



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (Oregon OSHA)
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November 1, 2021

[Text of changes](#)
[January 14, 2021 Federal Register](#)

Oregon OSHA's increase of certain minimum and maximum penalties for alleged violations

In November of 2015, Congress passed legislation requiring federal OSHA to increase maximum and minimum penalties for alleged violations by up to 78%. Federal OSHA had not raised these penalties since 1990, reducing their effectiveness as a deterrent for noncompliance. Under federal law, states that operate their own Occupational Health and Safety plans are required to adopt maximum penalty levels that are at least as effective as federal OSHA's. Oregon must adopt similar standards as federal OSHA to maintain state plan authority.

After seeking a change in the statute to provide the necessary authority to mirror federal penalty adjustments, Oregon OSHA first adjusted maximum and minimum penalties by rule in 2017, with an effective date of January 1, 2018. Under that rule change, the maximum penalty for a violation that is not classified as willful or repeat was raised from \$7,000 to \$12,471, and the maximum penalty for willful or repeated violations was raised from \$70,000 to \$124,709. The minimum penalty for a willful violation was increased from \$5,000 to \$8,900, while the other minimum penalties were left unchanged. This rulemaking aligns Oregon OSHA with the most recent federal OSHA penalties. Effective in January of 2021, the federal maximum penalty for a violation that is not classified as willful or repeat was increased to \$13,653 and the maximum penalty for willful or repeated violations was increased to \$136,532. In addition, this rulemaking includes several other clarifications and technical adjustments to the Oregon OSHA penalty rules.

To engage with stakeholders, Oregon OSHA presented the topic to the Partnership Advisory Committee in May 2019. The Committee requested the agency form a Fiscal Impact Advisory Committee (FIAC). In response, Oregon OSHA assembled a FIAC that met in January 2020. The FIAC recommended changes to the statement, and the Committee approved a revised fiscal impact statement in February 2020.

Oregon OSHA originally proposed the rule change February 26, 2020. Due to COVID-19 pandemic restrictions, the agency canceled in-person hearings and extended the comment period. The rule change was re-proposed April 24, 2020, and again, due to the extension of COVID-19 pandemic restrictions, Oregon OSHA canceled in-person public hearings and extended the comment period. The rule was re-proposed July 31, 2020, and four virtual hearings occurred in September and October 2020. Overall, Oregon OSHA received comment from February 26, 2020 through October 30, 2020 on the proposed rule amendments.

In general, comments focused on the language describing the Administrator's ability to use his or her discretion to assess penalties on a willful violation, as well as the language used to describe the determination of probability assessments. Oregon OSHA considered all comments received. Oregon OSHA, based on the comments received, made adjustments to the proposed rules and left others as proposed. The rules are adopted as follows.

OAR 437-001-0060 Advance Notice. In proposed rule, Oregon OSHA made Advance Notice more permissive rather than mandatory. Previously, employers were required to notify employees whenever advance notice of inspection was given, the adopted rule now requires employers to notify employees only if directed to do so by Oregon OSHA. It also required a penalty be assessed if the employer failed to provide notice; in the adopted rule, the assessment of a penalty is optional rather than mandatory. Public comments did not address this rule change, and the rule is adopted as proposed.

OAR 437-001-0096 Red Warning Notice. In the proposed rule, Oregon OSHA clarified the personnel that can authorize a Red Warning Notice, removed penalty language because it is addressed in OAR 437-001-0180, and made minor wording changes. Public comments did not address this rule change specifically, and the rule is adopted as proposed with exception to clarifications made to language in section (2).

OAR 437-001-0135 Evaluation of Probability to Establish Penalties. Oregon OSHA proposed changes related to the determination of high, medium and low probability. These changes were the focus of extensive feedback during the comment period. Commenters expressed concerns that the assessment was subjective and it would make it easier to increase penalties. The final rule, as adopted, includes a modified version of the proposed rule language that addresses several of the concerns raised.

OAR 437-001-0145 Penalty for Other than Serious or Serious Violation. Given the penalty table was last updated in 2017, Oregon OSHA proposed changes to align it with the most recent federal OSHA penalty calculation and incorporate their higher maximum amounts. The proposed language also clarified that penalty adjustments based on size can be applied to failure to correct violations. Lastly, the proposed language outlines the authority of the Administrator to use his or her discretion to set penalties for any serious, repeated, or willful violations; previously, this was only stated in the rule that specifically addressed such violations. The language about the Administrator's discretion was the subject of extensive public comment. The final rule, as adopted, limits the Administrator's discretion to serious violations as the Administrator's discretion to set penalties for repeat and willful violations are stated in the rules that specifically address such violations. The final rule, as adopted, incorporates the 2021 federal OSHA maximum penalty amounts, reflects the penalty table as proposed and otherwise includes language as proposed.

