Chapter 767

1974 REPLACEMENT PART

Motor Carriers

ECONOMIC REGULATION

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ECONOMIC REGULATION
(Generally)

767.005 "Broker," "carrier" or "motor carrier," "common carrier," "contract carrier," "forwarder," "private carrier" defined. As used in ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 the term:

(1) "Broker" means any person not included in the term "motor carrier" or "forwarder" and not a bona fide employe, commission agent or agent of any carrier or forwarder, but who, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for such transportation.

(2) "Carrier" or "motor carrier" means common carrier, contract carrier or private carrier.

(3) "Common carrier" means:

(a) Any person who transports for hire or who holds himself out to the public as willing to transport for hire, compensation or consideration by motor vehicle, persons or property, or both, for those who may choose to employ him; or

(b) Any person who leases, rents or otherwise provides a motor vehicle for the use of others and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.

(4) "Contract carrier" means any person engaged in the transportation by motor vehicle of persons or property, or both, for compensation, under special and individual agreements, leases or other arrangements, and not included in the term "common carrier."

(5) "Forwarder" means any person, except motor carriers and bona fide employes or agents of motor carriers, who, as principal or agent, is engaged in securing, accepting or assembling, for compensation directly or indirectly, property not owned by him to be transported by motor carrier.

(6) "Private carrier" means any person not included in the term "common carrier" or "contract carrier" who operates a motor vehicle over the public highways for the purpose of transporting property in connection with a noncarrier commercial enterprise in which such person is engaged. Ownership of the property transported shall not be accepted as sufficient proof of a private carrier operation, if the carrier is in fact engaged in the transportation of property for hire, compensation or remuneration, or if such transportation operations are conducted for profit and not merely in furtherance and within the scope of a noncarrier commercial enterprise in which such person is engaged.

[Amended by 1955 c.681 §1; 1959 c.420 §1; 1971 c.655 §155]

767.010 "Combined weight," "motor vehicle" defined. As used in ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 the term:

(1) "Combined weight" means the weight of the motor vehicle plus the weight of the maximum load which such motor vehicle may carry as declared by the applicant subject to audit and approval by the commissioner. The combined weight of motor busses or bus trailers is the light weight of the vehicle plus the weight of the maximum seating capacity including the driver's seat estimated at 170 pounds per seat, exclusive of emergency seats, except that transit type motor vehicles may use 150 pounds per seat in determining combined weight. In cases where a bus has a seating capacity which is not arranged for separate or individual seats, 18 lineal inches of such capacity shall be deemed the equivalent of a passenger seat.

(2) "Motor vehicle" means any self-propelled or motor-driven vehicle, or any train or combination of vehicles, used or physically capable of being used upon any public highway in this state in the transportation of persons or property, except vehicles operating wholly on fixed rails or tracks and electric trolley busses. "Motor vehicle" includes overdimension vehicles or vehicles permitted excessive weights pursuant to special authorization issued by a city, county or the Department of Transportation.

[Amended by 1959 c.420 §2; 1965 c.228 §1; 1971 c.655 §156]

767.015 "Department," "public highway" and "safe for operation" defined. As used in ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 the term:

(1) "Department" means the Department of Transportation.

(2) "Public highway" means every street, alley, road, highway and thoroughfare in this state used by the public or dedicated or appropriated to public use.

(3) "Safe for operation" means mechanical safety and compliance with such regulations regarding equipment and operation

as shall be specified by law or by rule of the commissioner.
[Amended by 1959 c.420 §3; 1961 c.161 §1; 1971 c.655 §157]

767.017 "Certificate," "permit" defined. As used in ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640:

(1) "Certificate" means an authority issued to a common or contract carrier other than as provided by ORS 767.145 or 767.155.

(2) "Permit" means an authority issued to a carrier under ORS 767.145, 767.150 or 767.155.
[1969 c.699 §3; 1971 c.655 §158]

767.020 Declaration of policy. (1) The business of operating as a motor carrier of persons or property for hire upon the highways of this state is declared to be a business affected with the public interest. It is hereby declared to be the state transportation policy to promote safe, adequate, economical and efficient service; to foster sound, economic conditions in transportation; and to encourage the establishment and maintenance of reasonable rates for transportation services, without unjust discriminations, undue preferences or advantages or unfair or destructive competitive practices.

(2) The rapid increase of motor carrier traffic and the fact that under existing law many motor trucks, trailers and busses are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that:

(a) More stringent regulations should be employed, to the end that the highways may be rendered safer for the use of the general public;

(b) The wear of such highways be reduced;

(c) Minimum of inconvenience to other users of the highways be effected;

(d) Minimum hindrance and stoppage to other users of the highways compatible with needs of the public for adequate transportation service, be effected;

(e) The highways be safeguarded from improper or unnecessary usage;

(f) Operation by irresponsible persons or any other operation threatening the safety of the public or detrimental to the general welfare be prevented;

(g) Congestion of traffic on the highways be minimized; and

(h) The various transportation agencies of the state be adjusted and correlated so that public highways may serve the best interest of the general public.

(3) The legislature hereby declares that to effect the ends and purposes listed in this section, ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 are adopted.
[Amended by 1969 c.699 §1; 1971 c.655 §159]

767.025 Nonapplicability of economic regulation to school, mail and government transportation and vehicles on highway construction projects. (1) ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 do not apply to motor vehicles:

(a) When operated by, or under contract with, any school board, district or person responsible for the administration of school activities, and engaged exclusively in transporting students or their instructors to or from school or authorized school activities or functions.

(b) When operated by, or under contract with, any school board, district or person responsible for the administration of school activities, and engaged exclusively in transporting elementary or secondary school students to or from activities or functions under the sponsorship of the State Board of Higher Education.

(c) On a trip basis while being used exclusively in the transportation of United States mail as a substitute or supplement for rail transportation. This exclusion shall apply as of January 1, 1965.

(d) When owned and operated by the United States, the State of Oregon, any county, city, town or municipality in this state, or any department of any of them except when owned or operated as a carrier for hire.

(2) ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 do not apply to persons when regularly operating over a rural or star route and engaged exclusively in the transportation of United States mail under contract with, or when such person is an employe of, the Post Office Department. Such person may, in addition thereto, transport property for consideration in such vehicle over his rural or star mail route not to exceed 200 pounds in weight for any one delivery, when not in competition with a regular route common carrier.

(3) ORS 767.005 to 767.315, 767.405 to 757.495 and 767.605 to 767.640 do not apply

to motor vehicles operated by, or under contract with, a person responsible for the construction or reconstruction of a highway under contract with the Department of Transportation or with an agency of the United States, when operated within the immediate construction project as described in the governmental agency contract during the construction period.

[Amended by 1959 c.497 §1; 1961 c.175 §1; 1965 c.458 §2; 1967 c.486 §1; 1969 c.46 §1; 1971 c.181 §1; 1971 c.655 §160]

767.030 Nonapplicability of economic regulation to motor vehicles owned by farmers. (1) ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 do not apply to a motor vehicle owned by a farmer when used exclusively in any one or more of the following operations:

(a) Transporting his own agricultural commodities, agricultural products or livestock (including the products of such commodities, products or livestock that were packed, processed or manufactured on his farm) that were originally grown or raised by him on his farm, or when used in any transportation which is incidental to the regular operation of his farm, or when used to transport supplies, equipment or materials to his farm that are consumed or used on his farm.

(b) Transporting forest products to his own farm, or transporting for any purpose such products originating on his farm.

(c) Transporting from the farm of another farmer the agricultural commodities, agricultural products or livestock (including the products of such commodities, products or livestock that were packed, processed or manufactured on such farm and those products indicated in paragraph (b) of this subsection) that were originally grown or raised on such farm.

(d) Transporting supplies, equipment or materials on an exchange of labor basis or for a nominal consideration to another farmer, if such supplies, equipment or materials are to be used or consumed on the other farmer's farm, or are directly related to the operation of such farm.

(e) Transporting sand, gravel, rock, dirt, debris, cinders or asphaltic concrete mix to a project of a district or corporation organized under ORS chapter 545, 547 or 554 of which the farmer whose vehicle is being used is a landowner if such materials are directly related to the construction or operation of such district or corporation project.

(2) As used in this section:

(a) "Farm" includes one or more farms, orchards or ranches, but does not include a tree farm unless part of a farm operation.

(b) "Farmer" means a person who is engaged, either as owner or renter, in a farm operation of a size to reasonably require the use of the motor vehicle or vehicles claimed under the exemption provided by ORS 481.225 and this chapter, but does not include cooperative corporations or associations organized under ORS chapter 62 or corporations, or subsidiaries of corporations, if the shares of any such corporation or subsidiary are owned by more than 100 shareholders. As used in this paragraph, "shares" and "shareholder" have the same meaning given these terms in ORS 57.004.

(3) As used in this section, "forest products" means forest materials originating on a farm or as an incident to the regular operation of a farm, but piling, poles over 30 inches in circumference at the large end, and logs over eight feet six inches in length, or logs over eight feet six inches but not over 16 feet six inches in length when transported on any motor vehicle having a gross weight in excess of 16,000 pounds shall not be considered forest products, agricultural commodities or agricultural products within the meaning of this section.

[Amended by 1957 c.667 §1; 1959 c.497 §2; 1965 c.613 §1; 1971 c.655 §161; 1973 c.396 §1]

767.035 Nonapplicability of economic regulation to certain specified vehicles. ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 do not apply to persons or motor vehicles:

(1) While being used in the transportation of persons for hire in vehicles having a seating capacity of more than five persons and operating wholly within the corporate limits of a city in Oregon and within a radius of three airmiles beyond the corporate limits of such city. When the three airmile radius of a city in which the original starting point of such vehicle is located extends into the corporate limits of another city and both of the cities are served by the same carrier, the two cities shall be considered for the purpose of this subsection as one city if the service proposed may be rendered by a vehicle which at no time on such movement operates beyond the three airmile radius of both cities. If ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to

767.640 do not apply to any persons or vehicles because of the provisions of this subsection, such persons and vehicles shall be subject to regulations of the city in which they operate.

(2) When a passenger vehicle of not exceeding a five-passenger seating capacity is engaged in a taxicab operation, either transporting passengers between points in Oregon or transporting property in single shipments that do not exceed 10 pounds in weight, consisting of:

(a) Drugs or medical, dental or optical supplies;

(b) News or advertising matter, or matter to be used in producing news or advertising, including but not limited to art work, copy, photographs, film (still, movie, or video or audio tape), engravings, reproductions, plates or proofs;

(c) Food, clothing, flowers or personal effects;

(d) Papers in envelopes;

(e) General commodities moving between the hours of 6:30 p.m. and 7:30 a.m. on weekdays and Saturdays, or at any time on Sundays or legal holidays;

(f) Data processing matter not exceeding five pounds per shipment;

(g) Brief cases and hand-carried luggage, regardless of weight;

when moving between a single consignor and a single consignee in on-call service wholly within the corporate limits of a city in Oregon and within a radius of three airmiles beyond the corporate limits of such city in which the starting point of such vehicle is located, when transported at rates prescribed by the commissioner under ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640; provided, however, that such shipments of property shall be transported under a shipping document consisting of three parts, one to be supplied to the shipper, one to the consignee at the time of delivery and one to be retained by the carrier and kept available for inspection for two years. Said shipping document shall contain the address of the consignor and consignee, a brief, accurate description of the property transported and the charge therefor. Such persons and vehicles shall be subject to regulations of the city in which they operate.

(3) When used for the transportation of property by private carrier by means of a single vehicle or combination of vehicles the combined weight of which vehicle and load, vehicles or vehicles and load does not exceed 8,000 pounds.

(4) When operated exclusively for the purpose of transporting persons or property in connection with the patrolling of forests for the prevention or fighting of forest fires.

(5) When engaged in operating implements of husbandry, temporarily drawn, moved or otherwise propelled.

(6) Used in towing vehicles at the direction of a police officer or in servicing or towing wrecked or disabled vehicles, if the vehicle:

(a) Is not otherwise used in transporting goods and merchandise for compensation;

(b) Is specially constructed for such use; or

(c) Has a combined weight not exceeding 8,000 pounds.

(7) When operated as a hearse or ambulance.

(8) When operating over any road or thoroughfare in private ownership.

(9) When using any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products as defined in ORS 321.005, or the product of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of such road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with:

(a) An agency of the United States;

(b) The State Board of Forestry;

(c) The State Forester; or

(d) A licensee of an agency named in paragraph (a), (b) or (c) of this subsection.

(10) When using any county road for the removal of forest products as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(a) Such use by a person or motor vehicle is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States, authorizing such person or the owner of such motor vehicle to use such road and requiring such person or owner to pay for or to perform the construction or maintenance of the county road, including any operator of a motor vehicle retained to transport logs, poles and piling for such persons or owners who are exempt under this section;

(b) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(c) Copies of the agreements or permits required by paragraphs (a) and (b) of this subsection are filed with the Director of the Department of Transportation.

(11) While being used in the transportation of persons for hire if the operation:

(a) Is performed by a nonprofit corporation or other nonprofit entity; and

(b) Is not in competition with the scheduled regular route service of a carrier of persons which is subject to the provisions of this chapter or a service provided by a mass transit district formed under ORS chapter 267; and

(c) Is performed by use of vehicles operating in compliance with ORS 485.310 to 485.420; and

(d) Is providing service with continuing regularity under a predetermined plan of operation within a radius of 40 airmiles of the designated point of origin; and

(e) Is approved by the Mass Transit Division as complying with paragraphs (a) to (d) of this subsection.

[Amended by 1953 c.333 §2; 1955 c.638 §1; 1959 c.179 §1; 1959 c.497 §3; 1961 c.250 §1; 1963 c.362 §1; 1965 c.425 §1; 1967 c.367 §1; 1969 c.223 §1; 1971 c.655 §162; 1973 c.396 §2; 1974 s.s. c.38 §1]

767.037 Nonapplicability of economic regulation to certain motor vehicles used to transport handicapped or mentally retarded persons to workshops or day care services. ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 do not apply to any person or to any passenger motor vehicle of not exceeding a 12-passenger seating capacity:

(1) When operated by or under contract with any person responsible for the administration of sheltered workshops as defined in ORS 344.710 to 344.730 or day-care services provided by a facility licensed pursuant to ORS 418.805 to 418.885; and

(2) When the vehicle is engaged in transporting, to or from such services or workshops, individuals, with or without their supervisors or assistants, who are disabled, severely handicapped or mentally retarded individuals.

[1967 c.125 §2; 1971 c.655 §163]

767.040 Compliance with chapter required. No common carrier, contract carrier or private carrier shall operate any motor vehicle for the transportation of persons or property, or both, on any public highway in this state, and no person shall act as a broker or forwarder, except in accordance with the provisions of this chapter.

