Chapter 767

1991 EDITION

Motor Carriers

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ECONOMIC REGULATION
(Generally)

767.005 Definitions. As used in this chapter:

(1) "Broker" means any person not a "motor carrier" or a bona fide employee or agent of any carrier who sells or offers for sale any transportation subject to this chapter, or negotiates for or purports to be one who sells or arranges for such transportation.

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

(3) "Cartage carrier" means any person who undertakes to transport any class of property by motor vehicle for compensation when the transportation is performed wholly within an incorporated city or a commercial zone adjacent to an incorporated city.

(4) "Certificate" means an authority issued to a common or contract carrier other than as provided by ORS 767.030, 767.145 or 767.155.

(5) "Charter service" means irregular route passenger service under contract with a carrier for exclusive use of the vehicle by a complete, cohesive group that has a common trip purpose.

(6) "Combined weight" means the weight of the motor vehicle plus the weight of the maximum load which the applicant has declared such vehicle will carry. Any declared combined weight is subject to audit and approval by the commission. The combined weight of motor buses 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.

(7) "Common carrier" means:

(a) Any person who transports persons or property for hire or who publicly purports to be willing to transport persons or property for hire by motor vehicle; or

(b) Any person who leases, rents or otherwise provides a motor vehicle to the public 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.

(8) "Contract carrier" means any person who engages in transportation by motor vehicle of persons or property for compensation, other than transportation referred to in subsection (7) of this section, under continuing contracts with one person or a limited number of persons either:

(a) For the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served; or

(b) For the furnishing of transportation services designed to meet the distinct and peculiar needs of each individual customer which are not normally provided by a common carrier.

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

(10) "Extreme miles" or "extreme mileage" means the total miles operated by a vehicle over the public highways, except the extra miles necessarily operated in traversing detours or temporary routes on account of road blockades in the state.

(11) "Motor vehicle" means any self-propelled vehicle and any such vehicle in combination with any trailing units, 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 buses. "Motor vehicle" includes overdimension vehicles or vehicles permitted excessive weights pursuant to a special authorization issued by a city, county or the Department of Transportation.

(12) "Permit" means an authority issued to a carrier under ORS 767.030, 767.145, 767.150, 767.155 or 767.157.

(13) "Private carrier" means any person who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged.

(14) "Privilege taxes" means the weight-mile tax and fees prescribed in this chapter.

(15) "Property" includes, but is not limited to, permanent loads such as equipment, appliances, devices, or ballast that are attached to, carried on, or made a part of the vehicle and that are designed to serve some functional purpose.

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

(17) "Recycling" means the collecting and returning of reusable waste materials to the manufacturing cycle as part of a conservation program that has been certified by the Department of Environmental Quality and

approved by the commission on the basis of the certification. Recycling shall not include scrap dealership businesses, energy sources or any other exemption designated by rule by the Public Utility Commission of Oregon.

(18) "Safe for operation" means mechanical safety and compliance with rules regarding equipment and operation as are specified by law or by rule of the commission.

(19) "Special operations" means irregular route passenger service that is not charter service or the usual operation of the ordinary regular route common carrier of passengers and involves the sale of tickets by the carrier to the individual passenger.

(20) "Transit-type motor vehicle" means any passenger-carrying vehicle that does not have a separate space for transporting baggage or express.

(21) "Transporter" has the meaning given that term in ORS 466.005. [Amended by 1955 c.681 §1; 1959 c.420 §1; 1971 c.655 §155; 1975 c.692 §3; 1977 c.253 §2; 1979 c.349 §1; 1981 c.117 §1; 1981 c.280 §3; 1981 c.554 §1; 1983 c.357 §1; 1983 c.703 §21; 1985 c.28 §1; 1985 c.49 §1; 1989 c.992 §4b]

767.010 [Amended by 1959 c.420 §2; 1965 c.228 §1; 1971 c.655 §156; 1975 c.692 §4; repealed by 1977 c.253 §43]

767.015 [Amended by 1959 c.420 §3; 1961 c.161 §1; 1971 c.655 §157; repealed by 1977 c.253 §43]

767.017 [1969 c.699 §3; 1971 c.655 §158; repealed by 1977 c.253 §43]

767.020 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 do the following:

(a) Promote safe, adequate, economical and efficient service and to promote the conservation of energy.

(b) Foster sound, economic conditions in transportation.

(c) Encourage the establishment and maintenance of reasonable rates for transportation services, without unjust discriminations, undue preferences or advantages or unfair or destructive competitive practices.

(d) Provide specific state action immunity against all antitrust claims and prosecution in those instances when carriers lawfully develop, publish and charge rates and provide services specifically prescribed by the commission and in those instances when carriers lawfully engage in prior consultation for purposes described in this paragraph.

(2) The volume of motor carrier traffic presents dangers and hazards on public highways and make it imperative that:

(a) Stringent rules be employed, to the end that the highways may be rendered safe for the use of the general public;

(b) The wear of such highways be controlled;

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

(d) A 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;

(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; and

(i) A method of assessing privilege taxes be provided to enable the further construction of highways and to provide for the operation, preservation and maintenance of highways already built.

(3) The legislature hereby declares that to effect the ends and purposes listed in this section, this chapter is adopted. [Amended by 1969 c.699 §1; 1971 c.655 §159; 1977 c.253 §3; 1981 c.554 §2; 1983 c.357 §2]

767.022 Nonapplicability of chapter to certain vehicles used in nonprofit transportation of passengers. (1) This chapter does not apply to motor vehicles with a seating capacity of less than 16 persons while used in nonprofit operation for commuting to job, job training or educational facilities.

(2) For the purposes of this section, "nonprofit operation" means a voluntary commuter ridesharing arrangement that may charge a fee to defray expenses but remains nonprofit in its operation without reference to any entity that may sponsor it. In establishing the fee, the following items may be included as expenses:

(a) The cost of acquiring the vehicle;

(b) Insurance;

(c) Maintenance of the vehicle;

(d) Fuel; and

(e) Other reasonable expenses attributable to use of the vehicle for ridesharing purposes. [1977 c.660 §2; 1981 c.227 §1]

767.025 Nonapplicability of chapter to certain persons and vehicles. Except as provided in ORS 767.032, this chapter does

not apply to the persons or vehicles described in this section. The exemption under this section applies to the following persons and vehicles:

(1) Vehicles being used by, or under contract with, any school board, district or person responsible for the administration of elementary or secondary school activities, and engaged exclusively in transporting students or combination of students and other persons to or from school or authorized school activities, or those activities sponsored by the State Board of Higher Education. This exemption shall not be affected by the charging of a fee to cover the costs of the transportation.

(2) Vehicles being used in a taxicab operation if the vehicle:

(a) Is a passenger vehicle with a passenger seating capacity which does not exceed five;

(b) Carries passengers for hire where the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled or waiting time; and

(c) Is transporting persons or property, or both, between points in Oregon.

(3) Vehicles being used for the transportation of property by private carrier by means of a single vehicle or combination of vehicles with a combined weight that does not exceed 8,000 pounds.

(4) Vehicles being used in operating implements of husbandry.

(5) Vehicles being used as a hearse or ambulance.

(6) Vehicles being used over any private road or thoroughfare.

(7) Vehicles being used on 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 forest products converted to a form other than logs at or near the harvesting site, or when used for the construction or maintenance of the 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 this subsection.

(8) Vehicles being used on any county road for the removal of forest products as defined in ORS 321.005, or the products of forest products converted to a form other than logs at or near the harvesting site, if:

(a) The use is pursuant to a written agreement entered into with the State Board of Forestry, the State Forester or an agency of the United States, authorizing the owner of the motor vehicle to use the road and requiring the 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 the 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 the county road; and

(c) Copies of the agreements or permits required by this subsection are filed with the Director of Transportation.

(9) Vehicles being used in the transportation of persons for hire if the operation:

(a) Is performed by a nonprofit entity;

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

(c) Is performed by use of vehicles operating in compliance with ORS 820.020 to 820.070;

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

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

(10) Vehicles being used in transporting disabled persons, with or without their supervisors or assistants, to or from day care services or facilities if the motor vehicle is a passenger motor vehicle with a seating capacity of not more than 12 passengers. The exemption provided by this subsection applies only when the motor vehicle is operated by or under contract with any person responsible for the administration of rehabilitation facilities as defined in ORS 344.710 to 344.730 or day care services provided by a facility licensed under ORS 418.805 to 418.885.

(11) Vehicles owned or 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.

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

(13) Vehicles owned or operated by 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 the person is an employee of, the Postal Service. The person may transport additional property for consideration in the vehicle over the mail route not to exceed 200 pounds in weight for any one delivery, when not in competition with a regular route common carrier.

(14) Vehicles owned or 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.

(15) Vehicles owned or operated by, or under contract with, a charitable organization when exclusively engaged in performing transportation, either one way or round trip, necessary to the operation of the charitable organization. As used in this subsection, "charitable organization" means an organization that has no capital stock and no provision for making dividends or profits, but derives its funds principally from public and private charity and holds them in trust for the promotion of the welfare of others and not for profit. Any organization claiming an exemption under this subsection shall file an affidavit with the commission stating that it is organized and operated in accordance with the requirements of this subsection.

(16) A person who provides services relating to the packing or movement of personal property if the person does not directly or indirectly provide a motor vehicle for the movement of the property and if the person does not act as an agent for any person who does provide a motor vehicle for movement of the property.

(17) Vehicles owned or operated by a person prior to the time the vehicle is placed in commercial operation.

(18) Vehicles with a maximum speed that does not exceed 35 miles per hour that are designed for off-road use and that are operated on the public highways in any one calendar year a number of miles that does not exceed 15 percent of the total number of miles the vehicle is operated for that calendar year.

(19) Passenger vehicles with a passenger seating capacity that does not exceed five when used in the transportation of new telephone books.

(20) Vehicles being used for the transportation of persons by private carrier by means of a single vehicle or combination of vehicles with a combined weight that does not exceed 12,000 pounds.

(21) A vehicle that is used in a limousine service operation in which the destination and route traveled may be controlled by the passenger and the fare is calculated on the basis of any combination of initial fee, distance traveled and waiting time if the vehicle:

(a) Is driven by a licensed chauffeur;

(b) Is a passenger vehicle with a passenger seating capacity that does not exceed eight;

(c) Carries passengers for hire between points in Oregon; and

(d) Operates on an irregular route basis.

(22) A person transporting the person's own commercial fishing boat if the combined weight of the vehicle, trailer and boat is 15,000 pounds or less. [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; 1975 c.692 §5; 1977 c.253 §4; 1979 c.260 §1; 1979 c.349 §2a; 1981 c.223 §1; 1981 c.276 §1; 1981 c.338 §2; 1981 c.403 §2; 1981 c.554 §3; 1981 c.800 §2a; 1983 c.338 §971; 1985 c.31 §1; 1985 c.49 §2; 1985 c.196 §3; 1985 c.223 §1; 1985 c.565 §119a; 1987 c.111 §1; 1989 c.224 §136; 1989 c.992 §5; 1991 c.93 §12]

767.026 Report from owners or operators of vehicles exempted by ORS 767.025. Owners or operators of vehicles exempt from the provisions of ORS chapter 767 by ORS 767.025 shall file an annual report with the Department of Transportation showing the miles of travel by registered weight class of vehicle for each exempt vehicle. The department shall determine by rule the form and manner of the report. [1989 c.992 §29]

Note: 767.026 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 767 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

767.027 Applicability of chapter to certain vehicles and combinations over 26,000 pounds. Except as otherwise provided in this section, this chapter does not apply to the persons or vehicles described in this section. The provisions of ORS 767.190, 767.195, 767.205, 767.210, 767.215, 767.450 (1) and (3), 767.775 to 767.875, 767.895 and 767.905 apply to any of the following vehicles or combinations of vehicles with a combined weight of more than 26,000 pounds:

(1) Vehicles being used exclusively in the transportation of United States mail on a trip basis.

