



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, 2020

[Text of proposed changes](#)

Oregon OSHA's Proposed Amendments in General Administrative Rules to Clarify Employer's Responsibilities

Public Hearings Canceled/Comment Period Extended. [See details here](#)

Public Hearings Scheduled for:

<u>Date</u>	<u>Time</u>	<u>Location</u>
March 26, 2020	1:30 pm	Oregon OSHA Bend Field Office 1230 NE 3 rd St, Ste A-115 Bend, OR 97701
March 30, 2020	1:30 pm	Cook Memorial Library Conference Room 2006 Fourth St La Grande, OR 97850
April 14, 2020	10:00 am	Eugene Public Library Bascom/Tykeson Room 100 W 10 th Avenue Eugene, OR 97401
April 24, 2020	10:00 am	Oregon OSHA Portland Field Office 16760 SW Upper Boones Ferry Rd Tigard, OR 97224
May 7, 2020	10:30 am	Coos Bay Public Library Myrtlewood Room 525 Anderson Avenue Coos Bay, OR 97420
May 14, 2020	1:30 pm	Medford Public Library Large Meeting Room 205 S Central Avenue Medford, OR 97501

Oregon OSHA is adding two definitions and a paragraph to the Division 1 rules. The Oregon Court of Appeals determined that Oregon OSHA needs to more clearly define how “reasonable diligence” and “unpreventable employee misconduct” are interpreted and applied in enforcement activities and Oregon OSHA believes that such guidance is most appropriately provided through an administrative rule. The proposed additions to the rules are to clarify in general how Oregon OSHA assesses an employer’s reasonable diligence, what constitutes unpreventable employee misconduct, how Oregon OSHA assesses an employer’s knowledge of a violation, and when an employer is and is not responsible for a violation that has occurred on its worksite.

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 June 2020.

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: May 29, 2020

Oregon OSHA contact: Sky Wescott, Central Office @ 503-947-7440
or email at sky.i.wescott@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

Heather Case

350 Winter Street NE Salem OR 97301-3882

503-947-7449

Rules Coordinator

Address

Telephone

RULE CAPTION

Amendments in General Administrative Rules to Clarify Employer's Responsibilities.

March 26, 2020	1:30 pm	Oregon OSHA Bend Field Office 1230 NE 3 rd St Suite A-115 Bend, OR 97701	Heather Case
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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 437-001-0015, 437-001-0760

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 adding two definitions and a paragraph to the Division 1 rules. The Oregon Court of Appeals determined that Oregon OSHA needs to more clearly define how "reasonable diligence" and "unpreventable employee misconduct" are interpreted and applied in enforcement activities and Oregon OSHA believes that such guidance is most appropriately provided through an administrative rule. The proposed additions to the rules are to clarify in general how Oregon OSHA assesses an employer's reasonable diligence, what constitutes unpreventable employee misconduct, how Oregon OSHA assesses an employer's knowledge of a violation, and when an employer is and is not responsible for a violation that has occurred on its worksite.

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)

437-001-0015- Added two definitions to paragraph (15).

437-001-0760- Language added clarifying reasonable diligence in new paragraph (1)(f).

Please visit the rules and laws section of our website at osha.oregon.gov/rules and select *proposed rules* in the rule making column to view our proposed rules.

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.

May 29, 2020

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Signature

Printed name

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 437-001-0015, 437-001-0760

Rule Caption: Amendments in General Administrative Rules to Clarify Employers' Responsibilities

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

Stats. Implemented: ORS 654.001 through 654.295; 654.412 through 654.423; 654.760 through 654.780

Need for the Rule(s):

Oregon OSHA is adding two definitions and a paragraph to the Division 1 rules. The Oregon Court of Appeals determined that Oregon OSHA needs to more clearly define how "reasonable diligence" and "unpreventable employee misconduct" are interpreted and applied in enforcement activities and Oregon OSHA believes that such guidance is most appropriately provided through an administrative rule. The proposed additions to the rules are to clarify in general how Oregon OSHA assesses an employer's reasonable diligence, what constitutes unpreventable employee misconduct, how Oregon OSHA assesses an employer's knowledge of a violation, and when an employer is and is not responsible for a violation that has occurred on its worksite.

