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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

01/25/2023 11:36 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Lifting Restriction on Limited Term CDL Issuance to Legally Present Mexican and Canadian Citizens

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2023 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 received modified guidance from Federal Motor Carrier Safety Administration (FMCSA) on September 8, 2022, related to the applicability of 49 CFR § 383.23 (Footnote 1) to limited-term commercial driver license (CDL) and commercial learner permit (CLP) applicants from Mexico. DMV proposes to amend OAR 735-063-0265 and 735-063-0268 to remove the prohibition against issuing a limited-term CLP or a limited-term CDL to qualified and eligible applicants from Mexico or Canada who are now domiciled in or a resident of Oregon. DMV will accept SAVE verified proof of temporary lawful status (I-94, CBP I-94 or I-766) that displays under a heading of country of citizenship, country of birth, nationality, or similar heading either Mexico or Canada for the purpose of issuing limited-term CLP and CDLs.

The Commercial Motor Vehicle Safety Act of 1986 provided the first federal standards for CDL issuance. The purpose of this Act was twofold: (1) to improve highway safety by ensuring that drivers of large trucks and buses were qualified to operate those vehicles and (2) to remove unsafe, unqualified drivers from our Nation's highways. Central to this new legal framework was the "domicile requirement," which established a single-license standard and sought to eliminate the ability to avoid suspensions or revocations with a new "clean" driving record in another state.

The Federal Highway Administration (FHWA), responsible for commercial motor vehicle (CMV) and CDL oversight at the time, subsequently promulgated regulations. Its first final rule on Commercial Driver Testing and Licensing Standards articulated the "one driver/one record" principle for the first time (49 CFR § 383.21).

49 CFR § 383.23 prohibits people from legally operating a CMV unless the person possesses a CDL issued by the person's jurisdiction of domicile. There are only three instances where a person may operate a CMV legally without possession a CDL issued by the person's jurisdiction of domicile:

- The person is domiciled in a foreign jurisdiction that does not issue CDLs in accordance with the United States

standards. These people may be issued a CDL from a jurisdiction in which the person is not domiciled.

- The person is domiciled in a state that is prohibited from issuing CDLs in accordance with 49 CFR § 384.405. These people may be issued a CDL from a jurisdiction in which the person is not domiciled.
- The person possess a CLP. These people do not possess a CDL, but they may operate a class of CMV as provided by the CLP in accordance with 49 CFR § 383.25.

The footnote in 49 CFR § 383.23 states, "Effective December 29, 1988, the Administrator determined that commercial driver's licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, and as amended on January 19, 2017, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of 49 CFR § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining a non-domiciled CDL, or any other type of driver's license, from a State or other jurisdiction in the United States."

Because Mexico and Canada issue CDLs in accordance with the United States standards, the federal regulation prevents Oregon from issuing CDLs to applicants who possess a CDL from either country when the person is NOT domiciled in or a resident of Oregon. Oregon law prevents DMV from issuing CDLs or non-commercial driver licenses to applicants who are not domiciled in or a resident of Oregon, therefore the federal government's prohibition of issuing credentials to applicants who are domiciled in Canada or Mexico has no effect on Oregon. An applicant who becomes a resident of or domiciled in Oregon is eligible for an Oregon CDL, regardless of if they were previously domiciled in or a resident of Canada or Mexico and were issued a CDL from that foreign jurisdiction. During the issuance of an Oregon CDL, DMV will require the applicant to surrender their CDL from Mexico or Canada, keeping Oregon in compliance with the single license provision of 49 CFR § 383.21.

Oregon does not issue non-domicile CDLs.

This proposed rulemaking will result in Oregon's continued alignment with federal regulations and will not prohibit qualified and eligible applicants from obtaining an Oregon CDL.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

eCFR :: 49 CFR 383.23 -- Commercial driver's license. -

<https://www.ecfr.gov/current/title-49/subtitle-B/chapter-III/subchapter-B/part-383/subpart-B/section-383.23>

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

DMV believes there will be a positive effect on racial equity in this state. People of marginalized communities who are here on a temporary basis from Mexico or Canada will be able to obtain a limited-term CLP or CDL. Obtaining a limited-term CLP or CDL will help the person provide for their family and will add CMV drivers to the road, which will help Oregon address supply chain problems and truck driver shortages.

FISCAL AND ECONOMIC IMPACT:

See statements 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) Public - Applicants from Mexico or Canada residing in Oregon on a temporary basis may now qualify for a CLP or CDL. Applicants who successfully complete the application requirements will be allowed to operate a CMV. This will enable them to earn an income and provide for their families. Small and large businesses will be positively impacted due to the purchasing power of the successful applicants and additional applicants for open positions. Oregonians as a whole will be positively impacted because additional CMV drivers will help ensure goods and services will be delivered.

State Agencies - DMV will have implementation costs that will be absorbed in the agency's budget.

(2) There are no costs for small business to comply with this rulemaking. Small businesses that wish to pay for their workers to obtain a CLP or CDL may incur costs associated with that like any other worker they opt to pay for.

(2)(a), (b) and (c) None

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.

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

This rule allows additional people to qualify for a CLP or CDL without compromising safety.

