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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: Not Suspending Noncommercial Driver Licenses Based Upon Another Jurisdiction's Notification of Implied Consent Suspension

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 735-070-0030 to remove section (3) of the rule that requires DMV suspend the driving privileges of a resident of Oregon upon receiving notification from another jurisdiction that the person's driving privileges have been suspended or revoked in that jurisdiction under circumstances which would require DMV to suspend the person's Oregon driving privileges under ORS 813.410(1) – Implied Consent - if the conduct had occurred in Oregon. DMV is also removing section (5) that states how long the suspension continues.

ORS 813.410 describes what DMV must do when DMV receives a report from a police officer that states a person either refused to submit to a breath or blood test, or received a breath or blood test indicated a blood alcohol level that constitutes being per se under the influence of intoxicating liquor.

ORS 809.400(2) permits DMV to suspend or revoke the driving privileges of any resident of Oregon upon receiving notice from another jurisdiction that the person's driving privileges in that jurisdiction have been suspended or revoked. If the person is not suspended in the other jurisdiction, DMV is not permitted to suspend the person in Oregon. The wording in OAR 735-070-0030(3), previously section (4), remains in effect and states that DMV will take suspension action of a person's commercial driving privileges under ORS 809.400(2), if an Oregon commercial driver is suspended in another jurisdiction for an implied consent offense.

DMV is removing section (3) due to inconsistent and incomplete reporting from other jurisdictions that negatively impacts the accuracy of Oregon driving records. Suspension actions based on inconsistent reporting and incomplete information from the other jurisdiction can result in an Oregon suspension that:

- Commences before the suspension in the other jurisdiction;
- Fails to accommodate a stay of suspension by the other jurisdiction when allowed for due process rights; or

- Results in an unresolved indefinite suspension on the Oregon record due to the lack of notice from the other jurisdiction that the suspension is no longer active in the other state.

The proposed change does not impact suspensions for DUII convictions and the person will still be suspended in the other jurisdiction when an Implied Consent (IC) suspension begins in that state. If the person is convicted by the other state for DUII related to this incident, DMV will suspend the Oregon driving privilege upon receipt of notice of the conviction. DMV believes this change will preserve safety and minimize legal risk due to inaccurate suspension dates.

Suspensions posted to an applicant's driving record prior to the effective date of this rulemaking will continue until evidence acceptable to DMV is received that the person has complied with the law of the reporting jurisdiction, driving privileges have been restored in the reporting jurisdiction, or the revocation or suspension in the other jurisdiction was not imposed under circumstances that would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None

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

The amendments to OAR 735-070-0030 removes the requirement of DMV to suspend a person's class C noncommercial driving privilege when DMV receives notification of an implied consent offense from another jurisdiction. DMV does not believe this will impact racial equity in this state because DMV has no reason to believe that minorities receive suspensions under the implied consent law more than any other race. This will impact all people equally, regardless of race. To any extent certain racial minorities in other states are more frequently (a) stopped by law enforcement, (b) assessed by law enforcement for DUII, or (c) have their implied consent suspensions upheld at administrative hearing, removing the provision for these suspensions to be applied on their Oregon record would mitigate those underlying racial disparities.

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#### FISCAL AND ECONOMIC IMPACT:

See statements below.

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#### 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) Public – The person will not be suspended in Oregon for another jurisdiction's implied consent suspension after May 10, 2024, the effective date of the rule. Because these persons will no longer be suspended for the IC administrative matter, they will no longer have to pay the \$85.00 reinstatement fee. DMV's rule will continue to authorize the person to be suspended in Oregon when the other jurisdiction finds the person guilty of DUII during a criminal proceeding. The person must pay the reinstatement fee if the person is suspended for DUII as a result of the criminal proceeding.

DMV will not collect the \$85.00 reinstatement fee, but the actual cost to DMV to process and manage customer reinstatement transactions, to include adding the suspension to the driving record, removing the suspension from the driving record, and discussing the suspension with the customer, exceeds the fee collected.

