



Oregon

Kate Brown, Governor

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July 5, 2018

[Text of changes](#)

Oregon OSHA – Silica Medical Evaluation Clarification and Timeline Clarification

Oregon OSHA adopted the rules for silica Sept. 23, 2016, with an effective date of July 1, 2018. At that time, Oregon OSHA decided to incorporate the General Industry standard and the Construction standard into one rule. Oregon OSHA was notified that the criteria requiring medical monitoring in the new Oregon standard (OAR 437-002-1062) could be read to require construction workers who were exposed to the action level for 30 or more days per year to have medical monitoring done. This was not Oregon OSHA's intent, as that requirement does not exist in the federal OSHA requirements. This rulemaking is to clarify the criteria for medical monitoring for the construction industry. Additionally, there are certain delayed provisions that affect the medical monitoring requirements, and language was included to help employers understand when those deferrals apply and when they end.

Oregon OSHA held one hearing concerning this rulemaking, and received no oral comments at that hearing. Additionally, the division received no written comments.

Please visit our web site 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.

This is Oregon OSHA Administrative Order 4-2018, Adopted July 5, 2018 and effective July 13, 2018.

Oregon OSHA contact: Dave McLaughlin, Central Office @ 503-947-7457, or email at dave.mclaughlin@oregon.gov

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

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
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on July 5, 2018 by the
Date prior to or same as filing date

Department of Consumer & Business Services/Oregon Occupational Safety & Health Division 437
Agency and Division Administrative Rules Chapter Number

Heather Case 350 Winter Street NE, Salem OR 97301-3882 503-947-7449
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to become effective July 13, 2018 as Oregon OSHA Administrative Order 4-2018.
Date upon filing or later

Rulemaking Notice was published in the June 2018 *Oregon Bulletin*.**
Month and Year

RULE CAPTION

Silica Medical Evaluation Clarification and Timeline Clarification.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

AMEND: OAR 437-002-1062

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

ORS 654.001 through 654.295
Stats. Implemented

RULEMAKING SUMMARY

Oregon OSHA adopted the rules for silica Sept. 23, 2016, with an effective date of July 1, 2018. At that time, Oregon OSHA decided to incorporate the General Industry standard and the Construction standard into one rule. Oregon OSHA was notified that the criteria requiring medical monitoring in the new Oregon standard (OAR 437-002-1062) could be read to require construction workers who were exposed to the action level for 30 or more days per year to have medical monitoring done. This was not Oregon OSHA's intent, as that requirement does not exist in the federal OSHA requirements. This rulemaking is to clarify the criteria for medical monitoring for the construction industry. Additionally, there are certain delayed provisions that affect the medical monitoring requirements, and language was included to help employers understand when those deferrals apply and when they end.

Oregon OSHA held one public hearing on this rulemaking, and received no comments at that hearing. The division also received no written comments concerning this rulemaking.

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)

437-002-1062: Separated requirements for medical monitoring by construction or construction-like activity versus no construction activity. Clarified deferral dates of compliance.

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 the left vertical column on the Proposed Rules page.



Authorized Signer

Michael D. Wood

Printed name

07/05/2018

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005



PERMANENT ADMINISTRATIVE ORDER

OSHA 4-2018

CHAPTER 437
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

FILED
07/05/2018 11:43 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Silica Medical Evaluation Clarification and Timeline Clarification.

EFFECTIVE DATE: 07/13/2018

AGENCY APPROVED DATE: 07/05/2018

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Filed By:
Heather Case
Rules Coordinator

AMEND: 437-002-1062

RULE TITLE: Medical Surveillance

NOTICE FILED DATE: 05/24/2018

RULE SUMMARY: Separated requirements for medical monitoring by construction or construction-like activity versus no construction activity. Clarified deferral dates of compliance.

RULE TEXT:

This rule describes the medical monitoring requirements of this subdivision.

(1) Make medical surveillance available to each employee who:

(a) Is engaged in construction (or construction-like) activity and will be required under this subdivision to use a respirator for 30 or more days per year.

(b) Is not engaged in construction activity and will be occupationally exposed to respirable crystalline silica at or above the permissible exposure limit for 30 or more days per year. This requirement, in accordance with 437-002-1065, is applicable between July 1, 2018 and June 30, 2020.

