

Department of Transportation
Administrative Rules Annual Report
HB 4106 (2016 Session)

Chapter 731

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	14
Amended	21
Repealed	2

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0

Department of Transportation, Public Transit Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Chapter 732

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	3
Amended	7
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	1
Amended	0
Suspended	0

PTD 3-2020

Filed: 04/03/2020 3:18 PM

732-020-0050

Adopt

Statement of Need

In November 2019, Oregon Department of Veterans Affairs (ODVA) invited Oregon Department of Transportation's Rail and Public Transit Division (RPTD) to develop and implement health care access services to veterans living in rural areas of Oregon. Pursuant to Senate Bill 5538 – Package 103, the 2019 Oregon legislature made a one-time allocation of \$500,000 in Oregon Lottery funds to ODVA for the expansion of Oregon's successful federally funded Highly Rural Veterans Transportation Program to be used by the end of the 2019-21 Biennium. The resource created by SB 5538 will be transferred from ODVA to RPTD by interagency agreement to administer a transit grant program to support access to health care for veterans living in rural areas which do not already receive federal funding for that purpose.

RPTD intends to use its existing Special Transportation Fund (STF) Discretionary grant program (OAR Chapter 732, Division 20) to administer the one-time allotment. However, RPTD requires administrative rules to define eligibility criteria for the new grant program.

Justification

The Oregon legislature has found that there is a significant need for veterans in Oregon to have improved health care outcomes. In particular, the \$500,000 allocation to ODVA originated from Measure 96 (2016) which amended Oregon's Constitution to deposit 1.5% of the net proceeds from the State Lottery in a veterans' service fund created by the Legislative Assembly. In its unanimous referral to Oregon voters, the Assembly found that average wait-time to access service from the Veterans Administration was 39 months contributing to over 250,000 Oregon veterans not receiving the care they earned. Accordingly, using the designated funds to facilitate rural veterans' ability to access health care is in the public interest.

To prepare funds for distribution on July 1, 2020, RPTD must act immediately to develop a grant program facilitating the initial on-time allotment. The short operational timeframe set by the legislature means that temporary rulemaking is necessary to launch the grant application and selection process. RPTD intends to engage in parallel permanent

rulemaking so that permanent rules will be in place during the period of grant administration beginning July 1, 2020.

Without adoption of the proposed temporary rule, RPTD lacks the legal authority to advertise and select grant recipients. Accordingly, failure to act promptly will result in serious prejudice to the public interest because delivery of an urgently needed service to Oregonians who served our nation will be lost. In addition to Oregon veterans themselves, sixteen Oregon counties and eight tribal nations that have been identified as eligible will be negatively impacted if the temporary rule is not adopted because their veteran residents will continue to be unable to access medically necessary services.

ODOT has found that it can most efficiently implement this grant program by leveraging its existing STF Discretionary Grant program, adopting a single rule to define eligibility criteria. Therefore, RPTD intends to temporarily adopt a single rule within its existing Special Transportation Fund (STF) Discretionary grant program (OAR Chapter 732, Division 20). It is the intent of RPTD to engage in concurrent permanent rulemaking so that there is an opportunity for public comment and a permanent rule can be in place for the post-selection, grant administration period.

Department of Transportation, Highway Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Chapter 734

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	4
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0

Department of Transportation, Driver and Motor Vehicle Services Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Chapter 735

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	12
Amended	85
Repealed	8

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	5
Amended	61
Suspended	4

DMV 7-2020

Filed: 05/27/2020 5:00 PM

735-063-0290

Amend

Statement of Need

DMV amends OAR 735-063-0290 to make use of TSA's temporary exemption of expiration of TSA security threat assessments (STAs) for commercial driver license (CDL) holders with hazardous material endorsements (HME). It may be impracticable for some commercial drivers to renew their STAs during the current COVID-19 crisis. Measures to prevent the spread of COVID-19 may affect the ability of persons holding commercial driving privileges to present themselves in-person to a TSA enrollment center for the collection of fingerprints and applicant information. Without the new STA, TSA's regulations prevent States from renewing or extending the expiration of the individual's State-issued HME. DMV has authority to adopt rules regarding the process and frequency for obtaining a security threat assessment and, to the extent practicable, make its rules uniform with any applicable federal regulations related to the holding of a CDL with HME, pursuant to ORS 807.175(1)(a) and (3).

Justification

TSA has determined that it is in the public interest to grant an exemption from certain process requirements in 49 CFR part 1572 related to STAs for HMEs, given the need for commercial drivers with an HME to continue to work without interruption during the current COVID-19 crisis. This action would not compromise the current level of transportation security resulting from the HME requirements because TSA maintains the ability to conduct recurrent security threat checks on HME holders and take action to revoke an HME if derogatory information becomes available, regardless of expiration date. TSA will use data previously submitted by these individuals with expired or expiring HMEs to conduct recurrent vetting against terrorism watch lists and databases to ensure that these individuals continue to meet TSA requirements for having an HME. The Exemption applies to HME that expired or would otherwise expire between March 1, 2020, and the end date of this exemption, which is set for July 31, 2020, unless otherwise modified by TSA. DMV is adopting this temporary rule because a lack of action by DMV may interrupt or impede the transportation of hazardous materials, including compressed gases, and materials necessary to manufacture essential products like cleaning agents and medical supplies. Additionally, due to the 5-year renewal period for the STA, it can be deduced that approximately 5% of HME may expire during the period covered by the waiver. When a HME expires, the individual is required to surrender it to DMV or face cancellation of their commercial driving privilege.