767.045 Application of economic regulation to interstate and foreign commerce. ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 apply to interstate and foreign commerce, except in so far as it may be in conflict with the provisions of the Constitution and the laws of the United States.

[Amended by 1971 c.655 §164]

767.050 Special privileges not affected by economic regulation. ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 do not prevent:

(1) Common carriers or contract carriers from transporting within this state at free or reduced rates:

(a) Themselves or their officers, agents or employes, or dependent members of the families of such individuals, or the personal effects or household goods of such individuals.

(b) Ministers of religions, inmates of hospitals and charitable and eleemosynary institutions and individuals exclusively engaged in charitable and eleemosynary work.

(c) Indigent, destitute and homeless individuals and such individuals when transported by charitable societies or hospitals, and the necessary agents employed in such transportation.

(d) Witnesses attending legal investigations in which the carrier is interested.

(e) Persons injured in wrecks and physicians and nurses attending such persons.

(2) The interchange of passes by common carriers with other common carriers and their officers, agents and employes, and their families, or officers, agents or employes of railway common carriers, and their families.

(3) Any common carrier or contract carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation.

(4) The issuance of mileage, commutation, party or excursion passenger tickets, if they are obtainable by all persons applying therefor under like circumstances and conditions.

[Amended by 1971 c.655 §165]

767.055 Prima facie evidence that carrier is common carrier. Evidence that any carrier holds or has obtained at any time, in his own name or for his benefit, contracts for the transportation of property with more than five shippers or consignees, is prima facie evidence that such carrier is, in fact, a common carrier. Showing may be made to the contrary by, for or on behalf of such carrier by evidence overcoming such prima facie evidence.

767.060 [Amended by 1953 c.338 §4; repealed by 1971 c.655 §250]

767.062 Appointment of agents to issue passes, collect fees. The commissioner may appoint agents to issue temporary passes provided in subsection (2) of ORS 767.310 and to collect any fees required by ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640. The commissioner shall prescribe the duties and compensation of such agents and may require them to give bonds, in such amount as the commissioner determines appropriate, conditioned upon the faithful performance of their duties.
[1971 c.655 §180]

767.065 Courts to forward copies of record on conviction for violation of economic regulation. The courts having jurisdiction of ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 shall, upon a conviction of anyone for violation of ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, immediately forward a copy of the record of such conviction to the office of the commissioner.
[Amended by 1971 c.655 §166]

(Certificates, Permits and Licenses)

767.105 Certificate or permit required for commercial transportation of persons or property on public highways. (1) No person shall operate any motor vehicle, whether loaded or empty, on any highway in this state as a common carrier, contract carrier or private carrier in the transportation of persons or property or both without first applying for and obtaining, in addition to any license required by any other law, a certificate or permit from the commissioner covering the proposed operation. Each separate operation of a motor vehicle in violation of this section is a separate violation, whether the prohibited operations occur within the same day or different days or relate to the same motor vehicle or different motor vehicles.

(2) Every person who engages for compensation or consideration to perform a combination of services which includes transportation of property of others upon the public highways is subject to the jurisdiction of the commissioner as to such transportation and shall not engage upon the same without first having obtained a common carrier or contract carrier certificate or permit to do so.
[Amended by 1959 c.206 §1; 1969 c.99 §1; 1969 c.699 §4]

767.107 Certain private carrier operations exempt from obtaining permit; application for authority to operate not required. A private carrier need not obtain a certificate of public convenience and necessity for:

(1) Transporting sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix for compensation or consideration over the public highways of this state when such materials are being delivered to a point where the private carrier is then engaged in transporting and delivering its own such materials in the fulfillment of a contract for construction or supply and the materials are required by the contractor in the furtherance of the work in progress.

(2) Furnishing transportation for compensation or consideration by motor vehicle over the public highways of this state for another private carrier for the movement of wet ready-mix concrete or asphaltic concrete mix.

(3) A private carrier furnishing the service referred to in subsections (1) and (2) of this section need not make application for such operating privilege.
[1971 c.520 §§8, 9; 1973 c.507 §1]

767.110 When authority required for towing operations. No person shall tow any motor vehicle or vehicle for hire upon any public highway of this state by means of any other motor vehicle, whether or not the towing motor vehicle is exempt from the provisions of this chapter, until a certificate or permit has been obtained from the commissioner. However, no such certificate or permit is required for towing operations exempted by subsection (6) of ORS 767.035.
[Amended by 1967 c.387 §1; 1969 c.699 §5]

767.115 [Repealed by 1961 c.110 §1]

767.120 Necessity for broker's and forwarder's licenses; issuance; regulations to be observed by licensee. (1) No person shall act as a forwarder or broker unless he holds a forwarder's or broker's license, issued by the commissioner, to engage in such transactions.

(2) A brokerage or forwarding license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that:

(a) The applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules and regulations of the commissioner thereunder; and

(b) The proposed service, to the extent to be authorized by the license, is or will be consistent with the public interest.

(3) No such license shall be issued or remain in force unless the applicant furnishes a bond or other security approved by the commissioner, in such form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements or arrangements therefor.

(4) The commissioner shall prescribe reasonable rules and regulations for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage or forwarding license.

767.125 Applications for authority. The commissioner shall prescribe forms of applications for certificates or permits for the use of applicants and shall make regulations for the filing thereof.

[Amended by 1961 c.111 §1; 1969 c.91 §3; 1969 c.699 §6; 1971 c.655 §167]

767.130 Restriction on authority; hearing upon request. (1) No certificate or permit shall be granted to any person:

(a) If the commissioner has reasonable grounds to believe that he is not capable of conducting the transportation service contemplated, in compliance with the law and rules and regulations of the commissioner; or

(b) Who has been an habitual or intentional violator thereof; or

(c) If the commissioner has reasonable grounds to believe that the information contained in the application for certificate or permit pertaining to ownership, possession or control of the equipment or operation to be conducted is false.

(2) No person whose application for certificate has been denied shall be eligible to renew the application for a period of six months or to operate or participate directly or indirectly in the proposed operation for a period of six months from the date application has been denied.

(3) Any person who has been denied a certificate or permit under subsection (1) of this section shall upon request be granted a hearing. After hearing the commissioner shall grant or deny the certificate or permit in conformity with the findings.

[Amended by 1961 c.50 §1; 1969 c.699 §7]

767.135 Issuance of common carrier certificates; when hearings necessary; findings necessary. (1) When a person files with the commissioner an application for a certificate to operate as a common carrier or contract carrier, for the extension of an existing certificate, or for the transfer of a certificate, the commissioner shall serve notice of the application upon every person who has an application filed and pending before the commissioner to serve the territory proposed to be served by the applicant, or who holds a certificate to serve that territory.

(2) If any person desires to protest the issuance, extension or transfer of the certificate or requests a hearing, he may file notice thereof with the commissioner within 10 days from the date of service of the notice of application. The commissioner thereupon shall fix a time and place for a hearing upon the application, and shall serve notice of the hearing upon the applicant and any person who has filed a notice of protest or request for a hearing. For the purpose of properly and fully informing himself, the commissioner may hold a hearing on an application although no notice of protest or request for a hearing is filed.

(3) If no person protests or requests a hearing, within the period specified in the notice that an application has been filed, the commissioner may order the issuance or transfer of the certificate without a hearing, if the applicant shows compliance with paragraphs (a), (b), (d), (e) and (f) of subsection (5) of this section.

(4) If all protests to the application are withdrawn prior to the closing of the record, the commissioner may order the issuance or transfer of the certificate if the applicant shows compliance with paragraphs (a), (b), (d), (e) and (f) of subsection (5) of this section.

(5) If the application for issuance or transfer of a certificate is the subject of a hearing, the commissioner shall issue the certificate if the applicant has complied with this chapter and the rules and regulations of the

commissioner, and if the commissioner finds from the record and the evidence that:

(a) The applicant is fit, willing and able properly to perform the service proposed;

(b) The applicant has certified that the vehicles listed on the application are in such operating order and so equipped as to comply with all Oregon laws, rules and regulations covering vehicle safety and operations and will be so maintained;

(c) The service proposed, to the extent authorized, is or will be required by the present or future public convenience and necessity or in case of proceedings under ORS 767.186 if the commissioner finds the assignment or other transfer is in the public interest;

(d) The service proposed will not be attended with substantial damage to the highways or danger to other users thereof or to the public;

(e) The rates, schedules or contracts proposed by the applicant, if an intrastate operator, are approved by the commissioner; and

(f) The applicant can and will furnish and file the insurance, bond or substitute security or qualify as self-insurer as provided in this chapter.

(6) If the application for issuance or transfer of a certificate is the subject of a hearing, and if the commissioner does not find that all the conditions provided in subsection (5) of this section are satisfied, he may deny the application or he may order that issuance of the certificate be deferred pending compliance by the applicant with those conditions provided in subsection (5) of this section specified in the order.

(7) If the applicant fails to appear at the time and place fixed for the hearing, the application may be denied.

[Amended by 1957 c.263 §1; 1959 c.412 §1; 1961 c.117 §1; 1969 c.699 §8; 1971 c.655 §168]

767.137 [1969 c.699 §26; repealed by 1971 c.655 §250]

767.139 [1969 c.699 §27; repealed by 1971 c.655 §250]

767.140 [Repealed by 1959 c.412 §2 (ORS 767.141 enacted in lieu of ORS 767.140)]

767.141 [1959 c.412 §3 (enacted in lieu of ORS 767.140); repealed by 1969 c.699 §28]

767.145 Dispensation of hearing and order requirement for authority covering certain operations. Hearing and order are not required for the issuance of authority to:

(1) Common or contract carriers engaged exclusively in the transportation of rough or planed lumber, including shingles, from point of origin to mill, retail yard or shipping point.

(2) Common or contract carriers engaged exclusively in the transportation of cordwood in long or short lengths or sawdust or hog fuel.

(3) Common or contract carriers engaged exclusively in transporting metallic ores or concentrates, whether crushed or otherwise, from mines, pits or quarries.

(4) Common or contract carriers engaged exclusively in transporting fish scrap from fish processing plants to rendering or reduction plants.

(5) Regular route common carriers desiring to operate over redesignated or relocated public highways provided:

(a) The new route has the same numerical designation as certificate holder's presently authorized route; and

(b) Not less than 10 days prior to the institution of such service such person file with the commissioner time schedules properly reflecting such service; and

(c) No service is to be performed to, from or between points on such redesignated or relocated public highway otherwise than in accordance with such person's existing certificate; and

(d) Such time schedules and service otherwise is in compliance with ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640.

[Amended by 1957 c.263 §2; 1961 c.169 §1; 1961 c.403 §1; 1969 c.575 §1; 1969 c.699 §8a; 1971 c.520 §1; 1971 c.655 §169]

767.147 [1961 c.403 §3; repealed by 1969 c.699 §28]

767.149 Authority for transporting sand, gravel, rock and other materials; application; requirements. (1) Every common or contract carrier, who has obtained authority under ORS 767.145 for the transportation of sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix, shall make application for reissuance of such authority, in accordance with subsection (4) of this section, within 90 days after January 1, 1972, or the commissioner shall summarily cancel the authority.

(2) Any private carrier that has transported sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix for compensation or consideration by motor vehicle over the public highways may make application in accordance with subsection (4) of this section within 90 days after

January 1, 1972, for the issuance of a certificate in the same manner and to the same degree as those carriers qualifying under that subsection.

(3) Authority issued pursuant to ORS 767.135 shall not be construed to include authority to transport sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix. However, an application for reissuance of authority issued pursuant to ORS 767.135 may be made in accordance with subsection (4) of this section within 90 days after January 1, 1972, or the commissioner shall summarily cancel the authority to transport sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix.

(4) Except where the commissioner has commenced a proceeding for cancellation of the authority under ORS 767.190, if upon application filed pursuant to subsection (1), (2) or (3) of this section, the commissioner finds that the applicant was engaged in providing service over public highways under the authority during the two-year period ending May 1, 1971, the commissioner at once shall cancel and reissue the authority without territorial limitation. A fee of $25 per certificate shall be paid once to the commissioner for each authority issued under this section. If the commissioner finds that the applicant was not engaged in providing service over public highways during the two-year period ending May 1, 1971, the commissioner shall summarily cancel the authority.

[1971 c.520 §5]

767.150 Issuance of permits to private carriers. Upon receipt of the information in writing required by the application form for permits in that class and in compliance with the law and the rules and regulations of the commissioner, permits shall be issued to private carriers, conditioned that the proposed operation will not be attended with substantial damage to the highway or danger to the users thereof, to adjacent property or facilities or to the public. The applicant is entitled to a hearing by the commissioner if his application has been declined by the commissioner.

767.155 Issuance of certificates to interstate carriers. (1) Common carriers and contract carriers engaged or to engage in interstate operations shall apply to the commissioner for a certificate of registration of Interstate Commerce Commission authority. The commissioner shall issue a certificate of registration in the form of a permit to them without a hearing and as a matter of course if they file with the commissioner a copy of the authority issued them by the Interstate Commerce Commission of the United States, if such authority is required, and furnish evidence of coverage by public liability and property damage insurance policy or qualify as self-insurer as required by ORS 767.195 to 767.215.

(2) No common or contract carrier engaged or to engage in interstate operations shall perform any transportation service for compensation upon the public highways of this state without first having applied for and secured a certificate of registration of Interstate Commerce Commission authority in the form of a permit in compliance with subsection (1) of this section.

[Amended by 1963 c.177 §1; 1969 c.699 §9; 1971 c.655 §170]

767.160 [Repealed by 1961 c.110 §1]

767.165 Special procedure for authority to transport logs, poles or piling. Any authority issued by the commissioner to common carriers, contract carriers or private carriers for the transportation of logs, poles or piling over public highways are subject to the following conditions:

(1) If the highways over which such applicant proposes to operate:

(a) Are state highways, the commissioner shall call upon the department to submit in writing such recommendations or suggestions that in its opinion should be imposed for the protection of the highways and for the best interest of the general public.

(b) Are county highways, the applicant shall first secure a recommendation from the county court or board of county commissioners that he be permitted to use the county highways over which he proposes to operate.

(c) Are streets of an incorporated city, the applicant shall first secure a recommendation from the governmental authority of such city that he be permitted to use the city streets over which he proposed to operate.

(2) Authority issued to such carriers is temporary and shall be revoked or suspended upon receipt, by the commissioner, of resolutions of the department with respect to state highways, the county court or board of county commissioners with respect to county highways and the municipal authority with respect to city streets, reciting that

in the judgment of such officials such revocation or suspension is required in order to preserve the highways, county roads or city streets involved.

