

Chapter 761

1977 REPLACEMENT PART

Railroad Equipment, Buildings and Tracks; Transportation of Hazardous Materials

RAILROAD BUILDINGS, TRACKS AND FACILITIES		761.325	Self-propelled vehicles used in yards or terminals
761.110	Maintenance of adequate passenger and freight depots and facilities	761.330	Track scales; inspection and sealing
761.120	Inspection of, recommendations on and orders concerning railroad equipment and facilities	761.340	Collection and payment of expenses of inspection; expenditures for administration
761.140	Construction of connections to lateral or branch lines	761.350	Tampering with scales prohibited
761.150	Procedure on failure to construct connections	HAZARDOUS MATERIALS	
761.160	When track connections with warehouses required; furnishing freight cars	761.370	"Hazardous Materials" defined
761.170	Recovery of penalty by injured party for failure to comply with ORS 761.160	761.380	Notice of movement of hazardous materials; confidentiality of notice information
761.180	Track clearances	761.395	Visual external inspections required on cars standing in rail yards or stations more than two hours
761.190	Cooperation with Secretary of Transportation on matters of safety; reports to be made public if required by federal law	761.400	Commissioner to designate hazardous materials and notice requirements
761.200	Walkway standards; variances	761.405	Notifying Emergency Services Division of reportable incident, derailments and fires; trains required to be equipped with radio gear
RAILROAD EQUIPMENT		PENALTIES	
761.310	Electric headlights for locomotives; liability for damages	761.990	Penalties
761.315	First aid kits required on locomotives and caboose cars		
761.320	Equipment required on track motor cars		

CROSS REFERENCES

Railroad regulation generally, Ch. 760	761.330
Railway inspectors required, 760.070, 760.075	License from Department of Agriculture not required for track scales, 618.126
Snowmobiles, regulations for crossing of highway or railroads rights of way, 483.735	
761.110	761.340
Grade crossings, 763.170	Expenditures without allotment prohibited in certain cases, 291.238
Track fencing regulations, 608.310 to 608.400	
761.140	761.370 to 761.400
Procedure for construction of side lines and extensions, condemnation, 760.060	Hazardous substances, Ch. 453

761.010 [Repealed by 1971 c.655 §250]

RAILROAD BUILDINGS, TRACKS AND FACILITIES

761.110 Maintenance of adequate passenger and freight depots and facilities. (1) Every railroad shall provide and maintain adequate depots and depot buildings, and clean and suitable toilet rooms, or buildings, at stations where its trains regularly stop to receive or discharge passengers.

(2) The depot buildings shall be kept clean, well lighted and warmed, for the comfort and accommodation of the traveling public.

(3) All railroads shall keep and maintain adequate and suitable freight depots, buildings, switches, spurs and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroads.

[Amended by 1971 c.655 §132]

761.120 Inspection of, recommendations on and orders concerning railroad equipment and facilities. The commissioner shall examine and inspect the physical condition of all railroad facilities in the state, including roadbeds, stations and equipment. Whenever it appears from such inspection that the safety of the public or the employes of such railroad may be threatened, notice of the condition or practice under investigation shall be given to the railroad and any person responsible for the maintenance or use of the railroad facility. If such condition or practice is not corrected to the commissioner's satisfaction, he shall set the matter for hearing. Following such hearing the commissioner shall order the railroad or person responsible for the maintenance or use of the railroad facility to make any repairs, alterations, or changes necessary to correct or eliminate any condition or practice found to threaten the safety of the public or the employes of the railroad. Notwithstanding the provisions of ORS 756.512, if in the opinion of the commissioner a condition or practice is so hazardous as to place the employes of the railroad in immediate danger he may issue, after hearing, upon 48 hours' written notice given the railroad, an order prohibiting the use of the facility until such time as necessary repair, alterations or changes are made.

[Amended by 1971 c.655 §133; 1973 c.171 §3; 1975 c.318 §2]

761.130 [Repealed by 1971 c.655 §250]

761.140 Construction of connections to lateral or branch lines. (1) Any railroad, upon application of any lateral or branch line railroad, or any shipper tendering intrastate traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any lateral or branch line of railroad or private sidetrack which may be constructed, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same, and shall furnish cars and transport, to the best of its ability, any traffic tendered to, over or from such lateral or branch line of railroad or private sidetrack, without discrimination in favor of or against such shipper.