DMV 8-2020

Filed: 05/27/2020 5:03 PM

735-063-0340

Amend

Statement of Need

DMV amends OAR 735-063-0340 to allow non-excepted intrastate operators and excepted interstate operators to maintain medical qualification during the COVID-19 state of emergency. This rule amendment provides for DMV to refrain from cancelling the commercial driving privileges of customers who may be unable to obtain new proof of medical qualification from a medical examiner. This rule amendment mirrors the provision that the Federal Motor Carrier Safety Administration (FMCSA) provided for non-excepted interstate operators in its Waiver in Response to the COVID-19 Emergency – for States, CDL Holders, CLP Holders, and Interstate Drivers Operating Commercial Motor Vehicles, dated March 24, 2020. This will allow commercial driving privilege (CDP) holders with a medical examiner’s certificate and/or expired medical waiver to continue to provide essential services under the emergency declaration. CDP holders are still required by state and federal law to submit their medical waivers to DMV when they are able to obtain it. They should continue to seek physician appointments and send their updated waivers to DMV as soon as possible.

Justification

FMCSA has provided regulatory relief from federal medical qualification requirements for non-excepted interstate operators, if individuals had medical examiner certificates valid for a period of 90 days or more with expiration on or after March 1, 2020. DMV proposes to adopt this temporary rule in order to provide consistency for medical qualification between individuals covered under the mandatory FMCSA waiver of federal medical qualification requirements and non-excepted intrastate and excepted interstate individuals required to maintain medical qualification solely under Oregon statute and rule. If DMV does not act in this rule amendment, excepted interstate operators and non-excepted intrastate operators will be subject to more stringent cancellation requirements than non-excepted interstate operators subject to federal medical qualification requirements.

DMV normally issues a notice of cancellation after a person’s medical qualification has expired. The notice provides CDP holders with 30 days to file proof of medical qualification. If DMV does not receive proof of medical qualification within the required timeframe, the individual’s commercial driving privileges will be suspended. Due to the renewal cycle for medical qualifications, DMV anticipates that 25% or more of excepted interstate and non-excepted intrastate operators’ medical qualification will expire during the six-month period in which this temporary rule may be effective. CDP holders may not be able to schedule physical examinations at this time because of the COVID-19 response efforts. These physical examinations must be conducted in person, and many medical providers are unable to accept patients for non-emergency visits at this time.

The intent of this temporary rule is to prevent a driver’s commercial driving privileges from automatically cancelling. This will allow CDP holders with an expired medical examiner certificate or an expired state waiver to continue to provide essential services under the declared state of emergency. DMV is adopting this temporary rule because a lack of action by DMV may interrupt or impede the transportation of food, critical personnel and supplies by excepted interstate operators and non-excepted intrastate operators during this emergency.

DMV 14-2020

Filed: 06/25/2020 11:52 AM

735-010-0260

Amend

735-062-0088

Adopt

Statement of Need

SB 57 (Oregon Laws 2019, chapter 312, sections 20, 23 and 28) requires the department to determine by rule the method used to serve:

- Notice of cancellation of the registration or title or both;
- Notice of suspension when the person has failed or refused to pay a fine or obey an order of the court; and
- Notice of approaching expiration of driver license, driver permit, and identification cards.

DMV is amending OAR 735-010-0260 to include how DMV will serve notice to customers when DMV initiates cancellation of a vehicle registration or title or both. With this rulemaking, DMV is not changing the method used to send customers notices of cancellation that had previously been described in statute. DMV will continue to send notice of cancellation of registration or title or both by first class mail.

Additionally, DMV is adding reference to ORS 809.416 in the “statutes/other implemented” of OAR 735-010-0260. The notices for suspension of driving privileges sent to customers under ORS 809.416 will follow the delivery method already described in OAR 735-010-0260(1).

DMV is adopting OAR 735-062-0088 to add to rule the method DMV will use to deliver notices of expiration of a driver license, driver permit, or identification card to customers. DMV will continue to mail the notification by first class mail to the address maintained in the DMV records as had been previously described in statute.

Justification

SB 57 (2019) directs the method DMV will use to provide cancellation notices by shifting from statute to rule with an operative date of July 1, 2020. DMV had planned to present the permanent rules for approval at the June Oregon Transportation Commission (OTC) meeting. Due to cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for legal challenges. June was the last month available for approving the permanent rules before the rules must go into effect. DMV believes there will be a serious prejudice to the public interest because DMV would be missing statutory deadlines and the public would not know the delivery method DMV uses to send their Notice of Suspension, Notice of Cancellation and notice of approaching expiration.

DMV 15-2020

Filed: 06/25/2020 11:53 AM

735-063-0360

Amend

Statement of Need

DMV administers serious traffic offense suspensions for commercial driving privilege holders and commercial motor vehicle operators in accordance with federal regulations present at 49 CFR §383.51. A first serious traffic offense does not cause a commercial driving privilege suspension. A second qualifying offense causes a 60-day commercial driving privilege suspension, and a third or subsequent offense causes a 120-day commercial driving privilege suspension. DMV must amend OAR 735-063-0360 to designate additional offenses that customers may commit in non-commercial motor vehicles when the offense directly results in the suspension, cancellation, or revocation of a customer’s license.

