ~~administrative code~~.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

4167-6-01 Recording and reporting occupational injuries and illnesses.

~~Records shall be established on a calendar basis.~~

(A) Each public employer shall maintain records and make report to the superintendent in accordance with this rule.

(1) [All reports shall be submitted on forms proscribed by the superintendent.](#)

(2) Records shall be established on a calendar year basis.

(3) [The superintendent may issue a citation for failure to comply with this rule.](#)

(B) Records retention and access to records.

(1) All records and reports required under this chapter shall be retained for five years at the establishment following the end of the year to which they relate.

(2) Each employer shall make any records required under this rule available to the superintendent upon the superintendent's request.

(3) The log and summary of all recordable occupational injuries and illnesses required under paragraph (C) of this rule shall be made available by the employer to any employee, former employee, or employee representatives for examination, and copying in a recordable manner and at reasonable times.

(C) Log and summary of work-related injuries and illnesses.

(1) Each employer shall maintain, for each establishment, a separate log and summary of all work-related - injuries and illnesses for that establishment.

(2) Each recordable injury and illness must be entered on the log and summary as early as practicable but no later than six working days after receiving information that a recordable injury or illness has occurred.

(3) The log and summary shall be on a form proscribed by the superintendent, or an equivalent as described in paragraph (G) of this rule.

(D) Supplementary record.

(1) In addition to the log and summary of work-related injuries and illnesses required under paragraph (C) of this rule, each public employer shall have available for inspection at each establishment within six working days after receiving information that a recordable accident case has occurred, a supplementary record for each occupational injury or illness for that establishment.

(2) The supplementary record shall be on a form proscribed by the superintendent, or an equivalent records that meet the following requirements, as determined by the superintendent:

(a) The records must contain the same information contained on the form proscribed by the superintendent;

(b) The records must be as readable and comprehensible as the form proscribed by the superintendent;

(c) The records must be completed in as much detail as required by the instructions for the form proscribed by the superintendent; and

(d) The records must meet the recording guidelines and instructions issued by the U.S. department of labor's bureau of labor statistics. For purposes of this rule, the exemptions referred to in the instructions issued by the U.S. department of labor's bureau of labor statistics do not apply.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

(E) Annual summary.

- (1) The annual summary shall be completed on a form prescribed by the superintendent, or an equivalent as described in paragraph (G) of this rule. Each annual summary shall include the employer's bureau of worker's compensation policy (risk) number.
- (2) The annual summary shall be submitted to the public employment risk reduction program by February first for the previous calendar year. An employer with less than five employees that has had no reportable injuries is exempted from this requirement.
- (3) Each employer, or representative of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete.

If a false statement, representation, or certification of these records is knowingly given, ~~a willful failure to comply order shall be issued by the superintendent.~~ [the administrator may seek an injunction, restraining order, or any other appropriate relief against the public employer pursuant to section 4167.17 of the Revised Code.](#)

- (4) Each public employer shall post a copy of each establishment's annual summary at each establishment from February first through April thirtieth of the year after the year to which the summary pertains. The annual summary must be posted in the same manner that notices are required to be posted under rule 4167-4-01 of the Administrative Code.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
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[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

4167-6-09 Records for substances required to be monitored or measured.

- (A) Each public employer shall maintain accurate records of public employee exposure to potentially toxic materials, carcinogenic materials, and harmful physical agents that are required to be monitored or measured under any Ohio public employment risk reduction standard.
- (B) Each affected public employee or public employee representative shall have the opportunity to observe and/or participate in any monitoring or measuring of such regulated exposures.
- (C) An affected public employee or public employee representative may undertake his or her own monitoring or measuring of such regulated exposures.
- (D) A public employer who monitors or measures a regulated exposure shall provide access to those records upon request of an affected current or former public employee or a public employee representative regarding the individual employee's exposure. A public employee or public employee representative who monitors or measures a regulated exposure shall also provide access to those records on request of the public employer and/or affected employees.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
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Change proposed in 5 yr. review

Provisions moved within same rule

4167-6-10 Reporting of fatality or multiple hospitalization accidents.

(A) Definitions.

For purposes of this rule:

(1) "Multiple Hospitalization" means the hospitalization of three or more public employees as the result of a work-related incident. Such hospitalization must:

(a) be an admission to a hospital or equivalent facility; an employee that is treated then released is not considered hospitalized for purposes of this rule.

(b) occur within thirty days of an incident.

(B) Within eight hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, the employer of any employees so affected shall orally report the fatality/multiple hospitalization by telephone, or in person, incident to the superintendent at the phone number indicated on the poster required under rule 4167-4-01 of the Administrative Code.

The telephone number to use for reporting a fatality or a multiple hospitalization is the same telephone number as for reporting refusal to work issues, as found in the appendix to rule 4167-4-01 of the Administrative Code

(B) This requirement applies to each such fatality or hospitalization of three or more employees which occurs within thirty days of an incident.

(C) If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (A) and (B) of this rule, the employer shall make an initial report within eight hours of the time the incident is reported to any employer or agent of the employer.

(D) Each initial report required by this section shall relate the following information: establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person for the employer, phone number, and a brief description of the incident.

(E) The superintendent shall develop and implement policies and procedures to obtain detailed information of incidents within ten days of the incident or when reported to the employer or agent of the employer. Such information includes, but is not limited to, the following:

(1) Causes or factors;

(2) Test results;

(3) Measurements;

(4) Witness statements;

(5) Follow-up actions; and

(6) Evaluations of work processes.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

[Change proposed in 5 yr. review](#)

[Provisions moved within same rule](#)

4167-6-11 Needlestick Records

(A) Definitions

- (1) “Public health care worker” means a person who is employed by a public employer to provide health services or other services that carry with them the potential for exposure incidents to bloodborne pathogens, including a person employed by a public hospital or other public health care facility, a person employed by a public employer to provide home health care, and a person employed by a public employer as a firefighter, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.
- (2) “Public health care worker” does not include a person who is employed by a public employer to provide dental services, treatment, or training or a dental student who is receiving training from a public employer.

(B) Needlestick records

In addition to records which may be required under ~~the public employment risk reduction program identified under section 4167.11 of the Revised Code~~ [this chapter](#), the employer of any public health care worker is required to maintain and submit accurate records of public health care worker exposure incidents of needlesticks or sharps to the public employment risk reduction program. These records shall be submitted in a manner prescribed by the ~~administrator~~ [superintendent](#). The records shall contain, at a minimum, the following information:

- (1) The date and time of the incident;
- (2) The type and brand of sharp involved;
- (3) The job classification of each worker involved;
- (4) The department or work area where the incident occurred;
- (5) The procedure the worker was performing at the time of the incident;
- (6) How the incident occurred;
- (7) The body part involved;
- (8) If the sharp involved in the incident was manufactured with engineered sharps injury protection, a specification of whether the incident occurred before, during, or after activation of the protective mechanism;
- (9) If the sharp involved in the incident was not manufactured with engineered sharps injury protection, an assessment of whether and how the incident could have been prevented by a sharp with protection, and the basis for the assessment;
- (10) Any other relevant description of the exposure incident.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

Change proposed in 5 yr. review
Provisions moved within same rule

4167-7-01 Variances from Ohio public employment risk reduction standards.

(A) Pre-application process.

A pre-application process is available for any public employer or group of public employers who wishes to have may request that the superintendent, ~~or superintendent's designee,~~ review either a temporary or permanent variance proposal to determine if the variance process is the appropriate action to pursue by the public employer.

- (1) The fee for the pre-application review is one hundred dollars.
- (2) The pre-application fee will be credited toward the application fee for the variance if, after-upon review, the superintendent determines that the variance process is ~~the~~ appropriate ~~action~~.
- (3) A public employer's pre-application for a variance order must ~~also~~ include:
 - (a) ~~A a~~ certification ~~statement~~ that the public employer has informed the affected employees of the contemplated variance application by taking the following steps:
 - (a) ~~(i)~~ Giving a copy of the application to the public employees' authorized representative, if any;
 - (b) ~~(ii)~~ Posting ~~at a location or locations where notices are normally posted a summary statement of the application;~~ the application in the same manner required under rule 4167-4-01 of the Administrative Code.

The certification required by this paragraph must include description of how employees have been informed of the application.

(B) Applications for variances and renewals of variances must be made in accordance with section 4167.09 of the Revised Code.

- (1) The initial application fee is one thousand dollars.
- (2) The renewal application fee is one hundred dollars.

(C) The superintendent shall grant variances according to the standards set forth in section 4167.09 of the Revised Code.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)

Change proposed in 5 yr. review

Provisions moved within same rule

4167-8-01 Inspection procedures.

(A) Authority for inspections.

The superintendent ~~or the superintendent's designee~~ shall conduct inspections and investigations ~~only if there is compliance with section 4167.10 of the Revised Code and~~ under the following circumstances:

- (1) A request to do so from a public employee or public employee representative pursuant to rule 4167-2-02 of the Administrative Code;
- (2) A refusal to work notification pursuant to rule 4167-2-01 of the Administrative Code;
- ~~(3) A request to do so from a public employer pursuant to division (B)(2) of section 4167.10 of the Revised Code;~~
- ~~(3) A refusal to work notification as provided under rule 4167-2-01 of the Administrative Code~~
- (4) Upon the superintendent's own initiative, pursuant to section 4121.37 of the Revised Code.

The superintendent ~~or the superintendent's designee~~ shall conduct all requested or required inspections within a reasonable amount of time following receipt of the request or the notification.

(B) The superintendent shall determine which Ohio risk reduction standards apply in conducting inspections and investigations.

(C) Conduct of inspections.

- (1) The superintendent ~~or the superintendent's designee~~ shall inspect and investigate any plant, facility, establishment, construction site, ~~or any other~~ area, workplace, or environment where work is being performed by a public employee of a public employer, and ~~any place of employment and~~ all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein.
- (2) Inspections shall take place at such times and in such places ~~of employment~~ as the superintendent ~~or the superintendent's designee~~ may direct.
 - (a) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.
 - (b) At the beginning of an inspection, inspectors compliance officers shall present their credentials to the employer or the employer's agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate the scope of the inspection and the records they wish to review as required under rule 4167-6-08 of the Administrative Code and other documents and records relevant to the inspection or investigation.
- ~~(c)(3) The superintendent or the superintendent's designee~~ Compliance officers designated by the superintendent shall have the authority to:
 - ~~(i) take~~ Take environmental samples, ~~and to~~ take or obtain photographs related to the purpose of the inspection, ~~or investigation, subpoenas, and~~ conduct tests and other studies reasonably calculated to serve the purposes of the inspection or investigation.

- (a) As used in this rule, "take environmental samples" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment

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such as dosimeters, pumps, badges and other similar devices to employees in order to measure their exposures.

(b) In taking photographs and samples, compliance officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance officers 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.

(ii) ~~(4) The superintendent or the superintendent's designee shall have the authority to provide~~ Provide public employees representatives the opportunity to accompany an inspection and to consult with the ~~inspector~~compliance officer regarding workplace safety, to interview employees and public employee representatives in private, and to provide employees and public employee representatives participation in a closing conference.

