



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (Oregon OSHA)
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February 26, 2019

[Text of proposed changes](#)
[Nov. 9, 2018 Federal Register](#)

Oregon OSHA's Proposed Rulemaking- Cranes and Derricks in Construction: Operator Qualification

Public Hearings Scheduled for:

<u>Date</u>	<u>Time</u>	<u>Location</u>
March 21, 2019	1:30 pm	Oregon OSHA Durham Plaza 16760 SW Upper Boones Ferry Rd Suite 200 Tigard, OR 97224

Oregon OSHA is proposing this rule in response to a federal OSHA rule adoption on November 9, 2018. This rule amended the operator certification requirements for cranes and derricks used in construction work. The federal rule process began in an exploratory capacity in 1998 and rulemaking began in earnest in 2004. The final rule was adopted in 2010 after extensive rulemaking committee meetings and comment periods. The rule was due to take full effect in 2014, but extensions through November 2018 with additional comment periods added up to an adoption timeframe of roughly 20 years. During these years Oregon OSHA adopted crane operator certification rules for Oregon, with the intent to provide more stringent training requirements than those federally mandated during the extended rulemaking process. The latest of these rules were adopted in April 2002 with the intent that Oregon OSHA's rulemaking on crane and derrick operator qualifications would reopen with the final adoption of the federal rules that were then being worked on.

The nature of Oregon OSHA's state plan certification requires that Oregon-specific rules be at least as effective as federal rules. OAR 437-003-0081 was judged more effective than the federal rules in effect at the time of adoption. Now that the federal rules have been adopted, this is no longer the case, especially the requirement for "Nationally Accredited" training program completion for operators. Oregon OSHA can see no feasible modifications to the federal rule that would be more effective. This is echoed by Oregon OSHA stakeholder groups who have been silent on the subject of modifications to the rule to enhance effectiveness. Therefore Oregon OSHA proposes to adopt the federal rule as written.

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.

When does this happen: Adoption tentatively will be in April 2019.

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: April 5, 2019

Oregon OSHA contact: Jeff Carlson, Central Office @ 503-947-7407
or email at Jeffery.t.carlson@oregon.gov

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

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

Repealing: OAR 437-003-0081

Rule Caption: Cranes and Derricks in Construction: Operator Qualification

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 this rule in response to a federal OSHA rule adoption on November 9, 2018. This rule amended the operator certification requirements for cranes and derricks used in construction work. The federal rule process began in an exploratory capacity in 1998 and rulemaking began in earnest in 2004. The final rule was adopted in 2010 after extensive rulemaking committee meetings and comment periods. The rule was due to take full effect in 2014, but extensions through November 2018 with additional comment periods added up to an adoption timeframe of roughly 20 years. During these years Oregon OSHA adopted crane operator certification rules for Oregon, with the intent to provide more stringent training requirements than those federally mandated during the extended rulemaking process. The latest of these rules were adopted in April 2002 with the intent that Oregon OSHA's rulemaking on crane and derrick operator qualifications would reopen with the final adoption of the federal rules that were then being worked on. The nature of Oregon OSHA's state plan certification requires that Oregon-specific rules be at least as effective as federal rules. OAR 437-003-0081 was judged more effective than the federal rules in effect at the time of adoption. Now that the federal rules have been adopted, this is no longer the case, especially the requirement for "Nationally Accredited" training program completion for operators. Oregon OSHA can see no feasible modifications to the federal rule that would be more effective. This is echoed by Oregon OSHA stakeholder groups who have been silent on the subject of modifications to the rule to enhance effectiveness. Therefore Oregon OSHA proposes to adopt the federal rule as written.

Documents Relied Upon, and where they are available:

Federal Register filing by federal OSHA. Federal Register Volume 83, Number 218, Friday, November 9, 2018. This document can be accessed at <https://www.regulations.gov/>.