OAR 437-001-0155 Determination of Penalty – Failure to Correct. Oregon OSHA proposed changes to the assessment of penalties for the failure to correct violation. This included language updates and a substantive change that reduced the minimum daily penalty for failure to correct a serious violation from the previous \$250 daily amount to \$100 daily. Public comments did not address this rule change. The final rule, as adopted, aligns it with the 2021 federal OSHA maximum penalty amount, and otherwise includes language as proposed.

OAR 437-001-0160 Penalty Criteria – Repeat Violation. Oregon OSHA proposed changes that would allow the Administrator, or designee, to identify fixed site employers whose activities would be better addressed as non-fixed activities when addressing repeat violations. This

change was not the subject of specific public comment. However, Oregon OSHA re-considered the merit of this change and the final adopted rule does not include the language as proposed.

OAR 437-001-0165 Determination of Penalty – Repeat Violation. Oregon OSHA proposed language to align penalties for repeat violations with the federal OSHA maximums and added penalties for fourth and fifth repeat for other than serious violations. In addition, Oregon OSHA proposed to allow the Administrator the same discretionary authority over repeat violations that the existing rule already gives license to for serious or willful violations. Some comments objected to the maximum penalty increase in general terms, and others objected to the discretionary authority as related to repeat violations. After considering those comments, Oregon OSHA adopted the language as proposed.

OAR 437-001-0170 Determination of Penalty – Failure to Report an Occupational Fatality, Catastrophe, or Accident. The proposed rule increased the maximum penalty to align with current federal OSHA maximum. In addition, Oregon OSHA proposed specific language to clarify that a willful failure to report remains subject to the maximum penalty for a willful violation. Many comments objected to what they saw as a new opportunity for the Administrator to exercise his or her discretion. After considering those comments, Oregon OSHA eliminated all references to maximum penalties from this provision; they are addressed sufficiently elsewhere in rules where such penalty amounts are defined.

OAR 437-001-0171 Determination of Penalty – Failure to Register a Farm Labor Camp/Facility. The proposed rule increased the maximum penalty to align with the current federal OSHA maximum. In addition, Oregon OSHA proposed specific language to clarify that a willful failure to report remains subject to the maximum penalty for a willful violation. The language about the Administrator's discretion was the subject of extensive public comment. In the adopted rule, Oregon OSHA eliminated all references to maximum penalties from this provision; they are addressed sufficiently elsewhere in rules where such penalty amounts are defined. The adopted also clarifies a rule reference.

OAR 437-001-0175 Determination of Penalty – Willful or Egregious Violation. Oregon OSHA proposed to increase the maximum penalties to align with current federal OSHA penalties. The proposed rule left in place existing provisions, but updated the wording. Oregon OSHA adopted the language as proposed.

OAR 437-001-0180 Determination of Penalty – Relating to Red Warning Notice. Oregon OSHA proposed increasing the maximum penalty for a red warning notice violation that is not willful. Oregon OSHA also proposed language to clarify that a willful violation in such cases remains subject to the maximum penalty for a willful violation. Many comments objected to what was seen as a new opportunity for the Administrator to exercise his or her discretion. After considering those comments, the reference to maximum penalties for willful violations was removed from this provision; they are addressed sufficiently elsewhere in rules where such penalty amounts are defined.

OAR 437-001-0225 Penalty for Falsification. Oregon OSHA proposed language to clarify that a willful violation for a false statement, representation, or certification remains subject to the maximum penalty for a willful violation. Many comments objected to what was seen as a new opportunity for the Administrator to exercise his or her discretion. After considering those comments, Oregon OSHA eliminated the mention of willful penalties, which are addressed sufficiently elsewhere, and instead inserted language making it clear that the maximum penalty listed in this section applies to non-repeat, non-willful violations.

437-001-0740 Falsification or Failure to Keep and Post Records or Make Reports. Oregon OSHA proposed language to clarify that a willful violation for the falsification of, or failure to keep or post records, or make reports, remains subject to the maximum penalty for a willful violation. The majority of comments focused on this change, as it appeared to be seen as a new opportunity for the Administrator to exercise his or her discretion in relation to “paperwork” violations. After considering those comments, Oregon OSHA eliminated the mention of willful penalties, which are addressed sufficiently elsewhere, and instead inserted language making it clear that the maximum penalty listed in this section applies to non-repeat, non-willful violations.

