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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 735
DEPARTMENT OF TRANSPORTATION
DRIVER AND MOTOR VEHICLE SERVICES DIVISION

FILED

07/25/2023 4:55 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Driver License Hardship Permit Necessary Services

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/21/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

DMV needs to amend Oregon administrative rules (OAR) addressing driver license hardship permits to allow additional opportunities for applicants to drive. The rules currently allow a person who has been issued a hardship permit to drive for work; alcohol, drug, and gambling treatment; and for necessary services. Necessary services allow the person to drive to and from grocery shopping, drive themselves or their children to and from school, drive to and from medical appointments that occur within specific time restrictions, and to care for elderly family members.

DMV proposes amending OAR 735-064-0005 to change the definition of "necessary services." The new definition of "necessary services" will include driving the applicant's children to and from childcare. As mentioned above, the current definition of necessary services includes driving the applicant or the applicant's children to and from school. This change will align the needs of parents of younger children with parents of school-aged children.

DMV proposes to amend the necessary services subsection in OAR 735-064-0040(5)(f) to:

- Clarify that medical appointments permitted in the necessary services section is for medical appointments that are not regular medical appointments. Regular medical appointment requirements are permitted and described in subsection (5)(e) of the rule.
- Extend the permissible timeframes when an applicant is able to demonstrate the need for non-regular medical appointments. DMV proposes to include Saturdays and Sundays. The current rules permit driving for non-regular medical appointments two days a week (Monday – Friday) from 8 a.m. to 12 noon or 1:00 p.m. to 5 p.m. DMV understands there may be situations when an applicant needs to go to a non-regular medical appointment prior to 8 a.m., during the noon hour, after 5 p.m. or maybe even on the weekend. As long as the person can demonstrate the need, DMV does not want to prevent an applicant from getting the medical care the person needs. This rule change will enable applicants to receive that medical care.

- Extend the permissible timeframes when an applicant is able to grocery shop to include the hours of 5 p.m. and 9 p.m. The current rule permits driving for grocery shopping one day a week from 8 a.m. to 12 noon or 1:00 p.m. to 5 p.m. DMV understands there may be applicants who need to conduct their grocery shopping outside of standard business hours and hope to accommodate these applicants with the addition of this later time block. DMV does not want to extend the block of time (four hours) to grocery shop because people with hardship permits are statutorily only allowed 12 hours of driving each day. Extending the block of time may make it hard for the person to stay within the 12-hour statutory requirement.
- Remove restrictions regarding caring of an elderly family member. Applicants who are caring for elderly family members will only need to provide the name and address of the person, or the facility to which, the applicant is driving for necessary services and the times they need to care for the elderly family member. Providing the information will allow DMV will use the information provided and allow for reasonable drive time to get to and from the family member's address.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule changes: 1) allow all hardship permit holders to drive to and from childcare and attend medical appointments that are outside of the timeframe listed in rule if the applicant can demonstrate the need for the appointment outside of the time restriction; 2) add another timeframe for grocery shopping; and 3) remove the timeframe listed in rule for care of an elderly family member. While these changes will apply to applicants of all races equally, by recognizing the need for expanded times when the driving permit can be available, DMV is increasing the usefulness of the hardship permit – which may impact people across diverse populations differently.

FISCAL AND ECONOMIC IMPACT:

See statements below.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The public may be positively affected economically as a result of these changes to Oregon administrative rule because they may be able to work additional hours and still have a hardship permit. Parents of young children will be able to take their kids to childcare and may not have to pay a transportation service to transport the parent and child to childcare. DMV is unable to quantify the economic affects because the impacts are specific to the individuals with hardship permits.

(2) None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

DMV sent draft rules to 14 organizations representing small businesses. No responses were received.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

DMV is permitting additional instances when a person can operate a non-commercial vehicle when they have been issued a hardship permit.

RULES PROPOSED:

735-064-0005, 735-064-0040

AMEND: 735-064-0005

RULE SUMMARY: DMV proposes amending this rule to change the definition of "necessary services." The new definition of "necessary services" will include driving to and from childcare.

CHANGES TO RULE:

735-064-0005

Definitions ¶¶

As used in Division 64 rules, unless the context requires otherwise:¶¶

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

(2) "DUII" means driving under the influence of intoxicants.¶¶

(3) "Fee" means an amount described in ORS 807.370.¶¶

(4) "IID" means ignition interlock device.¶¶

(5) "Intoxicants" means intoxicating liquor, cannabis, psilocybin, a controlled substance, an inhalant or any combination of the five.¶¶

(6) "Immediate family" means the applicant's spouse or partner in a domestic partnership, children, stepchildren, brother, sister, mother, father, mother-in-law, father-in-law, grandmother or grandfather.¶¶

(7) "Family member" means any of the following relatives who live within the same household as the applicant: the applicant's spouse or partner in a domestic partnership, children, stepchildren, brother, sister, mother, father, mother-in-law, father-in-law, grandmother or grandfather.¶¶

(8) "Necessary Services" means driving to and from grocery shopping, driving the applicant or the applicant's children to and from school, driving to and from childcare, driving to and from medical appointments and caring for elderly family members.¶¶

(9) "Care for elderly family member" means driving to and from the residence of the elderly family member.¶¶

(10) "Oregon resident" means a person who is domiciled in this state as defined by ORS 803.355 or is a resident of this state as defined by ORS 807.062(4) and (5).¶¶

(11) "Private transportation" means family members, friends or fellow employees who are able to serve the applicant's transportation needs.¶¶

(12) "Public transportation" means bus, shuttle or commuter service that is able to serve the applicant's transportation needs.

