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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

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ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Commercial Driver License (CDL) Third Party Examiner Skills Testing of Out-of-State Employees

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/21/2023 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 proposes to amend OAR 735-063-0260 to permit employers that provide training in Oregon and are also CDL third party testing businesses to administer CDL skills tests to their employees when the employee has a non-commercial driver license and commercial learner driver permit (CLP) issued by another state.

OAR 735-063-0260 currently prohibits DMV and CDL third party examiners from testing individuals who live out-of-state because the rule requires the person to have an Oregon CDL or an Oregon CLP. This rulemaking keeps the prohibition in place for DMV and third-party testing businesses that do not train and test their own employees but permits CDL third party examiners to test their own employees who possess an out-of-state driver license and CLP only if the employee has completed Entry-Level Driver Training (ELDT) with the company in Oregon.

This proposed change will allow employers to establish regional training centers in Oregon. The Federal Motor Carrier Safety Administration requires states to accept tests conducted in other states and would allow individuals who successfully pass the CDL Skills Test to return to their State of licensure and obtain their CDL.

This change would not affect or adversely impact test delays for residents of Oregon because it is limited to employer-based training providers that also are third party testing businesses and do not provide testing services to the general public.

This change will not have an impact on Oregon's compliance with federal statutes and regulations.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None

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

This rulemaking permits employees of CDL third party examiners to test with the company even when they possess an out-of-state CDL and CLP. This change applies to all people regardless of race. DMV does not believe this will affect racial equity in this state.

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 – There is a shortage of CDL drivers, and this rulemaking should reduce some of the burden this shortage has on Oregon’s economy and supply chain.

Businesses – Oregon based employers who are also third-party examiners will benefit by being able to train and test employees who live in other states at their facility in Oregon. This change may enable the business to take on more clients or to better service the clients they already have, which should result in either more income for the company or more satisfied customers.

Employees - The one-stop training and testing approach allowed under the new rule is intended to result in employees getting a CDL and driving a commercial motor vehicle for an employer more quickly than if they had to go back to their home state to take the CDL skills test and be issued a CDL. This should result in a financial benefit for the employee, e.g., gaining income.

DMV is unable to further quantify the economic impact of this rulemaking for the public, employees, or the businesses because DMV does not know all of the businesses that would want to begin testing out-of-state employees, how many out-of-state employees would be tested, and how often the employee would drive for the company in Oregon.

(2) None. There are only costs to the business if they choose to begin testing their employees.

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?

DMV is permitting additional people to complete a CDL skills test in Oregon while keeping in alignment with federal regulations.

AMEND: 735-063-0260

RULE SUMMARY: DMV proposes to amend this rule to permit employers that provide training in Oregon and are also CDL third party testing businesses to administer CDL skills tests to their employees when the employee has a noncommercial driver license and commercial learner driver permit (CLP) issued by another state.

CHANGES TO RULE:

CDL Testing and Requirements for Issuance of CDL ¶

(1) An applicant for a CDL must first be issued a CLP and pass a CDL skills test unless the applicant qualifies for one of the following exceptions:¶

(a) The applicant currently holds an Oregon CDL and is applying to renew or replace a CDL granting the exact same privileges.¶

(b) The applicant currently holds an Oregon CDL, is qualified for and has passed the knowledge test to add one or more of the following endorsements:¶

(A) Tank;¶

(B) Hazardous Materials;¶

(C) Doubles/Triples.¶

(c) The applicant surrenders a CDL that is valid or expired less than one year and was issued by another state or the District of Columbia and the applicant:¶

(A) Meets the qualifications set forth in OAR 735-062-0080 subsections (1)(a) - (e);¶

(B) Surrenders a CDL that is the same class as the CDL for which the application is made;¶

(C) Passes the vision screening; and¶

(D) Complies with OAR 735-063-0250(8)(a) to (d).¶

(d) The applicant meets the requirements of OAR 735-063-0280 to be issued an Oregon CDL based on the applicant's military training and experience operating CMVs.¶

(2) For a DMV examiner or CDL Third Party Examiner to administer a CDL skills test to an applicant, the applicant must:¶

(a) Have an unexpired Oregon driver license ~~and~~;¶

~~(b) Have an unexpired Oregon CLP. DMV must have issued the unexpired CLP that was issued not less than 14 days prior to the test. The applicant's;~~¶

~~(c) Have driving privileges must not be that are not suspended, revoked, cancelled or otherwise withdrawn;~~¶

~~(d) Complete all required ELDT;~~¶

~~(e) Be ready to take the test in a class of vehicle or combination of vehicles that corresponds to or is lesser than the CLP, class, endorsements, and restrictions, possessed by the applicant and that corresponds to the CDL for which the person is applying;~~¶

~~(f) Have proof of insurance coverage on the vehicle as required by Oregon law;~~¶

~~(g) Complete all portions of the CDL skills test on the same calendar day unless the applicant fails or is unable to complete all three parts of the CDL skills test during a previous attempt; and~~¶

~~(h) Communicate with the examiner in English. All examiner instructions are given in English and the applicant must respond in English.~~¶

(3) In addition to the applicants described in section (2) of this rule, a CDL Third Party Examiner may administer a CDL skills test to an applicant who:¶

(a) Has a valid non-commercial driver license issued by another state;¶

(b) Has a valid CLP issued by the same state as the non-commercial driver license described in subsection (a) of this section, that was issued not less than 14 days prior to the test;¶

