

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Transportation, Driver and Motor Vehicle Services Division	735
Agency and Division	Administrative Rules Chapter Number
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Rules Coordinator Address	Telephone

RULE CAPTION

Identity and Legal Presence Requirements for Driver Licenses and Permits and Identification Cards – Relating Provisions

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

April 15, 2008	6:00 pm	Transportation Building, Room 122 355 Capitol Street NE, Salem OR	Liz Woods
Hearing Date	Time	Location	Hearings Officer
April 16, 2008	6:00 pm	Multnomah Building, Commissioners Boardroom 501 SE Hawthorne, Portland OR	Liz Woods
Hearing Date	Time	Location	Hearings Officer
April 17, 2008	6:00 pm	Lane County Public Service Building, Harris Hall 125 E Eighth Street, Eugene OR	Liz Woods
Hearing Date	Time	Location	Hearings Officer
April 23, 2008	6:00 pm	Coos Bay Public Library, Myrtlewood meeting room 525 Anderson Avenue, Coos Bay OR	Liz Woods
Hearing Date	Time	Location	Hearings Officer
April 24, 2008	6:00 pm	Jackson County Community Justice, downstairs conference room 1101 W Main Street, Medford OR	Liz Woods
Hearing Date	Time	Location	Hearings Officer
April 29, 2008	6:00 pm	Sky View Middle School 63555 Eighteenth Street, Bend OR	Liz Woods
Hearing Date	Time	Location	Hearings Officer
April 30, 2008	6:00 pm	ODOT Region 5 Headquarters, large conference room 3012 Island Drive, La Grande OR	Liz Woods
Hearing Date	Time	Location	Hearings Officer

Note: ODOT will not be providing interpreters for these hearings. Anyone who wishes to give oral testimony in a language other than English may bring an interpreter and provide a translation into English.

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

ADOPT: 735-062-0002, 735-062-0015, 735-062-0016, 735-062-0032, 735-062-0033, 735-062-0125, 735-062-0220

AMEND: 735-010-0008, 735-010-0100, 735-010-0130, 735-062-0005, 735-062-0010, 735-062-0020, 735-062-0030, 735-062-0090, 735-062-0110, 735-062-0120, 735-070-0004, 735-070-0010, 735-070-0020

REPEAL: 735-062-0021

AMEND & RENUMBER: 735-062-0000 to 735-062-0007

ORS 184.616, 184.619, 802.010, 807.024, 807.040, 807.050, 807.060, 807.120, 807.150, 807.160, 807.173, 807.375, 807.400, 809.310, 809.411, 811.603, Oregon Laws 2008, Chapter 1	None
Stat. Auth.	Other Authority
ORS 801.562, 802.012, 802.200, 802.500, 803.015, 803.050, 803.140, 803.220, 803.370, 807.024, 807.040, 807.050, 807.060, 807.066, 807.110, 807.150, 807.160, 807.173, 807.220, 807.230, 807.280, 807.370, 807.375, 807.400, 807.405, 807.410, 807.420, 809.135, 809.310, 809.320, 821.080, Oregon Laws 2008, Chapter 1	
Stats. Implemented	

RULE SUMMARY

Oregon Laws 2008, Chapter 1, requires that an applicant for a driver license, driver permit, or identification card provide proof of a Social Security Number (SSN) or ineligibility for a SSN and proof of legal presence in the United States. These rules define the documents that may be used to prove a SSN (or ineligibility for a SSN), the documents that may be used to prove legal presence, and the documents that may be used to prove an applicant's identity, date of birth, and address.

