



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (Oregon OSHA)
350 Winter Street NE, PO Box 14480, Salem, OR 97309-0405
Phone: 503-378-3272, Toll Free: 1-800-922-2689, Fax: 503-947-7461
osha.oregon.gov

July 30, 2020

Text of changes

January 23, 2019 Federal Registry

January 15, 2020 Federal Registry

Oregon OSHA's Proposed Increase of Certain Minimum and Maximum Penalties for Alleged Violations

The following public hearings replace those previously scheduled for in-person testimony on 8/20/20 and 9/22/20, which have been canceled.

Virtual Public Hearings Scheduled for:

<u>Date</u>	<u>Time</u>
September 24, 2020	11:00 am

Please register for **Penalties** on Sep 24, 2020 11:00 AM PDT at:
<https://attendee.gotowebinar.com/register/3468884827386690831>

September 24, 2020	5:00 pm
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Please register for **Penalties** on Sep 24, 2020 5:00 PM PDT at:
<https://attendee.gotowebinar.com/register/1729203445059069967>

October 7, 2020	5:00 pm
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Please register for **Penalties (Spanish)** on Oct 7, 2020 5:00 PM PDT at:
<https://attendee.gotowebinar.com/register/1660610412160312079>

After registering for a webinar, you will receive a confirmation email containing information about joining the webinar. In order to ensure as many people as possible are able to testify, Oregon OSHA reserves the right to restrict testimony to no more than 5 minutes.

The webinars listed above will be streamed from the Oregon OSHA Portland Field Office located at 16760 SW Upper Boones Ferry Rd, Tigard, OR 97224. Due to the COVID-19 Pandemic and in-line with Oregon Health Authority guidelines, there is a limited opportunity to testify in person and will be offered by appointment only. The number of appointments are limited, and they will be assigned on a first come first served basis. The appointments must be requested 5 business days prior to the hearing. Only those with appointments will be admitted

EXHIBIT **A**

into the hearing. Each appointment will give the attendee the opportunity to provide in-person oral testimony of up to 5 minutes on the record.

The opportunity to testify in person will be conditional on the following provisions:

- Attendees with appointments will stay in vehicle until they have been invited in via phone by an Oregon OSHA staff member.
- Facial coverings must be worn at all times while in the building.
- Attendees will remain at least 6 feet from all people at all times including outside the building and inside the building.

Unfortunately, because we need to ensure that all attendees are protected, we reserve the right to suspend the in-person portion of the hearing if there is any substantial non-compliance with the provisions described above. In any event, written comments will be received through October 30, 2020.

To register for an

appointment to testify:

Department of Consumer and Business Services/Oregon OSHA
Attention: Kate Ryan
350 Winter Street NE
Salem OR 97301-3882
E-mail – kate.ryan@oregon.gov
Phone – 971-673-2918

These summary statements are the same as previously filed.

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 the effectiveness of penalties as a deterrent for non compliance. Under federal law OSHA state plans must include effective sanctions for violations. 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 these maximum and minimum penalties by rule in 2017, with an effective date of January 1, 2018. Under that rule change (or, during that rulemaking), 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. When making adjustments to the base penalties consistent with the new maximum penalties, Oregon OSHA also created a new size adjustment for Oregon's smallest employers (10 or fewer), changing the size reduction in the base penalty for such employers from 60% to 75%.

Effective in January of 2019, the federal maximum penalty for a violation that is not classified as willful or repeat was increased to \$13,260 and the maximum penalty for willful or repeated violations was increased to \$132,598. Modest increases to both figures will be made again in January of 2020, and it is the intention of the present rulemaking to mirror the most current federal figures (based on preliminary information CPI information, Oregon OSHA expects the federal maximums to increase to \$13,538 and \$135,382, respectively). In addition, the current

rulemaking includes several other clarifications and technical adjustments to the Oregon OSHA penalty rules.

Please visit our web site osha.oregon.gov Click 'Rules and laws' in the Common resources column and view our proposed rules, or select other rule activity from this page.

When does this happen: Adoption tentatively will be in December 2020.

