

**Department of Public Safety Standards and Training
Memo**

Subject: OAR 259-060-0010 & 259-060-0450 – Proposed Rules #11
Compliance

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Issue: This proposed rule change reorganizes the administrative rule dealing with private security compliance to provide clarity. Potential violations are listed once and civil penalty amounts have been grouped together to improve readability. Language was added to allow the Department to consider violations which occur over a period of time longer than 30 days as another violation.

The definitions of “flagrant violation” and “violation” have been moved to OAR 259-060-0010 (Definitions) for consistency.

REVISED: Since the Policy Committee meet on May 15, 2012, failure to complete training and failure to submit properly completed forms in a timely manner have been added to the list of potential violations.

The following revised language for OAR 259-060-0010 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0010

Definitions

(16) “Flagrant Violation” means an act by a provider, contractor, owner or manager who, after being notified of a violation, intentionally continues or repeats the violation within a 36 month period after the initial violation.

(29) “Violation” means an act or omission that is prohibited under the Act or these rules.

The following revised language for OAR 259-060-0450 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

259-060-0450

Compliance

(1) The Department may cause administrative proceedings or court action to be initiated to enforce compliance with the Act and these rules.

~~(1) The Department or its designated staff may cause inspections of records and procedures of security managers, instructors, and private security professionals relating to the minimum employment standards and training standards that are mandated by the Private Security Service Providers Act, as well as those records and procedures which are under the purview of OAR 259-060-0000 to 259-060-0500, in order to verify adherence to and compliance with any applicable rule or statute.~~

~~(2) The Department or its designated staff may cause any administrative proceeding and/or court action to be initiated to enforce compliance with the provisions of the Private Security Service Providers Act, and the administrative rules promulgated thereunder.~~

~~(3) Scope and authority. Application of a civil penalty includes, but is not limited to, the violations set out in sub-section (5) of this rule.~~

~~(a) This rule sets guidelines for civil penalties for violations of the private security laws under ORS 181, and the administrative rules under chapter 259, division 60;~~

~~(b) This rule is authorized by ORS 181.870-181.991 and carries out ORS 181.991.~~

~~(4) Definitions. For the purposes of this rule:~~

~~(a) "Flagrant violation" is:~~

~~(A) An act by a provider, contractor, owner or manager who, after being notified of a violation, intentionally continues it;~~

~~(b) "Penalty order" is the entry of an administrative order, either:~~

~~(A) Assessing a penalty; or~~

~~(B) Finding a violation, regardless of whether a penalty is assessed.~~

~~(c) "Subsequent violation" is a repeat violation of any statute or rule within a 36-month period following any order for the same violation.~~

~~(5) Civil penalty amounts. For non-flagrant violations,~~

~~(a) A penalty of no less than \$250 for the first violation and \$500 for subsequent violations shall be charged for each of the following:~~

(2) Violations. The Department may find violation and recommend assessment of civil penalties upon finding that a private security provider, individual, business or entity is engaging in any of the following acts:

~~(A a) Failure by an unarmed private security officer or private security officer-alarm monitor to complete training, apply for certification or obtain a temporary work permit, prior to providing private security services **Providing private security services without valid certification or licensure or Temporary Work Permit;**~~

~~(B b) F **The** falsification of DPSST-submitted **any** documents **submitted to the Department** by an unarmed private security officer or private security officer-alarm monitor;~~

(c) Failure to complete training as required;

~~(C d) Failure of an unarmed private security officer or private security officer-alarm monitor to cease providing private security services upon **issuance of a cease and desist order, expiration of certification,** notice of termination, suspension, denial or revocation;~~

~~(D e) Failure of an unarmed private security officer or private security officer-alarm monitor to report his or her own arrest **to report criminal charges as required in ORS 181.885.**~~

~~(b) A penalty of no less than \$500 for the first violation and \$750 for subsequent violations shall be charged for each of the following:~~

~~(A) Failure by an armed private security officer to complete training or apply for certification prior to providing private security services;~~

~~(B) Falsification of DPSST-submitted documents by an armed private security officer;~~

~~(C) Failure of an armed private security officer to cease providing private security services upon notice of termination, suspension, denial or revocation;~~

~~(D) Failure of an armed private security officer to report his or her own arrest~~

~~(c) A penalty of no less than \$500 for the first violation and \$750 for subsequent violations shall be charged for each of the following:~~