Justification

DMV must amend OAR 735-063-0360 to designate additional offenses that customers may commit in non-commercial motor vehicles when the offense directly results in the suspension, cancellation, or revocation of a customer’s license. These offenses in non-commercial motor vehicles include failure to drive within a lane, unsafe passing on the left, unsafe passing on the right, following too closely, and violations of motor vehicle traffic control laws in conjunction with a fatal

accident. These amendments conform DMV's rule to provisions of the Federal Motor Carrier Safety Administration (FMCSA) regulations. If DMV does not comply, FMCSA may sanction Oregon through withdrawal of Federal-aid highway funds, and in extreme cases by decertification of the Oregon CDL program. Decertification would prevent DMV from issuing, renewing, transferring, or upgrading CDLs. In addition, ORS 809.525(3) requires DMV to designate serious traffic offenses in order to ensure that they "be uniform" with applicable federal regulations "[t]o the extent practicable."

DMV had planned to present permanent rules for approval at the June OTC meeting. Due to cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for legal challenges. June was the last month available for approving the permanent rules before the rules must go into effect. Due to programming lead times, the system configuration for this new rule goes into production on July 6, 2020. Reprogramming or establishing a manual work around would be costly and impact DMV's new system rollout. DMV also believes there would be a serious prejudice to the public interest because DMV would not be in conformity with the FMCSA Regulations and could face federally imposed sanctions.

DMV 16-2020

Filed: 06/25/2020 11:57 AM

735-050-0080

Amend

Statement of Need

As established in ORS 806.150, the Mandatory Insurance Compliance (MIC) Program directs DMV to ensure compliance with Oregon's automobile insurance requirements by randomly sampling a percentage of vehicles registered in Oregon. DMV may also select persons for whom DMV has reasonable grounds to believe the person is in violation of financial responsibility requirements. DMV requests the selected vehicle owners to provide proof of compliance with insurance requirements as established in ORS 806.060, 806.070, and 806.080. Oregon Laws 2019, chapter 312 (SB 57), amends ORS chapter 806 for the purpose of giving DMV the authority to establish the MIC program by administrative rule. Establishing the MIC program by administrative rule will give DMV the ability to make future changes to the program as DMV's technological capabilities change or as other law changes necessitate changes to the program. As a result of this rulemaking, the following changes will be made to the MIC program:

- DMV will send a notice of verification to all registered owners followed by a notice of suspension to all registered owners of the randomly sampled vehicle.
 - o Under the current system, DMV issues three notices consecutively: notice of verification (sent to the primary registered owner); a demand letter (sent to the primary registered owner); and a Notice of Suspension (sent to all registered owners).
- Registered owners will have 60 days to provide proof of compliance with insurance requirements before the suspension of all registered owners' driving privileges goes into effect.
- The Notice of Suspension can be withdrawn or the suspension can be rescinded when any one of the registered owners provides current proof of compliance with financial responsibility laws.

Justification

SB 57 (2019) amends ORS chapter 806 for the purpose of giving DMV the authority to establish the MIC program by administrative rule. DMV had planned to present permanent rules for approval at the June Oregon Transportation Commission (OTC) meeting. Due to the cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for legal challenges. June was the last month available for approving the permanent rules before the rules must go into effect. DMV believes there will be a serious prejudice to the public interest because the notice and enforcement requirements for the MIC would not be clearly defined in law, and DMV would be unable to check that Oregon motorists had the necessary automobile insurance to drive on Oregon roads. As a result, the statutorily mandated program would be ineffectual.

DMV 17-2020	Filed: 06/25/2020 12:00 PM
735-010-0070	Amend
735-018-0100	Amend
735-062-0005	Amend
735-062-0007	Amend
735-062-0010	Amend
735-062-0013	Amend
735-062-0135	Amend

Statement of Need

DMV's Service Transformation Program (STP) created opportunities to review DMV programs and optimize them based on new technological capabilities.

In an effort to deter unauthorized or fraudulent address changes, proposed rule amendments eliminate the ability for a person to change their address by use of a DMV drop box or in writing. An exception to the limitations on how DMV will accept notification of change of address is proposed for persons whose address is protected by law. To align with technical capabilities and online transactions, reference to "application form" and the requirement for an applicant to apply for an identification card in person are removed from administrative rule. DMV will have access to electronic verification software used to verify driving privilege status and prior issuances of driver licenses, permits or identification cards from out-of-state. Amendments are proposed to enable DMV to use the verification software.

The proposed rules specify that the expiration date for persons born on February 29 will expire on February 28 if the year of expiration is not a leap year. To comply with mandatory data elements from the American Association of Motor Vehicle Administrators card design standards, DMV needs to record eye color on the driver license, driver permit or identification card issued to any applicant.

Justification

In alignment with the operative date for Oregon to become compliant with the Federal Real ID Act of 2005, phase II of DMV's system modernization project is scheduled to be implemented on July 6, 2020. Due to COVID-19, the federal enforcement date for Real ID has been delayed but Oregon law still requires a compliance date by July 2020.

DMV has programmed its system to implement the new processes and procedures described in this rulemaking starting July 6, 2020. Failure to adopt these rules will result in serious prejudice if DMV programs and processes are implemented without first filing the administrative rule adoptions, amendments and repeals necessary to implement these programs that have already been programmed into DMV's computer system. As a result of this programming, multiple programs would be out of compliance with DMV's current administrative rules that set out requirements for persons doing business with DMV. The impacted persons subject to the serious prejudice are all persons who have been issued a driver license, driver permit or identification card because of the new requirements for the contents of driver license, driver permits and identification cards and the changes for submitting a mandatory address change. Also impacted are registered owners of any vehicle registered in Oregon and any driver who wishes to surrender their driving privileges in accordance with ORS 809.419.

