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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**

07/27/2022 7:57 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Commercial Driver License Waivers

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/21/2022 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)**

The Federal Motor Carrier Safety Administration (FMCSA) has created an alternative vision-standard process that eliminates the issuance of vision exemptions or waivers. Commercial drivers who do not satisfy the existing visual acuity standard with corrective lenses or the field of vision standard are required by FMCSA to complete the alternative vision-standard process and be physically qualified to operate a commercial motor vehicle (CMV) in interstate commerce.

These commercial drivers must satisfy FMCSA's alternative vision standard along with FMCSA's other physical qualification standards. If an ophthalmologist or optometrist determines a person meets the alternative standard and a medical examiner determines the person is physically qualified to operate a CMV, the person will be issued a medical certificate. Once the person is issued a medical card under the new alternative process, they are permitted to operate a CMV. They do not need a vision exemption issued by FMCSA nor an Oregon Waiver of Physical Disqualification. As a result, DMV no longer needs to issue Oregon waivers for vision.

DMV proposes to amend OAR 735-063-0240 to remove impaired vision from the list for Waiver of Physical Disqualifications available to people who are otherwise disqualified from operating a CMV under 49 CFR § 391.41(b).

DMV proposes to amend OAR 735-063-0210 to adopt 49 CFR 391.41 to 391.49 in effect as of April 1, 2022. This will include the updated alternative vision-standard process.

The proposed rules will align Oregon's medical certification standards for vision with FMCSA's new standards.

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

FMCSA final rule - <https://www.govinfo.gov/content/pkg/FR-2022-01-21/pdf/2022-01021.pdf>

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

Commercial Driver Learner Permit (CLP) and Commercial Driver License (CDL) applicants who needed an Oregon waiver will satisfy physical qualification standards through the new FMCSA alternative vision-standard process. This removes the need for applicants to apply for an Oregon vision waiver. DMV believes the rule will not affect racial equity in this state because any effect, positive or negative, is caused by FMCSA's alternative process.

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FISCAL AND ECONOMIC IMPACT:

See statements below.

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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) Public: CLP and CDL applicants will have to meet the FMCSA alternative vision standards and no longer need to go through Oregon DMV's medical waiver program. The new process may have different reporting requirements and may take a different timeframe for the applicant. DMV is unable to quantify any impacts, positive or negative, for the applicants.

DMV: DMV will be positively economically impacted because it will no longer need to issue and track applicants in Oregon's medical waiver program for vision impairment.

(2)(a), (b) and (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?

The FMCSA alternative vision-standard process removes the need for Oregon's waiver due to visual impairment. There were no discretionary DMV implementation details to develop or coordinate.

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RULES PROPOSED:

735-063-0210, 735-063-0240

AMEND: 735-063-0210

RULE SUMMARY: DMV proposes to amend this rule to adopt 49 CFR 391.41 to 391.49 in effect as of April 1, 2022. This will include the updated alternative vision-standard process.

CHANGES TO RULE:

735-063-0210

CDL or CLP Medical Standards ¶¶

(1) DMV adopts 49 CFR 391.41 to 391.49 in effect as of ~~January~~ April 1, 2022, pertaining to physical qualifications and medical examination of drivers of CMVs.¶¶

(2) Any person who certifies a driving type of non-excepted interstate must meet the medical qualifications described in 49 CFR 391.41 to 391.49 or be exempted from those medical qualifications pursuant to 49 USC 31135 and 31136(e) and 49 CFR 381.300 to 381.330 to be issued or to retain an Oregon CDL or CLP.¶¶

(3) Any person who certifies a driving type of excepted interstate or non-excepted intrastate must:¶¶

(a) Meet the medical qualifications in section (2) of this rule to be issued or retain an Oregon CDL or CLP; or¶¶

(b) Meet the medical qualifications for a Waiver of Physical Disqualification issued by DMV and described in 735-063-0240 to be issued or retain a restricted Oregon CDL or CLP.  
Statutory/Other Authority: ORS 184.619, 802.010, 807.040, 809.419  
Statutes/Other Implemented: ORS 807.040, 807.100, 809.419, 49 CFR §391.41 - §391.49

AMEND: 735-063-0240

RULE SUMMARY: DMV proposes to amend this rule to remove impaired vision from the list for Waiver of Physical Disqualifications available to people who are otherwise disqualified from operating a CMV under 49 CFR § 391.41(b).

CHANGES TO RULE:

735-063-0240

#### Waiver of Physical Disqualification ¶¶

(1) This rule is applicable to holders of or applicants for a CDL, CLP or Class C non-commercial license issued by DMV, who intend to operate a CMV only in Oregon intrastate commerce or are exempt from the physical qualification requirements in 49 CFR 391.41 and 391.43 under 49 CFR 390.3(f), 391.2, 391.68 or 398.3 but must have a medical certificate under ORS 807.100.¶¶

(2) For purposes of this rule, CMV means a commercial motor vehicle as defined in 49 CFR 390.5 and includes a driver employed or applying for employment to operate a CMV by a for-hire carrier as defined in ORS 825.005.¶¶

(3) DMV may issue or renew a Waiver of Physical Disqualification if the person is otherwise disqualified from operating a CMV under 49 CFR 391.41(b) because of one or more of the following disqualifying conditions:¶¶

(a) Loss or impairment of limb;¶¶

(b) Seizure disorder;¶¶

~~(c) Impaired vision; or~~¶¶

~~(d)~~ Hearing loss.¶¶

(4) Except as provided in sections (3) and (12) of this rule, DMV will not issue or renew a Waiver of Physical Disqualification to a person who does not meet the physical qualification standards set forth in 49 CFR 391.41(b).¶¶

