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Summary of Comments and Agency Decisions - Explanation of Rulemaking

Title: 2026 Amendments to the Annual Adjustment of Civil Penalties Rule, OAR 437-001-0142

Department of Consumer & Business Services
Oregon Occupational Safety & Health Division

Anticipated Administrative Order Number: OSHA 2-2026

Anticipated Adopted Date: September 30, 2026

Anticipated Effective Date: September 30, 2026

1. Executive Summary

This document provides the rulemaking history, rationale, and explanation of Oregon OSHA's decision to amend Oregon Administrative Rules (OAR) 437-001-0142. Rulemaking was initiated to ensure a statutory requirement to complete an annual adjustment of penalties, under Oregon Revised Statute (ORS) 654.086(4), in the event the necessary Consumer Price Index for All Urban Consumers, West Region, All Items (West Region CPI) data, as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor, is not available.

Due to the 2025 lapse in appropriations by the U.S. Congress, and the resulting suspension of federal government services (government shutdown), specifically that the BLS did not release the applicable West Region CPI-U data for October 2025, Oregon OSHA adopted a temporary amendment to OAR 437-001-0142. The temporary rulemaking (OSHA Administrative Order 2-2025) changed the methodology to calculate the time period change for the Annual Adjustment of Civil Penalties calculation. The amended rule was in effect from November 21, 2025, through May 18, 2026.

In order to calculate the 2027 penalty bulletin, and to prevent similar situations that may arise due to a lack of the necessary BLS data, Oregon OSHA is adopting changes to OAR 437-001-0142, the Annual Adjustment of Civil Penalties rule, to change the methodology used to calculate the required annual inflation adjustments.

2. Application of Statutory Requirements

This rulemaking falls within Oregon OSHA's statutory authority, and Oregon OSHA has fulfilled all of its related obligations under ORS 654 (Oregon Safe Employment Act; OSEA) and ORS 183 (Administrative Procedures Act; APA) .

The following Oregon Revised Statutes (ORS) give Oregon OSHA the authority to promulgate and adopt rules:

ORS 654.025(2): "The director and the Workers' Compensation Board may make, establish, promulgate and enforce all necessary and reasonable regulations, rules, standards, orders and other provisions for the purpose of carrying out their respective functions under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, notwithstanding any other statutory provisions which may be to the contrary..., " and

ORS 656.726(4): "The director hereby is charged with duties of administration, regulation and enforcement of ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and this chapter..."

In addition, **ORS 654.003(3):**

"Authorize[s] the Director of the Department of Consumer and Business Services and the designees of the director to set reasonable, mandatory, occupational safety and health standards for all employments and places of employment."

Under this authority, this rulemaking to amend the Annual Adjustment of Civil Penalties Rule (OAR 437-001-0142) is to ensure continued compliance with the annual statutory rule requirement under ORS 654.086(4), "The director shall, not later than January 15 of each year, adjust the amount of civil penalties that may be imposed under this section to account for the percentage increase or decrease, if any, in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor."

In Oregon, all agency rulemaking is subject to the requirements of the Administrative Procedures Act (APA) under ORS 183. ORS 183.335 requires that state agencies provide adequate notice to the public of their intended rulemaking actions before a rule is adopted and goes into effect. Oregon OSHA filed all required documents for the notice of proposed rulemaking, including the Statement of Need and Fiscal Impact, with the Oregon Secretary of State on July 24, 2026. The notice was published in the August 2026 Oregon Bulletin, and all appropriate parties were notified of the proposed rule changes.

The APA requires a fiscal impact statement (ORS 183.335). Since no compliance requirements for employers were necessary or included during this rule update, Oregon OSHA does not foresee any economic impacts to the cost of compliance from these changes.

Public comments on the proposed changes were accepted until 5:00 p.m. on September 11, 2026. One remote public hearing was conducted on Wednesday, August 26, 2026, at 10:00 a.m., and only one oral comment was received. No written comment was received.

The APA requires Oregon OSHA to fully consider any written and oral comments. Oregon OSHA has included a general review and response to the only oral public comment received, as shown in Section 5, Summary of Comments and Agency Decisions, herewith in.

The rule is fully within Oregon OSHA's statutory authority. Oregon OSHA has satisfied all applicable requirements of the APA.

3. History of the Current Rulemaking

Each year, as required under Oregon OSHA's General Administration Rules (Division 1), Violations and Penalties rule OAR 437-001-0142(1), the Director of the Department of Consumer and Business Services (DCBS), or their designee, must publish a notice of Oregon OSHA's Annual Adjustments to Penalties Bulletin in the Oregon Bulletin, or its successor, to notify the regulated community of annual adjustments in civil penalty amounts .