To remain in compliance with ORS 807.560, 807.420 & 803.220, DMV must establish by administrative rule, requirements for persons to provide notification of a change of address within 30 days from the date of the address change. Address change requirements would be accepted in a method not set forth in rule and an issuance of a driver license or identification card that the applicant was not entitled to receive. Failure to adopt temporary rules may result in addresses not being updated because the method of notification was not acceptable after implementation of DMV's system modernization. Failure to for DMV to update an address could result in notices of driving privilege suspensions or cancellations, renewal reminders or other communications from DMV being mailed to wrong addresses and DMV customers potentially not receiving important DMV communications.

Drivers eligible for Quit Driving Identification Cards will be issued identification cards to which they are not entitled because the identification card was not issued in accordance with new rules intended to avoid issuing identification cards to persons already possessing identification cards issued by other jurisdictions.

DMV planned to present the permanent rules for approval at the June Oregon Transportation Commission (OTC) meeting. However, that meeting has been cancelled and June was the last month available for approving the permanent rules before the rules must go into effect. Due to programming lead times, the system configuration for this new rule goes into production on July 6, 2020. Reprogramming or establishing a manual work around would be costly and impact DMV's new system rollout.

Due to the cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for legal challenges. Without the temporary rules, multiple programs will be operating out of compliance and lack public transparency resulting in serious prejudice to the public interest.

DMV 18-2020	Filed: 06/25/2020 12:02 PM
735-010-0008	Amend
735-018-0010	Amend
735-018-0020	Amend
735-018-0150	Adopt
735-060-0120	Amend
735-061-0410	Amend
735-061-0420	Amend
735-061-0440	Amend
735-061-0450	Amend
735-062-0070	Amend
735-062-0078	Amend
735-062-0080	Amend
735-062-0140	Amend
735-070-0110	Amend

Statement of Need

DMV wants to adopt a new rule, OAR 735-018-0150, to describe when an Oregon resident may apply to replace a Real ID or non-Real ID driver license, driver permit and identification card by electronic means using DMV's website. This is a part of DMV's system modernization and is intended to reduce the need for DMV customers to visit field offices and permit DMV staff to use time for other customer transactions.

Rule amendments are proposed to align with programming requirements necessary to implement DMV's new computer system, align with current operating policies, and create efficiencies for DMV customers and DMV.

Justification

In alignment with the operative date for Oregon to become compliant with the Federal Real ID Act of 2005, phase II of DMV's system modernization project is scheduled to be implemented on July 6, 2020. Due to COVID-19, the federal enforcement date for Real ID has been delayed but Oregon law still requires a compliance date by July 2020.

DMV has programmed its new computer system to implement the new processes and procedures described in this rulemaking starting July 6, 2020. Failure to adopt these rules will result in serious prejudice if DMV programs and processes are implemented without first filing the proposed administrative rule adoptions and amendments necessary to implement these programs that have already been programmed into DMV's computer system. As a result of this programming, multiple programs would be out of compliance with DMV's current administrative rules that set out requirements for persons doing business with DMV. The impacted persons subject to serious prejudice are Oregon residents who would be unable to use online services provided by DMV as described in its proposed rules. These persons include commercial and non-commercial Oregon drivers, drive test applicants, motorcycle endorsement applicants, DMV Third Party Testing Businesses, and approved motorcycle rider education providers.

DMV's Third Party Testing Program and Rider Education Providers may have difficulty complying with DMV requirements if the computer system is inconsistent with current DMV rules. DMV would not be able to enforce test result submission requirements, leaving the oversight of the third party testing program in jeopardy of losing program integrity. Lack of rules for the general public to access the online services soon to be provided would result in inconsistencies between DMV's practices, as operationalized through its computer system, and DMV's policies, as described in its rules. The results may include Oregon residents being issued credentials that they are not entitled to or cancellation of driving privileges because certain rules or guidelines were not followed at the time of issuance. DMV would be testing both commercial and non-commercial drivers outside of mandatory wait times.

A temporary filing will allow DMV to implement the system upgrade in compliance with its own policies and programming. This will result in clear and current guidelines through administrative rules to guide DMV business partners, general public, and testing applicants through the requirements of DMV's upcoming online services. A temporary filing will allow compliance with state laws, public transparency and prevent any serious prejudice to Oregon residents or businesses doing business with DMV.

DMV planned to present the permanent rules for approval at the June OTC meeting. The June OTC meeting has been cancelled, and June was the last month available for approving the permanent rules before the rules must go into effect.

DMV 19-2020 Filed: 06/25/2020 12:03 PM

735-062-0087	Amend
735-062-0096	Amend
735-062-0115	Amend
735-064-0080	Amend
735-064-0090	Amend
735-064-0230	Amend
735-064-0235	Amend
735-070-0054	Amend
735-070-0055	Amend
735-070-0060	Amend
735-070-0090	Suspend

Statement of Need

DMV's Service Transformation Program (STP) has created opportunities to review DMV driver permits and optimize them based on new technological capabilities. DMV identified many ineffective or out-of-date processes during preparation for its system modernization. This rulemaking proposes eliminating many of those processes to align with new capabilities and updated processes.

DMV is amending OAR 735-064-0080 which describes the process for issuing hardship permits to applicants whose driving privileges are suspended or revoked. With this amendment, applicants are no longer required to visit a DMV field office to be issued a restricted license. DMV's new computer system will update the driving record of the restricted driver upon issuance of the hardship permit from DMV Headquarters. Law enforcement will be able to view the restricted status of a hardship permit through an interface with DMV's computer system.