This is Oregon OSHA Administrative Order 13-2021, adopted November 1, 2021 and effective December 1, 2021.

Oregon OSHA contact: Sarah Rew, Salem Central Office @ 503-378-3272, or email at Sarah.C.REW@dcbs.oregon.gov.

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

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

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on November 1, 2021 by the _____
Date prior to or same as filing date

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

Lisa Appel 350 Winter Street NE, Salem OR 97301-3882 503-947-7449
Rules Coordinator Address Telephone

to become effective December 1, 2021 as Oregon OSHA Administrative Order 13-2021.
Date upon filing or later

Rulemaking Notice was published in the August 2020 *Oregon Bulletin*.**
Month and Year

RULE CAPTION

Oregon OSHA's increase of certain minimum and maximum penalties for alleged violations
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

AMEND: OAR 437-001-0060, 437-001-0096, 437-001-0135, 437-001-0145, 437-001-0155, 437-001-0160, 437-001-0165, 437-001-0170, 437-001-0171, 437-001-0175, 437-001-0180, 437-001-0225, 437-001-0740

ORS 654.025(2), 654.035, 656.726(4)
Stat. Auth.

ORS 654.001 through 654.295
Stats. Implemented

RULEMAKING SUMMARY

In November of 2015, Congress passed legislation requiring federal OSHA to increase maximum and minimum penalties for alleged violations by up to 78%. Federal OSHA had not raised these penalties since 1990, reducing their effectiveness as a deterrent for noncompliance. Under federal law, states that operate their own Occupational Health and Safety plans are required to adopt maximum penalty levels that are at least as effective as federal OSHA's. Oregon must adopt similar standards as federal OSHA to maintain state plan authority.

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INDIVIDUAL RULE SUMMARY (By rule number)

Provide a brief summary of the rule (if new adoption), or a brief summary of changes made to the rule (if amending)

437-001-0060 – Makes language regarding issuance of a penalty permissive rather than mandatory and requires employers to notify employees only if directed to do so by Oregon OSHA.

437-001-0096 – Adds designees, updates language and removes penalty language because it is addressed in OAR 437-001-0180.

437-001-0135 – Substantively changes language regarding determination of high, medium, and low probability ratings.

437-001-0145 – Increases penalties and table dollar amounts to align with federal OSHA 2021 penalty amounts and updates language and outlining.

437-001-0155 – Updates language regarding calculation of failure-to-abate penalties and decreases minimum daily penalty.

437-001-0160 – Updates language.

437-001-0165 – Updates maximum penalty amounts, adds penalties for fourth and fifth repeat violations, and gives the Administrator the same discretionary authority over repeat violations that the existing rule already gives license to for serious or willful violations.

437-001-0170 – Removes maximum penalty as it is addressed elsewhere in rules.

437-001-0171 – Removes maximum penalty as it is addressed elsewhere in rules.

437-001-0175 – Updates language and changes maximum and minimum penalty amounts to align with federal OSHA 2021 penalty amounts.

437-001-0180 – Updates language and maximum and minimum penalty amounts to align with federal OSHA 2021 penalty amounts.

437-001-0225 – Inserts language making it clear that the maximum penalty listed in this section applies to non-repeat, non-willful violations.

437-001-0740 – Inserts language making it clear that the maximum penalty listed in this section applies to non-repeat, non-willful violations.

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


Authorized Signer

Julie Love
Printed Name

11/1/2021
Date

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

**The *Oregon Bulletin* is published on the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.
ARC 930-2005

OFFICE OF THE SECRETARY OF STATE

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SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
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PERMANENT ADMINISTRATIVE ORDER

FILED

11/01/2021 1:19 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

OSHA 13-2021

CHAPTER 437

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

FILING CAPTION: Oregon OSHA's increase of certain minimum and maximum penalties for alleged violations

EFFECTIVE DATE: 12/01/2021

AGENCY APPROVED DATE: 11/01/2021

CONTACT: Lisa Appel

503-947-7449

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350 Winter Street NE

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Filed By:

Lisa Appel

Rules Coordinator

RULES:

437-001-0060, 437-001-0096, 437-001-0135, 437-001-0145, 437-001-0155, 437-001-0160, 437-001-0165, 437-001-0170, 437-001-0171, 437-001-0175, 437-001-0180, 437-001-0225, 437-001-0740

AMEND: 437-001-0060

RULE TITLE: Advance Notice

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Makes language regarding issuance of a penalty permissive rather than mandatory and requires employers to notify employees only if directed to do so by Oregon OSHA.