(2) Vehicles being used in the transportation of persons for hire, in vehicles with a seating capacity of more than five persons, within a city and within three air miles of the city. When the three air mile radius extends into the corporate limits of another city, the two cities shall be considered as one city for the purposes of this subsection. The following apply to this subsection:

(a) Service may also be provided to or from any area surrounding the area described under this subsection so long as the service does not compete with a carrier granted authority by the commission under this chapter to operate in that surrounding area.

(b) Any vehicle exempt from the provisions of this chapter under this subsection is subject to regulation by the city or cities in which it is operated.

(3) Vehicles being used for the purpose of transporting persons or property in connection with the patrolling of forests for the prevention or fighting of forest fires.

(4) Vehicles being used in towing or otherwise transporting vehicles at the direction of a police officer or in servicing, towing or transporting wrecked or disabled vehicles, or in towing or transporting a replacement vehicle for such wrecked or disabled vehicle if the vehicle:

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

(b) In the case of towing, is specially constructed for that use or has a combined weight not exceeding 8,000 pounds.

(5) Vehicles being used by a common carrier or contract carrier to transport within this state free or at reduced rates:

(a) The carrier's officers, agents or employees, or dependent members of the families of those individuals, or the personal effects or household goods of those individuals.

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

(c) Indigent, destitute and homeless individuals and the necessary agents employed in the transportation.

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

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

(f) Persons providing relief in cases of general epidemic, pestilence or other emergency.

(g) Persons traveling under commuter, party or excursion passenger tickets, if available to all persons applying under like circumstances or conditions.

(h) Persons traveling under an exchange of passes between common carriers.

(6) Vehicles being used to transport plants, artificial and natural flowers and accompanying florist accessories in movements originating at retail shops.

(7) Any vehicle used by a person licensed under ORS 508.235 while the person is transporting the person's own, unsold catch of fish from the point of landing to the first point where fish from the catch will be sold, placed in storage or processed in any way.

(8) Vehicles owned or operated by truck leasing companies operated empty over the public highways for the purpose of relocation of equipment. This exemption does not apply to motor vehicles operated empty as a result of or for the purpose of transporting passengers or property. [1989 c.992 §4]

767.028 Nonapplicability of certain provisions to vehicles and combinations of 26,000 pounds or less. The provisions of ORS 767.155, 767.195, 767.775, 767.780, 767.805 to 767.855 and 767.905 do not apply to any vehicle or combination of vehicles with a combined weight of 26,000 pounds or less. [1989 c.992 §2]

767.030 Requirements for farm vehicles. (1) Except as provided in ORS 767.032 or as otherwise provided in this section, this chapter does not apply to a motor vehicle owned or leased by a farmer who meets the qualifications under ORS 805.310 when used in any one or more of the following operations:

(a) Transportation described under ORS 805.390.

(b) 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 when the project is being constructed on land owned or leased by the farmer and the materials are directly related to the construction of the project.

(2) Any farmer with a vehicle registered under ORS 805.300, or with a farm device issued under ORS 805.400, may obtain from the commission a permit as a carrier that will authorize partial use of the vehicle to provide transportation services for hire subject to the following limitations:

(a) The permit only authorizes use of the vehicles to perform transportation for hire for other farmers who meet the qualifications required under ORS 805.310 whether or not the other farmers actually have vehicles licensed under ORS 805.300.

(b) The permit only authorizes use of the vehicles to perform transportation services relating to the operation of the farm of another that the vehicle owner with the permit could provide under the registration issued under ORS 805.300 or the farm device issued under ORS 805.400 relating to the operation of the farmer's own farm.

(c) The vehicle may not be operated for hire under the permit for more than 180 days in any year.

(3) The following apply to permits issued under this section:

(a) While being operated under a permit issued under this section, a vehicle and its operator and owner are only subject to those provisions of this chapter that are specifically made applicable under this subsection.

(b) Hearing and order are not required for issuance of the permit.

(c) While being operated under the permit, the vehicle is subject to ORS 767.775 to 767.905. This paragraph does not subject the vehicle to ORS 767.775 to 767.905 when the vehicle is being operated under the registration issued under ORS 805.300 or the farm device issued under ORS 805.400 and not being operated for hire under the permit.

(d) Any operation in violation of the permit, of the registration issued under ORS 805.300 or of the farm device issued under ORS 805.400 will subject the vehicle to regulation under this chapter.

(e) While operated under the permit, insurance of the type described in ORS 767.200 must be obtained for the vehicle.

(f) While operating under the permit, the vehicle is subject to those requirements relating to the safety of vehicle equipment that are established in the provisions of the Commercial Vehicle Safety Alliance Memorandum of Understanding adopted by the Public Utility Commissioner on May 12, 1981, that relate to the following: Brake adjustment; air loss rate; low air pressure warning devices; brake hoses; brake drums and discs; brake shoes, linings and pads; steering mechanisms; wheels; tires; drawbars and fifth wheels; and vehicle suspensions.

(g) The fee charged for issuance of a permit under this section shall be the same as for the issuance of a permit under ORS 767.145.

(h) A person operating under a permit issued under this section must obtain plates or other indicia of authority in the same manner as a vehicle operated under a permit under ORS 767.145.

(i) A permit issued under this section is subject to the same enforcement powers of the commission as those applicable to permits issued under ORS 767.145.

(j) In addition to other grounds for suspension or revocation of authority under this chapter, the commission may revoke or suspend a permit issued under this section if the commission determines that the person holding the permit is using vehicles registered under ORS 805.300 or operating under a farm device issued under ORS 805.400 primarily to provide transportation for hire under this section and that the person is not using the vehicles primarily in the person's own farming operation as permitted under ORS 805.390 and 805.400.

(4) Any person claiming an exemption from this chapter under this section must comply with recordkeeping requirements and reporting requirements that the commission determines necessary for the commission to administer this section. The commission shall not require records or reporting under this subsection for any vehicle that:

(a) Is registered under ORS 805.300;

(b) Has a combined weight of 33,000 pounds or less;

(c) Is not operating under a permit issued under this section; and

(d) Is operating under a farm device issued pursuant to ORS 805.400.

(5) The commission shall coordinate the administration and enforcement of this section with the Motor Vehicles Division's administration and enforcement of registration issued under ORS 805.390 and 805.400 to assure that the purpose of this section, ORS 805.390 and 805.400 is followed and to assure that the sections are not administered and enforced in a contradictory way. [Amended by 1957 c.667 §1; 1959 c.497 §2; 1965 c.613 §1; 1971 c.655 §161; 1973 c.396 §1; 1975 c.451 §189a; 1977 c.253 §5; 1977 c.684 §2; 1983 c.338 §972; 1983 c.679 §19; 1985 c.16 §471; 1985 c.668 §21]

767.032 Applicability of chapter to certain otherwise exempt vehicles when transporting hazardous wastes. This chapter does not apply to the vehicles described in ORS 767.025 and 767.030 except that the vehicles are subject to ORS 767.457 and 767.993 and the rules adopted by the commission relating to the safety of the vehicles while engaged in the transportation of hazardous wastes on public highways. [1981 c.680 §2]

767.034 Rules for transportation of infectious waste. The Public Utility Commission may establish rules governing the conditions for transportation of infectious waste that is not an incidental part of other solid waste. The rules may require persons transporting infectious waste for consideration to register separately with the Public

Utility Commission as an infectious waste transporter and may specify the terms of that registration, including a fee for such registration. The commission may require that persons transporting infectious waste for consideration document the county and state of origin of the waste. As used in this section, "infectious waste" has the meaning given in ORS 459.386. [1989 c.763 §10]

767.035 [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; repealed by 1977 c.253 §43]

767.037 [1967 c.125 §2; 1971 c.655 §163; repealed by 1977 c.253 §43]

767.038 Delivery services for charitable organizations. (1) Common or contract carriers may provide delivery services for charitable organizations or civic nonprofit organizations and festivals at no charge or at reduced rates or in exchange for promotional services by the charitable organization or civic nonprofit organization or festival.

(2) As used in this section:

(a) "Charitable organization" has the meaning given for that term in ORS 767.025 (15).

(b) "Civic nonprofit organization" or "festival" means an organization or festival classified under the Internal Revenue Code as having a 501(c)(3) or 501(c)(4) tax exempt status. [1989 c.292 §2]

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, except in accordance with the provisions of this chapter. [Amended by 1981 c.117 §2]

767.045 Application of chapter to interstate and foreign commerce. This chapter applies 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; 1977 c.253 §6]

767.050 [Amended by 1971 c.655 §165; repealed by 1977 c.253 §43]

767.055 [Repealed by 1981 c.554 §20]

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

767.062 Appointment of agents to issue passes, collect fees and taxes. The commission may appoint agents to issue temporary passes provided in ORS 767.805 (2) and to collect any fees and taxes required by this chapter. The commission shall prescribe the duties and compensation of such agents and may require them to give bonds or irrevocable letters of credit issued by a commercial bank as defined in ORS 706.005, in such amount as the commission determines appropriate, conditioned upon the faithful performance of their duties. [1971 c.655 §180; 1977 c.253 §7; 1991 c.331 §134]

767.065 Courts to forward copies of record on conviction for violation of chapter. The courts having jurisdiction of this chapter shall, upon a conviction of anyone for violation of this chapter, immediately forward a copy of the record of such conviction to the office of the commission. [Amended by 1971 c.655 §166; 1977 c.253 §8]

(Certificates, Permits and Licenses)

767.105 Certificate or permit required for commercial transportation of persons or property on public highways. 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 without possessing, in addition to any license required by any other law, a valid certificate or permit from the commission authorizing the proposed operation. Each 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. [Amended by 1959 c.206 §1; 1969 c.99 §1; 1969 c.699 §4; 1975 c.692 §7; 1977 c.253 §9]

767.107 Certain private carrier operations exempt from obtaining permit; application for temporary authority to operate 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 additional 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) Before furnishing the service referred to in subsections (1) and (2) of this section, a private carrier must obtain temporary authority from the commission. Such temporary authority may be issued without hearing or order. [1971 c.520 §§8, 9; 1973 c.507 §1; 1975 c.692 §8]

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 commission. [Amended by 1967 c.387 §1; 1969 c.699 §5; 1979 c.349 §3; 1981 c.800 §4; 1989 c.992 §24]

767.115 [Repealed by 1961 c.110 §1]

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

(2) A brokerage 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 and rules of the commission 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, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or other security approved by the commission, 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 commission shall prescribe reasonable rules for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage license. [Amended by 1981 c.117 §3; 1991 c.331 §135]

767.125 Applications for authority. The commission 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 Denial of permit, transfer or extension; hearing; restriction. (1) Notwithstanding any other provision of law, an applicant shall not be granted a certificate, permit, transfer of any operating authority or extension of any operating authority if the commission has reasonable grounds to believe, based on information contained in commission files and records, or based on evidence presented during hearing held under the provisions of ORS 767.135, that any of the following apply:

(a) The applicant is not capable of conducting the transportation service contemplated, in compliance with the law and rules of the commission.