As required by ORS 654.086(4), this annual notice is to account for the percentage change, if any, in the Consumer Price Index for All Urban Consumers, West Region, All Items (West Region CPI-U), from October to October of each year, as published by the U.S. Bureau of Labor Statistics (BLS), or its successor .

Due to the 2025 lapse in appropriations by the U.S. Congress and resulting suspension of federal government services (government shutdown), the BLS did not release the applicable West Region CPI-U data for October 2025. As a result,

Oregon OSHA adopted a temporary methodology for the Annual Adjustment of Civil Penalties calculation under Administrative Order 2-2025, that was adopted November 21, 2025, and was in effect from that date through May 18, 2026, and cannot be renewed.

In order to calculate the 2027 penalty bulletin, and to prevent similar situations that may arise due to a lack of the necessary BLS data, Oregon OSHA is adopting amendments to its current rule (OAR 437-001-0142) which will ensure that the methodology used to calculate future penalties bulletins provides the ability to use the West Region CPI-U for the closest preceding month, when such data is unavailable for October that year .

4. Description of Changes to the Proposed Rule as Adopted

OAR 437-001-0142 Annual Adjustment of Civil Penalties

- OAR 437-001-0142(1): Updates Oregon OSHA website link, and amends the West Region CPI-U data set rule language from “October to October of each year” to: “(a) The ending month West Region CPI-U data used in the Annual Adjustments to Penalties Bulletin most recently published in the Oregon Bulletin, or its successor; and (b) The October West Region CPI-U data of the year the Annual Adjustments to Penalties Bulletin is published in the Oregon Bulletin, or its successor. If the October West Region CPI-U data is unavailable at the time of calculation, the closest preceding month that the data is available will be used.” Also, the rule language “The annual adjustments will be effective January 1st of each calendar year,” was moved to its own separate new section, OAR 437-001-0142(5).
- OAR 437-001-0142(1)(a): Added new section and requirement to use the ending month West Region CPI-U data used in the Annual Adjustments to Penalties Bulletin most recently published in the Oregon Bulletin, or its successor.
- OAR 437-001-0142(1)(b): Added new section and requirement to use the October West Region CPI-U data of the year the Annual Adjustments to Penalties Bulletin is published in the Oregon Bulletin, or its successor, and if the October West Region CPI-U data is unavailable at the time of calculation, the closest preceding month that the data is available will be used.
- OAR 437-001-0142(2)(a) through (f): Amended grammar.
- OAR 437-001-0142(4): The note under the rule, “Appendix A is an example of information that will be included in Oregon OSHA's Annual Adjustments to Penalties Bulletin,” was moved under OAR 437-001-0142(1).

OAR 437-001-0142 Appendix A – Example of Oregon OSHA’s Annual Adjustments to Penalties Bulletin

- Corrects two references of ORS 654.086(3) by changing to 654.086(4).
- Summary revised to include previous bulletin number, published date, and effective date.
- Revised to specify that annual inflation adjustments to civil penalties are based on the percent change, if any, between the West Region CPI-U data described under OAR 437-001-0142.
- The BLS West Region CPI-U Data Used in this Annual Adjustment Calculation tables were revised to remove October data points, and revised to include data referenced months, BLS data release date, and percentage adjustment increase or decrease.
- “if any” was added to the fourth paragraph.
- “See tables on the following pages” was removed.
- Five penalty tables were revised for grammar and information clarification. The penalty tables were also reformatted from “complex” tables to “simple” tables to comply with regulatory requirements under Title II of the Americans with Disabilities Act (ADA) guidelines for web content. The need for these formatting changes was identified after the proposed rule amendments were filed on July 24, 2026. This change required the removal of the unnecessary table header language of “severity” in 13 tables and the removal of duplicate rule numbers, among other refinements.
- One word was changed from “with” to “at” regarding Administrator’s discretion for civil penalties for 4th and greater repeat violations .

5. Summary of Comments and Agency Decisions

Oregon OSHA held one remote public hearing on this rulemaking on August 26, 2026, and received only one comment during that hearing. Catie Theisen, with the Oregon Labor Federation, provided the comment that was in support of the proposed amendments to the rule by indicating that such changes were within the spirit of the underlining statute [ORS 654.086(4)], and the legislative intent of the bill [SB 592 (2023)], for which the rule was originally adopted under Oregon OSHA Administrative Order 3-2023 .

The comment period ended on September 11, 2026. The division received no written comments concerning this rulemaking during the comment period.

6. Conclusion

Oregon OSHA is adopting the proposed changes to the rule with minor grammar and formatting changes as described in Section 4, Description of Changes to the Proposed Rule as Adopted above .