RULES PROPOSED:

735-063-0265, 735-063-0268

AMEND: 735-063-0265

RULE SUMMARY: DMV proposes to amend this rule to remove the prohibition against issuing a limited-term CLP or a limited-term CDL to qualified and eligible applicants from Mexico or Canada who are now domiciled in or a resident of Oregon.

CHANGES TO RULE:

735-063-0265

Issuance of Limited Term Non-Real ID CLP or CDL

(1) An applicant who is lawfully present in the United States on a temporary basis may qualify for a limited term non-Real ID CLP or limited term non-Real ID CDL by providing one of the following documents:¶

(a) Arrival/Departure Record (I-94 or CBI I94-A) issued by the United States Department of Homeland Security or Custom and Border Protection presented with or within a valid unexpired foreign passport.¶

(b) Arrival/Departure Record (I-94 or CBP I-94) stamped admitted as a Refugee, Asylee, Asylum, Parole, Parolee, or Paroled for an indefinite period presented with acceptable proof of identity as defined in OAR 735-062-0020.¶

(c) Employment Authorization card (I-766), unexpired.¶

~~(2) In accordance with 49 CFR sections 383.21 and 383.23 an applicant from Mexico or Canada does not qualify for a limited term CLP or limited term CDL. DMV will not accept an I-94, CBP I-94 or I-766 that displays under a heading of country of citizenship, country of birth, nationality, or similar heading either Mexico or Canada.¶~~

~~(3) DMV will not accept any document issued by the United States Immigration and Customs Enforcement Agency containing the statement:¶~~

~~(a) Under Docket Control;¶~~

~~(b) Under the Order of Supervision; or¶~~

~~(c) Notice of Immigration Bond Cancelled.¶~~

~~(4) DMV will not accept as the proof required by section (1) of this rule a document that is not verified through the Systematic Alien Verification for Entitlements (SAVE) system.¶~~

~~(5) DMV will not accept any document as proof of lawful status in the United States that is:¶~~

~~(a) Stamped cancelled;¶~~

~~(b) Hole-punched;¶~~

~~(c) Marked with clipped corners;¶~~

~~(d) Altered; or¶~~

(e) Amended, unless the amendments were completed by the issuing authority.¶

(65) After determining that an applicant has met all requirements for a non-Real ID CLP or non-Real ID CDL and has provided proof of lawful status in the United States on a temporary basis, as described in this rule, DMV will issue a limited term driver license or limited term driver permit and mail it to the address provided by the applicant at the time of the application. The expiration date of a limited term CLP or limited term CDL is as described in ORS 807.130(3).

Statutory/Other Authority: ORS 184.619, 802.010, 807.730, 49 CFR 383.21, 383.23, 383.71

Statutes/Other Implemented: ORS 807.730

AMEND: 735-063-0268

RULE SUMMARY: DMV proposes to amend this rule to remove the prohibition against issuing a limited-term CLP or a limited-term CDL to qualified and eligible applicants from Mexico or Canada who are now domiciled in or a resident of Oregon.

CHANGES TO RULE:

735-063-0268

Issuance of Limited Term Real ID CDL

(1) An applicant who is lawfully present in the United States on a temporary basis may qualify for a limited term Real ID CDL by providing one of the following documents:¶

(a) Arrival/Departure Record (I-94 or CBI I94-A) issued by the United States Department of Homeland Security or Custom and Border Protection presented with or within a valid unexpired foreign passport.¶

(b) Arrival/Departure Record (I-94 or CBP I-94) stamped admitted as a Refugee, Asylee, Asylum, Parole, Parolee, or Paroled for an indefinite period presented with acceptable proof of identity as defined in OAR 735-062-0020.¶

(c) Employment Authorization card (I-766), unexpired.¶

~~(2) In accordance with 49 CFR sections 383.21 and 383.23 an applicant from Mexico or Canada does not qualify for a limited term Real ID CDL. DMV will not accept an I-94, CBP I-94 or I-766 that displays under a heading of country of citizenship, country of birth, nationality, or similar heading either Mexico or Canada.¶~~

~~(3) DMV will not accept any document issued by the United States Immigration and Customs Enforcement Agency containing the statement:¶~~

~~(a) Under Docket Control;¶~~

~~(b) Under the Order of Supervision; or¶~~

~~(c) Notice of Immigration Bond Cancelled.¶~~

~~(4) DMV will not accept as the proof required by section (1) of this rule a document that is not verified through the Systematic Alien Verification for Entitlements (SAVE) system.¶~~

~~(5) DMV will not accept any document as proof of lawful status in the United States that is:¶~~

~~(a) Stamped cancelled;¶~~

~~(b) Hole-punched;¶~~

~~(c) Marked with clipped corners;¶~~

~~(d) Altered; or¶~~

~~(e) Amended, unless the amendments were completed by the issuing authority.¶~~

~~(6) After determining that an applicant has met all requirements for a Real ID CDL and has provided proof of lawful status in the United States on a temporary basis, as described in this rule, DMV will issue a limited term Real ID CDL and mail it to the address provided by the applicant at the time of the application. The expiration date of a limited term Real ID CDL is as described in OAR 735-062-0008(13).~~

Statutory/Other Authority: ORS 184.619, 802.010, 807.730 & 49 CFR ~~??~~ 383.21, 383.23, 383.71

Statutes/Other Implemented: ORS 807.110 & 807.730