~~(5) 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 measure their exposures.~~

~~(6) In taking photographs and samples, inspectors shall take reasonable precautions to insure that such actions with flash, spark producing, or other equipment would not be hazardous. 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.~~

(iii) ~~(7) In making any inspections or investigations under this chapter, the superintendent or the superintendent's designee may a~~Administer oaths and require, by subpoena, the attendance and testimony of witnesses and the production of evidence under oath.

(a) Witnesses shall receive the same fees and mileage provided for witnesses in civil cases in the court of common pleas.

(b) In the case of contumacy, failure, or refusal of any person to comply with an order or any subpoena lawfully issued, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, a judge of the court of common pleas of any county in this state, on the application of the superintendent ~~or the superintendent's designee~~, shall issue an order requiring the person to appear and to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question. The court may punish any failure to obey the order of the court as a contempt thereof.

~~(8) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.~~

(d) ~~(9) At the conclusion of an inspection, the~~ inspector~~compliance officer~~ shall confer with the employer or the employer's representative and informally advise him 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 inspector~~compliance officer~~ any pertinent information regarding conditions in the workplace.

(e) ~~(10) All information obtained by the superintendent in connection with any investigation that is confidential or a trade secret may not be disclosed in violation of rule 4167-10-01 of the Administrative Code.~~

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
(location may have changed; see
concordance)
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4167-8-02 Finding of Imminent Danger.

- (A) If during an inspection or investigation, the superintendent finds any condition or practice which presents an imminent danger to the safety and health of a public employee, shall issue a “notice of imminent danger.”
- (1) The public employer shall immediately post the notice, or a clearly legible copy thereof, at or near each place the violation referenced in the notice exists or occurred.
 - (2) Citations shall be posted in areas accessible to public employees and/or public employee representatives, but need not be posted in areas accessible to the public.
 - (3) A public employer shall seek the approval of the superintendent to post citations in locations other than those at the site of a violation.
- (B) If, during an inspection or investigation, the superintendent finds any condition or practice in any place of employment that presents a substantial probability that the condition or practice could result in death or serious physical harm, after notifying the employer of the intent to issue an order, the superintendent shall issue, after consultation with the ~~superintendent~~administrator and upon recommendation by the ~~superintendent~~administrator, an order prohibiting the employment of any public employee or any continuing operation or process under such condition or practice until necessary steps are taken to correct or remove the condition or practice.
- (1) The order shall not be effective for more than fifteen days.
 - (2) To extend such an order, the superintendent shall petition the court of common pleas to extend the order and to require corrective action by the employer.
 - (3) Any party may appeal to a court of common pleas any order of the superintendent under this rule within thirty days of the issuance of the order.

**PROPOSED RULE
TO BE ADOPTED**

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concordance)
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4167-8-03—Citations.

- (A) The superintendent shall, with reasonable promptness, issue a citation to any public employer that, upon inspection or investigation, the superintendent finds has violated any of the following:
- (1) An Ohio employment risk reduction standard;
 - (2) An order issued upon a finding of imminent danger pursuant to rule 4167-8-02 of the Administrative Code;
 - (3) An order to abate a violation issued pursuant to this rule.
- (B) The superintendent may, upon inspection or investigation, issue a ~~citation or~~ notice of violation to any public employer that the superintendent believes has violated rules of this chapter that have no direct effect or immediate relationship to safety or health. ~~Such citation or notice of violation for may be issued even if the employer immediately abates, or initiates steps to abate, such alleged violation.~~
- (C) Citations issued under this rule shall:
- (1) Be issued in writing.
 - (2) Describe with particularity the nature of the alleged violation, including a reference to the provision of law, Ohio employment risk reduction standard, rule, or order alleged to have been violated.
 - (3) State that the issuance of a citation does not constitute a finding that a violation of the act has occurred unless there is a failure to contest as provided for in the act, or if contested, unless the citation is affirmed.
 - (4) Be issued within six months following the date of the final occurrence of the alleged violation.
 - (5) Fix a time for the abatement of the alleged violation pursuant to rule 4167-5-01 of the Administrative Code.
 - (6) Be sent to the public employer by certified mail, return receipt requested.
- (D) Upon receipt of any citation issued under this rule, the public employer shall immediately post the citation, or a clearly legible copy thereof, at or near each place an alleged violation referred to in the citation occurred.
- (1) Citations shall be posted in areas accessible to public employees and/or public employee representatives, but need not be posted in areas accessible to the public.
 - (2) A public employer shall seek the approval of the superintendent to post citations in locations other than those at the site of a violation.
- (E) At the request of an affected employer, employee, representative of employees, or upon the superintendent's own motion, the superintendent will hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, or notice of intention to contest.
- (1) If the conference is requested by the employer, an affected employee or his representative may be afforded an opportunity to participate, at the discretion of the superintendent.
 - (2) When the complainant is an employee and/or an employee representative, the complainant may be given the opportunity to participate in the conference.

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- (3) Any party may be represented by counsel at such conference.
- (4) No such conference or request for such conference shall operate as a stay of any fourteen calendar day period for filing a notice of intention to contest as prescribed ~~in this rule~~ [4167-14-01](#).
- (F) A citation shall be deemed a final order fourteen days after the employer's receipt of the citation, unless the employer elects to contest the citation pursuant to rules 4167-14-01 through 4167-14-03 of the Administrative Code. If the employer contest the citation, the order shall become final when either:
- (1) The employer chooses not to appeal an adverse decision within the timeframe the employer is permitted to do so under rules 4167-14-01 through 4167-14-03 of the Administrative Code; or
 - (2) The employer has exhausted all administrative remedies and a final decision is issued by the court of common pleas.

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TO BE ADOPTED**

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concordance)
[Change proposed in 5 yr. review](#)
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4167-9-01 Discrimination.

- (A) No public employer shall discharge or in any manner discriminate against any public employee because the employee in good faith has:
- (1) Filed any complaint under or related to the act;
 - (2) Instituted or caused to be instituted any proceeding under or related to the act;
 - (3) Testified or is about to testify in any proceeding under or related to the act; or
 - (4) Exercised on his own behalf or on the behalf of others any right afforded by the act.
- (B) Any public employee who believes that he has been discharged or otherwise discriminated against by any public employer in violation of paragraph (A) of this rule and who wishes to file a complaint must elect any one of the remedies provided for in division (B) of section 4167.13 of the Revised Code.
- (C) Nothing in this rule limits a public employer's right to take any actions provided in rules 4167-2-01 to 4167-2-04 of the Administrative Code.
- (D) Actions taken by the public employer which adversely affect a public employee shall be predicated upon nondiscrimination grounds. The proscriptions of paragraph (A) of this rule apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the act does not automatically render the employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.
- (E) To establish a violation of paragraph (A) of this rule, the employee's activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, paragraph (A) of this rule has been violated.
- (F) Discharge of, or discrimination against, an employee because the employee has filed any complaint under or related to this act is prohibited by this rule. An example of a complaint made under the act would be an employee request pursuant to section 4167.11 of the Revised Code. However, this would not be the only type of complaint protected by this rule. The range of complaints related to the act is commensurate with the broad remedial purposes of the act and the sweeping scope of its application.
- (G) Complaints made to other state, local, and federal agencies regarding occupational safety and health would be related to the act. Such complaints, however, must be related to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.
- (H) Discharge of, or discrimination against, any employee because the employee has instituted or caused to be instituted any proceeding under or related to the act is also prohibited by paragraph (A) of this rule. Examples of proceedings which could arise specifically under the act would be inspections as a result of employee requests, employee participation in employer variance requests, employee contests of abatement dates, and employee challenges to an order, rule, Ohio employment risk reduction standard proposed, adopted, or issued by the superintendent. In determining whether a proceeding is related to the act, paragraphs (F) and (G) of this rule are to be considered.
- (I) An employee need not directly institute the proceedings. It is sufficient if the employee sets into motion activities of others which result in proceedings under or related to the act.
- (J) Discharge of, or discrimination against, any employee because the employee has testified or is about to testify in proceedings under or related to the act is prohibited by this rule.

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- (K) Discriminatory protection is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, or adjudicative functions.
- (L) This rule protects employees from discrimination as a result of the exercise of any right afforded by the act. Certain rights exist by implication. For example, employees may request information from the public employment risk reduction program. Such requests would constitute the exercise of a right afforded by the act.
- (M) Employees interviewed by designees of the superintendent in the course of inspections or investigations cannot subsequently be discriminated against because of their cooperation.
- (N) There is no right afforded by the act which would entitle employees to refuse to work because of potential unsafe conditions at the workplace unless the provisions of rules 4167-2-01 to 4167-2-04 of the Administrative Code are met. An employee will normally have the opportunity to file a complaint with the superintendent about the existence of a condition alleged to be hazardous that has not been corrected by the employer. Under such circumstances, an employer would not ordinarily be in violation of paragraph (A) of rule 4167-9-01 of the Administrative Code by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.
- (O) Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the act are not exercising any rights afforded by the act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory activity prohibited by paragraph (A) of this rule.
- (P) A complaint of discrimination under this rule must be filed by the employee or by a representative authorized to so do on the employee's behalf.
- (Q) The complaint must be filed in accordance with the procedures listed in paragraph (B) of this rule.
- (R) The sixty day period outlined in section 4167.13 of the Revised Code will be stayed until the employee knows or should have known of extenuating circumstances, including but not limited to, where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action, or where the discrimination is in the nature of a continuing violation.

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4167-10-01 Protection of trade secrets and confidential information.

- (A) In accordance with section 4167.12 of the Revised Code, all information reported to or otherwise obtained by the superintendent ~~or the superintendent's designee~~ in connection with any investigation, inspection, or proceeding that reveals a trade secret or confidential information as defined in any specific section of the Revised Code or federal law is confidential ~~under the Ohio public employment risk reduction program~~.
- (B) Information deemed to be a trade secret or confidential information may be disclosed by the superintendent ~~or superintendent's designee~~ to other agents or authorized representatives of the superintendent concerned with fulfilling the requirements of the act, or when relevant, to any proceeding under the act. In any proceeding, the superintendent or the court shall issue orders as appropriate to protect the confidentiality of trade secrets and confidential information.
- (C) A public employer shall attempt to identify the existence of a trade secret or confidential information at the commencement of an inspection to the superintendent ~~or superintendent's designee~~. In the event that the public employer does not identify the existence of a trade secret or confidential information at the commencement of an inspection, the public employer must do so at the earliest opportunity.
- (D) A public employer who is claiming confidentiality on the basis of the existence of a trade secret or confidential information shall provide written substantiation to the superintendent of the claim.
- (E) The superintendent shall develop and implement policies and procedures to identify and secure information identified as a trade secret or confidential information to maintain confidentiality.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules
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4167-10-02 Required disclosure of trade secrets and confidential information to health professionals.