ORS 807.024 requires that a person applying for issuance, renewal or replacement of a driver license, driver permit or identification card submit to collection of biometric data by the Department of Transportation to establish the person's identity. On July 1, 2008, the department will begin using facial recognition software to determine whether the biometric data for a person applying for any driver license, driver permit or identification card matches the biometric data already on file for that person. This rulemaking covers those sections of the legislation that become operative on July 1, 2008.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

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

May 2, 2008

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Signature

Lauri Kunze

Printed name

Date

* The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Transportation, Driver and Motor Vehicle Services Division

735

Agency and Division

Administrative Rules Chapter Number

In the Matter of the Amendment of 735-010-0008, 735-010-0100, 735-010-0130, 735-062-0005, 735-062-0010, 735-062-0020, 735-062-0030, 735-062-0090, 735-062-0110, 735-062-0120, 735-070-0004, 735-070-0010, 735-070-0020; **Amendment and Renumbering of** 735-062-0000 to 735-062-0007; **Adoption of** 735-062-0002, 735-062-0015, 735-062-0016, 735-062-0032, 735-062-0033, 735-062-0125, 735-062-0220; **and the Repeal of** 735-062-0021

Rule Caption: Identity and Legal Presence Requirements for Driver Licenses and Permits and Identification Cards – Relating Provisions

Statutory Authority: ORS 184.616, 184.619, 802.010, 807.024, 807.040, 807.050, 807.060, 807.120, 807.150, 807.160, 807.173, 807.375, 807.400, 809.310, 809.411, 811.603, Oregon Laws 2008, Chapter 1

Other Authority: None

Statutes Implemented: ORS 801.562, 802.012, 802.200, 802.500, 803.015, 803.050, 803.140, 803.220, 803.370, 807.024, 807.040, 807.050, 807.060, 807.066, 807.110, 807.150, 807.160, 807.173, 807.220, 807.230, 807.280, 807.370, 807.375, 807.400, 807.405, 807.410, 807.420, 809.135, 809.310, 809.320, 821.080, Oregon Laws 2008, Chapter 1

Need for the Rule(s): Oregon Laws 2008, Chapter 1, requires that an applicant for a driver license, driver permit, or identification card provide proof of a Social Security Number (SSN) or ineligibility for a SSN and proof of legal presence in the United States. Other provisions require or authorize the Department of Transportation to identify or define by rule, among other things: the documentation that may be used to prove a SSN (or ineligibility for a SSN) and the documentation that may be used to prove legal presence; the circumstances in which a driver license may be issued, renewed or replaced without a contemporaneous photograph of the applicant; and the documents that may be used to prove an applicant's identity, date of birth, and address. Additional rules and rule amendments are required, or made necessary, by other provisions of Oregon Laws 2008, Chapter 1, including those concerning applicant temporary driver permits and identification cards and renewal and replacement driver licenses. This rulemaking covers those sections of Oregon Laws 2008, Chapter 1, that become operative on July 1, 2008.

ORS 807.024, which also becomes operative on July 1, 2008, requires that a person applying for issuance, renewal or replacement of a driver license, driver permit or identification card submit to collection of biometric data by the Department of Transportation to establish the person's identity. Accordingly, on July 1, 2008, the department will begin using facial recognition software to determine whether the biometric data for a person applying for any driver license, driver permit or identification card matches the biometric data already on file for that person under the name and identification number the person provides and whether the biometric data for the person matches the biometric data already on file for any other person. ORS 807.024 also requires that the department establish by rule an alternative method by which a person may establish his or her identity, when the person's identity cannot be determined through the comparison of biometric data. ORS 807.024 (as amended by Oregon Laws 2008, Chapter 1) authorizes the department to provide, by rule, for issuance, renewal or replacement of valid driver licenses and permits without the collection of biometric data. Pursuant to ORS 807.024, 809.310, 807.400, and 809.135, the proposed amended rules include provisions stating the circumstances in which the department will suspend, cancel or refuse to issue driving privileges or an identification card when a person fails to establish his or her identity by providing the biometric data or through approved alternative methods. ORS 807.375 authorizes the department to establish a fee to cover the cost of purchasing the equipment and establishing and maintaining a database used for collecting and verifying biometric data.

Proposed Rules, Rule Amendments and Repeal: Proposed new rule 735-062-0002 establishes definitions for terms used in rules in Chapter 735 Division 62.

Proposed new rules 735-062-0015, 735-062-0032, 735-062-0033 and 735-062-0125 are required or authorized by Oregon Laws 2008, Chapter 1, and state requirements for proof of legal presence, issuance of temporary permits and identification cards to applicants unable to provide SSN and legal presence documentation, and the issuance of a renewal or replacement driver license containing an already-on-file photograph.

