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DRIVER AND MOTOR VEHICLE SERVICES DIVISION

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FILING CAPTION: Secure Forms: Odometer Disclosure and Secure Power of Attorney

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RULES:

735-028-0070, 735-028-0080, 735-028-0090, 735-028-0110, 735-028-0125, 735-028-0160

AMEND: 735-028-0070

NOTICE FILED DATE: 03/28/2023

RULE SUMMARY: DMV amended this rule to remove subsection (3)(b) because it references a process that is being repealed in OAR 735-028-0080.

CHANGES TO RULE:

735-028-0070

Odometer Disclosures - Power of Attorney Granted to Disinterested Third Party ¶¶

All of the following apply to the use of powers of attorney for the purpose of making an odometer disclosure, when the power of attorney is granted by the buyer or seller to a "disinterested third party," as defined in OAR 735-028-0060:¶¶

(1) The power of attorney may be on any form as long as it:¶¶

(a) Contains a vehicle description sufficient for the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) to identify the vehicle (e.g., year, make and vehicle identification number);¶¶

(b) Contains a statement as to what authority is being granted (e.g., authority to make odometer disclosure);¶¶

(c) Indicates who is granted the power of attorney; and¶¶

(d) Is signed by the person granting the power of attorney.¶¶

(2) The person who receives the authority granted by the power of attorney must exercise the power of attorney by completing an odometer disclosure in the same manner and form required under OAR 735-028-0050 of the person who granted the power of attorney.¶¶

(3) The power of attorney ~~shall~~must be submitted to DMV with the title or title documents with which it is used, ~~w~~When application for title is submitted:¶¶

~~(a)~~ DMV may accept a copy of a general power of attorney that is not limited to the authority to make an odometer disclosure or transfer title on a specific vehicle. DMV also may accept a copy if the power of attorney is lost. Any copy submitted shall include a certification signed by either the person who granted the power of attorney or the person who received the authority, that the document is a true copy of the original;¶¶

~~(b)~~ A separate odometer disclosure filing as provided in ORS 803.126 and OAR 735-028-0080 shall not be required for a power of attorney granted to a disinterested third party.

Statutory/Other Authority: ORS 184.619, 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, ~~803.126~~, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060, 821.080 & ~~Ch. 873, OL 1991~~

Statutes/Other Implemented: ORS 803.120-, 803.122, 803.124, 49 CFR Part 580

AMEND: 735-028-0080

REPEAL: Temporary 735-028-0080 from DMV 19-2022

NOTICE FILED DATE: 03/28/2023

RULE SUMMARY: DMV amended this rule to permit the use of a more sustainable single-copy format that retains required security features, while continuing to permit the use of forms with the multi-copy format and to remove the requirement to make a separate odometer disclosure filing in the state where the vehicle is being titled as well as in the state that issued the power of attorney form.

CHANGES TO RULE:

735-028-0080

Odometer Disclosures - Power of Attorney Between the Buyer and Seller—~~Filings with the State~~ ¶

(1) A person may sign an odometer disclosure as both the buyer and seller by power of attorney only when allowed under OAR 735-028-0060.¶

(2) When a seller gives a power of attorney to the buyer for the purpose of making an odometer disclosure, the form used ~~shall~~must be the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) "Secure Power of Attorney," Form 735-402, DMV's "Secure Power of Attorney," Form 735-402A, or a secure form issued by another state that conforms to federal rules (49 CFR, Part 580).~~All of the following apply to such forms:¶~~

~~(a) P~~¶

~~(3) DMV does not accept secure power of attorney forms for use in making odometer disclosures that are photocopies, facsimiles, digitized copies or other reproductions of such forms are not acceptable for use in making odometer disclosures. This section does not prevent persons from making copies of completed forms, such as for their records;¶~~

~~(b4) Oregon DMV's sSecure pPower of aAttorney form, Form 735-402, and the secure forms of some other states, are multi-copy forms, each copy of which is a secure form. When used as intended, completion of the original power of attorney will result in the other copies being completed with the same information. Such copies shall~~must be acceptable for submission to the state as otherwise provided in this rule.¶

~~(35) A seller who grants power of attorney under section (2) of this rule, shall complete Part A of the secure power of attorney form, including the seller's printed and written signature and all other information required to be part of an odometer disclosure, as covered in OAR 735-028-0050.¶~~

~~(46) A buyer who receives power of attorney under section (2) of this rule shall print and sign his or her~~their name in Part A of the secure power of attorney form and ~~return one~~provide a copy of the form to the seller.¶