NCCCO Tower Crane Operator Testing Fees current as of February, 2019

These fees can be viewed at <http://nccco.org/nccco/certification-programs/tower-crane-operator/exam-fees>

Morrow Tower Crane Technician class cost current as of February, 2019

This class cost can be viewed at <https://www.morrow.com/product/tower-crane-technician/>

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)):

Only state agencies and local government units engaged in construction activities that use cranes and derricks will be directly affected by this rule. Most of this sort of work is done on behalf of smaller government agencies and by contractors who will be hesitant to pass slightly increased training costs onto customers in the bidding process. There are a few larger governmental organizations that use this equipment for construction work. These are mostly larger city governments and state agencies such as the City of Bend and the Oregon Department of Transportation. Representatives of organizations such as these have stated that they may cut training costs by identifying select operators for enhanced training while confining other operators to non-construction tasks to ensure rule compliance. These factors indicate that this rule should put little to no additional burden on the budgets of these organizations.

The public as a whole will be affected only to the degree that members of the public are employers and employees. Most members of the public will not be affected personally, professionally, or financially.

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:

The number of small businesses affected by this rule is unknown given the breadth of the construction activities affected by this rule. Almost any construction activity utilizing a crane of any design or configuration with a capacity greater than 2,000 pounds will require an operator that is certified by a nationally accredited training organization and an employer evaluation. This is the root of the difficulty of precisely calculating these numbers. The affected equipment ranges in size from tower cranes used to construct skyscrapers down to service truck mounted hoists used to lower machinery into place at a new building. Much of this smaller equipment is bought and sold like any other consumer good and requires no extra registration with any government agency, therefore, there is not a way to track numbers of affected equipment and users outside of private accounting and tax documents possessed by buyers and sellers of such equipment. This is not to say that the cost to a small business cannot be estimated from the known and estimated costs of compliance, simply that it is unknown how many small businesses will be affected. If a business in Oregon needed to train a new employee, with no previous experience, to operate a tower crane for use in construction it would cost roughly \$2,550. These are combined costs for training (\$2,295 from a local provider), testing (National Commission for the Certification of Crane Operators (NCCCO) testing fee of (\$165), and evaluating a new operator to meet the requirements of the rule (federal OSHA estimate of \$90 per evaluation).

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

Federal OSHA estimates that most of the recordkeeping and administrative activities will be related to the requirement to "perform the operator competency evaluation, document the evaluations, and provide any additional training needed by operators." The only professional service expected to be required by this rule will be the nationally accredited training that the rule mandates. There are two main sources for this training, resulting in a nationally accredited certification based in Oregon. These certifications are valid for 5 years and discounts are offered to experienced operators who are recertifying. Federal OSHA estimates that new nationwide costs to the construction industry to meet compliance with this rule will be 1.637 million dollars annually.

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

This rule will not require new equipment, as it affects training for use of equipment already owned by employers for their core business tasks. The rule will not require new supplies as the supplies used are identical to those already used by employers for their core business tasks. The training requirements are largely met on the job, so there shouldn't be undue supply/equipment wear/wastage incurred as a result of this rule due to the training time being spent performing useful core tasks. There will not likely be a need for extra administrative personnel due to this rule. Most of the administrative activities will be periodic and consist of performance evaluations and recordkeeping/retention of those evaluations. Federal OSHA expects that administrative costs for all affected employers nationwide will total \$62,000 annually. Federal OSHA breaks this down to a cost of \$90.04 dollars annually for each affected employee.


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

Small businesses were part of the federal OSHA rulemaking process in the form of the Small Business Advocacy Review Panel (SBAR) and Small Entity Representatives (SERs). These groups submitted reports and feedback/comments to federal OSHA throughout the rulemaking process. Since the rule adoption on November 9, 2018, Oregon OSHA has presented the requirements to our Construction Advisory Committee and the Public Utilities Committee. Oregon OSHA provided a document comparing the requirements of the adopted rule to the current OAR 437-003-0081 and solicited comments from both groups of stakeholders. The stakeholder group members, which include small businesses, were given the ability to comment on pre-proposal ideas. Oregon OSHA considers that the mixture of federal and state plan outreach is sufficient, especially given the lack of detailed Oregon specific fiscal impact feedback.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:


Signature

 2/25/19
Printed name Date

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

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

Heather Case 350 Winter Street NE Salem OR 97301-3882
Rules Coordinator Address

503-947-7449
Telephone

RULE CAPTION

Cranes and Derricks in Construction: Operator Qualification

March 21, 2019	1:30 pm	Oregon OSHA Durham Plaza 16760 SW Upper Boones Ferry Road Suite 200 Tigard, OR 97224	Heather Case
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Hearing Date	Time	Location	Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Amend: OAR 437-003-0001