RULE TEXT:

- (1) No person shall give advance notice of an inspection without authority of the Director, the Administrator, or designee, subject to penalties as prescribed in ORS 654.991(2).
- (2) If the Director, the Administrator, or designee approves a request for advance notice of an inspection:
 - (a) The notice shall not be given more than 24 hours in advance; and
 - (b) When advance notice is given to the employer, and if required by the Director, the Administrator, or designee, either at the time advance notice is given or any time thereafter, the employer must notify the employee representative without delay of the proposed inspection, or in the absence of an employee representative, immediately post a notice, provided to the employer by Oregon OSHA, in a sufficient number of locations in the place of employment to reasonably inform employees of the planned inspection. Failure to provide such notice when directed by the Director, the Administrator, or designee may result in a penalty as outlined in OAR 437-001-0176.
- (3) It will not be considered advance notice to advise a federal or state agency that is not the subject of the inspection of a proposed inspection in order to avoid duplicate inspections or to facilitate enforcement.
- (4) Any person who gives advance notice of any safety or health inspection without authority from the Director, the Administrator, or designee shall be punished, upon conviction, by being assessed a penalty not to exceed \$1,000 or be imprisoned for not more than six months, or both, as prescribed in ORS 654.991(2).

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 - 654.295

AMEND: 437-001-0096

RULE TITLE: Red Warning Notice

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Adds designees, updates language and removes penalty language because it is addressed in OAR 437-001-0180.

RULE TEXT:

(1) The Red Warning Notice shall be authorized by either the Director, the Administrator, or designee. For purposes of this rule, a Camp Closure Notice is a Red Warning Notice.

(2) When action is necessary to preclude or eliminate exposure of employees to a condition which, if such exposure occurred or continued, would constitute a violation of any statute or of any lawful regulation, rule, standard, or order affecting employee safety or health at a place of employment, a Red Warning Notice authorized under subsection (1) will be posted. The notice will be posted in plain view of any person likely to use the place of employment, machine, device, apparatus, or equipment that constitutes the hazard.

(3) Any place of employment, machine, device, apparatus, or equipment on which a Red Warning Notice has been posted must not be operated or used by any person until:

(a) The condition has been made safe and healthful; and

(b) The Red Warning Notice has been removed by Oregon OSHA; however,

(c) Nothing in this section prohibits an employer from using any place of employment, or operating any machine, device, apparatus, or equipment, exclusively for the purpose of remedying the violation, pursuant to the instructions on the Red Warning Notice.

(4) No person shall deface or destroy a Red Warning Notice or remove it without authorization from Oregon OSHA.

(5) The Red Warning Notice will be removed after:

(a) Notification from the employer that the condition has been corrected; and

(b) A follow-up inspection or other information confirms that the condition has been corrected.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0135

RULE TITLE: Evaluation of Probability to Establish Penalties

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Substantively changes language regarding determination of high, medium, and low probability ratings.

RULE TEXT:

(1) The probability of an accident that could result in an injury or illness from a violation will be determined by the Compliance Officer and will be expressed as a probability rating.

(2) The factors to be considered in determining a probability rating may include, as applicable:

(a) The number of employees exposed;

(b) The frequency and duration of exposure;

(c) The proximity of employees to the point of danger;

(d) Factors that require work under stress;

(e) Lack of proper training and supervision or improper workplace design; or

(f) Other factors that may significantly affect the probability of an accident occurring.

(3) The probability rating is:

(a) Low – If the factors considered indicate that the likelihood an accident could occur is lower than typical;

(b) Medium – If the factors considered indicate that the likelihood an accident could occur is typical; or

(c) High – If the factors considered indicate that the likelihood an accident could occur is higher than typical.

(4) The probability rating may be adjusted on the basis of any other relevant facts that would affect the likelihood of injury or illness.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0145

RULE TITLE: Penalty for Other than Serious or Serious Violation

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Increases penalties and table dollar amounts to align with federal OSHA 2021 penalty amounts and updates language and outlining.

RULE TEXT:

(1) A penalty must be assessed for any serious violation and may be assessed for any other than serious violation as established by the intersection of the probability rating and severity rating on the Penalty Schedule (Table 1). In a case where probability and severity are not appropriate considerations, a penalty may be assessed by considering the facts of the violation.

