

 <p style="text-align: center;"><b>MOTOR CARRIER SAFETY POLICY</b></p>	NUMBER	SUPERSEDES
	MCS-21-01	NEW
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	REFERENCE	
	42 U.S.C. § 2000d et seq. 78 Stat. 252, 23 U.S.C. § 324 et seq., 20 U.S.C. § 1681 et seq., 29 U.S.C. § 794 et seq. Section 504, 42 U.S.C. § 6101 et seq., 42 U.S.C. § 12101 et seq., 49 C.F.R. part 21, 27, 28, 37, & 303, 28 C.F.R. part 35 & 50.3, Executive Order 12898 (1995), Executive Order 13166 (2001), <a href="#">FMCSA Enforcement Memorandum regarding ELP versus LEP (MC-ECE-2016-006)</a> , 18-09-27-CVSA Operational Policy 13.	
SUBJECT	APPROVED SIGNATURE	
<b>INSPECTION SELECTION POLICY</b>	/s/ Carla Phelps	

## PURPOSE

The Oregon Department of Transportation (ODOT) Commerce and Compliance Division (CCD) personnel are committed to enhancing public safety through the consistent and objective enforcement of laws, rules, and regulations relating to commercial motor vehicles (CMV). The purpose of this policy is to establish uniform guidelines for the selection of CMVs for inspection.

## BACKGROUND

ODOT Complies with Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities. These authorities prohibit discrimination on the grounds of the following protected groups; race, color, national origin, sex, age, disability, low income and limited English proficiency. All standard operating procedures enacted by enforcement authorities are conducted in a nondiscriminatory manner, including the selection of CMVs for inspection.

## POLICY

The Division will concentrate inspection efforts on CMVs that have a negative impact on traffic safety. Only Commercial Vehicle Safety Alliance (CVSA) certified employees utilizing the North American Standard inspection process set forth by the CVSA will conduct inspections. Inspections will be conducted in a nondiscriminatory manner, including the selection of CMVs.

## DEFINITIONS

- A. Commercial Motor Vehicle: Title 49 CFR, Part 390.5 as adopted through Oregon Administrative Rule (OAR)740-100-0010, defines a commercial motor vehicle as: Any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle —

1. Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
  - 2. Is designed or used to transport more than 8 passengers (including the driver) for compensation; or**
  - 3. Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or**
  - 4. Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.**
- B. Motor carrier: Means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition includes the terms employer and exempt motor carrier.
- C. Shipper: Means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

## **AUTHORITY**

- A. General: CCD complies with Oregon Statutes that grant authority to conduct inspections, as well as all applicable ODOT and CCD rules of conduct, enforcement activity restrictions, and published policies and procedures regulating commercial vehicle enforcement as referenced below:
1. OAR 740-100-0010 adopts Federal Motor Carrier Safety Regulations as authorized by Oregon Revised Statutes (ORS) 825.252 and 825.258.
  2. ORS 810.560 before an enforcement official may conduct inspections of commercial vehicles, drivers or cargoes for purposes of enforcing rules adopted under ORS 825.252 (Safety regulations relating to drivers or operators) and 825.258 (Rules for transportation of hazardous waste, hazardous material and PCB), the official shall be trained and certified as a commercial vehicle inspector by the Department of Transportation.
  3. OAR 740-100-0015 provides inspector certification requirements for CCD personnel and enforcement officials.

4. ORS 823.023(1) The Department of Transportation or authorized representatives to enter upon any premises, or any equipment, rolling stock or facilities operated or occupied by any motor carrier or railroad for the purpose of making any inspection, examination or test reasonably required in the administration of ORS chapters 823, 824, 825 and 826, and to set up and use on such premises, equipment, rolling stock or facilities any apparatus or appliance and occupy reasonable space therefore;
5. ORS 823.023(4) The department or authorized representatives shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any motor carrier or railroad and to examine under oath any officer, agent or employee of such motor carrier or railroad in relation to its business and affairs; and the Department or authorized representatives shall, upon demand, have the right to enter any premises of a business that the department has reasonable cause to believe tendered for shipment, by motor or rail, any hazardous material and to make any examination, inspection or test reasonably required to determine compliance with the health and safety regulations administered or enforced by the department. Any person, who on behalf of the department demands to make an examination, inspection or test, shall produce upon request a certificate under the seal of the department showing authority to make the examination, inspection or test.
6. ORS 818.400 provides the authority for CCD Motor Carrier Enforcement Officers (MCEOs), and other authorities identified under ORS 810.490 to require CMVs to stop at a Port of Entry for the purpose of enforcing a motor vehicle law and makes it a misdemeanor to fail to stop and weigh (by passers).
7. Although such administrative actions, including commercial vehicle inspections, do not require probable cause or reasonable suspicion, it is CCD's practice to identify vehicles for inspection based on factors articulated in this policy.