Repeal: OAR 437-003-0081

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 this rule in response to a federal OSHA rule adoption on November 9, 2018. This rule amended the operator certification requirements for cranes and derricks used in construction work. The federal rule process began in an exploratory capacity in 1998 and rulemaking began in earnest in 2004. The final rule was adopted in 2010 after extensive rulemaking committee meetings and comment periods. The rule was due to take full effect in 2014, but extensions through November 2018 with additional comment periods added up to an adoption timeframe of roughly 20 years. During these years Oregon OSHA adopted crane operator certification rules for Oregon, with the intent to provide more stringent training requirements than those federally mandated during the extended rulemaking process. The latest of these rules were adopted in April 2002 with the intent that Oregon OSHA's rulemaking on crane and derrick operator qualifications would reopen with the final adoption of the federal rules that were then being worked on. The nature of Oregon OSHA's state plan certification requires that Oregon-specific rules be at least as effective as federal rules. OAR 437-003-0081 was judged more effective than the federal rules in effect at the time of adoption. Now that the federal rules have been adopted, this is no longer the case, especially the requirement for "Nationally Accredited" training program completion for operators. Oregon OSHA can see no feasible modifications to the federal rule that would be more effective. This is echoed by Oregon OSHA stakeholder groups who have been

silent on the subject of modifications to the rule to enhance effectiveness. Therefore Oregon OSHA proposes to adopt the federal rule as written.

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 CFR 1926.1427 and CFR 1926.1430 will be adopted by reference.

437-003-0081- This rule and the appendices, OR-A through OR-F, associated with it will be repealed in their entirety. They are superfluous due to the more stringent requirements contained in the revisions of CFR 1926.1427 and CFR 1926.1430.


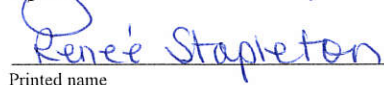
Please visit our web site osha.oregon.gov Click 'Rule changes' in the Topics, rules, guidelines column and view our proposed rules; or, select other rule activity from the left vertical column on the Proposed Rules page.

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.

April 5, 2019

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator


Signature

Printed name
2/25/19
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

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

PERMANENT: XX

HEARING DATE: Mar. 21, 2019

ADDRESS: 350 Winter Street NE

CITY/STATE: Salem OR 97301-3882

TEMPORARY:

EFFECTIVE DATE: April 10, 2019

PHONE: 503-947-7449

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

REPEAL: OAR 437-003-0081

Materials and labor costs increase or savings:

None.

Estimated administrative construction or other costs increase or savings:

All estimates are based on national calculations performed by federal OSHA as part of the rulemaking process. Federal OSHA estimates that the annual cost of documenting all construction industry crane operator performance evaluations nationwide will be \$62,000. Oregon OSHA expects that this modest amount will have little to no impact on the cost of building houses in Oregon. This is because most of the work with cranes during housing construction is limited to placing roof trusses. These trusses are most often placed by specialized companies who spend very little time on a single jobsite before moving to the next. Consequently one operator will help build several houses a week. By the time the initial national cost is filtered down to the specific segment of crane operators conducting housing construction activities it will be too small an amount to have any noticeable cost impact on any individual home construction project.

Land costs increase or savings:

Oregon OSHA expects utility companies that engage in land development activities to see a small increase in training and administrative costs. This is related specifically to activities such as installing new water lines in undeveloped areas. These costs are expected to be absorbed by the utilities rather than passed on to developers. This expectation is due to two interrelated factors. The first is the fact that no new equipment or personnel is required by this rulemaking. Rather, there will be an additional training and evaluation requirement applied to personnel already engaged in this work, using equipment that is already in service. The other factor is that the work of installing water lines adds capacity and customers to the utility provider, thereby eventually offsetting the cost with an increase in revenue.

Other costs increase or savings:

Oregon OSHA foresees no other cost impacts on housing costs 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.

PREPARERS NAME: Jeffery Carlson

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