~~(57) Upon receipt of the seller's title, the person granted the power of attorney shall determine whether the mileage disclosed on the power of attorney is less than the mileage shown on the title:¶~~

(a) If the mileage disclosed on the power of attorney is greater than the mileage shown on the title, the person may use the power of attorney to make the required disclosure:¶

(A) If the title is a conforming title, the person shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed on the power of attorney;¶

(B) If the title is a non-conforming title, the power of attorney form itself may be considered the disclosure, and the person need not complete a separate state-issued disclosure form.¶

(b) If the mileage disclosed on the power of attorney is less than the mileage shown on the title, and there is no indication from the seller on Part A of the power of attorney that the mileage has exceeded the mechanical limits of the odometer or that the mileage is not actual, the power of attorney is void for the purpose of making an odometer disclosure. In this case, the person granted the power of attorney ~~shall~~may not make the disclosure on the title and shall obtain a new disclosure from the seller. This subsection ~~shall~~does not apply if it is determined that DMV or another state made an error in recording the mileage on the title, and that the actual mileage reported and which should have been shown on the title was less than that reported on the power of attorney.¶

~~(68) If the person who is granted power of attorney under section (2) of this rule resells the vehicle prior to receipt of the title, and if the new buyer elects to grant power of attorney to that person for the purpose of making an odometer disclosure, the exact power of attorney form that was completed under sections (2) through (46) of this rule shall be used. In granting power of attorney under this section, the new buyer:¶~~

(a) Grants authority for the seller to sign all papers and documents required to secure title on the buyer's behalf;¶

(b) Grants authority for the seller to make the odometer disclosure on the title, only if the disclosure is exactly as completed on the power of attorney; and¶

(c) Acknowledges that the buyer is aware of the odometer disclosure made under Part A of the power of attorney

form the buyer is signing.¶

~~(79)~~ When power of attorney is granted under section ~~(68)~~ of this rule:¶

(a) The seller who is granted power of attorney shall complete Part B of the secure power of attorney form, including the seller's ~~printed and written~~ signature and all other information required to be part of an odometer disclosure, as covered in OAR 735-028-0050;¶

(b) The new buyer shall ~~print and sign his or~~ sign their name in Part B of the power of attorney;¶

(c) The seller shall provide a copy of the completed power of attorney to the buyer;¶

(d) Upon receipt of the title, the person who is granted power of attorney shall comply with the provisions of section ~~(57)~~ of this rule; and¶

(e) If the title is a conforming title, and the power of attorney is not void and is being used to make a disclosure under both Parts A and B of the power of attorney form, the person granted the power of attorney shall also complete Part C of the power of attorney form. Part C of the power of attorney includes, but ~~is~~ shall not be limited to:¶

(A) The signature, printed name and address of the person exercising the power of attorney;¶

(B) A certification that the person has disclosed the mileage on the title as it was disclosed on the power of attorney, that the person has examined the title and any reassignment documents, and that the examination indicated the mileage disclosed on the power of attorney is greater than that shown on the title and any reassignment documents;¶

(C) The date of the certification.¶

~~(810)~~ A person who is granted and who exercises a power of attorney under this rule shall complete the required odometer disclosure(s) on the title when received. The person shall provide ~~an~~the original power of attorney or one of the secure copies of a multi-copy form to:¶

(a) The Oregon DMV, along with the title and any other requirements, if that person is applying for title in ~~his or her~~ their name or on behalf of the new applicant; or¶

(b) Whomever that person provides the title.¶

~~(9)~~ A person who is granted and who exercises a power of attorney under this rule and who does not apply for title in his or her name or on behalf of the new applicant (e.g., title and power of attorney given to new buyer) or who applies for title in a state other than the state that issued the power of attorney form, shall in addition to complying with section ~~(8)~~ of this rule, make a separate odometer disclosure filing in the state that issued the power of attorney form. All of the following apply to such filings:¶

(a) The filing shall be made to the Oregon DMV if filed in Oregon, or to the equivalent agency if filed in another state;¶

(b) The laws and regulations of the state in which the documents are being filed shall apply (e.g., requirements for filing and any fee); and¶

(c) To comply with Federal rules and Oregon rules and statutes, filings required under subsection ~~(9)~~(9)(a) of this rule to be made to the Oregon DMV:¶

(A) Shall include at least a copy of the front and back of the title that has been completed to show the odometer disclosure, the original power of attorney or one of the secure copies of a multicopy power of attorney, and the \$4 filing fee required by ~~ORS 803.126~~;¶

(B) Shall be submitted to DMV within 30 days of selling the vehicle, or if the named attorney titles the vehicle in another state, within 30 days of exercising the power of attorney on the title; and¶

(C) Shall not be required if the title is a nonconforming title. However, DMV shall retain power of attorney documents and fees filed when the title is nonconforming.

