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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: Transferring Canadian and Mexican CDLs for an Oregon CDL

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2024 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)

This permanent rulemaking is subsequent to the temporary rulemaking that became effective on April 17, 2024.

DMV needs to amend OAR 735-063-0260 to permit applicants who meet the requirements provided in OAR 735-063-0263 and surrender a valid, unexpired Licencia Federal de Conductor issued by the United Mexican States (Mexican CDL) or a valid, unexpired CDL issued by a Canadian Province or Territory (Canadian CDL), to get an Oregon commercial driver license (CDL) without first obtaining a commercial learner permit (CLP) and passing a CDL skills test.

Prior to the temporary rulemaking, Oregon was rare, if not unique in that Oregon allowed CDL transfers to Mexican and Canadian CDL holders without testing. Other States such as Texas, California, Washington, Arizona, New Mexico and Colorado all require Mexican and Canadian CDL holders to pass CDL tests. Because of this difference, and the license reciprocity Oregon has with all other US states, Oregon has become a target for individuals who are fraudulently claiming Oregon residency to be issued Oregon CDLs and avoid the testing or issuance requirements in their home state.

DMV staff noticed a significant increase in the number of applicants with a Mexican CDL applying for an Oregon CDL. DMV went from averaging eight to an average of 125 CDL transfer transactions per month. Along with the significant increase in the number of these transactions, DMV staff identified potential issues with the documents that were submitted by the applicants to prove residency or domicile in Oregon. Examples of concerns included groups of applicants coming to the field office with one non-applicant who would provide verbal address verification for all members of the group, and applicants using residency documents from the same handful of national businesses. The observations made by DMV staff led to a comprehensive review of recent issuances, and a process change requiring centralized review of residency documents, which found significant indications of fraud, giving rise to concerns about the qualifications of these CDL drivers. DMV has not observed similar fraudulent activity related to Canadian CDLs,

however, the rulemaking addresses both Mexican and Canadian CDL transfers because the existing testing exceptions apply to both. And, in accordance with FMCSA guidance, Canadian and Mexican CDLs must be treated similarly; exceptions or prohibitions cannot be applied to one and not the other. Oregon does not have a similar exception for any other country.

DMV has chosen to permanently amend OAR 735-063-0263 to aid in the prevention of fraud by ensuring Mexican and Canadian CDL holders meet requirements and have the skills to safely operate a commercial motor vehicle (CMV) before obtaining Oregon CDLs. DMV proposes to permanently amend the rules to limit who is eligible for a CDL transfer without testing to applicants who have an Employment Based Third Preference (EB-3) visa, are sponsored and employed by an Oregon-based trucking company, have a valid Mexican or Canadian CDL, and meet all other requirements for an Oregon CDL. The EB-3 visa program ensures the individual has the appropriate labor certification and a permanent, full-time job offer. This requirement coupled with the requirement to be employed and sponsored by an Oregon-based trucking company will ensure all requirements are met to operate a CMV safely on Oregon roads and that they are a resident of or domiciled in Oregon.

As a result of DMV amending OAR 735-062-0263, only applicants who meet the updated requirements can use the CDL transfer process without testing. Applicants with a valid CDL from Mexico or Canada who do not meet the updated requirements provided in OAR 735-063-0263 will need to complete all requirements for a noncommercial driver license and a CDL, including obtaining a commercial learner permit and holding it for a minimum of 14 days, passing all knowledge exams, and all skills tests to obtain an Oregon CDL. A CDL from Mexico or Canada waives the Entry-level Driver Training requirement. This change will preserve confidence in Oregon issued credentials. DMV anticipates that potential applicants will no longer be able to come to Oregon and commit fraud to evade testing requirements in their home state.

In line with federal regulations, a person who holds a CDL issued in Mexico or Canada may continue to legally operate a CMV in the US, including Oregon, using a CDL issued in that country.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None

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

DMV acknowledges the adoption of these rules will have a disparate effect on racial equity.

Applicants from Mexico and Canada will no longer be eligible for CDL transfer without taking CDL tests unless they have an Employment Based Third Preference (EB-3) visa, are sponsored and employed by an Oregon-based trucking company, have a valid Mexican or Canadian CDL, and meet all other requirements to be issued an Oregon CDL. DMV proposes reducing which holders of Mexican or Canadian CDLs qualify for transfer without testing, while still maintaining the provision for some. The latter is a benefit CDL holders from other countries do not have.

