



August 31, 2023

Proposed Division 1 Civil Penalty & Work Refusal Changes from Senate Bills 592 and 907

Virtual Public Hearings Scheduled for:

<u>Hearing Date</u>	<u>Time</u>	<u>Location</u>	<u>Hearings Officer</u>
Monday, Sept. 18, 2023	10:00 AM	Virtual	OSHA Staff

Register in advance for this webinar:

https://www.zoomgov.com/webinar/register/WN_TWuPWjdLT46vmHb5EA1qwQ

Friday, Oct. 20, 2023	10:00 AM	Virtual	OSHA Staff
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Register in advance for this webinar:

https://www.zoomgov.com/webinar/register/WN_HfjlfIKJQES_BdW2aNwa5w

Monday, Oct. 23, 2023	5:30 PM	Virtual	OSHA Staff
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Register in advance for this webinar:

https://www.zoomgov.com/webinar/register/WN_AF36kqztRsWezV58ujeXWw

Wednesday, Oct. 25, 2023	6:30 PM	Virtual	OSHA Staff
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** This hearing will be held entirely in Spanish**

Register in advance for this webinar:

https://www.zoomgov.com/webinar/register/WN_NqD-KM1hSti5JdXiDoJ_Bq

Thursday, Oct. 26, 2023	2:00 PM	Virtual	OSHA Staff
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Register in advance for this webinar:

https://www.zoomgov.com/webinar/register/WN_mSzepbUgTW2PhpLLIb4Xpw

After registering, you will receive a confirmation email containing information about joining the webinar.

Rulemaking Summary:

This rulemaking proposes to amend 15 rules and adopt two new rules in Division 1 to align with the changes made to Oregon Safe Employment Act by *Senate Bill 592* and changes to ORS 654.062 by *Senate Bill 907* in the 2023 Oregon legislative session.

The Oregon legislature passed *Senate Bill 592* with an emergency clause with an effective date of May 24, 2023. Oregon OSHA must adopt rules addressing the legislative requirements and implement the changes as soon as possible. *Senate Bill 907* has an effective date of January 1, 2024.

Overall, Oregon OSHA proposes to amend OAR 437-001-0015 Definitions to incorporate new legislative requirements of “Programmed Inspection for Cause” and “Caused or Contributed to a Work-Related Fatality” violations.

Senate Bill 592 requires Oregon OSHA to conduct a comprehensive inspection of an employer when:

- a place of employment is deemed necessary by the department based upon the prior violation history regarding any state occupational safety or health law, regulation, standard, rule or order;
- an inspection of an accident reveals that a violation caused or contributed to a work-related fatality;
- whenever three or more willful violations have occurred at a place of employment within a one-year period; or,
- whenever three or more repeat violations have occurred at a place of employment within a one-year period.

To align with these new legislative requirements, Oregon OSHA proposes to amend the following rules to incorporate a new “Programmed Inspection for Cause” inspection type:

- OAR 437-001-0055 Priority of Inspections,
- OAR 437-001-0057 Scheduling Inspections, and
- OAR 437-001-0099 Closing Conference.

Senate Bill 592 also requires Oregon OSHA to increase civil penalties for violations, establishes standards for future civil penalties, and creates a new “Caused or Contributed to a Work-Related Fatality” violation type, in brief, changes include:

- Serious violations increase to a range between \$1,116 and \$15,625 for each violation;
- A new serious violation type “Caused or Contributed to a Work-Related Fatality” with civil penalties that range from \$20,000 to \$50,000 for each violation;
- Willful or repeat violations increase to a range between \$50,000 and \$250,000 for each violation; and
- A new violation type of willful or repeat violation that “Caused or Contributed to a Work-Related Fatality” with penalties that range from \$50,000 to \$250,000 for each violation.

To meet these new requirements, Oregon OSHA proposes to amend the following rules:

- OAR 437-001-0145 Penalty for Other than Serious or Serious Violation,
- OAR 437-001-0155 Determination of Penalty — Failure to Correct,
- OAR 437-001-0160 Penalty Criteria — Repeat Violation,
- OAR 437-001-0165 Determination of Penalty — Repeat Violation,

- OAR 437-001-0170 Determination of Penalty — Failure to Report an Occupational Fatality, Catastrophe, or Accident,
- OAR 437-001-0171 Determination of Penalty — Failure to Register a Farm Labor Camp/Facility,
- OAR 437-001-0175 Determination of Penalty — Willful or Egregious Violation,
- OAR 437-001-0180 Determination of Penalty — Relating to Red Warning Notice,
- OAR 437-001-0201 Determination of Penalty — Relating to Field Sanitation, and
- OAR 437-001-0203 Determination of Penalty — Relating to Violations Which Have No Probability and Severity.

In addition, the legislation requires Oregon OSHA to adjust its civil penalties annually based on changes in the Western Region Consumer Price Index (CPI-WR). In response, the agency proposes OAR 437-001-0142 that creates a bulletin process to make the mandatory annual adjustments rather than annual rulemaking. The 2024 civil penalties will reflect the values established in *Senate Bill 592* plus any increase from application of the 2023 CPI-WR published in Oregon OSHA’s Annual Adjustments to Penalties Bulletin.

Senate Bill 592 also affects Oregon OSHA’s penalty adjustments for employers for certain civil penalties. Oregon OSHA proposes to move the penalty adjustment content currently in OAR 437-001-0145 to a new rule 437-001-0150 Civil Penalty Adjustments and to update that rule language to align with the revised terms of the statute.

Lastly, *Senate Bill 907* requires Oregon OSHA to conduct rulemaking regarding an employee’s right to refuse certain work tasks; federal OSHA already outlines these expectations. Oregon OSHA proposes to amend OAR 437-001-0295 Discrimination Complaint to align with federal OSHA and maintain state plan authority.

Please visit our website osha.oregon.gov/rules to view our proposed rules, or select other rule activity from this page.

When does this happen: Adoption of proposed changes will tentatively be in November 2023.
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
 PO BOX 14480
 Salem OR 97309-0405
 Email – OSHA.rulemaking@dcbs.oregon.gov
 Fax – 503-947-7461

Comment period closes: November 3, 2023 at 5:00 PM

Oregon OSHA contact: Jennifer Stewart, Salem Central Office @ 503-378-3272, or email at Jennifer.Stewart2@dcbs.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
Agency and Division

OAR 437

Administrative Rules Chapter Number

Lisa Appel
Rules Coordinator

350 Winter Street NE Salem OR 97301-3882
Address

503-947-7449
Telephone

RULE CAPTION

Proposed Division 1 Civil Penalty & Work Refusal Changes from Senate Bills 592 and 907

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. Send comments to OSHA.rulemaking@dcbs.oregon.gov.

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After registering, you will receive a confirmation email containing information about joining the webinar.

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

RULEMAKING ACTION

ADOPT: OAR 437-001-0142, 437-001-0150

AMEND: OAR 437-001-0015, 437-001-0055, 437-001-0057, 437-001-0099, 437-001-0145, 437-001-0155, 437-001-0160, 437-001-0165, 437-001-0170, 437-001-0171, 437-001-0175, 437-001-0180, 437-001-0201, 437-001-0203, 437-001-0295

RULEMAKING SUMMARY

This rulemaking proposes to amend 15 rules and adopt two new rules in Division 1 to align with the changes made to Oregon Safe Employment Act by *Senate Bill 592* and changes to *ORS 654.062* by *Senate Bill 907* in the 2023 Oregon legislative session.

The Oregon legislature passed *Senate Bill 592* with an emergency clause with an effective date of May 24, 2023. Oregon OSHA must adopt rules addressing the legislative requirements and implement the changes as soon as possible. *Senate Bill 907* has an effective date of January 1, 2024.

Overall, Oregon OSHA proposes to amend OAR 437-001-0015 Definitions to incorporate new legislative requirements of "Programmed Inspection for Cause" and "Caused or Contributed to a Work-Related Fatality" violations.

Senate Bill 592 requires Oregon OSHA to conduct a comprehensive inspection of an employer when:

- a place of employment is deemed necessary by the department based upon the prior violation history regarding any state occupational safety or health law, regulation, standard, rule or order;
- an inspection of an accident reveals that a violation caused or contributed to a work-related fatality;
- whenever three or more willful violations have occurred at a place of employment within a one-year period; or,
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To align with these new legislative requirements, Oregon OSHA proposes to amend the following rules to incorporate a new "Programmed Inspection for Cause" inspection type:

- OAR 437-001-0055 Priority of Inspections,
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Senate Bill 592 also requires Oregon OSHA to increase civil penalties for violations, establishes standards for future civil penalties, and creates a new "Caused or Contributed to a Work-Related Fatality" violation type, in brief, changes include:

- Serious violations increase to a range between \$1,116 and \$15,625 for each violation;
- A new serious violation type "Caused or Contributed to a Work-Related Fatality" with civil penalties that range from \$20,000 to \$50,000 for each violation;
- Willful or repeat violations increase to a range between \$50,000 and \$250,000 for each violation; and
- A new violation type of willful or repeat violation that caused or contributed to a work-related fatality with penalties that range from \$50,000 to \$250,000 for each violation.

To meet these new requirements, Oregon OSHA proposes to amend the following rules:

- OAR 437-001-0145 Penalty for Other than Serious or Serious Violation,
- OAR 437-001-0155 Determination of Penalty — Failure to Correct,
- OAR 437-001-0160 Penalty Criteria — Repeat Violation,
- OAR 437-001-0165 Determination of Penalty — Repeat Violation,
- OAR 437-001-0170 Determination of Penalty — Failure to Report an Occupational Fatality, Catastrophe, or Accident,
- OAR 437-001-0171 Determination of Penalty — Failure to Register a Farm Labor Camp/Facility,

- OAR 437-001-0175 Determination of Penalty — Willful or Egregious Violation,
- OAR 437-001-0180 Determination of Penalty — Relating to Red Warning Notice,
- OAR 437-001-0201 Determination of Penalty — Relating to Field Sanitation, and
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In addition, the legislation requires Oregon OSHA to adjust its civil penalties annually based on changes in the Western Region Consumer Price Index (CPI-WR). In response, the agency proposes OAR 437-001-0142 that creates a bulletin process to make the mandatory annual adjustments rather than annual rulemaking. The 2024 civil penalties will reflect the values established in *Senate Bill 592* plus any increase from application of the 2023 CPI-WR published in Oregon OSHA’s Annual Adjustments to Penalties Bulletin.

Senate Bill 592 also affects Oregon OSHA’s penalty adjustments for employers for certain civil penalties. Oregon OSHA proposes to move the penalty adjustment content currently in OAR 437-001-0145 to a new rule 437-001-0150 Civil Penalty Adjustments and to update that rule language to align with the revised terms of the statute.

Lastly, *Senate Bill 907* requires Oregon OSHA to conduct rulemaking regarding an employee's right to refuse certain work tasks; federal OSHA already outlines these expectations. Oregon OSHA proposes to amend OAR 437-001-0295 Discrimination Complaint to align with federal OSHA and maintain state plan authority.

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)

OAR 437-001-0015. AMEND. In order to align with SB 592, the following changes are proposed. In the definition of Comprehensive inspection (in section (16)) there are edits to clarify the language, attribute judgment to the compliance officer, and a sentence is added stating that (with exception of an emphasis inspection) a programmed inspection is a comprehensive inspection. In (63)(b)(C) Violation definition, there is an edit to clarify the timeframe to “within the previous three years,” for repeat violations to be consistent with other references to “repeat violations”. In (63)(e), “Caused or contributed to a work-related fatality violation” is added as a new violation type to align with SB 592 Section 2(1)(a)(B) and Section 2(1)(c)(B).

OAR 437-001-0055. AMEND. In section (5) of the proposed rule, there is a new priority – “Programmed Inspections for Cause” to align with SB 592 Section 1(c)(2) & (3), which establishes new criteria for the agency to act upon to prioritize an employer for inspection; the new provision requires renumbering.