[Table 1 - Penalty table]

(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 statewide peak employment:

[Table 2 - Penalty size adjustments]

(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.

(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.

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

(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.

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

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

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

437-001-0145 Penalty for Other than Serious or Serious 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

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

AMEND: 437-001-0155

RULE TITLE: Determination of Penalty — Failure to Correct

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Updates language regarding calculation of failure-to-abate penalties and decreases minimum daily penalty.

RULE TEXT:

- (1) A citation must be issued for an employer's failure to correct a previously cited violation.
- (2) Penalties assessed for a failure to correct a previously cited violation will not exceed \$13,653 per day:
 - (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;
 - (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 failure to correct the violation results from the employer's lack of diligence, the daily penalty will be not less than \$50 for other than serious violations, and not less than \$100 for serious violations.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0160

RULE TITLE: Penalty Criteria — Repeat Violation

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Updates language.

RULE TEXT:

Oregon OSHA will identify repeat violations as follows:

(1) 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.

(2) 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.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0165

RULE TITLE: Determination of Penalty — Repeat Violation

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Updates maximum penalty amounts, adds penalties for fourth and fifth repeat violations, and gives the Administrator the same discretionary authority over repeat violations that the existing rule already gives license to for serious or willful violations.

RULE TEXT:

(1) The penalty for a repeat violation will be calculated by multiplying the penalty for the current violation by the following factors:

[Table 1 - Penalties for Repeat Violations]

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

(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.

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

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

437-001-0165

Determination of Penalty – Repeat Violation

Table 1 - Penalties for Repeat Violations

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

AMEND: 437-001-0170

RULE TITLE: Determination of Penalty — Failure to Report an Occupational Fatality, Catastrophe, or Accident

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Removes maximum penalty as it is addressed elsewhere in rules.

RULE TEXT:

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.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0171

RULE TITLE: Determination of Penalty — Failure to Register a Farm Labor Camp/Facility

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Removes maximum penalty as it is addressed elsewhere in rules.

RULE TEXT:

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.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 656.726(4), ORS 654.035

STATUTES/OTHER IMPLEMENTED: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810, 658.825

AMEND: 437-001-0175

RULE TITLE: Determination of Penalty — Willful or Egregious Violation

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Updates language and changes maximum and minimum penalty amounts to align with federal OSHA 2021 penalty amounts.

RULE TEXT:

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.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0180

RULE TITLE: Determination of Penalty — Relating to Red Warning Notice

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Updates language and maximum and minimum penalty amounts to align with federal OSHA 2021 penalty amounts.

RULE TEXT:

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 and not more \$13,653 for each such violation.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0225

RULE TITLE: Penalty for Falsification

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Inserts language making it clear that the maximum penalty listed in this section applies to non-repeat, non-willful violations.

RULE TEXT:

(1) An employer who knowingly makes any false statement, representation, or certification regarding the correction of a violation shall be assessed a civil penalty of not less than \$100 and not more than \$2,500 for violations that are neither repeated nor willful.

(2) An employer who knowingly makes any false statement, representation, or certification regarding the correction of a violation, and that violation is found to have caused or materially contributed to the death of any employee, shall be penalized according to the provisions of ORS 654.991(3). In such cases, the Administrator shall contact the appropriate local district attorney for assistance and possible prosecution.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295

AMEND: 437-001-0740

RULE TITLE: Falsification or Failure to Keep and Post Records or Make Reports

NOTICE FILED DATE: 07/31/2020

RULE SUMMARY: Inserts language making it clear that the maximum penalty listed in this section applies to non-repeat, non-willful violations.

RULE TEXT:

Oregon OSHA will cite employers who fail to keep the records, post the summaries, or make the reports required by OAR 437-001-0700 (except OAR 437-001-0704 which is addressed in OAR 437-001-0170) or OAR 437-001-0706. Citations will be 'other than serious' and carry a penalty of at least \$100 but not more than \$1,000 for each violation that is neither repeated nor willful.

Note: ORS 654.991(3) provides that anybody who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required by ORS 654.001 to 654.295, will, on conviction, be fined not more than \$10,000 or be imprisoned for not more than six months, or both. Also, ORS 654.086(1)(e) provides for civil penalties for falsification of a document.

STATUTORY/OTHER AUTHORITY: ORS 654.025(2), 654.035, 656.726(4)

STATUTES/OTHER IMPLEMENTED: ORS 654.001 through 654.295