(A) Definitions:

For purposes of this rule,

- (1) “Employer” means a public sector employer or any private sector employer who provides substances or chemicals claimed to be trade secret or confidential information to a public employer.
- (2) “Health professional” means
 - (a) a treating physician or nurse, or
 - ~~(b) a physician, toxicologist, or epidemiologist employed by or under contract with a political subdivision public employer.~~
- (3) “Written statement of need” means the request of a health professional for a specific chemical identity that describes, with reasonable detail, one or more of the following health needs for the information:
 - (a) To treat an individual that has been exposed to the chemical concerned, and knowledge of the specific chemical identity of the chemical is needed for diagnosis and treatment;
 - (b) To assess exposure of public employees to the hazard of the chemicals or substances concerned;
 - (c) To conduct or assess sampling to determine exposure levels of public employees exposed to the chemicals or substances concerned;
 - (d) To conduct periodic medical surveillance of public employees exposed to the chemical or substances concerned;
 - (e) To conduct studies to determine the health effects of exposure to the chemical or substances concerned.
 - (f) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(B) An employer may not withhold from the superintendent the specific chemical identity or other specific information needed to fulfill the purposes of the act.

(C) The employer shall promptly provide the specific chemical identity of the substance or chemical to any health professional who submits to the employer a written statement of need for the specific chemical identity. The employer may require the confidentiality agreement specified in paragraph (E) of this rule as a precondition to providing the information.

(D) The employer shall immediately provide a copy of ~~a material~~[the](#) safety data sheet ~~or emergency~~ and ~~hazardous chemical inventory form that contains~~[provide](#) the specific chemical identity of ~~a~~[the](#) substance or chemical, if ~~the specific chemical identity is~~ known, to any health professional who requests that information if the health professional determines that all of the following conditions pertain to the request:

- (1) A medical emergency exists;

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concordance)

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(2) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first aid diagnosis or treatment; and

(3) The individual being diagnosed or treated has been exposed to the chemical concerned.

The employer shall not require any such health professional to provide a written confidentiality agreement or statement of need as a precondition for disclosure of a specific chemical identity under this division; however, the employer may require the health professional to provide a written statement of need and a written confidentiality agreement under paragraph (E) of this rule once circumstances permit.

(E) Any health professional who obtains information under this rule shall enter into a written confidentiality agreement with the employer that the health professional will not use the information obtained for any purpose other than the safety and health needs asserted in the statement of need, except as otherwise may be authorized by the terms of the agreement.

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(location may have changed; see
concordance)

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4167-13-01 Abatement verification, abatement plan, and progress reports.

(A) ~~This rule requires all public employers to verify the abatement of violative conditions set forth in citations, as detailed below.~~ Filing requirements

- (1) An employer may combine the required documentation for multiple citations under this rule into a single document.
- (2) Where a document must be submitted to the superintendent of this rule, the submission date of such document is the date received by the superintendent.
- (3) Receipt of an employer's documents by the superintendent does not constitute an agreement that the employer has abated the condition for which the citation was issued.
- (4) Any employer failing to comply with the provisions of this rule shall be subject to citation.
- (5) False statements knowingly and willfully made in any document required by this rule ~~are subject to the willful failure to comply provisions~~ may result in the administrator seeking an injunction, restraining order, or any other appropriate relief against the public employer pursuant to section 4167.17 of the Revised Code.

(B) Abatement verification.

Each employer shall submit to the superintendent an abatement verification report with respect to each citation item, and do so within fourteen calendar days after the abatement date for the citation item. Abatement verification for more than one citation item is permitted to be combined in a single document.

- (1) The abatement verification report shall contain the following information for each citation item:
 - (a) Identification of the ~~Each~~ citation item;
 - (b) A statement noting whether or not abatement has been accomplished with respect to each citation item and instance listed in the citation;
 - (c) A description of the measures taken to accomplish abatement;
 - (d) The date abatement was accomplished and documentary evidence that is sufficient to demonstrate clearly that the hazard has been corrected;
 - (e) If abatement has not been accomplished, the reason(s) for not abating;
 - (f) The signature of the employer or the employer's duly authorized representative; and
 - (g) The date of signature.
- (2) If the employer has initially stated that a particular citation item has not been abated, and later the employer abates the condition, the employer shall submit to the superintendent abatement verification within fourteen calendar days after abatement.

~~(3) Abatement verification for more than one citation item, and progress reports, as provided under paragraph (D) of this rule are permitted to be combined in a single document.~~

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~~(4) Each abatement verification with respect to a citation item shall be accompanied by documentary evidence that is sufficient to demonstrate clearly that the hazard has been corrected.~~

(C) Abatement plan.

(1) The superintendent may require in a citation that the employer submit a formal plan for the abatement of safety and health violations in instances where multiple steps or long-term abatement actions are necessary.

(2) When called for in a citation, the employer shall prepare a written, signed, and dated abatement plan with respect to each citation item for which the plan is required.

~~(3) Abatement plans for more than one citation item may be combined within a single document.~~

~~(4)~~ The abatement plan shall be submitted to the administrator issuing the citationssuperintendent within fourteen calendar days after the date of any final order.

(D) Progress reports. The superintendent may require progress reports in a citation where multi-step abatement is deemed appropriate.

(1) The superintendent shall specify the citation item with respect to which the progress reports are required, the measures which the administrator superintendent expects to be taken on or before the submission of each progress report, and the date for the submission of each progress report, expressed as the number of calendar days from the date of any final order.

(2) The employer shall submit to the superintendent the requested progress reports with respect to each citation item for which they are required under the abatement plan.

~~(3) Progress reports for more than one citation item may be combined within a single document.~~

~~(E) Document transmittal. When this section requires submission of a document to the superintendent, it must be submitted by first class mail, postage prepaid, facsimile transmission, or hand delivery, the date of submission is the date when the document is received by the superintendent.~~

~~(F) Receipt of an employer's documents by the agency under this regulation does not constitute an agreement that the employer is in compliance.~~

~~(G) Accuracy of documentation. The employer shall assure that each statement in a document or accompanying documentation required by this section is accurate.~~

~~(E)(H)~~ Posting requirements. A copy of each document required to be submitted to the superintendent shall be posted, at the time of submission, at or near each place the violation(s) described in the citation occurred.

(1) Where, because of an employer's operations, it is not practicable to post a document at or near the location of the violation(s), such document shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees.

(2) Where it is physically impracticable, because of a document's size, magnitude, or other considerations, such as potential destruction, to post abatement plans and progress reports, a notice to affected employees shall be posted indicating the location where the document(s) can be reviewed.

(3) The abatement verification, abatement plan(s), and progress reports shall be provided, upon request for examination and copying, to employees, to employee representatives, and to the superintendent. If employers are engaged in activities which are geographically dispersed, the document may be posted at

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the location where employees report each day in accordance with rule 4167-4-01 of the Administrative Code. If employees do not primarily work at, or report to, a single location, the document may be posted at the location where employees work in accordance with rule 4167-4-01 of the Administrative Code.

- (4) The employer shall assure that any document required to be posted by this section is not altered, defaced, or covered by other material.
- (5) Any document required to be posted by this section shall remain posted until the violation has been abated, or for six calendar days, whichever is later.

~~(I) Penalties. Any employer failing to comply with the provisions of this rule shall be subject to citation.~~

~~(J) False statements. False statements knowingly and willfully made in any document required by this rule are subject to the willful failure to comply provisions.~~

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4167-14-01 Contests of citations.

(A) Any contest must be postmarked within fourteen calendar days of the receipt of the citation and be mailed to the superintendent at the superintendent's official address.

~~(1)~~ A public employer to whom a citation has been issued ~~has fourteen calendar days after the receipt of the citation to~~[may](#) contest all or any part of the citation.

~~(2)~~~~(B)~~ Any public employee or public employee representative ~~has fourteen calendar days after the receipt of a citation to file notice that~~[may contest](#) the time period fixed in the citation for the abatement of a violation ~~is unreasonable~~.

~~(B)~~~~(C)~~ The contest for an adjudication hearing must include:

(1) By the public employer, the factual basis for contesting each provision of the act, standard, regulation, rule, or order issued by the administrator.

(2) By the public employer, employee or employee representative evidence that any proposed abatement date is unreasonable.

~~(D) Any contest must be postmarked within fourteen calendar days of the receipt of the citation and be mailed to the superintendent of the division of safety and hygiene at the official address listed in rule 4167-1-02 of the Administrative Code.~~

~~(E) Any contest of an superintendent's citation must be made to the superintendent within fourteen calendar days of the receipt of the citation.~~

~~(F) At the request of an affected employer, employee, representative of employees, or upon the superintendent's own motion, the superintendent will hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, or notice of intention to contest. If the conference is requested by the employer, an affected employee or his representative may be afforded an opportunity to participate, at the discretion of the superintendent. When the complainant is an employee and/or an employee representative, the complainant may be given the opportunity to participate in the conference. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any fourteen calendar day period for filing a notice of intention to contest as prescribed in this rule.~~¹

¹ Provision (F) shifted to 4167-8-03

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(location may have changed; see
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4167-14-02 Hearings and appeals.

(A) Definitions

For purposes of this rule:

- (1) “Affected party” means a any public employer, public employee, or public employee representative affected by an order, rule or Ohio employment risk reduction standard proposed, adopted, or otherwise issued pursuant to this chapter.
- (2) “Program action” means the proposal, adoption, or issuance of the order, rule, or standard under this chapter.

(B) Request of hearing from the superintendent.

~~Except as provided in paragraph (E) of rule 4167-14-01 of the Administrative Code, a~~Any public employer, public employee, or public employee representative affected by an order, rule or Ohio employment risk reduction standard proposed, adopted, or otherwise issued pursuant to this chapter, affected party may request, within fourteen calendar days of a program action ~~the proposal, adoption, or issuance of the order, rule, or standard,~~ a hearing from the superintendent.

~~(1)(B)~~The superintendent shall appoint a hearing officer within fourteen calendar days of the receipt of the request. ~~The hearing officer shall hold a hearing within fourteen calendar days of appointment and render a decision within fourteen calendar days of the hearing.~~

~~(2)(C)~~ The hearing officer shall hold a hearing within fourteen calendar days of appointment. The hearing will be held in conformance with the procedures outlined in section 119.09 of the Revised Code.

- (a) Continuances may be ordered by the hearing officer on the superintendent’s own motion, or may be granted by the hearing officer on motion or application of any party filed in writing and showing good and sufficient cause for the continuance.
 - (b) The parties may, by stipulations filed in writing with the hearing officer or orally presented at the hearing, agree on any facts involved in the proceedings, but the hearing officer may thereafter require development of any fact necessary to a proper determination of a controversy.
- (3) The hearing officer shall render a decision within fourteen calendar days of the hearing.
- (4) The hearing officer’s decision shall be a final order after thirty days, unless:
- (a) Within thirty days, the adversely impacted party appeals the decision to the superintendent pursuant to paragraph (C) of this rule; or
 - (b) The superintendent, on the superintendent’s own motion, modifies or reverses the decision within thirty days. The superintendent’s determination shall be a final order after thirty days of issuance if it has not been appealed pursuant to paragraph (D) of this rule.