To get a copy: Our web site – osha.oregon.gov Rules and laws, then, Proposed rules
Or call 503-947-7454

To comment: Department of Consumer and Business Services/Oregon OSHA
350 Winter Street NE
Salem OR 97301-3882
E-mail – tech.web@oregon.gov
Fax – 503-947-7461

Comment period closes: October 30, 2020

Oregon OSHA contact: Gary Robertson, Central Office @ 503-947-7454
or email at gary.L.robertson@oregon.gov

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

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

OAR 437

Agency and Division

Administrative Rules Chapter Number

Fred Bruyns

350 Winter Street NE Salem OR 97301-3882

503-947-7717

Rules Coordinator

Address

Telephone

RULE CAPTION

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

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Michael Wood

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October 7, 2020

5:00 pm

Michael Wood

*** This hearing will be conducted entirely in Spanish

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Phone – 971-673-2918

Hearing Date	Time	Location	Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Amend: OAR 437-001-0060, 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) and 656.726(4) _____
Stat. Auth. _____ Other Authority _____

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 the effectiveness of penalties as a deterrent for non compliance. Under federal law OSHA state plans must include effective sanctions for violations. 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 these maximum and minimum penalties by rule in 2017, with an effective date of January 1, 2018. Under that rule change (or, during that rulemaking), 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. When making adjustments to the base penalties consistent with the new maximum penalties, Oregon OSHA also created a new size adjustment for Oregon's smallest employers (10 or fewer), changing the size reduction in the base penalty for such employers from 60% to 75%.

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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)

These summary statements are the same as those previously filed.

437-001-0060- Makes language regarding issuance of a penalty permissive rather than mandatory.

437-001-0096- Removed penalty language from rule.

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

437-001-0145- Changes in base penalties and table amounts.

437-001-0155- Changes language regarding calculation of failure-to-abate penalties and proposed decrease in minimum daily penalty.

437-001-0160- Changes language to allow employer's activities across fixed sites to be managed in a fashion more consistent with non-fixed sites.

437-001-0165- Changes maximum and minimum penalty amounts.

437-001-0170- Clarifies language that willful violations remain an option for these failures to report.

437-001-0171- Clarifies language that willful violations remain an option for these penalties.

437-001-0175- Change in maximum and minimum penalty amounts.

437-001-0180- Clarifies language that willful violations remain an option for these penalties.

437-001-0225- Clarifies language that willful violations remain an option for these penalties.

437-001-0740- Clarifies language that willful violations remain an option for these penalties.

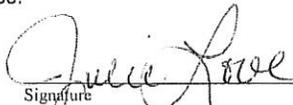
Please visit the rules and laws section of our website at osha.oregon.gov/rules and select *proposed rules* in the rule making column to view our proposed rules.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

October 30, 2020

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator


Signature

Julie Love
Printed name

7/30/2020
Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

In the Matter of:

Amending: OAR 437-001-0060, 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

Rule Caption: Oregon OSHA's proposed increase of certain minimum and maximum penalties for alleged violations.

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

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

Need for the Rule(s):

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 the effectiveness of penalties as a deterrent for non compliance. Under federal law OSHA state plans must include effective sanctions for violations. Oregon must adopt similar standards as federal OSHA to maintain state plan authority.

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Documents Relied Upon, and where they are available:

OAR 437, Division 1, General Administrative Rules

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

In relation to all employers affected by the proposed rule, it must first be noted that the proposed changes in the rule do not affect the cost of complying with existing Oregon OSHA rules nor do these proposed changes create any new requirements for employers. The only financial impact is on those employers who receive a violation that carries a penalty. For that reason (as has been the case with past changes to the penalty rules), Oregon OSHA believes that there will be no "cost of compliance" for businesses of any size or any other employer covered by the rule. Any change in the penalty structure, by its very nature, affects the cost of *non-compliance* with Oregon OSHA rules, not the cost of complying with them. This rule does not change the compliance obligations of the employer; it just changes the penalties of non-compliance.