(b) The applicant is or has been a repeated and intentional violator of the provisions of this chapter or of the rules of the commission. This paragraph does not apply to violations for which an applicant has been penalized under subsection (2) of this section.

(c) The information contained in the application pertaining to ownership, possession or control of the equipment or operation to be conducted is false.

(2) A person whose application has been denied under subsection (1) of this section shall not be eligible to renew the application or to operate or participate directly or indirectly in the proposed operation for a period of time ordered by the commission. The period of time ordered by the commission under this subsection shall in no event be less than a period of six months from the date application has been denied and shall continue until the applicant has complied with any other penalties ordered by the commission under this or other provisions of this chapter. An applicant may renew an application without prejudice by past violations after the penalty period under this subsection.

(3) Upon request, any person who has been denied an application under subsection (1) of this section shall be granted a hearing. This subsection does not require a separate or additional hearing for applicants if the issues are addressed as part of any hearing on the application. After the hearing, the commission shall grant or deny the application in conformity with the findings.

(4) Subsection (1) of this section shall be strictly construed for purposes described in this subsection and shall control over any other purposes or policy considerations under the laws relating to motor carriers. The commission shall exercise the authority granted under subsection (1) of this section to assure that persons described in paragraph (b) of subsection (1) of this section:

(a) Achieve an awareness of and respect for the provisions of this chapter and rules of the commission.

(b) Do not legitimize activities that violate this chapter or the rules of the commission by applying for and receiving any operating authority to continue previously unlawful activities.

(5) If the commission determines that a carrier issued authority under this chapter is not providing requested transportation services that are within the authority of the carrier, the commission shall limit the au-

thority of the carrier to service that the carrier is actually providing unless the carrier provides full transportation services permitted under the carrier's authority. [Amended by 1961 c.50 §1; 1969 c.699 §7; 1983 c.357 §3; subsection (4) enacted as 1983 c.357 §18; 1985 c.33 §1]

Note: 767.130 (4) was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 767 but not to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

767.135 Issuance of carrier certificates; hearings; findings; transfer procedure. (1) When a person files with the commission 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 commission shall serve notice of the application upon every person who has an application filed and pending before the commission to serve the territory proposed to be served by the applicant, or who holds a certificate to serve that territory. If any person desires to protest the issuance, extension or transfer of the certificate, the person may file notice thereof with the commission within 15 days from the date of service of the notice of application. The commission 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 protest. For the purpose of being properly and fully informed, the commission may hold a hearing on an application although no protest is filed.

(2) If no person protests within the time provided in subsection (1) of this section, the commission may order the issuance, transfer or extension of the certificate without a hearing, if the applicant shows compliance with paragraphs (a), (b) and (d) to (f) of subsection (4) of this section.

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

(4) If the application for issuance or transfer of a certificate is the subject of a hearing, the commission shall issue the certificate if the applicant has complied with this chapter and the rules of the commission, and if the commission finds from the record and the evidence submitted at the hearing 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 comply with all Oregon laws and rules 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 commission 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 highway users or to the public;

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

(5) If the application for issuance or transfer of a certificate is the subject of a hearing, and if the commission does not find that all the conditions provided in subsection (4) of this section are satisfied, the commission may deny the application or may order that issuance of the certificate be deferred pending compliance by the applicant with those conditions provided in subsection (4) of this section specified in the order.

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

(7)(a) Pending determination of application for transfer of a certificate, the commission, without hearing, may grant approval of the temporary operation of the certificate by the prospective transferee, or, if the transferor's service to the public may be substantially impaired, may authorize temporary management of the transferor's motor carrier operations by the prospective transferee.

(b) Service performed under any temporary authority granted under this section is subject to all provisions of this chapter and the rules of the commission.

(c) Service performed under any temporary authority granted under this section creates no presumption that transfer of the certificate is required by the public convenience and necessity or is in the public interest.

(d) Evidence of operation under a temporary authority as provided in this section is not admissible to show the extent of utilization of the certificate to be transferred. [Amended by 1957 c.263 §1; 1959 c.412 §1; 1961 c.117 §1; 1969 c.699 §8; 1971 c.655 §168; 1975 c.692 §9; 1977 c.253 §10; 1983 c.357 §4]

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

767.138 [1983 c.357 §6; repealed by 1985 c.26 §1]

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

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

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

767.145 When hearing and order not required. (1) Hearing and order are not required for the issuance of authority to common or contract carriers engaged in performing:

(a) Transportation of lumber, shingles, veneer, plywood, particle board, wallboard and siding.

(b) Transportation of cordwood in long or short lengths or sawdust, hog fuel, wood chips or bark dust.

(c) Transportation of fish scrap from fish processing plants to rendering or reduction plants.

(d) Local cartage of property within areas designated by the commission pursuant to ORS 767.417.

(e) Transportation of newspapers and accompanying advertising materials when the combined weight does not exceed 8,000 pounds.

(f) Transportation of messages, including business or legal communications and transportation of packages of business paraphernalia and supplies that weigh not more than 10 pounds.

(g) Transportation of waste material for recycling as part of a conservation program that is certified and approved.

(h) Transportation of unprocessed potatoes including cuttings, seed potatoes, waste and culls.

(i) Transportation of cut trees that are or will be sold for use as Christmas trees.

(j) Transportation of unprocessed agricultural commodities from fields to processing plants or storage points.

(k) Transportation of compressed motor vehicle bodies or other compressed scrap metal for a person licensed pursuant to ORS 822.110.

(L) Transportation of unprocessed onions.

(2) Hearing and order are not required for regular route common carriers desiring to operate over redesignated or relocated public highways provided:

(a) The new route has replaced the route authorized in the carrier's certificate; and

(b) Not less than 10 days prior to the institution of such service such person files with the commission 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 this chapter. [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; 1975 c.692 §10; 1977 c.253 §11; 1979 c.349 §4; 1979 c.781 §1; 1981 c.90 §1; 1981 c.244 §1; 1981 c.554 §4; 1985 c.38 §1; 1985 c.419 §1; 1989 c.469 §1]

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

767.149 Authority for transporting metallic ores, sand, gravel, rock and other materials. (1) Upon October 4, 1977, common and contract carrier certificates authorizing the transportation of sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix shall include authority to transport metallic ores or concentrates or raw nonmetallic products, whether crushed or otherwise, when moving from mines, pits or quarries.

(2) General commodity authority issued under certificate pursuant to ORS 767.135 shall not be construed to include authority to transport sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete, asphaltic concrete mix and metallic ores and concentrates or raw nonmetallic products, whether crushed or otherwise, when moving from mines, pits or quarries or logs, poles or piling. [1971 c.520 §5; 1977 c.253 §12; 1979 c.349 §5]

767.150 Issuance of permits to private carriers; exception. (1) 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 commission, 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 commission if the application has been declined by the commission.

(2) A person acting as a private carrier need not obtain a permit from the commission for operating any vehicle or combination of vehicles with a combined weight of 26,000 pounds or less. [Amended by 1989 c.992 §6]

767.155 Issuance of certificates to interstate carriers. (1) A common, contract or private carrier engaged or to engage in interstate operations shall apply to the commission for a certificate of registration.

(2) The commission shall issue a certificate of registration in the form of a permit to the carrier without a hearing and as a matter of course if:

(a) The carrier files with the commission a statement that its operations are either authorized by the Interstate Commerce Commission of the United States or are exempt from such regulation; and

(b) The carrier furnishes to the commission either evidence of coverage by public liability or property damage insurance, as required by ORS 767.195 to 767.210, or evidence that it qualifies as a self-insurer under ORS 767.215.

(3) No common, contract or private carrier engaged or to engage in interstate operations shall perform any transportation service upon the public highways of this state without first having applied for and secured a certificate of registration 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; 1975 c.692 §11; 1989 c.29 §1]

767.157 Issuance of permits to carriers described in ORS 767.027. Upon receipt of the information in writing required by the application form for permits in that class and in compliance with the law, rules and regulations of the commission, permits shall be issued to motor carriers described in ORS 767.027, 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 commission if the application has been declined by the commission. [1989 c.992 §4a]

767.160 [Repealed by 1961 c.110 §1]

767.165 [Amended by 1959 c.87 §1; 1969 c.699 §10; 1971 c.655 §171; repealed by 1979 c.628 §2]

767.167 Temporary authority to provide transport services; request; protest; duration; renewal; procedure to obtain permanent authority. (1) The commission may grant temporary authority for a contract carrier or common carrier to provide transport services where it is shown that a need exists for such service. Such temporary authority may be authorized only if the commission receives a request for service from a user of the proposed transportation service, and if the commission concludes, after investigation, that the request represents a true need.

(2) The commission shall provide for protest and hearing under ORS 767.135 within 90 days after temporary authority is issued under this section. The commission shall cancel immediately any temporary authority granted under this section if the commission determines at hearing that the authority does not comply with requirements for grant of authority under ORS 767.135.

(3) The commission shall not grant temporary authority under this section for an initial period of more than six months.

(4) The commission may renew temporary authority granted under this section one time for a period of not more than six months.

(5) A person who is granted temporary authority under this section may apply for permanent authority to provide the transportation after the expiration of the temporary authority by making application in the manner provided for application for permanent authority under this chapter.

(6) A grant of temporary authority under this section does not establish any right to a grant of permanent authority under this chapter, but a carrier may use evidence from operation under temporary authority under this section to establish a need for transportation services and to establish an ability to provide those services. [1981 c.79 §2; 1983 c.357 §7; 1985 c.136 §1]

767.170 Emergency authority for transportation without hearing. (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 commission, the issuance of a certificate or permit for emergency transportation service, the commission may issue an emergency certificate or permit therefor, without hearing or order, the term of which shall be limited to a reasonable time to be determined by the commission under the circumstances.

(2) The commission may issue an emergency 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.

(3) The commission may issue an emergency certificate without hearing or order to transport logs when the number of carriers and their equipment or equipment necessary to provide the service requested 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.

(4) The commission may issue emergency authority without hearing or order to trans-

port 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.

(5) The commission may issue an emergency certificate without hearing or order for transportation services donated for the benefit of a charitable organization, if the services are not of a type ordinarily required in the operation of the organization. Notwithstanding any other provision of this chapter, a certificate issued pursuant to this subsection shall be issued without charge to the applicant. As used in this subsection "charitable organization" means any person organized and existing for religious or medical purposes or any political subdivision of this state.

(6) The commission may issue an emergency certificate without hearing or order to transport fertilizer for agricultural purposes under circumstances described in this subsection. The term of a certificate issued under this subsection shall be limited to a reasonable time to be determined by the commission under the circumstances. The commission shall not issue a certificate under this subsection for the transportation of any type of fertilizer that the commission determines by rule to be hazardous when transported. The commission may issue a certificate under this subsection if the commission determines the transportation is necessary:

(a) To preserve either the quantity or quality of agricultural production;

(b) Because the number of carriers having proper operating authority and their equipment or equipment necessary to provide the service requested in an area is temporarily insufficient; or

(c) Because weather or other conditions require expeditious transportation to meet the needs of agricultural production.