(C) Appeal of hearing officer’s decision to superintendent.

~~(D)~~A public employer, public employee, or public employee representative may appeal the decision of the hearing officer to the superintendent pursuant to chapter 119. of the Revised Code, provided that the appeal is made within thirty days of the receipt of the hearing officer’s decision. ~~The decision of the hearing officer~~

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~~is final unless appealed to the superintendent within the time period set in this rule or unless the superintendent, on his own motion, modifies or reverses the decision within that time period.~~

~~(1)(E)~~ The superintendent shall [review the record of the hearing and](#) issue a [decision-determination](#) within thirty days of receipt of the appeal of the hearing officer's decision.

~~(2)~~ [The superintendent's determination shall be a final order after thirty days of issuance if it has not been appealed pursuant to paragraph \(D\) of this rule.](#)

~~(F) If a party fails to appeal the decision of the hearing officer, the decision of the hearing officer is not, for purposes of paragraph (C) of this rule, a final order of the administrator and is not appealable to court as provided in rule 4167-14-03 of the Administrative Code, except that if the party fails to appeal the decision of the hearing officer and the administrator modifies or reverses the decision of the hearing officer under this paragraph, the decision of the administrator is appealable to court pursuant to rule 4167-14-03 of the Administrative Code.~~

(D) Appeal of superintendent's determination to court.

- (1) An affected party that has received a determination by the superintendent under paragraph (B)(4)(b) or (C)(1) of this rule may, within thirty calendar days of issuance of the determination, appeal to the court of common pleas of Franklin county or to the court of common pleas of the county in which the alleged violation has occurred.
- (2) The court shall conduct a hearing on the appeal and shall, pursuant to division (B)(1) of section 4167.16 of the Revised Code, give preference to all proceedings under this rule over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. The hearing shall proceed as in the case of a civil action as provided for in Chapter 2505. of the Revised Code, and the court shall determine the rights of the parties in accordance with the laws applicable to the action.
- (3) If the court finds an undue hardship to the appellant as defined in rule 4167-5-02 of the Administrative Code will result from the enforcement of the order pending determination of the appeal, the court may grant a suspension of the order and fix the terms thereof.
- (4) The court shall affirm the order of the superintendent upon consideration of the record as a whole and additional evidence as the court has admitted, if the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such finding, the court shall reverse, vacate or modify the order or make such other ruling as is supported by law.
- (5) The judgment of the court is final and conclusive unless reversed, vacated, or modified on appeal as provided in chapter 2505. of the Revised Code.

**PROPOSED RULE
TO BE ADOPTED**

Key: Text from original PERRP Rules (location may have changed; see concordance) Change proposed in 5 yr. review Provisions move d within same rule
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4167-14-03 Appeals to the court.

- (A) A public employer, public employee, or public employee representative who has exhausted all administrative appeals of a final order by the superintendent may within thirty calendar days of issuance of the order appeal to the court of common pleas of Franklin county or to the court of common pleas of the county in which the alleged violation has occurred.
- (B) The court shall conduct a hearing on the appeal filed under paragraph (A) of this rule and shall give preference to all proceedings under this rule over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. The hearing shall proceed as in the case of a civil action as provided for in Chapter 2505. of the Revised Code, and the court shall determine the rights of the parties in accordance with the laws applicable to the action.
- (C) If the court finds an undue hardship to the appellant as defined in rule 4167-5-02 of the Administrative Code will result from the enforcement of the order pending determination of the appeal, the court may grant a suspension of the order and fix the terms thereof.
- (D) The court shall affirm the order of the superintendent upon consideration of the record as a whole and additional evidence as the court has admitted, if the order is supported by reliable, probative, and substantial evidence and is in accordance with law.
- (E) In the absence of the elements of paragraph (C) of this rule, the court shall reverse, vacate or modify the order or make such other ruling as is supported by this rule.
- (F) The judgment of the court is final and conclusive unless reversed, vacated, or modified on appeal as provided in Chapter 2505. of the Revised Code.
- (G) No person who has failed to exhaust all administrative appeals as provided in this rule and rule 4167-5-03 of the Administrative Code may file an appeal of a final order of the superintendent.

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4167-1-01 Definitions.

The following definitions shall apply in all rules of this chapter of the Administrative Code:

- (A) "Act" means the Public Employment Risk Reduction Act promulgated under House Bill 308 on December 17, 1992, and as amended thereafter.
- (B) "Administrator" means administrator of the bureau of workers' compensation.
- (C) "Employment Risk Reduction Standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment and places of employment.
- (D) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.
- (E) "Imminent danger" means a condition or practice in any place of employment, where such a danger exists, which reasonably can be expected to cause death or serious physical harm, immediately or before the danger's imminence can be eliminated through the inspection procedures provided by section 4167.10 of the Revised Code.
- (F) "Ohio employment risk reduction standard" means any risk reduction standard adopted or issued under this chapter of the Administrative Code.
- (G) "Public employee" as defined in section 4167.01 of the Revised Code means any individual who engages to furnish services subject to the direction and control of a public employer, including those individuals working for a private employer who has contracted with a public employer and who the national labor relations board has declined jurisdiction. "Public employee" does not mean a fire fighter or a peace officer employed by a public employer or any person employed as a correctional officer in a county or municipal corporation correctional institution whether the county or municipal corporation solely or in conjunction with each other operates the institution.
- (H) "Public employee representative" means an employee organization certified or recognized by the state employment relations board under section 4117.05 of the Revised Code as the exclusive representative of the public employees in a bargaining unit.
- (I) "Public employer" as defined in section 4167.01 of the Revised Code means any of the following:
 - (1) The state; and its instrumentalities;
 - (2) Any political subdivisions and their instrumentalities, including any county, county or state hospital, municipal corporation, city, village, township, park district, school district, state institution of higher learning, public or special district, state agency, authority, commission, or board;
 - (3) Any branch of public employment not mentioned in paragraph (I)(1) or (I)(2) of this rule.
- (J) "Undue hardship" means any requirement imposed under this chapter or a rule or order issued thereunder that would require a public employer to take an action with significant difficulty or expense.
- (K) "Peace officer" is hereby defined by section 109.71 of the Revised Code as a deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, member of a police force employed by a metropolitan housing authority, township constable, policemen appointed by a railroad company, employees of the department of taxation engaged in enforcement, undercover drug agents, liquor

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control investigators, an employee of the department of natural resources who is a park officer, forest officer, game protector, state watercraft officer, an employee of a park district or of a conservancy district, a policeman employed by a hospital who is appointed pursuant to sections 4973.17 and 4973.22 of the Revised Code, state university law enforcement officers appointed under section 3345.04 of the Revised Code, and the superintendent and the patrolmen of the state highway patrol.

(L) "Abatement date" means:

- (1) The date set forth in a citation for the abatement of a violation when the citation item has not been contested;
- (2) When a citation item has been contested and a final order has been issued, the date is computed by adding to the final order date either the amount of time allowed for abatement in the original citation or, if the order modifies the abatement period, the newly specified period;
- (3) The date for abatement expressly set forth in a final order;
- (4) The date for abatement expressly set forth in a petition for modification of abatement date final order; or
- (5) The date for abatement expressly set forth in a settlement agreement.

(M) "Abatement plan" is a written, detailed plan outlining a schedule for the implementation of measures to achieve abatement.

(N) "Abatement verification" includes a final abatement report, an abatement plan, and progress reports.

(O) "Citation item" is a separately designated portion of a citation containing one or more instances of violation.

(P) "Equipment" is a machine or device, powered or unpowered, used to do work.

(Q) "Final order date" is:

- (1) Where the citation item has not been contested, the fourteenth day after the employer's receipt of the citation;
- (2) The fourteenth day after the date on which a decision of a hearing officer is made, including an order approving a settlement or a withdrawal of a notice of contest;
- (3) Where review has been directed by the superintendent of the division of safety and hygiene, the thirtieth day after the date on which the superintendent issues the decision, including but not limited to an order approving a settlement or a withdrawal of a notice of contest, or an order severing citation items from a case; or
- (4) The date on which a court of common pleas issues a decision where the superintendent's order has been stayed.

(R) "Petition for modification of the abatement date (PMA) final order" means

- (1) The superintendent approval of an uncontested (PMA);
- (2) An order of a hearing officer granting a (PMA), in whole or in part, unless the hearing officer's decision is directed for review within thirty days of the decision of the superintendent;
- (3) An order of a court of common pleas granting a PMA, in whole or in part.

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- (S) "Progress report" is a written report explaining what measures have been taken, if any, in the process of achieving abatement of a violative condition in a citation item, other than measures ultimately achieving abatement; and the dates on which those measures have been taken.
- (T) "Hospitalization" means an individual must be admitted to a hospital or equivalent facility; it does not mean treated and released.
- (U) "Division" means division of safety and hygiene.
- (V) "Superintendent" means superintendent of the division of safety and hygiene.

4167-1-02 Official address.

All correspondence pertaining to the program shall be mailed to the official address at the "Public Employment Risk Reduction Program, Ohio Bureau of Workers Compensation, Division of Safety and Hygiene, 13430 Yarmouth Drive, Pickerington, Ohio 43147."

4167-1-16 Filing of documents.

Each notice of appeal, application, or other document to be filed with the administrator shall be filed at the official office of the administrator. Such filing means the actual delivery to the office of said notice of appeal, application, or other document.

4167-1-17 Continuances.

Continuances and adjournments of meetings may be ordered by the administrator on the administrator's own motion, or may be granted by it on motion or application of any party filed in writing and showing good and sufficient cause therefor. Any such motion must be directed to the administrator and may be acted upon by the administrator or the administrator's designee.

4167-1-18 Stipulations.

The parties may, by stipulations filed in writing with the administrator or orally presented at the hearing, agree on any facts involved in the proceedings, but the administrator may thereafter require development of any fact necessary to a proper determination of a controversy.

4167-1-19 Exhibits.

The parties may present any exhibits deemed necessary as part of their testimony.

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4167-2-01 Refusal to work procedures.

- (A) In accordance with division (A) of section 4167.06 of the Revised Code, a public employee acting in good faith has the right to refuse work under conditions that the public employee reasonably believes present an imminent danger of death or serious harm to the public employee, provided that the condition is not as normally exists or reasonably might be expected to occur in the normal and regular duties of the public employee.
- (B) In accordance with division (A) of section 4167.06 of the Revised Code, a public employee may refuse in good faith to perform assigned task(s) after all of the following conditions are met prior to the refusal of performing the assigned task(s):
- (1) There is insufficient time to eliminate the danger through the inspection and enforcement procedures provided by section 4167.10 of the Revised Code.
 - (2) The danger is one that a reasonable person under the circumstances would conclude an imminent danger exists.
 - (3) Request their immediate supervisor or other supervisory representative of the employer to have the hazardous condition corrected.
 - (4) The public employer's representative declines to correct the hazardous condition, or disputes that the condition is of such a nature as to pose an imminent danger of death or serious harm.
- (C) A public employee who exercises his right to refuse work in accordance with paragraph (B) of this rule must or notify the superintendent or superintendent's designee in a written statement, as soon as practical, of the condition that presents or presented an imminent danger of death or serious harm to the public employee. If, from the description provided, there is a reason to believe a hazardous condition exists that poses an imminent danger, a representative of the division of safety and hygiene shall attempt to contact the public employer and discuss the situation and means of correction.