Statutory/Other Authority: ORS 184.619, 802.010, 807.240, 807.270

Statutes/Other Implemented: ORS 807.240, 813.520

AMEND: 735-064-0040

RULE SUMMARY: DMV proposes to make amendments to the necessary services section of the rule.

CHANGES TO RULE:

735-064-0040

Application Requirements for a Hardship Permit ¶¶

- (1) An Oregon resident whose driving privileges are suspended, or revoked under ORS 809.600 as a habitual offender, may apply for a hardship permit. DMV may not issue a hardship permit when:¶¶
- (a) DMV is prohibited by law from issuing a hardship permit.¶¶
 - (b) The suspension of the person's driving privileges is ordered under ORS 809.419 whereby the person is unable to demonstrate that the person is not incompetent to drive because of a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle.¶¶
 - (c) The suspension is an immediate suspension of the person's driving privileges ordered under ORS 809.417(3)(c) for causing or contributing to an accident resulting in death while operating a motor vehicle. When DMV has reason to believe that the person may endanger people or property if the person's driving privileges are not immediately suspended, a condition of the immediate suspension is that the person may not be issued a hardship permit.¶¶
- (2) Documents required to obtain a hardship permit depend on the reason(s) for the suspension or revocation and the type of driver license for which the applicant has applied. An applicant must comply with any sections of this rule that apply to the applicant's suspension, revocation or combination of suspension(s) and revocation(s). All applicants must:¶¶
- (a) Complete a Hardship Application, (DMV Form 735-6044). This form is available at ~~any DMV office, can be printed by going to www.oregondmv.com, or an online application can be completed at <https://DMV2U.oregon.gov>; and online application at DMV2U.oregon.gov, as a print-only application from, www.oregondmv.com or at any DMV office.~~¶¶
 - (b) Pay the hardship permit fee and the reinstatement fee.¶¶
- (3) An applicant, whose driving privileges are suspended under ORS 809.310(3) or 809.411(8) for committing a fraudulent or unlawful act in applying for or in the use of a driver license, driver permit or identification card, must:¶¶
- (a) Provide proof of a verifiable Social Security number or a written statement that the person has not been assigned a SSN;¶¶
 - (b) Provide proof of lawful status if the applicant is applying for a Real ID driver license;¶¶
 - (c) Submit to the collection of biometric data and establish identity as provided in ORS 807.024; and¶¶
 - (d) Provide proof of identity and date of birth.¶¶
- (4) An applicant for a hardship permit must submit a SR22 insurance certificate or other proof of financial responsibility as described in ORS 806.240. The SR22 insurance certificate for an applicant whose driving privileges are suspended for a DUI conviction must show at least the minimum coverage amounts specified in ORS 806.075.¶¶
- (5) An applicant must provide information to DMV that justifies the specific request for driving privileges as follows:¶¶
- (a) To and from work: Name of employer, work address and work hours. If self-employed, the applicant must provide evidence such as a business license, business tax statement, newspaper advertisement or business receipts that DMV may review to verify that the applicant is self-employed.¶¶
 - (b) During the course and scope of the person's employment: A letter from the applicant's employer that states that the applicant's job duties include driving and provides information regarding what times and in which counties the applicant must drive to perform those duties. If self-employed, the applicant must provide the times and counties in which the applicant must drive.¶¶
 - (c) Seeking employment: The days of the week and times of day and in which counties the applicant will seek employment. DMV will only grant driving privileges within normal business hours (8 a.m. ~~to~~ 5 p.m. Monday through Friday) and within the state of Oregon for an applicant to seek employment while on a hardship permit.¶¶
 - (d) For a treatment or rehabilitation program: The name and address of the alcohol, drug or gambling addiction program, along with the days and times the applicant is required to drive to and from the program. Applicants are limited to five treatment or rehabilitation programs for the purposes of the hardship permit, unless the applicant demonstrates the need for additional treatment or rehabilitation programs.¶¶
 - (e) For regular medical treatment: The name and address of the medical treatment facility and the hours and days of the week treatment is provided. DMV will only grant driving privileges within normal business hours (8 a.m. ~~to~~ 5 p.m. Monday through ~~Fri~~Sunday) and within the state of Oregon for an applicant needing regular medical

treatment while on a hardship permit, unless the person demonstrates the need for treatment outside of those restrictions.¶

(f) For necessary services: The name and address of the person to whom or facility to which the applicant is driving for the necessary services and the day(s) and time(s) for which the privilege is needed.¶

~~(A) In addition to these requirements, DMV will grant driving privileges for g:¶~~

~~(A) Grocery shopping one day a week (Monday through Sunday), 8:00 from 8 a.m. -to 12 noon or, 1:00 p.m. -5:00 p.m.¶~~

~~(B) DMV will grant driving privileges for medical appointments two days a week (Monday through Friday), 8:00 a.m. - noon or 1:00 p.m. - 5:00 to 5 p.m. or 5 p.m. to 9 p.m.¶~~

~~(C) DMV will grant driving privileges for the care of elderly family member~~ Non-regular medical appointments two days a week (Monday through Sunday), 8:00 a.m. -to 12 noon or 1:00 p.m. -5:00 to 5 p.m., unless the applicant demonstrates the need for ~~more frequent care~~ attending medical appointments outside these timeframes.¶

(6) An applicant must submit any other information DMV may require for purposes of determining whether the person qualifies under any section of this rule.¶

(7) DMV will deny an application for a hardship permit when DMV has reviewed the application and the applicant does not meet the qualifications for the permit or one or more of the requirements for the permit is missing. If within 60 days of the letter of denial from DMV, the applicant provides all necessary documents to meet any missing requirement or qualification for a hardship permit, DMV will apply the original application fee when issuing the permit.

Statutory/Other Authority: ORS 184.619, 802.010, 807.240

Statutes/Other Implemented: ORS 807.240, 807.370