

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 740
DEPARTMENT OF TRANSPORTATION
MOTOR CARRIER TRANSPORTATION DIVISION

FILED
01/19/2023 2:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Annual re-adoption of Federal Motor Carrier Safety Regulations and Out of Service Criteria

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2023 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.

CONTACT: Howard Russell
503-373-1979
howard.h.russell@odot.oregon.gov

CCD Safety Compliance
3930 Fairview Industrial Drive SE
Salem, OR 97301

Filed By:
Lauri Kunze
Rules Coordinator

NEED FOR THE RULE(S)

The proposed amendments constitute an annual adoption of Federal Motor Carrier Safety Regulations (FMCSR), North American Standard Administrative Out-of-Service Criteria, North American Standard Vehicle Out-of-Service Criteria, North American Standard Hazardous Material Out-of-Service Criteria, North American Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway route controlled Quantities of Radioactive Materials, North American Standard Driver Out-of-Service Criteria, Maximum Fine Schedule, and adoptions of United States Department of Transportation Hazardous Materials Regulations. The changes are necessary to ensure Oregon's motor carrier safety, hazardous materials, driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These adoptions are made each year to insure that truck inspections and violation penalties are administered in the same fashion throughout the United States for all commercial motor vehicles and drivers. The safety regulations apply to every motor carrier. Further, adoption of these regulations is required to maintain federal funding. It's anticipated that the adoptions will have no to minimal impact on racial equity; however, any impact should be positive because these adoptions provide more consistency which enhances equity.

FISCAL AND ECONOMIC IMPACT:

None

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).

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

RULES PROPOSED:

740-100-0010, 740-100-0065, 740-100-0070, 740-100-0080, 740-100-0085, 740-100-0090, 740-100-0100, 740-110-0010

AMEND: 740-100-0010

RULE SUMMARY: Rule adopts Federal Safety Regulations applicable to the operation of commercial motor vehicles.

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, 2022~~3~~, 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 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 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

AMEND: 740-100-0065

RULE SUMMARY: Yearly adoption of the North American Standard Administrative Out-of-Service Criteria.

CHANGES TO RULE:

740-100-0065

North American Standard Administrative Out-of-Service Criteria ¶

The North American Standard Administrative Out-of-Service Criteria, as recognized by USDOT, in effect April 1, 2022~~3~~, is adopted and incorporated into this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" must 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 will be towed, transported, or escorted to a safe location only at the direction of an official authority.

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

Statutes/Other Implemented: ORS 825.210, 825.252

AMEND: 740-100-0070

RULE SUMMARY: Yearly readoption of the North American Standard Vehicle Out-of-Service Criteria.

CHANGES TO RULE:

740-100-0070

North American Standard Vehicle Out-of-Service Criteria ¶¶

The North American Standard Vehicle Out-of-Service Criteria, as recognized by USDOT, in effect April 1, 2022~~3~~, is adopted by and incorporated into this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to one or more of the following:¶¶

(1) 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 must 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 will be towed, transported or escorted only at the direction of an official authority.¶¶

(2) 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.

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

Statutes/Other Implemented: ORS 825.250, 825.252

AMEND: 740-100-0080

RULE SUMMARY: Yearly readoption of the North American Standard Hazardous Materials Out-of-Service Criteria.

CHANGES TO RULE:

740-100-0080

North American Standard Hazardous Material Out-of-Service Criteria ¶

The North American Standard Hazardous Materials Out-of-Service Criteria, as recognized by USDOT, in effect April 1, 2022~~3~~, is adopted and incorporated in this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" must 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 will be towed, transported or escorted to a safe location only at the direction of an official authority.

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

Statutes/Other Implemented: ORS 825.250, 825.258, 825.260

AMEND: 740-100-0085

RULE SUMMARY: Yearly readoption of the Out of Service Criteria as it applies to Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials.

CHANGES TO RULE:

740-100-0085

North American Standard Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials ¶

The North American Standard Out-of-Service Criteria ~~Out-of-Service Criteria~~ for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials, as recognized by USDOT, in effect April 1, 2022~~23~~, is adopted and incorporated in this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" must 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 will be towed, transported or escorted to a safe location only at the direction of an official authority.

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

Statutes/Other Implemented: ORS 825.250, 825.258, 825.260

AMEND: 740-100-0090

RULE SUMMARY: Yearly readoption of the North American Standard Driver Out-of-Service Criteria.

CHANGES TO RULE:

740-100-0090

North American Standard Driver Out-of-Service Criteria ¶¶

(1) Except for any content that conflicts with requirements of section (2) of this rule, the North American Standard Driver Out-of-Service Criteria, as recognized by USDOT in effect April 1, 2022~~3~~, is adopted and incorporated by reference. Inspection violations identified in the Out-of-Service Criteria may be subject to one or both of the following:¶¶

(a) Out-of-Service Violation: Drivers with violations under this category must 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) Drivers found to be disqualified in this state or any other jurisdiction, as specified in 49 CFR 391.15 will be placed Out-of-Service until re-qualification is established.

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

Statutes/Other Implemented: ORS 825.250, 825.252

AMEND: 740-100-0100

RULE SUMMARY: Yearly readoption of the Commercial Motor Vehicle Safety Alliance's Uniform Maximum Fine Schedule.

CHANGES TO RULE:

740-100-0100
Maximum Fine Schedule ¶¶

(1) The Uniform Maximum Fine Schedule, published by the Commercial Vehicle Safety Alliance revised April 1, 2022~~3~~, is adopted and incorporated in this rule.¶¶

(2) Except as provided in sections (3) and (4) of this rule, the penalty for the Groups described in the Uniform Maximum Fine Schedule will have the same presumptive fine as traffic violation categories established in ORS 153.018 . The corresponding Maximum Fine Schedule Groups to traffic violation categories specified in ORS 153.012 are as follows:¶¶

(a) Uniform Maximum Fine Schedule Group 1 is equal to a Class A traffic violation.¶¶

(b) Uniform Maximum Fine Schedule Group 2 is equal to a Class B traffic violation.¶¶

(c) Uniform Maximum Fine Schedule Group 3 is equal to a Class C traffic violation.¶¶

(3) Violations of OAR 740-100-0040 related to failure to carry traction devices will have a presumptive fine amount equal to a Class C traffic violation fine.¶¶

(4) Except as provided in section (3) of this rule, violations of commercial motor carrier safety regulations found in OAR 740-100 and 740-105, not specifically addressed in the Uniform Maximum Fine Schedule, will carry a presumptive fine equal to a Class C traffic violation.¶¶

(5) Copies of the Uniform Maximum Fine Schedule are available from the Commercial Vehicle Safety Alliance: 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or can be found at the website: <https://cvsa.org/>
Statutory/Other Authority: ORS 153.022, 184.619, 823.011

Statutes/Other Implemented: ORS 153.012, 153.015, 153.018, 825.252, 825.990

AMEND: 740-110-0010

RULE SUMMARY: Yearly re-adoption of Hazardous Materials Regulations established by the United States Department of Transportation.

CHANGES TO RULE:

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 823.061 who causes to be transported a hazardous material must 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, 2022~~3~~.¶

(2) Copies of the federal regulations referred to in this rule are available from ODOT, 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, 823.061, 825.258

Statutes/Other Implemented: ORS 823.061, 825.258