[Amended by 1959 c.87 §1; 1969 c.699 §10; 1971 c.655 §171]

767.170 Emergency or temporary authority. (1) If any condition or emergency arises requiring relief in cases of general epidemic, pestilence or other calamitous visitation in the state or any community therein, wherein the public or community interest or the transportation of any persons or property requires, in the opinion of the commissioner, the issuance of a certificate or permit for a temporary transportation service, the commissioner may issue a temporary certificate or permit therefor, without hearing or order, the term of which shall be limited to a reasonable time to be determined by the commissioner under the circumstances.

(2) The commissioner may issue a temporary certificate without hearing or order to transport agricultural or horticultural products from the field at time of harvest to point of processing or storage if such transportation is immediately necessary to preserve either the quantity or quality, or both, of such products. The term of such certificate shall be limited to a reasonable time to be determined by the commissioner under the circumstances.

(3) The commissioner may issue a temporary certificate without hearing or order to transport dairy products from farm to dairy if such transportation is immediately necessary to preserve either the quantity or quality, or both, of such products. Such certificate will be issued for a period not to exceed 30 days.

(4) The commissioner may issue a temporary certificate without hearing or order to transport logs when the number of carriers and their equipment in an area having proper operating authority is temporarily insufficient, or the weather or other forest conditions require, to transport expeditiously the commodity from the point of origin to storage, mill or shipping point and meet the marketing needs of the logging industry. Such certificate will be issued for a period not to exceed 30 days.

(5) The commissioner may issue temporary authority without hearing or order to transport sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix when the number of carriers and their equipment in an area having proper operating authority is temporarily insufficient, or weather or other conditions require, to transport expeditiously the commodity and meet the needs of the public. Such authority will be issued for a period not to exceed 30 days.

(6) The emergency or temporary authority issued under this section will not convey any right to permanent authority or be evidence of a need for permanent authority.

[Amended by 1961 c.112 §1; 1961 c.403 §4; 1969 c.699 §11; 1971 c.520 §6; 1971 c.655 §171a]

767.175 Issuance and placement of identification plates and receipts; receipt to state combined weight of vehicle; new plates issued biennially. (1) Except as otherwise permitted under ORS 767.177 and 767.310, the commissioner shall, with respect to each self-propelled or motor-driven vehicle, issue an identification plate or marker. He shall also issue a receipt stating therein the combined weight of each self-propelled or motor-driven vehicle and any train or combination of vehicles to be used therewith.

(2) The receipt shall be carried with the motor vehicle at all times, and no person shall load any motor vehicle in excess of its combined weight permit rating thus determined except as variations may necessarily result in passenger loading.

(3) The identification plate or marker must be fastened or placed on the motor vehicle to which it is issued in a manner prescribed by the commissioner by rule.

(4) Commencing January 1, 1958, and biennially thereafter, the commissioner shall by general order revoke all outstanding identification plates or markers and issue new identification plates or markers for all motor vehicles subject to this chapter.

[Amended by 1957 c.561 §1; 1969 c.91 §4]

767.177 Substitute identification devices; applications; fees. (1) Notwithstanding ORS 767.175, the commissioner, in his discretion, may require the use of identification devices, such as cab cards, stamps or carrier identification numbers, in lieu of, as a substitute for or in addition to, plates or markers, to identify and be carried with or placed upon each motor vehicle authorized to be operated in Oregon subject to the provisions of this chapter. The form of any identification device and the method for its use shall be determined by the commissioner.

(2) Except as may be inconsistent with this section, all provisions of this chapter relating to identification plates or markers shall

be applicable to the identification devices authorized by this section.

(3) Notwithstanding any other provision in this chapter, the commissioner may require applications for identification devices to be made annually and may require each carrier holding or obtaining a permit under this chapter to pay to the commissioner a fee of not to exceed $2.50 for each device issued on an annual basis.

[1969 c.91 §2]

767.180 Vehicles to be operated only in class for which authority issued; effect of violation. (1) The commissioner shall, in issuing certificates or permits, classify the applicants as to their proper class under the law and no carrier shall operate in a different class without certificate or permit from the commissioner.

(2) No vehicle shall be operated in more than one of the classes covered by ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 except that:

(a) Vehicles carrying persons may also carry baggage and express or be operated as charter cars.

(b) An authorized common or contract carrier may act as a private carrier without separate or additional authority.

(3) Common or contract carriers may interchange equipment upon which an identification plate or marker has been issued by the commissioner and such identification plate or marker thereon may remain on the equipment and no transfer of registration with either the Motor Vehicles Division of the Department of Transportation or the commissioner shall be required, provided that such interchange shall be permitted only in accordance with rules and regulations as prescribed by the commissioner pertaining to insurance coverage, accounts, records, reports, operations and practices thereof.

(4) If, after notice and hearing, the commissioner finds that any carrier is operating any vehicle in a class other than that for which the certificate or permit is issued, he shall revoke or suspend the certificate or permit, or order the carrier to cease and desist the illegal or irregular practices found.

[Amended by 1955 c.79 §1; 1957 c.561 §2; 1969 c.699 §12; 1971 c.655 §172; 1973 c.507 §3]

767.185 [Amended by 1961 c.249 §1; 1969 c.699 §13; 1971 c.655 §173; repealed by 1973 c.426 §1 (767.186 enacted in lieu of 767.185)]

767.186 Legal status of certificates and licenses. (1) Notwithstanding subsection (4) of ORS 57.480 or any other provision of law:

(a) No certificate issued under ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, or any prior law, shall be assigned or otherwise transferred except as provided in ORS 767.135.

(b) No license issued under ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, shall be assigned or otherwise transferred without the written approval of the commissioner that such assignment or transfer is consistent with the public interest and conforms with ORS 767.120.

(2) No such certificate or license shall be construed to be a franchise or irrevocable or exclusive or to possess value for rate-making purposes. However, upon the death of an individual holding a certificate or license:

(a) If the estate of such individual is admitted to probate, the executor or personal representative may continue the operation thereunder, for the purpose of transferring the certificate or license, for a period not to exceed two years from the date of death; or

(b) If the estate of such individual is not probated, all the heirs of the deceased holder of the certificate or license may file with the commissioner an application for the transfer of the certificate or license together with an affidavit signed by all such heirs stating the name of the person to whom the certificate or license is to be transferred. If any heir has not arrived at the age of majority or is otherwise legally incapacitated, his parent or guardian shall sign for him. The affidavit shall be on a form prescribed and furnished by the commissioner. Subject to the provisions of ORS 767.130, the commissioner shall transfer the certificate or license to the person named as transferee in the affidavit.

(3) In determining the scope of authority to be transferred under subsection (2) of this section, the commissioner shall consider, as evidence of past use under the certificate or license, only the services furnished during the two-year period immediately preceding the death of the certificate or license holder.

(4) If an application under subsection (2) of this section for the transfer of the certificate or license is not filed within 18 months of the date of death, and if such certificate or license is not transferred within two years of the date of death, the certificate or license shall be deemed automatically revoked.

[1973 c.426 §2 (enacted in lieu of 767.185)]

767.190 Cancellation or suspension of authority. (1) Certificates and permits when issued shall be valid until revoked. If at any time after notice to the certificate or permit holder and a hearing before the commissioner, the continued operation is found by him to be against the public interest, unduly congesting the highway or fraught with substantial danger to users of the highway, to adjacent property or facilities or to the public, or inflicting substantial damage to the highway, the commissioner shall cancel the certificate or permit so investigated or condition the operation thereunder as conditions require.

(2) Certificates, permits or licenses may be suspended or canceled by the commissioner for any of the following causes, after notice and hearing based upon his own or other complaint, when the certificate, permit or license holder:

(a) Or his agents or employes have repeatedly violated ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 or other highway or motor laws of this state.

(b) Has repeatedly and intentionally violated or avoided any order, rule or regulation of the commissioner.

(c) Has intentionally made unlawful rebates.

(d) Has repeatedly refused or has repeatedly failed, after having been requested to do so, to furnish service authorized by certificate or permit or granted by license. The commissioner in such cases may also, in his discretion, restrict the certificate, permit or license to conform with operations conducted.

(e) Has not, except for reasons beyond his control, transported property or persons authorized by his certificate or furnished service authorized by his license for a period exceeding six consecutive months immediately preceding the filing of the complaint in the proceeding; or, in the case of a common or contract carrier authorized to transport logs, poles or piling, has not, except for reasons beyond his control, transported commodities as authorized by his certificate, or furnished service authorized by his license for a period exceeding 12 consecutive months immediately preceding the filing of a complaint in the proceeding. The commissioner in such cases may also, in his discretion, restrict the certificate to conform with operations performed that were required by the public convenience and necessity or may conform the license to services furnished.

(f) Has refused, or has failed, within the time provided, to file the annual report required by ORS 767.605.

(g) Has failed to appear for hearing after notice that his certificate, permit or license is under investigation.

(h) Has filed with the commissioner an application which is false with regard to the ownership, possession or control of the equipment being used or the operation being conducted.

(i) Has repeatedly underestimated charges for household goods in transit.

[Amended by 1957 c.263 §3; 1959 c.86 §1; 1961 c.120 §1; 1963 c.210 §1; 1967 c.30 §1; 1969 c.146 §1; 1969 c.699 §14; 1971 c.655 §174; 1973 c.534 §1]

767.195 Liability insurance needed by carriers. (1) Except as provided in ORS 767.215, no authority shall be issued to any person to operate as a motor carrier until he has filed with the commissioner a policy of public liability and property damage issued by an insurance company or reciprocal insurance exchange authorized to transact business as such within this state, and in accordance with the policies, forms and manuals on file with the State Insurance Commissioner, for the following minimum limits of liability:

(a) Bodily injury liability, limit for each person, $10,000,

(b) Bodily injury liability, subject to above limit for any one person, limit for each accident, $20,000,

(c) Property damage liability, limit for each accident, $10,000,

and upon such terms, conditions and provisions as the commissioner may determine to be necessary for the reasonable indemnification of the patrons of the applicant and of the public against damage and injury for which the applicant may be liable by reason of the operation of any motor vehicle. However, the insurance policy required of a carrier or persons engaged solely in interstate commerce need not provide for the protection of their patrons.

(2) In lieu of such policy of insurance, any carrier subject to ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640:

(a) May cause his insurer to file a signed certificate of insurance coverage based upon a policy approved by the State Insurance Commissioner, if said policy by its terms fulfills the requirements as to coverage required by this section, and the rules and regulations of the commissioner; or

(b) May be permitted, at the discretion

of the commissioner, to file on forms approved by the commissioner a certified statement that the carrier has insurance in effect which meets the requirements of this section and that the carrier will cause to be filed with the commissioner within 30 days a policy of insurance or a signed certificate of insurance complying with this section showing that the carrier's insurance was effective at the time of issuing the certificate or permit and remained effective for the duration of the operating authority.

(3) (a) Filing or furnishing a certificate containing an untrue statement shall constitute false swearing and shall subject persons so doing to the provisions of ORS 162.140 and, upon conviction, to the penalties provided therefor.

(b) Failure to file within 30 days the policy or signed certificate required by paragraph (b) of subsection (2) of this section or the filing or furnishing of a certificate containing an untrue statement is a violation of ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 and, in addition, is cause for revocation or suspension of the carrier's certificate or permit without notice or hearing.

(4) In fixing the amount of the insurance policy the commissioner shall give due consideration to the character and amount of traffic and number of persons involved and the degree of danger which the proposed operation involves.

[Amended by 1953 c.582 §1; 1959 c.412 §4; 1969 c.98 §1; 1969 c.699 §15; 1971 c.655 §175]

767.200 Additional bond and insurance required of intrastate carriers of property. (1) Common and contract carriers of property intrastate may provide collect on delivery service. Any carrier providing collect on delivery service shall file with the commissioner a satisfactory bond in a sum to be fixed by the commissioner, conditioned that such carrier shall make compensation to shippers or consignees for all property shipped collect on delivery, or money collected therefor, belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation business.

(2) No certificate or permit shall be issued to any person to operate intrastate as a common or contract carrier of freight or express until he has filed with the commissioner, in addition to such coverage, cargo insurance in such penal sum as the commissioner may deem necessary to protect adequately the interests of the public. This policy shall bind the assurer for loss of, or damage to, property carried in, upon or attached to the motor vehicles or other equipment operated by, for or under the control of the assured, or while in the care or custody of the assured.

(3) The commissioner may waive the filing of such bond or cargo insurance for any carrier whose service is limited to commodities not subject to material damage or loss through ordinary transportation hazards, or any carrier who does not engage in transporting collect on delivery shipments.

[Amended by 1969 c.699 §16; 1973 c.507 §4]

767.205 Limitations on cancellation of insurance or bond; suspension of authority on cancellation of insurance or bond. (1) No insurance policy or collect on delivery bond furnished under ORS 767.195 or 767.200 may be canceled or otherwise terminated at any time prior to its expiration until the indemnity or surety company or reciprocal insurance exchange which executed the same, has filed with the commissioner a notice of cancellation as provided in such bond or policy. Such cancellation shall be effective not less than 15 days from the date of receipt, and no agreement between the parties thereto shall operate to avoid this restriction upon cancellation.

(2) If any such insurance policy or collect on delivery bond becomes inoperative, the authority under the certificate or permit involved shall cease and be suspended, in so far as it pertains to any affected vehicles, until an insurance policy or collect on delivery bond meeting the requirements of ORS 767.195 and 767.200 becomes effective and is filed with and accepted by the commissioner.

[Amended by 1963 c.119 §1; 1969 c.699 §17; 1971 c.655 §176]

767.210 Deposit of securities in lieu of insurance or bond. (1) The holder of any certificate or permit may furnish, file and deposit with the commissioner, in lieu of the insurance policy or surety bond, as the case may be, provided for in ORS 767.195 and 767.200, money or bonds, negotiable by delivery, of the State of Oregon, school districts therein, or of any county therein, or obligations of the United States, or obligations for which the faith of the United States is pledged for the payment of both the principal and interest, equal in amount to the amount of the insurance policy or bond required by the commissioner.

(2) So long as the deposit remains unincumbered the depositor is entitled to collect the interest upon such securities.

(3) The commissioner shall hold the securities upon such terms as he shall designate and approve pursuant to the provisions of ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, and shall deliver such securities to the State Treasurer, who shall receive and hold them subject to the lawful orders of the commissioner. The State Treasurer and his surety shall be liable upon his official bond for their safekeeping. The depositors shall reimburse the State Treasurer for any expenses incurred by him in the mailing, insuring, shipping or delivering of any such securities, or of the interest coupons attached thereto as they mature.

(4) Such substituted security shall be subject to the liabilities imposed by the terms of the policy of insurance or surety bond then currently used by the commissioner.