To reduce unnecessary configuration and to establish an expiration date that most closely matches the intent of the emergency and student driver permit, DMV proposes to amend OARs 735-064-0230 and 735-064-0235 by eliminating the option to have an emergency or student driver permit expire one week after the applicant's 18th birthday.

Temporary driver permits will now be automatically generated through DMV's computer system. As a result, DMV proposes to amend OAR 735-062-0096 to reflect the discontinuance of the temporary driver permit form. Moreover, to prevent premature invalidation of a driver license, driver permit or identification card issued from another jurisdiction, DMV is proposing to eliminate language authorizing the invalidation of a driver license, driver permit or identification card issued from another jurisdiction upon issuance of a temporary driver permit. The issuance of a temporary driver permit does not guarantee issuance of an Oregon driver license, driver permit or identification card.

Electronic convictions are submitted securely from courts to DMV. A court that convicts a driver for violating a license restriction can submit the conviction electronically to DMV. However, due to character limitations, electronic submission does not include applicable subsections to a statutory citation. Due to DMV's inability to obtain the complete violation information and to align with current practices, DMV is proposing to repeal OAR 735-070-0090, which requires DMV to send drivers a warning or take suspension action on a driver convicted of violating a license restriction.

Through STP, reorganizing and restructuring DMV's processing units require amending several administrative rules as they reference specific processing units that no longer function under a specific unit name. Minor terminology amendments are also proposed for clarity.

Justification

In alignment with the operative date for Oregon to become compliant with the Federal Real ID Act of 2005, phase II of DMV's system modernization project was scheduled to be implemented on July 6, 2020. Due to COVID-19, the federal enforcement date for Real ID has been delayed but Oregon law still requires a compliance date by July 2020.

DMV has programmed its system to implement the new processes and procedures described in this rulemaking starting July 6, 2020. Failure to adopt these rules will result in serious prejudice if DMV programs and processes are implemented without first filing the administrative rule amendments and repeals necessary to implement these programs that have already been programmed into DMV's computer system. As a result of this programming, multiple programs would be out of compliance with DMV's current administrative rules that set out requirements for persons doing business with DMV. The impacted persons subject to the serious prejudice are driver hardship permit applicants, temporary driver permit holders and law enforcement officers who enforce driving restrictions and implied consent laws.

Failure to adopt the proposed administrative rules prior to system implementation may cause complications due to unclear guidelines regarding the new process for issuing hardship permits, submitting hardship permit applications, withdrawing implied consent forms submitted by police agencies and rescinding implied consent suspensions imposed on wrong persons because these rules instruct permit applicants and law enforcement on how to submit specific forms. If rules are not filed, hardship permits issued to customers will not comply with current rules and drivers could be cited for an offense at no fault of their own. Drivers could challenge their citations, which may invite unnecessary legal proceedings. Additionally, delays in hardship permit issuances or amendments to hardship permits may cause issues for drivers who depend on the hardship to legally drive their vehicle to employment, medical appointments, obtain necessary services, treatment or rehabilitation programs. A delay in the withdrawal of implied consent form may lead to a wrongful suspension of driving privileges imposed on driver, which may also invite unnecessary legal challenges.

The Real ID fee for hardship permit applicants who have already satisfied Real ID requirements will be subject to Real ID fees as set forth in ORS 807.480. Driver licenses issued by DMV may not be issued in compliance with DMV rules, leaving the customer not entitled to the Real ID driver license issued by DMV.

DMV planned to present the permanent rules for approval at the June OTC meeting. However, that meeting has been cancelled, and June was the last month available for approving the permanent rules before the rules must go into effect. Due to programming lead times, the system configuration for this new rule goes into production on July 6, 2020. Reprogramming or establishing a manual work around would be costly and impact DMV's new system rollout.

Due to the cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for legal challenges. Without the temporary rules, multiple programs will be operating out of compliance and lack public

transparency, resulting in serious prejudice to the public interest.

DMV 20-2020	Filed: 06/25/2020 12:05 PM
735-062-0385	Amend
735-074-0080	Amend
735-074-0120	Amend
735-074-0140	Amend
735-074-0180	Amend
735-074-0220	Amend
735-076-0000	Amend
735-076-0002	Amend
735-076-0005	Amend
735-076-0007	Amend
735-076-0010	Amend
735-076-0015	Amend
735-076-0018	Amend
735-076-0020	Amend
735-076-0035	Amend

Statement of Need

Proposed amendments address changes to the At-risk Driver program that are required by rule for the implementation of DMV’s system modernization. A global change throughout these amendments is to DMV’s practice of sending a letter followed by a notice of suspension or cancellation. At-risk Driver actions will now begin by issuing a notice of suspension or cancellation in place of the letter to ensure DMV communication to the customers is clear and satisfies the requirements of the Administrative Procedure Act, ORS chapter 183. Several other minor amendments relating to terminology and DMV processes are proposed for clarity and consistency and to align with DMV’s upcoming system modernization.

Justification

In alignment with the operative date for Oregon to become compliant with the Federal Real ID Act of 2005, phase II of DMV’s system modernization project is scheduled to be implemented on July 6, 2020. Due to COVID-19, the federal enforcement date for Real ID has been delayed but Oregon law still requires a compliance date by July 2020

DMV has programmed its system to implement new processes and procedures described in this rulemaking starting on July 6, 2020. Failure to adopt these rules will result in serious prejudice if DMV programs and processes are implemented without first filing the dozens of administrative rule adoptions, amendments and repeals necessary to implement these programs that have already been programmed into DMV’s computer system. As a result of this programming, multiple programs would be out of compliance with DMV’s current administrative rules that set out requirements for doing business with DMV. The impacted persons subject to serious prejudice are drivers subject to the At-Risk Driver Program, all users of Oregon roadways, and medical professionals licensed in the state of Oregon.

