

Notice of First Public Comment Period
LSA Document #24-387

OVERSIZE-OVERWEIGHT VIOLATIONS

PURPOSE OF NOTICE

The Department of State Revenue (department) is soliciting public comment on adding rules at [45 IAC 22](#) concerning applying civil penalties to oversize-overweight violations. The department seeks comment on the affected citations listed and any other provisions of Title 45 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Regulatory Analysis: [20241016-IR-045240387RAA](#)
Notice of Public Hearing: [20241016-IR-045240387PHA](#)

CITATIONS AFFECTED: [45 IAC 22](#)

AUTHORITY: [IC 6-8.1-3-3](#); [IC 9-20-18-14.5](#)

OVERVIEW

Basic Purpose and Background

[45 IAC 22](#) is being added to comply with SECTION 15 of Public Law 249-2023. The proposed rule clarifies Indiana's treatment of civil penalties for oversize-overweight violations, how the department determines applicable civil penalties, and the benefits to businesses and the department by minimizing the scope of disputes.

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Bruce Kolb
Senior Counsel
Department of State Revenue
Indiana Government Center North
100 North Senate Avenue, Room N248
Indianapolis, IN 46204
(317) 232-2566
bkolb@dor.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

The department is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #24-387 Oversize-Overweight Violations
Bruce Kolb
Senior Counsel
Department of State Revenue
Indiana Government Center North
100 North Senate Avenue, Room N248
Indianapolis, IN 46204

- (2) By email to bkolb@dor.in.gov. PLEASE NOTE: Email comments will not be considered part of the official

written comment period unless they are sent to the address indicated in this notice.
(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than November 15, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Department of State Revenue, Indiana Government Center North, 100 North Senate Avenue, Room N248, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the office of the Department of State Revenue.

If the department does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. [45 IAC 22](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 22. CIVIL PENALTIES; OVERSIZE-OVERWEIGHT CARRIER VIOLATIONS

Rule 1. Civil Penalties; Oversize-Overweight Carrier Violations

[45 IAC 22-1-1](#) "Violation" defined

Authority: [IC 6-8.1-3-3](#); [IC 9-20-18-14.5](#)

Affected: [IC 9-20-18-14.5](#)

Sec. 1. As used in this article, "violation" refers to a civil penalty assessed to a carrier by the department of state revenue under [IC 9-20-18-14.5](#).

(Department of State Revenue; [45 IAC 22-1-1](#))

[45 IAC 22-1-2](#) Penalty schedule

Authority: [IC 6-8.1-3-3](#); [IC 9-20-18-14.5](#)

Affected: [IC 9-20-18-14.5](#)

Sec. 2. (a) The following schedule applies to a penalty assessed to a carrier by the department of state revenue (department) under [IC 9-20-18-14.5](#)(b):

- (1) A warning letter is issued for a first violation.
- (2) A civil penalty of one thousand dollars (\$1,000) is assessed for a second violation.
- (3) A civil penalty of one thousand five hundred dollars (\$1,500) is assessed for a third or later violation.

(b) The following schedule applies to a penalty assessed to a carrier by the department under [IC 9-20-18-14.5](#)(c):

- (1) A warning letter is issued for a first violation.
- (2) A civil penalty of two thousand five hundred dollars (\$2,500) is assessed for a second violation.
- (3) A civil penalty of five thousand dollars (\$5,000) is assessed for a third or later violation.

(c) If a carrier has no violations during a consecutive three hundred sixty-five (365) calendar day period, the penalty count for the carrier will reset and the carrier will receive a warning letter as the next penalty by the department under [IC 9-20-18-14.5](#).

(Department of State Revenue; [45 IAC 22-1-2](#))

[45 IAC 22-1-3](#) Assessment of civil penalty

Authority: [IC 6-8.1-3-3](#); [IC 9-20-18-14.5](#)

Affected: [IC 9-20-18-14.5](#)

Sec. 3. When making an assessment of a penalty under section 2 of this rule, the following apply:

