

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

April, 2020

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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 ~~Director,~~ **the Administrator,** 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** ~~[\$12,675]~~**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. 7/1/12.
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:

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.