(7) The emergency 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; 1977 c.401 §1; 1977 c.469 §1; 1981 c.79 §3; 1985 c.38 §2]

767.175 [Amended by 1957 c.561 §1; 1969 c.91 §4; repealed by 1977 c.253 §43]

767.177 [1969 c.91 §2; repealed by 1977 c.253 §43]

767.180 Carrier to operate only in class for which authority issued; effect of violation; records. (1) The commission 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 commission.

(2) 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 commission and such identification plate or marker may remain on the equipment and no transfer of registration with either the Motor Vehicles Division of the Department of Transportation or the commission shall be required, provided that such interchange shall be permitted only in accordance with rules adopted by the commission pertaining to insurance coverage, accounts, records, reports, operations and practices thereof.

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

(5) A carrier operating as a common and contract carrier shall maintain separate records pertaining to each class of operation as prescribed by the commission. [Amended by 1955 c.79 §1; 1957 c.561 §2; 1969 c.699 §12; 1971 c.655 §172; 1973 c.507 §3; 1977 c.253 §13]

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 any provision of law:

(a) No certificate issued under this chapter, or any prior law, shall be assigned or otherwise transferred except as provided in ORS 767.135.

(b) No license issued under this chapter shall be assigned or otherwise transferred without the written approval of the commission 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 ratemaking 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 commission an application for the transfer of the certificate or license together with an affidavit signed by the heirs stating the name of the person to whom the certificate or license is to be transferred. If any heir has not reached the age of majority or is otherwise legally incapacitated, the heir's parent or guardian shall sign for the heir. The affidavit shall be on a form prescribed and furnished by the commission. Subject to the provisions of ORS 767.130, the commission 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 commission 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); 1977 c.253 §14; 1981 c.633 §82; 1987 c.94 §108; 1989 c.171 §84]

767.190 Cancellation or suspension of authority. (1) Subject to subsection (3) of this section, certificates and permits when issued shall be valid until suspended or revoked when the carrier is found by the commission to be in violation of this chapter.

(2) Certificates, permits or licenses may be suspended or canceled by the commission based upon the commission's own or other complaint after notice and hearing, when the certificate, permit or license holder:

(a) Or agents or employees of the holder have repeatedly violated this chapter or other highway or motor laws of this state.

(b) Has repeatedly violated or avoided any order or rule of the commission.

(c) Has repeatedly made unlawful rebates or repeatedly underestimated transportation charges to clients.

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

(e) Has not, except for reasons beyond the control of the holder, transported property or persons authorized by the certificate or furnished service authorized by the license for a period exceeding 180 consecutive days 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, piling, sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete, asphaltic concrete mix or metallic ores or concentrates or raw nonmetallic products, whether crushed or otherwise, when moving from mines, pits or quarries, has not, except for reasons beyond the control of the holder, transported commodities as authorized by the certificate, or furnished service authorized by the license for a period exceeding 365 consecutive days immediately preceding the filing of a complaint in the proceeding. The commission in these cases may also, in the discretion of the commission, 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 not, except for reasons beyond the control of the holder, transported property or persons authorized by the permit for a period exceeding three consecutive years immediately preceding the filing of the complaint in the proceeding.

(g) Has refused, or has failed, within the time provided, to file the annual report required by ORS 767.605 or has failed or refused to maintain records required by the commission or to produce such records for examination within the time set by the commission.

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

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

(j) Has failed to comply with rules adopted under ORS 767.751.

(3) The commission shall not suspend or revoke a certificate or permit of a vehicle or person described in ORS 767.027 unless the person or vehicle is in violation of this section and ORS 767.195, 767.205, 767.210, 767.215, 767.450 (1) and (3), 767.775 to 767.875, 767.895 or 767.905. [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; 1975 c.692 §12; 1977 c.253 §15; 1981 c.554 §7; 1983 c.357 §8; 1985 c.18 §1; 1989 c.779 §6; 1989 c.992 §7]

767.195 Liability insurance of carriers. (1) Except as provided in ORS 767.215, no certificate or permit shall be issued to any person to operate as a motor carrier until the person has in effect a policy of public liability and property damage issued by an in-

surance company or reciprocal insurance exchange authorized to transact business within this state, and in accordance with the policies, forms and manuals on file with the Director of the Department of Insurance and Finance.

(2) Insurance required under this section shall be provided at minimum limits the commission by rule may prescribe, and upon such terms, conditions and provisions as the commission 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.

(3) In fixing the amount of the insurance policy the commission shall give due consideration to the character and amount of traffic, the 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; 1975 c.692 §13; 1977 c.253 §16; 1981 c.676 §3; 1985 c.135 §2]

767.200 Collect on delivery service authorized for intrastate carriers; cargo insurance; bond. (1) Common and contract carriers of property intrastate may provide collect on delivery service. Any carrier providing collect on delivery service shall obtain a satisfactory bond in a sum to be fixed by the commission, 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 the person has in effect cargo insurance in such penal sum as the commission 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 commission may waive the requirement 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; 1981 c.676 §4; 1985 c.135 §3]

767.205 Rules for compliance with ORS 767.195 and 767.200; notice prior to cancellation of insurance or bond; suspension of authority when insurance or bond inoperative. (1) The commission by rule shall establish a system for determining how motor carriers demonstrate compliance with the insurance and bond requirements of ORS 767.195 and 767.200. The system may require certification of compliance by the carrier or the filing of a policy or bond with the commission and may require different acts of compliance based on class of carrier or experience. The system shall also specify what acts constitute failure to comply for purposes of revocation or suspension of the carrier's authority.

(2) 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 commission 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.

(3) If any insurance policy or collect on delivery bond required under ORS 767.195 or 767.200 becomes inoperative, the authority under the certificate or permit involved shall cease and be suspended insofar 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 accepted by the commission. [Amended by 1963 c.119 §1; 1969 c.699 §17; 1971 c.655 §176; 1981 c.676 §5; 1983 c.285 §1; 1985 c.135 §1]

767.210 Deposit of securities or letter of credit in lieu of insurance or bond. (1) In lieu of the insurance policy or surety bond, the holder of any certificate or permit may file with the commission an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or money, bank or savings and loan savings certificates, 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 commission.

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

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

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

(5) If the securities or letter of credit 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;

(b) The certificate or permit canceled; or

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

(6) If any such securities become impaired in value, the commission shall require additional protection by insurance, bond, letter of credit or substitute security to the extent that the value of the securities may have become impaired. [Amended by 1969 c.699 §18; 1971 c.655 §177; 1977 c.253 §17; 1979 c.444 §1; 1991 c.331 §136]

767.212 [1971 c.655 §178; repealed by 1977 c.253 §43]

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 commission 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 commission may prescribe. [Amended by 1957 c.368 §1]

(Taxes and Fees)

767.305 Application fee; transfer fee; refunds. (1) In addition to the other fees prescribed in this chapter, every person applying for a certificate under ORS 767.135 or a license under ORS 767.120, or a permit under ORS 767.145 shall pay to the commission with the application a fee of $150 for a certificate or license application and $50 for a permit application. A fee of $150 shall accompany an application for transfer of certificates. Except as otherwise provided in ORS 767.307, if an application under any other provision of this chapter is set for hearing, a $150 fee shall be paid before such hearing.

(2) The commission may refund the fees collected under this section or ORS 767.307 if the applicant parties or their duly authorized representatives make written request therefor, if:

(a) Request for withdrawal of the application was received by the commission no later than five days before the hearing date or if no hearing is required, such request must have been received prior to issuance of authority; and

(b) The commission finds that:

(A) Applicant is not eligible to file application;

(B) Certificate authority is not needed for the service intended;

(C) Applicant's death or serious illness precludes conducting the operations for which application was made; or

(D) Transferor withdraws consent for transfer of certificate.

(3) When the commission fixes a time and place for a hearing as required by ORS 767.135 (1), if any person who protested fails to appear at the hearing and failed to withdraw the protest at least five days before the date of the hearing, the commission may require such person to pay a sum equal to the application fee required by this section or by ORS 767.307. [Amended by 1961 c.44 §1; 1969 c.699 §19; 1971 c.655 §179; 1975 c.692 §14; 1977 c.253 §18; 1979 c.349 §6; 1989 c.260 §3; 1991 c.67 §206]

767.307 Geographic zones for transportation of specified commodities; fees. (1) The commission shall divide the state into geographic zones for the purpose of defining the territory that may be served by carriers transporting the commodities specified in ORS 767.149 (1).

(2) In lieu of any fee required under ORS 767.305 (1), a person applying for authority

to transport the commodities specified in ORS 767.149 (1) shall pay to the commission an application fee of $150 for the initial zone for which authority is requested and $50 for each additional zone for which authority is requested. [1989 c.260 §2]

767.310 [Amended by 1957 c.561 §3; 1969 c.91 §5; 1969 c.699 §20; repealed by 1977 c.253 §43]

767.315 [Amended by 1981 c.117 §4; repealed by 1985 c.68 §1]

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

(1) After hearing, regulate 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 and require their preservation for such time as the commission may determine proper, and have access thereto with right of audit and inspection at all reasonable times.

(3) Require the filing of such periodical or other reports or data of such carriers as the commission deems necessary.

(4) Require reasonably adequate service and facilities.

(5) Regulate operating 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) Relieve the highways of all undue burdens and safeguard traffic thereon by promulgating and enforcing reasonable rules and orders designed and calculated to prevent serious highway congestion, and minimize the dangers attending transportation on the public highways of all commodities including hazardous materials, hazardous substances and hazardous wastes. [Amended by 1971 c.655 §181; 1975 c.692 §15; 1977 c.253 §19; 1981 c.117 §5; 1983 c.127 §1]

767.407 Temporary rate procedures. Notwithstanding ORS 767.405 (1), after petition by any interested person, or upon the commission's own motion, the commission may permit the establishment or modification of rates, classifications and practices to become temporarily effective without a hearing if the commission finds that such action is in the public interest. The commission shall hold the hearing required by ORS 767.405 (1) 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; 1983 c.357 §9]

767.409 Publication of notice of proposed rate establishment or modification. When directed by the commission, any carrier, or agent on behalf of the carrier, which proposes the establishment or modification of a rate, classification or practice shall publish notice thereof in a newspaper of general circulation in the area in which the proposal shall be effective. Publication shall be within the time provided by the commission. [1981 c.554 §19]

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

(1) The rates, rules and practices used by common carriers shall be prescribed by the commission and:

(a) Be plainly stated in tariffs or schedules available to the public at each carrier's office, and at the office of the commission; and

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

(2) All contracts governing services performed by contract carriers acting under au-

thority of certificates issued by the commission shall be submitted to the commission for approval and:

(a) All contracts of contract carriers shall plainly state the rates, rules and practices to be applied to the service performed; and

(b) Shall specifically reflect the specialized or other services performed by the contract carrier.

(3) No common carrier or contract carrier shall:

(a) Charge, collect or receive a different remuneration for the transportation of passengers or property or for any service in connection therewith, than the rates which have been legally prescribed and filed with the commission.

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

(4) Any action against common carriers for recovery of overcharges or by common carriers for the collection of undercharges shall be commenced within two years from the time the cause of action accrued. As used in this subsection, overcharges or undercharges shall mean charges assessed for transportation service different from those applicable under the tariff lawfully in effect.

