

Department of Transportation, Transportation Safety Division (TSD)

**Division 20
Distracted Driving Avoidance Course**

737-020-0010

Purpose

The purpose of these rules is to maintain a list of approved providers to be provided to courts pursuant to Oregon Laws 2017, chapter 629, section 4 by:

- (1) Establishing minimum standards for course curriculum to implement a distracted driving avoidance course;
- (2) Establishing a procedure to approve distracted driving avoidance courses that meet the curriculum standards;
- (3) Establishing rule to provide minimum and uniform standards for the approval, suspension, and revocation of distracted driving avoidance course providers who provide instruction under Oregon Laws 2017, chapter 629, section 4.
- (4) Establishing requirements for drivers required to take a distracted driving avoidance course to obtain proof of course completion;

Stat. Auth.: ORS 184.616, 184.619

Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0020

Definitions

As used in these rules, unless the context otherwise requires:

- (1) “Approved Course” or “course” means a distracted driving avoidance course or program conducted by an approved provider. An approved course may be offered online or in a classroom setting.
- (2) “Approved provider” or “provider” is a person or business that has been granted approval by ODOT-TSD to provide instruction using a Division-approved curriculum.
- (3) “Completion Certificate” means a certificate provided by an approved provider to a course participant that serves as proof the participant successfully completed an approved course.
- (4) “Department” or “ODOT” means the Oregon Department of Transportation.
- (5) “Division” or “ODOT-TSD” means the Transportation Safety Division of the Oregon Department of Transportation. A reference to the Division or ODOT-TSD may include its designee.

(6) “Distracted Driving Avoidance Course” means an approved course as required by Oregon Laws 2017, chapter 629, section 4.

(7) “Revocation” means the termination of the authority granted an approved provider to be on the list of approved providers for a specified period, with a new certificate obtainable only as defined under 737-020-0020 or 737-020-0020.

(8) “Sanction” means an action taken by ODOT-TSD against a provider for non-compliance with Oregon law or ODOT-TSD rule related to the distracted driving avoidance course.

(9) “Successful Completion” by a participant means having attended 90 minutes of instruction (or makeup sessions) and completing all required assignments with a minimum of 80% passing score.

(10) “Suspension” means the temporary withdrawal for a specified period of time of the approved provider from the approved provider list and ODOT-TSD approved provider status.

(11) “These rules” means the Oregon Administrative Rules, Chapter 737, Division 20.

(12) “Warning” means a written correction notice issued by ODOT-TSD that requires a provider to take corrective action as specified.

Stat. Auth.: ORS 184.616, 184.619

Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0030

Curriculum and Completion Requirements

(1) An approved curriculum must include a minimum of 90 minutes of instruction that includes:

- (a) Definition of distracted driving, including the types of distractions drivers face;
- (b) Review of both Oregon and national statistics as they relate to distracted driving;
- (c) Review of ORS 811.507;
- (d) Countermeasures to avoid distracted driving;
- (e) Driver responsibility;
- (f) Defensive driving;
- (g) Other rules of the road that relate to driving correctly and distraction free driving;
- (h) How physics and natural laws affect driving, including perception and reaction times;
and
- (i) How physical, emotional, and psychological conditions affect driving.

(2) A participant must demonstrate comprehension of at least 80% of the course content described above in order to successfully complete the course.

(3) A written plan for the instructional session must include the following elements:

(a) Overall objectives;

(b) Materials and resources used and provided to participants for instruction;

(c) Methods of assessment of participant comprehension and learning; and

(d) A statement of standards for Successful Completion.

(4) Current distracted driving avoidance instructional materials shall be provided by the approved provider to the participant in the classroom instruction.

(5) At the end of each course, the provider must promptly issue a Completion Certificate to each participant who successfully completes the approved course. The Completion Certificate must contain, at a minimum, the name and business address of the approved provider, the name of the participant, the date of course completion, and a specific statement that the participant successfully completed the approved distracted driving avoidance course.

(6) The distracted driving avoidance curriculum must be approved by ODOT-TSD or its designee prior to initial program implementation. The provider must review and update the content at least every three years from date initial approval or upon request by ODOT-TSD.