4167-2-02 Employee rights.

- (A) In accordance with division (A) of section 4167.06 of the Revised Code, a public employee who has refused in good faith to perform assigned task(s) which he believes to pose an imminent hazard shall continue to receive full compensation for the tasks that would have been performed or the public employer reassigns the public employee, the public employer shall pay him his full compensation as if he were not reassigned when the employee has met all of the following conditions prior to the refusal of performing the assigned task(s) so long as the employee has followed the requirements of paragraph (B) of rule 4167-2-01 of the Administrative Code.
- (B) A public employer will not discriminate against an employee in any manner for a good faith refusal to work.

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4167-2-03 Employer rights.

A public employee who refuses to perform assigned tasks under which he believes to pose an imminent hazard and who fails to meet all of the requirements in paragraph (B) of rule 4167-2-01 of the Administrative Code, is subject to any disciplinary action provided by law or agreement between the public employee for a refusal to work, including, but not limited to suspension, nonpayment of wages for the duration of the refusal of work, or discharge.

4167-2-04 Inspection and enforcement procedure.

- (A) A public employee who has exercised his right to refuse work shall notify the superintendent in writing, signed by the employee, and shall detail the nature of the condition that presents an imminent danger. The notice must be sent as soon as practical after exercising the right to refuse work.
- (B) Upon receipt of the notice, the superintendent or superintendent's designee shall immediately contact the public employer and inform the employer of the notification. The superintendent shall also inform the employer that a representative of the division will immediately inspect the premises of the public employer.
 - (1) If, upon inspection the superintendent or superintendent's designee finds that a hazardous condition exists, the superintendent, or the superintendent's designee shall issue an order after consultation and upon recommendation of the superintendent, which prohibits the employment of any public employee or any continuing operation or process under such condition or practice until necessary steps are taken to correct or remove the condition or practice. The order shall not be effective for more than fifteen days.
 - (2) To extend such an order, the superintendent or superintendent's designee shall petition the court of common pleas to extend the order and to require corrective action by the employer.
 - (3) Any party may appeal to a court of common pleas any final order of the superintendent within thirty days of the issuance of the final order.
 - (4) If, upon inspection, the superintendent or the superintendent's designee determines that there are no reasonable grounds to believe an imminent danger does or did exist, the superintendent shall inform the public employee or public employee representative in writing of the determination. The public employee may be subject to any disciplinary action provided by law or agreement. A copy of the determination shall also be sent to the public employer.

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4167-3-01 Incorporation by reference.

- (A) In accordance with division (A)(1) of section 4167.07 of the Revised Code, the public employment risk reduction advisory commission has adopted occupational safety and health standards by the United States secretary of labor pursuant to the “Occupational Safety and Health Act of 1970,” 84 Stat. 1590, 29 U.C.S.A. 651 as amended.
- (B) The public employment risk reduction advisory commission has hereby adopted from the Code of Federal Regulations, Title 29, Subtitle b, Chapter XVII, Part 1910 occupational safety and health standards Subpart C to and including Subpart T and Subpart Z. In addition, the standards of Part 1926, Subpart C to and including Subpart X are incorporated in the Revised Code as Ohio public risk reduction standards with the exclusion of standards 29 CFR 1910.96, 1910.97, 1926.53, and 1926.54.

4167-3-02 Adoption of standards.

In accordance with division (A)(2)(A) of section 4167.07 of the Revised Code, the public employment risk reduction advisory commission has adopted the Code of Federal Regulations, Title 29, Subtitle B, Chapter XVII, Part 1910 occupational safety and health standards 1910.132, 1910.133, 1910.135, 1910.136, and 1910.138 as Ohio employment risk reduction standards.

4167-3-03 Adoption of standards.

In accordance with division (A)(2)(a) of section 4167.07 of the Revised Code, the public employment risk reduction advisory commission has adopted the Code of Federal Regulations, Title 29, Subtitle B, Chapter XVII, Part 1928 occupational safety and health standards as Ohio employment risk reduction standards.

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4167-3-04 Amending of existing standards.

In accordance with division (A)(2)(b) of section 4167.07 of the Revised Code, the public employment risk reduction advisory commission has amended Ohio employment risk reduction standards as referenced by:

- (A) U.S. department of labor [OSHA, 1994] "29 CFR 1910 and 1926; safety standards for fall protection in the construction industry; final rule." Federal register, vol. 59, no. 152., pages 40729 through and including 40753, August 10, 1994.
- (B) U.S. department of labor [OSHA, 1994] "29 CFR 1910 and 1926; occupational exposure to asbestos; final rule." Federal register, vol. 59, no. 153., pages 41057 through and including 41162, August 10, 1994.
- (C) U.S. department of labor [OSHA, 1994] "29 CFR 1910, 1926, and 1928; retention of D.O.T. markings, placards, and labels; final rule." Federal register, vol. 59, no. 137., pages 36695 through and including 36700, July 19, 1994.
- (D) U.S. department of labor [OSHA, 1994] "29 CFR 1910.120 and 1926.65; hazardous waste operations and emergency response; final rule." Federal register, vol. 59, no. 161., pages 43270 through and including 43280, August 22, 1994.
- (E) U.S. department of labor [OSHA, 1994] "29 CFR 1910 and 1928; logging operations; final rule." Federal register, vol. 59, pages 51672 through and including 51748, October 12, 1994.
- (F) U.S. department of labor [OSHA, 1996] "29 CFR 1910 and 1926;" safety standards for scaffolds used in the construction industry, final rule" Federal register, vol. 61, no. 170, pages 46104 through and including 46131, August 30, 1996.
- (G) U.S. department of labor [OSHA, 1996] "29 CFR 1910 and 1926; occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rule: corrections" Federal register, vol. 61, no. 165, pages 43456 through and including 43459, August 23, 1996.
- (H) U.S. department of labor [OSHA, 1996] "29 CFR 1910, et al. Occupational Exposure to 1, 3-butadiene; final rule:" Federal register, vol. 61, no. 214, pages 56831 through and including 56856, November 4, 1996.
- (I) U.S. department of labor [OSHA, 1997] "29 CFR 1910, 1915, 1926, et al. Occupational exposure to methylene chloride; final rule." Federal register, vol. 62, no. 7, pages 1601 through and including 1619, Friday, January 10, 1997.
- (J) U.S. department of labor [OSHA, 1998] "29 CFR 1910.134 and 1926.103 changed designation to 1910.139; respiratory protection; final rule." Federal register vol. 63, pages 1152 through and including 1300, April 8, 1998.
- (K) U.S. department of labor [OSHA, 1998] "29 CFR 1910.1052; 1910.1025; 1910.1047 and 1910.1048. Methylene chloride; final rule." Federal register, vol. 63, pages 50711-50732. September 22, 1998.
- (L) U.S. department of labor [OSHA, 1998] "29 CFR 1910.141; 1910.142; 1910.145; 1910.146; 1910.147. Permit required confined space; final rule." Federal register, vol. 63, no. 230, pages 66018 through and including 66040, December 1, 1998.

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- (M) U.S. department of labor [OSHA, 1998] "29 CFR 1910.178; and 1926.602. Powered industrial truck operator training; final rule." Federal register, vol. 63, no. 230, pages 66238 through and including 66274, December 1, 1998.
- (N) U.S. department of labor [OSHA, 1999] "29 CFR 1910.103, 1910.16 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911. Dipping and coating operations; final rule." Federal register, vol. 64, no. 55, pages 13909 through and including 13912, March 23, 1999.
- (O) U.S. department of labor [OSHA, 2001] "29 CFR part 1910; occupational exposure to bloodborne pathogens; needlesticks and other sharps injuries; final rule." Federal register, vol. 66, no. 12, pages 5324 and 5325, January 18, 2001.
- (P) U.S. department of labor [OSHA, 2001] "29 CFR 1926-amended; changes to subpart M and subpart R; steel erection." Federal register, vol. 66, no. 12, pages 5265 through and including 5280, January 8, 2001.
- (Q) U.S. department of labor [OSHA, 2002] "29 CFR 1926.200; 1926.201; 1926.202; and 1926.203, safety standards for signs, signals, and barricades; final rule: "Federal register, vol. 67, no.177, pages 57722 through and including 57736, Thursday, September 12, 2002.
- (R) U.S. department of labor [OSHA, 2002] "29 CFR 1910.33 through 1910.39, and 1910.119; 1910.120; 1910.157; 1910.268; 1910.272; 1910.1047; 1910.1050 and 1910.1051, exit routes, emergency action plans, and fire prevention plans; final rule: "Federal register, vol. 67, no.216, pages 67949 through and including 67965, Thursday, November 7, 2002.
- (S) U.S. department of labor [OSHA, 2004] "29 CFR 1910.401; 1910.402; 1910.424; and 1910.430. Commercial Diving Operations; final rule." Federal register, vol. 69, no.31, pages 7351 through and including 7366, February 17, 2004.

4167-3-04.1 Amending of existing standards by the bureau of worker's compensation division of safety and hygiene.

Effective July 1, 2005, in accordance with division (A)(2)(b) of section 4167.07 of the Revised Code the administrator, with the advice and consent of the bureau of workers' compensation board of directors, has the authority to amend Ohio employment risk reduction standards. Any rule adopted by the public employment risk reduction advisory commission pursuant to the rules of this chapter shall remain in effect unless amended or rescinded by the administrator.

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4167-3-04.2 Amending of standards.