(5) The commission shall check the records of common carriers and contract carriers for the purpose of discovering all discriminations and rebates. The commission:

(a) Upon the commission's own motion, may, and upon the complaint of any aggrieved person, shall, pursuant to written notice served upon any common or contract carrier, investigate the rates, classifications, rules and practices of common or contract carriers and service in connection therewith; and

(b) To the extent that the rates, classifications, rules or practices are found by the commission to be unreasonable, unlawful, unfair or unduly discriminatory, preferential or prejudicial, shall, by orders based upon the evidence, require the carrier to comply with just, fair, lawful and reasonable rates, classifications, rules and practices established by the commission. Such carrier shall forthwith comply with such orders.

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

(7) 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.

(8) Notwithstanding subsection (7) of this section, the commission may, upon application and hearing, or upon the commission's 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. An agreement established under this subsection may not have a duration of longer than one year. The commission:

(a) May, subject to the governing policies of this chapter, prescribe rules and impose such terms and conditions as are found to be just and reasonable.

(b) Shall require any carrier not providing physical service under an agreement under this subsection to either institute service or abandon authority for such service after one year. [Amended by 1961 c.548 §1; 1971 c.655 §183; 1973 c.507 §5; 1975 c.692 §16; 1977 c.253 §20; 1981 c.117 §6; 1983 c.357 §10; 1985 c.22 §1]

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 commission, as follows:

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

(b) Irregular route.

(c) Local cartage service.

(2) Regular route 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 transporta-

tion rates and offerings of special services filed with the commission 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) Irregular route carriers shall file tariffs and classifications governing rates. 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 under a predetermined plan of operation or time schedule between any particular points or over any particular route, but this paragraph shall not 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 repeated movements over the same route for such reasonable periods of time as may be necessary to meet the needs of a particular shipper in particular instances or requiring specialized service.

(4) Cartage carriers shall file tariffs and classifications governing rates. The commission shall, after hearing, determine what territorial limits will be included within the commercial area adjacent to the limits of any incorporated city.

(5) Irregular route carriers providing charter service 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 carriers providing special operations may sell tickets on an individual basis. Special operations tariffs shall be filed with the commission and shall become effective on not less than three days' notice. [Amended by 1957 c.675 §1; 1969 c.699 §23; 1971 c.655 §184; 1973 c.507 §6; 1977 c.253 §21; 1981 c.280 §4; 1983 c.357 §11]

767.416 Distinctions between regular and irregular route carriers of property. The commission, after public hearing, shall adopt rules setting forth criteria for determination of distinctions between regular and irregular route motor carriers of property. The rules adopted by the commission under this section shall be published as provided under ORS 183.360. [1983 c.357 §13]

767.417 Applicability of ORS 767.405 to 767.415 to local cartage activities; application for authority. (1) The provisions of ORS 767.405, 767.407, 767.410 and 767.415, except for ORS 767.405 (2), (3), (4) and (6), do not apply to common or contract carriers engaged in local cartage of property within areas designated in rules adopted by the commission. The commission shall designate a local cartage area as exempt from economic regulation if the commission finds from the record and evidence in a rulemaking proceeding that:

(a) The gross revenue derived from local cartage service in the designated cartage area by carriers does not exceed $100,000 a year;

(b) The population of the affected city or cartage area is less than 10,000;

(c) The incorporated city or designated cartage area is not an essential part of a metropolitan, industrial or homogeneous economic area;

(d) The incorporated city or cartage area is not contiguous to another city or within the area encompassed by the commercial zone of another city;

(e) Service to the public would not be adversely affected;

(f) The carrier's ability to render service would not be adversely affected; and

(g) It is not otherwise adverse to the public interest to exclude such area from regulation.

(2) If the commission finds in a future rulemaking proceeding that adequate service is not being provided or that the public interest demands that the exemption be removed, the commission shall remove the exemption and require the affected cartage carriers to comply with the provisions of this chapter.

(3) Within 90 days after the effective date of the order removing the exemption, carriers who operated within the local cartage area for at least six consecutive months im-

mediately preceding the effective date of the order may file with the commission an application for operating authority. The application shall be accompanied by evidence of qualified operations in the local cartage area. If the commission finds that the applicant has engaged in qualified operations in the area, the commission shall issue an appropriate certificate authorizing the carrier to provide service within the area. Applicants may continue to provide service pending the commission's decision on the application. [1977 c.253 §25; 1983 c.540 §9]

767.420 Regulation of contract carriers. (1) The commission shall supervise and regulate all contract carriers of persons or of property and shall exercise and perform all the powers and duties stated in ORS 767.405 (1), (2), (3) and (6) and 767.455 (1), except that the commission 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 the contract carrier 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 commission may enforce these provisions, each contract carrier shall file with the commission a copy of its contract, immediately upon its execution, 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 commission. 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 commission. However, contracts for the transportation of commodities within the exemption of ORS 767.425 need not be submitted to the commission for approval.

(4) The commission has jurisdiction over 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 commission shall apply and enforce the same accordingly. However, the commission 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. [Amended by 1971 c.655 §185; 1973 c.507 §7; 1977 c.253 §22; 1981 c.554 §8; 1985 c.38 §3]

767.422 Authority of provider of irregular route service to provide charter service and special operations. A common or contract carrier that holds a certificate for transportation of passengers in irregular route service is authorized to provide both charter service and special operations. [1981 c.280 §2]

767.425 Exemption of certain operations from regulatory provisions. ORS 767.405, 767.407, 767.410 and 767.415, with the exception of ORS 767.405 (2), (3), (4) and (6), do not apply to the performance by common or contract carriers of:

(1) Transportation of logs, poles or piling or lumber, shingles, veneer, plywood, particle board, wallboard and siding.

(2) Transportation of cordwood in long or short lengths or sawdust, hog fuel, wood chips or bark dust.

(3) Transportation of sand, gravel, rock, dirt, debris, cinders, wet ready-mix concrete or asphaltic concrete mix, metallic ores or concentrates or raw nonmetallic products, whether crushed or otherwise, when moving from mines, pits or quarries.

(4) Transportation of fish scrap from fish processing plants to rendering or reduction plants.

(5) Transportation of newspapers and accompanying advertising materials when the combined weight does not exceed 8,000 pounds.

(6) Transportation of messages, including business or legal communications and transportation of packages of business paraphernalia and supplies that weigh not more than 10 pounds.

(7) Transportation of waste material for recycling as part of a conservation program that is certified and approved.

(8) Transportation of unprocessed potatoes including cuttings, seed potatoes, waste and culls if the common or contract carrier does not refund or remit in any manner or by any device any portion of the charges for the transportation service.

(9) Transportation of cut trees that are or will be sold for use as Christmas trees.

(10) Transportation of unprocessed agricultural commodities from fields to processing plants or storage points.

(11) Transportation of compressed motor vehicle bodies or other compressed scrap metal for a person licensed pursuant to ORS 822.110.

(12) Transportation of unprocessed onions. [Amended by 1961 c.440 §1; 1969 c.575 §2; 1977 c.253 §23; 1979 c.349 §7; 1979 c.781 §2; 1981 c.90 §2; 1981 c.244 §2; 1981 c.554 §8a; 1985 c.38 §4; 1985 c.419 §2; 1989 c.469 §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 commission, 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 [Amended by 1971 c.655 §186; repealed by 1977 c.253 §43]

767.440 Classification and regulation of brokers. (1) The commission may, from time to time, establish such just and reasonable classifications of brokers as the special nature of the services performed by such brokers requires, and such just and reasonable rules and requirements, consistent with this chapter, to be observed by the brokers so classified or grouped, as the commission deems necessary or desirable in the public interest.

(2) To regulate brokers, as provided in this chapter, the commission may establish reasonable requirements with respect to licenses, financial responsibility, accounts, records, reports, operations and practices of any such person.

(3) No broker shall:

(a) Refund or remit in any manner or by any device any portion of the transportation charge paid by any customer, except at the direction of the commission.

(b) Pay or compensate, by any device, any customer for the purpose of influencing the customer to use the services of any carrier or broker.

(c) Charge, collect or receive a different remuneration for the transportation of passengers or property or for any service in connection therewith, than the rates which have been legally prescribed and filed with the commission. [Amended by 1971 c.655 §187; 1977 c.253 §26; 1981 c.117 §7; 1983 c.357 §15]

767.445 General authority to prescribe and enforce rules and classifications. (1) The commission shall, by general order or otherwise, prescribe and enforce rules in conformity with this chapter 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 commission may make such subdivisions of the carriers, as classified in this chapter, as in the opinion of the commission may work to the efficient administration of this chapter and shall do all things necessary to carry out and enforce its provisions.

(3) All rules made by the commission pursuant to this chapter and filed in the office of the commission have the force and effect of law.

(4) 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.

(5) Without restricting the general powers conferred upon the commission to prescribe and enforce rules, the commission is vested with special authority with respect to the matters listed in ORS 767.450, 767.460 and 767.895. [Amended by 1971 c.655 §188; 1977 c.253 §27]

767.450 Regulation of motor vehicles. The commission 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.

767.452 Stop for inspection. An authorized representative of the commission may require a person driving a vehicle or combination of vehicles subject to regulation by the commission on a street or highway to stop and submit to an inspection of the driver, the cargo or the vehicle or combination of vehicles at any location where representatives of the commission are conducting tests and inspections when signs are displayed requiring such stop. [1991 c.819 §2]

767.455 Safety regulations relating to drivers or operators; uniformity with federal regulations. (1) The commission shall, after public notice and hearing, adopt rules that require common, contract and private carriers to:

(a) Protect and safeguard the health and safety of all employees, 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 required number of hours released from duty.

(b) Establish minimum qualifications for persons who drive motor vehicles, as, for, or on behalf of the carrier.

(c) Use reasonable precautions for safety of operations and equipment of motor vehicles subject to their operations and control.

(2) Venue for prosecution for the violation of rules adopted under this section lies:

(a) In the county in which the defendant resides if the defendant is a resident of this state.

(b) In the county where the violation was committed if the defendant is not a resident of this state.

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

(4) The rules promulgated under subsection (1) of this section should provide for uniformity between state and federal motor carrier safety and hours of service rules in so far as practicable. [Amended by 1963 c.184 §1; 1969 c.699 §24; 1977 c.253 §28; 1981 c.554 §9; 1985 c.132 §1]

767.456 Limitation on movement of vehicles to particular days of week. Except as provided in this section, the commission shall not adopt rules limiting the movement of vehicles that are subject to regulation under this chapter to any particular days of the week. The commission may adopt rules described under this section if:

(1) The rules are recommended by the Superintendent of State Police; and

(2) The commission determines that the rules are required to protect the interest and safety of the general public. [1983 c.461 §2]

767.457 Standards for safe transportation of hazardous wastes and substances. (1) The commission shall adopt rules setting standards for the safe transportation of hazardous waste, hazardous substance and PCB by all transporters.

(2) The authority granted under this section:

(a) Is in addition to any other authority granted the commission.

(b) Does not supersede the authority of the Energy Facility Siting Council to regulate the transportation of radioactive materials under ORS 469.550, 469.570, 469.603 to 469.621 and 469.992.

(3) In addition to any other penalty for violation of a rule adopted under this section, the commission, after hearing, may impose a civil penalty of not more than $10,000 for violation of a rule adopted under this section. Each day of noncompliance with a rule is a separate violation. [1981 c.680 §3; 1983 c.703 §22; 1985 c.670 §36; 1989 c.6 §16]

767.458 Impoundment of vehicles unlawfully transporting hazardous wastes or substances. (1) In addition to any other enforcement measure allowed, if a person violates the provisions of ORS 466.080 or 767.457 or rules adopted by the commission under ORS 466.080 or 767.457, the commission may impound the person's vehicle transporting, about to transport or that has transported hazardous waste, PCB or hazardous substance within the state. The commission may charge a reasonable fee for the costs of impoundment and storage, if any, before releasing any vehicle to its owner.

