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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMV 31-2024

CHAPTER 735
DEPARTMENT OF TRANSPORTATION
DRIVER AND MOTOR VEHICLE SERVICES DIVISION

FILED

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FILING CAPTION: Commercial driving privileges issuance, renewal and cancellation; federal Drug and Alcohol Clearinghouse

EFFECTIVE DATE: 11/14/2024 THROUGH 05/12/2025

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NEED FOR THE RULE(S):

The Oregon DMV needs to temporarily amend Oregon Administrative Rules (OAR) 735-063-0205 and 735-001-0050, and adopt a new rule, OAR 735-063-0315. DMV is required by 49 CFR Part 382 and ORS 807.166 to adopt rules to implement the federal Drug and Alcohol Clearinghouse (DACH) for operation of commercial motor vehicles. DMV must adopt temporary rules because DMV must comply with the federal law, but will not be able to adopt permanent rules before the deadline for federal compliance.

The DMV started the permanent rulemaking process based on the expectation the Oregon Transportation Commission (OTC) would hold the scheduled November OTC meeting and vote on approving the permanent rules implementing DACH. However, the OTC canceled this meeting due to reasons beyond the DMV's control.

The DMV has already provided the Notice of Proposed Rulemaking to the public in the October 2024 Oregon Bulletin, and no feedback was received. This temporary rule will be in effect for approximately a month, until just after the OTC meeting on December 4, 2024, when we anticipate the OTC approving the permanent rule.

In 2021, the Federal Motor Carrier Safety Administration (FMCSA) finalized regulations to require State Driver's Licensing Agencies (such as DMV) to access and use information obtained through DACH, an FMCSA-administered database containing driver-specific controlled substance and alcohol records. State Driver's Licensing Agencies risk having federal highway funds withheld if they do not act to remove the commercial driving privileges (CDP) from a person who has a drug and alcohol driving prohibition. This temporary rulemaking is in response to the passage of Oregon Laws 2023, chapter 400, section 8, (Oregon Revised Statutes (ORS) 807.166), which requires DMV to adopt rules necessary to administer DACH for Oregon CDP holders.

DACH is a secure online database that gives employers and government agencies real-time access to information about commercial driver license (CDL) holder drug and alcohol violations. DACH contains records of violations of drug and alcohol prohibitions in 49 CFR Part 382, Subpart B, including positive drug or alcohol test results and test refusals.

According to FMCSA, the purpose of DACH is to improve highway safety by ensuring the commercial learner permit (CLP) and CDL holders with violations described in 49 CFR Part 382, Subpart B, do not operate a commercial motor vehicle (CMV) until they complete a return-to-duty process and can lawfully resume driving.

Following the federal regulations adopted by FMCSA, DMV will query the DACH database prior to issuance of CDP. If DACH indicates the applicant is prohibited from operating a CMV, DMV will not issue, renew or replace CDP to the applicant. This rulemaking also authorizes DMV to query DACH, or receive information from DACH, while the person holds CDP. When DMV receives information from DACH that a person has a prohibited status, DMV will cancel the person's CDP. When a person is denied issuance or renewal, or their CDP privileges are cancelled because of information from DACH, the person may be issued a Class C noncommercial driver license and may qualify to reinstate their CDP when DACH states that the person is no longer prohibited from operating a CMV.

This rulemaking also adds definitions and provides other processes and procedures for the administration of DACH.

JUSTIFICATION OF TEMPORARY FILING:

The DMV must use the emergency rulemaking process under ORS 183.335(5) for the CDL DACH rules for a few important reasons, primarily because the November Oregon Transportation Commission meeting was canceled. This cancellation requires the DMV to act quickly to follow federal rules and manage DACH effectively. Delays could put the state at risk of not meeting federal requirements, which could endanger federal funding and negatively impact public safety on the roads.

