



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services  
Oregon Occupational Safety & Health Division (Oregon OSHA)  
350 Winter Street NE PO Box 14480 Salem, OR 97309-0405  
Phone: 503-378-3272; Toll Free: 1-800-922-2689; Fax: 503-947-7461  
osha.oregon.gov

February 26, 2021

[Text of proposed changes  
September 15, 2020 Federal Register](#)

## Cranes and Derricks in Construction: Railroad Roadway Work

Due to the COVID-19 pandemic and in line with Oregon Health Authority guidelines, the hearings will be held virtually. Oregon OSHA offices remain closed to the public.

### ***Virtual Public Hearings Scheduled for:***

<u>Date</u>	<u>Time</u>
<b>March 24, 2021</b>	<b>11:00 am</b>

Please register for the Public Hearing for Cranes and Derricks in Construction: Railroad Roadway Work on March 24, 2021 11:00 AM PST at:  
<https://attendee.gotowebinar.com/register/952991121447045643>

After registering for a webinar, you will receive a confirmation email containing information about joining the webinar. In order to ensure as many people as possible are able to testify, Oregon OSHA reserves the right to restrict testimony to no more than 5 minutes.

### ***Rule Summary:***

Oregon OSHA is proposing these rules in response to Federal OSHA rules filed in the Federal Register on September 15, 2020. Oregon OSHA as a State Plan is required to amend our standards to be identical or "at least effective as" rules adopted by Federal OSHA. This particular rulemaking is deregulatory in nature and provides exemptions from several of the rules in Subdivision CC of the construction rules. The rules also serve to clarify the situations in which either OSHA or the Federal Railway Administration (FRA) holds primary jurisdiction over worker safety during railroad construction and maintenance work.

Please visit our web site [osha.oregon.gov](https://osha.oregon.gov) Click 'Rules and laws' in the Common resources column and view our proposed rules, or select other rule activity from this page.

***When does this happen:*** Adoption tentatively will be in May 2021.

***To get a copy:*** Our web site – [osha.oregon.gov](http://osha.oregon.gov) Rules and laws, then,  
Proposed rules  
Or call 503-947-7449

***To comment:*** Department of Consumer and Business Services/Oregon  
OSHA  
PO BOX 14480  
Salem OR 97309-0405  
E-mail – [tech.web@oregon.gov](mailto:tech.web@oregon.gov)  
Fax – 503-947-7461

***Comment period closes:*** April 16, 2021

***Oregon OSHA contact:*** Jeff Carlson, Central Office @ 503-484-0628  
or email at [Jeffery.T.Carlson@oregon.gov](mailto:Jeffery.T.Carlson@oregon.gov)

State of Oregon  
Department of Consumer and  
Business Services  
Oregon OSHA  
350 Winter St. NE  
Salem, OR 97301-3882

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA  
Agency and Division

OAR 437  
Administrative Rules Chapter Number

Lisa Appel  
Rules Coordinator

350 Winter Street NE Salem OR 97301-3882  
Address

503-378-3272  
Telephone

**RULE CAPTION**

**Cranes and Derricks in Construction: Railroad Roadway Work**

**Virtual Public Hearings Scheduled for:**

Hearing Date	Time	Location	Hearings Officer
<b>March 24, 2021</b>	<b>11:00 am</b>	Oregon OSHA, Salem	Lisa Appel

Please register for the Public Hearing for Cranes and Derricks in Construction: Railroad Roadway Work on March 24, 2021 11:00 AM PST at:  
<https://attendee.gotowebinar.com/register/952991121447045643>

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

**Amend: OAR 437-003-0001**

ORS 654.025(2) and 656.726(4)  
Stat. Auth.

Other Authority

ORS 654.001 through 654.295  
Stats. Implemented

**RULEMAKING SUMMARY**

Oregon OSHA is proposing these rules in response to Federal OSHA rules filed in the Federal Register on September 15, 2020. Oregon OSHA as a State Plan is required to amend our standards to be identical or "at least effective as" rules adopted by Federal OSHA. This particular rulemaking is deregulatory in nature and provides exemptions from several of the rules in Subdivision CC of the construction rules. The rules also serve to clarify the situations in which either OSHA or the Federal Railway Administration (FRA) holds primary jurisdiction over worker safety during railroad construction and maintenance work.

**INDIVIDUAL RULE SUMMARY (By rule number)**

Provide a brief summary of the rule (if new adoption), or a brief summary of changes made to the rule (if amending)

437-003-0001 – Revisions of 29 CFR 1926.1440, 1442, and 1443 will be adopted by reference to align with Federal OSHA rules.

29 CFR 1926.1400 – Adding an exclusion for certain flash-butt welding trucks to the scope of the standard.

29 CFR 1926.1442 – Adding exceptions to the subpart related to roadway maintenance machines.

29 CFR 1926.1443 – Renumbering the severability statement.

Please visit our web site [osha.oregon.gov](http://osha.oregon.gov) Click 'Rule changes' in the Topics, rules, guidelines column and view our proposed rules; or, select other rule activity from the left vertical column on the Proposed Rules page.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.