In accordance with division (A)(2)(b) of section 4167.07 of the Revised Code, the administrator of workers' compensation, with the advise and consent of the bureau of workers' compensation board of directors, has amended Ohio employment risk reduction standards as referenced by:

- (A) U.S. department of labor [OSHA, 2007] 29 CFR 1910 - amended; changes to subpart S Electrical. Federal Register, vol. 72, No. 30, pages 7136 through and including 7221, February 14, 2007.
- (B) U.S. department of labor [OSHA, 2007] "29 CFR Parts 1910; 1915; 1917; 1918; and 1926 employer payment for personal protective equipment; final rule." Federal Register, vol. 72, no. 220, pages 64341 through and including 64430, November 15, 2007.
- (C) U.S. department of labor [OSHA, 2009] "29 CFR Parts 1910; 1915; 1917; 1918; - amend; Cutting and brazing, Eye and face protection, Foot protection, Head protection, Incorporation by reference, Ventilation, and Welding; Final rule." Federal Register, vol. 74, no. 173, pages 46350 through and including 46361, September 9, 2009.
- (D) U.S. department of labor [OSHA, 2009] "29 CFR Parts 1910; Revising Standards Referenced in the Acetylene Standard. Final rule." Federal Register, vol 74, no 216, pages 57883 through and including 57884, November 10, 2009.
- (E) U.S. department of labor [OSHA, 2010] "29 CFR Parts 1926; Revising the cranes and derricks standard. Final rule." Federal register, vol 75, no 215, pages 68429 through and including 68430, November 8, 2010.
- (F) U.S. department of labor [OSHA, 2011] "29 CFR Parts 1910; 1910.6; 1910.102, Revising Standards Referenced in the Acetylene Standard. Final rule." Federal Register, vol. 76, no. 233, pages 75782 through and including 75786, December 5, 2011.
- (G) U.S. department of labor [OSHA, 2012] "29 CFR 1910; 1915; 1926; Hazard Communication. Final Rule." Federal register, vol. 77, no. 58, pages 17574 through and including 17896, March 26, 2012.
- (H) U.S. department of labor [OSHA, 2012] "29 CFR 1910, 1915, 1917, 1918, and 1926, Updating OSHA Standards Based on National Consensus Standards; Head Protection. Direct final rule." Federal register, vol. 77, no. 121, pages 37587 through and including 37600, June 22, 2012.
- (I) U.S. department of labor [OSHA, 2013] "29 CFR 1910, 1915, and 1926, Hazard Communication; Corrections and Technical Amendment. Final rule." Federal register, vol.78, no. 27, pages 9311 through and including 9315, February 8, 2013.

**RENUMBERED AS 4167-6-11:
TO BE RESCINDED IN ITS ENTIRETY**

4167-3-06 Safe needle standards.

(A) Definitions

- (1) “Public health care worker” means a person who is employed by a public employer to provide health services or other services that carry with them the potential for exposure incidents to bloodborne pathogens, including a person employed by a public hospital or other public health care facility, a person employed by a public employer to provide home health care, and a person employed by a public employer as a firefighter, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.
- (2) “Public health care worker” does not include a person who is employed by a public employer to provide dental services, treatment, or training or a dental student who is receiving training from a public employer.

(B) Needlestick records

In addition to records which may be required under the public employment risk reduction program identified under section 4167.11 of the Revised Code, the employer of any public employee is required to maintain and submit accurate records of public health care worker exposure incidents of needlesticks or sharps to the public employment risk reduction program. These records shall be submitted in a manner prescribed by administrator. The records shall contain, at a minimum, the following information:

- (1) The date and time of the incident;
- (2) The type and brand of sharp involved;
- (3) The job classification of each worker involved;
- (4) The department or work area where the incident occurred;
- (5) The procedure the worker was performing at the time of the incident;
- (6) How the incident occurred;
- (7) The body part involved;
- (8) If the sharp involved in the incident was manufactured with engineered sharps injury protection, a specification of whether the incident occurred before, during, or after activation of the protective mechanism;
- (9) If the sharp involved in the incident was not manufactured with engineered sharps injury protection, an assessment of whether and how the incident could have been prevented by a sharp with protection, and the basis for the assessment;
- (10) Any other relevant description of the exposure incident.

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4167-4-01 Notification to employees.

- (A) On the effective date of this rule, each employer shall post and keep posted a notice or notices, to be furnished by the division, informing employees of the protections and obligations provided under the provisions of section 4167.11 of the Revised Code (see appendix to this rule).
- (B) 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.
- (C) Where distinctly separate activities are performed at a single physical location (such as but not limited to multiple agencies residing in the same building), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment.
- (D) Where employers are engaged in activities that are physically dispersed (such as but not limited to transportation and sanitary services), the required notice or notices shall be posted at the location to which employees report each day.
- (E) Where employees do not usually work at, or report to, a single establishment (such as but not limited to field inspectors), such notice or notices shall be made available to each employee by other means (such as but not limited to providing a copy at least annually in a pay check) or providing a copy in an employee handbook.
- (F) On the effective date of this rule, the employer may in lieu of paragraphs (A), (B), (C), and (D) of this rule elect to inform employees of their rights by other appropriate means (such as but not limited to providing a copy of the notice in an employee handbook). Under the conditions of this paragraph, the employer shall inform employees at the time of initial hire and at least annually thereafter of the protections and obligations under the provisions of section 4167.11 of the Revised Code (See appendix to this rule).

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**Appendix A
Appendix to Rule 4167-4-01**

Ohio public employment risk reduction program

Safety and health protection

On the job

The public employment risk reduction act was enacted to provide safe and healthful working conditions for Ohio's public employees.

Employer duties: Each public employer shall provide a place of employment free from recognized hazards.

Employee duties: Each employee shall comply with all safety and health standards, rules, and regulations.

Enforcement: The division of safety and hygiene will:

1. Inspect job sites for unsafe and unhealthful conditions following a request to do so by a public employee, public employee representative, or public employer.
2. Issue citations requiring public employers to correct safety and health violations.

Refusal to work: Any public employee acting in good faith may refuse work under conditions reasonably believed to present an imminent danger of death or serious physical harm, provided that the condition is not such as normally exists or reasonably might be expected to occur in the normal and regular duties of the public employee. In the case of a refusal to work, the public employee must follow these three steps: and if all of the conditions in this rule are not met the public employee may be subject to disciplinary action pursuant to law or agreement.

1. Notify his or her immediate supervisor of the imminent danger condition.
2. Submit a written statement of the imminent danger to the superintendent as soon as practical.

Complaints: Any public employee or employee representative may file a complaint with the division of safety and hygiene of any unsafe or unhealthful condition or practice by letter, or by fax. Employees should initially attempt to have unsafe or unhealthful conditions corrected through their own procedures by contacting their immediate supervisor.

Inspections: The inspector will question privately a representative number of employees and management personnel concerning safety and health conditions in the workplace.

Citations: Following an inspection by the division of safety and hygiene, notice of violations issued to the public employer must be prominently posted at or near the place where the hazard was found.

Protection: Employees cannot be discharged or otherwise discriminated against in any manner for filing a complaint in accordance with the act or by instituting or causing to be instituted any provision of the Act. Discrimination complaints must be filed with the State Personnel Board of Review within sixty days of the discriminatory act or be pursued through provisions under a collective bargaining agreement.

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Fatality/multiple hospitalization reporting: within eight (8) hours after a death of any employee from a work related incident, or the in-patient hospitalization of three or more employees, the employer is required to contact the division of safety and hygiene.

For additional information contact:

Ohio bureau of workers' compensation

Division of labor and worker safety and hygiene

Public employment risk reduction program Yarmouth Drive, Pickerington, Ohio 43147

Phone: (614) 644-2246 (800) 671-6858

Fax: (614) 644-3133

Refusal To Work Phone: (614) 731-4380

Fatality/multiple hospitalization reporting phone: (614) 731-4380

Under provision of Rule 4167-4-01 of the Ohio Administrative Code, public employers must post this notice (or facsimile) in a conspicuous place where notices to employees are customarily posted. Minimum reproduction size of this notice is 8 1/2 by 14 inches. Alternatively, a copy of this notice can be given to each employee provided each employee is informed of the provisions of this notice at the time of initial hire and at least annually thereafter.

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4167-6-01 Recording and reporting occupational injuries and illnesses.

Records shall be established on a calendar year basis.

4167-6-02 Log and summary of work-related injuries and illnesses.

- (A) Each employer shall, except as provided in paragraph (E) of this rule, maintain for each establishment a log and summary of all work-related injuries and illnesses for that establishment.
- (B) For the purposes of this rule, the log and summary shall be the PERRP form no. 300P/300AP or equivalent. To be accepted as an acceptable alternative, the records must contain at least the same information contained on PERRP form no. 300P/300AP and be as readable and comprehensible to a person not familiar with PERRP form no 300P/300AP
- (C) The log and summary shall be completed in the detail provided in the forms and instructions on PERRP form no. 300P/300AP or equivalent, and shall meet the recording guidelines and instructions issued by the U.S. department of labor's bureau of labor statistics. For purposes of this rule, the exemptions referred to in the instructions issued by the U.S. department of labor's bureau of labor statistics do not apply to public employers defined in rule 4167-1-01 of the Administrative Code. The effective date for the PERRP log and summary form- 300P/300AP shall begin no later than January 1, 2005.
- (D) Each recordable injury and illness must be entered on the log and summary as early as practicable but no later than six working days after receiving information that a recordable injury or illness has occurred.
- (E) A public employer may maintain the log of work-related injuries and illnesses at a place other than the establishment or by means of data processing equipment, or both when:
 - (1) There is available at the place where the log is maintained sufficient information to complete the log within six working days after receiving information that a recordable case has occurred, as required by paragraph (D) of this rule.
 - (2) At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment which is kept complete and current on a quarterly basis.

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4167-6-03 Supplementary record.

- (A) In addition to the log and summary of work-related injuries and illnesses PERRP form no. 300P/300AP or equivalent, each public employer shall have available for inspection at each establishment within six working days after receiving information that a recordable accident case has occurred, a supplementary record for each occupational injury or illness for that establishment.
- (B) For the purposes of this rule, the supplementary record shall be the PERRP form no.301 P or equivalent. To be accepted as an acceptable alternative, the records must contain at least the same information required on the PERRP form no. 301 P. The effective date for the supplementary record PERRP form no. 301 P shall begin no later than January 1, 2005.
- (C) The supplementary record shall be completed in the detail prescribed in the instructions accompanying the OSHA form no. 301 P.

4167-6-04 Annual summary.

- (A) Each public employer shall post an annual summary of work-related injuries and illnesses for each establishment. The PERRP form no.200AP or equivalent shall be used in presenting the summary.
- (B) The annual summary shall be completed and thereafter posted by February first for the previous calendar year and shall remain in place until April thirtieth.
 - (1) A copy of the posted "Annual Summary of Work-Related Injuries and Illnesses" shall be submitted to the public employment risk reduction program by each February first for the previous calendar year beginning with the summary for the year 1998 and each year thereafter with the first 2002 annual summary submitted no later than October first 2003. Each annual summary shall include the employer's bureau of worker's compensation policy (risk) number.
- (C) The summary shall consist of a copy of the year's totals from the PERRP form no.200AP or equivalent and the following information from that form:
 - (1) The calendar year covered;
 - (2) Public employer's name;
 - (3) Establishment address;
 - (4) Certification, signature, title, and date, in accordance with paragraph (D) of this rule.
- (D) Each employer, or representative of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the representative of the employer who supervises the preparation of the annual summary, at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying the summary is true and complete.
- (E) Each public employer shall post a copy of the establishment's annual summary at each establishment in the same manner that notices are required to be posted in Chapter 4167-4 of the Administrative Code.
- (F) The retention of these records shall be in accordance with rule 4167-6-07 of the Administrative Code.

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4167-6-05 Falsification and failure to keep records or reports.

- (A) A failure to post a copy and submit of the establishment's annual summary shall result in the issuance of a citation.
- (B) If a false statement, representation, or certification of these records is knowingly given, a willful failure to comply order will be issued.

4167-6-07 Retention of records.