All state agencies are affected by the rule only in the sense that they are employers under the Oregon Safe Employment Act (OSEAct) and may be subject to penalties in the event violations are identified and cited. State agencies other than DCBS/Oregon OSHA will have no costs under this rule other than those that they would incur as an employer – and, as noted above, the rule will make no change to the cost of compliance for employers. Similarly, local governments are affected by this rule only in the sense that they are employers under the OSEAct and may be subject to penalties in the event violations are identified and cited. Finally the public as a whole will be affected only to the degree that members of the public are employers (who may be cited and assessed penalties) or employees (who may benefit from increased compliance with workplace health and safety rules as a result of increased employer compliance with existing rules). None of these entities will experience any fiscal impact due to changes in the cost of complying with this proposed rule.

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

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

Small employers already experience somewhat lower penalties on average than do large employers, and those differences were magnified in the previous rulemaking for employers with 10 or fewer employees. Those existing differences would not be significantly affected by the proposed changes.

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

As previously noted, this rule has no anticipated fiscal impact on compliant employers. Those businesses affected in the form of penalties for non-compliance would include employers of all sizes. In Oregon more than 90% of all employers are small businesses, employing more than half of the state's workforce.

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

There are no new recordkeeping or other administrative activities required for employers to comply with the proposed rules.

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

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

The preceding paragraphs represent the legally required fiscal impact statements regarding the proposed rule. The remainder of this discussion relates not to the cost of compliance, but to the likely effect on assessed penalties. Although Oregon OSHA recognizes that such an analysis is not legally required, the analysis has been provided because of the level of stakeholder interest in such information.

Even without repeat violations or the evidence of willful conduct, Oregon OSHA currently has the authority to issue penalties of up to \$12,471 per violation, but in practice the majority of penalties are much lower. Most penalties result from the identification of a "serious" violation, where a serious injury or death could result. However, nearly two-thirds of violations cited by Oregon OSHA continue to be considered "other-than-serious

“with no penalty attached. Overall, more than half of Oregon OSHA inspections result in no penalties at all, either because there were no violations issued or because the violations issued carried no penalties. There is no reason to believe this will change as a result of the revised penalty rules.

As part of its 2017 rulemaking, Oregon OSHA estimated that the average penalty for a first-time serious violation would increase from an average of \$435 during Federal Fiscal Years 2015 and 2016 to an average of \$553 following adoption of the revisions to the rule. That expected increase of more than 27 percent was primarily the result of the 78 percent increase in the maximum penalties, offset somewhat by the increased reduction in the base penalty for the smallest employers. The actual increase in penalties – almost certainly affected by factors other than the rulemaking – was just over 50 percent, with the average for the most recent two years being \$656 (having peaked at \$682 in FFY 2018 before dropping back to \$629 – illustrating the instability of the year-to-year average figure). Because the 2017 analysis involved comparing the penalties issued to the penalties that would have been issued under the revised rule for the same set of violations, Oregon OSHA remains reasonably confident that the actual impact of the 2017 rulemaking was much closer to the 27 percent estimate (in an interesting statistical coincidence, the later numbers involved fewer violations, so that the *total* penalty amount assessed for first-time serious violations for the most recent two-year period in fact represented just slightly more than the 27 percent estimate would have predicted).

In relation to the current rulemaking, which would increase the maximums by just over 8.5 percent and make other adjustments, Oregon OSHA estimates that the primary effect of the rulemaking would be to increase the average penalty for a first-time serious violation by 7.5 percent to \$673 (compared to the FFY 2019 figure). This analysis is appropriately less complex than the 2017 analysis, because it does not need to account for the offsetting effect of a new size reduction, but instead is driven almost entirely by the modifications to the base penalty table.

Summary of Changes by rule number and Potential Fiscal Impact on Non-Compliant Employers

437-001-0060 Advance Notice

The only substantive change in the proposed draft of OAR 437-006-0060 is to make the language regarding issuance of a penalty permissive rather than mandatory. For this reason, to the extent it has any effect, it would be to potentially reduce the cost. However, no such penalty has been assessed during at least the past 15 years.

437-001-0096 Red Warning Notice

The only substantive change in the proposed draft of OAR 437-001-0096 is to remove the penalty language. However, those provisions are repeated elsewhere in the proposed rule, so there is no actual substantive change.

437-001-0135 Evaluation of Probability to Establish Penalties

The change in the criteria for the evaluation of probability is a substantive one, although for the most part it better aligns the rule language with current training and practice. To the degree it has an effect, it would be likely to generate a modest increase in the probability determinations, and therefore in the resulting penalty assessments.

