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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 738
OREGON DEPARTMENT OF AVIATION

FILED

09/29/2022 4:38 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rules to Address Vehicle/Pedestrian Deviations

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/21/2022 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.

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Filed By:
Lauri Kunze
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/20/2022

TIME: 2:00 PM

OFFICER: Anthony Beach

ADDRESS: Virtual hearing

ODAV

Salem, OR 97302

SPECIAL INSTRUCTIONS:

Microsoft Teams meeting

Join on your computer, mobile app or room device

<https://www.microsoft.com/microsoft-teams/join-a-meeting>

Meeting ID: 287 228 328 650

Passcode: CHzY4y

Or call in (audio only)

+1 971-277-1965,,704115492# United States, Portland

Phone Conference ID: 704 115 492#

NEED FOR THE RULE(S)

The rule amendments are needed to ensure a safe and controlled aircraft operations area at the Aurora State Airport (UAO), by providing the Department of Aviation (Department) the means to enforce rules against Vehicle/Pedestrian Deviations (V/PD).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 54

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

This rule will have no effect on racial equity in Oregon. The Oregon Department of Aviation (ODAV) remains committed to affirmative action and equal opportunity, and to an active affirmative action program. ODAV aims to provide an integrated aviation system that benefits all Oregonians. The changes in violation and civil penalties from this rulemaking will apply to all Oregonians regardless of race or other protected classes.

FISCAL AND ECONOMIC IMPACT:

This rulemaking will have a minimal fiscal and economic impact for the Department, as any revenue generated from the civil penalties will primarily be used in administration to enforce the rules. Excess revenues, if any, will go to the Department's operating budget to further improve and maintain a safe operating environment on the Department's airports.

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) The Department of Aviation, and any tenant, through-the-fence Permittee, business, contractor, employee, pilot, guest, or other user of an airport with an Air Traffic Control Tower that is operated by the Department.

(2) This rulemaking will have no effect on small businesses that are not located on, or doing business at an airport with an Air Traffic Control Tower that is operated by the Department. Small businesses located on an airport with an Air Traffic Control Tower that is operated by the Department will not be effected if they are not in violation of the rule.

(2)(a) Approximately two to three dozen aviation related small businesses are located on an airport with an Air Traffic Control Tower that is operated by the Department, and are subject to the rules.

(2)(b) and (c) None

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

Small businesses that could potentially be affected by these rules were included and/or represented by participants in the Rule Advisory Committee (RAC).

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

738-140-0010, 738-140-0020, 738-140-0030

AMEND: 738-140-0010

RULE SUMMARY: Added definitions 7, 10, and 11 for Vehicle/Pedestrian Deviation, Movement Area, and Responsible Party. Renumbered so new definitions would be in alphabetical order.

CHANGES TO RULE:

738-140-0010

Definitions ¶¶

For purposes of 738-140-0005 through 738-140-0050, the following definitions apply:¶¶

(1) "Aircraft" is a device that is used or intended to be used for flight in the air.¶¶

(2) "Class A Violation" is an action or non-action in breach of a statute or rule that incurs a maximum fine of \$2,000 for an individual and \$4,000 for a corporation in accordance with ORS 153.012. See also: ORS 153.018, 153.019, 153.021.¶¶

(3) "Department" is the Oregon Department of Aviation.¶¶

(4) "Director" is the Director of the Oregon Department of Aviation.¶¶

(5) "Director's delegate" is any person acting with sanction from and on behalf of the Director of the Department of Aviation.¶¶

(6) "Intentional" is the deliberate or willful action or non-action of a person or entity.¶¶

(7) "Movement Area" means the runways, taxiways, and other areas of an airport that aircraft use for taxiing, takeoff, and landing, exclusive of loading ramps and parking areas, and that are under the control of an air traffic control tower.¶¶

(8) "OAR" is the Oregon Administrative Rules.¶¶

(89) "ORS" is the Oregon Revised Statutes.¶¶

(910) "Responsible Party" means an individual, organization, or business, that invites, contracts, or employs another person inside the airport fence, or shares airport access information to another person, or otherwise provides another person access inside the airport fence.¶¶

(11) "Vehicle/Pedestrian Deviation" ("V/PD") means any entry or movement on the Movement Area by a vehicle (including aircraft operated by non-pilots) or pedestrian that has not been authorized by air traffic control.¶¶

(12) "Violation" is a breach of a statute, rule, standard, or permit condition.¶¶

(103) "Violator" is any person, entity, or public department that has breached a statute, rule, standard, or permit condition.

Statutory/Other Authority: ORS 153.022, 183.745, 835.035, 835.112, 837.998

Statutes/Other Implemented: ORS 837.005 - 837.998

RULE SUMMARY: Added section (9) to establish a V/PD as a Violation for which a Civil Penalty may be imposed.

