STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND Division of Motor Vehicles

Notice of Public Hearing

The Administrator of the Division of Motor Vehicles has under consideration proposed amendments to **Rules and Regulations Governing Applicants for Commercial Driver's Licenses, Permits, Renewals and Endorsements.** These proposed amendments are promulgated in accordance with Chapters 31-2 and 42-35 and Section 31-10.3-8 of the General Laws of Rhode Island, as amended, and are established for the purpose of setting forth administrative rules of practice and procedure for the Division of Motor Vehicles. Notice is hereby given in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended, that a public hearing on the above proposed rules and regulations shall be held on Monday, February 6, 2012 at 10:00 a.m. in Dealer Hearing Room, Third Floor, Rhode Island Division of Motor Vehicles, 600 New London Avenue, Cranston, Rhode Island, at which time and place all persons interested will be heard.

In the development of the proposed rules and regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the Rhode Island General Laws, as amended, which may result from these regulations. No alternative approach or duplication or overlap was identified based upon available information.

Copies of the proposed regulations are available for public inspection at the offices of DMV, 600 New London Avenue, Cranston, Rhode Island 02920, or by calling 401-462-4DMV, or by sending an email to: marcy.coleman@dmv.ri.gov. Copies may also be viewed on the Division of Motor Vehicles' website at http://www.dmv.ri.gov/. In conformance with Section 42-35-3(a)(1) of the General Laws of Rhode Island, copies of a concise summary of non-technical amendments will be available upon request. In conformance with Section 22-12-1.1 of the General Laws of Rhode Island, a fiscal note will be made available upon request.

For the sake of accuracy, it is requested that statements made relative to any aspect of the regulations, including alternative approaches, overlap, or significant economic impact, be submitted in writing at the time of the hearing or mailed prior to the hearing date to: Marcy Coleman, Legal Counsel, Division of Motor Vehicles, 600 New London Avenue, Cranston, Rhode Island 02920. Oral statements made at the public hearing will be considered, but should be limited to five minutes each. Dealer Hearing Room is accessible to individuals with disabilities. Individuals requesting interpreter services for the hearing impaired must call Marcy Coleman 401-462-1208 at least forty-eight (48) hours in advance of the hearing date.

Signed this 5th day of January, 2012

_____

Carole Dwyer
Interim Administrator, Division of Motor Vehicles

RHODE ISLAND Department of Revenue
Division of Motor Vehicles
RULES AND REGULATIONS GOVERNING APPLICANTS FOR COMMERCIAL DRIVER'S LICENSES, PERMITS, RENEWALS AND ENDORSEMENTS

Concise Summary of All Non-technical Amendments Pursuant to RIGL § 42-35-3(a)(1)

Some of the mandatory disqualifiers have been amended so that they are not applicable to renewals. This was done because the current regulation was having a disparate impact depending on the applicant's renewal cycle.

The second amendment allows individuals over seventy years of age to provide a valid medical certificate in lieu of the skills test required for certain renewals. This will bring the regulation into compliance with RIGL § 31-10-30.

RULES AND REGULATIONS GOVERNING APPLICANTS FOR COMMERCIAL DRIVER'S LICENSES, PERMITS, RENEWALS AND ENDORSEMENTS

Adopted November 2007

Amended January 2012

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF REVENUE

DIVISION OF MOTOR VEHICLES

INTRODUCTION

These Rules and Regulations are promulgated under the authority of Section 31-10.3-8 and Chapter 42-35 of the General Laws of Rhode Island, as amended, and are established for the purpose of setting standards for the issuance of a commercial driver's license, permit and endorsement.

Pursuant to the provisions of Section 42-35-3(c) of the General Laws of Rhode Island, as amended, consideration was given to: (1) alternative approaches to the regulations; and (2) duplication or overlap with other state regulations. No alternative approach, overlap or duplication nor any significant economic impact was identified; consequently these Regulations are adopted in the best interest of the health, safety and welfare of the public.

The within Rules and Regulations were adopted by me as Interim Administrator of the Division of Motor Vehicles on the _____ day of ~~November, 2007~~ January, 2012.