DMV actions are in direct response to federal regulations established by FMCSA that require state licensing agencies to access and utilize the DACH database. By following the rulemaking process, the DMV ensures compliance with federal law, mitigating the risk of losing federal highway funding that is vital for Oregon's transportation infrastructure. Failure to act could lead to serious prejudice against the state in terms of federal support.

The DMV's rulemaking aligns with Oregon Laws 2023, chapter 400, section 8, which mandates the DMV to create rules for administering DACH for Oregon CDL holders. This demonstrates a commitment to fulfilling state legislative mandates and promoting the effective implementation of public safety measures regarding commercial driving.

The DACH is designed to enhance highway safety by preventing commercial drivers with drug or alcohol violations from operating commercial motor vehicles until they complete necessary return-to-duty processes. The DMV's proposed rulemaking establishes procedures for querying DACH and canceling commercial driving privileges (CDP) when violations are identified, directly supporting public safety objectives and reducing risks on the road.

The rulemaking process allows the DMV to define key terms and procedures, providing clarity for both the agency and the public. This is particularly important when addressing sensitive issues like drug and alcohol violations. Clear rules and procedures help ensure that all stakeholders understand the process, which is critical for maintaining public trust and confidence.

The rulemaking establishes a framework for individuals affected by DACH information. By allowing individuals to apply for a Class C noncommercial driver license and detailing the reinstatement process for their CDP, the DMV ensures fairness and due process. This balanced approach provides individuals the opportunity to regain their driving privileges while upholding safety standards.

The cancellation of the November OTC meeting requires DMV to expedite its rulemaking to ensure compliance with federal regulations and effective administration of DACH. This situation highlights the urgency of moving forward with

rulemaking; delays could jeopardize the state's compliance with federal requirements, risking federal funding and potentially leading to serious prejudice against the public interest in road safety.

In summary, the Oregon DMV's use of the rulemaking process for the CDL Federal Drug and Alcohol Clearinghouse is essential for legal compliance, effective implementation of state and federal laws, public safety enhancement, clarity in procedures, fairness, and timely action in light of administrative challenges. This comprehensive approach ensures that the DMV can fulfill its obligations and protect the safety of Oregon's roads.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

RULES:

735-001-0050, 735-063-0205, 735-063-0315

AMEND: 735-001-0050

RULE SUMMARY: DMV is adding to the list of circumstances when DMV will provide an administrative review.

CHANGES TO RULE:

735-001-0050

Administrative Review ¶¶

(1) A person who is entitled to an administrative review by DMV under ORS chapter 809 or section (34) of this rule may request an administrative review. An administrative review may be requested by:¶¶

(a) Completing a request on-line at <https://DMV2U.oregon.gov>;¶¶

(b) Faxing a request to (503) 945-5497; or¶¶

(c) Mailing a request to DMV, Administrative Review, 1905 Lana Ave. NE, Salem, Oregon 97314.¶¶

(2) A request for an administrative review must include sufficient information for DMV to identify the person.¶¶

(3) A request for an administrative review may include the following information:¶¶

(a) The person's full name, date of birth, mailing address, and customer number; and¶¶

(b) Any evidence that shows the person is not subject to the suspension, cancellation, or revocation that is the subject of the administrative review.¶¶

(4) In addition to those circumstances specified in ORS 809.140 and 809.440, Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will provide an administrative review of a suspension, revocation, ~~or~~ cancellation or denial of issuance action for:¶¶

(a) Failure to install or maintain installation of an ignition interlock device under ORS 813.602;¶¶

(b) Failure to complete and pass a security threat assessment required for a hazardous materials endorsement from the federal Transportation Security Administration (TSA) or being assessed as a security threat by TSA under ORS 807.173;¶¶

(c) Failure to submit proof of medical qualification to operate a commercial motor vehicle under ORS 807.100(2);¶¶

(d) Failure to pay a judgment under ORS 809.415(1);¶¶

(e) A lapse in making future financial responsibility filings under ORS 809.415(3)(c) or 807.240(3)(e);¶¶

(f) Notification from the superintendent of a hospital under ORS 807.700;¶¶

(g) A request by a school superintendent or a school district board under ORS 339.254;¶¶

(h) Notice received by DMV that a vehicle is totaled, wrecked, dismantled, disassembled or substantially altered under ORS 819.030.¶¶

(i) Cancellation of commercial driving privileges due to failure to complete entry-level driver training as required by rules adopted pursuant to ORS 807.085.¶¶

(j) Instances when the federal Drug and Alcohol Clearinghouse indicates the driver is prohibited from operating a commercial motor vehicle under ORS 807.166 and OAR 735-063-0315.