(2) As used in this section and ORS 767.457:

(a) "Hazardous substance" includes any substance defined by the commission as hazardous.

(b) "Hazardous waste" has the meaning given that term in ORS 466.005.

(c) "PCB" has the meaning given that term in ORS 466.505 when the PCB is a waste product of an industrial, commercial or other activity. [1985 c.670 §35]

767.460 Regulation of shipping receipts, changes of vehicles and routes, records and mileage. The commission may:

(1) Require every person operating as a common or contract carrier of property, except carriers carrying dairy products from farm to processing plant and carriers engaged exclusively in transporting commodities described in ORS 767.425 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 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) 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. [Amended by 1969 c.699 §25; 1971 c.655 §189; 1975 c.692 §17]

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 chapter or order of commission. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any provision of this chapter or any order, rule or decision of the commission shall incur a penalty of not more than $100 for every such violation.

(b) In addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of ORS 767.105 shall incur a penalty of not more than $500 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 shall be commenced within two years following the date of the violation complained of.

(4) The commission may reduce any penalty provided for in this section on such terms as the commission considers proper if:

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

(b) The defendant submits to the commission a written request for reduction 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 commission, the Attorney General, at the request of the commission, 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 commission. 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.

(6) Any motor carrier found knowingly to have assessed charges for transportation service less than published in its tariffs or written contracts on file with the commission may be directed to collect the undercharges from the persons liable therefor and to remit such undercharges to the commission in addition to any monetary penalties imposed against the carrier for charging less than the tariff or contract prescribes.

(7) Any motor carrier found to have assessed charges for transportation service more than the rates which have been legally filed with and prescribed by the commission shall refund the overcharges to the persons from whom collected. If the carrier is unable to do so, the carrier may be required to remit such overcharges to the commission in addition to any monetary penalties imposed against the carrier for charging more than the applicable tariff or contract prescribes. [Amended by 1957 c.263 §4; 1971 c.655 §190; 1975 c.692 §18; 1977 c.253 §29; 1979 c.349 §8; 1981 c.554 §10; 1987 c.158 §156; 1991 c.375 §1]

Note: The amendments to 767.470 by section 12, chapter 407, Oregon Laws 1991, become operative January 1, 1993. See section 39, chapter 407, Oregon Laws 1991. The text that is operative on and after January 1, 1993, is set forth for the user's convenience.

767.470. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any provision of this chapter, ORS chapter 768 or any order, rule or decision of the commission shall incur a penalty of not more than $100 for every such violation.

(b) In addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of ORS 767.105 shall incur a penalty of not more than $500 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 shall be commenced within two years following the date of the violation complained of.

(4) The commission may reduce any penalty provided for in this section on such terms as the commission considers proper if:

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

(b) The defendant submits to the commission a written request for reduction 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 commission, the Attorney General, at the request of the commission, 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 commission. 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.

(6) Any motor carrier found knowingly to have assessed charges for transportation service less than published in its tariffs or written contracts on file with the commission may be directed to collect the undercharges from the persons liable therefor and to remit such undercharges to the commission in addition to any monetary penalties imposed against the carrier for charging less than the tariff or contract prescribes.

(7) Any motor carrier found to have assessed charges for transportation service more than the rates which have been legally filed with and prescribed by the commission shall refund the overcharges to the persons

from whom collected. If the carrier is unable to do so, the carrier may be required to remit such overcharges to the commission in addition to any monetary penalties imposed against the carrier for charging more than the applicable tariff or contract prescribes.

767.475 Utilization of state police in enforcing chapter. The commission 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 commission 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 commission. (1) The commission 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 commission. The commission 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 commission.

767.500 Vehicle owner to be made party to certificate or permit enforcement proceedings; dismissal of charges against driver. (1) In any prosecution for any violation of ORS 767.105, 767.107, 767.110 or 767.155 of any driver who is employed by the owner or lessee of the vehicle involved in the violation to operate the vehicle, the court shall make the owner or lessee of the vehicle a codefendant if appearance has not been made by the driver within 15 days of the date the driver was cited to appear in court.

(2) If it is found that the owner or lessee caused or permitted the driver to operate the vehicle in violation of ORS 767.105, 767.107, 767.110 or 767.155, and if the owner or lessee is found guilty of violating any of those provisions, the court may dismiss the charges against the driver. [1977 c.552 §2]

767.505 Rating bureaus. (1) The commission shall adopt rules providing for guidelines and requirements for the formation of bureaus that carriers regulated under this chapter may join to develop and maintain reasonable rates for transportation services. The rules shall include procedures to assure that rates established through the rate bureaus are without unjust discriminations, undue preferences or advantages or practices that are unfair or that the commission determines will adversely affect competition.

(2) The commission may establish any rule for the regulation of rate bureaus under this section that the commission determines to be in the public interest.

(3) Carriers regulated under this chapter may become members of rate bureaus that meet the requirements established by the commission under this section and may use the services of the rate bureaus in the development of rates and rating practices, classifications, divisions and rules that relate to rates in a manner allowed by the commission. [1983 c.357 §17]

(Contracts for Transporting Logs, Poles or Pilings)

767.510 Contracts for transportation of logs, poles and pilings; determination of rates; penalty. (1) Any person who proposes to contract with a common or contract carrier for the intrastate transportation of logs, poles or pilings shall inform the carrier at the time of the initial contact regarding a specific job of the rate for the job, of the time of payment and of any special conditions connected with the job. In addition, before the carrier picks up the load, the information required by this subsection shall be given to the carrier in writing:

(a) On a form developed by the commission under ORS 767.511 and furnished by the commission; or

(b) On a form that contains the information required under ORS 767.511 for forms developed by the commission but that is provided by the person proposing the contract.

(2) For purposes of subsection (1) of this section, any rate or any method of determining a rate may be used so long as the rate or method is agreed to in writing prior to the beginning of the transportation.

(3) A person who violates this section or the terms of a contract described in this section is subject to a civil penalty of not more than $500, to be paid to the commission, for each violation. [1989 c.480 §2]

767.511 Form for contracts for transportation of logs, poles and pilings. The commission shall develop a form that may be used by persons who contract with common or contract carriers as provided in ORS

767.510. The form shall include a space for noting the rate and the time of payment and a list of any special conditions that may be included in the contract. The commission shall make forms developed under this section available to persons described in ORS 767.510 (1). [1989 c.480 §3]

767.512 Meeting requirements of ORS 767.510 with prior contract. The requirements of ORS 767.510 shall be considered to have been met if there is a prior written contract, other than a contract described in ORS 767.510, between the shipper and the common or contract carrier that lists the rate, the time of payment and any special conditions. [1989 c.480 §4]

(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 commission; exemptions. On or before April 1 of each year, unless additional time is granted, every certificated motor carrier shall file with the commission a report, verified under oath by its chief officer, agent or owner, in such form and containing such information as the commission shall prescribe, covering the year ending December 31 next preceding. However, motor carriers within the exemption of ORS 767.425 and carriers operating as follows are exempt from making this report:

(1) Private carriers.

(2) Carriers engaged exclusively in interstate operations. [Amended by 1961 c.440 §2; 1969 c.575 §3; 1971 c.655 §191a; 1973 c.507 §8; 1975 c.692 §19; 1977 c.253 §30]

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 commission, shall file with the commission, within a time fixed by the commission, 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 records. The commission and the commission's duly authorized representatives have the same authority as to accounts, reports and records, including inspection and preservation thereof, with respect to any person holding a brokerage license issued under this chapter, as in the case of motor carriers. [Amended by 1971 c.655 §192; 1975 c.692 §20; 1977 c.253 §31; 1981 c.117 §8]

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

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

(3) All claims, duly approved by the commission, 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; 1989 c.966 §69]

767.635 Monthly transfer of Motor Carrier Account surplus to State Highway Fund. On the last day of each month the Executive Department shall certify to the State Treasurer the balance of all money in excess of $800,000 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; 1975 c.692 §21; 1977 c.253 §32, 1981 c.249 §3]

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

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

(2) In the 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.

767.644 Disclosure of hazardous waste transportation reports and information to Environmental Protection Agency. Records, reports and information obtained or used by the commission in administering the hazardous waste program under ORS 767.457 shall be available to the United States Environmental Protection Agency upon request. If the records, reports or information has been submitted to the commission under a

claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law. [1983 c.703 §7]

767.645 [Repealed by 1957 c.431 §2]

767.650 [Repealed by 1971 c.655 §250]

767.655 [Repealed by 1967 c.68 §1]

(Miscellaneous)

767.660 Voluntary ridesharing arrangement not to be taxed or licensed by local government. (1) No county, city or other municipal corporation may impose a tax on, or require a license for, a voluntary ridesharing arrangement using a motor vehicle with a seating capacity for not more than 15 persons.

(2) For the purposes of this section "voluntary ridesharing arrangement" has the meaning given that term in ORS 656.025. [1981 c.227 §7]

767.665 Advertising requirements for carriers of household goods. A carrier that transports household goods shall include the carrier's certificate number in all newsprint classified advertising, newsprint display advertising and telephone directory advertising prepared by or at the direction or request of the carrier. [1989 c.1096 §2]

767.700 [1971 c.655 §195; 1975 c.692 §22; repealed by 1977 c.253 §43]

767.705 [1971 c.655 §196; 1975 c.692 §23; repealed by 1977 c.253 §43]

767.710 [1971 c.655 §197; repealed by 1977 c.253 §43]

767.715 [1971 c.655 §198; repealed by 1977 c.253 §43]

767.720 [1971 c.655 §199; repealed by 1977 c.253 §43]

767.725 [1971 c.655 §200; 1973 c.573 §1; 1975 c.692 §24; repealed by 1977 c.253 §43]

767.730 [1971 c.655 §201; 1973 c.396 §3; 1975 c.451 §189b; repealed by 1977 c.253 §43 and 1977 c.684 §5]

767.735 [1971 c.655 §202; 1973 c.396 §4; 1974 s.s. c.38 §2; repealed by 1977 c.253 §43]

767.740 [1971 c.655 §203; repealed by 1977 c.253 §43]

767.745 [1971 c.655 §204; repealed by 1975 c.692 §34]

767.750 [1971 c.655 §205; repealed by 1977 c.253 §43]

MOTOR CARRIER EDUCATION PROGRAM

767.751 Rules for establishment of motor carrier education program; contents of program. The commission, in consultation with the Department of Transportation, shall adopt rules to establish a program for the education of motor carriers which covers, at a minimum, safety, weight mile tax and insurance regulations administered by the commission and size and weight regulations administered by the department. The department shall assist the commission in preparing and presenting the program. [1989 c.779 §2]

767.752 Participation in program. (1) Except as provided in subsection (4) of this section, all motor carriers that are domiciled in Oregon and that receive a certificate or permit from the commission for the first time on or after July 1, 1990, shall participate in the program established under ORS 767.751.

(2) A motor carrier required by subsection (1) of this section to participate in the program must do so within 180 days of the date on which it receives a certificate or permit from the commission.

