

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form.

Department of Transportation, Driver and Motor Vehicle Services Division

735

Agency and Division

Administrative Rules Chapter Number

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Rules Coordinator

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**RULE CAPTION**

Convictions Used in Driver Improvement and Other Programs Where the Sanction Based on Cumulative Convictions

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

**RULEMAKING ACTION**

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

**AMEND:** 735-064-0220 and 735-072-0035

**REPEAL:**

ORS 184.616, 184.619, 802.010, 809.480 and 809.605

Stat. Auth.

None

Other Authority

ORS 807.240, 807.270, 809.480, 809.600(2) and 809.605

Stats. Implemented

**RULE SUMMARY**

ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes.

OAR 735-072-0035 is used only in the Driver Improvement Programs and contains a list of traffic offenses where it takes five offenses listed to equal one driver improvement violation.

During the 2009 legislative session, several bills were enacted creating new traffic offenses or amending current traffic offense statutes where changes are required in OAR 735-064-0220 and 735-072-0035. DMV proposes to amend OAR 735-064-0220 and 735-072-0035 to implement these laws.

DMV proposes to further amend these two rules by listing convictions that involve all-terrain vehicles, motor assisted scooters, snowmobiles, equipment violations and local ordinances to OAR 735-072-0035. These convictions will no longer be used for determining a habitual offender revocation, hardship and probationary permit violations, and to describe a motor vehicle traffic control violation. Instead, these convictions will be listed in OAR 735-072-0035 to determine when a person has attained a driver improvement violation under both the Adult and Provisional Driver Improvement Programs. DMV also proposes to remove any conviction that carries its own suspension or revocation of driving privileges sanction, e.g. failure to install or use an ignition interlock device. Other proposed changes move repealed statutory references and obsolete ACD codes into new sections. Other changes, such as listing offenses in alphabetical order, are made for clarity.

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.

**November 23, 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.

ARC 923-2005

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 OAR 735-064-0220 and 735-072-0035

**Rule Caption:** Convictions Used in Driver Improvement and Other Programs Where the Sanction Based on Cumulative Convictions

**Statutory Authority:** ORS 184.616, 184.619, 802.010, 809.480 and 809.605

**Other Authority:** None

**Statutes Implemented:** ORS 807.240, 807.270, 809.480, 809.600(2) and 809.605

**Need for the Rule(s):** ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes.

OAR 735-072-0035 is used only in the Driver Improvement Programs and contains a list of traffic offenses where it takes five offenses listed to equal one driver improvement violation.

During the 2009 legislative session, several bills were enacted creating new traffic offenses or amending current traffic offense statutes where changes are required in OAR 735-064-0220 and 735-072-0035. DMV proposes to amend OAR 735-064-0220 and 735-072-0035 to implement these laws.

DMV proposes to further amend these two rules by listing convictions that involve all-terrain vehicles, motor assisted scooters, snowmobiles, equipment violations and local ordinances to OAR 735-072-0035. These convictions will no longer be used for determining a habitual offender revocation, hardship and probationary permit violations, and to describe a motor vehicle traffic control violation. Instead, these convictions will be listed in OAR 735-072-0035 to determine when a person has attained a driver improvement violation under both the Adult and Provisional Driver Improvement Programs. DMV also proposes to remove any conviction that carries its own suspension or revocation of driving privileges sanction, e.g. failure to install or use an ignition interlock device. Other proposed changes move repealed statutory references and obsolete ACD codes into new sections. Other changes, such as listing offenses in alphabetical order, are made for clarity.

**Documents Relied Upon and where they are available:** Enrolled House Bills 2377 and 2427 and Enrolled Senate Bills 314 and 583 that can be found at <http://www.leg.state.or.us/searchmeas.html>.

**Fiscal and Economic Impact, including Statement of Cost of Compliance:** None

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): None
  - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: None. The sanctions that could result by the convictions listed in these rules effect individuals, not businesses.
  - 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 proposed amendments to OAR 735-064-0220 and 735-072-0035 implement new legislation (convictions) or involve DMV practices. An advisory committee was not necessary for this rulemaking.

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Authorized Signer

Lauri Kunze  
\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date