Proposed new rule 735-062-0015 establishes what documents the department will accept as proof of citizenship, permanent legal residence or legal presence.

Proposed new rule OAR 735-062-0016 provides for an alternative method for an applicant to establish his or her identity when identity cannot be established through biometric data comparison. Proposed new rule OAR 735-062-0016 also specifies the circumstances, in which the department will suspend, cancel or refuse to issue driving privileges or an identification card when an applicant fails to establish his or her identity by providing the biometric data or through the alternative method.

Proposed new rule OAR 735-062-0220 imposes an additional fee of \$3.00 to each issuance of an original motorcycle or farm

endorsement that occurs between an original issuance and renewal or between renewals of a Class C or commercial driver license. The other fee increases allowed by ORS 807.375 have been incorporated into Chapter 1, Oregon Laws 2008, effective July 1, 2008.

The proposed amendment to OAR 735-062-0005 specifies the documents (and types of documents) that the department will accept as proof of an applicant's Social Security Number (SSN) or proof that an applicant is not eligible for a SSN. OAR 735-062-0005 also provides that the department will verify a SSN with the Social Security Administration (SSA) before issuing the driver license, driver permit or identification card.

The proposed amendments to OAR 735-062-0007, 735-062-0010, 735-062-0090 and 735-062-0110 further implement the provisions of Oregon Laws 2008, Chapter 1, and ORS 807.024 requiring that applicants for a driver license, driver permit, or identification card provide proof of a SSN or ineligibility for a SSN, proof of legal presence in the United States, and submit to the collection of biometric data.

The proposed amendment to OAR 735-062-0020 concerns proof of identity and date of birth and is the basis for the proposed repeal of temporary rule OAR 735-062-0021, which was adopted as a temporary rule before the enactment of Oregon Laws 2008, Chapter 1. Proposed amendments to OAR 735-010-0130, 735-062-0030 and 735-070-0010 delete references to temporary OAR 735-062-0021. Proposed amendments to 735-010-0100 and 735-010-0130 delete the term "true name" and substitute the term "full legal name," as required by Oregon Laws 2008, Chapter 1, and the proposed amendment to OAR 735-010-0008 defines "full legal name," as that term is used in Oregon Laws 2008, Chapter 1.

The proposed amendments to OAR 735-062-0120 and proposed new rule OAR 735-062-0125 define the requirements for issuing an original, renewed or replacement driver license using an already-on-file photograph of the applicant, as required and authorized by Oregon Laws 2008, Chapter 1.

The proposed amendment to OAR 735-070-0000 provides that a person who is unable to establish identity, as described in ORS 807.024, is not entitled to a driver license or driver permit.

The proposed amendments to OAR 735-070-0004 specify the cancellation and suspension actions the department will take when the department determines that a driver license, driver permit or identification card was issued based on false information given by the applicant or when the applicant is otherwise not entitled to driving privileges or the identification card. The proposed amendments to OAR 735-070-0020 clarify that the department will not rescind a cancellation pending the outcome of a hearing when the cancellation is due to a person's inability to establish identity as required in ORS 807.024 and OAR 735-062-0016.

The department proposes to repeal temporary rule OAR 735-062-0021 because it is inconsistent with the identity requirements of Oregon Laws 2008, Chapter 1.

Documents Relied Upon and where they are available: Enrolled SB 1080 (Oregon Laws 2008, Chapter 1) is available at - <http://www.leg.state.or.us/cgi-bin/searchMeas.pl>.

Fiscal and Economic Impact, including Statement of Cost of Compliance: State agencies and units of local government: With the possible exception of the proposed amendment of OAR 735-062-120 ("Standards for Issuance of Driver's Licenses Without a Photograph") and the proposed adoption of OAR 735-062-0125 ("Standards for Issuance of a Renewal or Replacement Driver License Containing a Previous Photograph"), any fiscal or economic impact on state agencies (including the Department of Transportation's Driver and Motor Vehicle Services Division) and units of local government results from the legislature's enactment of ORS 807.024 and Oregon Laws 2008, Chapter 1, and not the rules to be adopted, amended, or repealed in this proceeding (hereinafter "proposed rules"). Considered in combination, the proposed amendment of OAR 735-062-120 and proposed adoption of OAR 735-062-0125 will likely have a neutral fiscal impact on the department's Driver and Motor Vehicle Services Division (DMV), because most, if not all, of the individuals who would not qualify for issuance, renewal or replacement of a driver license under amended OAR 735-062-120, would qualify under proposed OAR 735-062-125.