(5) If the securities provided for in this section are furnished in lieu of an insurance policy or bond, they shall not be subject to withdrawal or assignment by the holder of the certificate or permit, either voluntarily or by operation of law, until the expiration of one year after the holder of the certificate or permit, in connection with which they are furnished has:

(a) Substituted therefor a policy of insurance or surety bond as provided in ORS 767.195 and 767.200; or

(b) His certificate or permit canceled; or

(c) Surrendered such certificate or permit to the commissioner for cancellation and has ceased operation thereunder.

(6) If any such securities become impaired in value, the commissioner shall require additional protection by insurance, bond or substitute security to the extent that the value of the securities, or any of them, may have become impaired.

[Amended by 1969 c.699 §18; 1971 c.655 §177]

767.212 Private carriers as self-insurers. ORS 767.195 to 767.210 do not apply to any private carrier using more than 25 motor vehicles if that carrier furnishes, in such form and at such times as the commissioner considers appropriate, proof of the carrier's ability to act as a public liability and property damage self-insurer in the amounts provided in ORS 767.195.

[1971 c.655 §178]

767.215 Self-insurance in lieu of insurance or bond. (1) Any common carrier, engaged in interstate or interstate and intrastate operations within the State of Oregon, which is or becomes qualified as a self-insurer with the Interstate Commerce Commission of the United States in accordance with laws of the United States applicable to self-insurance by motor carriers, is exempt, so long as such qualification remains effective, from the provisions of ORS 767.195 to 767.210.

(2) The commissioner may require proof of the existence and continuation of such exempt status to be made by affidavit of the carrier in such form and at such times as the commissioner may prescribe.

[Amended by 1957 c.368 §1]

(Taxes and Fees)

767.305 Application fee; transfer fee. (1) In addition to the other fees prescribed in ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, every person applying for a certificate under ORS 767.135 shall pay to the commissioner with his application a fee of $150. A like fee shall accompany an application for transfer of such certificates. If an application under any other provision of this chapter is set for hearing, a $150 fee shall be paid before such hearing. The fees collected under this section are not refundable.

(2) When the commissioner fixes a time and place for a hearing as required by subsection (2) of ORS 767.135, if the person who protested or requested the hearing fails to appear at the hearing and failed to withdraw his protest or request for hearing at least five days before the date of the hearing, the commissioner may require such person to pay the cost of the hearing.

[Amended by 1961 c.44 §1; 1969 c.699 §19; 1971 c.655 §179]

767.310 Plate fees; temporary pass fees; summary revocation of plate or marker. (1) In addition to other fees prescribed in this chapter, each carrier holding or obtaining a certificate or permit under this chapter shall pay to the commissioner a fee of $5 for each identification plate or marker issued to identify and be attached to each self-propelled or motor-driven vehicle operated or to be operated in connection with such certificate or permit. This fee shall be known as a plate fee to be paid in advance of the issuance of the identification plate or marker.

(2) In cases of emergency when, because of single trip or short time operation not exceeding 10 days, it is impractical to assign and have an identification plate or marker attached to a motor vehicle, the commissioner may issue a temporary pass identifying the motor vehicle. For this pass a fee of $2 for each motor vehicle shall be paid.

(3) An identification plate or marker may be summarily revoked by the commissioner whenever the motor vehicle to which it is issued is suspended from operation or removed from certificate or permit. In such case no refund of fees shall be allowed for the unexpired term of such identification plate or marker.

[Amended by 1957 c.561 §3; 1969 c.91 §5; 1969 c.699 §20]

767.315 Broker's and forwarder's tax. Brokers and forwarders shall pay to the commissioner a fee or tax of six percent of the gross revenues earned, less any freight charges paid by forwarders, from intrastate business. On or before the 20th day of each month, each broker or forwarder shall pay the amount of the fees or taxes due from them for the preceding calendar month. If payment is not made on or before such date, there shall be added for each month overdue a sum equal to one and one-half percent of the amount of the original fee.

767.320 [Amended by 1965 c.288 §2; repealed by 1971 c.655 §250]

767.325 [Amended by 1953 c.337 §3; 1961 c.553 §1; 1963 c.380 §1; 1963 c.466 §1; 1967 c.486 §2; 1969 c.699 §21; 1971 c.655 §218; renumbered 767.815]

767.330 [Amended by 1963 c.380 §2; renumbered 767.820]

767.335 [Amended by 1953 c.337 §3; 1955 c.653 §1; 1957 c.561 §4; 1959 c.180 §1; 1961 c.378 §1; 1963 c.380 §3; 1965 c.250 §1; 1971 c.655 §219; renumbered 767.825]

767.340 [Amended by 1971 c.655 §220; renumbered 767.830]

767.345 [Renumbered 767.835]

767.350 [Repealed by 1961 c.110 §1]

767.355 [Amended by 1953 c.336 §2; 1957 c.564 §1; 1963 c.234 §1; 1967 c.29 §1; 1969 c.146 §2; 1971 c.655 §221; renumbered 767.840]

767.357 [1969 c.146 §7; renumbered 767.845]

767.360 [Amended by 1957 c.564 §2; 1963 c.234 §2; 1969 c.146 §3; 1971 c.655 §222; renumbered 767.850]

767.365 [Amended by 1957 c.564 §4; 1971 c.655 §223; renumbered 767.855]

767.370 [Amended by 1957 c.564 §4; renumbered 767.860]

767.375 [1957 c.564 §5; 1963 c.23 §1; 1969 c.146 §4; renumbered 767.865]

767.380 [1961 c.190 §2; 1967 c.29 §2; 1969 c.146 §5; 1969 c.699 §22; 1971 c.655 §224; renumbered 767.870]

767.385 [1963 c.140 §2; repealed by 1965 c.448 §4]

767.390 [1967 c.178 §2; amended by 1971 c.655 §225; renumbered 767.875]

(Regulation and Enforcement)

767.405 Commissioner's authority over common carriers and forwarders. Except as provided in ORS 767.425, the commissioner shall supervise and regulate all common carriers of persons or property, or both, and forwarders, and with respect thereto shall:

(1) After hearing, fix, alter, regulate, determine, declare and prescribe just, fair and reasonable rates, classifications and practices.

(2) Prescribe the kind and form of accounts, manifests, receipts and records to be used and kept pertaining to operation, and the method and manner of keeping them, require their preservation for such time as the commissioner may determine proper, and have access thereto with right of audit and inspection thereof at all reasonable times.

(3) Require the filing of such periodical or other reports or data of such carriers and forwarders, as the commissioner deems necessary.

(4) Require reasonably adequate service and facilities.

(5) Regulate operating time schedules of regular route common carriers so as to meet the needs of any community served and so as to prevent unnecessary duplication by regular route common carriers of the transportation services afforded by other regular route common carriers.

(6) Prescribe and require reasonable precautions for safety of operation of motor vehicles subject to this chapter, to the end that uniformity between state and federal motor carrier safety regulations shall be established and maintained in so far as practicable.

(7) Relieve the highways of all undue burdens and safeguard traffic thereon by promulgating and enforcing reasonable rules, regulations and orders designed and calculated to prevent serious highway congestion, and minimize the dangers attending transportation on the public highways of all commodities including explosives or highly inflammable or combustible liquids, fluids, substances or gases.

[Amended by 1971 c.655 §181]

767.407 Temporary rate procedures. Notwithstanding subsection (1) of ORS 767.405, the commissioner may permit the establishment or modification of rates, classifications and practices to become temporarily effective without a hearing if the commissioner finds that such action is in the public interest. The commissioner shall hold the hearing required by subsection (1) of ORS 767.405 as soon thereafter as is practicable. Any such rates, classifications and practices determined after hearing shall be effective as though originally determined pursuant to ORS 767.405.
[1971 c.655 §182]

767.410 Regulation of common carriers and forwarders. Except as provided in ORS 767.425:

(1) All rates made by and all rules, regulations and practices adopted by each common carrier or forwarder shall:

(a) Be plainly stated in tariffs or schedules available to the public at such carrier's or forwarder's office and filed with the commissioner before they become effective.

(b) Be just, reasonable and fair and shall not be unduly discriminatory, prejudicial or preferential.

(2) No common carrier or forwarder shall:

(a) Charge, demand, collect or receive a greater, less, or different remuneration for the transportation of passengers or property, or both, or for any service in connection therewith, than the rates which have been legally established and filed with the commissioner.

(b) Refund or remit in any manner or by any device any portion of the rates required to be collected by its tariffs on file with the commissioner.

(3) The commissioner shall check the records of common carriers and forwarders for the purpose of discovering all discriminations and rebates. The commissioner, upon his own motion, may, and upon the complaint of any aggrieved person, shall, pursuant to written notice served upon any such common carrier or forwarder, investigate the rates, classifications, rules, regulations and practices, made or exacted for the transportation of persons or property by the common carrier or forwarder, or for any service in connection therewith. To the extent that same are found by the commissioner to be unreasonable, exorbitant, unlawful, unfair or unduly discriminatory, preferential or prejudicial, the commissioner shall, by orders based upon the evidence, fix in lieu thereof just, fair, lawful and reasonable rates, classifications, rules, regulations and practices. Such carrier or forwarder shall forthwith comply with such orders.

(4) The commissioner may suspend a tariff or time schedule that he believes will impair the ability of carriers or forwarders to serve the public or appears to be unjust, unfair, unreasonable, prejudicial, discriminatory or otherwise unlawful.

(5) No common carrier will be permitted to restrict its services to paying time schedules on passenger routes or on high-class commodities with a low rate in competition with a common carrier giving complete service. However, this subsection does not apply to the transportation of commodities requiring special equipment or to the transportation of express or any special or particular commodity which because of its character or use requires rapid transit.

(6) Notwithstanding subsection (5) of this section, the commissioner may, upon application and hearing, or upon his own motion, permit two or more common carriers authorized to serve the same point or points to enter into an agreement for the pooling or division of traffic, or of service, or of gross or net earnings, or any portion thereof as to such service point or points whenever it appears that such agreement will be in the interest of better service to the public, of economy of operation and will not unduly restrain competition. The commissioner may, subject to the governing policies of ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, prescribe rules and regulations and impose such terms and conditions in such cases as are found to be just and reasonable.
[Amended by 1961 c.548 §1; 1971 c.655 §183; 1973 c.507 §5]

767.415 Classes of common carriers; rights and duties of each class. Except as provided in ORS 767.425:

(1) Common carriers shall be classified, and the classification shall be shown on the common carrier's certificate or permit when issued or reissued by the commissioner, as follows:

(a) Regular route, scheduled service, including sightseeing tours.

(b) Irregular route.

(c) Local cartage service.

(2) A carrier operating in the regular route, scheduled service class is any person who undertakes to transport persons or property, or both, or any class of property, by motor vehicle for compensation between fixed termini and over a regular route upon established or fixed schedules. Carriers of persons shall file a schedule setting forth the termini between which service is rendered, the hours of departure and arrival, and tariffs and classifications governing rates. Carriers of property shall file a schedule setting forth the termini between which the service is rendered, the frequency of service, elapsed time between pick up and delivery of property and tariffs and classifications governing rates. Sightseeing tours may be offered to the public as regular route, scheduled services, subject to the following modifications: Routes, time schedules, tariffs of transportation rates and offerings of special services filed with the commissioner shall be accepted and placed in effect only if they are such as to render the sightseeing tours noncompetitive with other regular route, scheduled carriers of passengers over the same, similar or a combination of routes. Transportation rates shall be stated separately from other rates. Schedules of sightseeing tours may be seasonal in nature, and individual schedules may be canceled owing to inclement weather or other conditions rendering the service impractical.

(3) A carrier operating in the irregular route class is any person who undertakes to transport persons or property, or both, or any class of property, by motor vehicle for compensation over irregular routes. Such carriers shall file tariffs and classifications governing rates. Irregular route carriers of persons shall be limited to providing vehicles on an hourly or a mileage basis, and the tariffs of such carriers shall clearly state the hourly or mileage charge for each vehicle on its certificate or permit. Irregular route common carriers shall serve indiscriminately the territory which they are authorized to serve, and their service shall be on call, coincidental, nonscheduled, unperiodical, itinerant and ambulatory in nature. Such carriers shall not:

(a) By solicitation, advertisement, or by a course of dealing or practice, or otherwise, hold themselves out to render regular service between any particular points or over any particular routes, or lead shippers to believe or understand that they may rely upon a continuous regularity of service by such carriers between particular or specified points or over any particular or specified route.

(b) In the solicitation of business or the advertising of their service restrict or limit such solicitation or advertising to traffic moving between any particular or specified points or over any particular or specified routes.

(c) Operate with continuing regularity under a predetermined plan of operation or time schedule or approximate time schedule, between any particular points or over any particular route, but this paragraph shall not apply to or prohibit repeated movements by such carriers over the same route or between the same points in instances where the character or volume of the traffic requires more or less continued and repeated movements over the same route for such reasonable periods of time as may be necessary to meet the demands of a particular shipper in particular instances.

(4) A local cartage carrier is any person who undertakes to transport any class of property by motor vehicle for compensation when such transportation is performed wholly within an incorporated city or within a zone adjacent to and commercially a part of such incorporated city. The commissioner shall, after hearing, determine what territorial limits will be included within the commercial area adjacent to the limits of any incorporated city. Such carriers shall file tariffs and classifications governing rates. [Amended by 1957 c.675 §1; 1969 c.699 §23; 1971 c.655 §184; 1973 c.507 §6]

767.420 Regulation of contract carriers. (1) The commissioner shall supervise and regulate all contract carriers of persons or of property, or both, and, with respect thereto, exercise and perform all the powers and duties stated as subsections (1), (2), (3), (6) and (7) of ORS 767.405, except that he shall not require contract carriers to be or become common carriers.

(2) No contract carrier shall give or cause any undue or unreasonable advantage or preference to those whom he serves as compared with patrons of any common carrier, or subject the patrons of any common carrier to any undue or unreasonable discrimination or disadvantage, or by unfair competition destroy or impair the service or business of any common carrier or the integrity of the state's regulation of any such service or business.

(3) To the end that the commissioner may enforce these provisions, each contract carrier, except carriers engaged exclusively in transporting the commodities included in the exemptions provided by ORS 767.425 shall file with the commissioner copies of his contract, immediately upon the making of such contract, including the rates and practices called for or contemplated in the performance of the contract, for review and revision and approval or modification as to rates and practices by the commissioner. No contract carrier shall enter upon the performance of any contract contemplated by this section, until approval of such contract has been given by the commissioner.

(4) The commissioner has jurisdiction over said rates and practices to the same extent as is required by ORS 767.410, in the case of common carriers, and ORS 767.410 is by this reference made applicable to contract carriers and the commissioner shall apply and enforce the same accordingly; provided, the commissioner has no authority to fix rates on agricultural, horticultural, poultry, dairy, livestock, timber or livestock products in the transportation from the point of origin to packing or processing plants, or from the point of origin or from packing or processing plants to the nearest market or shipping points, when not transported in competition with common carriers or railroads.