(c) Meets the requirements provided in subsections (c) through (h) of section (2) of this rule;¶

(d) Is employed by an organization that provides employer-based training in Oregon and is an Oregon DMV approved employer-based testing organization;¶

(e) Has completed the employer provided ELDT in Oregon; and¶

(f) Is being tested by the same organization that provided ELDT.¶

(4) DMV adopts the following FMSCA regulations in effect as of January 1, 2020, as the standards that must be followed by an examiner in the administration of a CDL skills test:¶

(a) 49 CFR 383.71, Driver Applicant and Certification Procedures;¶

(b) 49 CFR 383.110 through 383.123, Required Knowledge and Skills; and¶

(c) 49 CFR 383.131 through 383.135, Tests.¶

~~(4) The CDL skills test must be administered in accordance with the federal regulations adopted by section (3) of this rule and the methods and procedures set forth in the Oregon CDL Examiner's Manual. The CDL skills test consists of three parts:~~¶

~~(a) A pre-trip vehicle inspection test. This part of the CDL skills test must be the first test administered by the examiner. It is designed to evaluate the applicant's ability to identify and operate the equipment on the vehicle in which the applicant is being tested and to detect and identify unsafe vehicle equipment items as described in the Oregon Commercial Driver Manual.~~¶

~~(b) A basic control skills test. This part of the CDL skills test must be administered after the applicant has successfully completed the pre-trip vehicle inspection test and prior to the on-road drive test. It is designed to~~

evaluate the applicant's ability to control the vehicle and judge the position of the vehicle in relation to other objects through basic starting, stopping, backing and parking maneuvers.¶

(c) An on-road drive test. This part of the CDL skills test, which must be administered after successful completion of the basic control skills test, is designed to evaluate the applicant's competency to safely operate a vehicle or combination of vehicles under actual driving conditions. The applicant must demonstrate safe and proper driving methods and procedures and knowledge of the traffic laws. The following apply to an on-road drive test:¶

(A) The vehicle or combination of vehicles used for the CDL skills test must be of the class for which the applicant seeks a license or endorsement and must have the proper equipment in safe working order so that the vehicle(s) can be operated safely and legally. DMV will not administer the test if the examiner concludes the vehicle cannot be operated safely and legally; and¶

(B) The vehicle or combination of vehicles must not be loaded.¶

(56) If the applicant fails any part of the CDL skills test, DMV or a CDL Third Party Tester may administer the failed parts of the test on a subsequent day on which DMV or the CDL Third Party Tester does business. CDL Third Party Examiners must conform to the scheduling requirements in OAR 735-060-0105(1)(n).¶

(67) If an applicant fails any part of the CDL skills test, DMV or an approved Third Party Tester may accept the score for the part of the CDL skills test that the applicant passed. Scores for parts of the CDL skills test that the applicant passed may not be accepted for subsequent CDL skills test after the applicant's CLP expires.¶

(78) All CDL skills test results must be recorded in CSTIMS.¶

(89) A passing score for a completed CDL skills test is valid for six months. Once an applicant uses a CDL skills test score to have DMV issue commercial driving privileges, the test score is void and DMV may not use the test score for a subsequent issuance.¶

(910) If a CDL skills test administered by DMV is not completed because of vehicle equipment failure due to the vehicle not having the necessary safety equipment or not being in proper working order, the required test fee will remain on the DMV customer record to serve as payment for a postponed test. If an applicant must postpone a CDL skills test three times due to equipment failure, it is a test failure and the test fee is forfeited. DMV will require an additional test fee for subsequent tests.¶

(101) An applicant for a CDL with a hazardous materials endorsement must meet the requirements described in OAR 735-063-0290.¶

(112) If an applicant is applying for a Real ID CDL, the applicant is not required to comply with the provisions in section (1)(c)(D) of this rule.¶

(123) An applicant for a Real ID CDL must first be issued a non-Real ID CLP and pass a CDL skills test unless the applicant surrenders a valid CDL issued by another state or the District of Columbia and the applicant:¶

(a) Meets social security number verification requirements set forth in OAR 735-062-0006;¶

(b) Except as provided in section (134) of this rule and OAR 735-063-0268, provides proof of U.S. citizenship as described in OAR 735-062-0022(3) or permanent legal residency in the U.S. as described in OAR 735-062-0022(4);¶

(c) Certifies driving type;¶

(d) Provides proof of medical qualification as described in OAR 735-063-0220; and¶

(e) Satisfies all requirements set forth in ORS 807.285.¶

(134) A citizen of a nation with a Compact of Free Association (COFA) with the United States must provide the proof required in OAR 735-062-0022(5). For purposes of this rule, a citizen of a COFA nation is considered to have met lawful permanent resident requirements, under authority of FMCSA guidance, as required under ORS 807.040 for issuance of a CDL. The expiration date of a Real ID issued to a COFA citizen is described in OAR 735-062-0008(14).

Statutory/Other Authority: ORS 184.619, 802.010, 807.085, 807.455, 807.480, ~~Oregon Laws 2021, Chapter 630, Section 103~~

Statutes/Other Implemented: ORS 807.018, 807.031, 807.035, 807.045, 807.085, 807.173, 807.285, 807.455, 807.480, ~~Oregon Laws 2021, Chapter 630, Section 103~~, 49 CFR ~~?~~383.71, 49 CFR ~~?~~383.110 - 383.123, 49 CFR ~~?~~383.131-383.135