

EVALUATION OF PROBABILITY TO ESTABLISH PENALTIES

437-001-0135 Evaluation of Probability to Establish Penalties.

- (1) The probability of an accident which could result in an injury or illness from a violation shall be determined by the Compliance Officer and 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 require work under stress;
 - (e) Lack of proper training and supervision or improper workplace design; or
 - (f) Other factors which 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 an accident could occur;
 - (b) **Medium** – If the factors considered indicate it would be likely that an accident could occur; or
 - (c) **High** – If the factors considered indicate it would be very likely that an accident could occur.
- (4) The probability rating may be adjusted on the basis of any other relevant facts which would affect the likelihood of injury or illness.

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

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.

EVALUATION OF SEVERITY TO ESTABLISH PENALTIES / PENALTY FOR OTHER THAN SERIOUS OR SERIOUS VIOLATION

437-001-0140 Evaluation of Severity to Establish Penalties.

(1) A severity rating for each violation shall be determined by the Compliance Officer on the basis of the degree of injury or illness which is reasonably predictable. If more than one injury or illness is reasonably predictable, the Compliance Officer will determine the severity based upon the most severe injury or illness. Severity ratings will be selected from the following schedule:

- (a) **Other Than Serious** – Conditions that could cause injury or illness to employees but would not include serious physical harm;
- (b) Serious Physical Harm; or
- (c) Death.

(2) The severity rating may be adjusted on the basis of any other relevant facts which would affect the severity of the possible injury or illness.

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

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.

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.

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

(1) A penalty shall be assessed for any serious violation and may be assessed for any other than serious violation by considering the penalty 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.

(2) Penalty adjustments may be made based upon the employer's previous calendar year's lost workday cases incidence rate, if available, and efforts made during the inspection to correct violations. Penalty adjustments shall not be applied to repeat, willful or failure to correct violations or to any violation which contributed to an injury, illness or death of an employee. Adjustments shall not reduce the penalty to less than the mandatory minimum penalty which has been established by rule or statute. Adjustments are:

- (a) A penalty reduction of 35 percent for each violation for an employer's lost workday cases incidence rate for the previous calendar year, if below the current published statewide average rate for that employer's Standard Industrial Classification. For fixed places of employment the lost workday cases incidence rate is based upon the rate for that place of employment. For nonfixed places the lost workday cases incidence rate is based upon the employer's rate statewide.

PENALTY FOR OTHER THAN SERIOUS OR SERIOUS VIOLATION

(b) A penalty reduction of 30 percent for each violation, when the employer corrects the violation before the end of the inspection.

(c) A penalty reduction of 10 percent may be given when the employer employed no more than 50 employees at any time in the previous 12 months, including the day of the inspection.

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

(4) The penalty for combined violations of the same rule shall be calculated by computing the penalty and possible adjustment for each subpart making up the combination and adding these to establish a total penalty for the combination.

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

PENALTY TABLE 1

PROBABILITY	SEVERITY	PROBABILITY	SEVERITY	
	OTHER THAN SERIOUS		SERIOUS	
			SERIOUS PHYSICAL HARM	DEATH
LOW	0	LOW	\$300	\$1,500
HIGH	\$300	MEDIUM	\$500	\$2,500
		HIGH	\$1,250	\$5,000

(6) The Administrator may assess a penalty of up to \$7,000 for any serious or other than serious violation after considering the facts.

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

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.

DETERMINATION OF PENALTY – FAILURE TO CORRECT / PENALTY CRITERIA – REPEAT VIOLATION

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

- (1) A citation shall be issued for an employer's nonabatement of a violation.
- (2) Penalties of not more than \$7,000 per day for failure to correct a violation:
 - (a) May be assessed for each workday, or part of a day, that the violation results in continued exposure after the ordered correction date;
 - (b) 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 delayed the employer in correcting the violation; and
 - (c) If failure to correct the violation results from the employer's lack of diligence, the penalty shall be not less than \$50 for other than serious violations, and not less than \$250 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(3).

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.

NOTE: In the following rule, (3) was amended to conform with Federal OSHA's change of how to determine repeat violations when very serious violations are involved.

437-001-0160 Penalty Criteria – Repeat Violation. Oregon OSHA will assess penalties for repeat violations as follows:

- (1) A violation of any statute, regulation, rule, standard or order will be cited as repeated when, upon reinspection, another violation of the previously cited statute, regulation, rule, standard or order is found.
- (2) 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.