OAR 437-001-0057. AMEND. In sections (1), (3)(a) - (b), (4)(b), (6)(b), and (12) a clarifying statement is added to make exceptions for the “Programmed Inspections for Cause” list to align with SB 592. In section 3 of the rule, (a) - (b) are changed to regulatory text from previously being “Notes”. A new section is added to the rule as: (8) “Programmed Inspections for Cause” that defines criteria for when that inspection type shall occur to align with SB 592 Section 1(1)(c). Sections (9), (10), (11), (12), (13) and (14) of the rule are re-numbered to make room for the new “Programmed Inspections for Cause” inspection type. Lastly, there is a correction to an error in outlining that begins in (13)(c)(B).

OAR 437-001-0099. AMEND. Sub-section (o) is clarified to include the “Programmed Inspections for Cause” inspection type required by SB 592 Section 1(1)(c), and there is a typo fix in (p).

OAR 437-001-0142. ADOPT. This is a new rule that establishes yearly penalty adjustments for inflation as required by SB 592 Section 2(4), as the legislation requires Oregon OSHA to adjust its civil penalties annually based on changes in the Western Region Consumer Price Index (CPI-WR). The rule provides a process for the agency to publish changes in a yearly bulletin, clarifies which penalties the yearly adjustment will apply to; and defines ranges in penalty minimums and maximum amounts. Note: The 2024 civil penalties will reflect the

values established in SB 592 plus any increase from application of the 2023 CPI-WR published in Oregon OSHA's Annual Adjustments to Penalties Bulletin.

OAR 437-001-0145. AMEND. This rulemaking makes extensive changes to 437-001-0145 to align with SB 592. It creates a brand-new violation type as "Caused or Contributed to a Work-Related Fatality" as required by SB 592 Section 2, (1)(a)(B) and (1)(b)(B) with associated civil penalty amounts defined in Table 1 & 3. In addition, the rule defines civil penalty amounts, which were previously referenced in other rules, in paragraph (2) of this rule; changes include increased civil penalty amounts for Other than Serious, Serious Physical Harm or Death-rated violations; Repeat; Willful; as well as Serious, Repeat or Willful "Caused or Contributed to a Work-Related Fatality" violations, all of which are consolidated in Table 1. Table 2 -Civil Penalties for Serious and Other Than Serious-rated Violations defines increased penalty amounts from SB 592 Section 2(1)(a)(A) and (b). Penalty adjustments, which were previously in this rule, are moved to a brand-new rule: OAR 437-001-0150. Throughout the rule, language cites that civil penalty amounts will adjust annually in accordance with newly proposed OAR 437-001-0142.

OAR 437-001-0150. ADOPT. This is a new rule that incorporates penalty adjustments that were previously located in OAR 437-001-0145, and makes edits to that content to define how penalty adjustments apply to all civil penalty types and classifications to align with SB 592. For clarity, Table 1 Penalty Adjustments was added as a summary for eligible reductions. Employer size reductions for first-instance penalties are addressed in Table 2, and this has not changed except for being moved from OAR 437-001-0145 to this new rule. SB 592, Section 2 required a number of penalty changes that affect provisions in this new rule, as follows: the reductions identified in Table 2 are not applicable to repeat violations or violations that caused or contributed to a work-related fatality; however, employers with 1-50 employees are eligible for a \$7,000 reduction for repeat violations. The civil penalties for repeat violations must be within new increased minimum and maximum amounts specified by SB 592, section 2, and they will change, along with the repeat size reduction, annually in accordance with OAR 437-001-0142.

437-001-0155. AMEND. Rule changes align it with the increased civil penalty amounts required by SB 592 Section 2. In addition, language is added to define that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142. Section (3) of the rule is updated to include size reductions identified in OAR 437-001-0150 Penalty Adjustments.

437-001-0160. AMEND. Rule changes align it with the increased civil penalty amounts required by SB 592 Section 2. In addition language is added to define that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142. Administrator discretion in section (7) is updated to include all repeat civil penalties.

437-001-0165. AMEND. As required by SB 592 Section 2, civil penalty amounts are increased for repeat violations and language is added citing that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142. Note: The Table 1 Penalties for Repeat violation multiplier is updated. In addition, new rule language cites that all civil penalties will be within the minimum and maximum amounts for a repeat or repeat that caused or contributed to a work-related fatality violation identified in OAR 437-001-0145, including other than serious repeat violations. Section (3) of the rule includes Table 2 that summarizes civil penalties for repeat violations that caused or contributed to a work-related fatality. Administrator discretion in section (7) of the rule is updated to include all repeat penalties.

437-001-0170. AMEND. Rule changes align it with the increased civil penalty amounts required by SB 592 Section 2. In addition, language is added to define that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142.

437-001-0171. AMEND. Rule changes align it with the increased civil penalty amounts required by SB 592 Section 2. In addition, language is added to define that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142.

437-001-0175. AMEND. This rulemaking makes extensive changes to OAR 437-001-0175. As required by SB 592 Section 2, civil penalty amounts are increased for willful violations and language is added citing that civil

penalty amounts will adjust annually in accordance with OAR 437-001-0142. Table 1 Civil Penalties for Willful Violation are increased to align with SB 592 Section 2. Table 2 defines civil penalty amounts for the new type of willful violation that caused or contributed to a work-related fatality. Section (3) of the rule aligns with SB 592 in that willful violations that caused or contributed to a work-related fatality are not eligible for employer size reductions. Administrator discretion is further defined in sections (4) and (5).

437-001-0180. AMEND. Rule changes align it with the increased civil penalty amounts required by SB 592 Section 2. In addition, language is added to define that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142.

437-001-0201. AMEND. Rule changes align it with the increased civil penalty amounts required by SB 592 Section 2. In addition, language is added to define that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142. Includes a typo correction to a rule reference.

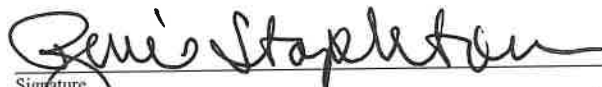
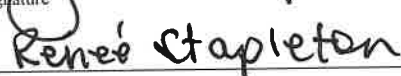
437-001-0203. AMEND. Rule changes align it with the increased civil penalty amounts required by SB 592 Section 2. In addition, language is added to define that civil penalty amounts will adjust annually in accordance with OAR 437-001-0142.

437-001-0295. AMEND. SB 907 requires changes to this rule to align with federal OSHA regarding an employee's right to refuse certain work tasks. This proposed amendment remains consistent with federal OSHA's provisions for work refusal as provided in 29 CFR 1977.12(b)(1)-(2) and remains within the original scope of the agency's current work refusal rule OAR 437-001-0295(1)(b).

November 3, 2023, 5:00 PM

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator


Signature

Printed name
8/31/23
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

OAR 437

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Adopting: OAR 437-001-0142, 437-001-0150

Amending: OAR 437-001-0015, 437-001-0055, 437-001-0057, 437-001-0099, 437-001-0145, 437-001-0155, 437-001-0160, 437-001-0165, 437-001-0170, 437-001-0171, 437-001-0175, 437-001-0180, 437-001-0201, 437-001-0203, 437-001-0295

Rule Caption:

Proposed Division 1 Civil Penalty & Work Refusal Changes from Senate Bills 592 and 907

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

Stats. Implemented: ORS 654.001 - 654.326, 654.412 - 654.423 & 654.991, 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810, 658.825

Need for the Rule(s):

In order to maintain alignment with state law, Oregon OSHA must propose new rules and adopt amendments to its General Administrative Rules (Division 1) related to compliance inspections, civil penalties, and protected work refusal. This rulemaking was initiated in response to the enactment of two legislative bills – Senate Bill 592 (SB 592) and Senate Bill 907 (SB 907) – from Oregon’s 2023 regular legislative session. SB 592 (2023), signed into law by Governor Kotek on May 24, 2023, was enacted under an emergency clause which required Oregon OSHA to begin administrative rulemaking as soon as possible. SB 907 (2023) was signed into law on June 7, 2023, with an effective date of January 1, 2024. A summary of each legislation is provided below.

Senate Bill 592 (2023) requires Oregon OSHA to conduct a comprehensive inspection of an employer when:

- a place of employment is deemed necessary by the department based upon the prior violation history of the place of employment regarding any state occupational safety or health law, regulation, standard, rule or order;
- an inspection of an accident reveals that a violation caused or contributed to a work-related fatality;
- whenever three or more willful violations have occurred at the same workplace within a one-year period; or,
- whenever three or more repeat violations have occurred at the same workplace within a one-year period.

Senate Bill 592 (2023) requires Oregon OSHA to increase civil penalties for violations and establishes standards for future civil penalties to:

- Serious violations: between \$1,116 and \$15,625 for each violation
- Serious violation caused or contributed to the death of an employee: between \$20,000 and \$50,000 for each violation
- Willful or repeat violation: between \$50,000 and \$250,000 for each violation
- Willful or repeat violation caused or contributed to a work-related fatality: between \$50,000 and \$250,000 for each violation
- Adjust all civil penalty amounts annually using the Western Region Consumer Price Index (CPI-WR)

- Removes Oregon OSHA's ability to reduce civil penalties below the minimum for all violations
- Removes Oregon OSHA's ability to provide penalty reductions for repeat serious violations that result in a work-related fatality or any repeat willful violation, unless the employer agrees to additional abatement measures

The civil penalty increases prompted by SB 592 require Oregon OSHA to adjust its civil penalties annually based on changes in the Western Region Consumer Price Index (CPI-WR). The 2024 civil penalties will reflect the values established in SB592 (2023) plus any increase from application of the 2023 CPI-WR published in Oregon OSHA's Annual Adjustments to Penalties Bulletin. The use of data from October to October of each year for this annual civil penalty adjustment is similar to how federal OSHA adjusts its penalties on an annual basis.

SB 907 (2023) directed Oregon OSHA to clarify its existing administrative rule (OAR 437-001-0295(1)(b)) related to protected work task refusal and discrimination in accordance with the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). Federal OSHA's rules for protected work refusal are enforced under 29 CFR 1977.12(b)(1)-(2). ORS 654.062(6)(a) of the Oregon Safe Employment Act (OSEA), delegates authority to enforce discrimination complaints filed under ORS 654.062(5) of the OSEA, to the Commissioner of the Bureau of Labor and Industries (BOLI). The Civil Rights Division (CRD) of BOLI is responsible for the processing and investigation of discrimination complaints filed under ORS 654.062(5), including protected work refusal under specific conditions.

Documents Relied Upon, and where they are available:

Oregon Legislature – 2023 Regular Session Bills (592)

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB592>

Oregon Legislature – Enrolled Senate Bill 592

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB592>

Oregon Live – Oregon Legislative Bill Tracker SB592

<https://gov.oregonlive.com/bill/2023/SB592/>

Oregon Legislature – 2023 Regular Session Bills (907)

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB907>

Oregon Legislature – Enrolled Senate Bill 907

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB907>

Oregon Live – Oregon Legislative Bill Tracker SB907

<https://gov.oregonlive.com/bill/2023/SB907/>

Oregon Employment Department - A Snapshot of Oregon Firms by Size Class, 2022:

<https://www.qualityinfo.org/-/a-snapshot-of-oregon-firms-by-size-class-2022>

Statement Identifying How Adoption of Rule(s) Will Affect Racial Equity in This State:

The proposed rule changes are not expected to impact racial equity in the workplace for underrepresented communities, as the proposed rule changes apply to all workers covered under the Oregon Safe Employment Act (OSEAct).

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)):

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) and may be subject to penalties in the event violations are identified and cited. The public as a whole will be affected only to the degree that members of the public are employers (who may be cited and assessed penalties) or employees (who may benefit from inspection activity)).