## PROCEDURES

- A. Criteria for Selection of CMV's for Inspections at Ports of Entry, Scales, and During Mobile Operations:
  1. **Inspection priority is given to an observed violation of law or regulations related to the driver or the vehicle, including equipment, size, weight and load violations.**
  2. **When available, POEs will consistently use standardized electronic vehicle screening systems that utilize ISS carrier safety rating information. Carriers that are poorly rated or have insufficient data will take priority in the inspection selection.**

- 3. When CMV traffic patterns are minimal, CMVs with no valid CVSA decal may be selected for inspection.**
- 4. Vehicles displaying a valid CVSA decal will not be subject to re-inspection unless an equipment violation is observed or a driver violation is suspected.**
- 5. CCD personnel shall not interrupt or otherwise disturb any driver of a CMV in an off duty or sleeper berth status, when the CMV is legally parked, for the sole purpose of conducting a random inspection.**

B. Documentation:

1. All inspections will be documented through the ASPEN inspection program.
2. Inspections shall be uploaded as soon as possible, but no later than the end of the inspecting employee's shift.
3. Inspections containing out-of-service violations should be uploaded immediately.
4. When the ASPEN program is not available, CVSA inspections are to be documented on a hand written Driver-Vehicle Examination Report (ODOT form 735-9242).

## **AGENCY RESPONSIBILITY**

- A. The Division is committed to the unbiased and equitable treatment of all persons in enforcing the law and providing services. Employees conducting motor vehicle enforcement, including CMV inspections, will adhere to nondiscrimination policies and Title VI requirements.
- B. ODOT complies with Title VI and other federal nondiscrimination authorities which prohibit discrimination based on race, color, national origin, age, disability, sex, income level, or Limited English Proficiency in ODOT's programs, activities, services, operation, delivery of benefits, or opportunities to participate as identified in the FMCSA Title VI Program Assurance signed by the Oregon Department of Transportation Director.
  1. These authorities require that no person shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any ODOT program or activity on the basis of race, color, national origin, sex, age, disability, income level, or limited English proficiency.
  2. ODOT has adopted a Public Notice of Compliance with Title VI Program Rights that informs the public of the department's Title VI program assurances and responsibilities. This public notice is posted for public access at this link:  
<https://www.oregon.gov/odot/Business/OCR/Pages/index.aspx>

- C. ODOT must ensure that all of its programs and activities are operated in a nondiscriminatory manner. In order to monitor ODOT’s Title VI compliance, the ODOT Office of Civil Rights (OCR):
1. Ensures compliance with Title VI.
  2. Provides technical assistance in the program area’s implementation of Title VI.
  3. Provides training to personnel conducting traffic enforcement compliance review, and safety audit activities as detailed in the Motor Carrier Supplement Plan (linked below) including the adherence to FMCSA Enforcement Memorandum regarding ELP versus LEP (MC-ECE-2016-006).
  4. Correct deficiencies, when found to exist.
- D. As part of ODOT’s Title VI internal monitoring programs, CMV enforcement complaints, including those related to commercial vehicle inspections, will be reviewed to ensure work is completed in compliance with Title VI, as referenced in the Motor Carrier Supplement Plan: [https://www.oregon.gov/odot/Business/OCR/SiteAssets/Lists/Non\\_Dis\\_Main\\_List/EditForm/ODOT Title VI Implementation Plan FMCSA Supplement 2021.pdf](https://www.oregon.gov/odot/Business/OCR/SiteAssets/Lists/Non_Dis_Main_List/EditForm/ODOT%20Title%20VI%20Implementation%20Plan%20FMCSA%20Supplement%202021.pdf).
- E. ODOT will provide any needed technical assistance in the implementation of Title VI, and correct any deficiencies found to exist.

**STAFF RESPONSIBILITY**

**ACTION**

Managers and Supervisors

- Understand and follow policy.
- Periodic review of the policy will ensure understanding and practice by all employees.
- Seek advice of Program Manager regarding question or concerns to address properly and promptly.

All Employees

- Understand and follow policy.
- Seek advice of Region Manager regarding question or concerns to address properly and promptly.
- Shall obtain and maintain supporting documentation for any disputed enforcement action.
- Share information about habitual drivers and/or companies who are habitual offenders with other regions and a registration compliance investigator.