

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 740
DEPARTMENT OF TRANSPORTATION
MOTOR CARRIER TRANSPORTATION DIVISION

FILED

01/30/2023 3:25 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Jumping Out-of-Service Order Penalties for Employers of Commercial Motor Vehicle Operators

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2023 5:00 PM

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

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Howard Russell
503-373-1979
howard.h.russell@odot.oregon.gov

CCD Safety Compliance
3930 Fairview Industrial Drive SE
Salem, OR 97301

Filed By:
Lauri Kunze
Rules Coordinator

NEED FOR THE RULE(S)

740-300-0120

The Federal Motor Carrier Safety Administration (FMCSA) has determined that Oregon's fine to be levied against employers of commercial motor vehicle operators who knowingly allow, permit, authorize or require their operators to violate Out-of-Service Orders does not meet FMCSA guidelines. This amendment is being made to ensure federal funding of the Commerce and Compliance Division continues. Although the fine amount of \$10,000 falls within FMCSA parameters, the rule currently does not assess the fine until there is a repeat violation within twelve months. This amendment imposes the fine any time the violation is committed and clarifies there will be no mitigation. Further, if there is a repeat violation within 12 months the motor carrier will also have its authority suspended. This amendment also removes reference to penalties against carriers who do not return equipment compliance check forms referenced in ORS 825.955. Such penalties are no longer imposed on motor carriers.

740-300-0130

This rule is being repealed. Language addressing mitigation in cases of motor carriers not returning equipment compliance check forms is no longer relevant. The remaining provision stating that there will be no mitigation to a penalty imposed by 740-300-0120 is now being incorporated into 740-300-0120.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Adoption of these rule changes will ensure the ODOT Commerce and Compliance Division's ongoing eligibility for

federal funding. Without access to this federal funding, minority and underserved communities could be negatively impacted as a result of reduced services provided by the Division.

FISCAL AND ECONOMIC IMPACT:

See statements below.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) None. However, failure to adopt these amendments may result in the loss of federal grant funding to the Oregon Department of Transportation.

(2) As in the case of large businesses, small motor carrier businesses will only be economically affected should they knowingly allow, permit, authorize or require employee drivers to violate Out-of-Service Orders. Otherwise, there will be no economic effect to small businesses.

(2)(a) The precise number is unknown. The Commerce and Compliance Division does not ask motor carriers how many people they employ when those companies register. The amendments apply to any carriers, large or small, that knowingly allow, permit, authorize or require their operators to violate Out-of-Service Orders in violation of ORS 825.960.

(2)(b) and (c) None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Fourteen groups representing small businesses received a copy of the proposed amendment and were asked to submit comments on fiscal and economic impact. No comments were received.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

740-300-0120, 740-300-0130

AMEND: 740-300-0120

RULE SUMMARY: This amendment describes penalties employers of commercial motor vehicle operators are subject to should they allow, permit, authorize or require their operators to violate Out-of-Service orders.

CHANGES TO RULE:

740-300-0120

Violations Specified in ~~ORS 825.955 and ORS 825.960~~, Relating to ~~Out-Of-Service Notices and Driver Equipment Compliance Check Form Orders or Notices~~ - Penalties ¶

~~Except as otherwise ordered by the Department in a particular case, a~~ (1) Any person who commits the violations specified in ~~ORS 825.955 or 825.960~~, related to ~~Out-Of-Service notices and driver equipment compliance check form orders or notices~~, in addition to any penalties otherwise provided by law, shall be subject to the following penalties:¶

~~(1a) For a defendant who has no previous history of violations, upon a finding of violation(s), the Department will issue an order finding such violations. \$10,000 for each violation committed; and~~¶

~~(2b) For a motor carrier who, within the 12 months preceding the violation, has been found by order of the Department in violation of such statute:¶~~

~~(a) \$1,000 for each new violation specified in ORS 825.955 and \$10,000 for each new violation specified in 825.960 committed; and~~

~~(b) SORS 825.960, a suspension of operating authority for five working days.~~

~~(32) For purposes of determining the applicable penalty level, a corporate carrier will not be held responsible for orders entered against it while under a different controlling interest. There shall be no mitigation for a penalty imposed under ORS 825.960 and this OAR 740-300-0120 relating to violation of provisions of an Out-Of-Service order or notice.~~

Statutory/Other Authority: ORS 823.011, 825.232

Statutes/Other Implemented: ORS 825.955~~137~~, 825.960

REPEAL: 740-300-0130

RULE SUMMARY: No mitigation is available in cases where a motor carrier has been found in violation of an out-of-service order or notice.

CHANGES TO RULE:

~~740-300-0130~~

~~Violations Specified in ORS 825.955 and ORS 825.960 - Mitigation~~

~~(1) A petitioner who has admitted the allegations of a notice of proposed civil penalty for penalties imposed under OAR 740-300-0120(2), or who has requested mitigation under ORS 825.955(4)(b) within 15 days of service of a penalty order, and who has taken corrective action to remedy the violation(s) and otherwise is in substantial compliance with the laws and rules of the Department may be eligible for mitigation of penalties. The Department may suspend the five-day suspension of operating authority for a penalty imposed under OAR 740-300-0120, relating to failure to return a Driver Equipment Compliance Check form.¶~~

~~(2) There shall be no mitigation for a penalty imposed under OAR 740-300-0120 relating to violation of provisions of an Out-Of-Service notice or relating to false certification.~~

~~Statutory/Other Authority: ORS 823.011, 825.232~~

~~Statutes/Other Implemented: ORS 825.955~~