(5) To apply for a Waiver of Physical Disqualification, an applicant must submit the following:¶¶

(a) A completed waiver application form, including:¶¶

(A) A current FMCSA medical examination report completed by a certified medical examiner listed on the FMSCA National Registry of Certified Medical Examiners. The report must show that notwithstanding the disqualifying condition, the applicant meets all other physical qualification standards as set forth in 49 CFR 391.41(b);¶¶

(B) Current medical information regarding the disqualifying condition from a treating medical specialist specializing in the assessment and treatment of the type of disqualifying condition for which the applicant is requesting a waiver; and¶¶

(C) If requested by DMV, a copy of the applicant's out-of-state driver record if the applicant has held a driver license in another jurisdiction during the three-year period preceding the date of application.¶¶

(b) If requested by DMV, additional information showing that the disqualifying condition does not impair the person's ability to safely operate a CMV in intrastate commerce.¶¶

(6) The Medical Determination Officer will review an application for an original waiver or for renewal of a waiver and make a recommendation to DMV whether to approve or deny the waiver.¶¶

(a) The Medical Determination Officer review will be conducted using medical waiver guidelines. These guidelines are criteria maintained by the Medical Determination Officer and are available from DMV.¶¶

(b) The Medical Determination Officer may request additional information from DMV or the applicant before making a recommendation.¶¶

(7) Records relating to an applicant or the holder of a current waiver may be reviewed at any time by DMV to determine if the person is qualified to hold the waiver and is complying with the restrictions and conditions of the waiver. The review may include a recommendation from the Medical Determination Officer. DMV may use the information from these records or a recommendation from the Medical Determination Officer as a basis for denial of a waiver or for revocation of an existing waiver as specified in OAR 735-063-0350(4). Records include but are not limited to:¶¶

(a) Driving record;¶¶

(b) Accident record;¶¶

(c) Conviction record; and¶¶

(d) Medical records.¶¶

(8) If DMV has reason to believe the holder of a Waiver of Physical Disqualification is no longer qualified for the waiver, DMV:¶¶

(a) May immediately revoke the waiver as specified in OAR 735-063-0350;¶¶

(b) May request in writing that the holder submit any information requested by DMV in order for DMV to determine if the holder remains eligible for the waiver. The holder must submit any requested information to DMV within 60 days of the date the written request is mailed. Failure to submit the requested information will result in revocation of the waiver as set forth in OAR 735-063-0350(3). DMV may grant an additional 30 days if:¶¶

- (A) The person is seriously ill or injured and DMV receives a written request from a physician for an extension;¶
  - (B) The person is temporarily out of state and DMV receives a written request for an extension from the person; or¶
  - (C) The person can show that the information was requested from another party within the 60 day period and the delay in submitting the information was caused by the other party.¶
- (9) To be eligible for a Waiver of Physical Disqualification, a driver must:¶
- (a) Qualify for commercial driving privileges, have a valid Oregon CDL or CLP, or be an Oregon licensed driver employed by or seeking employment with a carrier to operate a CMV only in Oregon intrastate commerce;¶
  - (b) Have driving privileges that are not suspended, revoked, cancelled or withdrawn in Oregon or any other jurisdiction;¶
  - (c) Have a Waiver of Physical Disqualification that is not currently denied or revoked as specified in OAR 735-063-0350(1) or 735-063-0350 (4);¶
  - (d) Apply for the Waiver of Physical Disqualification as explained in section (4) of this rule; and¶
  - (e) Receive a recommendation for waiver approval from the Medical Determination Officer.¶
- (10) Any driver issued a waiver must comply with the following conditions:¶
- (a) Notify DMV within 10 days of any change in the driver's physical condition or any other condition pertaining to the need for the waiver, modification of the waiver or revocation of the waiver;¶
  - (b) Notify DMV of any crash, arrest or conviction involving the use of a motor vehicle within 30 days of the crash or within 10 days of the arrest or conviction;¶
  - (c) Notify DMV within 10 days of any suspension, cancellation, revocation or withdrawal of driving privileges in a jurisdiction other than Oregon;¶
  - (d) Carry a copy of the medical waiver and any listed waiver conditions at all times while operating a CMV and make the waiver and waiver conditions available to enforcement personnel upon request;¶
  - (e) Operate a CMV only in Oregon intrastate commerce. This subsection does not apply to a driver who is exempt from the physical qualification requirements in 49 CFR 391.41 and 391.43 under 49 CFR 390.3(f), 391.2, 391.68 or 398.3, but must have an approved medical certificate under ORS 807.100; and¶
  - (f) Comply with all waiver conditions related to the disqualifying condition as noted on the Waiver of Physical Disqualification.¶
- (11) The waiver is valid for a period not to exceed the expiration date of the driver's medical certificate.¶
- (12) Incomplete waiver applications are invalid 180 days after receipt by DMV and DMV will take no action to deny or approve the application. After this period, the person must reapply for a waiver in accordance with all of the requirements of this rule.¶
- (13) DMV will renew a Waiver of Physical Disqualification issued for a sleep disorder or cardiac condition if the waiver was in effect on August 10, 2009, and all other requirements set forth in section (9) of this rule are met.
- Statutory/Other Authority: ORS 184.619, 802.010  
Statutes/Other Implemented: ORS 807.040, 807.150