~~(A) Failure by a private security unarmed or alarm monitor instructor to complete training or apply for certification, prior to providing private security training;~~

~~(B) Falsification of DPSST submitted documents by a private security unarmed security or alarm monitor instructor;~~

~~(C) Failure of a private security unarmed or alarm monitor instructor to cease providing private security training upon notice of termination, suspension, denial or revocation;~~

~~(D) Failure of a private security unarmed or alarm monitor instructor to report his or her own arrest;~~

(f) Failure to submit properly completed forms to the Department in a timely manner;

(g) Providing training without a valid certification;

~~(E **h**) Failure of a private security unarmed or alarm monitor instructor to instruct the full DPSST certified **Department-approved** curriculum as required by ORS 181.883.;~~

~~(d) A penalty of no less than \$750 for the first violation and \$1,000 for subsequent violations shall be charged for each of the following:~~

~~(A) Failure by a private security firearms instructor to complete training or apply for certification, prior to providing private security training;~~

~~(B) Falsification of DPSST submitted documents by a private security firearms instructor;~~

~~(C) Failure of a private security firearms instructor to cease providing private security training upon notice of termination, suspension, denial or revocation;~~

~~(D) Failure of a private security firearms instructor to report his or her own arrest;~~

~~(E) Failure of a private security firearms instructor to instruct the full DPSST certified curriculum as required by ORS 181.883.~~

~~(e) A penalty of no less than \$1,000 for the first violation and \$1,500 for subsequent violations shall be charged for each of the following:~~

~~(A) Failure by a private security manager to complete training or apply for certification, prior to providing private security services, except as provided for in OAR 259-060-0130(11);~~

~~(B) Falsification of DPSST submitted documents by a private security manager;~~

~~(C) Failure of a private security manager to cease providing private security services upon notice of termination, suspension, denial or revocation;~~

~~(D) Failure of a private security manager to report his or her own arrest, or the known arrest of an employed private security services provider;~~

~~(E i) Failure of a private security manager to terminate the employment **as a private security provider** of **an individual** private security services provider or applicant whose application has been terminated, or whose certificate **certification or licensure** has been suspended, denied or revoked, upon notice from the Department to do so;~~

~~(F j) The employment of **Employing** private security providers who have not completed the training and application process required under the Private Security Service Providers Act **and these rules**;~~

(k) Failure to employ a licensed executive manager;

(l) Failure to provide technological communication or visibility of a certified security professional to crowd management staff;

(m) Failure to provide documentation of one certified security professional to ten crowd management staff;

(n) Expecting crowd management staff to perform security duties other than the duties incidental to crowd management; or

(o) Any other violation of requirements of the Act or these rules.

(3) The Department may issue a Demand to Examine Books and Records (DEBR) to obtain any record or document related to compliance.

(a) The Department may cause inspections or audits of the records of any private security provider, business or entity. Records inspected may include any document relating to the requirements of the Act and these rules.

(b) Failure to cooperate or respond to any investigative inquires or DEBR may result in issuance of a civil penalty as described in this rule and the revocation of certification or licensure as described in OAR 259-060-0300.

(4) The Department may issue a Cease and Desist Order when an individual, business or entity is not in compliance with these rules. The order requires the individual, business or entity to cease and desist providing private security services in the state of Oregon and will remain in effect until the entity or individual gains compliance.

(5) Complaints and Allegations of Violations.

(a) All complaints or allegations of violations must be submitted on a Department-approved complaint form before an investigation can be initiated, unless the Department grants an exception. The Department may consider additional credible sources of information to determine non-compliance.

(b) A preliminary administrative review of the complaint or allegation will be conducted by the Department to ensure there is sufficient information to proceed. Staff may conduct a fact-finding preliminary investigation.

(A) If sufficient information is determined to support the complaint or allegation, staff may open and conduct an investigation and gather relevant information.

(B) Private security providers, applicants, or other involved parties will respond to any questions or requests within 20 days after a request is mailed by the Department, unless an extension is requested and approved by the Department.

(6) Procedures for Proposing a Civil Penalty.

(a) The Department may issue a Allegation of Non-Compliance when there is a reason to believe a violation has occurred. The purpose of this document is to provide education and allow an opportunity to gain compliance within 30 days without penalty.