_____

~~Charles F. Dolan, Administrator~~
Carole Dwyer, Interim Administrator
Division of Motor Vehicles

TABLE OF CONTENTS

RULE 1. PURPOSE, SCOPE AND AUTHORITY 6

RULE 2. DEFINITIONS 6

RULE 3. MINIMUM ELIGIBILITY FOR COMMERCIAL DRIVER'S LICENSE, PERMIT OR ENDORSEMENT…….6

RULE 4. GROUNDS FOR MANDATORY INELIGIBILTY FOR ISSUANCE OF A COMMERCIAL DRIVER'S LICENSE, PERMIT, RENEWAL OR ENDORSEMENT……...7

RULE 5. GROUNDS FOR DISCRETIONARY INELIGIBILITY FOR ISSUANCE OF A COMMERCIAL DRIVER'S LICENSE, PERMIT, RENEWAL OR ENDORSEMENT 8

RULE 6. NOTICE OF DENIAL 8

RULE 7. HEARINGS..... 9

RULE 8. APPEALS.....9

RULE 9. RENEWALS 9

RULE 10. LIBERAL CONSTRUCTION……10

RULE 11. SEVERABILITY 10

RULE 1. PURPOSE, SCOPE AND AUTHORITY

1.1 Pursuant to Section 31-10.3-8 of the Rhode Island General Laws, the Administrator of the Division of Motor Vehicles is authorized to adopt and enforce rules and regulations necessary to administer the provisions of the Uniform Commercial Driver's License Act, contained in Chapter 31-10.3 of the Rhode Island General Laws. In implementing these Rules and Regulations, the Administrator of the Division of Motor Vehicles seeks to ensure public safety by strengthening commercial driver licensing standards.

1.2 These Rules and Regulations establish standards to be used in determining eligibility of applicants for commercial driver's licenses, renewals, permits and endorsements, as well as the hearing and appeal process that shall be followed in the event that an application is denied, pursuant to Section 31-10.3-8 of the Rhode Island General Laws.

1.3 The Rules and Regulations herein contained are promulgated pursuant to Section 42-35-2 of the Rhode Island General Laws and Section 31-10.3-8 of the Rhode Island General Laws, as amended.

RULE 2. DEFINITIONS

The following words used in these Rules and Regulations shall have the following meaning, except when the context otherwise requires;

2.1 The term "Act" whenever used in these Regulations, shall be deemed to refer to the Administrative Procedures Act, Chapter 42-35 of the Rhode Island General Laws.

2.2 The term "Administrator" refers to the Administrator or chief of the Division of Motor Vehicles.

2.3 The term "applicant" means any person who applies to the Division of Motor Vehicles for a commercial driver's license, renewal, permit or endorsement.

2.4 The term "application" refers to an official Division of Motor Vehicles' application for commercial driver's license, renewal, permit or endorsement.

2.5 The term "commercial motor vehicle" (CMV) means a motor vehicle or combination of vehicles used to transport passengers or property if the motor vehicle:

(i) Has a gross combination weight rating of twenty-six thousand one (26,001) or more pounds inclusive of a towed unit(s) with a gross vehicle weight rating of more than ten thousand pounds (10,000 lbs.);

(ii) Is designed to transport sixteen (16) or more passengers including the driver; or

(iii) Is transporting hazardous materials as defined in these Regulations.

2.6 The term "conviction" means an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost or violation of condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated. *See*, Section 31-10.3-3 (11) of the Rhode Island General Laws.

2.7 The term “Department” refers to the State of Rhode Island Department of Revenue, a department in the executive branch of state government that is located at One Capitol Hill, Providence, Rhode Island 02908, or any successor Department.

2.8 The term “Director” wherever used in these Regulations, shall be deemed to refer to the Director of the Department of Revenue, or any successor Department.

2.9 The term “Division” refers to the Division of Motor Vehicles.

2.10 The term “Division of Motor Vehicles” (DMV) refers to the division that exists within the State of Rhode Island Department of Revenue, pursuant to the requirements of Section 42-142-1 of the Rhode Island General Laws, or any successor Department.

2.11 The term “disqualification" means withdrawal of the privilege to drive a commercial motor vehicle due to:

(i) The suspension, revocation, or cancellation of a commercial driver's license by the state or jurisdiction of issuance; or

(ii) Any withdrawal of a person's privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations); or

(iii) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. (Code of Federal Regulations) Part 391.

2.12 The term “endorsement” means an authorization on an individual’s commercial driver’s license required to permit the individual to operate certain types of commercial motor vehicles.

2.13 The term "hazardous materials" means any material that has been designated as hazardous under 49 United States Code 5103 and is required to be placarded under subpart F of 49 CFR Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73.

2.14 The term “hearing” wherever used in these Regulations, shall be deemed to refer to any contested case that is brought before the Administrator of the Division of Motor Vehicles.