(3) In addition to motor carriers required to participate in the program established under ORS 767.751, the commission may require participation by any motor carrier that:

(a) Has underpaid its tax obligation for the use of the highways by 15 percent or more;

(b) Exceeds by more than 15 percent, in a one-year period, the industry average for out-of-service violations for vehicle inspection or for accidents per mile; or

(c) Receives, in a one-year period, two or more citations for being 10,000 pounds or more overweight.

(4) Subsection (1) of this section does not apply to a carrier receiving a certificate or permit for the first time on or after July 1, 1990, if the carrier is a successor in interest to a carrier that held a certificate or permit prior to that date.

(5) Rules adopted by the commission under ORS 767.751 shall require each motor carrier participating in the program to have in attendance at least one 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 issued to the motor carrier. No rule shall require the participation of a motor carrier more than one time except for motor carriers required to participate under subsection (3) of this section. [1989 c.779 §§3, 4]

767.753 Fee for program. The commission shall assess a fee to defray the cost of the program, but the fee shall not exceed $60. [1989 c.779 §5]

767.755 [1971 c.655 §206; repealed by 1977 c.253 §43]

WEIGHT-MILE TAX

(Certificates, Licenses and Permits)

767.760 [1971 c.655 §207; 1975 c.692 §26; repealed by 1977 c.253 §43]

767.765 [1971 c.655 §208; repealed by 1977 c.253 §43]

767.770 [1971 c.655 §209; repealed by 1977 c.253 §43]

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 commission shall, with respect to each self-propelled or motor-driven vehicle, issue an identification plate or marker. The commission 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. A fee of $5 shall be paid to the commission for each replacement weight receipt issued.

(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 commission by rule.

(4) Commencing January 1, 1958, and biennially thereafter, the commission 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; 1985 c.185 §1]

Note: The amendments to 767.775 by section 17, chapter 407, Oregon Laws 1991, become operative January 1, 1993. See section 39, chapter 407, Oregon Laws 1991. The text that is operative on and after January 1, 1993, is set forth for the user's convenience.

767.775. (1) Except as otherwise permitted under ORS 767.780 and 767.805, the commission shall, with respect to each self-propelled or motor-driven vehicle that is not issued an identification device under ORS chapter 768, issue an identification plate or marker. The commission 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. A fee of $5 shall be paid to the commission for each replacement weight receipt issued.

(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 commission by rule.

(4) Identification plates or markers issued under this section shall be valid from January 1 until the following December 31.

767.780 Substitute identification devices; applications; fees. (1) Notwithstanding ORS 767.775, the commission, in the discretion of the commission, 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 commission.

(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 commission 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 commission a fee of not to exceed $5 for each device issued on an annual basis. [1971 c.655 §211; 1981 c.554 §11]

767.785 [1971 c.655 §212; 1973 c.507 §9; repealed by 1975 c.692 §27 (767.786 enacted in lieu of 767.785 and 767.790)]

767.786 Suspension or cancellation of authority; notice; hearings. (1) A certificate, permit or license is subject to suspension or cancellation, if the holder thereof:

(a) Is delinquent in reporting or paying any fees, taxes or penalties due the commission, or

(b) Has refused or failed, within the time provided, to file a deposit or bond requested under ORS 767.870.

(2) A written 10-day notice of suspension shall be given to the certificate, permit or license holder and unless a hearing is requested within such time, the certificate, permit or license shall be deemed suspended without further notice or hearing until the report, payment, bond or deposit is filed with the commission.

(3) Upon a written 10-day notice and complaint by the commission, a certificate, permit or license may be suspended or canceled for any of the reasons set forth in subsection (1) of this section. If the certificate, permit or license is suspended, the filing of the report, payment, bond or deposit will not reinstate the authority until the suspension period has expired, except on order of the commission. [1975 c.692 §28 (enacted in lieu of 767.785 and 767.790)]

Note: The amendments to 767.786 by section 13, chapter 407, Oregon Laws 1991, become operative January 1, 1993. See section 39, chapter 407, Oregon Laws 1991. The text that is operative on and after January 1, 1993, is set forth for the user's convenience.

767.786. (1) A certificate, permit or license is subject to suspension or cancellation, if the holder thereof:

(a) Is delinquent in reporting or paying any fees, taxes or penalties due the commission, whether imposed under this chapter or under ORS chapter 768; or

(b) Has refused or failed, within the time provided, to file a deposit or bond requested under ORS 767.870.

(2) A written 10-day notice of suspension shall be given to the certificate, permit or license holder and unless a hearing is requested within such time, the certificate, permit or license shall be deemed suspended without further notice or hearing until the report, payment, bond or deposit is filed with the commission.

(3) Upon a written 10-day notice and complaint by the commission, a certificate, permit or license may be suspended or canceled for any of the reasons set forth in subsection (1) of this section. If the certificate, permit or license is suspended, the filing of the report, payment, bond or deposit will not reinstate the authority until the suspension period has expired, except on order of the commission.

767.790 [1971 c.655 §213; 1973 c.507 §10; repealed by 1975 c.692 §27 (767.786 enacted in lieu of 767.785 and 767.790)]

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 commission a notice of cancellation as provided in such bond. Such cancellation shall be effective not less than 30 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 the requirements of ORS 767.870 have been met by the carrier. [1971 c.655 §214; 1975 c.692 §33]

767.797 Reinstatement fees. In addition to any other requirements of this chapter, a carrier whose operating authority has been suspended shall pay a reinstatement fee of $25 to the commission before the operating authority may be reinstated, plus $5 for each vehicle identification device outstanding under the carrier's authority at the time of suspension, if the suspension has been in effect more than 30 days. However, if the suspension has been in effect for 30 days or less, in addition to the reinstatement fee of $25 the carrier only need pay $5 for each identification device it does not surrender upon application for reinstatement of the authority. [1975 c.692 §2; 1981 c.554 §12]

767.800 [1971 c.655 §215; repealed by 1977 c.253 §43]

(Taxes and Fees)

767.805 Plate fees; temporary pass fees; when plate or marker not to be displayed; summary recall of plate or marker; fee for failure to surrender plate. (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 commission a fee of $15 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 commission may issue a temporary pass identifying the motor vehicle. The pass must be carried in the motor vehicle for which it is issued. For this pass a fee of $9 for each motor vehicle shall be paid.

(3) Except as otherwise provided by rule, whenever a motor vehicle is no longer authorized for use under a certificate or permit, or when the certificate or permit under which the vehicle is authorized for use has been suspended or canceled, the identification plate or marker issued for the motor vehicle shall not be displayed. In such cases, the identification plate or marker may be summarily recalled by the commission and no refund of fees shall be allowed for the unexpired term of the plate or marker.

(4) In addition to other fees prescribed in this chapter, a carrier whose operating authority has been suspended or canceled shall pay to the commission a fee of $15 for each identification plate or marker which the carrier fails to surrender to the commission within 90 days of the date of suspension or cancellation of the carrier's operating authority. [1971 c.655 §216; 1979 c.322 §12; 1981 c.554 §13; 1983 c.35 §1; 1985 c.185 §2; 1989 c.19 §1]

Note: The amendments to 767.805 by section 18, chapter 407, Oregon Laws 1991, become operative January 1, 1993. See section 39, chapter 407, Oregon Laws 1991. The text that is operative on and after January 1, 1993, is set forth for the user's convenience.

767.805. (1)(a) 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 commission a fee of $7.50 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. The same fee shall be paid for renewal of a plate issued under this subsection. A person paying the fee imposed by this subsection shall be issued a card and sticker, if required, in addition to a plate.

(b) Each carrier requiring a replacement plate or sticker shall pay a fee of $7.50.

(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 commission may issue a temporary pass identifying the motor vehicle. The pass must be carried in the motor vehicle for which it is issued. For this pass a fee of $9 for each motor vehicle shall be paid.

(3) Except as otherwise provided by rule, whenever a motor vehicle is no longer authorized for use under

a certificate or permit, or when the certificate or permit under which the vehicle is authorized for use has been suspended or canceled, the identification plate or marker issued for the motor vehicle shall not be displayed. In such cases, the identification plate or marker may be summarily recalled by the commission and no refund of fees shall be allowed for the unexpired term of the plate or marker.

(4) In addition to other fees prescribed in this chapter, a carrier whose operating authority has been suspended or canceled shall pay to the commission a fee of $15 for each identification plate or marker which the carrier fails to surrender to the commission within 90 days of the date of suspension or cancellation of the carrier's operating authority.

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 commission 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 commission and if the sender establishes to the satisfaction of the commission 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 commission 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.

(3) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, a report or payment that is required to be filed with the commission by ORS 767.815 to 767.855 and that is filed by a person whose certificate, permit or license is suspended under ORS 767.786 (1)(a) for delinquent reporting or paying shall be considered filed on the date it is received by the commission. [1971 c.655 §217; 1989 c.42 §1]

767.815 Motor carrier tax for use of highways. (1) In addition to other fees and taxes imposed by law upon carriers, there shall be assessed against and collected from every carrier a tax for the use of the highways, to apply to 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.

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

(a) Table "A" applies to motor vehicles subject to the tax imposed by this section that are not issued an annual variance permit under ORS 818.200 (1)(a) to (c) to operate with a combined weight of more than 80,000 pounds.

(b) Table "B" applies to motor vehicles subject to the tax imposed by this section that are issued or required to obtain an annual variance permit under ORS 818.200 (1)(a) to (c) to operate with a combined weight of more than 80,000 pounds.

(c) The declared combined weight shall be the combined weight, as defined in ORS 767.005, declared in the application for authority under ORS 767.105, subject to audit and approval by the commission.

(d) In addition to any tax due under this chapter, motor vehicles that exceed the maximum vehicle weight limits for annual variance permits under ORS 818.200 (1)(a) to (c) are subject to the road use assessment fee imposed under ORS 818.225 for the entire motor vehicle weight, minus the road use assessment fee for the maximum vehicle weight allowed under the annual variance permit.

(4) The tax for each motor vehicle when table "A" or "B" is 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. [Formerly 767.325; 1975 c.692 §29; 1977 c.253 §33; 1983 c.338 §973; 1985 c.196 §1; 1989 c.992 §8; 1991 c.880 §1]

767.820 Carrier tax tables.

MILEAGE TAX RATE TABLE "A"

Declared Combined Weight Groups (Pounds)	Fee Rates Per Mile (Mills)
26,001 to 28,000	44.5
28,001 to 30,000	47.0
30,001 to 32,000	49.0
32,001 to 34,000	51.5
34,001 to 36,000	53.5
36,001 to 38,000	56.0
38,001 to 40,000	58.0
40,001 to 42,000	60.5
42,001 to 44,000	62.5
44,001 to 46,000	64.5
46,001 to 48,000	67.0
48,001 to 50,000	69.0
50,001 to 52,000	71.5
52,001 to 54,000	74.0
54,001 to 56,000	77.0
56,001 to 58,000	80.0
58,001 to 60,000	84.0
60,001 to 62,000	88.0
62,001 to 64,000	93.0

64,001	to 66,000	98.0
66,001	to 68,000	105.0
68,001	to 70,000	112.5
70,001	to 72,000	120.0
72,001	to 74,000	127.0
74,001	to 76,000	133.5
76,001	to 78,000	139.5
78,001	to 80,000	145.5

AXLE-WEIGHT MILEAGE TAX RATE TABLE "B"

Declared Combined Weight Groups (Pounds)	Number of Axles 5	6	7	8	9 or more
	(Mills)				
80,001 to 82,000	151.0	136.5	128.0	123.0	117.5
82,001 to 84,000	155.0	139.5	130.0	125.0	119.0
84,001 to 86,000	159.5	142.5	132.0	126.5	120.5
86,001 to 88,000	165.0	146.0	134.0	128.5	122.0
88,001 to 90,000	172.0	150.0	136.5	130.0	123.5
90,001 to 92,000	179.0	154.0	139.0	132.0	125.0
92,001 to 94,000	187.0	158.0	141.5	134.5	126.5
94,001 to 96,000	195.0	163.0	144.0	136.5	128.0
96,001 to 98,000	204.0	169.0	147.0	138.5	130.0
98,001 to 100,000		175.0	150.0	141.0	132.0
100,001 to 102,000			153.0	144.0	134.5
102,001 to 104,000			157.0	147.0	137.0
104,001 to 105,500			161.0	150.5	140.0

[Formerly 767.330; 1977 c.864 §1; 1981 c.698 §3; 1983 c.727 §§3, 7; 1985 c.196 §§2, 2a, 2b; 1985 c.209 §14; 1987 c.899 §§5, 12; 1989 c.992 §9; 1991 c.67 §207; 1991 c.497 §10; 1991 c.880 §8]

767.825 Substitute taxes for certain vehicles. (1)(a) In lieu of other fees provided in ORS 767.815, carriers engaged in operating motor vehicles in the transportation of logs, poles or piling may pay annual fees for such operation computed at the rate of six dollars for each 100 pounds of declared combined weight.

