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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 740
DEPARTMENT OF TRANSPORTATION
MOTOR CARRIER TRANSPORTATION DIVISION

FILED
09/23/2020 11:14 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Re-adoption of Federal Motor Carrier Safety Regulations to Incorporate New Hours of Service Regulations

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/21/2020 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):

On September 29, 2020, the Federal Motor Carrier Safety Administration's new hours-of-service regulations go into effect. This amendment is to incorporate those new Federal Motor Carrier Safety Regulations into Oregon law, so inspectors can apply the new regulations to drivers stopped for inspections.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

49 CFR Part 395

FISCAL AND ECONOMIC IMPACT:

Impact to motor carriers should be positive. The new hours of service regulations give drivers more flexibility in the use of the 30-minute break rule, the adverse driving conditions exception, and the sleeper-berth provision. Carriers qualifying for the short-haul provision may now allow their drivers to work longer and drive farther before reaching the point where Electronic Logging Devices must be purchased, installed and operated.

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).

Depending on the nature of their businesses, some motor carriers qualifying as small businesses may realize cost savings should the newly expanded short-haul provision allow those companies to avoid purchasing, installing and

operating Electronic Logging Devices. Further, flexibility in the sleeper-berth provision may provide opportunities for cost savings. Savings estimates are unavailable.

(1) None

(2)(a) Unknown. ODOT's Commerce and Compliance Division does not ask motor carriers how many people they employ when those companies register.

(2)(b) and (c) None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Fourteen groups representing small businesses received a copy of the proposed amendments and were asked to submit comments on fiscal and economic impact. No comments were received.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 740-100-0010

RULE SUMMARY: Amending to readopt Federal Motor Carrier Safety Regulations in order to incorporate new FMCSA rules that go into effect on September 29, 2020.

CHANGES TO RULE:

740-100-0010

Adoption of Federal Safety Regulations ¶¶

(1) Except as provided in section (3) 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 40 (Procedures For Transportation Workplace Drug and Alcohol Testing Programs), 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~~September 29, 2020, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 823 and 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 823 and 825, except:¶¶

(a) Relating to Part 385:¶¶

(A) The provisions of Part 385.1(b), 385.13(b), 385.13(c), 385.13(d)(3), 385.301 through 385.337 and Appendix A to Part 385 do not apply to a motor carrier operating exclusively in intrastate commerce.¶¶

(B) With reference to Part 385.13(a), 385.19(c) and 385.19(d), current intrastate safety rating information is available from ODOT only by telephone at (503) 378-6963.¶¶

(C) With reference to Part 385.15 and 385.17, requests for administrative review of an intrastate safety rating or requests for a change to a proposed or final intrastate safety rating based on corrective actions must be submitted in writing to the ODOT ~~Motor Carrier Transportation~~Commerce and Compliance Division, 3930 Fairview Industrial Drive SE, Salem OR 97302.¶¶

(D) With reference to Appendix B of Part 385, a final intrastate safety rating will be determined by the Department and the motor carrier to whom the rating applies will be notified in writing of its intrastate safety rating.¶¶

(E) In addition to the violations described in the List of Acute and Critical Violations in Appendix B of Part 385, the Department will include the following violations in a determination of an intrastate or an interstate safety rating:¶¶

- (i) Financial responsibility requirements in OAR 740-040-0010 (critical) and 740-040-0020 (acute); and¶
- (ii) Intrastate drivers hours-of-service requirements found in OAR 740-100-0010(2)(i) (critical).¶
- (b) The provisions of Part 387 will apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes.¶
- (c) With reference to Part 390.21, external identification requirements do not apply to vehicles operated exclusively in intrastate private carriage provided that neither the gross vehicle weight, the gross vehicle weight rating, the gross combination weight or the gross combination weight rating exceeds 26,000 pounds, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles designed or used to transport more than 15 passengers including the driver.¶
- (d) 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. A driver engaged in intrastate commerce must be at least 18 years old.¶
- (e) The rules in Part 391 (except Part 391.11(b)(2), English Speaking Driver, 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 engaged in intrastate commerce and:¶
 - (A) Does not drive a motor vehicle with a gross vehicle weight, gross vehicle weight rating, gross combination weight or gross combination weight rating of 26,001 pounds or more; and¶
 - (B) 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; or¶
 - (C) Does not operate a passenger vehicle designed or used to transport 16 or more passengers, including the driver.¶
- (f) 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.¶
- (g) With reference to Part 395.1(e)(1), motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to exceed 12 hours driving following ten consecutive hours off-duty.¶
- (h) With reference to Part 395.1(g), 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.¶
- (i) With reference to Part 395.1(e)(2) and Part 395.3, a motor carrier 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.¶
- (j) With reference to Part 395.1(k), the planting and harvesting period in Oregon begins January 1 of each year and ends December 31 of each year. ¶
- (k) The provisions of subsections (g) through (j) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. A motor carrier transporting hazardous materials of a type or quantity requiring placarding must comply with Part 395.¶
- (3) The intracity operation exemption adopted by the US Department of Transportation found in Part 391.62 is not adopted and prescribed.¶
- (4) 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 will be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.¶

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

Statutory/Other Authority: ORS 184.619, 823.011, 825.232, 825.252

Statutes/Other Implemented: ORS 825.210, 825.250, 825.252