Statutory/Other Authority: ~~ORS 184.619~~, 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, ~~803.126~~, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060, 821.080 & Ch. 873, ~~OL 1991~~

Statutes/Other Implemented: ~~ORS 803.120-~~, 803.122, 803.124, 49 CFR Part 580

AMEND: 735-028-0090

NOTICE FILED DATE: 03/28/2023

RULE SUMMARY: DMV amended this rule to remove section (11) because it referenced OAR 735-028-0080(9) which has been repealed.

CHANGES TO RULE:

735-028-0090

Odometer Disclosure a Requirement for Issuance of Title, Exceptions ¶¶

(1) In order to issue a title, DMV must receive an odometer disclosure that meets the requirements of this division, unless the vehicle is exempt as described in OAR 735-028-0010.¶¶

(2) Except as otherwise provided in this rule, if there has been more than one transfer since the last title or other primary ownership document was issued (e.g., the owner sold the vehicle to a dealer who sold it to another person) the following odometer disclosures are required:¶¶

(a) Between the owner (seller) in whose name the last title or other primary ownership document was issued and the first buyer; and¶¶

(b) Between the person who last transferred the vehicle and the current applicant for title.¶¶

(3) If a vehicle is transferred through multiple parties (e.g., a vehicle sold from dealer to dealer), only the first and last disclosure must be submitted to DMV as provided in section (2) of this rule. However, this does not exempt the in-between owners from requirements to obtain, provide, and in some cases, maintain records on odometer disclosures, as otherwise required by DMV rules, federal law or federal rules.¶¶

(4) DMV may accept an odometer disclosure from the buyer, rather than the seller, or accept a transfer where only one of the two disclosures required under section (2) of this rule is provided, in the following situations:¶¶

(a) The most recent buyer does not receive the required disclosure(s) from the seller or the disclosure is subsequently lost or destroyed, and the seller is not available or refuses to provide the required disclosure(s);¶¶

(b) Interest is transferred by operation of law and the person who transferred interest did not have possession of or reasonable access to the vehicle, such as a transfer ordered by a court;¶¶

(c) DMV is satisfied a disclosure(s) required under section (2) of this rule is otherwise not available;¶¶

(d) The owner shown on an out-of-state title does not make a disclosure. This exception does not apply if the owner on an out-of-state title sells the vehicle directly to an Oregon business required to keep records of odometer disclosures, identified in section (6) of this rule;¶¶

(e) The owner shown on an Oregon title sells the vehicle to an out-of-state dealer and does not make a disclosure, and the vehicle is subsequently transferred to an Oregon buyer.¶¶

(5) When accepting a disclosure from the buyer or accepting a transfer where only one of the two disclosures required under section (2) of this rule is received, DMV may require additional evidence or information as to why a disclosure from the seller or person required to provide the disclosure has not been provided:¶¶

(a) When a transfer occurs between private parties or businesses not required by federal rule or law to maintain odometer disclosure records, in lieu of evidence, DMV:¶¶

(A) May accept a certification from the buyer that includes a statement that a disclosure from the seller is not available; or¶¶

(B) If one of the two disclosures required under section (2) of this rule is provided, DMV may accept the transfer without requiring an additional disclosure or certification.¶¶

(b) When a vehicle is sold by or through a business required by federal rule to maintain odometer disclosure records, in addition to the certification described in subsection (5)(a) of this rule, DMV may require any or all of the following:¶¶

(A) Evidence that the buyer attempted to get the required disclosure from the seller, or evidence that the seller no longer is in business;¶¶

(B) A statement, certification or other evidence from the seller stating why the seller is unable to provide the required disclosure information; or¶¶

(C) A certified copy of the disclosure from the seller's records, if the original disclosure is not available.¶¶

(c) When a transfer occurs by operation of law:¶¶

(A) DMV will accept a certification from the buyer as provided in subsection (5)(a) of this rule, without requiring further information or evidence as to the availability of a disclosure from the person who transferred the interest, if the transfer is of the type where the person who is transferring interest would in many cases not have possession of, or reasonable access to, the vehicle (e.g., transfer by court order or bankruptcy trustee);¶¶

(B) DMV may require the information described in subsection (5)(b) of this rule, if the transfer is of a type where the person who is transferring interest would in most cases have possession of or reasonable access to the vehicle