In relation to employers subject to the proposed rulemaking, it must first be noted that the proposed rule changes do not affect the cost of complying with existing Oregon OSHA rules nor do these proposed rule changes create any new compliance requirements for employers. The financial impact is on those employers who receive a violation that carries a civil penalty. For that reason, Oregon OSHA believes that there will be no increase to the "cost of compliance" for businesses of any size or any other employer covered by these proposed rules. Any change in the civil penalty structure, by its very nature, affects the cost of *non-compliance* with Oregon OSHA rules, not the cost of complying with them.

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:

According to the Oregon Employment Department, "A Snapshot of Oregon Firms by Size Class, 2022," (published December 8, 2022) there were 112,700 firms with fewer than 50 employees in Oregon in March 2022. These firms accounted for 96 percent of all firms statewide and 40% of employees in the state of Oregon.

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

The proposed rulemaking does not induce changes to Oregon OSHA general recordkeeping or other administrative activities.

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

The projected equipment, supplies, labor and increased administration for the cost of compliance will not change as a result of this rulemaking.

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 members on the SB 592 and SB 907 (Division 1) Rules Advisory Committee.

Administrative Rule Advisory Committee consulted?

Oregon OSHA convened and solicited input from a Rulemaking Advisory Committee (RAC) during the rule making process. Employers and organizations were involved in the development of this rule as their representatives were members of the RAC. Oregon OSHA contacted other Rulemaking Advisory Committees and invited members to participate in the present rulemaking activity, including members of the Oregon OSHA Construction Advisory Committee, Fire Service Advisory Committee, Forest Activities Advisory Committee, and Agriculture Labor Housing Advisory Committee. Additional membership was open to all interested individuals, employers, and organizations. Oregon OSHA held RAC meetings for this rulemaking on June 20, July 20, August 10, and August 23, 2023. RAC member comments were accepted during each meeting and through emails or phone calls.


Signature

Renee Stapleton
Printed name

8/31/23
Date

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:** September 18,
October 20, 23, 25 & 26, 2023 virtual hearings

ADDRESS: 350 Winter Street NE **TEMPORARY:** **EFFECTIVE DATE:**
CITY/STATE: Salem OR 97301-3882

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 Statement of Need and Justification and Notice of Proposed Rulemaking.

Description of the need for, and objectives of the rule:

See attached Statement of Need and Justification and Notice of Proposed Rulemaking.

List of rules adopted or amended:

ADOPT: OAR 437-001-0142, 437-001-0150

AMEND: OAR 437-001-0015, 437-001-0055, 437-001-0057, 437-001-0099, 437-001-0145, 437-001-0155,
437-001-0160, 437-001-0165, 437-001-0170, 437-001-0171, 437-001-0175, 437-001-0180, 437-001-0201,
437-001-0203, 437-001-0295

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: Lisa Appel

EMAIL ADDRESS: Lisa.Appel@dcbs.oregon.gov

Oregon OSHA

Text of Changes for Proposed Division 1 Civil Penalty & Work Refusal Changes from Senate Bills 592 and 907

Proposed Rule Changes
August 31, 2023

Text removed is in [brackets with line through].

Text added is in **bold and underline**.

437-001-0015 Definitions

The following definitions shall apply to OAR 437, unless the context requires otherwise:

- (1) Abatement — Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.
- (2) Accepted disabling claims — Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.
- (3) Accepted disabling claims rate — The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).
- (4) Act — The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).
- (5) Administrator — The Administrator of the Oregon Occupational Safety and Health Division (Oregon OSHA).
- (6) Affected employee — An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date, or variance.
- (7) Agent of the employer — Any supervisor or person in charge or control of the work or place of employment including, but not limited to, any manager, superintendent, foreperson, or lead worker.

(8) Appeal — A written request for a hearing to contest a citation, notice or order, a proposed assessment of civil penalty, and the period of time fixed for correction of a violation, or any of these, by filing with Oregon OSHA, within 30 days after receipt of the citation, notice or order, a written request for a hearing before the Workers' Compensation Board. Such a request need not be in any particular form, but must specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

(9) Audiometric zero — The lowest sound pressure level that the average young adult with normal hearing can hear.

(10) Board — The Workers' Compensation Board created by ORS 656.712.

(11) Catastrophe — An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or to an equivalent medical facility.

(12) Citation — A document issued by Oregon OSHA according to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

(13) Complaint — A written or oral report from an employee, employee representative, or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

(a) Imminent danger.

(b) Serious.

(c) Other than serious.

(14) Compliance officer — A designated Oregon OSHA employee responsible for conducting inspections or investigations; identifying possible violations and hazards; proposing citations, penalties, and correction dates; and assisting employers and employees with information to correct violations and hazards.

(15) Comprehensive consultation — A consultation to cover the entire establishment and entails a physical hazard assessment evaluation and a review of records, written programs, and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

(16) Comprehensive inspection — A substantially complete inspection of the establishment. An inspection may be comprehensive even though, as a result of the exercise of professional judgment **of the compliance officer**, not all potentially hazardous conditions, operations, and practices within those areas are inspected. **With the exception of an emphasis inspection, a programmed inspection defined in OAR 437-001-0057 is a comprehensive inspection.**

(17) Consultant — A designated Oregon OSHA employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees, and other agency staff with information, advice, and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices, and development of safety and health programs.

(18) DART (Days Away, Restricted, or Transferred) — The number of lost workday injury and illness cases experienced by 100 full-time workers (DART rate = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

NOTE: Lost workday cases include both days away from work and days of restricted time.

(19) Decibel (dB) — Unit of measurement of sound level. For purposes of this rule, decibels refer to the combined average of the readings at 2000, 3000, and 4000 Hz on the audiogram.

(20) Department — The Department of Consumer and Business Services.

(21) Director — The Director of the Department of Consumer and Business Services, or the director's designee.

(22) Division — The Oregon Occupational Safety and Health (Oregon OSHA) Division of the Department of Consumer and Business Services.

(23) Emphasis Program — A special program that targets Oregon OSHA activity to industries that have a high potential for serious injuries or illnesses, according to national or state data.

(24) Employee — Any individual, including a minor, whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, and who is subject to the direction and control of an employer, and includes:

(a) Salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts, and other public corporations.

(b) Any person provided with workers' compensation coverage as a subject worker under ORS Chapter 656, whether by operation of law or by election.

(25) Employee exposure record — A record of monitoring or measuring that contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

(26) Employee medical record — A record that contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(a) The results of medical examinations and tests;

(b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(c) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

(27) Employee representative — A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

(28) Employer:

(a) Any person who has one or more employees, or

(b) Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker according to ORS 656.128, or

(c) Any corporation in relation to the exposure of its corporate officers except for corporations without workers' compensation coverage under ORS 656.128 and whose only employee is the sole owner of the corporation, or

(d) Any successor or assignee of an employer. For purposes of this definition and ORS 654.005(5)(c), a business or enterprise is substantially the same entity as the predecessor employer if:

(A) A majority of the current business or enterprise is owned by the former owners or their immediate family members, and

(B) One or more of the following criteria exist for both the current and predecessor business or other enterprise:

(i) Substantially the same type of business or enterprise.

(ii) Similar jobs and working conditions.

(iii) A majority of the machinery, equipment, facility, or methods of operation.

(iv) Similar product or service.

(v) A majority of the same supervisory personnel.

(vi) A majority of the same officers and directors.

NOTE: Not every element needs to be present for an employer to be a successor. The cumulative facts will determine the employer's status.

(29) Employer representative — An individual selected by the employer, to serve as spokesperson or, in the absence of a selected spokesperson, the person in charge of the place of employment at the time of the inspection.

(30) Environmental exposure sampling – Sampling of the workplace environment, performed for a variety of reasons including identifying of contaminants and their sources, determining worker exposures, and checking the effectiveness of controls.

(31) Establishment — An establishment is a single physical location doing business, offering services, or having industrial operations. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas, and sanitary services; and similar operations, the establishment is the main or branch office, terminal, station, etc. that either supervise such activities or are the base for personnel to carry out these activities.

(a) One location/multiple establishments. Normally, one business location has only one establishment. Under limited conditions, two or more separate businesses that share a single location are separate establishments. An employer may divide one location into two or more establishments only when:

(A) Each of the establishments represents a distinctly separate business;

(B) Each business is engaged in a different economic activity;

(C) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, each business can be a separate establishment.

(b) Multiple locations/one establishment. Only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(A) The employer operates the locations as a single business operation under common management;

(B) The locations are all near each other; and

(C) The employer keeps one set of business records for all the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) Telecommuting from home. For employees who telecommute from home, the employee's home is not a business establishment, and a separate 300 Log is not

required. Employees who telecommute must be linked to one of the business' establishments under 437-001-0700(15)(c).

(32) Farm operation — Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

(33) Filed — A document is considered to have been filed on the date of postmark if mailed, or on the date of receipt, if transmitted by other means to Oregon OSHA, DCBS, or the WCB.

(34) First aid — Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, or similar injuries that do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though it is provided by a physician or registered professional personnel.

(35) Fixed place of employment — The entire facility maintained by an employer at one general location, and operations provided from that facility, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations, fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months. Forest activities are excluded as are construction sites established for a period of 24 months or less.

(36) Hazard — A condition, practice, or act that could result in an injury or illness to an employee.

(37) Health hazard — Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents, and harmful physical stress agents.

(38) Imminent danger — A condition, practice, or act that exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately.

(39) Injury or illness — An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, skin disease, respiratory disorder, or poisoning.

NOTE: Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.

(40) Inspection — An official examination of a place of employment by a compliance officer to determine if an employer is in compliance with the Act.

(a) Programmed — Inspections conducted under the provisions of OAR 437-001-0057.

(b) Unprogrammed.

(A) Follow-up inspection — An inspection to determine if a previously identified violation has been corrected.

(B) Complaint inspection — An inspection made in response to a complaint.

(C) Accident investigation — A systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures.

(D) Referral inspection — An inspection made in response to a referral.

(41) Letter of corrective action — A letter stating the corrective action(s) taken by the employer to comply with the violation(s) that were not corrected at the time of the inspection.

(42) Lost workdays — The actual number of days after, but not including, the day of injury or illness when the employee would have worked, but could not perform all or any part of their normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

(43) Medical treatment — Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel, nor does it include treatment ordinarily considered diagnostic or preventative in nature.

(44) MOD (Experience Rating Modification Factor) — Experience rating recognizes the differences among individual insureds with respect to safety and loss prevention. It compares the experience of individual insureds with the average insured in the same classification. The differences are reflected by an experience rating modification, based on individual payroll and loss records, that may result in an increase, decrease, or no change in premium.

(45) North American Industry Classification System (NAICS) — A classification system developed by the Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity.

(46) Order to correct — A written Oregon OSHA order that directs an employer to abate a violation within a given period of time.

(47) Owner — Every person having ownership, control, or custody of any place of employment or of the construction, repair, or maintenance of any place of employment.

(48) Partial inspection — An inspection with focus limited to certain potentially hazardous areas, operations, conditions, or practices at the establishment. The inspection may include review of injury and illness records and any required programs relative to the inspection.

(49) Person — One or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any

organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

(50) Personal exposure samples — Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their specific work exposures. Personal samplers are placed on the worker to obtain either one continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

(51) Physician or other licensed health care professional — A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

(52) Place of employment:

(a) Includes every place that is fixed or movable; indoors, outdoors, or underground; and the premises and structures appurtenant thereto.

(b) Includes every place where an employee works or intends to work either temporarily or permanently.

(c) Includes every place where there is any process, operation, or activity related, either directly or indirectly, to an employer's industry, trade, business, or occupation, including a labor camp provided by an employer for their employees or by another person engaged in providing living quarters or shelters for employees.

(d) Does not include any place where the only employment involves nonsubject workers employed in or around a private home.

(e) Does not include any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews, or grandchildren.

(53) Record — Any recorded information regardless of its physical form or character.