- (1) A carrier shall only receive one (1) warning letter from the department of state revenue (department) for a first violation under [IC 9-20-18-14.5\(b\)](#) or [IC 9-20-18-14.5\(c\)](#).
- (2) A warning letter providing an outline of additional civil penalties a carrier may be subject to if any future violations occur, or may have already occurred, but have not been processed by the department.
- (3) When substantially similar violations are committed by a single, distinguishable act or failure to act, only one (1) of those violations may be subject to a civil penalty for that act. This subdivision is intended to avoid duplicating civil penalty assessment for violating multiple provisions of a statute or rule that may be substantially similar or closely related. This subdivision is not intended to limit in any way civil penalty assessment for violations resulting from more than one (1) distinguishable, unrelated act or failure to act, or a reoccurring violation.
- (4) When determining the amount of a civil penalty under the procedures outlined in subdivision (3), the department shall use the appropriate violation with the highest penalty amount.
- (5) Based on the limitation in subdivision (3), the penalties under section 2 of this rule are assessed for each violation, and, as a result, a carrier may accrue multiple penalties in a single Indiana State Police Commercial Enforcement Division Inspection Report.
- (6) When an Indiana state police (ISP) officer conducts an inspection that does not result in a citation, or during the inspection the officer issues a warning to a carrier under [IC 9-20-18-14.5\(b\)](#), [IC 9-20-18-14.5\(c\)](#), or [IC 9-20-18-14.5\(d\)](#), the department may not assess a civil penalty, and any warning issued by ISP serves as the complete penalty for referenced violations.
- (7) Warning letters sent to a carrier for actions where ISP did not provide the full information, and therefore not actionable by the department, are sent as a courtesy and do not count as a warning letter for purposes of this section.

(Department of State Revenue; [45 IAC 22-1-3](#))

[45 IAC 22-1-4](#) Penalty mitigation

Authority: [IC 6-8.1-3-3](#); [IC 9-20-18-14.5](#)

Affected: [IC 9-20-18-7](#)

Sec. 4. (a) If a carrier protests a civil penalty assessment made by the department of state revenue (department) under section 2 of this rule, the carrier may raise any of the defenses found in [IC 9-20-18-7\(c\)](#) as a defense to the civil penalty. The carrier bears the burden of demonstrating the applicability of a defense.

(b) If a carrier protests a civil penalty assessment made by the department under section 2 of this rule, the department may adjust the amount of the civil penalty downward to reflect mitigating factors, including the following:

- (1) The good faith efforts to comply or prevent the violation.
- (2) Cooperation by the carrier with the department during the investigation process.
- (3) The carrier's history of compliance.
- (4) Remedial or corrective actions taken by the carrier.
- (5) The extent to which the vehicle was overweight.
- (6) Whether the carrier did not have access to, or control of, the load when it was loaded.
- (7) Whether, despite exercising due diligence, the carrier did not know, or could not have known, a permit was required.
- (8) Whether, despite exercising due diligence, the carrier did not know, or could not have known, the vehicle was oversize or overweight at the time of inspection by the Indiana state police.
- (9) Whether the civil penalty will result in financial hardship.
- (10) The carrier does not have a history of oversize-overweight civil penalties.

(c) The amount of a civil penalty may not be adjusted downward under subsection (b) if any of the aggravating factors in section 3 of this rule apply to the carrier.

(Department of State Revenue; [45 IAC 22-1-4](#))

[45 IAC 22-1-5](#) Penalty elevation

Authority: [IC 6-8.1-3-3](#); [IC 9-20-18-14.5](#)

Affected: [IC 9-20-18-14.5](#)

Sec. 5. (a) If a carrier protests a civil penalty assessment made by the department of state revenue (department) under section 2 of this rule, the department may adjust the amount of the civil penalty upward to reflect aggravating factors, including the following:

- (1) Willful or intentional misconduct.**
- (2) Obstruction or failure to comply with the department's investigation.**
- (3) Fraudulent conduct.**
- (4) The violation resulted in identifiable, ascertainable financial harm to the state.**
- (5) The violation involved identifiable, ascertainable damage to the roads or bridges in the state of Indiana.**
- (6) Failure to pay the full amount of any previously mitigated civil penalty by the date prescribed by the department.**

(b) If aggravating factors are identified, the department may adjust a civil penalty amount up to the highest amount provided under [IC 9-20-18-14.5\(b\)](#) and [IC 9-20-18-14.5\(c\)](#).

(Department of State Revenue; [45 IAC 22-1-5](#))

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An [html](#) version of this document.