(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 believes this change is a positive impact to the customer and necessary to ensure compliance with our legal authorities and maintain accurate records.

AMEND: 735-070-0030

RULE SUMMARY: DMV needs to amend this rule to remove section (3) of the rule that requires DMV suspend the driving privileges of a resident of Oregon upon receiving notification from another jurisdiction that the person's driving privileges have been suspended or revoked in that jurisdiction under circumstances which would require DMV to suspend the person's Oregon driving privileges under ORS 813.410(1) – Implied Consent - if the conduct had occurred in Oregon. DMV is also removing section (5) that states how long the suspension continues.

DMV is adding language to clarify that suspensions posted to an applicant's driving record prior to the effective date of this rulemaking will continue until evidence acceptable to DMV is received that the person has complied with the law of the reporting jurisdiction, driving privileges have been restored in the reporting jurisdiction, or the revocation or suspension in the other jurisdiction was not imposed under circumstances that would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon.

CHANGES TO RULE:

735-070-0030

Suspension/Revocation for Out-of-State Conviction, Suspension or Revocation ¶

(1) For purposes of ORS 809.400(1):¶

(a) The date a notice of conviction is received by the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) is:¶

(A) The date the notice of conviction is date stamped by the Driver Records Unit; or¶

(B) The date the notice of conviction is electronically transmitted to Oregon DMV from the reporting jurisdiction.¶

(b) "Initiated" means the date the conviction is entered on the person's Oregon driving record.¶

(c) A conviction is entered on the person's Oregon driving record when it is manually placed on the record by DMV or when it is transmitted from the reporting jurisdiction if received electronically.¶

(2) Except as provided in ORS 809.400(1), DMV will suspend or revoke the driving privileges of any resident of this state upon receiving notice of the conviction of the person in another jurisdiction for an offense which, if committed in this state, would be grounds for suspending or revoking of the person's driving privileges.¶

~~(3) DMV will suspend the driving privileges of a resident of this state, upon receiving notice from another state, territory, federal possession or district, or province of Canada that the person's driving privileges have been suspended or revoked in that jurisdiction under circumstances which would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon.¶~~

~~(4) DMV will~~ shall suspend the commercial driving privileges of a resident of this state pursuant to ORS 809.413(12510(7), upon receiving notice that the person's commercial driving privileges have been suspended or revoked in another jurisdiction under circumstances that would require DMV to suspend driving privileges if the conduct had occurred in Oregon. The period of suspension will be the same as would be imposed if the conduct had occurred in Oregon.¶

~~(5) A suspension under section (3) of this rule will continue until evidence acceptable to person whose driving privileges were suspended before May 10, 2024, as a result of DMV is received that the person has complied with the law of the reporting jurisdiction, driving privileges have been restored in the reporting jurisdiction, or the revocation or suspension in the other jurisdiction was not imposed~~ ing notification from another state, territory, federal possession or district, or province of Canada that the person's driving privileges have been suspended or revoked in that jurisdiction under circumstances ~~that~~ which would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon. ~~Acceptable evidence is:~~¶

(a) A letter on letterhead from the reporting jurisdiction showing the person has complied with the jurisdiction's law or that driving privileges have been restored.

(b) A certified copy of the driving record from the reporting jurisdiction showing the restoration of driving privileges.

(c) Response to a DMV inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) indicating the person's driving privileges are not suspended, revoked, cancelled or otherwise not valid continue in effect. The suspension will continue until DMV receives evidence acceptable to DMV that the person has complied with the law of the reporting jurisdiction, driving privileges have been restored in the reporting jurisdiction, or

(d) A copy of the reporting jurisdiction's law and any relevant documents show the revocation or suspension in the suspension or revocation other jurisdiction was not imposed under circumstances that would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon.

Statutory/Other Authority: ORS ~~184.616~~, 184.619, 802.010, 809.400

Statutes/Other Implemented: ORS 802.540, 809.41300, 809.40510