



September 20, 2016

[Text of changes](#)
[May 12, 2016 Federal Register](#)

Oregon OSHA – Proposed Changes with Federal OSHA Amendments: Improve Tracking of Workplace Injuries and Illnesses

Public Hearings Scheduled for:

<u>Date</u>	<u>Time</u>	<u>Location</u>
October 25, 2016	11:00 am	Oregon OSHA Red Oaks Square 1230 NE Third Street, Suite A-115 Bend, OR 97701-4374
October 27, 2016	10:00 am	Oregon OSHA Durham Plaza 16760 SW Upper Boones Ferry Road Suite 200 Tigard, OR 97224
November 2, 2016	10:00 am	Oregon OSHA 1140 Willagillespie Road, Suite 42 Eugene, OR 97401-6730
November 3, 2016	10:00 am	City of Medford Lausmann Annex – Room 151 200 S Ivy Medford, OR 97501

This rulemaking is to keep Oregon OSHA in harmony with recent changes to federal OSHA standards.

On May 12, 2016, federal OSHA adopted rules to improve tracking of work-place injuries and illnesses for employers. Due to the unique nature of the national recordkeeping program, state-plan states must promulgate recordkeeping and recording requirements that are substantially identical to 29 CFR part 1904.

This rulemaking will increase prevention of workplace injuries and illnesses as a result of expanded access to timely establishment-specific injury/illness information by federal OSHA, employers, employees, potential customers, and researchers. The benefits of the final rule also include the promotion of complete and accurate reporting of work-related injuries and illnesses.

The final rule requires employers in certain industries to electronically submit to federal OSHA injury and illness data that employers are already required to keep under existing federal OSHA regulations. The frequency and content of these establishment-specific submissions is set out in the final rule and is dependent on the size and industry of the employer. Federal OSHA intends to post the data from these submissions on a publicly accessible website. Federal OSHA does not intend to post any information on the website that could be used to identify individual employees.

The final rule also amends federal OSHA's recordkeeping regulation to update requirements on how employers inform employees to report work-related injuries and illnesses to their employer. The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses. The final rule also amends OSHA's existing recordkeeping regulation to clarify the rights of employees and their representatives to access the injury and illness records.

Oregon OSHA proposes to amend OAR 437-001-0700 Recording Workplace Injuries and Illness, in Division 1, General Administrative Rules, to reflect federal OSHA's final rule changes.

Please visit our web site osha.oregon.gov Click 'Rules and laws' in the Topics, rules, guidelines column and view our proposed rules, or select other rule activity from this page.

- When does this happen:** Adoption tentatively will be in November 2016
- To get a copy:** Our web site – osha.oregon.gov Rules and laws, then, Proposed rules
Or call 503-947-7449
- To comment:** Department of Consumer and Business Services/Oregon OSHA
350 Winter Street NE
Salem OR 97301-3882
E-mail – tech.web@oregon.gov
Fax – 503-947-7461
- Comment period closes:** November 4, 2016
- Oregon OSHA contact:** Jeff Wilson, Central Office @ 503-947-7421
or email at jeffrey.r.wilson@oregon.gov
- Dave McLaughlin, Central Office @ 503-947-7457
or email at dave.mclaughlin@oregon.gov

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

OAR 437

Agency and Division

Administrative Rules Chapter Number

Sue Joye

350 Winter Street NE Salem OR 97301-3882

503-947-7449

Rules Coordinator

Address

Telephone

RULE CAPTION

Adopt federal OSHA amendments: Improve Tracking of Workplace Injuries and Illnesses.

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Hearing Date

Time

Location

Hearings Officer

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

RULEMAKING ACTION

Amend: OAR 437-001-0700.

ORS 654.025(2) and 656.726(4)

Stat. Auth.

Other Authority

ORS 654.001 through 654.295; 654.412 through 654.423; 654.750 through 654.780

Stats. Implemented

RULE SUMMARY

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Please visit our website 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

November 4, 2016

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Printed name

Michael A Wood 9/15/2016

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

Secretary of State
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 437-001-0700.

Rule Caption:
Adopt federal OSHA amendments: Improve Tracking of Workplace Injuries and Illnesses.

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

Stats. Implemented: ORS 654.001 through 654.295; 654.412 through 654.423; 654.750 through 654.780

Need for the Rule(s):

This rulemaking is to keep Oregon OSHA in harmony with recent changes to federal OSHA standards.

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Documents Relied Upon, and where they are available:

Federal Register, May 12, 2016
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=26789

Division 1, General Administrative Rules, OAR 437-001-0700 Recording Workplace Injuries and Illnesses
<http://osha.oregon.gov/OSHARules/div1/div1.pdf#437-001-0700>

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

Fiscal and Economic Impact:

As described by federal OSHA, this final rule is not an economically significant regulatory action. The final rule does not add to or change any employer's obligation to complete, retain, and certify injury and illness records. The final rule also does not add to or change the recording criteria or definitions for these records. The only changes are that, under certain circumstances, employers will be obligated to submit information from these records to federal OSHA in an electronic format and to assure that employees have, and understand they have, a right to report injuries and illnesses without fear of discrimination. The final rule also amends federal OSHA's recordkeeping regulation to update requirements on how employers inform employees to report work-related injuries and illnesses to their employer.

The final rule clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

Statement of Cost of Compliance:

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

Costs incurred by Oregon OSHA represent similar costs associated with the promulgation, implementation and administration of a rule.

All state agencies and local government units are affected by the rules in the sense that they are employers under the Oregon Safe Employment Act (OSEAct).