(e.g., possessory lien sale or sheriff's sale).¶

(6) Businesses required to maintain odometer disclosure records under federal rule or law include:¶

(a) Auction companies, which as used in this rule, includes any person who takes possession (whether through consignment or bailment, or through any other arrangement) of a motor vehicle owned by another person for purposes of selling such motor vehicle at an auction;¶

(b) Dealers, which for the purpose of odometer disclosures under this rule and under federal odometer provisions, includes:¶

(A) Any person who meets the definition of "dealer" as defined in OAR 735-150-0010, regardless of whether the person holds a business certificate issued under ORS Chapter 822; and¶

(B) Any person who meets the definition of "dealer" in federal rules and laws (i.e., has sold five or more motor vehicles in the past 12 months to purchasers who in good faith purchase such vehicles for purposes other than resale). For the purpose of this rule, DMV considers any Oregon dismantler or dealer who holds a certificate issued under ORS Chapter 822 to meet this definition.¶

(c) Distributors, which as used in this rule, means any person who has sold five or more vehicles in the past 12 months for resale; and¶

(d) Lessors, which as used in this rule, means any person or agent for any person who has leased five or more motor vehicles in the past 12 months.¶

(7) In addition to any information or documents required under section (5) of this rule, and except as otherwise provided in this rule, disclosures accepted from buyers must contain at least the following:¶

(a) The odometer reading, excluding tenths of a mile or kilometer;¶

(b) Vehicle information sufficient for DMV to identify the vehicle;¶

(c) A certification as to whether, to the best of the person's knowledge, the odometer reading reflects the actual mileage, is in excess of the designed mechanical odometer limit, or does not reflect the actual mileage;¶

(d) The printed name and written signature of the buyer; and¶

(e) The buyer's address.¶

(8) DMV may accept a disclosure on a form other than required under OAR 735-028-0020 through 735-028-0090:¶

(a) Examples of situations where DMV may accept alternative forms include:¶

(A) A disclosure required to be on a title that is in the possession of, and is being retained by DMV;¶

(B) DMV accepting a disclosure as provided under section (5) of this rule; or¶

(C) A disclosure made on a secure power of attorney that has not been transferred to a state issued disclosure form.¶

(b) DMV will not accept a disclosure on an alternative form when:¶

(A) A dealer signs a disclosure as both seller and buyer and does not use a secure power of attorney form; or¶

(B) A dealer uses a secure power of attorney form to make a disclosure when the title was not lost or in the possession of a lienholder.¶

(9) DMV may accept an odometer disclosure that does not contain all the information required by rule, if the documents received by DMV contain all of the following:¶

(a) The odometer reading;¶

(b) A certification as to whether, to the best of the person's knowledge, the odometer reading reflects the actual mileage, mileage in excess of the designed mechanical limit of the odometer, or does not reflect the actual mileage;¶

(c) Vehicle information sufficient for DMV to identify the vehicle; and¶

(d) The signature of the person making the disclosure.¶

(10) DMV may accept a secure power of attorney that does not contain all the information required by rule, if the documents received by DMV contain all of the following:¶

(a) The odometer reading;¶

(b) A certification as to whether, to the best of the person's knowledge, the odometer reading reflects the actual mileage, mileage in excess of the designed mechanical limit of the odometer, or does not reflect the actual mileage;¶

(c) Vehicle information sufficient for DMV to identify the vehicle;¶

(d) The signature of the person granting power of attorney; and¶

(e) The signature of the named attorney.¶

~~(11) DMV may retain a separate power of attorney filing and fee under OAR 735-028-0080(9) that does not contain all the required information.~~

Statutory/Other Authority: ORS 184.619, 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, ~~803.126~~, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060, 821.080

Statutes/Other Implemented: ORS 803.120, 815.425, 49 CFR Part 580

AMEND: 735-028-0110

REPEAL: Temporary 735-028-0110 from DMV 19-2022

NOTICE FILED DATE: 03/28/2023

RULE SUMMARY: DMV added definitions for "odometer disclosure form" and "power of attorney form," making permanent the changes that were made during the temporary rulemaking.