(2) However, this section does not compel a railroad to remove from or deliver on a private sidetrack traffic tendered in less than carload lots.

(3) Shipments of livestock, perishable property and explosives may have precedence over all other classes of merchandise.

761.150 Procedure on failure to construct connections. (1) If any railroad fails to install and operate the connections required by ORS 761.140 on application therefor in writing by the owner of any such lateral or branch line of railroad, or any shipper, the owner of any such lateral or branch line of railroad, or any shipper may make complaint to the commissioner in the manner provided by ORS 756.500 to 756.610. The commissioner shall, in the manner provided in said statutes:

(a) Make investigation of the connections.

(b) Determine the safety, practicability and justification of the connections.

(c) Ascertain the items of reasonable cost of making such connections.

(d) Make an order, directing the railroad to comply with ORS 761.140 in accordance with such order.

(2) The order shall be enforced as other orders of the commissioner fixing a reasonable service are enforced. The railroad shall furnish the rails and fastenings, and the switch, complete with frog and guard rails, and the ties and grading shall be furnished or the expense borne by applicant.

[Amended by 1971 c.655 §134]

761.160 When track connections with warehouses required; furnishing freight cars. Whenever any warehouse is built within 150 feet of the main line of any railroad in

this state, with sidetrack graded and ties laid down without expense to the company owning or operating said road, and not less than 300 tons of freight stored in said warehouse ready for transportation and the warehouses are so situated that trains can be started with the same power as in daily use on ordinary straight and level track, then the said railroad company shall:

(1) Lay down the track, with the necessary connections and switches.

(2) From time to time furnish suitable freight cars necessary for the removal of such freight.

(3) Transport freight in carload lots to or from said warehouse in regular order, as other freight is transported on said road, whenever notice is given to the agent of the company or person in charge of the nearest station thereon.

761.170 Recovery of penalty by injured party for failure to comply with ORS 761.160. If any company or corporation owning or operating any railroad in this state fails to comply with ORS 761.160, the person injured by such failure may recover against such railroad company, in any court having jurisdiction, a penalty of \$300 for each week during which such failure continues.

761.180 Track clearances. The commissioner, upon his own motion or upon application of any person, and with or without hearing:

(1) May enter an order prescribing standard track clearances for railroads.

(2) Upon finding good cause, may enter an order granting authority for a railroad to operate at particular points with clearances different from those prescribed as standard track clearances.

[1971 c.655 §135]

761.190 Cooperation with Secretary of Transportation on matters of safety; reports to be made public if required by federal law. (1) The commissioner may cooperate with, make certifications to, and enter agreements with the Secretary of Transportation of the United States under sections 101 to 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421-441).

(2) The commissioner may assume responsibility for and carry out on behalf of the Secretary of Transportation of the United States regulatory jurisdiction over the safety practices applicable to railroad facilities and

operations in Oregon not otherwise subject to the jurisdiction of any other agency of this state.

(3) Notwithstanding any other provisions of law to the contrary, the commissioner shall make public such reports as are required to be made public under section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435) and the regulations thereunder, and shall provide such information as is required thereunder to the Secretary of Transportation of the United States.

[1973 c.171 §2]

761.200 Walkway standards; variances. (1) The commissioner, upon his own motion or upon application of any person, and utilizing the procedure in ORS 756.410, shall prescribe standards for walkways alongside railroad tracks where necessary for the safety of railroad employees.

(2) The commissioner may for good cause shown permit variances from the standards so prescribed.

[1973 c.232 §§2, 3]

RAILROAD EQUIPMENT

761.310 Electric headlights for locomotives; liability for damages. (1) Every person operating any class I line of railroad, as classified by the Interstate Commerce Commission, shall maintain and use upon every locomotive power vehicle, power car and other equipment used as the equivalent of or in the place of locomotives which is operated at night, electric front and rear headlights of sufficient candle power, measured with a reflector, to throw a light in clear weather that will enable the operator of the same plainly to discern an object the size of a man at a distance of not less than 800 feet. However, every locomotive, power vehicle, power car or other equipment used as the equivalent of or in place of locomotives shall extinguish the light on the end and to which a car is coupled when used for switching purposes only in a railroad yard.

(2) Any person who violates this section, in addition to the penalty prescribed in ORS 761.990, is liable for all damages resulting, in whole or in part, directly or indirectly from the violation.