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

The changes to the base penalties as described by the table would result in the following adjustments:

- No change for other-than-serious or low probability non-death serious violations;
- An increase of 7.14 percent for medium probability non-death serious violations;
- An increase of 7.5 percent for high probability non-death serious violations;
- An increase of 7.14 percent for low probability death violations;
- An increase of 8.33 percent for medium probability death violations;
- An increase of 8 percent for high probability death violations.

Because the various adjustments (including repeat and willful calculations) are themselves calculated using these base penalties, the likely effect of these changes on penalty amounts (as noted above) is expected to be an increase of approximately 7.5 percent in the average penalties assessed.

The only other substantive change in OAR 437-001-0145 corrects an oversight in recent rulemaking activity. Oregon OSHA had inadvertently eliminated the administrator's discretion in relation to repeat violations, creating some (although very infrequent) circumstances where the recognition of a repeat violation would require a penalty lower than would otherwise have been assessed (using the administrator's discretion). Because such violations are rare, this change is unlikely to have a meaningful effect on the penalty averages overall.

437-001-0155 Determination of Penalty – Failure to Correct

There are two proposed changes in this section with potential substantive impacts:

The first would clarify that failure-to-abate penalties are to be calculated based on the number of workdays that the violation goes uncorrected, rather than simply those such days with independently documented exposure. In the relatively infrequent case of a failure-to-abate violation, this would at least sometimes result in an increase in the penalty assessed.

The second is the proposed decrease in the minimum daily penalty, which aligns it with the minimum penalty for a first-time serious violation. As a result of this change, those failure-to-abate violations that are cited with a calculated penalty of between \$100 and \$250 before the daily penalty is assessed will not experience an artificial increase resulting simply from the fact that the size-adjusted base penalty is relatively low (such a relatively low penalty is either the result of the employer's small size, the relative lack of gravity of the violation, or a combination of the two). While this change is also not likely to affect many employers, Oregon OSHA believes that the two changes in this rule section would be likely to offset one another in their impact on average penalties.

437-001-0160 Penalty Criteria – Repeat Violation

The only substantive change in this section relates to those situations where an employer's activities across its fixed sites are managed in a fashion more consistent with non-fixed sites. The change would allow the administrator the same discretion to address such issues that he or she currently has when confronted with non-fixed sites that are managed in a fashion more consistent with fixed sites. The effect of this change, which would be applied rarely if ever, would be a slight upward pressure on average penalties for repeat violations.

437-001-0165 Determination of Penalty – Repeat Violation

There are two substantive changes in this section other than the modified maximum penalties for such violations. One involves restoring the administrator's discretion in repeat violations, which was discussed in an earlier section. The other adds a 3rd and 4th repeat penalty amount to the discussion of Other-than-Serious repeat penalties (it was not updated in a previous rulemaking, when the administrator's discretion for both 3rd and 4th Serious and Other-than-Serious repeats was replaced as the "default" approach by the additional language on the existing table). This change is not expected to affect average penalty amounts.

The overall effect of the change in the maximum penalties would be the same estimated 7.5 percent increase as the change in the base penalties.

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

The change to this rule simply clarifies that willful violations remain an option for such failures, and would be penalized accordingly in those infrequent situations where they might occur. Because of their infrequency, Oregon OSHA does not anticipate a significant impact on either average or overall penalties.

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

The change to this rule simply clarifies that willful violations remain an option for such failures, and would be penalized accordingly in those infrequent situations where they might occur. Because of their infrequency (and

the infrequency of the underlying violation itself), Oregon OSHA does not anticipate a significant impact on either average or overall penalties.

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

The only substantive change to this section is the change in the maximum and minimum penalties. The overall effect of the change would be the same estimated 7.5 percent increase as the change in the base penalties.

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

The change to this rule simply clarifies that willful violations remain an option for such failures, and would be penalized accordingly in those situations where they might occur (red warning violations are themselves very infrequent, although Oregon OSHA recognizes that in those rare situations where such a violation occurs it would not be surprising to determine that it represents willful conduct). Because of their infrequency, Oregon OSHA does not anticipate a significant impact on either average or overall penalties.