Signature

April 16, 2021

**Last Day for Public Comment**

Last day to submit written comments to the Rules Coordinator

Michael D. Wood

Printed name

2/26/2021

Date

\*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-2005

## STATEMENT OF NEED AND FISCAL IMPACT

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

Department of Consumer and Business Services/Oregon OSHA  
Agency and Division

OAR 437  
Administrative Rules Chapter Number

### In the Matter of:

**Amending:** OAR 437-003-0001

**Rule Caption:** Cranes and Derricks in Construction: Railroad Roadway Work

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

**Stats. Implemented:** ORS 654.001 through 654.295

### Need for the Rule(s):

Oregon OSHA is proposing these rules in response to Federal OSHA rules filed in the Federal Register on September 15, 2020. Oregon OSHA as a State Plan is required to amend our standards to be identical or "at least effective as" rules adopted by Federal OSHA. This particular rulemaking is deregulatory in nature and provides exemptions from several of the rules in Subdivision CC of the construction rules. The rules also serve to clarify the situations in which either OSHA or the Federal Railway Administration (FRA) holds primary jurisdiction over worker safety during railroad construction and maintenance work.

### Documents Relied Upon, and where they are available:

Federal Register filing by Federal OSHA. Federal Register Volume 85, Number 179 Tuesday, September 15, 2020. This document can be accessed at <https://www.regulations.gov/>

### Fiscal and Economic Impact:

#### Statement of Cost of Compliance:

##### 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

Due to the fact that this rulemaking is deregulatory in nature, Oregon OSHA does not anticipate any additional costs as part of this.

##### 2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Federal OSHA estimates that there are roughly 767 firms classified as small businesses in this category nationwide. For the railroad industry the Small Business Administration (SBA) classifies an entity as "small" if it employs less than 1,501 people. Federal OSHA projects that this rulemaking will result in a nationwide cost savings of \$2.5 million per year with a discount rate of 3% for employers in this category. This rulemaking will not impose new costs on small businesses in the state.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services.**

This rulemaking is largely deregulation and regulatory agency jurisdictional deconfliction. There is no foreseeable expectation that this rulemaking will increase administrative costs to affected employers because it does not require that any new or additional actions be taken.

**c. Equipment, supplies, labor and increased administration required for compliance.**

This rulemaking will not require new equipment as it allows the unmodified use of equipment already owned by employers for their core business tasks. The rule will not require new supplies as the supplies used and quantities of those supplies are purposefully unaffected by this rulemaking. The training requirements of railroad maintenance workers will not change in response to this rulemaking. There will not be any driver of extra costs in this category due to this rulemaking.

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

Small businesses were part of the original Federal OSHA construction crane rulemaking process in the form of the Small Business Advocacy Review Panel (SBAR) and Small Entity Representatives (SERs).

**Administrative Rule Advisory Committee consulted?: Yes**

This rulemaking concerns adopting federal rules as written and will only affect federal rules previously adopted by Oregon OSHA. A stakeholder meeting was held on February 16, 2021 and all stakeholders that attended were in support of adoption.

If not, why?:



Michael D. Wood 2/26/2021

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

## HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING  
A \*TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.  
(ORS 183.534)  
FOR ADMINISTRATIVE RULES

**AGENCY NAME:** DCBS/Oregon OSHA  
**ADDRESS:** 350 Winter Street NE  
**CITY/STATE:** Salem OR 97301-3882  
**PHONE:** (503) 947-7449

**PERMANENT:** XX

**HEARING DATE:** Mar 24, 2021

**TEMPORARY:**

**EFFECTIVE DATE:** May 2021

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.

IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

**Description of proposed change:** (Please attach any draft or permanent rule or ordinance)  
See attached Notice of Proposed Rulemaking Hearing.

**Description of the need for, and objectives of the rule:**  
See attached Notice of Proposed Rulemaking Hearing.

**List of rules adopted or amended:**

**AMEND:** OAR 437-003-0001

**Materials and labor costs increase or savings:**

This rulemaking is focused on deregulating equipment and processes commonly used in railroad roadway construction and maintenance. Oregon OSHA expects this rule to have no effect on labor costs in the residential construction industry. Oregon OSHA does not expect this rule to incur any cost increases on materials in the residential construction industry.

**Estimated administrative construction or other costs increase or savings:**

There is no projected effect on administrative costs in the residential construction industry in Oregon.

**Land costs increase or savings:**

This rulemaking will not have any direct effect on right of way requirements in the railroad industry.

**Other costs increase or savings:**

Oregon OSHA foresees no other cost impacts on housing construction in Oregon.

\*Typical-Single story 3 bedrooms, 1 1/2 bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

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