Statutory/Other Authority: ORS 184.619, 802.010, 809.440

Statutes/Other Implemented: ORS 809.440

AMEND: 735-063-0205

RULE SUMMARY: DMV proposes to add the definition of "commercial driving privileges" or "CDP" and "DACH," and clarify the definition of "Disqualifying condition."

CHANGES TO RULE:

735-063-0205

Definitions ¶¶

Except as otherwise provided in these OAR 735, division 63, rules, the following definitions apply to OAR 735, division 63:¶¶

- (1) "AAMVA" means the American Association of Motor Vehicle Administrators.¶¶
- (2) "Accident records" include, but are not limited to DMV records, police reports, crash reports or other reports from motor carriers.¶¶
- (3) "CDL" means commercial driver license.¶¶
- (4) "CDLIS" means the Commercial Driver's License Information System operated by AAMVA for FMCSA.¶¶
- (5) "CDL Third Party Examiner" means an individual certified by DMV to administer CDL skills tests through a CDL Third Party Tester.¶¶
- (6) "CDL skills test" means a three-part test to determine a CDL applicant's driver competency, consisting of: a pre-trip vehicle inspection, a basic control skills test and an on-road drive test.¶¶
- (7) "CDL Third Party Tester" means a person authorized by DMV to operate a CDL skills testing program and provide CDL Third Party Examiner(s) to administer CDL skills test.¶¶
- (8) "CLP" means a commercial learner driver permit issued under ORS 807.285.¶¶
- (9) "CMV" means commercial motor vehicle, as defined in ORS 801.208.¶¶
- (10) "Commercial driving privileges" or "CDP" has the meaning set forth in ORS 801.207.¶¶
- (11) "Conviction record" means an official record showing a determination of guilt by a court of law upon a plea, verdict, finding, or unvacated bail forfeiture.¶¶
- (112) "CSTIMS", means the Commercial Skills Test Information Management System, a web-based system for scheduling and reporting CDL skills tests information and results.¶¶
- (123) "DACH" means the FMCSA Drug and Alcohol Clearinghouse.¶¶
- (14) "Disqualifying condition" ~~is a means one or more~~ medical condition(s) not meeting FMCSA physical qualification standards as set forth in 49 CFR 391.41(b).¶¶
- (135) "DMV" means the Oregon Department of Transportation, Driver and Motor Vehicle Services Division.¶¶
- (146) "Driving type" means a certification by an applicant or holder of a CDL or CLP for one of the following:¶¶
 - (a) Non-excepted interstate: the person operates or expects to operate in interstate commerce;¶¶
 - (b) Excepted interstate: the person operates or expects to operate in interstate commerce but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68 or 398.3; or¶¶
 - (c) Non-excepted intrastate: the person operates only in intrastate commerce.¶¶
- (157) "ELDT" means Entry-Level Driver Training required under 49 CFR Part 380, Subpart F.¶¶
- (168) "Fifth wheel hitch" has the meaning set forth in ORS 801.275.¶¶
- (179) "FMCSA" means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.¶¶
- (1820) "First-time Real ID" means the first time DMV issues an Oregon Real ID to an applicant and may be issued as an original, renewal or replacement driver license, driver permit or identification card, depending on the privilege that the applicant possesses.¶¶
- (219) "Intrastate commerce" has the meaning set forth in 49 CFR § 390.5 and includes any trade, traffic or transportation taking place exclusively within Oregon.¶¶
- (202) "Lawful status" means, for the purpose of applying for a Real ID driver license, driver permit or identification card, has the meaning set forth in 6 CFR § 37.3.¶¶
- (213) "Medical Determination Officer" means a physician, nurse practitioner or physician assistant, ~~licensed~~ licensed to provide health care services by the State of Oregon, and is employed or designated by DMV to make medical determinations of a driver's medical eligibility for driving privileges.¶¶
- (224) "Medical Specialist" means a person who is licensed as a doctor of medicine, a doctor of osteopathic medicine, an optometrist or an audiologist.¶¶
- (235) "Physician" has the meaning set forth in ORS 807.710.¶¶
- (246) "Real ID" has the meaning set forth in ORS 807.450, and is marked with the distinguishing feature of a star in the upper right corner.¶¶
- (257) "SPE certificate" means a Skill Performance Evaluation certificate issued by FMCSA pursuant to 49 CFR 391.49 to a person who demonstrates the ability to safely operate a CMV in spite of limb impairment or loss.¶¶