[Amended by 1971 c.655 §135a]

761.315 First aid kits required on locomotives and caboose cars. Every locomotive and caboose of every railroad

operating in this state shall be equipped with a first aid kit.

[1977 c.535 §6]

761.320 Equipment required on track motor cars. (1) Every person operating or controlling any railroad which is a common

carrier shall equip each of its track motor cars operating during the period 30 minutes before sunset and 30 minutes after sunrise with:

(a) An electric headlight of sufficient candle power to enable the operator of the car to plainly discern any track obstruction, landmark, warning sign or grade crossing at a distance not less than 300 feet.

(b) A red rear electric light with sufficient candle power to be plainly visible at a distance not less than 300 feet.

(c) A windshield equipped with a device, which must be kept in good working order, with which the operator can clean rain, snow and other moisture from the windshield.

(d) A canopy or top adequate to protect the occupants of the car from sun, rain, snow or other inclement weather.

(2) As used in this section, "track motor car" means all power-propelled speeders and motor cars which can be lifted on and off the track by hand.

761.325 Self-propelled vehicles used in yards or terminals. (1) No railroad shall permit or require an employe to use a self-propelled vehicle in its yards or terminals for inspecting trains, equipment or facilities or transporting employes or materials for the repair of trains, equipment or facilities, unless the vehicle is designed, constructed and operated in accordance with the safety orders and regulations adopted under ORS 654.001 to 654.232.

(2) As used in subsection (1) of this section, "railroad" means a railroad as defined by ORS 760.005 and 760.010.

[1971 c.586 §§1, 2; 1973 c.833 §47]

Note: 761.325 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 761 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

761.330 Track scales; inspection and sealing. (1) All track scales used by railroads within this state to weigh cars or freight offered for shipment in carload lots shall be under the jurisdiction of the commissioner and subject to his inspection. The commissioner may also test other track scales.

(2) The commissioner shall, from time to time, test and inspect all such scales. No track scale shall be used in determining weights for the purpose of determining freight charges without first obtaining a seal from the commissioner approving such use.

(3) The commissioner shall approve a suitable sealing device, and cause all track scales inspected under this section to be officially sealed with such device, when such scales are found or made to be in compliance with the commissioner's rules.

(4) The commissioner may procure or otherwise secure the use of the car, apparatus or facilities used for tests and inspections as he may require for the purposes of this section. Such car, apparatus or facilities may be used jointly with another state or states to test track scales and for that purpose may be taken beyond the limits of the state under such terms and conditions agreed upon with such other states. The car and apparatus needed to test track scales shall be transported free by every railroad in this state.

[Amended by 1971 c.655 §136]

761.340 Collection and payment of expenses of inspection; expenditures for administration. (1) The commissioner may ascertain, declare and collect the reasonable cost and expenses of making inspections and tests of track scales, other than those operated by railroads subject to his jurisdiction. Any person other than said railroads operating such scale shall pay the cost and expense of any inspection to the commissioner upon demand, which sum shall be paid by the commissioner into the State Treasury and shall be placed by the State Treasurer to the credit of the Public Utility Commissioner Account and shall be used only for the purpose of paying the expenses of the commissioner in the administration of ORS 761.330 to 761.350.

(2) When, in the judgment of the commissioner, action is deemed necessary to collect any unpaid costs and expenses upon the neglect or refusal, after demand, of any person to pay such costs and expenses, the commissioner shall bring such action or take such proceedings as may be necessary in the name of the state in any court of competent jurisdiction and be entitled to recover all such costs and expenses and the costs and disbursements incurred therein, which moneys shall be credited to the Public Utility Commissioner Account and shall be used only for the purpose of paying the expenses of the commissioner in the administration of ORS 761.330 to 761.350.

[Amended by 1957 c.459 §9; 1971 c.655 §137]

761.350 Tampering with scales prohibited. No person shall break or tamper with or cause to be broken or tampered with, the seal or the track scales after the same has been installed or inspected by the commissioner or his inspector.

[Amended by 1971 c.655 §138]

761.360 [Repealed by 1971 c.655 §250]

HAZARDOUS MATERIALS

761.370 "Hazardous materials" defined. As used in ORS 761.380 and subsection (2) of 761.400 "hazardous materials" means those substances designated by the commissioner pursuant to subsection (1) of ORS 761.400.

