

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rules(s) adopted on March 19, 2008 by the
Date prior to or same as filing date.

Oregon Transportation Commission, Oregon Department of Transportation
Agency and Division

740

Administrative Rules Chapter Number

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to become effective

April 1, 2008

Date upon filing or later

Rulemaking Notice was published in the

February 2008

Month and Year

*Oregon Bulletin.***

RULE CAPTION

Adoption and amendment of Federal safety and hazardous materials transportation regulations affecting motor carriers

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

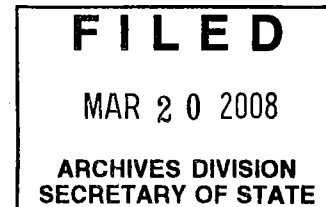
ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: OAR 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090 and 740-110-0010

REPEAL:

RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.



ORS 153.022, 184.616, 184.619, 823.011, 823.061, 825.137, 825.210, 825.232, 825.252, 825.258 & 825.990
Stats. Auth.

None

Other Authority

ORS 825.210, 825.250, 825.252, 825.258 & 825.260

Stats. Implemented

RULE SUMMARY

These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations and the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Amendments to the drivers' hours of service regulations were made to correct an oversight from a previous rulemaking that should have allowed intrastate drivers to use extended intrastate hours of service for sleeper berth operations and for the time card exception. A provision regarding utility service vehicle drivers was deleted, as it has recently been included in the federal regulations that are being adopted. Amendment related to medical waiver applications reflects transfer of that program to DMV.

Authorized Signer

Gregg Dal Ponte
Printed Name

20 March 2008
Date

* With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

** The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

MCTD 1-2008

740-100-0010

Adoption of Federal Safety Regulations

(1) Except as provided in section (4) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in Title 49, Code of Federal Regulations (CFR), Parts 380 (Special Training Requirements), 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards Requirements and Penalties), 385 (Safety Fitness Procedures), 387 (Minimum Levels of Financial Responsibility for Motor Carriers), 390 (Federal Motor Carrier Safety Regulations: General), 391 (Qualification of Drivers), 392 (Driving of Motor Vehicles), 393 (Parts and Accessories Necessary for Safe Operation), 395 (Hours of Service of Drivers), 396 (Inspection, Repair, and Maintenance), 398 (Transportation of Migrant Workers), 399 (Employee Safety and Health Standards), and all amendments thereto in effect April 1, 2008, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) The provisions of Part 387 shall apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes.

(b) With reference to Part 390.21, external identification requirements do not apply to vehicles with a gross combination weight rating of 26,000 pounds or less and operated exclusively in intrastate private carriage, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles with a seating capacity of more than 15 passengers including the driver.

(c) The rules in Part 391.11(b)(1) regarding the minimum age for a commercial motor vehicle operator do not apply to a driver engaged in intrastate commerce.

(d) The rules in Part 391 (except Part 391.11(b)(5), Valid Operator's License, and Part 391.15, Disqualification of Drivers) do not apply to a driver who is employed by a private carrier and does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with Title 49, CFR, Part 177.823, and drives a motor vehicle with a gross vehicle or gross combination weight rating of 26,000 pounds or less.

(e) Notwithstanding Parts 391.41 to 391.49 (Subpart E -- Physical Qualifications and Examinations) the Department may issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Driver and Motor Vehicle Services Division.

(f) With reference to Part 395.1(e), intrastate motor carriers transporting property may drive for a maximum of 12 hours following ten hours off duty;

(g) With reference to Part 395.1(g), intrastate motor carriers transporting property may drive for a maximum of 12 hours following ten hours off duty and may not drive after the 16th hour on duty;

(h) With reference to Part 395.3, motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following ten consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following ten consecutive hours off-duty;

- (C) Drive for any period following 70 hours on-duty in any seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week, however, any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or
- (D) Drive for any period following 80 hours on-duty in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week, however, any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.
- (i) The provisions of subsections (f) through (h) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. Motor carriers transporting hazardous materials of a type or quantity requiring placarding must comply with Part 395.
- (j) The provisions of Parts 396.17 through 396.23 (Periodic Inspection Requirements), are not applicable to operations conducted wholly in intrastate commerce.
- (3) The provisions of Part 386.83(a)(1) and Part 386.84(a)(1), related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce, and apply to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.
- (4) The intracity operation exemption adopted by the US Department of Transportation found in Part 391.62 is not adopted and prescribed.
- (5) Wherever reference is made in Title 49 of the CFR as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety Administration," it shall be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.
- (6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 825.137, 825.210, 825.232 & 825.252
Stats. Implemented: ORS 825.210, 825.250 & 825.252

740-100-0060

Operation of Motor Vehicles, Out-of-Service Conditions Prohibited

- (1) No motor carrier shall permit or require any person to operate nor shall any person operate a motor vehicle over the public highways of the State of Oregon unless the vehicle is free from each defect listed in OAR 740-100-0070. (North American Standard Vehicle Out-of-Service Criteria.)
- (2) In addition to the requirements of section (1) of this rule, a vehicle transporting hazardous materials shall be free from each defect listed in OAR 740-100-0080. (North American Standard Hazardous Material Out-of-Service Criteria.)
- (3) Except as provided in section (4) of this rule, in addition to the requirements of sections (1) and (2) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0090. (North American Standard Driver Out-of-Service Criteria.)
- (4) No motor carrier engaged in intrastate transportation shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0010(2)(f) through (i).

(5) Each defect which exists in each applicable standard shall be deemed a separate and distinct violation of this rule.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.210 & 825.252

740-100-0070

North American Standard Vehicle Out-of-Service Criteria

(1) Appendix A of the North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2008, is adopted by and incorporated into this rule. Inspection violations identified in the chart may be subject to one or more of the following:

(a) Out-of-Service Condition: When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to likely cause an accident or breakdown, or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle shall be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted only at the direction of an official authority.

(b) Other: Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

740-100-0080

North American Standard Hazardous Material Out-of-Service Criteria

(1) Appendix A of the North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2008, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized in this Appendix as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.258

740-100-0090

North American Standard Driver Out-of-Service Criteria

(1) Appendix A of the North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2008, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to one or both of the following:

(a) Out-of-Service Violation: Drivers with violations under this category shall not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met.

(b) Other: Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier must certify in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250, 825.252 & 825.260

740-110-0010

Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to ORS 823.061 who causes to be transported a hazardous material shall comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 397 and such portions of Parts 107-178 and 180 as are applicable, and amendments thereto, in effect on April 1, 2008.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 823.061 & 825.258

Stats. Implemented: ORS 825.258