(54) Recordable occupational injuries or illnesses — Any occupational injuries or illnesses that result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that prevent the employee from performing their normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or

(c) Nonfatal cases without lost workdays that result in transferring to another job or terminating employment, require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses that are reported to the employer but are not classified as fatalities or lost workday cases.

(55) Referral — A notification made to the responsible agency of safety or health violations observed by an Oregon OSHA employee, other federal, state or local government representatives, or the media.

(56) Rule — Any agency directive, standard, regulation or statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of the agency and that is adopted according to the Administrative Procedures Act. The term includes the amendment or repeal of a prior rule, but does not include, unless a hearing is required by statute, internal management directives, regulations, or statements that do not substantially affect the interests of the public.

(57) Scheduling list — An electronic or paper list of places of employment or employers scheduled for inspection.

(58) Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

(b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, pneumoconiosis, narcosis, or occupational infections (caused by biological agents), and other cases of comparable severity.

(59) Standard threshold shift (STS) — A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.

(60) Substantially similar— As it relates to a repeat violation, a second violation that is closely related in substance or form to a previous violation.

(61) Suspended penalty — A penalty that is determined but not assessed.

(62) Variance — The written authority given by Oregon OSHA to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:

(a) Permanent — A variance that remains in effect until modified or revoked according to OAR 437-001-0430;

(b) Temporary — A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule;

(c) Research — A variance granted for a stated period of time to allow industrial or governmental research designed to demonstrate or validate new and improved safety or health techniques or products; and

(d) Interim order — The temporary authority for an employer to use an alternative means or method by which the employer effectively safeguards the safety and health of employees until final action can be taken on the variance request.

(63) Violation — The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard, or order.

(a) Specific classifications of violations are:

(A) Serious violation — A violation where there is substantial probability that death or serious physical harm could result from an existing condition or from one or more practices, means, methods, operations, or processes that have been adopted or are in use in a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know about the violation;

(B) Other than serious violation — A violation that is other than a serious or minimal violation; and

(C) Minimal violation — A violation that does not have a direct or immediate relationship to the safety or health of employees.

(b) Specific types of the above classifications are:

(A) Willful violation — A violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard, or order.

(B) Unabated violation — A violation that has not been fully corrected by the date ordered.

(C) Repeat violation:

(i) An employer's second or subsequent violation involving a substantially similar violation as the earlier violation or violations-, **cited within the**

previous three years, will be cited as a repeat violation under the criteria in OAR 437-001-0160(3)(a).

(ii) In these rules, repeat, repeated, and repeatedly are used synonymously.

(D) First-instance violation — An employer’s first violation of a particular statute, regulation, rule, standard, or order.

(E) Egregious — Those conditions that normally constitute a flagrant violation of the Oregon Safe Employment Act, or Oregon OSHA standards, or regulations such that each instance of the violation is cited separately.

(c) Combined violation — Multiple violations of the same statute, regulation, rule, standard, or order within an establishment that have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard, or order.

(d) Grouped violation — Multiple violations of different statutes, regulations, rules, standards, or orders within an establishment that have been combined as one violation:

(A) To indicate an increase in the severity or probability of the violation, or

(B) Recordkeeping and posting requirements involving the same document, or

(C) The violations are so closely related as to constitute a single hazardous condition.

(e) Caused or contributed to a work-related fatality violation – The workplace death of an employee that was attributed to a violation or in which the violation was a related factor, as determined by the compliance officer.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)

Statutes/Other Implemented: ORS 654.001 - 654.326, 654.412 - 654.423 & 654.991

History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018

OSHA 2-2015, f. 3-18-15, cert. ef. 1-1-16

OSHA 2-2012, f. 5-11-12, cert. ef. 7-1-12

OSHA 10-2009, f. & cert. ef. 10-5-09

OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09

OSHA 1-2008, f. 2-22-08, cert. ef. 3-1-08

OSHA 5-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08

OSHA 7-2006, f. & cert. ef. 9-6-06

OSHA 6-2003, f. & cert. ef. 11-26-03

OSHA 7-2002, f. & cert. ef. 11-15-02

OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02

OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00

OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00

OSHA 7-1999, f. & cert. ef. 7-15-99

OSHA 5-1998, f. & cert. ef. 10-15-98
OSHA 2-1996, f. & cert. ef. 6-13-96
OSHA 6-1994, f. & cert. ef. 9-30-94
OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92
OSHA 24-1990, f. & cert. ef. 10-10-90
OSHA 10-1990(Temp), f. & cert. ef. 5-31-90
APD 7-1988, f. 6-17-88, cert. ef. 7-1-74
APD 6-1987, f. 12-23-87, cert. ef. 1-1-88
WCD 9-1986, f. 10-7-86, cert. ef. 12-1-86
WCD 12-1984, f. 9-20-84, cert. ef. 11-1-84
WCD 2-1984, f. 3-2-84, cert. ef. 3-15-84
WCD 9-1983, f. & cert. ef. 11-15-83
WCD 6-1982, f. 6-28-82, cert. ef. 8-1-82
WCD 4-1981, f. 5-22-81, cert. ef. 7-1-81
WCD 7-1979, f. 8-20-79, cert. ef. 9-1-79
WCD 5-1978, f. 6-22-78, cert. ef. 8-15-78
WCB 8-1975, f. 8-5-75, cert. ef. 9-1-75
WCB 19-1974, f. 6-5-74, cert. ef. 7-1-74

437-001-0055 Priority of Inspections

Inspections will be prioritized to predominantly focus enforcement activities on places of employment reasonably believed to be the most unsafe. Inspections should generally be made according to the following priorities:

- (1) Imminent danger — An inspection should be made as soon as possible after the Division becomes aware of the condition, practice, or act that could reasonably be expected to immediately cause death or serious physical harm.
- (2) Fatality, catastrophe, or accident — An inspection, if appropriate, should be made as soon as possible after the Division becomes aware of a fatality, catastrophe, or accident.
- (3) Complaint — An inspection may be initiated when the Division receives a complaint, based on the nature and credibility of the allegations.
- (4) Referral — An inspection may be made if safety or health violations were observed and referred by a Division employee; federal, state, or local government representative; or the media, based on the nature and credibility of the allegations.

(5) Programmed Inspections for Cause – An inspection may be made by following the provisions in OAR 437-001-0057(8).

~~(5)~~ **(6)** Programmed Inspections — An inspection may be made by following the provisions in OAR 437-001-0057.

~~(6)~~ **(7)** Follow-up — An inspection may be initiated when one or more of the following exists:

- (a) The employer requests removal of a red warning notice.

- (b) A variance request has been denied.
- (c) An extension of time has been denied.
- (d) The Division believes the employer may not be in compliance with a previously cited violation, or needs monitoring as they progress towards correction of a violation.
- (e) The employer is issued an order to correct for one or more violations that if cited could be considered serious.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
 Statutes/Other Implemented: ORS 654.001 - 654.326, 654.412 - 654.423 & 654.991
 History:
OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX
 OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018
 OSHA 10-2009, f. & cert. ef. 10-5-09
 OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00
 OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00
 OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92
 APD 7-1988, f. 6-17-88, ef. 7-1-74
 APD 6-1987, f. 12-23-87, ef. 1-1-88
 WCD 6-1982, f. 6-28-82, ef. 8-1-82
 WCD 4-1981, f. 5-22-81, ef. 7-1-81
 WCD 5-1978, f. 6-22-78, ef. 8-15-78

437-001-0057 Scheduling Inspections

The following rules are intended to predominantly focus enforcement activities on the places of employment that the director reasonably believes to be the most unsafe.

- (1) ~~[The]~~ **Except for Programmed Inspections for Cause, the** Division will schedule programmed inspections according to a priority system based on written neutral administrative standards.
- (2) The Division will identify the most hazardous industries and places of employment through information obtained from the Department of Consumer and Business Services claim and employer files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, the Bureau of Labor Statistics Census of Fatal Occupational Injuries, the Oregon Employment Department, and knowledge of recognized safety and health hazards associated with certain processes. Health hazards include carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, harmful physical stress agents, and biological agents.
- (3) Scheduling lists will be provided by the Division to its field offices, at least annually.

~~[Note: An]~~ **(a) Except for Programmed Inspections for Cause, an** employer will be exempt from any scheduled inspection generated by a list for a fixed site from seven

days prior to the scheduled date of an Oregon OSHA consultation to 60 days after receipt of the written consultation report.

~~[Note: An]~~ **(b) Except for Programmed Inspections for Cause, an** employer will be exempt from any scheduled inspection generated by a list for a construction, forest activities, or Agriculture Labor Housing site from seven days prior to the scheduled date of an Oregon OSHA consultation to 30 days after receipt of the written consultation report.

(4) Scheduling Safety Inspections for Fixed Places of Employment.

(a) The scheduling lists are compiled, using an electronic scheduling system, for safety enforcement managers to schedule inspections at fixed places of employment for each compliance officer. Written neutral administrative standards (the seven criteria listed below) are standardized using a statistical weighting method involving t-scores. These weighted scores are averaged across the seven criteria to create a composite score. This composite score is used to determine the position of each industry (using the 4-digit NAICS code) on the list from most to least hazardous. see Table 1 ~~[(attached)]~~. Lists are divided into 10 tiers. Places of employment are randomly selected for inspection within each tier using the following percentages whenever a list is generated. The percentages will not be affected by the places of employment excluded in (4)(b) unless the number of exclusions makes it impossible to meet the target percentage. When that occurs, all remaining eligible places of employment will be selected. The scheduling lists will be sorted by field office.

Table 1 - Written neutral administrative standards

Source type	Data source	Weight factor
Oregon total case incidence rate	Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses	1.5
Oregon DART rate	Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses	1.5
Federal total case incidence rate	Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses	0.5
Federal DART rate	Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses	0.5
Federal fatal case rate	Bureau of Labor Statistics' Census of Fatal Occupational Injuries	1
Oregon compensable fatality claims rate	Oregon Workers' Compensation Data	1
Oregon accepted disabling claims rate	Oregon Workers' Compensation Data	1

- (A) 30 percent of places of employment under the NAICS identified as Tier A.
- (B) 25 percent of places of employment under the NAICS identified as Tier B.
- (C) 20 percent of places of employment under the NAICS identified as Tier C.
- (D) 15 percent of places of employment under the NAICS identified as Tier D.

- (E) 12.5 percent of places of employment under the NAICS identified as Tier E.
- (F) 10 percent of places of employment under the NAICS identified as Tier F.
- (G) 7.5 percent of places of employment under the NAICS identified as Tier G.
- (H) 5 percent of places of employment under the NAICS identified as Tier H.
- (I) 2.5 percent of places of employment under the NAICS identified as Tier I.
- (J) No more than 0.05 percent of places of employment under the NAICS not otherwise identified in Tiers A through I.

~~[(b) Places]~~ **(b) Except for Programmed Inspections for Cause, places** of employment will be exempt from programmed inspections if any of the following conditions apply:

- (A) A location has received a comprehensive safety inspection within the previous 36 months.
- (B) A location has received Voluntary Protection Program (VPP) status.
- (C) A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).
- (D) A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.
- (E) A location has received two consecutive comprehensive safety inspections with no serious, willful, or egregious violations, and with no inspections of any type resulting in serious, willful, or egregious violations since the date of the first of the two consecutive comprehensive inspections.
- (F) A location has received certification as meeting the British Standards Institute's OHSAS 18001 standards (Occupational Health and Safety Management Systems), or the ISO 45001 (International Organization for Standardization) standards. Evidence of certification must be provided before the start of an inspection.
- (G) A location has a MOD rate of 0.50 and they provide evidence to that effect before the start of an inspection.

(c) The field office managers will provide each compliance officer a list of inspections that are assigned in descending order from tiers A through J. The compliance officer will make a reasonable effort to inspect each place of employment on that list prior to receiving another list; however, failure to inspect all places of employment on a list will

not invalidate subsequent inspections. The compliance officer's list will generally be followed in descending order but may be inspected in any order to use the compliance officer's time efficiently.