(5) Contract carriers engaged exclusively in transporting unprocessed agricultural commodities from fields to processing plants or storage points are exempt from the filing requirements of subsection (3) of this section and from the provisions of ORS 767.200 and 767.605.

[Amended by 1971 c.655 §185; 1973 c.507 §7]

767.425 Exemption of certain operations from regulatory provisions. ORS 767.405 to 767.415, with the exception of subsections (2), (3), (4), (6) and (7) of ORS 767.405, do not apply to:

(1) Common or contract carriers engaged exclusively in the transportation of logs, poles or piling or rough or planed lumber, including shingles, from point of origin to mill, retail yard or shipping point.

(2) Common or contract carriers engaged exclusively in the transportation of cordwood in long or short lengths or sawdust or hog fuel.

(3) The operation of motor vehicles engaged exclusively in the transportation of sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix.

(4) The operation of motor vehicles engaged exclusively in transporting metallic ores or concentrates, or raw nonmetallic products, whether crushed or otherwise, from mines, pits or quarries.

(5) Carriers engaged exclusively in transporting fish scrap from fish processing plants to rendering or reduction plants.

[Amended by 1961 c.440 §1; 1969 c.575 §2]

767.430 Regulation of interstate carriers. A person engaged exclusively in the conduct of interstate transportation shall:

(1) Observe and comply with the laws of this state regulating traffic on its highways, or the operation of motor vehicles thereon, or limiting the size, weight or speed of motor vehicles; and

(2) Observe and comply with the laws of this state and with the orders, rules and regulations of the commissioner, the department, county courts, boards of county commissioners and municipal authorities to protect the highways from substantial damage and to promote safety to other users thereof, to adjacent property and facilities and to the public.

767.435 Regulation of charges made by persons transporting property of others as part of a combination of services. Every person engaging for compensation to perform a combination of services which includes transportation of property of others upon the public highways shall advise the commissioner what portion of the consideration is intended to cover the transportation service. If the agreement covering the combination of services is in writing, the rate for such transportation shall be set forth therein. The rates for the transportation services included in such combination of services shall be subject to control and regulation by the commissioner in the same manner that the rates of common and contract carriers are controlled and regulated.

[Amended by 1971 c.655 §186]

767.440 Classification and regulation of brokers and forwarders. (1) The commissioner may, from time to time, establish such just and reasonable classifications of brokers or forwarders as the special nature of the services performed by such brokers or forwarders requires, and such just and reasonable rules, regulations and requirements, consistent with ORS 767.005 to

767.315, 767.405 to 767.495 and 767.605 to 767.640, to be observed by the brokers or forwarders so classified or grouped, as the commissioner deems necessary or desirable in the public interest.

(2) To regulate brokers and forwarders, as provided in ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, the commissioner may establish reasonable requirements with respect to licenses, financial responsibility, accounts, records, reports, operations and practices of any such person.
[Amended by 1971 c.655 §187]

767.445 Commissioner's general authority to prescribe and enforce rules, regulations and classifications. (1) The commissioner shall, by general order or otherwise, prescribe and enforce rules and regulations in conformity with ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 to better accomplish the enforcement of its provisions, which shall cover and include common carriers, contract carriers and private carriers and their operations.

(2) The commissioner may make such subdivisions of the carriers, as classified in ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, as in his opinion may work to the efficient administration of ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 and shall do all things necessary to carry out and enforce its provisions.

(3) All rules and regulations made by the commissioner pursuant to ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 and filed in his office have the force and effect of law.

(4) This section does not restrict the powers of the department or the county courts or boards of county commissioners under existing laws and amendments thereof.

(5) Without restricting the general powers conferred upon the commissioner to prescribe and enforce rules and regulations, the commissioner is vested with special authority with respect to the matters listed in ORS 767.450 and 767.460.
[Amended by 1971 c.655 §188]

767.450 Regulation of motor vehicles. The commissioner may:

(1) Require the weighing of motor vehicles loaded and empty at reasonably frequent intervals;

(2) Inspect and require proper equipment and markings of motor vehicles and insure the making of necessary repairs, to promote efficient and safe operation; and

(3) Prescribe the character of appliances to be used on motor vehicles to establish correct mileage traveled by such vehicles and require the installation and proper repair and inspection of such appliances.

767.455 Regulation of hours of service for drivers. (1) The commissioner may, after public notice and hearing, adopt rules and regulations to protect and safeguard the health and safety of all employes, passengers and the public by prescribing the limit of hours that drivers or operators of motor vehicles may remain on duty at any time, and the number of hours of release from duty required; provided, however, that uniformity between state and federal motor carrier regulation shall be established and maintained in so far as practicable.

(2) Venue for prosecution for the violation of this section lies in the county of the residence of the defendant.

(3) The commissioner may revoke the certificate or permit of any person for repeated violation of the laws or rules governing hours of service.

(4) This section also applies to owner-drivers and helpers.
[Amended by 1963 c.184 §1; 1969 c.699 §24]

767.460 Regulation of shipping receipts, changes of vehicles and routes, classification, records, mileage and distingulshing marks. The commissioner may:

(1) Require every person operating as a common or contract carrier of property, except carriers carrying dairy products from farm to factory and carriers engaged exclusively in transporting logs, poles or piling to issue a receipt in triplicate for freight received for shipment, which shall contain the name of the truck operator, date and place received, name of consignor, name of consignee, destination, description of shipment, weight, rate and charges, and signature of the carrier or his agent; one of said receipts to be delivered to the consignor, one to consignee and one to be retained by carrier in its files.

(2) Prescribe rules governing amendments of certificates or permits covering additions to and withdrawals of vehicles and the extension or contraction of routes, and the filing of applications therefor.

(3) Classify and reclassify carriers in accordance with subsections (3), (4) and (6) of ORS 767.005.

(4) Prescribe forms of accounts and records to be kept, reports to be made and blanks to be used by common and contract carriers in transportation operations, and matters incidental thereto.

(5) Prescribe distinguishing marks, such as signs, colors, lights, tags and plates as may be convenient or necessary for distinguishing classes of carriers or for protective or regulatory purposes; but not inconsistent with ORS chapter 483.

[Amended by 1969 c.699 §25; 1971 c.655 §189]

767.463 [1959 c.498 §2; repealed by 1971 c.655 §250]

767.465 [Repealed by 1971 c.655 §250]

767.470 Civil penalty for violation of economic regulation provisions or order of commissioner. (1) In addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of ORS 767.005 to 767.315, 767.405 to 767.495 or 767.605 to 767.640 or any order, rule, regulation or decision of the commissioner shall incur a penalty of $100 for every such violation.

(2) Each such violation shall be a separate offense and in case of a continuing violation every day's continuance is a separate violation. Every act of commission or omission which procures, aids or abets in the violation is a violation under this section and subject to the penalty provided in this section.

(3) Such penalty shall not be imposed except by order following complaint as provided in ORS 756.500 to 756.610. Such proceeding may only be commenced within two years following the date of the violation complained of.

(4) The commissioner may mitigate any penalty provided for in this section on such terms as he considers proper if:

(a) The defendant admits the violations alleged in the complaint and makes timely request for mitigation of the penalty; or

(b) The defendant submits to the commissioner a written request for mitigation of the penalty within 15 days from the date the penalty order is served.

(5) If the amount of such penalty is not paid to the commissioner, the Attorney General shall bring an action in the name of the State of Oregon in the Circuit Court of Marion County to recover such penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the commissioner. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter.

[Amended by 1957 c.263 §4; 1971 c.655 §190]

767.475 Utilization of State Police in enforcing chapter. The commissioner shall call upon the State Police for all police service or police assistance necessary for the proper and efficient policing of carriers operating under this chapter. The commissioner and the State Police shall cooperate in the enforcement of this chapter to the end that there may be no duplication of service or expense.

[Amended by 1953 c.338 §4; 1971 c.655 §191]

767.480 [Amended by 1953 c.338 §4; repealed by 1971 c.655 §250]

767.485 [Amended by 1957 c.263 §5; repealed by 1971 c.655 §250]

767.490 [Repealed by 1953 c.478 §2]

767.495 Service of process on nonresident carrier by serving the commissioner. (1) The commissioner is the true and lawful attorney upon whom all process, summons or notices in any action, suit or proceeding against each motor carrier residing or having its principal place of business outside this state may be served, when such action, suit or proceeding is caused by or relates to the operation of motor vehicles of or by such carrier within the state.

(2) The service of process, summons or notice upon such carrier may be made by leaving a copy thereof, together with a copy of the complaint or order, in the office of the commissioner. The commissioner shall forthwith notify such carrier of such service by letter directed to it at its residence or place of business as shown by the records of the commissioner.

(Records, Reports and Funds)

767.600 [Amended by 1953 c.337 §3; 1969 c.146 §8; renumbered 767.905]

767.605 Carrier's annual report to commissioner; exemptions. On or before April 1 of each year, unless additional time is granted, every motor carrier shall file with the commissioner a report, verified under oath by its chief officer, agent or owner, in such form and containing such information as the commissioner shall prescribe, covering the year ending December 31 next preceding. However, carriers operating as follows shall be exempt from making this report:

(1) Private carriers.

(2) Carriers engaged exclusively in transporting logs, poles or piling.

(3) Carriers engaged exclusively in the transportation of cordwood in long or short lengths or sawdust or hog fuel.

(4) Carriers engaged exclusively in the transportation of sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix, to the extent of those operations.

(5) Carriers engaged exclusively in the transportation of metallic ores or concentrates, or raw nonmetallic products, whether crushed or otherwise, from mines, pits or quarries, to the extent of those operations.

(6) Carriers engaged exclusively in transporting fish scrap from fish processing plants to rendering or reduction plants.

(7) Carriers engaged exclusively in interstate operations.

(8) Common or contract carriers engaged exclusively in the transportation of rough or planed lumber, including shingles, from point of origin to mill, retail yard or shipping point.

[Amended by 1961 c.440 §2; 1969 c.575 §3; 1971 c.655 §191a; 1973 c.507 §8]

767.610 [Repealed by 1961 c.110 §1]

767.615 Copies of contracts to be filed by carriers. Every common carrier and contract carrier, whenever required by the commissioner, shall file with the commissioner, within a time fixed by him, copies of all contracts which relate to the transportation of persons or property, or any service in connection therewith, made or entered into by such carrier with any other common carrier, contract carrier or transportation company or carrier, or any shipper, consignee or other person doing business with such common carrier or contract carrier.

767.620 [Amended by 1957 c.431 §1; repealed by 1971 c.655 §250]

767.625 Inspection of broker's and forwarder's records. The commissioner and his special agents and examiners have the same authority as to accounts, reports and records, including inspection and preservation thereof, with respect to any person holding a brokerage or forwarding license issued under ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640, as in the case of motor carriers.

[Amended by 1971 c.655 §192]

767.630 Motor Carrier Account. (1) All fees, taxes, charges and other sums collected by the commissioner under this chapter shall be paid into the State Treasury and shall be by the State Treasurer placed to the credit of the General Fund to an account to be known as the Motor Carrier Account.

(2) The commissioner may purchase the necessary supplies and equipment and provide for all necessary and incidental expenses incurred by him in administering and enforcing this chapter.

(3) All claims, duly approved by the commissioner, which have been incurred in pursuance of law, shall be paid by warrants drawn in the manner provided by law, payable out of the Motor Carrier Account of the General Fund.

[Amended by 1971 c.655 §193]

767.635 Monthly transfer of Motor Carrier Account surplus to State Highway Fund. On the last day of each month the Secretary of State shall certify to the State Treasurer the balance of all money in excess of $200,000 remaining in the Motor Carrier Account of the General Fund as of the close of business on the 25th day of such month, after deducting sums disbursed by warrants drawn under ORS 767.630. The State Treasurer shall thereupon transfer the balance from the General Fund to the State Highway Fund.

[Amended by 1965 c.258 §3]

767.640 Restrictions on use of funds. No part of the funds produced by this chapter shall be used by the commissioner directly or indirectly:

(1) For the purpose of investigating the rules, charges, practice or service of any carrier by rail.

(2) In his administration or enforcement of any law or authority over any carrier by rail.

(3) To investigate any public utility other than motor carriers.

(4) To investigate motor carriers beyond the appropriation made in this chapter.

767.645 [Repealed by 1957 c.431 §2]

767.650 [Repealed by 1971 c.655 §250]

767.655 [Repealed by 1967 c.68 §1]

WEIGHT-MILE TAX
(Generally)

767.700 "Carrier," "common carrier," "contract carrier" and "private carrier" defined. As used in ORS 767.700 to 767.905 and 767.992 the term:

(1) "Carrier" or "motor carrier" means common carrier, contract carrier or pivate carrier.

(2) "Common carrier" means:

(a) Any person who transports for hire or who holds himself out to the public as willing to transport for hire, compensation or consideration by motor vehicle, persons or property, or both, for those who may choose to employ him; or

(b) Any person who leases, rents or otherwise provides a motor vehicle for the use of others and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.

(3) "Contract carrier" means any person engaged in the transportation by motor vehicle of persons or property, or both, for compensation, under special and individual agreements, leases or other arrangements, and not included in the term "common carrier."

(4) "Private carrier" means any person not included in the term "common carrier" or "contract carrier" who operates a motor vehicle over the public highways for the purpose of transporting property in connection with a noncarrier commercial enterprise in which such person is engaged. Ownership of the property transported shall not be accepted as sufficient proof of a private carrier operation, if the carrier is in fact engaged in the transportation of property for hire, compensation or remuneration, or if such transportation operations are conducted for profit and not merely in furtherance and within the scope of a noncarrier commercial enterprise in which such person is engaged.

[1971 c.655 §195]

767.705 "Combined weight," "motor vehicle" and "transit type motor vehicle" defined. As used in ORS 767.700 to 767.905 and 767.992 the term:

(1) "Combined weight" means the weight of the motor vehicle plus the weight of the maximum load which such motor vehicle may carry as declared by the applicant subject to audit and approval by the commissioner. The combined weight of motor busses or bus trailers is the light weight of the vehicle plus the weight of the maximum seating capacity including the driver's seat estimated at 170 pounds per seat, exclusive of emergency seats, except that transit type motor vehicles may use 150 pounds per seat in determining combined weight. In cases where a bus has a seating capacity which is not arranged for separate or individual seats, 18 lineal inches of such capacity shall be deemed the equivalent of a passenger seat.