This rulemaking will require applicants from Mexico and Canada who do not meet the criteria of an EB-3 visa to complete all requirements for a noncommercial driver license and a CDL, including obtaining a commercial learner permit and holding it for a minimum of 14 days, passing all knowledge exams, and all skills tests to obtain an Oregon CDL. Federal law requires CDL applicants to communicate with examiners only in English during a skills test. This requirement has a disproportionate negative impact on applicants from Mexico whose English proficient population is 5% versus Canada whose English proficient population is 76.1%.

Currently, a CDL from Mexico or Canada waives the Entry-level Driver Training requirement. DMV recognizes this rulemaking places additional burdens on applicants, but DMV believes this is a necessary step to take to prevent fraud, ensure all Oregon CDL requirements are met and ensure safety on Oregon's roads.

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) Applicants from Mexico who do not qualify for a CDL transfer without testing will need to complete a vision screening, knowledge test, and applicants from Mexico and Canada will need to complete a skills test to receive an Oregon Class C noncommercial driver license. The cost for a Class C noncommercial knowledge test is \$7 and a noncommercial skills test is \$45 through DMV and approximately \$65 if the applicant takes the skills test from a Third Party Tester. The fee for the Class C noncommercial driver license is \$64. The applicant will also need to pass a CLP knowledge test which costs \$10 and then be issued a CLP, which costs \$40. These customers will also need to take a CDL skills test, which costs \$145 for a DMV-administered skills test. If the applicant takes a CDL skills test through a Third Party CDL Tester, the fees are approximately \$250. All Third Party skills tests costs are set by the Third Party contracted testing business and the test costs vary.

Trucking companies will need to work with the person from Mexico or Canada to get the person the required documentation to qualify for the CDL transfer without testing. The trucking companies that have used the CDL transfer without testing process for their EB-3 holders say it takes them approximately 30 minutes to complete the necessary paperwork for DMV and about 30 minutes for the driver to compile the documents and provide them to the company.

DMV will need to conduct vision screenings, knowledge tests and skills tests for noncommercial driving privileges for these customers. DMV will need to conduct knowledge testing for these applicants for the applicants to receive a CLP.

(2)(a) The type of small businesses subject to the rules are trucking companies. There are approximately 6,874 small business Oregon trucking companies.

Third Party CDL testing businesses may receive a small increase in the number of test applicants. They will receive approximately \$250 for each additional test. DMV is unable to determine how many additional tests may be given. There is no cost to comply for Third Party CDL Testing businesses. There are five private for-hire Third Party CDL testing small businesses in Oregon.

(2)(b) It takes approximately 30 minutes of additional administrative activities to provide the documentation to DMV necessary to show the applicant qualifies for a CDL transfer without testing. DMV is unable to estimate the cost for these increased administrative activities.

(2)(c) The small businesses will only incur the additional administrative costs identified in section (2)(b).

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. DMV also

involved three small businesses, one large business and the Oregon Trucking Association in the rule advisory committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

735-063-0260, 735-063-0263

AMEND: 735-063-0260

RULE SUMMARY: DMV needs to amend OAR 735-063-0260 to permit applicants who meet the requirements provided in OAR 735-063-0263 and surrender a valid, unexpired Licencia Federal de Conductor issued by the United Mexican States (Mexican CDL) or a valid, unexpired CDL issued by a Canadian Province or Territory (Canadian CDL), to get an Oregon commercial driver license (CDL) without first obtaining a commercial learner permit (CLP) and passing a CDL skills test.

CHANGES TO RULE:

735-063-0260

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.¶

(e) The applicant surrenders a valid, unexpired Licencia Federal de Conductor issued by the United Mexican States or a valid, unexpired CDL issued by a Canadian Province or Territory in conformity with the Canadian National Safety Code and meets the requirements described in OAR 735-063-0263.¶

(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;¶

(b) Have an unexpired Oregon CLP that was issued not less than 14 days prior to the test;¶

(c) Have driving privileges 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.¶
- (5) The CDL skills test must be administered in accordance with the federal regulations adopted by section (4) 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.¶
- (6) 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).¶
- (7) 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.¶
- (8) All CDL skills test results must be recorded in CSTIMS.¶
- (9) 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.¶
- (10) 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.¶
- (11) An applicant for a CDL with a hazardous materials endorsement must meet the requirements described in OAR 735-063-0290.¶
- (12) 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.¶
- (13) 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 (14) 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.¶

