

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Transportation, Central Services Division
Agency and Division

735

Administrative Rules Chapter Number

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RULE CAPTION

ODOT intends to adopt, amend, and repeal administrative rules regarding Oregon Fuels Tax

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

RULEMAKING ACTION

ADOPT: 735-170-0105, 735-170-0115, 735-174-0035, 735-174-0045, 735-176-0017, 735-176-0019, 735-176-0021, 735-176-0022, 735-176-0045

AMEND: 735-170-0000, 735-170-0010, 735-170-0020, 735-170-0040, 735-170-0045, 735-170-0050, 735-170-0090, 735-170-0100, 735-170-0110, 735-170-0120, 735-170-0130, 735-170-0140, 735-174-0000, 735-174-0010, 735-174-0020, 735-174-0030, 735-174-0040, 735-176-0000, 735-176-0010

REPEAL: 735-170-0030, 735-170-0060, 735-170-0070, 735-170-0080, 735-176-0015, 735-176-0018

RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 184.616, 184.619, 319.010 – 319.430, 319.990, 319.520 – 319.880 and Chapter 44, Oregon Laws 2008
Stat. Auth..

None
Other Authority

ORS 319

Stats. Implemented

RULE SUMMARY

This rulemaking is needed to implement legislation enacted by the 2008 Legislative Assembly. Chapter 44, Oregon Laws 2008 amended ORS 319.520 and 319.665 to ensure uniform documentation requirements for retail and non-retail use fuel sales in the state of Oregon. ODOT is proposing these amendments to rules to implement the requirements of Chapter 44, Oregon Laws 2008. Other changes are proposed to ensure uniform reporting requirements for all fuel transactions in the state of Oregon, and to correct and clarify current rule language for divisions 170, 174, and 176. Fuel tax reports and remittance are due to the Department in the following month (except for quarterly and annual filers) in which the tax is charged and collected from customers. For Use Fuel Sellers and Users the due date is the 20th and for Motor Vehicle Fuel Dealers the due date is the 25th. There has been a longstanding precedent to accept tax reports postmarked by the tax report due date. Licensees with postage meters are able to alter the postmark date, making postmark dates unreliable. The Department intends to further clarify in rule that fuel taxes and accompanying reports are to be received in the Department or its agent by applicable due dates.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association 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 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.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

October 21, 2008

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Signature

Lauri Kunze

Printed name

Date

* The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Transportation, Central Services Division

735

Agency and Division

Administrative Rules Chapter Number

In the Matter of the Adoption of 735-170-0105, 735-170-0115, 735-174-0035, 735-174-0045, 735-176-0017, 735-176-0019, 735-176-0021, 735-176-0022, 735-176-0045; Amendment of 735-170-0000, 735-170-0010, 735-170-0020, 735-170-0040, 735-170-0045, 735-170-0050, 735-170-0090, 735-170-0100, 735-170-0110, 735-170-0120, 735-170-0130, 735-170-0140, 735-174-0000, 735-174-0010, 735-174-0020, 735-174-0030, 735-174-0040, 735-176-0000, 735-176-0010; and Repeal of 735-170-0030, 735-170-0060, 735-170-0070, 735-170-0080, 735-176-0015, 735-176-0018

Rule Caption: ODOT intends to adopt, amend, and repeal administrative rules regarding Oregon Fuels Tax

Statutory Authority: ORS 184.616, 184.619, 319.010 – 319.430 , 319.990, 319.520 – 319.880 and Chapter 44, Oregon Laws 2008

Other Authority: None

Statutes Implemented: ORS 319

Need for the Rule(s): This rulemaking is needed to implement legislation enacted by the 2008 Legislative Assembly. Chapter 44, Oregon Laws 2008 amended ORS 319.520 and 319.665 to ensure uniform documentation requirements for retail and non-retail use fuel sales in the state of Oregon. ODOT is proposing these amendments to rules to implement the requirements of Chapter 44, Oregon Laws 2008. Other changes are proposed to ensure uniform reporting requirements for all fuel transactions in the state of Oregon, and to correct and clarify current rule language for divisions 170, 174, and 176. Fuel tax reports and remittance are due to the Department in the following month (except for quarterly and annual filers) in which the tax is charged and collected from customers. For Use Fuel Sellers and Users the due date is the 20th and for Motor Vehicle Fuel Dealers the due date is the 25th. There has been a longstanding precedent to accept tax reports postmarked by the tax report due date. Licensees with postage meters are able to alter the postmark date, making postmark dates unreliable. The Department intends to further clarify in rule that fuel taxes and accompanying reports are to be received in the Department or its agent by applicable due dates.

Documents Relied Upon and where they are available: None

Fiscal and Economic Impact, including Statement of Cost of Compliance: ODOT will likely see a substantial increase in fuels tax revenue due to improved licensee record-keeping and reporting requirements. This increase is not measurable because underpayment of tax is currently only found at audit, and only if accurate and complete records have been kept, per ORS 319.510 to 319.990.

ODOT anticipates a decrease in administrative costs due to increased licensee compliance with ORS 319.010 to ORS 319.990.

ODOT will experience a positive impact on its ability to provide accurate data on fuel movement in the State when requested by other local, state and federal agencies.

ODOT will likely see refund claims under OAR 735-174 stay at current levels or decrease slightly due to refund claimants who do not wish to maintain the required records. As a result, ODOT as well as other local governments may see a reduction in the amount of funds returned to businesses and individuals. This reduction is not measurable because refunds will only be issued if accurate and complete records are submitted with the claim, and those records will likely not be available to claimants currently out of compliance with ORS 319.280 to 319.330.

Up to half of current use fuel licensees, many of whom could be classified as small businesses, have the potential to be relieved of the burden of licensing and reporting requirements.

Licensees will not rely on the regular mail postmark to determine the mailing timeliness of reports. This rulemaking has the potential for the most significant impact to motor vehicle fuel dealers. Tax report preparation time will be shortened by approximately 2-5 days.

Currently licensees have the use of tax money collected until the date the tax report is due. New rules will have some fiscal impact to dealers as they will have less “float time” on the use of the tax money. Many licensees will opt to use an overnight delivery service so that they may obtain a delivery receipt. Licensees that currently pay by EFT will not be impacted. We anticipate an increase of EFT payers. There are 157 Oregon motor vehicle fuel dealer licenses, 739 Oregon use fuel seller licenses, and 1189 Oregon use fuel user licenses.

How were small businesses involved in the development of this rule? The ODOT Fuels Tax Group sent a survey to use fuel users and invited participation to motor vehicle fuel dealers, use fuel sellers, use fuel users, state agencies, county jurisdictions, city jurisdictions, small business groups, and other interested parties in this rulemaking , as well as noted previous feedback given regarding our current administrative rules regarding ORS 319.510 to 319.990.

Administrative Rule Advisory Committee consulted?: No

If not, why?: An advisory committee was not needed. The ODOT Fuels Tax Group is amending its rules to implement the requirements of Chapter 44, Oregon Laws 2008 and updating administrative rules for clarity.

Authorized Signer

Lauri Kunze

Printed name

Date