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:

In addition to the electronic submission for all establishments with 250 or more employees, federal OSHA requires employers in specific industries to submit data electronically when there are 20 or more employees at an establishment within those industries. The following table lists those industries and number of employers in Oregon within that industry. While this rule can affect approximately 52,147 employers, it is anticipated that many of the establishments will not have the threshold level of 20 employees that would require electronic submission. Of the small employers in Oregon who have establishments with 20 or more employees the annual cost for electronic submission is estimated to be \$11.11.

NAICS Code	Industry	Oregon Employers
11	Agriculture, forestry, fishing and hunting	3,919
22	Utilities	249
23	Construction	12,301
31-33	Manufacturing	5,911
42	Wholesale trade	9,289
4413	Automotive parts, accessories, and tire stores	796
4421	Furniture stores	345
4422	Home furnishings stores	422
4441	Building material and supplies dealers	751
4442	Lawn and garden equipment and supplies stores	284
4451	Grocery stores	1,556
4452	Specialty food stores	427

4521	Department stores	210
4529	Other general merchandise stores	324
4533	Used merchandise stores	364
4542	Vending machine operators	39
4543	Direct selling establishments	170
4811	Scheduled air transportation	37
4841	General freight trucking	945
4842	Specialized freight trucking	634
4851	Urban transit systems	8
4852	Interurban and rural bus transportation	6
4853	Taxi and limousine service	74
4854	School and employee bus transportation	60
4855	Charter bus industry	10
4859	Other transit and ground passenger transportation	126
4871	Scenic and sightseeing transportation, land	14
4881	Support activities for air transportation	100
4882	Support activities for rail transportation	30
4883	Support activities for water transportation	55
4884	Support activities for road transportation	173
4889	Other support activities for transportation	22
4911	Postal service	38
4921	Couriers and express delivery services	145
4922	Local messengers and local delivery	116
4931	Warehousing and storage	228
5152	Cable and other subscription programming	11
5311	Lessors of real estate	1,880
5321	Automotive equipment rental and leasing	189
5322	Consumer goods rental	223
5323	General rental centers	45
5617	Services to buildings and dwellings	3,088
5621	Waste collection	155
5622	Waste treatment and disposal	40
5629	Remediation and other waste management services	159
6219	Other ambulatory health care services	95
6221	General medical and surgical hospitals	60
6222	Psychiatric and substance abuse hospitals	6
6223	Specialty (except psychiatric and substance abuse) hospitals	4
6231	Nursing care facilities	156
6232	Residential mental retardation, mental health and substance abuse	831

	facilities	
6233	Community care facilities for the elderly	1,461
6239	Other residential care facilities	118
6242	Community food and housing, and emergency and other relief services	297
6243	Vocational rehabilitation services	235
7111	Performing arts companies	154
7112	Spectator sports	78
7121	Museums, historical sites, and similar institutions	118
7131	Amusement parks and arcades	27
7132	Gambling industries	16
7211	Traveler accommodation	1,068
7212	RV (recreational vehicle) parks and recreational camps	200
7213	Rooming and boarding houses	52
7223	Special food services	527
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance	410
8123	Dry-cleaning and laundry services	266

Oregon employment data is from the Oregon Employment Department's employer database (<https://www.qualityinfo.org>).

In most cases, submitting information to federal OSHA would require several basic steps: (1) Logging on to federal OSHA's web-based submission system; (2) entering basic establishment information into the system (the first time only); (3) copying the required injury and illness information from the establishment's records into the electronic submission forms; and (4) hitting a button to submit the information to federal OSHA.

Oregon Employment Department wage data for 2016 for a Human Resource Specialist at the 90th percentile range is listed as (\$44.44 per hour). Factoring in a fringe benefit factor of 1.5 the total compensation would be \$66.66 per hour.

Federal OSHA has estimated that establishments with 20-249 workers that have been identified in the table provided (who would only need to submit the 300a form) should be able to electronically submit the data in 10 minutes. Based on the total compensation per hour listed above, the cost would be \$11.11. Establishments with 250 or more employees should be able to submit the 300a and the additional records required in 20 minutes, resulting in a cost of \$22.22.

Oregon OSHA currently has a rule (OAR 437-001-0700(23)) that prohibits employers from discriminating against employees for reporting work-related injuries and illness, or files a safety/health complaint or asks for safety related records. This should have little to no fiscal impact on employers.

Under the new rule employers will be required to establish a reasonable procedure for reporting injuries and illnesses and inform employees of that procedure. The procedure would not be considered in compliance if it would deter a reasonable person from accurately reporting an injury or illness. Federal OSHA has addressed this issue in the past and has provided direction to employers in the federal OSHA Memorandum dated March 12, 2012

<https://www.osha.gov/as/opa/whistleblowermemo.html> The new rule serves as a clarification of the rules that have been in place for a number of years in Oregon and will have little additional fiscal impact on employers.

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

As a recordkeeping-based rule, costs have been included in the estimates listed above.

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

These costs are inclusive with the costs listed above.

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

A stakeholders meeting was held that represent smaller employers including Associated General Contractors, and the Law Office of Cummins, Goodman, Denley & Vickers. A variety of stakeholder groups such as Oregon OSHA's Construction Advisory Committee were informed about the rules and the impacts and they were invited to participate in the stakeholder group for this rulemaking. Federal OSHA, who promulgated this rule, involved stakeholders who represented small business owners as well.

**Administrative Rule Advisory Committee consulted?
If not, why?**

Yes.



Authorized Signer

Michael A Wood 9/15/2016
Printed name Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.
ARC 925-2005