(14) 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

Statutes/Other Implemented: ORS 807.018, 807.031, 807.035, 807.045, 807.085, 807.173, 807.285, 807.455, 807.480, 49 CFR 383.71, 49 CFR 383.110 - 383.123, 49 CFR 383.131-383.135

AMEND: 735-063-0263

RULE SUMMARY: DMV has chosen to permanently amend OAR 735-063-0263 to aid in the prevention of fraud by ensuring Mexican and Canadian CDL holders meet requirements and have the skills to safely operate a commercial motor vehicle (CMV) before obtaining Oregon CDLs. DMV proposes to permanently amend the rules to limit who is eligible for a CDL transfer without testing to applicants who have an Employment Based Third Preference (EB-3) visa, are sponsored and employed by an Oregon-based trucking company, have a valid Mexican or Canadian CDL, and meet all other requirements for an Oregon CDL.

CHANGES TO RULE:

735-063-0263

CDL Transfer from Canada or Mexico

~~(1) For the purposes of OAR 735-063-0260(1)(c), an applicant may surrender a valid~~An individual may apply to transfer a valid, unexpired Licencia Federal de Conductor issued by United Mexican States or a valid, unexpired CDL issued by a Canadian Province or Territory for an equivalent Oregon CDL if the individual and their employer meet all requirements described in this rule.

~~(2) An Oregon-based trucking company, as defined in section (5) of this rule, that sponsors and employs an individual as described in this rule must first contact DMV Driver Programs at~~DMV_CDLPolicyUnit@odot.oregon.gov to establish eligibility for the transfer of the individual's CDL.

~~(3) To establish the individual's and employer's eligibility for CDL transfer under this rule, the employer must provide the following information:~~

~~(a) The individual applicant's name, date of birth and residence address;~~

~~(b) A copy of the applicant's unexpired EB-3 visa;~~

~~(c) Evidence of the applicant's valid, unexpired Licencia Federal de Conductor issued by the United Mexican States or valid, unexpired CDL issued by a Canadian Provinces and Territories or the United Mexican States. DMV may accept for surrender only:~~

~~(a) A or Territory in conformity with the Canadian National Safety Code that DMV is able to verify through the CDLIS;~~

~~(d) A statement from the company that it withholds Oregon income tax for the applicant; and~~

~~(e) The information required in section (6) of this rule to determine if the company meets the definition of an Oregon-based trucking company, as defined in section (5) of this rule.~~

~~(4) The employer is eligible under this rule if it is an Oregon-based trucking company as defined in section (5) of this rule.~~

~~(5) For purposes of this rule, an "Oregon-based trucking company" means a for-hire motor carrier of property whose principal place of business is located in Oregon.~~

~~(6) DMV shall verify that the trucking company's principal place of business is located in Oregon through the Oregon Secretary of State - Business Registry or other databases, as necessary. To assist DMV in verifying the company's principal place of business, the company must provide DMV with the following information:~~

~~(a) The company's complete business name;~~

~~(b) The address listed as the company's principal place of business; and~~

~~(c) Any additional information requested by DMV to assist DMV in determining the company's principal place of business.~~

~~(7) An applicant is eligible for a CDL transfer under this rule if they meet the following eligibility criteria:~~

~~(a) The applicant possess a valid, unexpired Licencia Federal de Conductor issued by the United Mexican States; or~~

~~(b) A a valid, unexpired CDL issued by a Canadian Province or Territory in conformity with the Canadian National Safety Code;~~

~~(2b) The applicant for transfer must comply withholds an unexpired EB-3 visa;~~

~~(c) The applicant is employed and sponsored by an Oregon-based trucking company; and~~

~~(d) The applicant's driving privileges are not suspended, revoked, cancelled or otherwise withdrawn in any jurisdiction.~~

~~(8) To apply for a CDL transfer, the all other requirements of OAR 735-063-0260, as if the transfer occurred from another U.S. jurisdiction applicant must:~~

~~(a) Complete the application requirements described in ORS 807.045(1);~~

~~(b) Provide proof of medical qualification as described in OAR 735-063-0220; and~~

~~(c) Complete all other eligibility or qualification requirements, excluding an actual demonstration, provided in statute or Oregon administrative rule for the issuance of a CDL.~~

(39) For the purposes of section (1) of this rule, an applicant surrendering a valid, unexpired Licencia Federal de Conductor is considered to have met the requirements of OAR 735-062-0080(1)(a).
Statutory/Other Authority: ORS 184.619, 802.010, 807.072, ~~CFR 7.383.23~~
Statutes/Other Implemented: ORS 807.07045, 807.072, 825.005