

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Transportation, Driver and Motor Vehicle Services Division		735	
Agency and Division		Administrative Rules Chapter Number	
Lauri Kunze	355 Capitol St. NE, Rm. 29, Salem OR 97301	lauri.g.kunze@odot.state.or.us	(503) 986-3171
Rules Coordinator	Address		Telephone

RULE CAPTION

Requirements for a Hazardous Materials Endorsement; Military Privileges; Valid CDL; Civil Penalty for Out-of-Service Order

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

October 19, 2009	1:00 pm	Multnomah County Commission Board Room 501 SE Hawthorne Blvd, Portland OR 97214	Liz Woods
Hearing Date	Time	Location	Hearings Officer
October 21, 2009	9:00 am	U of O Continuing Education Center 975 High Street, Eugene OR 97401	Liz Woods
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND: 735-062-0190, 735-070-0000 and 735-070-0170

REPEAL: 735-062-0003 and 735-070-0043

ORS 184.616, 184.619, 802.010, 807.173, 183.745	49 USC, Sec 5103a, 49 CFR §383.71, 49 CFR §1572
Stat. Auth.	Other Authority
ORS 807.170, 807.173, 807.350, 809.310, 183.745 and Sec. 14, Ch. 395, OL 2009	
Stats. Implemented	

RULE SUMMARY

Chapter 395, Oregon Laws 2009 (SB 129) amends several statutes related to commercial driving privileges and the operation of a commercial motor vehicle. The bill was proposed by DMV to make certain that Oregon's commercial driver license (CDL) program is in compliance with federal regulations.

To qualify for a hazardous materials endorsement, Section 8, Chapter 395, Oregon Laws 2009 requires the person to be a U.S. citizen or permanent legal resident as defined by the department by rule. The proposed amendment of OAR 735-062-0190(1)(c) establishes what documents are required to establish proof of U.S. citizenship or a permanent legal status. DMV also proposes to amend OAR 735-062-0190 to align DMV's process with federal requirements that a person be required to pass a security threat assessment from the Transportation Security Administration (TSA) every five years. Other amendments clarify the process for cancellation of a commercial driver license if a person does not remain qualified for the hazardous materials endorsement. Other changes are made for clarity.

DMV proposes to amend OAR 735-070-0000 to include a reference to ORS 807.173 which authorizes DMV to cancel a CDL if the person no longer qualifies for a hazardous materials endorsement.

Section 14, Chapter 395, Oregon Laws 2009 specifies new civil penalty amounts for violation of an out-of-service order. DMV proposes to amend OAR 735-070-0170 to delete the language concerning the civil penalty amounts and to update a statutory reference in the section that sets forth administrative hearing rights.

DMV proposes to repeal two rules because of statutory amendments in Chapter 395, Oregon Laws 2009. DMV proposes to repeal OAR 735-062-0003 and 735-070-0043 as the new law includes all necessary language and the rules are no longer needed.

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

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, 2009

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.

Secretary of State
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, Driver and Motor Vehicle Services Division
Agency and Division

735
Administrative Rules Chapter Number

In the Matter of the Amendment of 735-062-0190, 735-070-0000 and 735-070-0170 and repeal of 735-062-0003 and 735-070-0043

Rule Caption: Requirements for a Hazardous Materials Endorsement; Military Privileges; Valid CDL; Civil Penalty for Out-of-Service Order

Statutory Authority: ORS 184.616, 184.619, 802.010, 807.173, 183.745

Other Authority: 49 USC, Sec 5103a, 49 CFR §383.71, 49 CFR §1572

Statutes Implemented: ORS 807.170, 807.173, 807.350, 809.310, 183.745 and Sec. 14, Ch. 395, OL 2009

Need for the Rule(s): Chapter 395, Oregon Laws 2009 (SB 129) amends several statutes related to commercial driving privileges and the operation of a commercial motor vehicle. The bill was proposed by DMV to make certain that Oregon's commercial driver license (CDL) program is in compliance with federal regulations.

To qualify for a hazardous materials endorsement, Section 8, Chapter 395, Oregon Laws 2009 requires the person to be a U.S. citizen or permanent legal resident as defined by the department by rule. The proposed amendment of OAR 735-062-0190(1)(c) establishes what documents are required to establish proof of U.S. citizenship or a permanent legal status. DMV also proposes to amend OAR 735-062-0190 to align DMV's process with federal requirements that a person be required to pass a security threat assessment from the Transportation Security Administration (TSA) every five years. Other amendments clarify the process for cancellation of a commercial driver license if a person does not remain qualified for the hazardous materials endorsement. Other changes are made for clarity.

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DMV proposes to repeal two rules because of statutory amendments in Chapter 395, Oregon Laws 2009. DMV proposes to repeal OAR 735-062-0003 and 735-070-0043 as the new law includes all necessary language and the rules are no longer needed.

Documents Relied Upon and where they are available: Enrolled Senate Bill 129, which can be found at <http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0129.en.pdf>

Fiscal and Economic Impact, including Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): None

2. Cost of compliance effect on small business (ORS 183.336): These proposed administrative rule amendments and repeal may have a small positive impact on some small businesses. The true impact of the proposed rule changes is on individuals who have or want to have a hazardous materials endorsement. There should be an overall positive economic impact on individuals wanting to get a hazardous materials endorsement in Oregon if they had one previously in another state, since the person will not have to pass another security check through TSA if they passed one within the past four years and nine months. The four year and nine month time period will prevent a person moving from out of state from being issued an original hazardous materials endorsement after the scheduled DMV notification that it is time to get a current TSA security check. The five-year requirement will be for all of drivers wanting to renew a hazardous materials endorsement. Currently, DMV asks for the security check every four years to sync with our eight year renewal cycle. The cost of a security check is approximately \$100, so persons wanting to retain a hazardous materials endorsement will benefit by the proposed amendments to OAR 735-062-0190. More drivers may retain a hazardous materials endorsement as the frequency of the requirement and cost for a security check will be lessened. The small businesses that employ these drivers or need hazardous material transported may benefit from a more stable workforce.

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: There are no small businesses that are directly subject to these proposed rule amendments as the rules directly impact individuals only. However, small businesses that employ drivers with a hazardous materials endorsement may benefit indirectly from an increase in the stability of the workforce. The number of small businesses that employ (or hire) such a workforce is not tracked, so DMV is unable to estimate that number.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None

c. Equipment, supplies, labor and increased administration required for compliance: None

How were small businesses involved in the development of this rule? Fourteen groups representing small businesses were notified of the proposed amendments and invited to comment. No comments were received.

Administrative Rule Advisory Committee consulted?: No

If not, why?: The rules are being amended and repealed to implement statutory changes from the 2009 Legislative session, to further implement federal regulations applicable to the issuance of hazardous materials endorsements, and to clarify and correct language. Consultation with an advisory committee was unnecessary to implement these changes.

Authorized Signer

Lauri Kunze

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2005