437-001-0225 Penalty for Falsification

The change to this rule simply clarifies that willful violations remain an option for such failures, and would be penalized accordingly in those situations where they might occur (such violations are themselves very infrequent, although Oregon OSHA recognizes that in those rare situations where such a violation occurs it would not be surprising to determine that it represents willful conduct). Because of their infrequency, Oregon OSHA does not anticipate a significant impact on either average or overall penalties.

437-001-0740 Falsification or Failure to Keep and Post Records or Make Reports

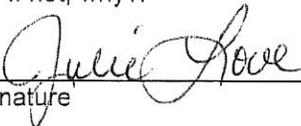
The change to this rule simply clarifies that willful violations remain an option for such failures, and would be penalized accordingly in those infrequent situations where they might occur. Because of their infrequency, Oregon OSHA does not anticipate a significant impact on either average or overall penalties.

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

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

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

If not, why?:


Signature

Julie Love
Printed name

7/30/2020
Date

Oregon OSHA's Proposed Adjustment of Certain Minimum and Maximum Penalties for Alleged Violations.

July 2020

Text removed is in ~~[brackets with line through]~~.

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

437-001-0060 Advance Notice

(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 ~~[shall]~~ **must** ~~[,without delay,]~~ 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. ~~[Any employer who fails to notify the employees, through posting, of the proposed inspection shall be assessed a penalty as prescribed in ORS 654.086(1)(f)]~~ **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 ~~D[irector]~~, **the A[dd]ministrator**, or ~~[his]~~ designee shall be punished, upon conviction, by being assessed a penalty not to exceed \$1,000 or be imprisoned for not more than 6 months, or both, as prescribed in ORS 654.991(2).

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

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

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

437-001-0096 Red Warning Notice

(1) The Red Warning Notice shall be authorized by either the Director, **the** Administrator, **one of the statewide Managers** of Enforcement, or **one of the Field Office Enforcement Managers**~~[Supervisors]~~. 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 Compliance Officer ~~[shall obtain]~~ **will seek** permission to post a Red Warning Notice. The notice ~~[shall]~~ **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 ~~[shall]~~ **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 ~~[the Division]~~ **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 ~~[the Division]~~ **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.

~~[(6) Any person 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 than \$5000 for each such violation.]~~

~~[(7) Any employer who violates or directs an employee to violate OAR 437-001-0096(3), and the violation is determined to be a willful violation, may be assessed a civil penalty of not less than \$8,900 and not more than \$126,749.]~~

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

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

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

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

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

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

OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.

OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.

OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.

OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

437-001-0135 Evaluation of Probability to Establish Penalties

- (1) The probability of an accident that could result in an injury or illness from a violation **will** ~~[shall]~~ be determined by the Compliance Officer and **will** ~~[shall]~~ 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~~[, which]~~ **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 ~~[degree of]~~ probability of an accident occurring.
- (3) The probability rating is:
- (a) Low – If the factors considered indicate ~~[it would be unlikely that]~~ **that the likelihood** an accident could occur **is lower than the compliance officer would consider to be normal;**
 - (b) Medium – If the factors considered indicate ~~[it would be likely that]~~ **that the likelihood** an accident could occur **is what the compliance officer would consider to be normal;** or
 - (c) High – If the factors considered indicate ~~[it would be very likely that]~~ **that the likelihood** an accident could occur **is higher than the compliance officer would consider to be normal.**
- (4) The probability rating may be adjusted on the basis of any other relevant facts ~~[which]~~**that** would affect the likelihood of injury or illness.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

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

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

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

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

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

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

OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 1/1/18.

OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

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

(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

Probability	Severity	Probability	Severity	
Other Than Serious		Serious		
			Serious Physical Harm	Death
Low	0	Low	\$300	\$ [3,500] 3,750
High	\$300	Medium	\$ [700] 750	\$ [6,000] 6,500
		High	\$ [2,000] 2,150	\$ [12,500] 13,500

(2) Penalty adjustments will be made based on an employer's size for all violations [~~except failure to correct~~]. 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 3 years. Adjustments will be made as follows:

- 10% reduction **of the base penalty** if the compliance officer determines that the information demonstrates a positive history overall.
- No [reduction] **change in the base penalty** if the compliance officer determines that history is what would be expected of a typical employer.
- 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:

- Evidence of an overall safety and health program.
- Effective communication of safety and health policies.
- Promotion of safety and health prior to the inspection.
- Employees are clearly involved in the safety and health program.
- Management's commitment at all levels is apparent.
- Worksite hazard analysis is conducted.
- Employees and managers alike are held accountable for safety and health.