(5) Scheduling Safety Inspections for Construction and Forest Activities.

(a) Construction and forest activities scheduling lists will be used by safety enforcement managers and compliance staff to focus enforcement efforts on employers with the most hazardous places of employment. Employers will be selected and placed on one of two lists based on the following criteria:

(A) Construction List — The following written neutral administrative standards will be used to select and rank employers on this list. Construction employers that have one or more accepted disabling claims in the first 12 of the previous 18 months and are ranked in the top 500 construction employers. The employers on this list will be ranked statewide using violation history, weighted claims rate, and weighted claims count as described in subsection (b) of this section. The 500 employers with the most points will be placed on a list.

(B) Forest Activities List — The following written neutral administrative standards will be used to select and rank employers on this list. Forest activities employers that have one or more accepted disabling claims in the first 12 of the previous 18 months and are ranked in the top 50 forest activities employers. The employers on this list will be ranked statewide using violation history, weighted claims rate, and weighted claims count as described in subsection (b) of this section. The 50 employers with the most points will be placed on a list.

(b) Ranking Factors: Construction and forest activities employers are ranked using violation history, weighted claims rate, and weighted claims count. The rankings from each factor are combined to produce a score for each employer, and the employers are ranked based on their score. The top 500 construction employers will be on one list and the top 50 forest activities employers will be on another list:

(A) Violation History - Employers with a violation history will be assigned points for each violation on citations that have become a final order within the previous 36 months. Willful violations are assigned five points, failure to abate violations four points, repeat violations three points, serious violations two points, and other-than-serious violations one point. Average points per citation will be determined with the employer having the most points receiving a ranking of one followed by the employer with the next highest points receiving a ranking of two, etc. Employers not inspected within 36 months are given a ranking of zero, that will put them at the top of this category.

(B) Weighted Claims Count - Selected claims from the first 12 of the previous 18 months are assigned points based on the seriousness of the claim. These points are totaled for each employer. Employers are ranked on the total points with the

employer having the most points receiving a rank of one, followed by the second highest weighted claims count receiving a ranking of two, etc.

(C) Weighted Claims Rate- Employers are ranked in this category with the highest weighted claims rate receiving a ranking of one, followed by the second highest weighted claims rate receiving a ranking of two, etc. The weighted claims count described in (B) above is used to determine the claims rate.

NOTE: The selected claims and the points assigned to the selected claims will be identified by the agency in a program directive.

(c) The field office manager will provide selected compliance officers the construction and/or forest activities lists. The compliance officers will make a reasonable effort to locate and inspect those employers on the construction and forest activities lists, however failure to inspect all employers on a list will not invalidate subsequent inspections.

(6) Scheduling Health Inspections for Fixed Places of Employment.

(a) The scheduling lists are designed as an electronic scheduling system used by health enforcement managers to schedule inspections at fixed places of employment for each compliance officer. Places of employment will be listed by NAICS and randomly selected within each tier using the following percentages whenever a list is generated. The scheduling lists will be sorted by field office.

(A) 7.5 percent of places of employment under the NAICS identified as Tier A.

(B) 2.5 percent of places of employment under the NAICS identified as Tier B.

(C) Not more than 0.05 percent of places of employment under NAICS not identified in Tiers A and B.

~~[(b)]~~ Places **(b) Except for Programmed Inspections for Cause, places** of employment will be exempt from programmed inspections if any of the following conditions apply:

(A) A location has received a comprehensive health inspection within the previous 36 months.

(B) A location has received Voluntary Protection Program (VPP) status.

(C) A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).

(D) A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.

(E) A location has received two consecutive comprehensive health inspections with no serious, willful, or egregious violations, and with no inspections of any type resulting in serious, willful, or egregious violations since the date of the first of the two consecutive comprehensive inspections.

(F) A location has received certification as meeting the British Standards Institute's OHSAS 18001 standards (Occupation Health and Safety Management Systems). Evidence of certification must be provided before the start of an inspection.

(G) A location has a MOD rate of 0.50 and they provide evidence to that effect before the start of an inspection.

(c) The field office managers will provide each compliance officer a list of inspections that are assigned in descending order from the health scheduling lists. The compliance officer will make a reasonable effort to inspect each place of employment on that list prior to receiving another list; however, failure to inspect all places of employment on a list will not invalidate subsequent inspections. The compliance officer's list will generally be followed in descending order, but may be inspected in any order to use the compliance officer's time efficiently.

(7) Scheduling Health Inspections for Nonfixed Places of Employment — An inspection may be scheduled when information such as recognized health hazards known to be associated with certain processes are reasonably thought to exist at a place of employment.

(8) Programmed Inspection for Cause — A comprehensive inspection at a place of employment will be conducted when any of the following occur.

(a) Within one year of the applicable closing conference where:

(A) An accident investigation revealed that a violation has caused or contributed to a work-related fatality

(B) Three or more willful violations occur at a place of employment within a 12-month period; or

(C) Three or more repeat violations occur at a place of employment within a 12-month period.

(b) An employer has a history of non-compliance and the Administrator deems a comprehensive inspection is necessary for the protection of employees.

~~(8)~~**(9)** Random Inspections — The Division will conduct random inspections of places of employment that are scheduled and conducted under written neutral administrative standards. Program directives will be issued and changed when the director believes it necessary to preserve the random nature of the inspections.

~~(9)~~**(10)** Emphasis Inspections — An inspection may be made if the place of employment is included in a national or local safety or health emphasis program. Emphasis programs are established by identifying the most hazardous industries and processes through information obtained from the Department of Consumer and Business Services claim files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, the Oregon Employment Department,

and knowledge of recognized hazards associated with certain processes. Program directives will be issued to establish and describe emphasis programs and the written neutral administrative standards that will be used to schedule the inspections.

~~[(40)]~~**11** Farm Labor Housing Inspections — Farm labor housing is a national and local emphasis program. A list of all known farm labor housing locations will be sent to field offices annually. Locations may be selected and inspected in any order to make efficient use of available resources. Housing locations not on the list may also be inspected. Farm labor housing is not an agricultural operation; therefore, the agriculture exemption for employers of 10 or fewer permanent, year-round employees does not apply to farm labor housing inspections.

~~[(11)]~~~~The~~**(12) Except for Programmed Inspections for Cause, the** Division will annually make reasonable efforts to notify, in writing, each employer whose place of employment is rated as one of the most unsafe places of employment, that there is increased likelihood of inspection of the employer's place of employment and consultative services are available.

~~[(42)]~~**13** Agricultural employers with 10 or fewer permanent, year-round employees, both full-time and part-time, will be subject to scheduled inspections only if any of the following has occurred:

- (a) A valid complaint has been filed according to ORS 654.062, or
- (b) Within the preceding two-year period, an accident at the employer's agricultural place of employment resulted in death or a serious disabling injury from a violation of the Oregon Safe Employment Act or rules adopted under the ~~[a]~~**A**ct, or
- (c) The employer and principal supervisors of the agricultural establishment have not annually completed at least four hours of instruction on agricultural safety or health rules and procedures. This instruction must be documented.
 - (A) Instruction includes any instruction conducted or accepted by Oregon OSHA or instruction related to agricultural safety and health that is offered or approved by any public or private college, university, or governmental agency. The employer must maintain documentation of the instruction. The documentation must include the date, provider, subject, and duration of the instruction, and the signature of the person completing the instruction.

NOTE: Certified Applicator Training Core A and B offered by the Oregon Department of Agriculture will satisfy a portion of the required training. One-hour credit will be allowed annually for this training.

(B) For purposes of these sections, the time period begins to run when~~the instruction is received, or~~:

~~[(a)]~~**(i) the instruction is received;**

(ii) Within the preceding four-year period, the agricultural establishment has not had a comprehensive consultation by an individual acting in a

public or private consultant capacity. For purposes of this section, the time period begins to run when the consultation is received~~[,];~~ or

~~(e)~~ **(iii)** If the consultation was done and the agricultural employer has failed to correct violations noted in the consultation report within 90 days after receiving the report.

NOTE: For purposes of determining the number of employees, members of the agricultural employer's immediate family are excluded. This includes grandparents, parents, children, step-children, foster children, and any blood relative living as a dependent of the core family.

~~[(43)]~~ **(14)** Evaluation of Enforcement Scheduling:

(a) Each year Oregon OSHA will complete a summary evaluation of enforcement scheduling, including (but not limited to) the number of scheduled inspections and the basis for those inspections, the number of attempted scheduled inspections that could not be completed, and the results of those inspections.

(b) At least every three years beginning by July 1, 2012, Oregon OSHA will assess the enforcement scheduling system and other available data to ensure that the scheduling system continues to accomplish its statutory purpose of predominantly focusing Oregon OSHA enforcement resources on those places of employment reasonably believed to be the most unsafe.

NOTE: See Safety by NAICS, Safety by Tier/Rank, Health by NAICS, to review safety and health scheduling lists of employers identified by NAICS codes and their placement in appropriate tiers.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)

Statutes/Other Implemented: ORS 654.001 - 654.326, 654.412 - 654.423 & 654.991

History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018

OSHA 2-2011, f. 9-29-11, cert. ef. 10-1-11

OSHA 10-2009, f. & cert. ef. 10-5-09

OSHA 7-2006, f. & cert. ef. 9-6-06

OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00

OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00

OSHA 2-1996, f. & cert. ef. 6-13-96

OSHA 10-1995, f. & cert. ef. 11-29-95

OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

APD 7-1988, f. 6-17-88, ef. 7-1-74

APD 6-1987, f. 12-23-87, ef. 1-1-88

WCD 6-1982, f. 6-28-82, ef. 8-1-82

WCD 4-1981, f. 5-22-81, ef. 7-1-81

437-001-0099 Closing Conference

(1) The [C]ompliance [O]fficer shall, if practicable, conduct a joint closing conference with the employer or a representative, and a representative of the employees, if any, and shall advise these representatives:

- (a) Of any violation(s) as a result of the inspection and of any hazards which at this time may not be a violation;
- (b) Of the right to present any pertinent information regarding the violation(s);
- (c) That a citation shall be issued for all other than serious or serious violations even if the violations were corrected at the time of the inspection;
- (d) That penalties may be imposed for other than serious violations and shall be imposed for serious violations;
- (e) That a reasonable time for correction of each alleged violation shall be proposed;
- (f) That further correspondence separate from the citation regarding the inspection will be received detailing the nonviolation hazards observed during the inspection;
- (g) Of all posting requirements contained in OAR 437-001-0275 and 437-001-0280;
- (h) That if the employer fails to correct any violation by the date indicated on the citation, additional penalties may be imposed for each day the violation(s) remains uncorrected (see OAR 437-001-0235);
- (i) Of employee protection against discrimination ([see]See OAR 437-001-0295);
- (j) Of appeal rights contained in ORS 654.078 and OAR 438-085-0006 to 438-085-0870;
- (k) Of rights to an informal conference (see OAR 437-001-0255);
- (l) Of extension procedures (see OAR 437-001-0240);
- (m) Of consultative services available through the Department and workers' compensation insurance carriers (see OAR 437-001-0450 through 437-001-0465);
- (n) Of variance procedures (see OAR 437-001-0400 through 437-001-0435);
- (o) Of the possibility of ~~follow-up inspections;~~ **subsequent inspections, including those inspections triggered under Programmed Inspections for Cause OAR 437-001-0057(8)(a) through (b);**
- (p) That if any safety or health condition was encountered which was beyond the expertise of the [C]ompliance [O]fficer, that condition will be considered a referral and may be addressed by another representative of Oregon OSHA.; **and**

(q) Of the availability of return visits by the [G]compliance [O]fficer to assist the employer in obtaining compliance.