CHANGES TO RULE:

738-140-0020

Violations for Which a Civil Penalty May be Imposed ¶¶

The Department may impose a civil penalty for violations of any of the following statutes, administrative rules, or orders:¶¶

(1) Intentional violation of any provision of ORS 837.020 or 837.025 concerning registration of pilots may incur a civil penalty.-The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to \$24.00; and "I" is the impact of the violation and shall be equal to 1.¶¶

Example of an intentional violation of ORS 837.020: If a pilot were to explicitly refuse to register with the Department, or if the pilot were to expressly state to the Department that he or she will not fly, and then the Department receives information that the pilot did fly, then the Department may impose a civil penalty under this rule.¶¶

(2) Intentional violation of any provision of ORS 837.015 or 837.040 to 837.060 concerning registration of aircraft may incur a civil penalty.-The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to \$24.00; and "I" is the impact of the violation and, shall be equal to 1.¶¶

Example of an intentional violation of ORS 837.015: If an aircraft owner were to explicitly refuse to register their aircraft with the Department, or if the aircraft owner were to expressly state to the Department that the aircraft will not fly, and then the Department receives information that the aircraft did fly, then the Department may impose a civil penalty under this rule.¶¶

(3) Intentional violation of any provision of ORS 837.070 concerning notice of sale or transfer of registration of aircraft may incur a civil penalty.-The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to \$24.00; and "I" is the impact of the violation and, shall be equal to 1.¶¶

Example: If an aircraft seller were to explicitly refuse to submit notice of sale or transfer of registration to the Department, or if the aircraft owner was aware of their obligation to submit an Oregon Aircraft Ownership Transfer Form to the Department and failed to do so, then the Department receives information that the aircraft was sold or transferred, then the Department may impose a civil penalty under this rule.¶¶

(4) Intentional violation of any provision of ORS 837.075 concerning aircraft dealer's license may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine, and shall be equal to \$24.00; and "I" is the impact of the violation and, shall be equal to 1.¶¶

Example: If a person matching the description in OAR 738-005-0010(9) of an "Aircraft Dealer" intentionally refuses to submit an Oregon Aircraft Dealer's License Application with the appropriate fee, and then the Department acquires evidence of aircraft dealing by that person, then the Department may impose a civil penalty under this rule.¶¶

(5) Violation of any provision of ORS 837.080 concerning prohibited operation of aircraft may incur a minimum civil penalty of an amount computed using the formula described in OAR 738-140-0030. The "BF" is the base fine and shall be equal to \$27.50.-In accordance with ORS 837.998(2), the maximum civil penalty that may be imposed under this rule is \$2,500 per violation. Violations of ORS 837.080 may also be a Class B misdemeanor as per ORS 837.990.¶¶

Example of a violation of ORS 837.080: if the Department were to receive information about a person operating an aircraft in a careless or reckless manner so as to endanger the life or property of another, or operating an aircraft under the influence of intoxicating liquor, drugs or controlled substances, then the violator would incur a civil penalty under this rule.¶¶

(6) Intentional Violation of any provision of ORS 837.085 concerning dropping articles without a permit issued by the Department may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to \$8.00, and the maximum potential fine equal to \$720.¶¶

Example: If the Department had issued a warning, fine, or citation to a pilot or passenger for a violation of ORS 837.085 on a previous occasion, and then the Department learns of a subsequent violation of ORS 837.085, then the violation is deemed intentional, and the pilot or passenger may incur a civil penalty under this rule.¶¶

(7) Intentional violation of ORS 837.090 concerning landings under non-exigent circumstances on public highways, grounds, closed runways, or any other place where landing is impermissible may incur a civil penalty.

The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine, and shall be equal to \$8.00.¶

Example: If the a pilot has received information stating that a runway is closed, or that landing on a grass strip is impermissible, or if the pilot has violated ORS 837.090 previously, and then the Department receives information that the pilot did land on a closed runway or anywhere landing is impermissible, then the Department may impose a civil penalty under this rule.¶

(8) Intentional violation of any provision of ORS 837.095 concerning flying over military establishments or taking photographs of a military establishment without permission from the person in command of the military establishment may incur a civil penalty.-The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to \$8.00, and the maximum potential fine equal to \$720.¶

(9) A Vehicle/Pedestrian Deviation committed at an airport with an Air Traffic Control Tower operated by the Department.

Statutory/Other Authority: ORS 153.022, 183.745, 835.035, 835.112, 837.998

Statutes/Other Implemented: ORS 837.005 - 837.998

AMEND: 738-140-0030

RULE SUMMARY: Updated title, amount of civil penalties, and Exhibit A formula table.

CHANGES TO RULE:

738-140-0030

~~Formula to Determine Amount of Civil pPenalty for Violations of Chapter 837-ies ¶~~

~~[Table not included. See ED. NOTE.]¶~~

~~[ED. NOTE: Tables referenced are available from the agency.](1) For each occurrence of a V/PD in violation of OAR 738-140-0020 (9), the Department may impose a civil penalty on the person who committed the V/PD, a Responsible Party, or both of:¶~~

~~(a) \$500 for a single violation, \$1500 for two violations committed within a one-year period, \$3,000 for three violations committed within a one-year period, \$5500 for four violations committed within a one-year period, and an additional \$2500 for each violation committed in excess of four violations within a one-year period; and.¶~~

~~(b) \$2500 for any single violation involving acts that demonstrate intentional or reckless disregard for rules, policies procedures intended to promote the safe and orderly use of the affected airport. ¶~~

~~(c) There is no maximum cap on the civil penalty for multiple violations except that the Director may not impose more than \$2500 for any single violation.¶~~

~~(d) The Director may also take any additional action as allowed by law. ¶~~

~~(2) For all other violations of this Chapter, the civil penalty shall be determined according to Exhibit A, "Civil Penalty Formula."~~

Statutory/Other Authority: ORS 153.022, 183.745, 835.035, 835.112, 837.998

Statutes/Other Implemented: ORS 837.005 - 837.998