2.15 The term “license” wherever used in these Regulations shall mean a commercial driver’s license (CDL), a license issued in accordance with state and federal standards which allows the license holder to operate a specified class of commercial motor vehicle.

2.16 “Medical Advisory Board” is an advisory panel established pursuant to Section 31-10-44 of the Rhode Island General Laws. When any person's eligibility or continuing eligibility for a license is questioned on the grounds of physical or mental fitness, the Administrator of the Division of Motor Vehicles may consult with relevant specialist members of the Medical Advisory Board in determining that person's qualifications to operate a motor vehicle.

2.17 The term “moving violation” means any violation of the law committed by the driver of a vehicle, while the vehicle is in motion.

2.18 The term “permit” wherever used in these Regulations shall mean a commercial driver’s permit issued in accordance with state and federal standards which allows the permit holder to operate a specified class of commercial motor vehicle under specified conditions.

2.19 The term “person” means any individual, partnership, corporation, limited liability company, association, governmental subdivision, public or private organization or any other entity however formed.

2.20 The term “renewal” means the reissuance of a license, permit or endorsement, the term of which has expired.

RULE 3. MINIMUM ELIGIBILITY FOR COMMERCIAL DRIVER’S LICENSE, PERMIT OR ENDORSEMENT

3.1 At the time of submitting an application, the applicant must have been a licensed driver for a minimum of two years. Time periods during which the applicant’s driving privileges were suspended shall not be used in computing the two year minimum.

3.2 At the time of submitting the application, the applicant must be physically qualified to safely operate a commercial motor vehicle. In making this determination, the Division of Motor Vehicles shall follow applicable federal guidelines contained in 49 C.F.R. § 391.41 and may seek recommendations from the Medical Advisory Board pursuant to Section 31-10-44 of the Rhode Island General Laws.

RULE 4. GROUNDS FOR MANDATORY INELIGIBILTY FOR ISSUANCE OF A COMMERCIAL DRIVER'S LICENSE, PERMIT~~, RENEWAL~~ OR ENDORSEMENT

Pursuant to Section 31-10.3-14 (4) of the Rhode Island General Laws, the Division of Motor Vehicles shall not issue a commercial driver's license, permit~~, renewal~~ or endorsement to any person determined to fall within any of the following categories:

4.1 Within a three-year period prior to submitting the application, the applicant has been convicted of any of the offenses set forth in any of the following sections of the Rhode Island General Laws:

(Offenses resulting in mandatory suspension)
(Reckless driving and other offenses against public safety)
(Eluding a law enforcement officer with a motor vehicle)

4.2 Within a two-year period prior to submitting the application, the applicant has been convicted of three or more moving violations within a twelve month period. Parking tickets shall not be considered moving violations.

4.3 Within a five-year period prior to submitting the application, the applicant has been convicted of one or more violations or offenses set forth in the following sections of the Rhode Island General Laws:

(Possession of open container of alcoholic beverage
while operating a motor vehicle)
(Driving to endanger, death resulting)
(Driving to endanger, serious bodily injury resulting)
(Driving under the influence)
(Refusal to submit to chemical test)
(Driving under the influence, death resulting)
(Revocation of license upon refusal to submit to breath test)
(Driving while in possession of controlled substance)
(Refusal to submit to chemical test – juvenile motorist)
(Driving under the influence, serious bodily injury resulting)
(Driving while impaired)

4.4 At the time of submitting the application, the applicant's driving privileges are suspended or revoked.

4.5 Within a three-year period prior to submitting the application, the applicant's driving privileges have been suspended. Suspensions not based on moving violations will not be considered in applying this particular provision.

4.6 Pursuant to Section 31-11-3 of the Rhode Island General Laws, the Division of Motor Vehicles may regard out of state convictions for similar offenses or violations of the same gravity and carrying similar penalties as those listed herein for purposes of determining license, permit or endorsement eligibility.

4.7 At the time of submitting the application, the applicant is subject to any disqualification under 49 CFR § 383.51.

RULE 5. GROUNDS FOR MANDATORY INELIGIBILTY FOR RENEWAL

Pursuant to Section 31-10.3-14 (4) of the Rhode Island General Laws, the Division of Motor Vehicles shall not issue a renewal to any person determined to fall within any of the following categories:

5.1 At the time of submitting the renewal application, the applicant's driving privileges are suspended or revoked.

5.2 At the time of submitting the renewal application, the applicant is subject to any disqualification under 49 CFR § 383.51.

