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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 735
DEPARTMENT OF TRANSPORTATION
DRIVER AND MOTOR VEHICLE SERVICES DIVISION

FILED

02/29/2024 7:27 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: CDL Out-of-Service Violation Civil Penalties

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/21/2024 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.

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NEED FOR THE RULE(S)

DMV needs to amend OAR 735-070-0170 to align the civil penalty amounts provided in the rule with the federally required minimum amounts. ORS 813.055 requires the Oregon Department of Transportation (ODOT) to impose a civil penalty on the operator of a commercial motor vehicle if the operator:

- Has violated an out-of-service order issued under ORS 813.050 or any out-of-service order or notice issued by ODOT or by an authorized representative of ODOT; or
- ODOT received notification that a person has violated any out-of-service order or notice issued by a state or federal agency.

On July 18, 2023, DMV completed the rulemaking process for OAR 735-070-0170. At that time the federal regulation required a minimum civil penalty for a first violation of an out-of-service order or notice to be \$3,740 and for a second or subsequent violation to be \$7,481. Those amounts were incorporated into the rule. On December 28, 2023, the federal government increased the minimum amounts to \$3,861 for a first violation and \$7,723 for a second or subsequent violation. In this rulemaking, DMV is amending OAR 735-070-0170 to bring the civil penalty amounts into compliance with new minimum civil penalty amounts provided in the federal regulations.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Federal Register (see "D." in the attachment) - <https://www.federalregister.gov/documents/2023/12/28/2023-28066/revisions-to-civil-penalty-amounts-2024>

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

This rule will amend the amounts of civil penalties for violations of out-of-service orders. The amounts will bring Oregon into compliance with federal regulations. The civil penalties will be applied equally for all races. This

amendment of the rule should not have an effect on racial equity in this state.

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) CMV operators who violate out-of-service orders will pay \$121 more for a first violation and \$242 more for second or subsequent violations.

(2)(a), (b) and (c) None

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

DMV sent draft rules to 14 organizations representing small businesses. No responses were received.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

DMV is amending the rule to align with federal regulation minimum requirements.

AMEND: 735-070-0170

RULE SUMMARY: DMV needs to amend this rule to align the civil penalty amounts provided in the rule with the federally required minimum amounts.

CHANGES TO RULE:

735-070-0170

Hearing Regarding Civil Penalty for Violation of an Out-of-Service Order or Notification of Violation ¶¶

(1) When a civil penalty is imposed under ORS 813.055, the operator of a commercial motor vehicle has a right to a contested case hearing in accordance with ORS 183.745. The amount of the civil penalty is not an issue at the hearing, and the administrative law judge presiding at the contested case hearing may not reduce the amount of the civil penalty.¶¶

(2) The schedule of civil penalties is assessed as follows:¶¶

(a) ~~\$3,740~~861 for the first violation of an out-of-service order or notice.¶¶

(b) ~~\$7,481~~723 for a second or subsequent violation of an out-of-service order or notice.

Statutory/Other Authority: ORS 184.619, 802.010, 813.055

Statutes/Other Implemented: ORS 813.055, 49 CFR ~~2~~383.53, Appendix B to 49 CFR Part 386, paragraph (b)(1)