Stat. Auth.: ORS 184.616, 184.619

Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0040

Provider Applications

(1) On initial application for approval, a provider must submit the following:

(a) Application on a form supplied by ODOT-TSD;

(b) Curriculum materials, as identified in OAR 737-020-0030(1), (2), (3), and (4); and,

(c) Policies as identified in OAR 737-020-0050(1).

(2) A provider may not offer or begin a distracted driver avoidance course until the provider has been granted approved provider status by ODOT-TSD.

(3) Each approved provider must identify an individual from within the approved program to be the contact person with the Division ensuring that all approved course requirements are met.

(4) Incomplete applications will be returned to applicants by ODOT-TSD.

(5) If an application for approval is denied, the applicant is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500. ODOT-

TSD may deny applications for failure to satisfy curriculum or program standards as described in these rules or for misrepresentations during the application process.

(6) Applications for renewal of approval are not required. Approved applicants will remain in approved status unless revoked or suspended by ODOT or unless the provider notifies ODOT-TSD that it will no longer provide distracted driving avoidance courses to the public.

Stat. Auth.: ORS 184.616, 184.619

Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0050

Provider Responsibilities

(1) Each approved provider must adopt written policies that include:

- (a) Participant fees and refunds;
- (b) Course failures and provision for repeat training by participants who failed to satisfy the course standards, if any;
- (c) How to manage instructors or participants that may be under the influence of intoxicants during instruction; and
- (d) Methods to ensure the online course attendee is, in fact, the participant that is identified to receive the course.

(2) An approved provider must:

- (a) Notify ODOT-TSD in writing within 10 business days if:
 - (A) There are changes to the point of contact identified on the initial application form, or any other provider contact information including but not limited to mailing address, business address, phone number, web address or email address; or,
 - (B) The provider no longer meets or maintains the requirements set forth in these rules.
- (b) Comply with all statutes, administrative rules, and regulations related to an approved distracted driving avoidance course program provider;
- (c) Adhere to the Code of Ethics and Rules of Conduct set forth in OAR 737-020-0060;
- (d) Respond to ODOT-TSD in writing, if requested, within 10 business days to any complaint forwarded by ODOT-TSD.
- (e) Be responsible for all aspects of the program and is required to maintain required records, whether or not instruction is contracted.

Stat. Auth.: ORS 184.616, 184.619

Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0060

Code of Ethics and Rules of Conduct

- (1) Each provider accepts the responsibilities and requirements of the driving education profession and must adhere to the highest ethical standards of professional conduct.
- (2) To fulfill their obligations to the public and to ODOT-TSD, the provider must:
 - (a) Recognize that the instruction and training of participants is a position of trust;
 - (b) Exhibit competence and wisdom in conducting professional responsibilities;
 - (c) Uphold and obey the law, including but not limited to the provisions of the Motor Vehicle Code; and
 - (d) Maintain and uphold the highest educational standards possible for instructing and training participants.
- (3) A provider may not engage in or knowingly allow any owner, administrator, manager, or employee of an approved provider to engage in any of the following:
 - (a) Assist or knowingly allow a participant to fraudulently obtain certification for which the participant is ineligible or has not qualified;
 - (b) Discriminate against a participant because of race, religion, national origin, size, disability, age, sex, or sexual orientation;
 - (c) Possess any unlawful controlled substance or intoxicant or be under the influence of any intoxicant while providing instruction to course participants; or
 - (d) Falsify any document or make a misrepresentation on an application, certification or any other record.

Stat. Auth.: ORS 184.616, 184.619

Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0070

Recordkeeping

- (1) The approved provider must maintain the following records:
 - (a) A record for each participant who begins the provider's distracted driving avoidance course, regardless of whether or not the participant completes an approved course, which includes at a minimum:
 - (A) The date of the course; and
 - (B) Whether or not the course was successfully completed.
 - (b) The distracted driving avoidance course curriculum currently in use; and

- (c) Written policies and procedures required by these rules.
- (2) Records must be retained for five years.
- (3) Curriculum and instructional materials must be made available for review by ODOT-TSD on request.

