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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**DMV 14-2022**

CHAPTER 735  
DEPARTMENT OF TRANSPORTATION  
DRIVER AND MOTOR VEHICLE SERVICES DIVISION

**FILED**

10/17/2022 2:08 PM  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Security Threat Assessment for a CDL Hazardous Materials Endorsement

EFFECTIVE DATE: 10/17/2022 THROUGH 04/14/2023

AGENCY APPROVED DATE: 10/15/2022

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NEED FOR THE RULE(S):

OAR 735-063-0290 requires commercial driver license (CDL) holders with a hazardous materials endorsement (HME) to pass a security threat assessment (STA) from the Transportation Security Administration (TSA) at intervals of not more than five years from the date of the person's most recent TSA STA. An individual seeking renewal of a HME must initiate an STA at least 60 days before expiration of their current HME. The process of initiating an STA requires the individual to submit information to the TSA enrollment center at least 60 days before the expiration of the HME. When a CDL HME holder does not complete the STA in accordance with OAR 735-063-0290 and federal regulation, DMV initiates cancellation of the driver's CDL.

Even though all shipments do not include hazardous materials, many employers want to have commercial motor vehicle drivers with HMEs available as a matter of efficiency to ensure any driver is authorized to carry any shipment. According to TSA, enrollments for HMEs have exceeded historical demands, increasing from approximately 15,000 per month in 2021 to 20,000 per month in 2022. This has increased processing times and TSA is currently unable to complete the adjudication of potential disqualifying factors and make an eligibility determination within the 60 day timeframe.

On September 15, 2022, TSA granted a temporary exemption from requirements regarding the expiration of TSA STAs for HME holders. For the duration of the exemption, states may extend the expiration date up to 180 days for an HME that expires between July 1, 2022 and December 27, 2022. TSA determined it is in the public interest to grant the exemption to ensure HME's do not expire due to the backlog, further exacerbating current difficulties with the transfer and movement of cargo nationwide and at ports.

DMV believes temporarily amending OAR 735-063-0290 to allow DMV to act in accordance with the TSA temporary exemption will alleviate an undue burden on CDL HME holders and their employers.

JUSTIFICATION OF TEMPORARY FILING:

TSA is unable to complete STAs within a 60 day timeframe, which could result in cancellation for CDL drivers with a

HME. DMV's failure to act promptly will result in serious prejudice to the public interest and qualified CDL HME drivers. The United States is currently experiencing a shortage of commercial driver license (CDL) drivers. Taking qualified CDL drivers off the road because of delays in TSA's processing time would further exacerbate the supply chain issues Oregon is currently facing.

CDL drivers with an HME also deliver cargo not requiring a HME. Cancelling their CDL privileges due to an expired HME, therefore, may negatively impact all cargo transport. The public may not be able to receive necessary medical supplies, fuel to get to work, fertilizer and food products, or other goods.

CDL drivers with an HME will be impacted because they will not be able to earn income. The resulting impact would hurt small businesses and large businesses in addition to individual CDL holders.

According to the TSA exemption, TSA has determined that there is little risk to transportation security associated with the temporary exemption. Additionally, CDL HME holders are still otherwise medically qualified to operate a commercial motor vehicle and do not need to pass any additional DMV tests to continue to do so.

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DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Federal Register: Exemption From Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals - <https://www.federalregister.gov/documents/2022/09/15/2022-19864/exemption-from-renewal-of-the-hazardous-materials-endorsement-security-threat-assessment-for-certain-individuals>

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AMEND: 735-063-0290

RULE SUMMARY: DMV is amending this rule to allow DMV to act in accordance with TSA temporary exemption from requirements regarding the expiration of TSA security checks, described in 87 Fed Reg 56,692 to 56693 (2022), for Hazardous materials endorsement holders. DMV may extend the expiration date for up to 180 days for an HME that expires between July 1, 2022, and December 27, 2022. DMV will withdraw a CDL cancellation issued to eligible individuals.