Without the updated rules on mandatory medical report forms, medical professionals may be delayed in submitting mandatory reports to DMV, which may result in unsafe drivers on Oregon roads and potentially putting all users of the road in danger. With programming changes that do not align with administrative rule authority, DMV may face legal challenges for driving privilege cancellations or suspensions imposed on At-Risk drivers. Computer programming that does not align with administrative rules, when the entire At-Risk program is based on administrative rules, will result in serious prejudice to At-Risk drivers, users of the road and medical professionals.

DMV planned to present the permanent rules for approval at the June OTC meeting. June was the last month available for approving the permanent rules before the rules must go into effect. Due to programming lead times, the system configuration for this new rule goes into production on July 6, 2020. Reprogramming or establishing a manual work around would be costly and impact DMV's new system rollout.

Due to the cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for legal challenges. Without the temporary rules, the At-Risk Driver Program will be operating out of compliance and lack public transparency resulting in serious prejudice to the public interest.

DMV 21-2020	Filed: 06/25/2020 12:08 PM
735-062-0085	Suspend
735-063-0210	Amend
735-063-0240	Amend
735-063-0250	Amend
735-063-0263	Adopt
735-063-0280	Amend
735-063-0310	Suspend
735-063-0311	Adopt

Statement of Need

DMV is proposing several administrative rule amendments, adoptions and repeals to take effect with phase II of DMV's system modernization project. These rule proposals align with programming requirements necessary to implement DMV's new computer system, comply with Federal Motor Carrier Safety Regulations (FMSCR), implement enacted legislation, Oregon Laws 2019, chapter 312, and establish efficiencies related to commercial driving privileges.

To align with programming requirements necessary to implement DMV's new computer system, DMV is proposing to repeal OAR 735-062-0085 and amend OAR 735-063-0250. ORS 807.072(6) permits DMV to adopt rules permitting waiving of testing for farm endorsement applicants with a traffic accident within the last two years of the date of application. DMV has determined that it will cease to exercise this rulemaking authority in the interests of highway safety and for operational reasons related to the DMV system modernization project. Proposed amendment of OAR 735-063-0250 is also made to align with programming requirements for DMV's new computer system. A person will not be required to take a knowledge test if the test was previously required for the issuance of the current type of license or permit held at time of application.

Oregon Laws 2019, chapter 312 (SB 57), amended ORS 802.200(9)(a) to confer rulemaking authority on DMV to determine what should be present on Oregon driver records to comply with federal regulations. DMV proposes to clarify driver record requirements and ensure that administrative rules conform to the requirements of the FMCSRs. In addition, this proposed rule adoption of OAR 735-063-0311 permits DMV to formalize processes related to conviction and withdrawal retention schedules and DMV application of sanctions. By repealing 735-063-0310, DMV repeals the requirement to transfer another jurisdiction's driving record to Oregon upon transfer of driving privileges to Oregon. This requirement is already provided in OAR 735-010-0110 and is also described in proposed rule OAR 735-063-0311.

DMV is proposing to permit the transfer of commercial driver licenses from the United Mexican States and Canada. The Federal Motor Carrier Safety Administration (FMCSA) has indicated that it permits transfer of certain commercial driver licenses from the United Mexican States and Canada in accordance with the provisions of 49 CFR § 383.23. FMCSA regards Mexican Licencias Federales de Conductor and Canadian CDLs issued in conformance with the National Canadian Safety Code, to have regulatory standards equivalent to the United States for commercial driver licenses.

DMV has determined that OAR 735-063-0280 requires amendments to better align the application requirements with the documentation available to applicants. The amended rule specifies that DMV must receive applications from applicants within one year of qualifying service as a military service member being regularly employed in a military position requiring operation of a CMV, in order to align the rule with federal regulations. It also reduces the requirement for eligibility from operation of commercial motor vehicles being the "primary duty" to being "a primary duty." This rule amendment aligns the requirements with the documentation available to applicants and will permit more individuals to make use of the process.

Justification

In alignment with the operative date for Oregon to become compliant with the Federal Real ID Act of 2005, phase II of DMV's system modernization project is scheduled to be implemented on July 6, 2020. Due to COVID-19, the federal enforcement date for Real ID has been delayed but Oregon law still requires a compliance date by July 2020.

DMV has programmed its system to implement the new processes and procedures described in this rulemaking starting July 6, 2020. Failure to adopt these rules will result in serious prejudice if DMV programs and processes are implemented without first filing several administrative rule adoptions, amendments and repeals necessary to implement these programs that have already been programmed into DMV's computer system. As a result of this programming, multiple programs would be out of compliance with DMV's current administrative rules that set out requirements for persons doing business with DMV. The impacted persons subject to serious prejudice are all CDP holders, any prospective Oregon CDP applicant with Canadian or Mexican CPD, certain military service members applying for CDP, and CDP holders with type II Diabetes.

DMV intends to implement new testing requirements for farm endorsement applicants as of July 6, 2020. If temporary rules are not in place, DMV will require skills testing for applicants not otherwise required by rule to take the test. CDP applicants will also be required to repeat testing requirements not required under the temporary rules if the applicant failed all or part of a CDL skills test.

