

ALL NEW RULES

Oregon Department of Aviation
OAR Chapter 738
Division 140

CIVIL PENALTIES

738-140-0005

Scope and Purpose

(1) These rules are designed by the Oregon Department of Aviation to establish procedures and requirements for the administration and enforcement of civil penalties. These rules are intended to explain the authority granted to the Director of the Department of Aviation by ORS 835.106 and 835.112 et seq. The civil penalty authority described in these rules is in addition to other authorities and corrective actions available to the Director and the Department regarding violations of ORS chapter 837. Civil penalties imposed under these rules apply to violations of ORS chapter 837 and associated rules, orders, or permits included in, implemented, or issued, in accordance with ORS 837.998 and 183.745.

(2) At the Director's discretion, imposition of a civil penalty may be waived when the responsible party responds with timely compliance or voluntary restitution. If the timely compliance or restitution action(s) satisfy the Department, and the violation avoided long-term and irreversible impacts on public health, safety, welfare, and economic values of persons or property, then the Director may mitigate the consequences of the violation.

(3) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

(4) The Department of Aviation may reduce any civil penalty provided for in this section on such terms as the department considers proper if:

(a) The defendant admits the violations alleged in the notice and makes timely request for reduction of the penalty; or

(b) The defendant submits to the department a written request for reduction of the penalty within 15 days from the date the penalty order is served.

(5) If the amount of such penalty is not paid to the department, the Attorney General, at the request of the department, shall bring an action in the name of the State of Oregon in the Circuit Court of Marion County to recover such penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the department. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter.

Stat. Auth.: ORS 835.035, 835.112, 837.998

Stats. Implemented: ORS 837.005 through 837.998

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) "OAR" is the Oregon Administrative Rules.
- (8) "ORS" is the Oregon Revised Statutes.
- (9) "Violation" is a breach of a statute, rule, standard, or permit condition.
- (10) "Violator" is any person, entity, or public department that has breached a statute, rule, standard, or permit condition.

Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.998

Stats. Implemented: ORS 837.005 through 837.998

738-140-0015

Civil Penalty Policy

Upon a determination that a violation has occurred, the Director or Director's delegate may impose a civil penalty against the party responsible for the violation. The Director or Director's delegate may waive or adjust any civil penalty as provided in OAR 738-140-0015, 738-140-0020, or 738-140-0030. Imposing a civil penalty under these rules for a violation shall not preclude the Director or Director's delegate from pursuing other regulatory or penalty actions.

Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.998

Stats. Implemented: ORS 837.005 through 837.998

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.

Stat. Auth.: ORS 835.035, 835.112, 837.998
 Stats. Implemented: ORS 837.005 through 837.998

738-140-0025

Intentional Violation of Public Body Registration of Unmanned Aircraft Systems Requirement

Violation of any provision of ORS 837.360 concerning public body registration of unmanned aircraft systems may incur a civil penalty of an amount computed using the formula described in OAR 738-140-0030, whichever is greater, where “BF” is the base fine and shall be equal to \$111.00. The maximum civil penalty that may be imposed under these rules is \$10,000.

Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.100, 837.998
 Stats. Implemented: ORS 837.005 through 837.998

738-140-0030

Formula to Determine Amount of Civil penalty for Violations of Chapter 837

P = BF x C x V x F x I, where:	
“P”	is the amount of civil penalty in dollars;
“BF”	is the base fine, which shall be enumerated in the relevant rule;
“C”	indicates the level of cooperation of the responsible party in resolving the violation where:
	“C” will be equal to a value of 1 if the violator is highly cooperative, timely and diligent in applying the corrective measures directed by the Department;
	“C” will be equal to a value of 2 if the violator is moderately cooperative but either

	failed to meet the time frame for correction or failed to apply the corrective measures directed by the Department, or;
	“C” will be equal to a value of 3 if the violator is uncooperative and failed to apply the corrective measures directed by the Department within the specified time frame.
“V”	indicates the number of prior violations. “V” shall not exceed a value of 5.
“F”	indicates the familiarity or prior experience with or knowledge of the statutes, rules, standards or other directives:
	“F” will be equal to a value of 1 if the responsible party had no prior familiarity, experience, or knowledge of the laws, rules, permits or standards, and;
	“F” will be equal to a value of 2 if the responsible party did have prior familiarity, experience, or knowledge of laws and regulations and knowingly violated those provisions.
“I”	indicates the impact of the violation on the public interest in safety, property, and community combined with the duration or permanency of the impact(s) from the violation as follows:
	“I” will be equal to a value of 1 if the violation has no impact, or only minor impact(s) on persons or property and the impact(s) of the violation will have a duration of less than one year.
	“I” will be equal to a value of 2 if the violation has moderate impact(s) on persons or property or the impact(s) of the violation will have moderate duration from one to three years;
	“I” will be equal to a value of 3 if the violation has major impact(s) on persons or property or the impact(s) of the violation will last more than three years.

Stat. Auth.: ORS 835.035, 835.112, 837.998

Stats. Implemented: ORS 837.005 through 837.998

738-140-0035

Notice of Violation

(1) The agency’s notice of violation issued pursuant to ORS 183.415 shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party’s right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party’s right to a hearing;

(e) A statement of the agency’s authority and jurisdiction to hold a hearing on the matters asserted or charged; and

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a hearing; or

(B) A statement of the time and place of the hearing.

(g) A statement indicating whether and under what circumstances an order by default may be entered.

(2) A notice of violation may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the violation and all materials submitted by the party, automatically becomes part of the violation record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

Stat. Auth.: ORS 835.035, 835.112

Stats. Implemented: ORS 835.035, 835.112

738-140-0040

Rights of Parties and Opportunity for Hearing

(1) In addition to the information required to be given in writing under ORS 183.413(2) and 183.415(2) and (3), before commencement of a hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise. This information may be given orally or in writing.

(2) Unless otherwise precluded by law, the agency and the parties may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default. A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

Stat. Auth.: ORS 835.035, 835.112

Stats. Implemented: ORS 835.035, 835.112