**PENALTY CRITERIA – REPEAT VIOLATION /
DETERMINATION OF PENALTY -
REPEAT VIOLATION**

(3) At fixed places of employment, “high 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.

(4) For employers at nonfixed places of employment, repeat violations will be based on earlier violations occurring anywhere within the state.

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.

437-001-0165 Determination of Penalty – Repeat Violation.

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

Penalties for Repeat Violations	
1st repeat	X 2
2nd repeat	X 5
3rd repeat	X 10
4th repeat	Discretion of Administrator

(2) The total penalty for a repeat violation shall be not less than \$200, nor more than \$70,000.

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

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

DETERMINATION OF PENALTY – FAILURE TO REPEAT AN OCCUPATIONAL FATALITY, CATASTROPHE, OR ACCIDENT / FAILURE TO REGISTER A FARM LABOR CAMP/FACILITY / WILLFUL OR EGREGIOUS VIOLATION / FAILURE TO NOTIFY EMPLOYEES OF ADVANCE NOTICE

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 437-001-0700(21), a penalty of not less than \$250, nor more than \$7,000, shall be assessed.

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.

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 \$7,000, shall be assessed.

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.

437-001-0175 Determination of Penalty – Willful or Egregious Violation. For a willful violation, the Administrator, after considering the facts of the violation, may assess a penalty of not less than \$5,000, nor more than \$70,000. For egregious violations, the Administrator may assess a separate penalty for each instance of a violation.

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

437-001-0176 Determination of Penalty – Failure to Notify Employees of Advance Notice. The Administrator, after considering the related facts, may assess a penalty not to exceed \$1000 for each violation of the employer's failure to give notification by posting to employees of advanced notice.

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

**DETERMINATION OF PENALTY – RELATING TO
RED WARNING NOTICE / RELATING TO
FIELD SANITATION / RELATION TO VIOLATIONS
WHICH HAVENO PROBABILITY & SEVERITY**

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)).

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

437-001-0201 Determination of Penalty – Relating to Field Sanitation.

The Administrator shall assess a civil penalty of not less than \$250 and not more than \$2,500 to employers of workers who are engaged in field activities for the growing and harvesting of food crops intended for human consumption, who substantially fail to comply with OAR 437-004-1110 in Division 4, Agriculture.

Stat. Auth.: ORS 654.025(2) and 656.726(3).
Stats. Implemented: ORS 654.001 through 654.295.
Hist: WCD Admin. Order, Safety 9-1986, f. 10-7-86 ef. 12-1-86.
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 7-1999, f. 7/15/99, ef. 7/15/99.

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

(1) Safety and Health Protection on the Job Poster. If the employer has not displayed the poster, a minimum penalty of \$100 may be assessed.

(2) Annual Summary – If an employer fails to post the summary portion of the OSHA 300 Form no later than February 1 of the year following the year covered by the records and keep it posted until April 30 in accordance with 437-001-0700(17)(d)(A), a minimum penalty of \$200 may be assessed.

(3) Citation – If an employer fails to post the citation after receipt, a minimum penalty of \$200 may be assessed.

(4) OSHA 300 and DCBS 801 Forms – If the employer does not maintain the Log and Summary of Occupational Injuries and Illnesses, OSHA 300 Form, and the Supplementary Record, DCBS Form 801 or equivalent, a minimum penalty of \$100 may be assessed for each OSHA form not maintained.

DETERMINATION OF PENALTY - RELATING TO VIOLATIONS WHICH HAVE NO PROBABILITY AND SEVERITY

(5) Access to Records – If the employer fails upon request to provide records for inspection and copying by any authorized representative of OR-OSHA or by any employee, former employee, or authorized representative of employees, a minimum penalty of \$100 may be assessed for each form not made available.

(6) Flush Toilets/Warm Water Hand Washing Facilities – If an employer fails to provide flush toilets or warm water hand washing facilities on a construction site according to OAR 437-003-0020 in OAR 437, Division 3, Construction, a penalty of not less than \$200, nor more than \$2,500, shall be assessed.

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

Stats. Implemented: ORS 654.086.

Hist: 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 9-1995, f. 11/29/95, ef. 11/29/95.

OR-OSHA Admin. Order 11-2001, f. 9/14/01, ef. 1/1/02.

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

OR-OSHA Admin. Order 9-2008, f. 9/19/08, ef. 1/1/09.