Members of the General Public: With the possible exception of the proposed amendment of OAR 735-062-120 ("Standards for Issuance of Driver's Licenses Without a Photograph") and the proposed adoption of OAR 735-062-0125 ("Standards for Issuance of a Renewal or Replacement Driver License Containing a Previous Photograph") and OAR 735-062-0220 (establishing fees), any fiscal or economic impact on members of the general public results from the legislature's enactment of ORS 807.024 and Oregon Laws 2008, Chapter 1, and not these proposed rules. Oregon Laws 2008, Chapter 1, Sections 13 and 14, give DMV discretion to adopt rules allowing applicants for issuance, renewal or replacement of a driver license containing a photograph already on file and without the contemporaneous collection of biometric data. Proposed amended rule OAR 735-062-0120 specifies that DMV will issue a license without a photograph to persons who are members of religious denominations that prohibit photographing of its members and to persons with severe facial disfigurement. Proposed rule OAR 735-062-0125 specifies that, under other limited circumstances, DMV will renew or replace a driver license using a previous photograph of the applicant. These two rules will benefit certain members of the general public who otherwise may be unable to obtain a driver license, or would be unable to do so without the additional expense of going to a DMV field office. For example, a person, who, for business or employment reasons, is traveling or temporarily staying out-of-state, would save on costs of travel to return to Oregon to renew his or her driver license and not incur the costs resulting from not being able to drive lawfully. The issuance of a renewal or replacement license containing a previous photograph will also benefit Oregonians serving in the Armed Services. Because individual circumstances may differ, the department is unable to quantify these economic benefits. In addition, the proposed adoption of OAR 735-062-0125 may cause other applicants to incur additional costs. For example, under the proposed rule, an applicant who is unable to go to a DMV office to renew a driver license for medical reasons must submit proof of the medical condition, including a statement from a treating physician, in order to qualify for renewal. Again,

because individual circumstances will differ, the department is unable to quantify these economic costs. OAR 735-062-0220 imposes an additional fee of \$3.00 to each issuance of an original motorcycle or farm endorsement that occurs between an original issuance and renewal or between renewals of a Class C or commercial driver license.

Businesses, including small businesses: Again, with the possible exception of the proposed amendment of OAR 735-062-120 (“Standards for Issuance of Driver’s Licenses Without a Photograph”) and the proposed adoption of OAR 735-062-0125 (“Standards for Issuance of a Renewal or Replacement Driver License Containing a Previous Photograph”) and OAR 735-062-0220 (establishing fees), any fiscal or economic impact results from the legislature’s enactment of ORS 807.024 and Oregon Laws 2008, Chapter 1, and not these proposed rules. Business – large and small – may experience some savings as a result of the adoption of OAR 735-062-0125, because their employees and representatives working or traveling out-of-state need not interrupt their work to return to Oregon for a renewal or replacement license. No data are available that would permit the department to quantify or confirm those savings. OAR 735-062-0220 imposes an additional fee of \$3.00 to each issuance of an original motorcycle or farm endorsement that occurs between an original issuance and renewal or between renewals of a Class C or commercial driver license.

Projected reporting, recordkeeping and other administrative activities required for compliance: None.

Equipment, supplies, labor and administration required: None. The proposed rules impose no reporting requirements and impose no additional requirements for labor, administration or supplies.

How were small businesses involved in the development of this rule? Fourteen groups representing small businesses were notified of the proposed amendments and invited to comment. No comments were received.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The policy decisions were made by the legislature; the rules carry out those choices. Accordingly, an advisory committee would not have been helpful in the development of these proposed rules.

Authorized Signer

Lauri Kunze

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2005