[1975 c.132 §2; 1977 c.685 §1]

761.380 Notice of movement of hazardous materials; confidentiality of notice information. (1) Before transporting hazardous materials into this state or from a railroad terminal located within this state, a railroad shall, as soon as reasonably possible after it has notice of such train movement, provide such notification thereof as the commissioner determines pursuant to ORS 761.400. If the information necessary for the notification is not available before beginning the train movement, or if hazardous materials are added to the train while en route, notification shall be given as soon as the information is available. For the purposes of this subsection, "train movement" does not include a switching or transfer movement.

(2) Except to the extent that the commissioner determines is necessary to provide for the safe transportation of the hazardous materials, the commissioner, an employe of the commissioner and any person receiving information pursuant to this section shall not divulge or make known the information contained in the notification at any time before or during the transportation of the hazardous materials for which the notification is provided.

[1975 c 132 §3; 1977 c 685 §2]

761.390 [1975 c 132 §4, repealed by 1977 c.685 §8]

761.395 Visual external inspections required on cars standing in rail yards or stations more than two hours. Each railcar containing hazardous materials and bearing an "Explosives A" or "Flammable Gas" placard as required by federal regulation, and which remains in a rail yard or station for more than two hours shall be visually inspected externally by the transporting railroad

within two hours of the car's arrival and within two hours prior to the car's departure.

[1977 c.685 §6]

761.400 Commissioner to designate hazardous materials and notice requirements. After consultation with the State Fire Marshal the commissioner shall determine:

(1) What material and quantity thereof the transportation of which is hazardous to public health, safety or welfare and shall designate by rule such materials and quantities as hazardous materials. In defining hazardous materials the commissioner shall, so far as practicable, adopt definitions in conformity with the federal rules and regulations.

(2) What notification required by subsection (1) of ORS 761.380 is necessary to provide for the safe transportation of hazardous materials, including but not limited to the time, content and manner of notification.

[1975 c.132 §5; 1977 c.685 §3]

761.405 Notifying Emergency Services Division of reportable incident, derailments and fires; trains required to be equipped with radio gear. (1) Each railroad that gives notice to the United States Department of Transportation of an incident that occurs during the course of transporting hazardous materials as defined by federal regulations shall also give notice of the incident to the Administrator of the Emergency Services Division of the Executive Department.

(2) As soon as reasonably practicable, each railroad shall notify the Administrator of the Emergency Services Division of the Executive Department by telephone or similar means of communication of any derailment or fire involving or affecting hazardous material.

(3) To facilitate expedited and accurate notice to the administrator under this section, each train transporting hazardous materials in this state shall be equipped with at least two radio transmitter-receivers in good working order. In addition, 18 months after October 4, 1977, trains over 2,000 feet in length that are transporting hazardous materials shall be equipped with a radio handset in good working order capable of communicating with the radio transmitter-receivers. If the equipment required under this section does not function while the train is en route, the train may proceed to the next point of crew change

where the equipment shall be replaced or repaired.

[1977 c.685 §5]

761.410 [Repealed by 1971 c.655 §250]

761.420 [Repealed by 1965 c.253 §153]

761.430 [Repealed by 1971 c.655 §250]

761.510 [Repealed by 1961 c.726 §427]

761.520 [Repealed by 1961 c.726 §427]

761.530 [Repealed by 1961 c.726 §427]

PENALTIES

761.990 Penalties. (1) Violation of ORS 761.310 is punishable, upon conviction, by a fine of not less than \$100 and not more than \$500 for each offense.

(2) Violation of ORS 761.320 is punish-

able, upon conviction, by a fine of not more than \$100 for each offense.

(3) Violation of subsection (2) of ORS 761.330 or ORS 761.350 is a misdemeanor.

(4) Violation of ORS 761.325 is a misdemeanor.

(5) Violation of subsection (1) of ORS 761.380, ORS 761.395 or 761.405 by a railroad is punishable by a fine of not more than \$500.

(6) Violation of subsection (2) of ORS 761.380 is punishable by a fine of not more than \$500.

(7) As used in subsection (5) of this section, "railroad" means a railroad as defined by ORS 760.005 and 760.010.

[Amended by 1965 c.253 §150; 1971 c.655 §139; subsection (4) enacted as 1971 c.586 §3; 1975 c.132 §6; 1977 c.685 §7]

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,
October 1, 1977.

Thomas G. Clifford
Legislative Counsel

CHAPTER 762

[Reserved for expansion]

