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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMV 15-2023

CHAPTER 735
DEPARTMENT OF TRANSPORTATION
DRIVER AND MOTOR VEHICLE SERVICES DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Issuance of Non-Real ID and Real ID Limited Term CLP or CDL

EFFECTIVE DATE: 07/13/2023 THROUGH 01/08/2024

AGENCY APPROVED DATE: 07/12/2023

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NEED FOR THE RULE(S):

DMV needs to amend Oregon Administrative rule (OAR) 735-063-0265 and 735-063-0268 to align with 49 CFR 383.71(f)(2)(i) for limited term non-Real ID Commercial Learner Driver Permit (CLP), limited term non-Real ID Commercial Driver License (CDL) and limited term Real ID CDL issuance.

DMV is amending OAR 735-063-0265 and 735-063-0268 to remove a federally unacceptable document from the list of documents that a person who is lawfully present in the United States on a temporary basis may provide as proof of lawful status. Specifically, DMV is removing the applicant's ability to submit an "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" to qualify for a limited term non-Real ID CLP, limited term non-Real ID CDL or a limited term Real ID CDL.

JUSTIFICATION OF TEMPORARY FILING:

DMV finds that DMV's failure to act promptly will result in serious prejudice to the public interest. If DMV fails to act promptly it will result in serious prejudice because applicants for a limited term non-Real ID CLP, limited term non-Real ID CDL or limited term Real ID CDL will be issued a credential when they do not qualify according to federal regulations. Oregon DMV's issuance of limited term non-Real ID CLP, limited term non-Real ID CDL and limited term Real ID CDL must meet the Federal Motor Carrier Safety Administration (FMCSA) regulation documentation requirements that have been established in order for an applicant to prove the applicant's lawful status in the U.S.

Large commercial vehicles pose a greater safety risk to the public because of their size and potential cargo. An I-94 without an unexpired foreign passport has been deemed insufficient by the FMCSA to vet the individual's lawful status in the U.S. Issuing to someone with malicious intent whose lawful status in the U.S. has not been vetted to the level acceptable by the federal government presents a risk to the public and the state.

The failure to act promptly will seriously prejudice applicants for limited-term commercial driving privileges because applicants may take actions presuming they can obtain a credential under the current DMV rules while being ineligible

for the same credential under federal regulations. The prompt action will avoid conflicts in the law, provide a clear description of the eligibility requirements, and avoid DMV having to deny or cancel the credential due to ineligibility based on improper documentation.

This temporary rulemaking will mitigate the consequences because DMV will prevent the applicant from obtaining or renewing the credential and thus unable to pose a risk to the public or state while operating a CMV with an Oregon credential.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

eCFR :: 49 CFR 383.71 -- Driver application and certification procedures. - <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-III/subchapter-B/part-383/subpart-E/section-383.71>

RULES:

735-063-0265, 735-063-0268

AMEND: 735-063-0265

RULE SUMMARY: DMV is amending this rule to remove a federally unacceptable document from the list of documents that a person who is lawfully present in the United States on a temporary basis may provide as proof of lawful status.

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) 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.¶¶

(3) 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.¶¶

(4) 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.¶¶

(5) 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~~non-Real ID CDL or limited term ~~driver permit~~non-Real ID CLP 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 is amending this rule to remove a federally unacceptable document from the list of documents that a person who is lawfully present in the United States on a temporary basis may provide as proof of lawful status.

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) 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.¶¶

(3) 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.¶¶

(4) 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.¶¶

(5) After determining that an applicant has met all requirements for a limited term 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 ~~a~~described in OAR 735-062-0008(13~~1~~).

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