(b) The Department will issue a Notice of Violation upon discovery of violation as described in (3). The Notice will include a statement of found violations and proposed sanctions. An individual, business or entity may be given the opportunity to remedy the violation and pay a penalty within 10 days of the mailing of the notice.

(c) The Department, through the Policy Committee and Board, will issue a Notice of Intent to Propose a Civil Penalty upon the failure to remedy a violation or request an extension within 10 days of the mailing of the Notice of Violation.

(A) The Department may extend the time to remedy a violation upon a showing of good cause.

(B) An individual, business or entity will be given the opportunity to provide mitigation to the Department.

~~(a) Except as provided in section (8) of this rule, a case report of the designated failure to comply and subsequent recommendation of civil penalty shall be forwarded by staff for review by the Advisory Committee on Private Security Services, which in turn, shall forward its recommendation to the Board for final dispensation.~~

~~(b) Written notice of the violation of administrative rule or statute shall be served upon the licensee or certificate holder by certified and regular mail, with an opportunity for the licensee or certificate holder to remedy the violation within 14 days of the mailing of the notice, except for providers who have falsified the criminal history section of an application;~~

~~(c) Civil penalties may be lowered from the amount set in this rule, waived where further mitigation is warranted, or resolved by stipulation as provided in section (8) of this rule. Providers who remedy the stated violation and come into compliance without hearing may be assessed half of the penalty provided for in this rule.~~

~~(7) Options:~~

~~(a) If civil penalties are sought under ORS 181.991 for a continuing flagrant violation of the private security laws or rules, staff shall seek, and the committee shall recommend to the Board on Public Safety Standards and Training, the assessment of \$1,500 per occurrence.~~

~~(b) If judicial review of any application of a penalty under this section is requested under ORS 183.480:~~

~~(A) No civil penalty shall be sought or assessed for the alleged violation until after the review has been completed and the assessment upheld;~~

~~(B) Notwithstanding a request for judicial review, civil penalties can be brought or assessed for failure to comply with other laws or rules that do not involve the matter under review;~~

~~(C) The obligation to advise the Department of a judicial review request is on the person charged or about to be charged for the violation.~~

(7) Hearing Request:

(a) If the Department issues a Notice of Intent to Propose Civil Penalty, an individual, business or entity is entitled to a contested case hearing in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(b) The Department must receive a request for hearing in writing within 20 days of the date the Notice of Intent to Propose Civil Penalty was served on the individual, business or entity.

(8) Default Order. If a timely request for a hearing is not received, the Notice of Intent to Impose Civil Penalty will become a Final Order Imposing Civil Penalty.

~~(8 9) Resolution by sStipulation.~~

(a) Department staff is authorized to seek resolution by stipulation, subject to acceptance and approval by the Board or Director, if:

(A) ~~a~~ The matter is resolved before entry of an **final** order assessing penalty;

(B) ~~b~~ The respondent ~~corrects or proceeds to correct all deficiencies itemized~~ **satisfies all terms set forth** by **the** Department staff within the time allowed; and

(C) ~~c~~ The **Any stipulated** penalty amount agreed to is paid and **is** received **by the Department** with the stipulation.

~~(b) A stipulation shall not be accepted for less than the guideline provided for in this rule if the violation is for failure to obtain a required certificate or license, and such is not obtained as part of the resolution.~~

(10) Civil Penalty Amounts.

(a) Unarmed private security providers and alarm monitors will be charged a penalty of not less than \$250 for the first violation and a maximum of \$1,500 for each flagrant violation.

(b) Armed private security providers will be charged a penalty of not less than \$500 for the first violation and a maximum of \$1,500 for each flagrant violation.

(c) Private security instructors will be charged a penalty of not less than \$750 for the first violation and a maximum of \$1,500 for each flagrant violation.

(d) Private security managers, contract executive managers and business or entity owners that employ private security staff will be charged a penalty of not less than \$1,000 for the first violation and a maximum of \$1,500 for each flagrant violation.

(e) For the purposes of imposing civil penalties, each 30 day period in violation of the same statute or rule may be considered a separate violation by the Department.

(11) The Department may reduce or waive civil penalties from the amounts set in this rule in situations where further mitigations is warranted or the matter is resolved by stipulation at any time prior to the entry of a final order.

(12) Staff will recommend the full civil penalty amount for individuals, businesses or entities that fail to satisfy the terms as stipulated. The recommendation will be reviewed by the Private Security and Investigator Policy Committee and Board.