CHANGES TO RULE:

735-028-0110

Providing Secure Forms; Definitions ¶¶

As used in OAR 735-028-0110, ~~735-028-0125~~, ~~735-028-0150~~ and ~~735-028-01560~~ and any agreement entered into under ORS 803.124 and OAR 735-028-0120:¶¶

(1) "DMV" means the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.¶¶

(2) "End user" means a person ~~that~~ who buys or sells vehicles, or provides lending services for vehicles on a regular basis, including certified vehicle dealers, auto auctions, title companies and lending institutions.¶¶

(3) "Odometer disclosure form" means the paper document printed by secure process that is issued by a jurisdiction and contains the following information required by state or federal law upon a transfer of an interest in a motor vehicle:¶¶

(a) A vehicle description, the odometer reading and a certification as to whether, to the best of the person's knowledge, the reading reflects the actual mileage, mileage in excess of the designed mechanical limit or does not reflect actual mileage; and¶¶

(b) Depending on the type of transaction, any other information required by rule to be on the disclosure.¶¶

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.¶¶

(45) "Power of attorney form" means the paper document set forth by secure printing process or other secure process which is issued by a jurisdiction pursuant to 49 CFR ~~??~~ 580.13 or 580.14.¶¶

(6) "Secure Forms Agent" or "Agent" means a person authorized by DMV by written agreement to provide secure forms to end users under the authority of ORS 803.124.¶¶

(57) "Secure Form" means a State of Oregon Secure Odometer Disclosure/Reassignment form (DMV Form 403A) or a State of Oregon Secure Power of Attorney form (DMV Form 402A), used for the purpose of making an odometer disclosure statement as required by state and federal laws.¶¶

(68) "Service Fee" means the fee amount established under OAR 735-028-0125 that a secure forms agent may charge an end user to provide secure forms.¶¶

(79) "Vendor" means a person authorized by written agreement with the Oregon Department of Administrative Services to print, store and provide secure forms to DMV and secure forms agents.

Statutory/Other Authority: ~~ORS 184.616~~, 184.619, 802.010, 803.102, 803.120, 803.124, 803.124, 803.370

Statutes/Other Implemented: ORS 802.200, 803.045, ~~803.092~~, 803.045, 803.124, ~~803.126~~92, 803.124

AMEND: 735-028-0125

REPEAL: Temporary 735-028-0125 from DMV 19-2022

NOTICE FILED DATE: 03/28/2023

RULE SUMMARY: DMV amended this rule to increase the amount a secure forms agent may charge an end user, such as a vehicle dealer or credit union, for secure forms.

CHANGES TO RULE:

735-028-0125

Fee for Providing Secure Forms ¶

(1) An agent may charge the end user a service fee authorized under ORS 803.124 for the service of providing secure forms. A service fee may not exceed 1200 percent of the agent's cost to purchase secure forms from the vendor or a person described in OAR 735-028-0160. In addition to the service fee, an agent may charge an end user the actual cost charged by the United States Postal Service distribution costs for the delivery of secure forms to the end user.¶

(2) Upon request, a secure for similar parcel delivery service for the delivery of secure formsms agent must provide DMV a breakdown of the actual distribution costs associated with providing secure forms to the end user.

Statutory/Other Authority: ORS ~~184.616~~, 184.619, 802.010, 803.124

Statutes/Other Implemented: ORS 803.124, 49 CFR Part 580

ADOPT: 735-028-0160

REPEAL: Temporary 735-028-0160 from DMV 19-2022

NOTICE FILED DATE: 03/28/2023

RULE SUMMARY: DMV amended this rule from the temporary rulemaking version to permit a secure forms agent to sell odometer disclosure forms and power of attorney forms purchased from another state or a person supplying another state until the secure forms agent supply of forms is depleted.

CHANGES TO RULE:

735-028-0160

Secure Forms Limited Availability

(1) A secure forms agent may purchase odometer disclosure forms or power of attorney forms that meet or exceed federal requirements for form and content from a state or a person who supplies forms to another state who is not the vendor when:

(a) The secure forms agent has submitted a purchase order for new secure forms to the vendor;

(b) The vendor notifies DMV and the secure forms agent that the vendor is unable to provide secure forms in the amount requested to the secure forms agent; and

(c) DMV approves the form.

(2) A secure forms agent may sell the odometer disclosure forms or power of attorney forms purchased in accordance with section (1) of this rule to end users until the secure forms agent exhausts the supply purchased during the time Oregon forms were not available.

(3) A secure forms agent must provide DMV with a copy of the purchase order between the secure forms agent and the state or a person who supplies forms to another state described in section (1) of this rule upon request.

(4) DMV will not reimburse the secure forms agent for any unused odometer disclosure forms or power of attorney forms purchased by the secure forms agent from a state or a person who supplies forms to another state described in section (1) of this rule.

Statutory/Other Authority: ORS 184.619, 802.010, 803.124, 49 CFR 580.3

Statutes/Other Implemented: ORS 803.124