Stat. Auth.: ORS 184.616, 184.619
Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0080
Provider Sanctions

- (1) ODOT-TSD may impose sanctions when it determines a provider has violated any provision of Oregon Laws 2017, chapter 629, section 4 or administrative rules promulgated by ODOT-TSD.
- (2) In determining an appropriate sanction, ODOT may consider the following criteria:
 - (a) The severity of the violation;
 - (b) The impact of the violation on participants;
 - (c) The number of similar or related violations by the provider;
 - (d) Whether the violation was willful or intentional; or
 - (e) The history of prior sanctions imposed by ODOT-TSD.
- (3) ODOT-TSD may impose sanctions when it determines violations have occurred or are occurring. ODOT-TSD may issue any level of sanction it considers appropriate to the specific violation. Sanctions may include one or more of the following:
 - (a) Warning;
 - (b) Suspension from the approved list up to one year; or
 - (c) Revocation of approved status, removal from the approved list, and a prohibition on applying for approval for up to five years.
- (4) Reasons that ODOT may sanction a provider include, but are not limited to, the following:
 - (a) Misrepresenting information to obtain or maintain approved provider status, regardless of when the misrepresentation is discovered:
 - (A) Misrepresenting the program or its delivery;
 - (B) Misrepresenting or failing to maintain eligibility requirements; or
 - (C) Falsely claiming to correct program deficiencies.

- (b) Knowingly making a false statement or representation to ODOT-TSD or an actual or prospective course participant for the purpose of obtaining benefit to the provider;
- (c) Failing to adhere to an approved curriculum or policy adopted under OAR 737-020-0055(1)
- (d) Failing to correct deficiencies identified by ODOT-TSD, or to provide a complete response a Warning addressing each deficiency, within stated timelines;
- (e) Failing to abide by any applicable OAR or ORS;
- (f) Failing to submit required forms or information by the due date;
- (g) Issuing a Completion Certificate to a participant who has successfully completed the approved course, or failing to promptly issue a Completion Certificate to a qualified participant who has successfully completed the approved course; or
- (h) Failing to update course curriculum at least every three years.

(5) The provider may provide ODOT-TSD with evidence of any mitigating circumstances related to alleged rule violations, which may include the provider’s ability to comply or the degree of difficulty to comply.

(6) When ODOT-TSD takes action to suspend or revoke an approved provider ODOT-TSD will send notice to the approved provider. The notice will be in writing and state that the suspension or revocation will begin in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current address on record with ODOT-TSD.

(7) If ODOT-TSD suspends or revokes a provider, individuals who owned, operated, or knowingly participated in the violations of the provider at the time of the act may not, for the full term of the suspension or revocation, own, operate or participate in an ODOT-TSD approved distracted driving avoidance course.

(8) A suspended or revoked provider may not schedule participants for distracted driving avoidance courses, accept course fees or conduct distracted driving avoidance courses for an ODOT-approved program for the full term of suspension or revocation.

(9) A suspended or revoked provider must issue course fee refunds to enrolled participants who are monetarily affected by the suspension or revocation.

Stat. Auth.: ORS 184.616, 184.619
 Stats. Implemented: Or Laws 2017, ch 629, § 4

737-020-0090

Appeal Process and Reinstatement

(1) Upon notification of suspension or revocation a provider is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(2) Except as provided for in section (3) of this rule, a request for a hearing must be submitted in writing to, and received by, ODOT-TSD within 20 business days of the date of the notice. If a hearing request is received in a timely manner the suspension or revocation may not go into effect pending the outcome of the hearing.

(3) Except as provided in OAR 137-003-0528, when no request for a hearing is received by the deadline, the approved provider has waived the right to a hearing, ODOT-TSD's file must constitute the record of the case, and a default order must be issued by ODOT-TSD.

(4) If a provider approval has been revoked, the provider may apply again after the full term of revocation and must meet all the requirements for initial application approval.

(5) At the end of a suspension period, ODOT-TSD will reinstate the provider on the approved provider list upon verification that the provider has remedied any deficiencies and meets all the requirements for initial application approval.

Stat. Auth.: ORS 184.616, 184.619

Stats. Implemented: Or Laws 2017, ch 629, § 4

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