All records and reports required to be maintained in accordance with rules 4167-6-02, 4167-6-03, 4167-6-04 and 4167-6-05 of the Administrative Code shall be retained for five years at the establishment following the end of the year to which they relate.

4167-6-08 Access to records.

- (A) Each employer shall provide, upon request, records provided under this rule for inspection and copying by any representative of the superintendent for the purposes of carrying out the provisions of the public employment risk reduction program.
- (B) The log and summary of all recordable occupational injuries and illnesses provided for in rule 4167-6-02 of the Administrative Code shall be made available by the employer to any employee, former employee, or employee representatives for examination, and copying in a recordable manner and at reasonable times.

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4167-7-01 Variances from Ohio public employment risk reduction standards.

(A) Pre-application process. A pre-application process is available for any public employer or group of public employers who wishes to have the superintendent, or superintendent's designee, review either a temporary or permanent variance proposal to determine if the variance process is the appropriate action to pursue by the public employer.

- (1) The fee for the pre-application review is one hundred dollars.
- (2) The pre-application fee will be credited toward the application fee for the variance if, after review, the superintendent determines that the variance process is the appropriate action.
- (3) A public employer's pre-application for a variance order must also include:
 - (a) A certification statement that the public employer has informed the affected employees of the application by taking the following steps:
 - (i) Giving a copy of the application to the public employees' authorized representative, if any;
 - (ii) Posting at a location or locations where notices are normally posted a summary statement of the application;
 - (iii) Specifying at the place or places where notices to employees are normally posted and by other appropriate means where a complete copy may be examined.
 - (b) A description of how the employees have been informed.
 - (c) Where employees do not usually work at, or report to, a single establishment (such as but not limited to field inspectors), a summary statement shall be made available to each affected employee by other means (such as but not limited to by mail).

(B) Temporary variances.

- (1) Any public employer or group of public employers may apply to the superintendent for a temporary variance from an adopted standard or from any of its separate provisions.
- (2) The superintendent shall issue an order providing for a temporary variance if the public employer files an application that meets the following requirements:
 - (a) That the public employer is unable to comply with a standard or a provision thereof by its effective date because of the unavailability of professional or technical personnel, materials, and/or equipment needed to comply with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date.
 - (b) That the public employer is taking all available steps to safeguard its employees against the hazards the standard covers.
 - (c) That the public employer has an effective program for complying with the standard as quickly as practical.
 - (d) The granting of the variance will not create an imminent danger of death or serious physical harm to its employees or those that may be affected.

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- (3) A public employer's application for a temporary variance order must include:
- (a) The name and address of the applicant;
 - (b) The address of the place or places of employment involved;
 - (c) A specification of the standard or portion thereof from which the public employer is seeking a temporary variance;
 - (d) A statement by the public employer, supported by statements from qualified persons with firsthand knowledge of facts represented, that the public employer is unable to comply with the standard or portion thereof;
 - (e) A detailed statement of the reasons the public employer is unable to do so;
 - (f) A statement of the steps the public employer has taken and will take (with specific dates) to protect employees or others which may be affected against the hazard the standard covers;
 - (g) A statement of when the public employer expects to be able to comply with the standard and what steps it has taken and will take (with specific dates) to comply with the standard;
 - (h) A certification that the public employer has informed the affected employees of the application by following notification procedures in paragraph (A)(3) of this rule.
 - (i) A statement that employees have been informed of their right to a hearing.
- (4) The superintendent may issue an interim variance order to a public employer if all the application requirements have been met. An interim order will be in effect until a final decision is made on the basis of a hearing.
- (5) Length of temporary variance orders.
- (a) A temporary variance order may not be in effect for longer than the period the public employer needs to achieve compliance with the standard or for one year, whichever is shorter.
 - (b) A temporary variance order may be renewed two times, each time for six months, if;
 - (i) All application requirements have been met; and
 - (ii) The renewal application is filed at least ninety days prior to the order's expiration date.
- (6) An application for a temporary variance order shall contain an application fee of one thousand dollars.
- (7) An application for a renewal of a temporary variance order shall contain an application fee of one hundred dollars.

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4167-8-01 Inspection procedures.

(A) Authority for inspections.

The superintendent or the superintendent's designee shall conduct inspections and investigations only if there is compliance with section 4167.10 of the Revised Code and under the following circumstances:

- (1) A request to do so from a public employee or public employee representative;
- (2) A request to do so from a public employer;
- (3) A refusal to work notification as provided under rule 4167-2-01 of the Administrative Code
- (4) Upon the superintendent's own initiative.

The superintendent or the superintendent's designee shall conduct all requested or required inspections within a reasonable amount of time following receipt of the request or the notification.

Conduct of inspection.

- (1) The superintendent or the superintendent's designee shall inspect and investigate any plant, facility, establishment, construction site, or any other area, workplace, or environment where work is being performed by a public employee of a public employer, and any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein.
- (2) Inspections shall take place at such times and in such places of employment as the superintendent or the superintendent's designee may direct. At the beginning of an inspection, inspectors shall present their credentials to the employer or the employer's agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate the scope of the inspection and the records they wish to review as required under rule 4167-6-08 of the Administrative Code and other documents and records relevant to the inspection or investigation.
- (3) The superintendent or the superintendent's designee shall have the authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection or investigation, subpoenas, and conduct tests and other studies reasonably calculated to serve the purposes of the inspection or investigation.
- (4) The superintendent or the superintendent's designee shall have the authority to provide employees representatives the opportunity to accompany an inspection and to consult with the inspector regarding workplace safety, to interview employees and employee representatives in private, and to provide employees and employee representatives participation in a closing conference.
- (5) 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 measure their exposures.
- (6) In taking photographs and samples, inspectors shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. 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.

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- (7) In making any inspections or investigations under this chapter, the superintendent or the superintendent's designee may administer oaths and require, by subpoena, the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall receive the same fees and mileage provided for witnesses in civil cases in the court of common pleas. In the case of contumacy, failure, or refusal of any person to comply with an order or any subpoena lawfully issued, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, a judge of the court of common pleas of any county in this state, on the application of the superintendent or the superintendent's designee, shall issue an order requiring the person to appear and to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question. The court may punish any failure to obey the order of the court as a contempt thereof.
- (8) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.
- (9) At the conclusion of an inspection, the inspector shall confer with the employer or the employer's representative and informally advise him 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 inspector any pertinent information regarding conditions in the workplace.
- (10) All information obtained by the superintendent in connection with any investigation that is confidential or a trade secret may not be disclosed in violation of rule 4167-10-01 of the Administrative Code.

(C) Complaints by employees.

- (1) Any public employee or public employee representative who believes that a violation of an Ohio employment risk reduction standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving written notice to the superintendent or superintendent's designee of the violation or danger. The notice shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the public employee or public employee representative. The names of individual public employees making the notice or referred to therein shall not appear in the copy provided to the public employer and shall be kept confidential. The notice shall include:
 - (a) A description of the hazard to include, if applicable or possible, the date(s) and time(s), the location, and/or the pieces of equipment involved.
 - (b) The names of the public employee(s) or duties of the public employee(s) who are affected.
- (2) If, upon receipt of a notification pursuant to division (B)(2) of section 4167.10 of the Revised Code, the superintendent determines that there are no reasonable grounds to believe that a violation or danger exists, the superintendent shall inform the public employee or public employee representative in writing of his determination.
- (3) The complaining party may request reconsideration of such determination by submitting a written statement of position to the superintendent. The superintendent shall submit a copy of such statement, with confidentiality of the complainant maintained, to the employer. The employer may submit an opposing written statement of position with the superintendent. The superintendent, at his or her discretion, may hold informal conferences in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the superintendent shall affirm, modify, or reverse the original determination and furnish the complaining party and the employer a written notification of the decisions and the reasons thereof.
- (4) If the superintendent determines that an inspection is not warranted because the requirements of division (B)(2) of section 4167.10 of the Revised Code have not been met, the superintendent shall notify the

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complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of division (B)(2) of section 4167.10 of the Revised Code.

- (5) If, upon receipt of a notification, the superintendent determines that there are reasonable grounds to believe that a violation or danger exists, the superintendent shall, within five business days after receipt of the notification, notify the public employer, by certified mail, return receipt requested, of the alleged violation or danger. The notice provided to the public employer or his agent shall contain a copy of the notice provided to the superintendent by the public employee or the public employee representative under division (B)(1) of section 4167.10 of the Revised Code and shall inform the public employer of the alleged violation or danger and that the superintendent or the superintendent's designee will investigate and inspect the public employer's workplace as provided in this section. The public employer must respond to the superintendent concerning the alleged violation of danger within thirty days after receipt of the notice. If the public employer does not correct the violation or danger within the thirty-day period or if the public employer fails to respond within that time period, the superintendent or the superintendent's designee shall investigate and inspect the public employer's workplace as provided in this section. The superintendent or the superintendent's designee shall not conduct any inspection prior to the end of the thirty-day period unless requested or permitted by the public employer. The superintendent may, at any time, upon the request of the public employer, inspect and investigate any violation or danger alleged to exist at his place of employment.
- (6) The authority of the superintendent or the superintendent's designee to investigate and inspect a premises pursuant to a public employee or public employee representative notification is not limited to the alleged violation or danger contained in the notification. The superintendent or the superintendent's designee may investigate and inspect any other area of the premises where they have reason to believe that a violation or danger exists. In addition, if the superintendent or the superintendent's designee detects any obvious or apparent violation at any temporary place of employment while en route to the premises to be inspected or investigated, and that violation presents a substantial probability that the condition or practice could result in death or serious physical harm, the superintendent and the superintendent's designee may use any of the enforcement mechanisms provided in this section to correct or remove the condition or practice.

(D) Imminent danger upon investigation.

If, during an inspection or investigation, the superintendent or the superintendent's designee finds any condition or practice in any place of employment that presents a substantial probability that the condition or practice could result in death or serious physical harm, after notifying the employer of the intent to issue an order, the superintendent or the superintendent's designee shall issue an order after consultation either by telephone or in person with the superintendent and upon recommendation of the superintendent, which prohibits the employment of any public employee or any continuing operation or process under such condition or practice until necessary steps are taken to correct or remove the condition or practice. The order shall not be effective for more than fifteen days, unless a court of common pleas otherwise orders.

(E) Citations.

- (1) If during an inspection or investigation, the superintendent or the superintendent's designee finds any condition or practice which presents an imminent danger to the safety and health of a public employee, shall issue a "notice of imminent danger."
- (2) If, upon inspection or investigation, the superintendent or superintendent's designee believes that a public employer has violated any requirement of this chapter or any rule, Ohio employment risk reduction standard, or order adopted or issued pursuant thereto, shall, with reasonable promptness, issue

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a citation to the public employer. The citation shall be in writing and describe with particularity the nature of the alleged violation, including a reference to the provision of law, Ohio employment risk reduction standard, rule, or order alleged to have been violated. In addition, the citation shall fix a time for the abatement of the violation, as provided in division (H) of section 4167.10 of the Revised Code.