RULE ~~5~~ 6. GROUNDS FOR DISCRETIONARY INELIGIBILITY FOR ISSUANCE OF A COMMERCIAL DRIVER'S LICENSE, PERMIT, RENEWAL OR ENDORSEMENT

Unless at a hearing it is determined that operation of a commercial vehicle by the applicant would not pose a risk to the safety and welfare of the general public, the Division of Motor Vehicles shall not issue a commercial driver's license, permit, renewal or endorsement to any person determined to fall within the following categories:

~~5~~6.1 Where the application contains inaccurate or incomplete information;

~~5~~6.2 Where other information obtained from a reliable source during the course of the application process presents the person to whom the application has been made (the "clerk") with reasonable suspicion that the applicant is not fit or competent to safely operate a commercial motor vehicle. Any clerk who refuses to issue a commercial driver's license, permit, renewal or endorsement to any applicant pursuant to this rule shall specify in writing the factual basis for the denial, which must relate directly to an incident during which the applicant was driving a motor vehicle, and identify the source of the information which led to the denial. This information shall be provided to the applicant at the time of denial. Any clerk who refuses to issue a commercial driver's license, permit, renewal or endorsement to any applicant pursuant to this rule shall not use as the basis for denial any incident which would not be cause for denial under or in direct contravention to any other rule within these Rules and Regulations.

RULE ~~6~~7. NOTICE OF DENIAL

~~6~~7.1 The Division of Motor Vehicles shall notify in writing any individual whose application for a commercial driver's license, renewal, permit or endorsement has been denied. The notice shall contain the legal and factual basis for the denial, the procedure for requesting a hearing and a description of the individual's rights during the appeals process, as set forth in Section 31-11-7(b) of the Rhode Island General Laws.

RULE ~~7~~8. HEARING

~~7~~8.1 Request. Upon receiving a hearing request from an individual whose application has been denied, the Division of Motor Vehicles shall afford a hearing as early as practical, but no later than twenty (20) days after receiving the request, as set forth in Section 31-11-7(b) of the Rhode Island General Laws.

~~7~~8.2 Conduct of hearing. An individual whose application has been denied will be afforded the following rights at the hearing: (1) a hearing before an impartial decision-maker; (2) the opportunity to compel the production of documents and witnesses, including members of the Division of Motor Vehicles 's Medical Advisory Board; (3) the opportunity to confront and cross-examine witnesses; (4) access to all of the evidence upon which the Division of Motor Vehicles relied in making its determination to suspend; and (5) the right to present any and all relevant evidence including the right to obtain and present the results of a recently administered road test, as set forth in Section 31-11-7(d) of the Rhode Island General Laws.

~~7~~8.3 Decision. After the hearing conducted pursuant to Rule 7.2, the Division of Motor Vehicles shall issue a written decision within thirty days after the hearing based solely on the evidence adduced at the hearing and containing the legal and factual basis for the determination. The Division of Motor Vehicles may rescind its order of denial; determine that denial is not warranted; or may deny the license application, as set forth in Section 31-11-7(f) of the Rhode Island General Laws.

RULE ~~8~~9. APPEALS

~~8~~9.1 Any person aggrieved by any order of the Administrator of the Division of Motor Vehicles regarding license denial may appeal the order to the sixth division of the district court by filing, within ten (10) days from the date of the notice to such person of the issuance of the order appealed from, a petition in the sixth division district court stating the grounds upon which the appeal is taken, as set forth in Section 31-11-15 of the Rhode Island General Laws.

~~8~~9.2 A party aggrieved by a final order of the court may seek further appellate review pursuant to the procedures set forth in Section 42-35-15 of the Rhode Island General Laws.

RULE ~~9~~10. RENEWALS

~~9~~10.1 Licenses shall be renewed every five years.

~~9~~10.2 Any individual seventy years of age or older shall be required to renew their license every two years and shall be required to pass a skills test at the time of renewal. The skills test will not be required so long as the renewal applicant is in possession of a valid medical examination certificate issued pursuant to 49 CFR §§ 391.41-391.49.

RULE ~~10~~11. LIBERAL CONSTRUCTION

~~10~~11.1 The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Division of Motor Vehicles to effectuate the purposes of state law, goals, and policies.

RULE ~~11~~12. SEVERABILITY

~~11~~12.1 If any provision of these Rules and Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the Rules and Regulations which can be given effect, and to this end the provisions of these Rules and Regulations are declared to be severable.