(c) Is not engaged in construction activity and will be occupationally exposed to respirable crystalline silica at or above the action level for 30 or more days per year. This requirement, in accordance with 437-002-1065, is applicable as of July 1, 2020.

NOTE: The medical evaluation requirements of the respiratory protection rule, 1910.134, still apply for employees wearing respiratory protection.

(2) Medical surveillance must be provided at no cost to the employee and at a reasonable time and place.

(3) Ensure that all medical examinations and procedures required by this rule are performed by a PLHCP as defined in 437-002-1054.

(4) Make an initial (baseline) medical examination available within 30 days after initial assignment, unless the employee has received a medical examination that meets the requirements of this rule within the last three years. The examination must consist of:

(a) A medical and work history, with emphasis on: Past, present, and anticipated exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system; any history of respiratory system dysfunction, including signs

- and symptoms of respiratory disease (e.g., shortness of breath, cough, wheezing); history of tuberculosis; and smoking status and history;
- (b) A physical examination with special emphasis on the respiratory system;
 - (c) A chest X-ray (a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems), interpreted and classified according to the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader;
 - (d) A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV1) and FEV1/FVC ratio, administered by a spirometry technician with a current certificate from a NIOSH approved spirometry course;
 - (e) Testing for latent tuberculosis infection; and
 - (f) Any other tests deemed appropriate by the PLHCP.
- (5) Make medical examinations available that include the procedures described in 437-002-1062(4) (except 437-002-1062(4)(e)) at least every three years, or more frequently if recommended by the PLHCP.
- (6) Ensure that the examining PLHCP has a copy of this rule, and provide the PLHCP with the following information:
- (a) A description of the employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to respirable crystalline silica;
 - (b) The employee's former, current, and anticipated levels of occupational exposure to respirable crystalline silica;
 - (c) A description of any personal protective equipment used or to be used by the employee, including when and for how long the employee has used or will use that equipment; and
 - (d) Information from records of employment-related medical examinations previously provided to the employee and currently within the control of the employer.
- (7) Ensure that the PLHCP explains to the employee the results of the medical examination and provides each employee with a written medical report within 30 days of each medical examination performed. Ensure the written report contains:
- (a) A statement indicating the results of the medical examination, including any medical condition(s) that would place the employee at increased risk of material impairment to health from exposure to respirable crystalline silica and any medical conditions that require further evaluation or treatment;
 - (b) Any recommended limitations on the employee's use of respirators;
 - (c) Any recommended limitations on the employee's exposure to respirable crystalline silica; and
 - (d) A statement that the employee should be examined by a specialist (pursuant to 437-002-1062(9)) if the chest X-ray provided in accordance with this rule is classified as 1/0 or higher by the B Reader, or if referral to a specialist is otherwise deemed appropriate by the PLHCP.
- (8) Obtain a written medical opinion from the PLHCP within 30 days of the medical examination. The written opinion must contain only the following:
- (a) The date of the examination;
 - (b) A statement that the examination has met the requirements of this rule; and
 - (c) Any recommended limitations on the employee's use of respirators.
- (9) If the employee provides written authorization, the written opinion must also contain either or both of the following:
- (a) Any recommended limitations on the employee's exposure to respirable crystalline silica;
 - (b) A statement that the employee should be examined by a specialist (pursuant to 437-002-1062(11)) if the chest X-ray provided in accordance with this rule is classified as 1/0 or higher by the B Reader, or if referral to a specialist is otherwise deemed appropriate by the PLHCP.
- (10) Ensure that each employee receives a copy of the written medical opinion within 30 days of each medical examination performed.
- (11) If the PLHCP's written medical opinion indicates that an employee should be examined by a specialist, make a medical examination by a specialist available within 30 days after receiving the PLHCP's written opinion.

- (a) Ensure that the examining specialist is provided with all of the information that the employer is obligated to provide to the PLHCP in accordance with this rule.
- (b) Ensure that the specialist explains to the employee the results of the medical examination and provides each employee with a written medical report within 30 days of the examination. The written report must meet the requirements this rule.
- (c) Obtain a written opinion from the specialist within 30 days of the medical examination. The written opinion must meet the requirements of this rule.

[ED. NOTE: Appendix referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4).

STATUTES/OTHER IMPLEMENTED: ORS 654.001- 654.295