(2) Where the [G]compliance [O]fficer decides it is not practical to hold a joint conference, separate conferences shall be held for the employer or a representative and for a representative of the employees, if any. Notes shall be taken by the [G]compliance [O]fficer during the separate conferences; these will be available upon request.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)

Statutes/Other Implemented: ORS 654.001 - 654.295

History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018

OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

APD 7-1988, f. 6-17-88, ef. 7-1-74

APD 6-1987, f. 12-23-87, ef. 1-1-88

WCD 6-1982, f. 6-28-82, ef. 8-1-82

WCD 4-1981, f. 5-22-81, ef. 7-1-81

WCD 5-1978, f. 6-22-78, ef. 8-15-78

WCB 19-1974, f. 6-5-74, ef. 7-1-74

437-001-0142 Annual Adjustment of Civil Penalties

(1) Each year, the director will be responsible for publishing notice of Oregon OSHA's Annual Adjustments to Penalties Bulletin in the Oregon Bulletin or its successor. This bulletin will also be made available on the Division's website at <https://osha.oregon.gov/pages/topics/violations-and-penalties>, or its successor. This bulletin will notify the regulated community of annual adjustment in civil penalty amounts required by ORS 654.086(4) to account for the percentage change, if any, in the Consumer Price Index for All Urban Consumers, West Region (All Items), from October to October of each year as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor or its successor. The annual adjustments will be effective January 1st of each calendar year.

(2) Annual adjustments must be applied to the following civil penalties:

(a) Other than serious-rated violation - maximum civil penalty amounts in OAR 437-001-0145(2)(a) and civil penalty amounts in Table 2 in OAR 437-001-0145(2)(g).

(b) Serious Physical Harm or Death-rated violation – minimum and maximum civil penalty amounts in OAR 437-001-0145(2)(b) and civil penalty amounts in Table 2 in OAR 437-001-0145(2)(g).

(c) Repeat Violation - minimum and maximum civil penalty amounts in OAR 437-001-0145(2)(c) and civil penalty amounts in Table 2 in OAR 437-001-0145(2)(c).

(d) Willful Violations - minimum and maximum civil penalty amounts in OAR 437-001-0145(2)(d) and civil penalty amounts in Table 1 in OAR 437-001-0175(1).

(e) Violations that caused or contributed to a work-related fatality - minimum and maximum civil penalty amounts in OAR 437-001-0145(2)(e) and civil penalty amounts in Table 3 in OAR 437-001-0145(3).

(f) Willful and repeat violations that caused or contributed to a work-related fatality - minimum and maximum civil penalty amounts in OAR 437-001-0145(2)(f) and civil penalty amounts in Table 2 in OAR 437-001-0165(2)(a) and Table 2 in OAR 437-001-0175(3).

(3) An annual adjustment must be applied to the penalty reduction in OAR 437-001-0150(2)(b).

(4) The civil penalty amounts adjusted under this rule will not be lower than the minimum or greater than the maximum that may be assessed under OAR 654.086 as a result of any reductions or multipliers applied.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
Statutes/Other Implemented: ORS 654.001 - 654.295
History:
OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

**437-001-0145 Penalty for Other than Serious~~[or Serious Violation]~~,
Serious, or Caused or Contributed to a Work-Related Fatality Violation**

(1) A **civil** penalty must be assessed for any serious **physical harm or death-rated** violation and may be assessed for any other than serious-**rated** violation as ~~[established]~~ **determined** by the intersection of the probability rating and severity rating ~~[on the Penalty Schedule (Table 1).~~ **In a case]** **in accordance with Table 2 in subsection (2)(g) or Table 3 in subsection (3) of this rule, as adjusted annually in accordance with OAR 437-001-0142. For a violation** where probability and severity are not appropriate considerations, a **civil** penalty may be assessed by considering the facts of the violation.

[Table 1 – Penalty table

Probability	Severity	Probability	Severity	
Other Than Serious		Serious		
			Serious Physical Harm	Death
Low	0	Low	\$300	\$3,750
High	\$300	Medium	\$750	\$6,500
		High	\$2,150	\$13,500]

~~[(2) Penalty adjustments will be made based on an employer's size for all violations. Additional adjustments for an employer's compliance history, injury and illness history, demonstrated good faith efforts, and corrective action taken at the time of the inspection will be determined by the Compliance Officer and assessed as follows:~~

~~(a) Size adjustments—based on state wide peak employment:~~

~~Table 2 – Penalty size adjustments~~

Number of employees	Percent reduction
1-10	75
11-25	60
26-90	40
91-130	30
131-175	20
176-250	10
251 or more	No adjustment

~~(b) History adjustments will be based on injuries and illnesses (and trends) during the previous three years, including available information from both Workers' Compensation data and Bureau of Labor Statistics. This assessment will also include a review of the employer's violation history within the past three years. Adjustments will be made as follows:~~

- ~~(A) 10% reduction of the base penalty if the compliance officer determines that the information demonstrates a positive history overall;~~
- ~~(B) No change in the base penalty if the compliance officer determines that history is what would be expected of a typical employer; or~~
- ~~(C) 10% increase of the base penalty if the compliance officer determines that the information demonstrates a negative history overall.~~

~~(c) Good faith adjustments will be determined by, but not limited to, review of certain criteria as follows:~~

- ~~(A) Evidence of an overall safety and health program.~~
- ~~(B) Effective communication of safety and health policies.~~
- ~~(C) Promotion of safety and health prior to the inspection.~~
- ~~(D) Employees are clearly involved in the safety and health program.~~
- ~~(E) Management's commitment at all levels is apparent.~~
- ~~(F) Worksite hazard analysis is conducted.~~
- ~~(G) Employees and managers alike are held accountable for safety and health.~~
- ~~(H) Adjustments will be made as follows:~~
 - ~~(i) 20% reduction of the base penalty if the compliance officer determines that the information demonstrates a better than average effort to comply with the law and rules;~~
 - ~~(ii) No adjustment in the base penalty if the compliance officer determines that the information demonstrates an employer's good faith effort is average; or~~

(iii) — 20% increase of the base penalty if the compliance officer determines that the information demonstrates a poorer than average effort to comply with the law and rules.

(d) A 10% reduction of the base penalty will be provided for immediate correction of violations or other unsafe conditions identified during the inspection provided that such corrective action is substantial and not temporary or superficial.]

(2) All civil penalties will not be reduced below the following minimum or exceed the following maximum amounts, as adjusted annually in accordance with OAR 437-001-0142:

- (a) Other than serious-rated violation: \$0 minimum and \$15,625 maximum**
- (b) Serious Physical Harm or Death-rated violation: \$1,116 minimum and \$15,625 maximum**
- (c) Repeat Violation: \$11,162 minimum and \$156,259 maximum**
- (d) Willful Violation: \$11,162 minimum and \$156,259 maximum**
- (e) Serious Violation that Caused or Contributed to a Work-Related Fatality: \$20,000 minimum and \$50,000 maximum**
- (f) Willful or Repeat Violation that Caused or Contributed to a Work-Related Fatality: \$50,000 minimum and \$250,000 maximum**
- (g) As follows in Table 1 Updated Annually in Oregon OSHA’s Annual Adjustments to Penalties Bulletin– Penalty Range by Violation Type.**

**Table 1 – Civil Penalty Ranges by Type/Classification of Violation
(Updated Annually in Oregon OSHA’s Annual Adjustments to Penalties Bulletin)**

<u>Type/Classification of Violation</u>	<u>Minimum</u>	<u>Maximum</u>
<u>Other Than Serious-rated</u>	<u>\$0</u>	<u>\$15,625</u>
<u>Serious Physical Harm or Death-rated</u>	<u>\$1,116</u>	<u>\$15,625</u>
<u>Repeat</u>	<u>\$11,162</u>	<u>\$156,259</u>
<u>Willful</u>	<u>\$11,162</u>	<u>\$156,259</u>
<u>Serious - Caused or Contributed to a Work-Related Fatality</u>	<u>\$20,000</u>	<u>\$50,000</u>
<u>Repeat - Caused or Contributed to a Work-Related Fatality</u>	<u>\$50,000</u>	<u>\$250,000</u>
<u>Willful - Caused or Contributed to a Work-Related Fatality</u>	<u>\$50,000</u>	<u>\$250,000</u>

**Table 2 – Civil Penalties for Serious and Other Than Serious-rated Violations
(Updated Annually in Oregon OSHA’s Annual Adjustments to Penalties Bulletin)**

<u>Severity</u>	<u>Other than Serious</u>		<u>Serious Violation Types</u>					
			<u>Serious Physical Harm</u>			<u>Death</u>		
<u>Probability</u>	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>First- instance Penalty</u>	<u>\$0</u>	<u>\$300</u>	<u>\$3,348</u>	<u>\$6,696</u>	<u>\$8,929</u>	<u>\$11,162</u>	<u>\$13,394</u>	<u>\$15,625</u>

~~[(3) Penalty adjustments, except for size, will not be applied to repeat violations, violations for a failure to correct, willful violations, or any violation that the compliance officer determines contributed to an injury, illness, or death of an employee. Adjustments will not reduce the penalty to less than the mandatory minimum penalty that has been established by rule or statute or increase the penalty beyond the maximum penalty established by statute.]~~

(3) When evidence demonstrates that a Serious Physical Harm or Death-rated violation caused or contributed to a work-related fatality that is required to be reported under OAR 437-001-0704(3), the civil penalty assessed will be based on the civil penalty structure for caused or contributed to a work-related fatality as determined by the intersection of the probability rating and severity rating in accordance with Table 2 in subsection (2)(g) or Table 3 in subsection (3) of this rule, as adjusted annually in accordance with OAR 437-001-0142.

Table 3 – Civil Penalties for Serious Violation that Caused or Contributed to a Work-Related Fatality

(Updated Annually in Oregon OSHA’s Annual Adjustments to Penalties Bulletin)

<u>Severity</u>	<u>Serious Physical Harm</u>			<u>Death</u>		
<u>Probability</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>First-instance Penalty</u>	<u>\$20,000</u>	<u>\$23,000</u>	<u>\$26,000</u>	<u>\$30,000</u>	<u>\$37,000</u>	<u>\$43,000</u>

~~[(4) The adjusted final penalty for a serious violation will not be less than \$100.]~~

(4) Civil penalties for combined violations will be determined by taking the number of violations into account when assessing probability. Severity will be determined by identifying the most severe reasonably predictable injury or illness that could occur.

~~[(5) Penalties for combined violations will be calculated by taking the number of violations into account when assessing probability. Severity will be determined by identifying the most severe reasonably predictable injury or illness that could occur.]~~

(5) The civil penalty for grouped violations of different rules is determined based on the probability and severity determined for the entire group.

~~[(6) The penalty for grouped violations of different rules is calculated by determining the probability and severity for the entire group.]~~

(6) At the discretion of the Administrator, a civil penalty may be issued for any first-instance violation up to the maximum civil penalty amount in accordance with OAR 437-001-0145(2) as adjusted annually in accordance with OAR 437-001-0142.

~~[(7) For any serious violation, the Administrator may instead, at his or her discretion, assess a penalty of between \$100 and \$13,653.]~~

(7) Civil penalty amounts for all first-instance other than serious-rated violations that caused or contributed to a work-related fatality shall be assessed at the discretion of the Administrator in accordance with OAR 437-001-0145(2)(a), as adjusted annually in accordance with OAR 437-001-0142.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
 Statutes/Other Implemented: ORS 654.001 through 654.295
 History:

- OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX**
 OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021
 OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018
 OSHA 8-2017, amend filed 12/22/2017, effective 01/01/2018
 OSHA 2-2012, f. 5-11-12, cert. ef. 7-1-12
 OSHA 7-1995, f. & cert. ef. 7-5-95
 OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92
 APD 7-1988, f. 6-17-88, ef. 7-1-74
 APD 5-1988, f. 5-16-88, ef. 5-16-88
 APD 6-1987, f. 12-23-87, ef. 1-1-88
 WCD 12-1982, f. 9-20-84, ef. 11-1-84
 WCD 6-1982, f. 6-28-82, ef. 8-1-82
 WCD 4-1981, f. 5-22-81, ef. 7-1-81
 WCD 5-1978, f. 6-22-78, ef. 8-15-78
 WCB 8-1975, f. 8-5-75, ef. 9-1-75
 WCB 19-1974, f. 6-5-74, ef. 7-1-74

437-001-0150 Civil Penalty Adjustments

(1) Civil penalty amounts may be modified by applying penalty adjustments as outlined in Table 1 – Penalty Adjustments. Not all civil penalties are eligible to be adjusted. If eligible for adjustments, at their discretion, a compliance officer may make adjustments at the time of inspection based on history, good faith, and immediate correction.

