

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rules(s) adopted on December 21, 2011 by the
Date prior to or same as filing date.

Oregon Department of Transportation, Highway Division
Agency and Division

734
Administrative Rules Chapter Number

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to become effective January 1, 2012 through
Date upon filing or later

June 29, 2012
A maximum of 180 days including the effective date.

RULE CAPTION

Adoption of Temporary Access Management Rules to Conform to 2011 ORS Revisions made by SB 264
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: 734-051-1010, 734-051-1020, 734-051-1030, 734-051-1050, 734-051-1060, 734-051-1070, 734-051-2010, 734-051-2020, 734-051-2030, 734-051-3010, 734-051-3020, 734-051-3030, 734-051-3040, 734-051-3050, 734-051-3060, 734-051-3070, 734-051-3080, 734-051-3090, 734-051-3100, 734-051-3110, 734-051-4010, 734-051-4020, 734-051-4030, 734-051-4040, 734-051-4050, 734-051-5010, 734-051-5020, 734-051-5030, 734-051-5040, 734-051-5050, 734-051-5060, 734-051-5070, 734-051-5080, 734-051-5090, 734-051-5100, 734-051-5110, 734-051-5120, 734-051-6010, 734-051-6020, 734-051-6030, 734-051-6040, 734-051-6050, 734-051-6060, 734-051-6070, 734-051-7010

SUSPEND: 734-051-0010, 734-051-0020, 734-051-0035, 734-051-0040, 734-051-0045, 734-051-0070, 734-051-0080, 734-051-0085, 734-051-0095, 734-051-0105, 734-051-0115, 734-051-0125, 734-051-0135, 734-051-0145, 734-051-0155, 734-051-0165, 734-051-0175, 734-051-0185, 734-051-0195, 734-051-0205, 734-051-0215, 734-051-0225, 734-051-0245, 734-051-0255, 734-051-0265, 734-051-0275, 734-051-0285, 734-051-0295, 734-051-0305, 734-051-0315, 734-051-0325, 734-051-0335, 734-051-0345, 734-051-0355, 734-051-0500, 734-051-0510, 734-051-0520, 734-051-0530, 734-051-0540, 734-051-0550, 734-051-0560

ORS 184.616, 184.619, 374.310, 374.312, 374.313, 374.345, and 811.430, section 2, chapter 31, OL 2010, chapter 330, OL 2011
Stats. Auth.

ORS 374.305 through 374.990
Stats. Implemented

None
Other Authority

RULE SUMMARY

The 2011 Oregon Legislative Assembly adopted Senate Bill 264 which substantially overhauled the statutory authorization for the Oregon Department of Transportation (ODOT) highway access management program. The Act replaced a very general framework for control of highway access with a much more specific and technical framework. It also specified detailed and substantially different evaluation standards for approval and denial of highway access permits compared to what ODOT had in place. The changes in ORS 374.305 *et. seq.* are intended to provide more clear and objective standards for determining whether any particular property can receive a highway approach permit, thus improving property development processes in Oregon.

The new rules will immediately provide needed detail to staff and applicants about how the new procedures and criteria will be administered.

Authorized Signer

Jerri L. Bohard _____
Printed name Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Department of Transportation, Highway Division
Agency and Division

734
Administrative Rules Chapter Number

In the Matter of suspension of OAR 734-051-0010 through OAR 734-051-0560, and adoption of OAR 734-051-1010 through OAR 734-051-7010

Rule Caption: Adoption of Temporary Access Management Rules to Conform to 2011 ORS Revisions of Enrolled Senate Bill 264

Statutory Authority: ORS 184.616, 184.619, 374.310, 374.312, 374.313, 374.345, and 811.430, section 2, chapter 31, OL 2010, chapter 330, OL 2011

Other Authority: None

Statutes Implemented: ORS 374.305 through 374.990

Need for the Temporary Rule(s): The 2011 Oregon Legislative Assembly adopted Senate Bill 264. The bill was signed into law by the Governor in June 2011. The Bill substantially overhauled the statutory authorization for the Oregon Department of Transportation (ODOT) highway access management program. The Act replaced a very general framework for control of highway access with a much more specific and technical framework. It also specified detailed and substantially different evaluation standards for approval and denial of highway access permits compared to what ODOT had in place. The changes in ORS 374.305 *et. seq.* are intended to provide more clear and objective standards for determining whether any particular property can receive a highway approach permit, thus improving property development processes in Oregon.

New rules are needed immediately to provide sufficient detail to staff and applicants about how the new procedures and criteria will be administered. Failure to adopt temporary rules in time for the January 1, 2012 implementation of the law would severely undermine agency's ability to implement the law efficiently and to protect the safety of the motoring public.

Documents Relied Upon, and where they are available: The enrolled SB 264 can be found at:
<http://www.leg.state.or.us/11reg/measpdf/sb0200.dir/sb0264.en.pdf>

Justification of Temporary Rules(s): Upon adoption of SB 264, ODOT launched an immediate and complex work program to develop rules that would respond to changes required by Senate Bill 264, and which would also conform to highway engineering standards and practices. However, the scope of the legislative changes was so significant that ODOT determined that it could not resolve all of the technical issues and complete writing of new administrative rules within the timeframe of the permanent rulemaking process prior to January 1, 2012. Temporary rules are proposed to bring ODOT's access management program into overall compliance with the statute, but more work remains to be completed to fully resolve all issues. Temporary rules will provide a bridge to new permanent rules that will be adopted in summer 2012.

Implementation of ODOT's access management program is carried out in five Regional offices and 15 District offices. Failure to adopt temporary rules would result in inconsistent implementation of Senate Bill 264. This could prejudice applicants in districts where a strict interpretation of the statute was adopted and could prejudice the public interest in districts where a lax interpretation of the statute was adopted. Inconsistent interpretation and application of the statutory requirements could also result in a high degree of dissatisfaction among stakeholders and customers, and elected officials who are looking for proper interpretation and application of the new law to support economic development. The consequences of not establishing temporary rules would result in more errors and questionable decisions by the agency. This situation would increase the number of appeals of the agency's decisions, and diminish the trust of stakeholders and elected officials that the agency is carrying out the new law in an effective and efficient manner. The net effect of the increased errors and appeals would be to increase the agency's program administration cost at a time when there is public pressure to reduce the cost of government services. Finally, the addition of each approach onto the highway creates additional conflict points for motorists on the highway. The SB 264 statutory provisions remove ODOT's authority to permit highway approaches as the agency has done in the past, without providing all of the safety protections that are needed in the new permitting system. Temporary rules are critical to address ambiguities in the statutory provisions that could result in highway traffic safety issues.

Authorized Signer

Jerri L. Bohard
Printed name

Date