(268) "TPR" means the Training Provider Registry, an electronic system operated by FMCSA to list certified training providers and provide access to training providers to report ELDT completion information.¶

(279) "Waiver of Physical Disqualification" or "waiver" means a waiver issued by DMV to a driver who does not meet certain physical qualifications required for drivers of CMVs as set forth in 49 CFR 391.41(b).

Statutory/Other Authority: ORS 184.619, 802.010, 807.450, 807.460, 6 CFR 37.3

Statutes/Other Implemented: ORS 807.040, 807.100, 807.450

ADOPT: 735-063-0315

RULE SUMMARY: DMV proposes to adopt this rule to administer the federal Drug and Alcohol Clearinghouse.

CHANGES TO RULE:

735-063-0315

Commercial Driving Privileges; Federal Drug and Alcohol Clearinghouse; Cancellations

(1) In accordance with ORS 807.166, DMV shall query DACH prior to issuance, renewal or replacement of commercial driving privileges, including upgrading, adding restrictions and transferring a person's CDL privileges.¶

(2) DMV may not issue CDP to an applicant or renew an applicant's CDL when the query described in section (1) of this rule indicates the driver is prohibited from operating a CMV due to a violation of 49 CFR part 382, subpart B.¶

(3) DMV may initiate a query with DACH, or receive information from DACH without initiating a query, regarding an Oregon CDP holder.¶

(4) DMV shall cancel a person's CDP if DMV determines information from DACH indicates the CDP holder is prohibited from operating a CMV.¶

(5) After DMV cancels a person's CDP under section (4) of this rule, the person may apply to regain an Oregon CDP. When the person applies for CDP, DMV will query DACH as described in section (1) of this rule. DMV will issue CDP to the person only if DACH indicates the person is not prohibited from operating a CMV and all other requirements for issuance of CDP are met.¶

(6) A person whose CDP has been cancelled under section (4) of this rule may be issued a Class C noncommercial driver license described in ORS 807.031(5) or an identification card described in ORS 807.400, if all other requirements for issuance are met.¶

(7) If FMCSA notifies DMV that a CDP driver was erroneously placed in a prohibited status in DACH, DMV shall remove any reference to the driver's prohibited status from the CDLIS driver history and terminate the cancellation imposed under this rule. DMV will remove the cancellation from the driver record and restore the record to the status as it existed before the erroneous notification.¶

(8) Notwithstanding section (9) of this rule, DMV shall record a new sanction added to a CDLIS driver record during the period when DMV records show the driver had a prohibited status.¶

(9) DMV may not include any details of a DACH cancellation in the CDLIS driver history record for the CDP driver, including: a State-to-State Status request, State-to-State History request, and a Change State of Record request. Statutory/Other Authority: ORS 184.619, 802.010, 807.166, 809.310

Statutes/Other Implemented: ORS 807.166, 49 CFR Part 382