CHANGES TO RULE:

735-063-0290

Requirements for Issuance and Retention of a Hazardous Materials Endorsement ¶¶

(1) To obtain, retain or renew a CDL with a hazardous materials endorsement, a person must be qualified. To qualify for a hazardous materials endorsement a person must:¶¶

(a) Qualify for commercial driving privileges or have a valid Oregon CDL.¶¶

(b) Pass a hazardous materials endorsement knowledge test for an original endorsement or a renewal.¶¶

(c) Pass a security threat assessment (security check) from the Transportation Security Administration (TSA) in accordance with 49 CFR Part 1572, including receipt by DMV of a notice from TSA showing the person does not pose a security threat. A person must pass a TSA security check:¶¶

(A) Within four years and nine months prior to the date DMV issues an original hazardous materials endorsement;¶¶

(B) At intervals of not more than five years from the date of the person's most recent TSA security check; and¶¶

(C) Any other time required by DMV.¶¶

(d) Pay all required fees, which include, but may not be limited to, any applicable issuance fee and hazardous materials knowledge test fee.¶¶

(e) Successfully complete the hazardous materials endorsement ELDT in accordance with OAR 735-063-0262.¶¶

(2) A person is no longer qualified for a hazardous materials endorsement if:¶¶

(a) DMV receives a notice of threat assessment from TSA requiring cancellation of the hazardous materials endorsement;¶¶

(b) DMV receives notice from TSA indicating the person did not pass the security threat assessment; or¶¶

- (c) The person fails to complete and pass a TSA security check as described in section (1) of this rule.¶
- (3) If DMV determines a person is no longer qualified for a hazardous materials endorsement under this rule, DMV will cancel the person's commercial driving privileges. Upon cancellation the person must immediately surrender to DMV the CDL showing the hazardous materials endorsement. If the person otherwise qualifies and pays a replacement fee, DMV will issue a CDL without a hazardous materials endorsement or a class C non-commercial driver license.¶
- (4) The person may request an administrative review of the cancellation of the person's CDL. The issues for the administrative review are limited to whether:¶
- (a) When required, the person completed and passed a TSA security check as described in section (1) of this rule.¶
- (b) DMV received a notice from TSA showing the person does not qualify for a hazardous materials endorsement.¶
- (c) The person is the same person named on the notice.¶
- (5) An applicant for an Oregon CDL with a hazardous materials endorsement who presents a valid CDL with a hazardous materials endorsement issued by another state must still qualify for an original hazardous materials endorsement as set forth in section (1) of this rule.¶
- (6) If the person passes a TSA security check within one year from the date the person's CDL with a hazardous materials endorsement was canceled under section (3) of this rule and otherwise qualifies for the CDL and endorsement, DMV will reissue the CDL with a hazardous materials endorsement after payment of a replacement fee. If the cancellation has been in effect for more than one year, the person must reapply for the hazardous materials endorsement as an original endorsement and must take all required tests, pay all required fees and pass the required TSA security check.¶
- (7) In accordance with the TSA temporary exemption from requirements regarding the expiration of TSA security checks, described in 87 Fed Reg 56,692 to 56,693 (2022), and notwithstanding section (1)(c)(B) and (2)(c) of this rule, an eligible individual with a TSA security check that expires between July 1, 2022, and December 27, 2022, or a TSA security check that expires during an extension of the TSA security exemption, receives a single extended TSA security check. An extension of the TSA security check exemption may not extend beyond April 1, 2023.¶
- (8) The extension granted to an individual by DMV under section (7) of this rule expires in accordance with the following, whichever occurs first:¶
- (a) For a period of 180 days from the expiration date of the individual's most recent TSA security check; or¶
- (b) When the eligible individual's determination from TSA is received by DMV.¶
- (9) DMV shall withdraw a CDL cancellation issued to an eligible individual under section (3) of this rule when DMV determines the individual qualifies for an extension under section (7) of this rule.¶
- (10) DMV will initiate a CDL cancellation if a final or immediate notification of threat from TSA is received by DMV.¶
- (11) For purposes of section (7) through (9) of this rule, an "eligible individual" is defined as an individual who held a valid, unexpired HME with an STA (Determination of No Security Threat) on or after July 1, 2022, for which a hazardous materials endorsement has expired or would otherwise expire between July 1, 2022, and the close of the effective period of the concurrent federal exemption or an extension of that exemption.
- Statutory/Other Authority: ORS 184.619, 802.010, 807.085, 807.173, 49 USC sec. 5103a, Oregon Laws 20242, Chapter ~~630~~55, Section 1035
- Statutes/Other Implemented: ORS 807.085, 807.170, 807.173, 807.350, 809.310, Oregon Laws 20242, Chapter ~~630~~55, Section 1035