- (3) The superintendent may elect to issue a "notice of violation" with respect to minor violations that have no direct effect or immediate relationship to safety or health. An appropriate citation or notice of violation for minor violations may be issued even if the employer immediately abates, or initiates steps to abate, such alleged violation.
- (4) The superintendent may not issue a citation under this section after the expiration of six months following the final occurrence of any violation.
- (5) If a citation or notice of violation is issued for a violation alleged in a request for an inspection under division (B)(2) of section 4167.10 of the Revised Code, a copy of the citation or notice of violation shall also be sent to the employee or representative of employees who made the requests.
- (6) After an inspection, if the superintendent determines that a citation is not warranted with respect to the danger or violation alleged to exist in request for an inspection under division (B)(2) of section 4167.10 of the Revised Code the formal review procedures shall be applicable. After considering all views presented, the superintendent shall affirm the original determination, order a reinspection or issue a citation if it discloses a violation. The superintendent shall furnish the complaining party, and the employer with written notification of the determination and the reasons thereof.
- (7) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the act has occurred unless there is a failure to contest as provided for in the act, or if contested, unless the citation is affirmed.
- (8) Citations must be sent to the public employer by certified mail, return receipt requested. The public employer has fourteen days after receipt of the citation within which to notify the superintendent that there is such a wish to contest the citation. If the employer notifies the superintendent within the fourteen days that there is a wish to contest the citation, or if within fourteen days after the issuance of a citation a public employee or public employee representative files notice that the time period fixed in the citation for the abatement of the violation is unreasonable, the superintendent shall hold an adjudication hearing in conformance with Chapter 119. of the Revised Code.
- (9) The superintendent shall issue citations in writing and describe with particularity the nature of the alleged violation, including:
 - (a) A reference to the provision of law, Ohio employment risk reduction standard, rule, or order alleged to have been violated, and;
 - (b) Fix a time for the abatement of the violation.
- (10) The establishment of abatement dates for the correction of violations which result in citations will be set in accordance with rule 4167-5-01 of the Administrative Code.

(F) Posting of notices of imminent danger and citations.

Upon receipt of any citation, including a notice of imminent hazard, the public employer shall immediately post the citation, or a (clearly legible) copy thereof, at or near each place an alleged violation referred to in the citation occurred.

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- (1) Citations shall be posted in areas accessible to public employees and/or public employee representatives, but need not be posted in areas accessible to the public or non-employees.
- (2) A public employer shall seek the approval of the superintendent or the superintendent's designee to post citations in locations other than those at the site of a violation.

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4167-10-01 Protection of trade secrets and confidential information.

- (A) In accordance with section 4167.12 of the Revised Code, all information reported to or otherwise obtained by the superintendent or the superintendent's designee in connection with any investigation, inspection, or proceeding that reveals a trade secret or confidential information as defined in any specific section of the Revised Code or federal law is confidential under the Ohio public employment risk reduction program.
- (B) Information deemed to be a trade secret or confidential information may be disclosed by the superintendent or superintendent's designee to other agents or authorized representatives of the superintendent concerned with fulfilling the requirements of the act, or when relevant, to any proceeding under the act. In any proceeding, the superintendent or the court shall issue orders as appropriate to protect the confidentiality of trade secrets and confidential information.
- (C) A public employer shall attempt to identify the existence of a trade secret or confidential information at the commencement of an inspection to the superintendent or superintendent's designee. In the event that the public employer does not identify the existence of a trade secret or confidential information at the commencement of an inspection, the public employer must do so at the earliest opportunity.
- (D) A public employer who is claiming confidentiality on the basis of the existence of a trade secret or confidential information shall provide written substantiation to the superintendent of the claim.
- (E) Any private sector employer who provides substances or chemicals claimed to be trade secret or confidential information to a public employer may not withhold from the superintendent or superintendent's designee the specific chemical identity or other specific information if needed to fulfill the purposes of the act.
- (F) The public employer, or the private sector employer who provides substances or chemicals claimed to be trade secret or confidential information to the public employer, shall provide the specific chemical identity of the substance or chemical to any health professional who submits to the private sector employer a written request and statement of need for the specific chemical identity. The written statement of need shall be a statement of the health professional that there is a reasonable basis to believe that all of the following conditions pertain to the request:
 - (1) The information is needed for purposes of diagnosis or treatment of an individual;
 - (2) The individual being diagnosed or treated has been exposed to the chemical concerned; and
 - (3) Knowledge of the specific chemical identity of the chemical will assist in diagnosis and treatment.

An owner or operator to whom such a written request and statement of need is submitted shall provide the requested information to the health professional promptly after receiving the request and statement of need.

- (G) The public employer, or the private sector employer who provides substances or chemicals claimed to be trade secret or confidential information shall provide a copy of a material safety data sheet or emergency and hazardous chemical inventory form that contains the specific chemical identity of a substance or chemical, if the specific chemical identity is known, to any treating physician or nurse who requests that information if the physician or nurse determines that all of the following conditions pertain to the request:
 - (1) A medical emergency exists;
 - (2) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first aid diagnosis or treatment; and

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(3) The individual being diagnosed or treated has been exposed to the chemical concerned.

The private sector employer shall provide the requested information to the physician or nurse immediately upon receiving such a request. The private sector employer shall not require any such treating physician or nurse to provide a written confidentiality agreement or statement of need as a precondition for disclosure of a specific chemical identity under this division; however, the private sector employer may require the treating physician or nurse to provide a written confidentiality agreement under paragraph (J) of this rule and a statement setting forth the conditions listed in paragraph (I) of this rule as soon after the request is made as circumstances permit.

- (H) The public employer or the private sector employer who provides substances or chemicals to the public employer, shall provide the specific chemical identity of a substance or hazardous chemical, if the specific chemical identity is known, to any health professional, including, without limitation, a physician, toxicologist, or epidemiologist, who is either employed by or under contract with a political subdivision and who submits to the owner or operator a written request for the information, a written statement of need for the information that meets the requirements of this paragraph, and a written confidentiality agreement under this section. The owner or operator shall promptly after receipt of the written request, statement of need, and confidentiality agreement provide the requested information to the local health professional who requested it.
- (I) The written statement of need for a specific chemical identity shall describe with reasonable detail one or more of the following health needs for the information:
- (1) To assess exposure of public employees to the hazard of the chemicals or substances concerned;
 - (2) To conduct or assess sampling to determine exposure levels of public employees exposed to the chemicals or substances concerned;
 - (3) To conduct periodic medical surveillance of public employees exposed to the chemical or substances concerned;
 - (4) To conduct studies to determine the health effects of exposure to the chemical or substances concerned.
 - (5) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.
- (J) Any person who obtains information under this rule shall, as a precondition for receiving that information, enter into a written confidentiality agreement with the public employer or private sector employer who provides trade secrets or confidential information to the public employer, that the persons will not use the information for any purpose other than the safety and health needs asserted in the statement of need provided, except as otherwise may be authorized by the terms of the agreement or by the person providing the information.
- (K) The superintendent shall develop and implement policies and procedures to identify and secure information identified as a trade secret or confidential information to maintain confidentiality.

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4167-11-01 Emergency temporary standard.

- (A) In the event of an emergency or unusual situation, the superintendent shall issue an emergency temporary Ohio employment risk reduction standard to take effect immediately upon publication in newspapers of general circulation in Cleveland, Columbus, Cincinnati, and Toledo.
- (B) An emergency temporary standard shall be issued if the superintendent finds both of the following:
 - (1) Public employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
 - (2) The emergency standard is necessary to protect employees from the danger.
- (C) An emergency temporary Ohio public employment risk reduction standard shall be in effect no longer than fifteen days, unless the administrator approves the standard as issued by the superintendent, in which case the standard shall be in effect no longer than one hundred twenty days after the date the superintendent issues it.
- (D) The superintendent may renew an emergency standard approved by the administrator for a time period not to exceed one hundred days if the conditions in paragraph (B) of this rule continue to exist.
- (E) The administrator shall adopt a permanent Ohio public employment risk reduction standard to replace the emergency standard on or before the final expiration date of the temporary emergency standard if the conditions in paragraph (B) of this rule continue to exist.

4167-15-01 Exemption application requirements.

- (A) Pursuant to the application (see appendix to rule 4167-15-01 of the administrative code) the public employer must provide:
 - (1) Its bureau of workers' compensation risk number;
 - (2) If a member of a group, the name of the sponsoring association and or service representative;
 - (3) If not a member of a group, a copy of its current workers' compensation experience (actuarial) exhibit;
 - (4) A copy of the ordinance or resolution requesting an exemption.
- (B) The certification must be made by the elected official(s) of the public employer requesting the exemption.

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**4167-15-01
Appendix A**

Ohio Bureau of Workers' Compensation

Public Employment Risk Reduction Act

Application for Exemption

1. Public Employer: _____

Address: _____

City: _____ Zip: _____ County: _____

Contact: _____ Title: _____

Phone: _____ Fax: _____

2. BWC Risk No.: PE-_____ 3. No. of employees: _____

4. Are you a member of a group rating plan pursuant to division (A)(4) of section 4123.29 of the Revised Code?

___yes ___no

a. If yes, please provide the name of your:

Sponsoring association: _____

Service representative: _____

b. If no, please attach a copy of your current workers' compensation experience (actuarial) exhibit.

c. If you do not qualify for a group rating plan, provide the names and titles of the members of your safety committee. Attach a separate sheet, if necessary. (Not required of employers with five or fewer employees)

Employee Representatives Employer Representatives

Name Title Name Title

**OLD VERSION:
TO BE RESCINDED IN ITS ENTIRETY**

I, _____, certify that the following statements are true:

Name of applicant (please print)

1. The public employer has adopted an ordinance or a resolution, dated _____, requesting an exemption from Chapter 4167 of the Revised Code. (Please attach a copy.)

2. At least ten days prior to the passage of the ordinance or resolution, the public employer informed its public employees of this application by giving a copy of the application to its public representative, if any.

a. Name of public employee representative: _____

b. Date notified: _____

3. The public employer has informed its public employees by posting a statement, for thirty consecutive days at the place or places where notices to public employees are normally posted and by any other appropriate means of public employee notification, giving a summary of this application and specifying where a copy of this application may be examined. Dates of posting: From _____ to _____

4. The public employer has informed its public employees of their rights to a hearing under section 4167.15 of the Revised Code.

Describe briefly how the public employees have been informed of this application and of their rights to a hearing:

Signature of Applicant

Title

Sworn to before me and subscribed in my presence this _____ day of _____, 19__

(SEAL) _____

Notary Public

My commission expires _____

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4167-15-02 Exemption may be revoked.

The administrator may revoke an exemption under the following circumstances:

- (A) If the employer does not comply with division (I) of section 4167.19 of the Revised Code.
- (B) If pursuant to an inspection pursuant to division (G) or (I) of section 4167.19 of the Revised Code or section 4167.06 of the Revised Code, the administrator finds hazardous or unsafe conditions.

To Be Rescinded