(2) "Motor vehicle" means any self-propelled or motor-driven vehicle, or any train or combination of vehicles, used or physically capable of being used upon any public highway in this state in the transportation of persons or property, except vehicles operating wholly on fixed rails or tracks and electric trolley busses. "Motor vehicle" includes overdimension vehicles or vehicles permitted excessive weights pursuant to special authorization issued by a city, county or the Department of Transportation.

(3) "Transit type motor vehicle" means any passenger carrying vehicle which does not have a separate compartment or space provided for the transporting of baggage or express.

[1971 c.655 §196]

767.710 "Extreme miles" or "extreme mileage" and "public highway" defined. As used in ORS 767.700 to 767.905 and 767.992 the term:

(1) "Extreme miles" or "extreme mileage" means the total miles operated by a vehicle over the public highways, except the extra miles necessarily operated over in traversing detours or temporary routes on account of road blockades in this state in excess of the number of miles that would otherwise be required to make the trip by usual highway route.

(2) "Public highway" means every street, alley, road, highway or thoroughfare in this state used by the public or dedicated or appropriated to public use.

[1971 c.655 §197]

767.715 "Certificate" and "permit" defined. As used in ORS 767.700 to 767.905 and 767.992:

(1) "Certificate" means an authority issued to a common or contract carrier other than as provided by ORS 767.145 or 767.700.

(2) "Permit" means an authority issued to a carrier under ORS 767.145, 767.765 or 767.700.

[1971 c.655 §198]

767.720 Declaration of policy. The rapid increase of motor carrier traffic and the fact that under existing law many motor trucks, trailers and busses are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that:

(1) Statutes be passed to provide a method of assessing privilege taxes to enable the further construction of highways and to provide for the operation, preservation and maintenance of highways already built.

(2) The legislature hereby declares that to effect the ends and purposes listed in this section, ORS 767.700 to 767.905 and 767.992 are adopted.

[1971 c.655 §199]

767.725 Nonapplicability of weight-mile tax to school, mail, mass transit districts and government transportation and vehicles on highway construction projects. (1) ORS 767.700 to 767.905 do not apply to motor vehicles:

(a) When operated by, or under contract with, any school board, district or person responsible for the administration of school activities, and engaged exclusively in transporting students or their instructors to or from school or authorized school activities or functions.

(b) When operated by, or under contract with, any school board, district or person responsible for the administration of school activities, and engaged exclusively in transporting elementary or secondary school students to or from activities or functions under the sponsorship of the State Board of Higher Education.

(c) On a trip basis while being used exclusively in the transportation of United States mail as a substitute or supplement for rail transportation. This exclusion shall apply as of January 1, 1965.

(d) When owned and operated by the United States, the State of Oregon, any county, city, town or municipality in this state, or any department of any of them except when owned or operated as a carrier for hire.

(e) When owned or operated by a mass transit district created under ORS chapter 267.

(2) ORS 767.700 to 767.905 do not apply to persons when regularly operating over a rural or star route and engaged exclusively in the transportation of United States mail under contract with, or when such person is an employe of, the Post Office Department. Such person may, in addition thereto, transport property for consideration in such vehicle over his rural or star mail route not to exceed 200 pounds in weight for any one delivery, when not in competition with a regular route common carrier.

(3) ORS 767.700 to 767.905 do not apply to motor vehicles operated by, or under contract with, a person responsible for the construction or reconstruction of a highway under contract with the Department of Transportation or with an agency of the United States, when operated within the immediate construction project as described in the governmental agency contract during the construction period.

(4) Paragraph (e) of subsection (1) of this section applies to tax periods beginning after December 31, 1969.

[1971 c.655 §200; 1973 c.573 §1]

767.730 Nonapplicability of weight-mile tax to motor vehicles owned by farmers. (1) ORS 767.700 to 767.905 do not apply to a motor vehicle owned by a farmer when used exclusively in any one or more of the following operations:

(a) Transporting his own agricultural commodities, agricultural products or livestock (including the products of such commodities, products or livestock that were packed, processed or manufactured on his farm) that were originally grown or raised by him on his farm, or when used in any transportation which is incidental to the regular operation of his farm, or when used to transport supplies, equipment or materials to his farm that are consumed or used on his farm.

(b) Transporting forest products to his own farm, or transporting for any purpose such products originating on his farm.

(c) Transporting from the farm of another farmer the agricultural commodities, agricultural products or livestock (including the products of such commodities, products or livestock that were packed, processed or manufactured on such farm and those products indicated in paragraph (b) of this subsection) that were originally grown or raised on such farm.

(d) Transporting supplies, equipment or materials on an exchange of labor basis or for a nominal consideration to another farmer, if such supplies, equipment or materials are to be used or consumed on the other farmer's

farm, or are directly related to the operation of such farm.

(e) Transporting sand, gravel, rock, dirt, debris, cinders or asphaltic concrete mix to a project of a district or corporation organized under ORS chapter 545, 547 or 554 of which the farmer whose vehicle is being used is a landowner if such materials are directly related to the construction or operation of such district or corporation project.

(2) As used in this section:

(a) "Farm" includes one or more farms, orchards or ranches, but does not include a tree farm unless part of a farm operation.

(b) "Farmer" means a person who is engaged, either as owner or renter, in a farm operation of a size to reasonably require the use of the motor vehicle or vehicles claimed under the exemption provided by ORS 481.225 and this chapter, but does not include cooperative corporations or associations organized under ORS chapter 62 or corporations, or subsidiaries of corporations, if the shares of any such corporation or subsidiary are owned by more than 100 shareholders. As used in this paragraph, "shares" and "shareholder" have the same meaning given these terms in ORS 57.004.

(3) As used in this section, "forest products" means forest materials originating on a farm or as an incident to the regular operation of a farm, but piling, poles over 30 inches in circumference at the large end, and logs over eight feet six inches in length, or logs over eight feet six inches but not over 16 feet six inches in length when transported on any motor vehicle having a gross weight in excess of 16,000 pounds shall not be considered forest products, agricultural commodities or agricultural products within the meaning of this section.

[1971 c.655 §201; 1973 c.396 §3]

767.735 Nonapplicability of weight-mile tax to certain specified vehicles. ORS 767.700 to 767.905 do not apply to persons or motor vehicles:

(1) While being used in the transportation of persons for hire in vehicles having a seating capacity of more than five persons and operating wholly within the corporate limits of a city in Oregon and within a radius of three airmiles beyond the corporate limits of such city. When the three airmile radius of a city in which the original starting point of such vehicle is located extends into the corporate limits of another city and both of the cities are served by the same carrier, the two cities shall be considered for the purpose of this subsection as one city if the service proposed may be rendered by a vehicle which at no time on such movement operates beyond the three airmile radius of both cities.

(2) When a passenger vehicle of not exceeding a five-passenger seating capacity is engaged in a taxicab operation, either transporting passengers between points in Oregon or transporting property in single shipments that do not exceed 10 pounds in weight, consisting of:

(a) Drugs or medical, dental or optical supplies;

(b) News or advertising matter, or matter to be used in producing news or advertising, including but not limited to art work, copy, photographs, film (still, movie, or video or audio tape), engravings, reproductions, plates or proofs;

(c) Food, clothing, flowers or personal effects;

(d) Papers in envelopes;

(e) General commodities moving between the hours of 6:30 p.m. and 7:30 a.m. on week days and Saturdays, or at any time on Sundays or legal holidays;

(f) Data processing matter not exceeding five pounds per shipment;

(g) Brief cases and hand-carried luggage, regardless of weight;

when moving between a single consignor and a single consignee in on-call service wholly within the corporate limits of a city in Oregon and within a radius of three airmiles beyond the corporate limits of such city in which the starting point of such vehicle is located, when transported at rates prescribed by the commissioner under ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640; provided, however, that such shipments of property shall be transported under a shipping document consisting of three parts, one to be supplied to the shipper, one to the consignee at the time of delivery and one to be retained by the carrier and kept available for inspection for two years. Said shipping document shall contain the address of the consignor and consignee, a brief, accurate description of the property transported and the charge therefor.

(3) When used for the transportation of property by private carrier by means of a single vehicle or combination of vehicles the combined weight of which vehicle and load,

vehicles or vehicles and load does not exceed 8,000 pounds.

(4) When operated exclusively for the purpose of transporting persons or property in connection with the patrolling of forests for the prevention or fighting of forest fires.

(5) When engaged in operating implements of husbandry, temporarily drawn, moved or otherwise propelled.

(6) Used in towing vehicles at the direction of a police officer or in servicing or towing wrecked or disabled vehicles, if the vehicle:

(a) Is not otherwise used in transporting goods and merchandise for compensation;

(b) Is specially constructed for such use; or

(c) Has a combined weight not exceeding 8,000 pounds.

(7) When operated as a hearse or ambulance.

(8) When operating over any road or thoroughfare in private ownership.

(9) When using any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products as defined in ORS 321.005, or the product of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of such road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with:

(a) An agency of the United States;

(b) The State Board of Forestry;

(c) The State Forester; or

(d) A licensee of an agency named in paragraph (a), (b) or (c) of this subsection.

(10) When using any county road for the removal of forest products as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(a) Such use by a person or motor vehicle is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States, authorizing such person or the owner of such motor vehicle to use such road and requiring such person or owner to pay for or to perform the construction or maintenance of the county road, including any operator of a motor vehicle retained to transport logs, poles and piling for such persons or owners who are exempt under this section;

(b) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(c) Copies of the agreements or permits required by paragraphs (a) and (b) of this subsection are filed with the Director of the Department of Transportation.

(11) While being used in the transportation of persons for hire if the operation:

(a) Is performed by a nonprofit corporation or other nonprofit entity; and

(b) Is not in competition with the scheduled regular route service of a carrier of persons which is subject to the provisions of this chapter or a service provided by a mass transit district formed under ORS chapter 267; and

(c) Is performed by use of vehicles operating in compliance with ORS 485.310 to 485.420; and

(d) Is providing service with continuing regularity under a predetermined plan of operation within a radius of 40 airmiles of the designated point of origin; and

(e) Is approved by the Mass Transit Division as complying with paragraphs (a) to (d) of this subsection.

[1971 c.655 §202; 1973 c.396 §4; 1974 s.s. c.38 §2]

767.740 Nonapplicability of weight-mile tax to certain motor vehicles transporting handicapped or mentally retarded persons. ORS 767.700 to 767.905 do not apply to any person or to any passenger motor vehicle of not exceeding a 12-passenger seating capacity:

(1) When operated by or under contract with any person responsible for the administration of sheltered workshops as defined in ORS 344.710 to 344.730 or day-care services provided by a facility licensed pursuant to ORS 418.805 to 418.885; and

(2) When the vehicle is engaged in transporting, to or from such services or workshops, individuals, with or without their supervisors or assistants, who are disabled, severely handicapped or mentally retarded individuals.

[1971 c.655 §203]

767.745 Compliance with chapter required. No common carrier, contract carrier or private carrier shall operate any motor vehicle for the transportation of persons or

property, or both, on any public highway in this state, except in accordance with the provisions of this chapter.
[1971 c.655 §204]

767.750 Application of weight-mile tax to interstate and foreign commerce. ORS 767.700 to 767.905 and 767.992 apply to interstate and foreign commerce, except in so far as it may be in conflict with the provisions of the Constitution and the laws of the United States.
[1971 c.655 §205]

767.755 Courts to forward copies of record on conviction for violation of weight-mile tax provisions. The courts having jurisdiction of ORS 767.700 to 767.905 and 767.992 shall, upon a conviction of anyone for violation of ORS 767.700 to 767.905 and 767.992, immediately forward a copy of the record of such conviction to the office of the commissioner.
[1971 c.655 §206]

(Certificates, Licenses and Permits)

767.760 Authority required for commercial transportation of persons or property on public highways. (1) No person shall operate any motor vehicle, whether loaded or empty, on any highway in this state as a common carrier, contract carrier or private carrier in the transportation of persons or property or both without first applying for and obtaining, in addition to any license required by any other law, a certificate or permit from the commissioner covering the proposed operation. Each separate operation of a motor vehicle in violation of this section is a separate violation, whether the prohibited operations occur within the same day or different days or relate to the same motor vehicle or different motor vehicles.

(2) Every person who engages for compensation or consideration to perform a combination of services which includes transportation of property of others upon the public highways is subject to the jurisdiction of the commissioner as to such transportation and shall not engage upon the same without first having obtained a common carrier or contract carrier certificate or permit to do so.
[1971 c.655 §207]

767.765 Issuance of permits to private carriers. Upon receipt of the information in writing required by the application form for permits in that class and in compliance with the law and the rules and regulations of the commissioner, permits shall be issued to private carriers, conditioned that the proposed operation will not be attended with substantial damage to the highway or danger to the users thereof, to adjacent property or facilities or to the public. The applicant is entitled to a hearing by the commissioner if his application has been declined by the commissioner.
[1971 c.655 §208]

767.770 Issuance of certificates to interstate carriers. (1) Common carriers and contract carriers engaged or to engage in interstate operations shall apply to the commissioner for a certificate of registration of Interstate Commerce Commission authority. The commissioner shall issue a certificate of registration in the form of a permit to them without a hearing and as a matter of course if they file with the commissioner a copy of the authority issued them by the Interstate Commerce Commission of the United States, if such authority is required, and furnish evidence of coverage by public liability and property damage insurance policy or qualify as self-insurer as required by ORS 767.195 to 767.215.

(2) No common or contract carrier engaged or to engage in interstate operations shall perform any transportation services for compensation upon the public highways of this state without first having applied for and secured a certificate of registration of Interstate Commerce Commission authority in the form of a permit in compliance with subsection (1) of this section.
[1971 c.655 §209]

767.775 Issuance and placement of identification plates and receipts; contents of receipt. (1) Except as otherwise permitted under ORS 767.780 and 767.805, the commissioner shall, with respect to each self-propelled or motor-driven vehicle, issue an identification plate or marker. He shall also issue a receipt stating therein the combined weight of each self-propelled or motor-driven vehicle and any train or combination of vehicles to be used therewith.

(2) The receipt shall be carried with the motor vehicle at all times, and no person shall load any motor vehicle in excess of its combined weight permit rating thus determined except as variations may necessarily result in passenger loading.

(3) The identification plate or marker must be fastened or placed on the motor vehicle to which it is issued in a manner prescribed by the commissioner by rule.

(4) Commencing January 1, 1958, and biennially thereafter, the commissioner shall

by general order revoke all outstanding identification plates or markers and issue new identification plates or markers for all motor vehicles subject to this chapter.
[1971 c.655 §210]

767.780 Substitute identification devices; applications; fees. (1) Notwithstanding ORS 767.775, the commissioner, in his discretion, may require the use of identification devices, such as cab cards, stamps or carrier identification numbers, in lieu of, as a substitute for or in addition to, plates or markers, to identify and be carried with or placed upon each motor vehicle authorized to be operated in Oregon subject to the provisions of this chapter. The form of any identification device and the method for its use shall be determined by the commissioner.