Table 1 – Penalty Adjustments

<u>Violation Type</u>	<u>Size</u>	<u>History</u>	<u>Good Faith</u>	<u>Immediate Correction</u>
<u>Other than Serious</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>Serious</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>Repeat</u>	<u>1-50 Employees, Statewide Peak Employment</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Willful</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Caused or contributed to Work-Related Fatality</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Failure to Abate</u>	<u>Based on Original Violation Eligibility</u>	<u>No</u>	<u>No</u>	<u>No</u>

(2) Size adjustments:

(a) Are made based on statewide peak employment for the employer as defined in Table 2 except as provided in subsection (b):

Table 2 - Penalty Adjustment – Employer Size

<u>Number of employees</u>	<u>Percent reduction</u>
<u>1-10</u>	<u>75</u>
<u>11-25</u>	<u>60</u>
<u>26-90</u>	<u>40</u>
<u>91-130</u>	<u>30</u>
<u>131-175</u>	<u>20</u>
<u>176-250</u>	<u>10</u>
<u>251 or more</u>	<u>No adjustment</u>

(b) For employers with 50 or fewer employees, a reduction of \$7,000 is available for Serious Physical Harm or Death-rated repeat violations that did not cause or contribute to a work-related fatality. The reduction is adjusted annually in accordance with OAR 437-001-0142.

(c) Size reductions are not available for a violation that caused or contributed to a work-related fatality.

(3) History adjustments will be based on injuries and illnesses (and trends) during the previous three years, including available information from both Workers' Compensation Board data and Bureau of Labor Statistics. This assessment will also include a review of the employer's violation history within the past three years. The compliance officer may make the following adjustment:

(a) 10% reduction of the first-instance penalty if the compliance officer determines that the information demonstrates a positive history overall;

(b) No change in the first-instance penalty if the compliance officer determines that history is what would be expected of a typical employer; or

(c) 10% increase of the first-instance penalty if the compliance officer determines that the information demonstrates a negative history overall.

(4) Good faith adjustments will be determined by, but not limited to, review of certain criteria as follows:

(a) Evidence of an overall safety and health program.

(b) Effective communication of safety and health policies.

(c) Promotion of safety and health prior to the inspection.

(d) Employees are clearly involved in the safety and health program.

(e) Management's commitment at all levels is apparent.

(f) Worksite hazard analysis is conducted.

(g) Employees and managers alike are held accountable for safety and health.

(h) The compliance officer may make good faith adjustments as follows:

(A) 20% reduction of the first-instance penalty if the compliance officer determines that the information demonstrates a better than average effort to comply with the law and rules;

(B) No adjustment in the first-instance penalty if the compliance officer determines that the information demonstrates an employer's good faith effort is average; or

(C) 20% increase of the first-instance penalty if the compliance officer determines that the information demonstrates a poorer than average effort to comply with the law and rules.

(5) Immediate correction of violations or other unsafe conditions that are identified during the inspection. Corrective action must be substantial and not temporary or superficial. A 10% reduction of the first-instance penalty may be provided for immediate correction as determined by the compliance officer.

(6) Penalty adjustments will not result in a penalty amount less than the mandatory minimum civil penalty or greater than the maximum civil penalty as published in OAR 437-001-0145(2) as adjusted annually in accordance with OAR 437-001-0145.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)

Statutes/Other Implemented: ORS 654.001 - 654.295

History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

437-001-0155

Determination of Penalty — Failure to Correct

(1) A citation must be issued for an employer's failure to correct a previously cited violation.

(2) ~~Penalties~~ **Civil penalties** assessed for a failure to correct a previously cited violation will not exceed ~~[\$13,653]~~ **the maximum penalty** per day ~~[:]~~ **in OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.**

(a) Such penalties may be assessed for each workday, or part of a day, that the violation is not corrected and it results in continued exposure after the ordered correction date;
and

(b) Such penalties must be determined by considering the probability and severity of the original violation, the efforts of the employer to correct the violation, and factors that delayed the correction of the violation. ~~and (c) If]~~

(3) Failure to correct violations are not eligible for penalty reductions for history, good faith, or immediate correction. A size reduction may be applied in accordance with OAR 437-001-0150(2) based on the original violation classification.

(4) The civil penalty for failure to correct [the violation results from the employer's lack of diligence, the daily penalty will be not less than \$50 for] an other than serious [violations, and] violation may not be less than \$[100 for serious] 50 per day. For all other violations[-], the civil penalty will be within the minimum and maximum penalty per day as adjusted annually in accordance with OAR 437-001-0142.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
Statutes/Other Implemented: ORS 654.001 through 654.295
History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX
OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021
OSHA 8-2017, amend filed 12/22/2017, effective 01/01/2018
OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92
APD 7-1988, f. 6-17-88, ef. 7-1-74
APD 6-1987, f. 12-23-87, ef. 1-1-88
WCD 6-1982, f. 6-28-82, ef. 8-1-82
WCD 4-1981, f. 5-22-81, ef. 7-1-81
WCD 5-1978, f. 6-22-78, ef. 8-15-78
WCB 8-1975, f. 8-5-75, ef. 9-1-75
WCB 19-1974, f. 6-5-74, ef. 7-1-74

437-001-0160 Penalty Criteria — Repeat Violation

~~[Oregon OSHA will identify repeat violations as follows:~~

~~(1) **(1) Civil penalty amounts as defined in OAR 437-001-0145(2) are adjusted and published annually in Oregon OSHA's Annual Adjustments to Penalties Bulletin. All penalties shall not be reduced below the minimum or exceed the maximum amounts.**~~

(2) **Repeat violation criteria:**

(a) An employer's second or subsequent violation involving a substantially similar violation, cited within the previous three years, will be cited as a repeat violation as described below.

(b) When citing an identical standard for a violation of a previously cited statute, regulation, rule, standard, or order it will be presumed to be a repeat violation. That

presumption can be disproven only if the circumstances clearly demonstrate that the violation is not substantially similar to a previously cited violation.

Example: Previously a citation was issued for a violation of 1910.212(a)(1) for not guarding ingoing nip points. A recent inspection of the same establishment revealed a citation of 1910.212(a)(1) for not guarding against flying chips and sparks. Although the same standard was cited, the hazardous conditions are clearly not substantially similar and a repeat violation would not be appropriate.

(3) When citing a different standard, in some circumstances, substantially similar conditions can be demonstrated. In such cases, if the violations found are substantially similar, a repeat violation would be appropriate even though the standards are different.

Example #1: Previously a citation was issued for a failure to install appropriate scaffold guardrails under the Division 3 Construction standards. A recent inspection of the same employer found a violation for a failure to install appropriate scaffold guardrails, but this time the operation involved activities covered by the Division 2 General Industry standard. Although two different standards are cited, the violations are substantially similar and would therefore be treated as a repeat.

Example #2: Previously a citation was issued for failure to have a respirator program in a Division 2 General Industry situation where exposure to asbestos would require one. A recent inspection of the same employer found a violation for not requiring employees to wear respirators while performing lead-related tasks in the Lead, Division 3 Construction standard that requires respiratory protection. Although two different standards are cited, the violations are substantially similar and would therefore be treated as a repeat.

(4) Where a previously cited violation is under appeal and not yet final:

(a) The second violation will be cited as a repeat violation; and

(b) Such citation will state that the earlier violation is under appeal and the repeat classification of the current violation will be rescinded if the earlier violation does not become final.

(5) At fixed places of employment, “high probability serious” and “death” rated violations will be issued as repeat violations at all of an employer’s places of employment in the state. Repeat violations for all other violation types will be limited to the cited place of employment.

(6) At nonfixed places of employment, repeat violations will be based on earlier violations occurring anywhere within the state. Where the Administrator, or designee, determines in his or her discretion that the span of control and nature of activity for a portion of the state is more readily comparable to fixed location activity, repeat violations will be handled in a manner consistent with fixed places of employment.

(7) At the discretion of the Administrator, a civil penalty may be issued for any repeat violation and for any repeat violation that caused or contributed to a work-related fatality

up to the maximum penalty amount in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
 Statutes/Other Implemented: ORS 654.001 through 654.295
 History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021
 OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018
 OSHA 2-2012, f. 5-11-12, cert. ef. 7-1-12
 OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09
 OSHA 6-1994, f. & cert. ef. 9-30-94
 OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92
 APD 10-1989, f. & cert. ef. 7-7-89
 APD 7-1989(Temp), f. & cert. ef. 5-1-89
 APD 7-1988, f. 6-17-88, cert. ef. 7-1-74
 WCD 6-1982, f. 6-28-82, cert. ef. 8-1-82
 WCD 4-1981, f. 5-22-81, cert. ef. 7-1-81
 WCD 5-1978, f. 6-22-78, cert. ef. 8-15-78

437-001-0165 Determination of Penalty — Repeat Violation

(1) **A civil penalty must be assessed for each serious repeat violation.** The **civil** penalty for a **serious** repeat violation [~~will be calculated~~]**is determined** by multiplying the penalty for the current violation by the following factors:

~~[Table 1 – Penalties for Repeat Violations~~

1st repeat	X 2
2nd repeat	X 5
3rd repeat	X 10
4th repeat	X 15
5th repeat	X 20
Additional repeats	Discretion of Administrator

}

Table 1 - Penalties for Repeat Violations

<u>1st repeat</u>	<u>X 4</u>
<u>2nd repeat</u>	<u>X 6</u>
<u>3rd repeat</u>	<u>X 8</u>
<u>Additional repeats</u>	<u>Discretion of Administrator</u>

~~[(2) The total final penalty for a repeat violation will not be less than \$200, nor more than \$135,653.]~~

(2) A civil penalty must be assessed for each other than serious repeat violation. The civil penalty for an other than serious repeat violation will be the minimum for repeat

violations under OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.

~~[(3) For a repeated other than serious violation that otherwise would have no initial penalty, a penalty of \$200 will be assessed for the first repeated violation, \$500 if the violation has been cited twice before, \$1,000 for a third repeat, \$1,500 for a fourth repeat, and \$2,000 for a fifth repeat.]~~

(3) A civil penalty must be assessed for each repeat violation that caused or contributed to a work-related fatality. The civil penalty for a repeat violation that caused or contributed to a work-related fatality is determined by the intersection of the probability rating and severity rating in accordance with Table 2 below, as adjusted annually in accordance with OAR 437-001-0142:

Table 2 – Civil Penalties for Repeat Violations that Caused or Contributed to a Work-Related Fatality
(Updated Annually in Oregon OSHA’s Annual Adjustments to Penalties Bulletin)

<u>Type</u>	<u>Other than Serious</u>	<u>Serious</u>					
		<u>Serious Physical Harm</u>			<u>Death</u>		
<u>Severity</u>		<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>Probability</u>							
<u>First-instance Penalty</u>	<u>\$50,000</u>	<u>\$55,000</u>	<u>\$85,000</u>	<u>\$115,000</u>	<u>\$160,000</u>	<u>\$185,000</u>	<u>\$235,000</u>

~~[(4) The administrator may instead, at his or her discretion, assess a penalty of between \$200 and \$135,653 for any repeated violation.]~~

(4) The civil penalty for a repeat serious rated violation will not be less than the minimum or greater than the maximum under OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.