Without temporary rules in place, CDP holders who surrender a Canadian or Mexican CDL will either be unable to obtain Oregon CDP or the Oregon CDP issued to the applicant will not have been issued in compliance with the current administrative rules.

In 49 CFR § 391.46, FMCSA eliminates diabetes as a condition that requires a waiver of physical disqualification for CDP holders. DMV must amend its administrative rule to be in compliance with federal regulations.

DMV must adopt rules in accordance with Oregon Laws 2019, chapter 312, section 19, and 49 CFR § 383.51, which require the enforcement of federally required sanctions on commercial driving privileges when not imposed by another jurisdiction. Without the temporary rules, DMV would either not be in compliance with these state and federal mandates or, due to its new system programming, would issue sanction notices in conflict with current administrative rules.

DMV planned to present the permanent rules for approval at the June Oregon Transportation Commission (OTC) meeting. However, that meeting has been cancelled and June was the last month available for approving the permanent rules before the rules must go into effect. Due to programming lead times, the system configuration for this new rule goes into production on July 6, 2020. Reprogramming or establishing a manual work around would be costly and impact DMV's new system rollout.

Due to the cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for legal challenges. Without the temporary rules, multiple programs will be operating out of compliance and lack public transparency resulting in serious prejudice to the public interest. DMV also believes there will be a serious prejudice to the public interest because DMV would not be in conformity with the FMCSA regulations and could face federally imposed sanctions.

DMV 22-2020	Filed: 06/25/2020 12:10 PM
735-064-0220	Amend
735-072-0020	Amend
735-072-0023	Amend
735-072-0027	Amend
735-072-0035	Suspend
735-072-0041	Adopt

Statement of Need

DMV's Service Transformation Project (STP) has created opportunities to review DMV programs and optimize them based on new technological capabilities. This rule change updates the Driver Improvement Program (DIP) to reflect these new capabilities and were developed from a study conducted by the Center for Urban Studies, Portland State University. While DMV anticipates the overall number of DIP suspensions to decrease, the goal of this rule change is to ensure the program is more effectively addressing the population for whom DIP was created: drivers developing a chronic behavior of unsafe driving, rather than drivers who demonstrate only a brief pattern of such behavior.

Changes include:

- Combining the two tables listing driver improvement offenses found in OAR 735-072-0035 and 735-064-0220 to create a single list of offenses, which will be located in OAR 735-064-0220.
- Revising the driver improvement offense table to remove offenses that DMV will no longer be recording as a result of Oregon laws 2019, Chapter 312, Section 19. All offenses relating to driver improvement offenses will be found in OAR 735-064-0220 where they have been combined with other offenses that count towards separate habitual offender and CMV serious violation programs.
- Eliminating the requirement for five convictions to equal one driver improvement offense. Under this rule change, every conviction found on OAR 735-064-0220 will now count as one driver improvement offense.
- Increasing the number of adult driver improvement violations required to impose a driver improvement suspension from four to five.
- Eliminating the pending restriction for the adult driver improvement program.

Justification

In alignment with the operative date for Oregon to become compliant with the Federal Real ID Act of 2005, phase II of DMV's system modernization project is scheduled to be implemented on July 6, 2020. Due to COVID-19, the federal enforcement date for Real ID has been delayed but Oregon law still requires a compliance date by July 2020.

DMV has programmed its system to implement new processes and procedures described in this rulemaking starting on July 6, 2020. Failure to adopt these rules will result in serious prejudice if DMV programs and processes are implemented without first filing the proposed administrative rule adoption, amendments and repeals necessary to implement these Driver Improvement programs that have already been programmed into DMV's computer system. As a result of this programming, the Driver Improvement program would be out of compliance with DMV's current administrative rules that set out requirements for improving driver behavior. The impacted persons subject to serious prejudice are all persons operating a vehicle on Oregon roads.

ORS 809.480 authorizes DMV to establish, by administrative rule, a program designed to improve driving behavior. Violations and offenses that count as a DIP violation are set forth by these administrative rules. If DMV is unable to file these rules prior to the operative date of the scheduled computer system upgrade, DMV may be imposing hundreds of driving privilege suspensions for offenses that do not yet qualify as a driver improvement violation. Suspension notices would cite administrative rules that have not yet been adopted, repealed or amended. Drivers would be eligible for administrative review and, after review of the driver record, a final order could correct the error by disaffirming and rescinding the suspension. But administrative review would not help a person avoid the process of being subject to suspension. Operating a program not in compliance with administrative rules is a severe prejudice to all drivers on Oregon roads. Legal challenges and risk management cases could be difficult and time consuming for DMV.

DMV planned to present the permanent rules for approval at the June OTC meeting. However, that meeting has been cancelled, and June was the last month available for approving the permanent rules before the rules must go into effect. Due to programming lead times, the system configuration for this new rule goes into production on July 6, 2020. Reprogramming or establishing a manual work around would be costly and impact DMV's new system rollout.

Due to the cancellation of the OTC June meeting, temporary rules are necessary to ensure clarity and reduce risk for

legal challenges. Without the temporary rules the Driver Improvement Program will be operating out of compliance and lack public transparency, resulting in serious prejudice to the public interest.