(2) Except as may be inconsistent with this section, all provisions of this chapter relating to identification plates or markers shall be applicable to the identification devices authorized by this section.

(3) Notwithstanding any other provision in this chapter, the commissioner may require applications for identification devices to be made annually and may require each carrier holding or obtaining a permit under this chapter to pay to the commissioner a fee of not to exceed $2.50 for each device issued on an annual basis.
[1971 c.655 §211]

767.785 Suspension of authority, identification devices for delinquent fees, reports. (1) If any report or payment required by ORS 767.815 to 767.855 is delinquent, the commissioner shall notify the carrier:

(a) The date upon which the report or payment was due;

(b) That if the report and payment are not made before the 11th day after the date of notice, the certificate, permit, identification devices, plates and markers issued to the carrier will be suspended.

(2) If a carrier to whom notice has been sent as required by subsection (1) of this section fails to make the reports and payments required or to request a hearing on or before the 11th day after the date of the notice, the authority under the certificate or permit involved shall cease and be suspended until the reports and payments, including any applicable late payment charges, are made.
[1971 c.655 §212; 1973 c.507 §9]

767.790 Cancellation or suspension of authority; hearings. Certificates, permits or licenses may be suspended or canceled by the commissioner for any of the following causes, after notice and hearing based upon his own or other complaint, when the certificate, permit or license holder:

(1) Is delinquent in the reporting or payment of any penalties, fees or taxes due under the law, if written demand for the report or payment and notice of hearing for suspension or cancellation of certificate or permit have been served upon him by the commissioner at least 10 days before the hearing.

(2) Has refused, or has failed, within the time provided, to file a bond or deposit to secure payment of fees, taxes and penalties under ORS 767.870.
[1971 c.655 §213; 1973 c.507 §10]

767.795 Limitations on cancellation of bond; suspension of authority. (1) No bond filed pursuant to ORS 767.870 may be canceled or otherwise terminated at any time prior to its expiration until the surety company which executed the same, has filed with the commissioner a notice of cancellation as provided in such bond. Such cancellation shall be effective not less than 15 days from the date of receipt, and no agreement between the parties thereto shall operate to avoid this restriction upon cancellation.

(2) If any bond filed pursuant to ORS 767.870 becomes inoperative, the authority under the certificate or permit involved shall cease and be suspended in so far as it pertains to any affected vehicles until a bond filed pursuant to ORS 767.870 becomes effective and is filed with and accepted by the commissioner.
[1971 c.655 §214]

767.800 Appointment of agents to issue passes, collect fees and taxes. The commissioner may appoint agents to issue temporary passes provided in subsection (2) of ORS 767.805 and to collect any fees and taxes required by ORS 767.700 to 767.905 and 767.992. The commissioner shall prescribe the duties and compensation of such agents and may require them to give bonds, in such amount as the commissioner determines appropriate, conditioned upon the faithful performance of their duties.
[1971 c.655 §215]

(Taxes and Fees)

767.805 Plate fees; temporary pass fees; summary revocation of plate or marker. (1) In addition to other fees prescribed in this chapter, each carrier holding or obtaining a

certificate or permit under this chapter shall pay to the commissioner a fee of $5 for each identification plate or marker issued to identify and be attached to each self-propelled or motor-driven vehicle operated or to be operated in connection with such certificate or permit. This fee shall be known as a plate fee to be paid in advance of the issuance of the identification plate or marker.

(2) In cases of emergency when, because of single trip or short-time operation not exceeding 10 days, it is impractical to assign and have an identification plate or marker attached to a motor vehicle, the commissioner may issue a temporary pass identifying the motor vehicle. For this pass a fee of $2 for each motor vehicle shall be paid.

(3) An identification plate or marker may be summarily revoked by the commissioner whenever the motor vehicle to which it is issued is suspended from operation or removed from certificate or permit. In such case no refund of fees shall be allowed for the unexpired term of such identification plate or marker.

[1971 c.655 §216]

767.810 Determination of filing of reports or payments. (1) Any report or payment transmitted through the United States mail that is required to be filed with the commissioner by ORS 767.815 to 767.855 shall be considered filed:

(a) On the date shown by the post-office cancellation mark on the envelope or wrapper containing such report or payment.

(b) On the date such report or payment was mailed if the post-office cancellation mark on the envelope or wrapper containing the report or payment is omitted or is not legible or if the report or payment is not received by the commissioner and if the sender establishes to the satisfaction of the commissioner that the report or payment was deposited in the United States mail on or before the date due for filing.

(2) If the date for filing any report or payment required to be filed with the commissioner by ORS 767.815 to 767.855 falls on a Saturday, Sunday or legal holiday, a filing shall be considered timely if made on the next business day.

[1971 c.655 §217]

767.815 Motor carrier tax for use of highways. (1) In addition to the license fees and taxes otherwise imposed by law upon common carriers, contract carriers and private carriers there shall be assessed against and collected from every such carrier a tax for the use of the highways, to apply on the cost of administration of this chapter and for the maintenance, operation, construction and reconstruction of public highways.

(2) The tax rate which shall apply to each motor vehicle shall be based upon the declared combined weight of the motor vehicle and in accordance with the weight group tax rates as shown in the tables set forth in ORS 767.820, except that the tax rate which shall apply to each passenger motor vehicle weighing more than 12,000 pounds and not more than 30,000 pounds and having an overall length not in excess of 35 feet shall be two mills less than the fee rates per mile set forth in tables "A" and "B."

(3) For the purpose of computing the tax due:

(a) Tables "A" and "C" apply to motor vehicles using motor vehicle fuel as defined in ORS 319.010.

(b) Tables "B" and "D" apply to motor vehicles using motor vehicle fuel as defined in ORS 319.520.

(c) Table "B" or "D" applies to motor vehicles used upon the public highways in this state that use motor vehicle fuel of any description purchased outside this state.

(d) Table "A" or "B," or both, apply to motor vehicles used upon the public highways of this state that use motor vehicle fuel as defined in ORS 319.010, purchased part inside and part outside this state, but in no event shall table "A" be applied in the computation of any tax to more than the maximum miles which could be traveled in this state on such motor vehicle fuel purchased within the state.

(e) Table "D" shall be used by persons paying taxes on the flat fee basis in arriving at the fee payable on motor vehicles which use motor vehicle fuel as defined in ORS 319.010, when insufficient such fuel is purchased in Oregon to propel the motor vehicles the extreme miles traveled within this state.

(f) The declared combined weight, except as provided in paragraph (g) of this subsection, shall be the combined weight declared in the application for certificate or permit under ORS 767.760, subject to audit and approval by the commissioner.

(g) The declared combined weight, for weights over 76,000 pounds authorized pursuant to ORS 483.528, shall be the actual weight of the motor vehicle and its load with respect to each trip subject to the tax, determined by scale weights when so weighed,

records required by this chapter or any regulation issued thereunder, or from any other information available to the commissioner.

(4) All carriers who use tables "A," "A" and "B" or "C" in the computation of the tax or fee due under this section shall maintain records and purchase documents to substantiate and justify the use of such tables. The failure of any carrier to so keep such records and documents or to disclose them to the commissioner or his duly authorized representative is prima facie evidence that the tax or fee should have been computed by using tables "B" or "D."

(5) The tax for each motor vehicle when tables "A" or "B," or both, are used shall be computed by multiplying the extreme mileage of travel in Oregon by the appropriate weight group tax rate as it appears in the table or, for each passenger motor vehicle weighing more than 12,000 pounds and not more than 30,000 pounds and having an overall length not in excess of 35 feet, by the tax rate determined by subtracting two mills per mile from the appropriate weight group tax rate as it appears in the table set forth in ORS 767.820.

[Formerly 767.325]

767.820 Carrier tax tables.

MILEAGE TAX RATE TABLE "A"

Declared Combined Weight Groups (Pounds)	Fee Rates Per Mile (Mills)
0 to 6,000	1.5
6,001 to 8,000	2.5
8,001 to 10,000	3.5
10,001 to 12,000	4.5
12,001 to 14,000	5.5
14,001 to 16,000	6.5
16,001 to 18,000	8.0
18,001 to 20,000	9.0
20,001 to 22,000	10.5
22,001 to 24,000	11.5
24,001 to 26,000	13.0
26,001 to 28,000	14.0
28,001 to 30,000	15.0
30,001 to 32,000	16.5
32,001 to 34,000	17.5
34,001 to 36,000	18.5
36,001 to 38,000	20.0
38,001 to 40,000	21.5
40,001 to 42,000	22.5
42,001 to 44,000	24.0
44,001 to 46,000	25.5
46,001 to 48,000	26.5
48,001 to 50,000	28.0
50,001 to 52,000	29.0
52,001 to 54,000	30.5
54,001 to 56,000	31.5
56,001 to 58,000	32.5
58,001 to 60,000	34.0
60,001 to 62,000	35.0
62,001 to 64,000	36.0
64,001 to 66,000	36.5
66,001 to 68,000	37.5
68,001 to 70,000	38.0
70,001 to 72,000	38.5
72,001 to 74,000	39.0
74,001 to 76,000	39.5
76,001 and over	Add 0.5 mill per ton or fraction of ton

MILEAGE TAX RATE TABLE "B"

Declared Combined Weight Groups (Pounds)	Fee Rates Per Mile (Mills)
0 to 6,000	5.5
6,001 to 8,000	7.0
8,001 to 10,000	8.5
10,001 to 12,000	10.5
12,001 to 14,000	12.0
14,001 to 16,000	14.0
16,001 to 18,000	15.5
18,001 to 20,000	17.5
20,001 to 22,000	19.0
22,001 to 24,000	21.0
24,001 to 26,000	22.5
26,001 to 28,000	24.0
28,001 to 30,000	25.5
30,001 to 32,000	27.5
32,001 to 34,000	29.0
34,001 to 36,000	30.5
36,001 to 38,000	32.0
38,001 to 40,000	33.5
40,001 to 42,000	35.0
42,001 to 44,000	36.5
44,001 to 46,000	38.0
46,001 to 48,000	40.0
48,001 to 50,000	41.5
50,001 to 52,000	43.0
52,001 to 54,000	45.0
54,001 to 56,000	46.5
56,001 to 58,000	48.0
58,001 to 60,000	49.0
60,001 to 62,000	50.0
62,001 to 64,000	51.0
64,001 to 66,000	52.0
66,001 to 68,000	53.0
68,001 to 70,000	54.0
70,001 to 72,000	55.0
72,001 to 74,000	55.5
74,001 to 76,000	56.5

Declared Combined Weight Groups (Pounds)	Fee Rates Per Mile (Mills)
76,001 and over	Add 1.0 mill per ton or fraction of ton

FLAT FEE TABLE "C"

Declared Combined Weight Groups (Pounds)	Flat Fee
0 to 6,000	$ 35
6,001 to 8,000	50
8,001 to 10,000	65
10,001 to 12,000	75
12,001 to 14,000	90
14,001 to 16,000	115
16,001 to 18,000	140

FLAT FEE TABLE "D"

Declared Combined Weight Groups (Pounds)	Flat Fee
0 to 6,000	$125
6,001 to 8,000	150
8,001 to 10,000	175
10,001 to 12,000	205
12,001 to 14,000	230
14,001 to 16,000	255
16,001 to 18,000	290

[Formerly 767.330]

767.825 Substitute taxes for vehicles under 18,000 pounds, towing vehicles, log vehicles and dump trucks. (1) In lieu of the fees prescribed in ORS 767.815, carriers may pay an annual fee on each motor vehicle operated by them the combined weight of which does not exceed 18,000 pounds. The fees may be paid on a quarterly basis on or before the first day of each quarter. Quarterly periods shall commence January 1, April 1, July 1 and October 1. For operations commencing after the beginning of a quarter one-third the amount of the quarterly payment shall be paid for each month or partial month remaining in the quarter. The fees shall be determined by finding the fee rate applicable to the appropriate combined weight group appearing in flat fee tables "C" and "D."

(2) A carrier may be relieved from payment of the fee provided in subsection (1) of this section for any quarter on a motor vehicle which is not operated, if the identification plate or marker for the motor vehicle is surrendered to the commissioner on or before the fifth day of the quarter for which relief is sought.

(3) In lieu of other fees provided in ORS 767.815, carriers engaged in operating motor vehicles in the transportation of logs, poles or piling, or in the operation of motor vehicles equipped with dump bodies and used in the transportation of sand, gravel, rock, dirt, debris, cinders or asphaltic concrete mix in connection with highway or other construction projects, may pay annual fees for such operation computed as follows:

(a) Ninety-nine cents for each 100 pounds of declared combined weight on motor vehicles using as a propulsion fuel gasoline on which has been paid to the State of Oregon the gasoline tax provided by law.

(b) One dollar and sixty-five cents for each 100 pounds of declared combined weight on those motor vehicles using as a propulsion fuel any fuel other than gasoline on which has been paid to the State of Oregon the gasoline tax provided by law.

(c) Any carrier electing to pay fees under this method may, as to vehicles otherwise exempt from taxation, elect to be taxed on the mileage basis for movements of such empty vehicles over public highways whenever operations are for the purpose of repair, maintenance, servicing or moving from one exempt highway operation to another.

(4) The annual fees provided in subsection (3) of this section must be paid in advance but may be paid on a monthly basis on or before the first day of the month. Any carrier electing to pay fees under this method may not change his election during the same calendar year in which the election is made, but may be relieved from the payment due for any month on a motor vehicle which is not operated, if the identification plate or marker for the motor vehicle is surrendered to the commissioner on or before the fifth day of the first month for which relief is sought.

(5) In lieu of the fees provided in ORS 767.805 and 767.815, carriers conducting temporary operations in compliance with subsection (2) of ORS 767.170 shall pay to the commissioner in advance for such operations an annual fee of:

(a) $25 for each motor vehicle powered by gasoline on which the gasoline tax has been paid to the State of Oregon.

(b) $40 for each motor vehicle powered by any fuel other than gasoline on which has been paid to the State of Oregon the gasoline tax provided by law.

[Formerly 767.335]

767.830 Effect of carrier tax law on other taxes; offset of fees or taxes erroneously paid. (1) The fees or taxes listed in ORS

767.815 to 767.825 shall be in addition to, and not in lieu of, other fees and taxes of the state, county or municipality which may be imposed, levied, assessed or collected against the business or property of such carrier. This section does not authorize the imposition of license fees by municipalities upon intercity carriers, or deprive any city within which a passenger motor vehicle, having a seating capacity of not more than seven passengers, is principally operated for hire, from imposing and collecting license fees upon and from such motor vehicle, or the owner or operator thereof, as to such portion of its operations as are wholly within the corporate limits of such city.

