



## NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 735

**DEPARTMENT OF TRANSPORTATION**

**DRIVER AND MOTOR VEHICLE SERVICES DIVISION**

**FILED**

01/21/2026 4:50 PM

ARCHIVES DIVISION

SECRETARY OF STATE

FILING CAPTION: DMV Lay Representation at Contested Case Hearings

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2026 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 proposes to amend OAR 735-001-0040 to align the rule with a Department of Justice approved format and text. DMV is also amending the rule to update the types of contested cases where DMV may use an agency (lay) representative, as approved by DOJ.

### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

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

DMV finds this will not affect racial equity in this state. The rule is currently in effect and the amendments to the rule only impact who may appear for DMV at contested case hearings, a DMV employee or an Assistant Attorney General (AAG).

### FISCAL AND ECONOMIC IMPACT:

See 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) Only one contested case related to tolling is currently pending before the agency and DMV is represented by counsel; therefore, any cost savings to DMV based on the rule have not yet been determined. DMV is unable to quantify

the savings of using a lay representative instead of an AAG because any savings is dependent on the number of hearings held and whether DMV may choose to have an attorney represent it at specific contested case hearings.

Public – This rulemaking will have no cost of compliance on the public.

DMV/DOJ – This rulemaking will have a limited cost of compliance on DMV and DOJ. DMV will need staff time to collate statistics, compile biannual reports for reauthorization, and conduct or attend training on lay representative responsibilities. However, allowing agency representatives to handle qualifying DMV hearings reduces departmental expenses by eliminating the need to pay DOJ for legal representation in routine cases.

(2) None.

(2)(a) None.

(2)(b) None.

(2)(c) None.

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#### 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.

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

This rulemaking does not impact the public. This rule impacts DMV and DOJ.

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AMEND: 735-001-0040

RULE SUMMARY: DMV proposes to amend this rule to align it with a Department of Justice approved format and text. DMV is also amending the rule to update the types of contested cases where DMV may use an agency (lay) representative, as approved by DOJ.

#### CHANGES TO RULE:

735-001-0040

DMV Representation at Contested Case Hearings-

(1) ~~This rule authorizes an agency officer or employee to represent DMV at a contested case hearing as described in this rule. Except for a hearing described under ORS 183.430(2), the Attorney General has granted authority to DMV to appoint a subject to periodic review and reauthorization by the Attorney General, an officer or employee of DMV is authorized to appear on behalf of DMV in the following types of contested case hearings conducted by an Administrative Law Judge assigned from the Officers or employees to represent DMV at contested case hearings regarding of Administrative Hearings.~~¶

(a) Suspension, revocation and cancellation of driving privileges;¶

(b) Non-issuance of driver licenses and identification cards;¶

(c) Suspension or cancellation of identification cards;¶

(d) Suspension, revocation, cancellation, probation and denial of vehicle dealer certificates;¶

(e) Suspension, revocation, cancellation and denial of dismantler certificates;¶

(f) Suspension, revocation, denial and refusal to issue or renew a towing company certificate;¶

(g) Revocation and denial of a vehicle transporter certificate;¶

(h) Civil penalties assessed on unlicensed dealers and on licensed dealers who violate the laws and rules relating to the sale of vehicles under the authority of ORS 822.009 and OAR chapter 735, division 150;¶

(i) Civil penalties for violations related to dismantlers assessed under authority of ORS 822.137 and OAR chapter 735, division 152;¶

(j) Cancellation of vehicle title and registration under authority of ORS 809.090 and 809.095;¶

(k) ~~Refusal to renew motor vehicle registration related to toll enforcement under the authority of ORS 809.100, 381.312 and 383.035;~~¶

(l) Implied consent cases under ORS 813.410 and OAR 735, division 90;¶

(m) Denial, suspension or revocation of a commercial driving school certificate; and¶

(n) Denial, suspension or revocation of a commercial driver training instructor certificate.¶

(2) The administrative law judge shall not allow an agency representative appearing under section (1) of this rule to present legal argument as defined in this rule.¶

(a) "Legal Argument" includes arguments on:¶

(A) The jurisdiction of the agency to hear the contested case;¶

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and¶

(C) The application of court precedent to the facts of the particular contested case proceeding.¶

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:¶

(A) The application of the statutes or rules to the facts in the contested case;¶

(B) Comparison of prior actions of the agency in handling similar situations;¶

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;¶

(D) The admissibility of evidence; and¶

(E) The correctness of procedures being followed in the contested case hearing.¶

(3) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (1) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.¶

(4) An agency representative appearing under section (1) must read and be familiar with the most recently published Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

Statutory/Other Authority: ORS 183.415, 183.450, 183.452, 184.616, ~~814.619~~, 802.010

Statutes/Other Implemented: ORS 183.450, 183.452