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

**DMV 7-2020**

CHAPTER 735  
DEPARTMENT OF TRANSPORTATION  
DRIVER AND MOTOR VEHICLE SERVICES DIVISION

**FILED**  
05/27/2020 5:00 PM  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Requirements for Issuance and Retention of a Hazardous Materials Endorsement

EFFECTIVE DATE: 05/27/2020 THROUGH 11/22/2020

AGENCY APPROVED DATE: 05/27/2020

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**NEED FOR THE RULE(S):**

DMV amends OAR 735-063-0290 to make use of TSA's temporary exemption of expiration of TSA security threat assessments (STAs) for commercial driver license (CDL) holders with hazardous material endorsements (HME). It may be impracticable for some commercial drivers to renew their STAs during the current COVID-19 crisis. Measures to prevent the spread of COVID-19 may affect the ability of persons holding commercial driving privileges to present themselves in-person to a TSA enrollment center for the collection of fingerprints and applicant information. Without the new STA, TSA's regulations prevent States from renewing or extending the expiration of the individual's State-issued HME. DMV has authority to adopt rules regarding the process and frequency for obtaining a security threat assessment and, to the extent practicable, make its rules uniform with any applicable federal regulations related to the holding of a CDL with HME, pursuant to ORS 807.175(1)(a) and (3).

**JUSTIFICATION OF TEMPORARY FILING:**

TSA has determined that it is in the public interest to grant an exemption from certain process requirements in 49 CFR part 1572 related to STAs for HMEs, given the need for commercial drivers with an HME to continue to work without interruption during the current COVID-19 crisis. This action would not compromise the current level of transportation security resulting from the HME requirements because TSA maintains the ability to conduct recurrent security threat checks on HME holders and take action to revoke an HME if derogatory information becomes available, regardless of expiration date. TSA will use data previously submitted by these individuals with expired or expiring HMEs to conduct recurrent vetting against terrorism watch lists and databases to ensure that these individuals continue to meet TSA requirements for having an HME. The Exemption applies to HME that expired or would otherwise expire between March 1, 2020, and the end date of this exemption, which is set for July 31, 2020, unless otherwise modified by TSA. DMV is adopting this temporary rule because a lack of action by DMV may interrupt or impede the transportation of hazardous materials, including compressed gases, and materials necessary to manufacture essential products like cleaning agents and medical supplies. Additionally, due to the 5-year renewal period for the STA, it can be deduced that approximately 5% of HME may expire during the period covered by the waiver. When a HME expires, the individual is required to surrender it to DMV or face cancellation of their commercial driving privilege.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

"Exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals" promulgated by the Transportation Security Administration [Federal Register Docket No. TSA-2003-14610]

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AMEND: 735-063-0290

RULE SUMMARY: In response to the COVID-19 National Emergency and authorized by TSA's "Exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals," DMV will delay cancellation of a CDL with hazardous material endorsement for a period of 180 days if the license holder was unable to initiate or complete the required security threat assessment before the expiration date. The person with an expired hazardous materials endorsement must initiate the process of renewing the person's security threat assessment at least 60 days before the end of this 180-day extension.

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.¶
- (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 (23) 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) Notwithstanding the provisions of this rule, DMV will delay cancellation of a CDL with hazardous material endorsement for a period of 180 days if the license holder was unable to initiate or complete the required security threat assessment before the expiration date, and that hazardous materials endorsement expired or would otherwise expire between March 1, 2020, and July 31, 2020. The person with an expired hazardous materials endorsement must initiate the process of renewing the person's security threat assessment at least 60 days before the end of this 180-day extension. This provision is authorized by and complies with the "Exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals" published by the Transportation Security Administration on April 2, 2020, in response to the COVID-19 National Emergency.

Statutory/Other Authority: ~~49 USC sec. 5103a~~, ORS ~~184.616~~, 184.619, 802.010, 807.173, 49 USC sec. 5103a

Statutes/Other Implemented: ORS 807.170, 807.173, 807.350, 809.310