(5) The civil penalty for a repeat serious rated violation that caused or contributed to a work-related fatality, will not be less than the minimum or greater than the maximum under OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.

(6) The civil penalty for a repeat other than serious rated violation will not be less than the minimum or greater than the maximum under OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.

(7) At the discretion of the Administrator, a civil penalty may be issued for any repeat violation and for any repeat violation that caused or contributed to a work-related fatality up to the maximum penalty amount in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
 Statutes/Other Implemented: ORS 654.001 through 654.295
 History:
OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX
 OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021

OSHA 8-2017, amend filed 12/22/2017, effective 01/01/2018
OSHA 2-2012, f. 5-11-12, cert. ef. 7-1-12
OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92
APD 10-1989, f. & cert. ef. 7-7-89
APD 7-1989(Temp), f. & cert. ef. 5-1-89
APD 7-1988, f. 6-17-88, ef. 7-1-74
WCD 6-1982, f. 6-28-82, ef. 8-1-82
WCD 4-1981, f. 5-22-81, ef. 7-1-81
WCD 5-1978, f. 6-22-78, ef. 8-15-78
WCB 8-1975, f. 8-5-75, ef. 9-1-75
WCB 33-1974, f. 9-5-74, ef. 9-26-74
WCB 19-1974, f. 6-5-74, ef. 9-1-76

437-001-0170 Determination of Penalty — Failure to Report an Occupational Fatality, Catastrophe, or Accident

If an employer fails to report an occupational fatality, catastrophe, or accident as provided in OAR 437-001-0704, a penalty of not less than \$250 [~~shall be assessed.~~]**and not greater than the maximum penalty for a serious-rated violation in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142, shall be assessed.**

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
Statutes/Other Implemented: ORS 654.001 through 654.295
History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX
OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021
OSHA 8-2017, amend filed 12/22/2017, effective 01/01/2018
OSHA 7-2002, f. & cert. ef. 11-15-02
OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92
APD 7-1988, f. 6-17-88, ef. 7-1-74
APD 6-1987, f. 12-23-87, ef. 1-1-88
WCD 4-1981, f. 5-22-81, ef. 7-1-81

437-001-0171 Determination of Penalty — Failure to Register a Farm Labor Camp/Facility

If an operator, employer, or contractor fails to register a Farm Labor Camp or facility with Oregon OSHA as required in Division 4/J, OAR 437-004-1120(5)(b), a penalty of not less than \$250 [~~shall be assessed.~~]**and not greater than the maximum penalty for a serious-rated violation in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142, shall be assessed.**

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
Statutes/Other Implemented: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810 & 658.825
History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX
OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021
OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018
OSHA 8-2017, amend filed 12/22/2017, effective 01/01/2018
OSHA 6-2003, f. & cert. ef. 11-26-03

437-001-0175 Determination of Penalty — Willful or Egregious Violation

[For a willful violation, after applying appropriate adjustments based on the employer's size, the base penalty will normally be multiplied by 25. The Administrator may instead, at his or her discretion, assess a penalty between \$9,753 and \$135,653 based on the facts. For egregious violations, the Administrator may assess a separate willful penalty, after appropriate adjustments based on the employer's size, for each instance of a violation.]

(1) A civil penalty must be assessed for each willful violation. The civil penalty for a willful violation is determined by the intersection of the probability rating and severity rating in accordance with Table 1 below, as adjusted annually in accordance with OAR 437-001-0142:

**Table 1 – Civil Penalties for Willful Violation
(Updated Annually in Oregon OSHA's Annual Adjustments to Penalties Bulletin)**

<u>Type</u>	<u>Other than Serious</u>	<u>Serious</u>					
		<u>Serious Physical Harm</u>			<u>Death</u>		
<u>Severity</u>		<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>Probability</u>							
<u>First-instance Penalty</u>	<u>\$11,162</u>	<u>\$25,000</u>	<u>\$35,000</u>	<u>\$50,000</u>	<u>\$75,000</u>	<u>\$100,000</u>	<u>\$130,000</u>

(2) A civil penalty must be assessed for each willful violation that caused or contributed to a work-related fatality. The civil penalty for a willful violation that caused or contributed to a work-related fatality is determined by the intersection of the probability rating and severity rating in accordance with Table 2 below, as adjusted annually in accordance with OAR 437-001-0142:

**Table 2 – Civil Penalties for Willful Violation that Caused or Contributed to a Work-Related Fatality
(Updated Annually in Oregon OSHA's Annual Adjustments to Penalties Bulletin)**

<u>Type</u>	<u>Other than Serious</u>	<u>Serious</u>					
		<u>Serious Physical Harm</u>			<u>Death</u>		
<u>Severity</u>		<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>Probability</u>							
<u>First-instance Penalty</u>	<u>\$50,000</u>	<u>\$60,000</u>	<u>\$95,000</u>	<u>\$125,000</u>	<u>\$175,000</u>	<u>\$190,000</u>	<u>\$240,000</u>

(3) Willful violations that caused or contributed to a work-related fatality are not eligible for employer size reductions.

(4) At the discretion of the Administrator, a civil penalty may be issued for any willful violation and for any willful violation that caused or contributed to a work-related fatality

up to the maximum penalty amount in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.

(5) For egregious violations, the Administrator may assess a separate civil penalty for each instance of a violation under section (1) or (2) of this rule.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
Statutes/Other Implemented: ORS 654.001 through 654.295
History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021

OSHA 8-2017, amend filed 12/22/2017, effective 01/01/2018

OSHA 2-2012, f. 5-11-12, cert. ef. 7-1-12

OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

APD 7-1988, f. 6-17-88, ef. 7-1-74

WCD 5-1978, f. 6-22-78, ef. 8-15-78

WCB 8-1985, f. 8-5-75, ef. 9-1-75

437-001-0180 Determination of Penalty — Relating to Red Warning Notice

Any employer who violates or directs another to violate OAR 437-001-0096(3) or (4) shall be assessed a civil penalty of not less than \$~~100~~**250** and not more ~~[\$13,653]~~**than maximum penalty for [each such] a serious-rated violation in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142.**

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
Statutes/Other Implemented: ORS 654.001 through 654.295
History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 13-2021, amend filed 11/01/2021, effective 12/01/2021

APD 7-1988, f. 6-17-88, ef. 7-1-74

APD 6-1987, f. 12-23-87, ef. 1-1-88

WCD 5-1978, f. 6-22-78, ef. 8-15-78

437-001-0201 Determination of Penalty — Relating to Field Sanitation

The Administrator shall assess a **minimum** civil penalty of not less than \$250 and not ~~[more]~~**greater** than ~~[\$ 500]~~**the maximum penalty for a serious-rated violation in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142,** to employers of workers who are engaged in field activities for the growing and harvesting of food crops intended for human consumption, who substantially fail to comply with OAR 437-004-~~[0110]~~**1110** in ~~[division]~~**Division** 4, Agriculture.

Statutory/Other Authority: ORS 654.025(2) & 656.726(~~[3]~~**4**)
Statutes/Other Implemented: ORS 654.001 - 654.295
History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 7-1999, f. & cert. ef. 7-15-99

APD 7-1988, f. 6-17-88, ef. 7-1-74
APD 6-1987, f. 12-23-87, ef. 1-1-88
WCD 9-1986, f. 10-7-86, ef. 12-1-86

437-001-0203 Determination of Penalty — Relating to Violations Which Have No Probability and Severity.

- (1) Safety and Health Protection on the Job Poster — If the employer has not displayed the poster, a minimum penalty of \$100 may be assessed.
- (2) Annual Summary — If an employer fails to post the summary portion of the OSHA 300 Form no later than February 1 of the year following the year covered by the records and keep it posted until April 30 in accordance with 437-001-0700(17)(e), a minimum penalty of \$200 may be assessed.
- (3) Citation — If an employer fails to post the citation after receipt, a minimum penalty of \$200 may be assessed.
- (4) OSHA 300 and DCBS 801 Forms — If the employer does not maintain the Log and Summary of Occupational Injuries and Illnesses, OSHA 300 Form, and the Supplementary Record, DCBS Form 801 or equivalent, a minimum penalty of \$100 may be assessed for each OSHA form not maintained.
- (5) Access to Records — If the employer fails upon request to provide records for inspection and copying by any authorized representative of Oregon OSHA or by any employee, former employee, or authorized representative of employees, a minimum penalty of \$100 may be assessed for each form not made available.
- (6) Flush Toilets/Warm Water Hand Washing Facilities — If an employer fails to provide flush toilets or warm water hand washing facilities on a construction site according to OAR 437-003-0020 in 437, division 3, Construction, a penalty of not less than \$200, nor more than ~~[\$2,500, shall be assessed.]~~ **the maximum other than serious civil penalty in accordance with OAR 437-001-0145(2), as adjusted annually in accordance with OAR 437-001-0142, shall be assessed.**

NOTE: Forms referenced are available from the agency.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)
Statutes/Other Implemented: [~~ORS 654.086~~] **ORS 654.001-654.295**

History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX
OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018
OSHA 9-2008, f. 9-19-08, cert. ef. 1-1-09
OSHA 6-2003, f. & cert. ef. 11-26-03
OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02
OSHA 10-1995, f. & cert. ef. 11-29-95
OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92

437-001-0295 Discrimination Complaint

(1) An employee or prospective employee may file a complaint as provided in ORS 654.062(5) if the employee believes discrimination has occurred because:

(a) The employee opposed a practice forbidden by, or engaged in a practice provided for, in the Oregon Safe Employment Act; or

(b) ~~[The]~~**With no reasonable alternative and in good faith, the** employee refused ~~[in good faith]~~to ~~[be]~~**perform a work task that would expose the employee to a hazardous condition that presents a real risk of death or serious physical harm and all of the following conditions are met:**

(A) Where possible, the employee requested from the employer, and was unable to obtain, a correction of the hazardous condition; and

(B) A reasonable person would agree that the task, work area, equipment, or other factors created a hazardous condition that if exposed, would have subjected the employee to imminent danger [provided the employer refused to correct the hazard or it was not possible to notify the employer of the danger and the employee has notified Oregon OSHA or other appropriate agency, of the hazard, unless excused on the basis of]**or serious physical harm; and**

(C) Due to the urgency of the hazardous condition, there was insufficient time or opportunity ~~[as stated in OAR 839-003-0025, Bureau of Labor and Industries rules.]~~**to correct the hazard through regulatory authorities, such as Oregon OSHA.**

(2) The **discrimination** complaint ~~[shall]~~**must** be filed with the Commissioner of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232, within ~~[90 days]~~**one year** after the **employee or prospective** employee had reasonable cause to believe discrimination occurred. The complaint may also be filed in any Circuit Court of the State of Oregon.

(3) The complaint may also be **dual** filed with the U.S. Department of Labor, 3056 Federal Office Building, Seattle, Washington 98174 as stated in 29 CFR 1977.15.

Statutory/Other Authority: ORS 654.025(2) & 656.726(4)

Statutes/Other Implemented: ORS 654.001-654.295

History:

OSHA X-2023, f. XX-XX-XXXX, effective XX/XX/XXX

OSHA 5-2018, amend filed 11/29/2018, effective 12/17/2018

OSHA 8-2007, f. & cert. ef. 12-3-07

OSHA 7-2002, f. & cert. ef. 11-15-02

APD 7-1988, f. 6-17-88, ef. 7-1-74

APD 6-1987, f. 12-23-87, ef. 1-1-88

WCD 4-1981, f. 5-22-81, ef. 7-1-81

WCD 5-1978, f. 6-22-78, ef. 8-15-78

WCB 8-1975, f. 8-5-75, ef. 9-1-75

WCB 19-1974, f. 6-5-74, ef. 7-1-74