DMV 23-2020 **Filed: 06/25/2020 12:11 PM**

735-080-0046 Amend

735-080-0080 Amend

Statement of Need

In 2019, the Oregon Legislature amended ORS 811.602 (Oregon Laws 2019, chapter 413). Pursuant to ORS 811.602(3), DMV may issue a temporary duplicate disability parking permit to customers for travel purposes. The temporary duplicate permit can only be issued to the holder of an existing parking permit to serve as a travel copy. This rulemaking will amend OAR 735-080-0046 and 735-080-0080 in accordance with HB 2999 to reflect a validity period of up to 120 days.

The rulemaking also allows a customer to re-certify for a temporary duplicate at any time. Previously, a customer had to wait until within seven days of the old permit's expiration date in order to apply for a new permit. Allowing a customer to renew at any time will be more consistent with how other parking permits may be renewed.

Justification

HB 2999 (2019) authorizes DMV to issue temporary duplicate disability parking permits to customers for travel purposes for up to 120 days and eliminates some time restrictions for renewal applications. The bill carried an operative date of July 6, 2020. DMV had planned to present the permanent rules for approval at the June OTC meeting, but the OTC June meeting has recently been canceled. Due to programming lead times, the system configuration for this new rule goes into production on July 6, 2020. Reprogramming or establishing a manual work around would be costly and impact DMV's new system rollout. Temporary rules are necessary to ensure temporary duplicate disability parking permits can be issued for the extended period of time and renewed as the need arises. DMV acknowledges that there are travel restrictions in place right now, but that does not negate the necessity to travel in some instances. If DMV does not amend the rules in concert with the bill's operative date, DMV believes there could be a serious prejudice to this vulnerable population.

DMV 30-2020 **Filed: 10/23/2020 7:41 AM**

735-061-0440 Amend

Statement of Need

The purpose Oregon Administrative Rules (OAR) 735-061-0400 through 735-061-0470, is to establish criteria for which a third party testing business is authorized to give a Class C non-commercial drive test on behalf of DMV and to describe when such a service may be used by an applicant for an Oregon driver license.

Class C third party testing businesses are selected through a competitive procurement process before entering into an agreement with DMV to be authorized to administer drive tests. DMV also enters into agreements with governmental entities to participate in the program as third party testing businesses under ORS chapter 190.

An applicant who is obtaining a driver license for the first time must complete a drive test to demonstrate the applicant's

ability to operate a motor vehicle without endangering the safety of persons or property. On March 8, 2020, Governor Brown issued Executive Order 20-03, declaring a statewide state of emergency due to the COVID-19 outbreak in Oregon. In compliance with the order DMV field offices were closed to the public for 10 weeks and the third party testing businesses ceased testing. DMV has not yet resumed drive tests due to COVID-19 and the social distancing rules in effect. A customer who needs a drive test must go through a third party testing business. Currently, OAR 735-061-0440 limits the number of tests a third party examiner may conduct in a single day to 16. This temporary rule will increase the number of tests a third party examiner may conduct to 20 in a single day, increasing the state's testing capacity as much as 25%. This increase will allow third party businesses to better meet the high demand and reduce the backlog of customers waiting for a test.

Justification

DMV's failure to act promptly will result in serious prejudice to the public interest because customers will not be able to obtain driver licenses. People rely on driver licenses for essential daily activities such as medical appointments, employment, religious activities, and grocery shopping. If DMV does not act promptly, people who need to take and pass a drive test in order to obtain a driver license (customers applying for an original driver license or seeking to restore driving privileges) may lose employment or may not be able to meet other essential needs.

Department of Transportation, Transportation Safety Division

Administrative Rules Annual Report

Chapter 737

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	1
Amended	4
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	1
Amended	0
Suspended	0

TSD 1-2020

Filed: 07/16/2020 12:19 PM

737-010-0005

Adopt

Statement of Need

As technologies and motoring products continue to be brought to the vehicle market, there is a need to specify the definition of enclosed cab for three-wheeled vehicles in order to satisfy the requirements of "ORS 814.290(1) Exemptions from motorcycle helmet requirements. This section establishes exemptions from the requirements and penalties relating to the use of motorcycle helmets under ORS 814.260 to 814.280. As stated, a person is not in violation of ORS 814.260, 814.269, 814.275 or 814.280 if the person is any of the following: (1) Within an enclosed cab." [1983 c.338 §693; 1987 c.910 §6; 1995 c.492 §7]

Justification

Manufacturers are designing and marketing enclosed cab vehicles and have requested that the state provide a minimum standard by which vehicles can be produced. Additionally, there is potential liability on the Department of Transportation in regards to new enclosed cab vehicles that needs to be corrected while the working group continues to move towards permanent rule. The working group consists of affected vehicle manufacturers and this rule is submitted with group assent.

Department of Transportation, Motor Carrier Transportation Division

Administrative Rules Annual Report

Chapter 740

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	1
Amended	23
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	1
Suspended	0

MCTD 30-2020

Filed: 12/02/2020 1:26 PM

740-015-0040

Amend

Statement of Need

The rule in its current form requires a manual application be filled out and submitted in order for a motor carrier to obtain a PIN number before conducting certain electronic transactions on the Oregon Trucking Online website. This is time consuming and delays motor carriers who have been hired to conduct fire recovery activities related to the recent Oregon Wildfires. It is also delaying carriers who are trying to conduct yearly registration renewals.

Justification

This amendment is necessary to facilitate motor carriers' ability to quickly obtain PIN numbers to establish accounts and conduct electronic transactions on Oregon Trucking Online. This will accelerate the registration process and get trucks moving to this and other Oregon emergencies rapidly.

Department of Transportation, Rail Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Chapter 741

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	11
Amended	0
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0