Documents Relied Upon, and where they are available:

Division 1 General Administrative Rules OAR 437-001-0015 and 437-001-0760
<https://osha.oregon.gov/OSHARules/div1/div1.pdf>

Oregon Supreme Court Opinion 356 Or 577 (2014), December 26, 2014
https://cdm17027.contentdm.oclc.org/digital/api/collection/p17027coll3/id/328/page/0/inline/p17027coll3_328_0

Oregon Court of Appeals Opinion 294 Or App 831 (2018), November 15, 2018
https://cdm17027.contentdm.oclc.org/digital/api/collection/p17027coll5/id/20615/page/0/inline/p17027coll5_20615_0

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)):

In relation to all employers affected by the proposed rule, Oregon OSHA believes that the proposed changes in the rule do not affect the cost of compliance. These proposals do not create any new requirements for employers. For that reason, Oregon OSHA believes that there will be no "cost of compliance" for businesses of any size or any other employer covered by the rule. Any decisions employers make in order to better position themselves to demonstrate a lack of employer knowledge in the event an apparent violation of existing rules is identified do not represent a cost of compliance with either those rules or with the guidance described in this rule. In addition, the proposed rule reflects Oregon OSHA's existing interpretation of the interrelated issues of employer knowledge and reasonable diligence (a determination that the Oregon Supreme Court described in its CBI Services decision as "one that the legislature has delegated in the first instance to the agency"). There are no new recordkeeping or administrative activities required by the rule for employers to comply with the

proposed rule. However, employers may incur additional costs that are the result of discretionary decisions not required by the rule.

All state agencies are affected by the rule in the sense that they are employers under the Oregon Safe Employment Act (OSEAct) and may be subject to penalties in the event violations are identified and cited. State agencies other than DCBS/Oregon OSHA will have no costs under this rule other than those that they would incur as an employer. As noted, the cost of compliance for employers would not be changed by this rule. Similarly, local governments are affected by this rule only in the sense that they are employers under the OSEAct and may be subject to penalties in the event violations are identified and cited. Finally the public as a whole will be affected only to the degree that members of the public are employers or employees (who may benefit from increased compliance with workplace health and safety rules as a result of increased employer compliance with existing rules). None of these entities will experience any fiscal impact due to changes in the cost of complying with this proposed rule.

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

As noted, there would be no change in the cost of compliance, for either small businesses or large businesses.

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

As previously noted, this rule has no anticipated fiscal impact on compliant employers. As also noted above, there are no new recordkeeping or administrative activities required by the rule for employers to comply with the proposed rule. However, employers may incur additional costs that are the result of discretionary decisions not required by the rule. Those businesses affected by citations in the event of non-compliance would include employers of all sizes. In Oregon more than 90% of all employers are small businesses, employing more than half of the state's workforce.

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

There are no new recordkeeping or other administrative activities required for employers to comply with the proposed rules. Any decisions to change such practices are the result of discretionary decisions not required by the rule.

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


There are no equipment, supplies, labor or increased administration required for employers to comply with the proposed rules.

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

Small businesses and others were involved in the development of this rule insofar as their representatives were represented on the Oregon OSHA Partnership Committee, the Oregon OSHA Construction Advisory Committee, and other Oregon OSHA stakeholder groups. Those interested have also had the opportunity to comment on several preproposal drafts, and they are also invited to make comments in response to the rule proposal.

Administrative Rule Advisory Committee consulted?: Yes, in addition to discussions with other advisory groups and with an ad hoc committee assembled for the purpose, Oregon OSHA presented this rulemaking to the Oregon OSHA Partnership Committee for comment on several pre-proposal drafts as well as any potential fiscal impact of these rules.

If not, why?:



Signature

Michael D. Wood 2/26/2020

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

PERMANENT: XX

HEARING DATE: 3/26, 3/30, 4/14,
4/24, 5/7, 5/14, 2020

ADDRESS: 350 Winter Street NE

CITY/STATE: Salem OR 97301-3882

TEMPORARY:

EFFECTIVE DATE: June, 2020

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 437-001-0015, 437-001-0760

Materials and labor costs increase or savings:
None.

Estimated administrative construction or other costs increase or savings:
None.

Land costs increase or savings:
Oregon OSHA does not foresee any effect on land costs.

Other costs increase or savings:
Oregon OSHA does not foresee any additional costs.

*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: Sky Wescott
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