Adjustments will be made as follows:

- 20% reduction [~~in penalties~~] **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.

- No adjustment **in the base penalty** if the compliance officer determines that the information demonstrates an employer's good faith effort is ~~[at the norm]~~**average**.
- 20% increase ~~[in penalties]~~ **of the base penalty** if the compliance officer determines that the information demonstrates a poorer than ~~[normal]~~**average** effort to comply with the law and rules.

(d) A 10% reduction **of the base penalty** will be provided for immediate correction[s] 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) The Administrator may, **at his or her discretion**, assess a penalty of **between \$100 and** ~~[up to \$12,675]~~ **\$13,538** for any **serious** violation, **between \$200 and \$135,382 for any repeated violation, and between \$9,472 and \$135,382 for any willful violation** after considering the facts.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
 WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
 WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
 WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
 WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
 WCD Admin. Order, Safety 12-1982, f. 9-20-84, ef. 11-1-84.
 APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
 APD Admin. Order 5-1988, f. 5-16-88, ef. 5-16-88.
 APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
 OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
 OR-OSHA Admin. Order 7-1995, f. 7/5/95, ef. 7/5/95.
 OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.
 OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 1/1/18.

OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

437-001-0155 Determination of Penalty – Failure to Correct

(1) A citation ~~[shall]~~**must** be issued for an employer's ~~[nonabatement of]~~**failure to correct a previously cited** violation.

(2) Penalties ~~[of not more than]~~**assessed for a failure to correct a previous cited violation will not exceed** \$~~[42,675]~~**13,538** per day~~[for failure to correct a violation]~~:

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

(b) **Such penalties must** ~~[Shall]~~ be determined by considering the probability and severity of the original violation, the efforts of the employer to correct the violation, and factors ~~[which]~~**that** delayed the ~~[employer in correcting]~~**correction of** the violation; and

(c) If failure to correct the violation results from the employer's lack of diligence, the **daily** penalty ~~[shall]~~**will** be not less than \$50 for other than serious violations, and not less than \$~~[250]~~**\$100** for serious violations~~[, for each day or part of a day, during which the violation remains uncorrected]~~.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74 ef. 7-1-74.
WCB Admin. Order 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 1/1/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

437-001-0160 Penalty Criteria – Repeat Violation

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 in-going 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. **Where the Administrator, or designee, determines in his or her discretion that the span of control and nature of activity for a fixed place of employment is more readily comparable to nonfixed location activity, repeat violations will be handled in a manner consistent with nonfixed places 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.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.
 Hist: WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
 WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
 WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
 APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
 APD Admin. Order 7-1989, f. 5-1-89, ef. 5-1-89 (temp).
 APD Admin. Order 10-1989, f. 7-7-89, ef. 7-7-89 (perm).
 OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
 OR-OSHA Admin. Order 6-1994, f. 9/30/94, ef. 9/30/94.
 OR-OSHA Admin. Order 2-2009, f. 1/27/09, ef. 2/3/09.
 OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
 OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/11/12.
 OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

437-001-0165 Determination of Penalty – Repeat Violation

(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

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

(2) The total **final** penalty for a repeat violation will not be less than \$200, nor more than [a maximum of]\$[126,749]**135,382**.

(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, [and] \$1,000 for a third repeat, **\$1,500 for a fourth repeat, and \$2,000 for a fifth repeat.**

(4) The administrator may, at his or her discretion, assess a penalty of between \$200 and \$135,382 for any repeated violation after considering the facts.