(2) ORS 319.510 to 319.880 do not apply to vehicles or fuels used therein when the vehicles are subject to, and report and pay, the tax for the use of Oregon highways based upon the combined weight of the vehicle and in accordance with the weight group rates prescribed in ORS 767.815 to 767.825.

(3) When an audit of the operations of a carrier shows that the use fuel taxes reported and paid under ORS chapter 319 should have been reported and paid under this chapter, or that fees or taxes reported and paid under this chapter should have been reported and paid under ORS chapter 319, the fees or taxes erroneously reported and paid under one chapter need not be refunded but may be considered an offset of fees or taxes due under the other chapter.

[Formerly 767.340]

767.835 Fees required of interstate carriers. A person engaged exclusively in the conduct of interstate transportation shall currently pay to the commissioner the road tax mileage fees prescribed by ORS 767.815 to 767.830, 767.840, 767.850 and 767.855.

[Formerly 767.345]

767.840 Due date of fees and taxes; penalty; deficiency assessments; refund of overpayment; limitation on audit. (1) On or before the last day of each month, except for the time of payment provided in ORS 767.825 and 767.845, all persons shall report and pay to the commissioner the amount of taxes due from them for the preceding calendar month. If no taxes are due, the report shall so state. A minimum charge of $1 shall accompany each such report. If payment is not made on or before such date, there shall be added as a late payment charge a sum equal to five percent of the unpaid amount of the tax.

(2) Whenever practicable, and in no event later than three years after any report of taxes, or fees in lieu of taxes, is filed, the commissioner shall audit it if the commissioner deems such audit practicable. If the commissioner is not satisfied with the report filed or amount of tax, or fee in lieu of tax, paid to the state by any person, he may, not later than three years after the report was filed or the tax or fee was paid, make a proposed assessment of additional tax or fee due from such person based upon any information available to him. There shall be added to each such assessment, as a late payment charge, a sum equal to five percent of the amount of additional tax or fee due.

(3) Every such additional assessment shall bear interest at the rate of one-half of one percent per month, or fraction thereof, from the last day of the month following the close of the month for which the additional assessment is imposed until paid.

(4) If the additional assessment imposed exceeds by at least five percent but not more than 15 percent the amount of tax or fee reported or paid a penalty of five percent of the amount of the additional assessment shall be added thereto in addition to the five percent late payment charge provided in subsection (2) of this section.

(5) If the additional assessment imposed exceeds by more than 15 percent the amount of tax or fee reported or paid, a penalty of 20 percent of the amount of the additional assessment shall be added thereto in addition to the five percent late payment charge provided in subsection (2) of this section.

(6) The commissioner shall give to the person concerned written notice of such additional assessment.

(7) Except as provided in subsection (3) of ORS 767.830, the commissioner shall refund to any person the amount of any overpayment caused by any incorrect report.

(8) Whenever the commissioner has made an assessment pursuant to this section which has become final the commissioner may not reopen or reassess such taxes, interest or penalties unless the commissioner is satisfied that the taxpayer fraudulently or with intent to evade taxation destroyed, concealed or withheld any books, accounts, papers, records or memoranda required to be maintained by the taxpayer pursuant to this chapter or the rules and regulations of the commissioner.

[Formerly 767.355]

767.845 Quarterly reports authorized; reporting dates; amounts. Whenever in the judgment of the commissioner the estimated annual tax payable by a carrier under ORS 767.815 will be less than $300, the commissioner may authorize the carrier to file quarterly reports in lieu of monthly reports required by ORS 767.840 and 767.905. Such authorization may be withdrawn at any time upon the mailing of notice to the carrier at his last address of record with the commissioner. Quarterly reports so authorized and accompanying remittances as shown thereon to be due, in no case to be less than $3 for any quarter, shall be filed on or before the due date as follows: First quarter, April 30; second quarter, July 31; third quarter, October 31; fourth quarter, January 31. Any provisions of ORS 767.840 and 767.905 otherwise applicable to reports and remittances shall be applicable to reports and remittances under this section.
[Formerly 767.357]

767.850 Assessment by commissioner upon failure to report tax or fee due. (1) If any person neglects or refuses to make a report as required by ORS 767.700 to 767.905 and 767.992, the commissioner shall make a proposed assessment, based upon any information available to him, for the period with respect to which such person failed to make a report, of the amount of tax, or fee in lieu of tax, due for the period for which such proposed assessment is made.

(2) Each such assessment shall bear interest at the rate of one-half of one percent per month, or fraction thereof, from the last day of the month following the close of the month for which the assessment is imposed until paid.

(3) There shall be added to every such assessment a penalty of 25 percent of the amount thereof.

(4) The commissioner shall give to such person written notice of such assessment.

(5) Whenever the commissioner has made an assessment pursuant to this section which has become final the commissioner may not reopen or reassess such taxes, interest or penalties unless the commissioner is satisfied that the taxpayer fraudulently or with intent to evade taxation destroyed, concealed or withheld any books, accounts, papers, records or memoranda required to be maintained by a person subject to ORS 767.700 to 767.905 and 767.992 or the rules and regulations of the commissioner.
[Formerly 767.360]

767.855 Reassessment upon request. (1) Any person against whom an assessment is made under ORS 767.840 or 767.850, may petition the commissioner for a reassessment thereof within 30 days after service upon the person of notice thereof. If such a petition is not filed within the 30-day period, the assessment becomes final at the expiration thereof. If a petition for reassessment is filed within the 30-day period the commissioner shall reconsider the assessment and, if the person has so requested in his petition, shall grant such person a hearing and give the person 10 days' notice of the time and place thereof. The commissioner has power to continue the hearing from time to time as may be necessary. The decision of the commissioner upon a petition for reassessment shall become final 30 days after service upon the person concerned of notice thereof.

(2) Every assessment made by the commissioner under ORS 767.840 to 767.855 becomes due and payable at the time it becomes final and if not paid to the commissioner when due and payable there shall be added thereto a penalty of 10 percent of the amount of the tax.
[Formerly 767.365]

767.860 Collection of fees, taxes and other moneys. All fees, taxes and charges imposed by this chapter, all claims and penalties payable by any person under this chapter and all moneys collected under this chapter, are the property of the state. The commissioner shall collect and receive all fees, taxes, penalties and moneys due or to become due to the state under this chapter and, to that end, shall bring such actions or take such proceedings, including attachment and garnishment proceedings, in the name of the State of Oregon, as may be necessary.
[Formerly 767.370]

767.865 Warrant procedure for collecting tax, fee, penalty or assessment. (1) If any tax, or fee in lieu of tax, reported due, or any final assessment made by the commissioner under ORS 767.840, 767.850 and 767.855, including any penalties or charges therein imposed, or any final penalty imposed under ORS 767.470, is not paid in full, the commissioner may issue a warrant under his official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for payment of the amount thereof, with the added penalties or charges, interest and the cost of executing

the warrant, and to return such warrant to the commissioner and pay to him the money collected by virtue thereof by a time to be specified therein, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties or charges for which the warrant is issued and the date when such copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk.

(3) The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be added to and collected as a part of the warrant liability.

(4) In the discretion of the commissioner, a warrant of like terms, force and effect to levy upon funds of the taxpayer in possession of the Department of Revenue may be issued and directed to any agent authorized by him to collect taxes payable under this chapter, and in the execution thereof the agent shall have all of the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

[Formerly 767.375]

767.870 Deposit or bond to secure payment of fees, taxes, charges and penalties. (1) If the commissioner finds it necessary in order to insure the collection of any fees, taxes, charges or penalties imposed upon a carrier pursuant to this chapter, he may at the time and as a condition of granting a certificate or permit or as a condition of continuing a certificate or permit require a carrier to deposit and keep on deposit with the commissioner a sum equal to the estimated fees or taxes due the commissioner for a period of not to exceed three months. In determining the necessity for an applicant or carrier to maintain a deposit the commissioner shall consider the applicant or carrier's financial capability and responsibility and the commissioner's prior experience, if any, in collecting fees, taxes, charges or penalties from the applicant, carrier or any person having a substantial interest or control, directly or indirectly, in or over the operations conducted or to be conducted under the certificate or permit.

(2) The commissioner may accept in lieu of such deposit a bond to secure payment of sums payable by the carrier, or may accept bonds, negotiable by delivery, of the State of Oregon, school districts therein of the first class, or of any county therein, or obligations of the United States, or obligations for which the faith of the United States is pledged for the payment of both the principal and interest, equal in amount to the amount of such deposit to secure payment of sums payable by the carrier. The total amount of the deposit, bond, or negotiable bonds or obligations shall be determined by the commissioner in such manner as he shall deem proper, taking into account the nature and scope of the carrier's operations and the amount may be increased or reduced at any time.

(3) So long as the deposit remains unencumbered the depositor is entitled to collect the interest upon such securities.

(4) The commissioner shall hold the securities upon such terms as he shall designate and approve pursuant to the provision of this chapter, and shall deliver such securities to the State Treasurer, who shall receive and hold them subject to the lawful orders of the commissioner. The State Treasurer and his surety shall be liable upon his official bond for their safekeeping. The depositors shall reimburse the State Treasurer for any expenses incurred by him in the mailing, insuring, shipping or delivering of any such securities, or of the interest coupons attached thereto as they mature.

(5) If a carrier ceases to be a carrier under this chapter, the commissioner, upon receipt of all payments due, shall refund or have returned to the carrier all deposits and securities remaining to the carrier's credit and shall release the surety on any bond given under this section.

(6) Any applicant or carrier required under this section to make a deposit to secure the payment of fees, taxes, charges or penalties may by proper petition demand a hearing on the necessity of such deposit or the

reasonableness of the amount required. A hearing shall be granted and held within 10 days after the demand therefor. The decision of the commissioner shall become final 10 days after service of the order upon the applicant or carrier concerned.
[Formerly 767.380]

767.875 Use of collection agency to obtain moneys due. (1) In carrying out his duties under ORS 767.860, the commissioner may engage the services of a collection agency to collect any of the fees, taxes, penalties and moneys due to the state under this chapter. The commissioner may engage the services by entering into agreements to pay reasonable charges on a contingent fee or other basis.

(2) The commissioner may assign to the collection agency, for collection purposes only, any of the fees, taxes, penalties and moneys due the state under this chapter.

(3) The collection agency may bring such actions or take such proceedings, including attachment and garnishment proceedings, as may be necessary.
[Formerly 767.390]

767.880 Writing off uncollected moneys due. (1) Any fee, tax, penalty or money due the state assigned to a collection agency pursuant to ORS 767.875 that remains uncollected for two years after the date of such assignment meets the criteria for uncollectibility formulated pursuant to ORS 293.240, and shall be written off the accounts of the commissioner and assigned to the Secretary of State.

(2) ORS 293.245 applies to any fee, tax, penalty or money due the state assigned to the Secretary of State pursuant to subsection (1) of this section.
[1971 c.655 §226]

(Regulation and Enforcement)

767.885 Commissioner's authority to prescribe and enforce rules, regulations and classifications. (1) The commissioner shall, by general order or otherwise, prescribe and enforce rules and regulations in conformity with ORS 767.700 to 767.905 and 767.992 to better accomplish the enforcement of its provisions.

(2) All rules and regulations made by the commissioner pursuant to ORS 767.700 to 767.905 and 767.992 and filed in his office have the force and effect of law.

(3) This section does not restrict the powers of the Department of Transportation or the county courts or boards of county commissioners under existing laws and amendments thereof.

(4) Without restricting the general powers conferred upon the commissioner to prescribe and enforce rules and regulations, the commissioner is vested with special authority with respect to the matters listed in ORS 767.890 and 767.895.
[1971 c.655 §227]

767.890 Regulation of motor vehicles. The commissioner may:

(1) Require the weighing of motor vehicles loaded and empty at reasonably frequent intervals;

(2) Inspect and require proper equipment and markings of motor vehicles; and

(3) Prescribe the character of appliances to be used on motor vehicles to establish correct mileage traveled by such vehicles and require the installation and proper repair and inspection of such appliances.
[1971 c.655 §228]

767.895 Regulation of mileage records, distinguishing marks. The commissioner may:

(1) Prescribe such methods and means as he determines to be necessary for checking, verifying and ascertaining the number of miles traveled by each motor vehicle operated by common carrier, contract carrier and private carrier and insure that the mileage charged for is computed on basis of extreme mileage traveled.

(2) Prescribe distinguishing marks, such as signs, colors, lights, tags and plates as may be convenient or necessary for distinguishing classes of carriers or for protective or regulatory purposes; but not inconsistent with ORS chapter 483.
[1971 c.655 §229]

767.900 Utilization of State Police in enforcing weight-mile tax. The commissioner shall call upon the State Police for all police service or police assistance necessary for the proper and efficient policing of carriers operating under this chapter. The commissioner and the State Police shall cooperate in the enforcement of this chapter to the end that there may be no duplication of service or expense.
[1971 c.655 §230]

(Records and Reports)

767.905 Daily records and monthly reports by carriers. (1) Every common carrier, contract carrier and private carrier shall keep daily records, upon forms prescribed by the commissioner, of all vehicles used during the current month.

(2) On or before the last day of the month following, except as otherwise permitted under ORS 767.845, they shall certify to the commissioner, upon forms prescribed therefor, the true and correct summaries of their daily records which shall show the extreme miles traveled in this state during the preceding month, the amount of fuel tax paid to the state during the preceding month, and such other information as the commissioner may require.

(3) The daily records shall be kept on file in the office of the carrier and thereafter preserved until written permission for their destruction is given by the commissioner.

[Formerly 767.600]

PENALTIES

767.990 Penalties for violation of economic regulation. Every person who violates or procures, aids or abets violation of ORS 767.005 to 767.315, 767.405 to 767.495 and 767.605 to 767.640 and any person who refuses or fails to obey any order, decision, rule or regulation, made under or pursuant to this chapter, shall be punished, upon conviction, by a fine of not less than $10 nor more than $1,000 or by imprisonment in the county jail for not more than three months, or by both. Circuit courts, district courts and justices of the peace shall have concurrent jurisdiction of offenses punishable under this section.

[Amended by 1971 c.655 §194]

767.992 Penalties for violation of weight-mile tax. Every person who violates or procures, aids or abets violation of ORS 767.700 to 767.905 or 767.992 and any person who refuses or fails to obey any order, decision, rule or regulation, made under or pursuant to this chapter, shall be punished, upon conviction, by a fine of not less than $10 nor more than $1,000 or by imprisonment in the county jail for not more than three months, or by both. Circuit courts, district courts and justices of the peace shall have concurrent jurisdiction of offenses punishable under this section.

[1971 c.655 §231]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on June 1, 1974.

Thomas G. Clifford
Legislative Counsel