Stat. Auth.: ORS 654.025(2) and 656.726(4).
 Stats. Implemented: ORS 654.001 through 654.295.
 Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
 WCB Admin. Order 33-1974, f. 9-5-74, ef. 9-26-74.
 WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
 WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
 WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
APD Admin. Order 7-1989, f. 5-1-89, ef. 5-1-89 (temp).
APD Admin. Order 10-1989, f. 7-7-89, ef. 7-7-89 (perm).
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 1/1/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

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, nor more than \$~~42,675~~**13,538**, shall be assessed. **In the event that such a violation is determined to be willful, a penalty between \$9,472 and \$135,382 will be assessed at the Administrator’s discretion after a consideration of the facts.**

Stat. Auth.: ORS 654.025(2) and 656.726(4).
Stats. Implemented: ORS 654.001 through 654.295.
Hist: WCD Admin. Order, Safety 4-1981, f. 5-22-81 ef. 7-1-81.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.
OR-OSHA Admin. Order 7-2002, f. 11/15/02, ef. 11/15/02.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 1/1/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

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, 437-004-1120(5)(b), a penalty of not less than \$250 nor more than \$~~42,675~~**13,538**, shall be assessed. **In the event that such a violation is determined to be willful, a penalty between \$9,472 and \$135,382 will be assessed at the Administrator’s discretion after a consideration of the facts.**

Stat. Auth.: ORS 654.025(2) and 656.726(4).
Stats. Implemented: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810 and 658.825.
Hist: OR-OSHA Admin. Order 10-1995, f. 11/29/95, ef. 11/29/95.
OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.
OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 1/1/18.
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

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

For a willful violation, the base penalty, after appropriate adjustments based on the employer's size, will normally be multiplied by 25. [~~For a willful violation,~~] [t]The Administrator[~~, after considering the facts of the violation,~~] may, **at his or her discretion,** assess a penalty [~~of not less than \$8,900, nor more than \$126,749~~]**between \$9,472 and \$135,382 based on the facts.** [~~The base penalty will normally be multiplied by 25.~~]For egregious violations, the Administrator may assess a separate **willful** penalty, after any appropriate adjustments based on the employer's size, for each instance of a violation.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

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

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

OR-OSHA Admin. Order 7-1992, f. 7/31/92, ef. 10/1/92.

OR-OSHA Admin. Order 2-2012, f. 5/11/12, ef. 7/1/12.

OR-OSHA Admin. Order 8-2017, f. 12/22/17, ef. 1/1/18.

OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

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

[~~The Administrator, after considering the related facts, shall assess a penalty of not less than \$100 and not more than \$5,000 for each violation of the restrictions imposed by a Red Warning Notice (See OAR 437-001-0096(3) or (4))~~]**Any person 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 than \$13,538 for each such violation. In the event that such a violation is determined to be willful, a penalty between \$9,472 and \$135,382 will be assessed at the Administrator's discretion after a consideration of the facts.**

Stat. Auth.: ORS 654.025(2) and 656.726(3).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCD Admin. Order, Safety 5-1978, f. 6-22-78 ef. 8-15-78.

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

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

OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

437-001-0225 Penalty for Falsification

(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. **In the event that such a violation is determined to be willful, a penalty between \$9,472 and \$135,382 will be assessed at the Administrator's discretion after a consideration of the facts.**

(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.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 to 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.

437-001-0740 Falsification or Failure to Keep and Post Records or Make Reports

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 437-001-0704 which is addressed in 437-001-0170) or 437-001-0706. Citations will be 'other than serious' and carry a penalty of at least \$100 but not more than \$1000 for each violation. **In the event that such a violation is determined to be willful, a penalty between \$9,472 and \$135,382 will be assessed at the Administrator's discretion after a consideration of the facts.**

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 6 months, or both. Also, ORS 654.086(1)(e) provides for civil penalties for falsification of a document.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.
OR-OSHA Admin. Order 6-1994, f. 9/30/94, ef. 9/30/94.
OR-OSHA Admin. Order 11-2001, f. 9/14/01, ef. 1/1/02.
OR-OSHA Admin. Order 7-2002, f. 11/15/02, ef. 11/15/02.
OR-OSHA Admin. Order 11-2007, f. 12/21/07, ef. 1/1/08.
OR-OSHA Admin. Order 5-2018, f. 11/29/18, ef. 12/17/18.
OR-OSHA Admin. Order X-XXXX, f. XX/XX/XX, ef. XX/XX/XX.