(b) 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.

(2) The annual fees provided in subsections (1), (4) and (5) of this section may be paid on a monthly basis. Any carrier electing to pay fees under this method may not change an 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. A carrier electing to pay fees under this method shall report and pay these fees on or before the 10th of each month for the preceding month's operations. A monthly report shall be made on all vehicles on the annual fee basis including any vehicle not operated for the month.

(3)(a) In lieu of the fees provided in ORS 767.805 to 767.815, motor vehicles with a combined weight of less than 46,000 pounds that are being operated under a permit issued under ORS 767.030 may pay annual fees for such operation computed at the rate of four dollars and eighty-five cents for each 100 pounds of declared combined weight.

(b) The annual fees provided in this subsection shall be paid in advance but may be paid on a monthly basis on or before the first day of the month. A carrier may be relieved from the fees due for any month during which the motor vehicle is not operated for hire if a statement to that effect is filed with the commission on or before the fifth day of the first month for which relief is sought.

(4)(a) In lieu of other fees provided in ORS 767.815, carriers engaged in the operation of motor vehicles equipped with dump bodies and used in the transportation of sand, gravel, rock, dirt, debris, cinders, asphaltic concrete mix, metallic ores and concentrates or raw nonmetallic products, whether crushed or otherwise, moving from mines, pits or quarries may pay annual fees for such operation computed at the rate of five dollars and thirty cents for each 100 pounds of declared combined weight.

(b) Any carrier electing to pay fees under this method may, as to vehicles otherwise exempt for 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.

(5)(a) In lieu of other fees provided in ORS 767.815, carriers engaged in operating motor vehicles in the transportation of wood chips, sawdust, barkdust, hog fuel or shavings may pay annual fees for such operation computed at the rate of twenty-two dollars and fifty cents for each 100 pounds of declared combined weight.

(b) Any carrier electing to pay under this method may, as to vehicles otherwise exempt from taxation, elect to be taxed on the mileage basis for movement of such empty vehicles over public highways whenever operations are for the purpose of repair, maintenance, service or moving from one exempt highway operation to another. [Formerly 767.335; 1975 c.692 §30; 1977 c.253 §34; 1977 c.684 §4; 1977 c.775 §1; 1977 c.864 §2; 1979 c.349 §9; 1981 c.698 §4; 1983 c.338 §974; 1983 c.400 §1; 1983 c.679 §20; 1983 c.727 §§4a, 9; 1985 c.16 §475; 1985 c.199 §1; 1985 c.209 §§11, 15; 1987 c.203 §1; 1987 c.899 §§6, 13; 1989 c.992 §10; 1991 c.497 §11; 1991 c.880 §9]

Note: Section 28, chapter 992, Oregon Laws 1989, provides:

Sec. 28. Review of flat fee rates. The Public Utility Commission and the Oregon Transportation Commission shall review flat fee rates established under ORS 767.825 in each even-numbered year and shall recommend to each regular session of the Legislative As-

sembly any adjustments to the flat fee rates that the commissions deem appropriate. [1989 c.992 §28]

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]

767.832 Credit for fuel tax. Any tax paid under ORS 319.010 to 319.430 or 319.510 to 319.880 on motor vehicle fuel or fuel as defined in ORS 319.520, either directly by the collection of the tax by the vendor from the consumer or indirectly by adding the amount of the tax to the price of the fuel paid by the customer, is a credit against the amount of tax otherwise due and payable to the state under ORS 767.815 to 767.825. A credit under this section shall be allowed when the person claiming the credit submits to the commission:

(1) A report under ORS 767.825, 767.840 or 767.845; and

(2) Satisfactory evidence along with the report showing the amount of tax paid by the person under ORS 319.010 to 319.430 or 319.510 to 319.880 during the period reported. [1989 c.992 §3]

Note: 767.832 was added to and made a part of ORS chapter 767 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

767.835 Fees required of interstate carriers. A person engaged exclusively in the conduct of interstate transportation shall currently pay to the commission 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 taxes and fees; 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 commission the amount of taxes and fees due from them for the preceding calendar month. However, taxes and fees incurred after the 15th day of any month may be reported and paid to the commission on or before the last day of the second calendar month following the month in which the taxes or fees were incurred. If no taxes or fees are due in any reporting period, the report shall so state. If payment is not made on or before the date it is due, there shall be added as a late payment charge a sum equal to 10 percent of the unpaid amount of the tax.

(2) The commission may permit a person to report and pay motor carrier taxes and fees on a periodic basis other than the calendar-month basis prescribed in subsection (1) of this section, provided that the number of reporting periods in any 12-month period shall not be less than 12. If no taxes or fees are due in any reporting period, the report shall so state. If payment is not made on or before the date it is due, there shall be added as a late payment charge a sum equal to 10 percent of the unpaid amount of the tax.

(3) Whenever practicable, and in no event later than three years after any report of taxes or fees is filed, the commission shall audit it if the commission deems such audit practicable. If the commission is not satisfied with the report filed or amount of taxes or fees, including fees for temporary passes required under ORS 767.805 (2), paid to the state by any person, the commission may, not later than three years after the report was filed or the taxes or fees were paid, make a proposed assessment of additional taxes or fees due from such person based upon any information available to the commission. There shall be added to each such assessment, as a late payment charge, a sum equal to 10 percent of the amount of additional taxes or fees due.

(4) Every such additional assessment shall bear interest at the rate 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.

(5) If the additional assessment imposed exceeds by at least five percent but not more than 15 percent the amount of taxes or fees reported or paid a penalty of five percent of the amount of the additional assessment shall be added thereto in addition to the 10 percent late payment charge provided in subsection (3) of this section.

(6) If the additional assessment imposed exceeds by more than 15 percent the amount of taxes or fees reported or paid, a penalty of 20 percent of the amount of the additional assessment shall be added thereto in addition to the 10 percent late payment charge provided in subsection (3) of this section.

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

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

(9) Whenever the commission has made an assessment pursuant to this section which has become final the commission may not reopen or reassess such taxes, interest or penalties unless the commission 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 of the commission. [Formerly 767.355; 1975 c.692 §31; 1981 c.554 §14; 1985 c.111 §1; 1989 c.170 §1]

767.845 Annual and quarterly reports authorized. (1) Whenever in the judgment of the commission the estimated annual tax payable by a carrier will be less than $100, and the vehicles operated by the carrier are of less than 30,000 pounds combined weight, the commission may authorize the carrier to file reports annually in lieu of monthly reports required by ORS 767.840 and 767.905. Annual reports and accompanying remittances shall be filed on or before the due date of February 28 for the preceding calendar year.

(2) Whenever in the judgment of the commission the estimated annual tax payable by a carrier under ORS 767.815 will be less than $3,600, the commission may authorize the carrier to file quarterly reports in lieu of monthly reports required by ORS 767.840 and 767.905. Quarterly reports and accompanying remittances due shall be filed on or before the due date as follows: First calendar quarter, May 31; second quarter, August 31; third quarter, November 30; fourth quarter, February 28.

(3) Such authorizations may be withdrawn at any time upon the mailing of notice to the carrier at the last address of record of the carrier with the commission. 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; 1977 c.253 §35; 1981 c.554 §15; 1989 c.170 §3]

767.850 Assessment by commission upon failure to report tax or fee due. (1) If any person neglects or refuses to make a fee or tax report as required by this chapter, the commission shall make a proposed assessment, based upon any information available to the commission, for the period for which such person failed to make a report, of the amount of taxes and fees, including fees for temporary passes required under ORS 767.805 (2), due for the period for which such proposed assessment is made.

(2) Each assessment shall bear interest at the rate 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 commission shall give to such person written notice of such assessment.

(5) Whenever the commission has made an assessment pursuant to this section which has become final the commission may not reopen or reassess such taxes, fees, interest or penalties unless the commission 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 this chapter or the rules of the commission. [Formerly 767.360; 1977 c.253 §36; 1981 c.554 §16; 1985 c.111 §2]

767.855 Reassessment waiver or reduction upon request; charge for failure to appear at hearing. (1) Any person against whom an assessment is made under ORS 767.840 or 767.850, may petition the commission for a reassessment within 30 days after service upon the person of notice. If a petition is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is filed within the 30-day period the commission shall reconsider the assessment and, if the person has requested in the petition, shall grant such person a hearing and give the person 10 days' notice of the time and place of the hearing. The commission has power to continue the hearing from time to time as may

be necessary. The decision of the commission upon a petition for reassessment shall become final 30 days after service of notice upon the person concerned.

(2) The commission may waive or reduce the interest and penalties provided in ORS 767.840 (1) to (6) or 767.850 (2) or (3) on those terms as the commission considers proper if request for waiver or reduction is made within 30 days after service of notice of assessment upon the person concerned, or as part of the pleas made in the commission's reconsideration of the assessment.

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

(4) If any person who has requested a hearing pursuant to this section fails to appear at the scheduled hearing and failed to withdraw the petition for reassessment at least five days before the date of the hearing, the commission may require such person to pay a charge of $150 in addition to any other fees, taxes and charges which may be imposed under this chapter. [Formerly 767.365; 1977 c.253 §37; 1979 c.627 §1, 1981 c.554 §17; 1985 c.111 §3; 1989 c.170 §2]

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 commission 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]

Note: The amendments to 767.860 by section 14, chapter 407, Oregon Laws 1991, become operative January 1, 1993. See section 39, chapter 407, Oregon Laws 1991. The text that is operative on and after January 1, 1993, is set forth for the user's convenience.

767.860. All fees, taxes and charges imposed by this chapter and ORS chapter 768, all claims and penalties payable by any person under this chapter and ORS chapter 768 and all moneys collected under this chapter and ORS chapter 768, are the property of the state. The commission shall collect and receive all fees, taxes, penalties and moneys due or to become due to the state under this chapter and ORS chapter 768 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.

767.862 Collection of road use assessment fee; audit. (1) If the Highway Division assigns a road use assessment fee account to the commission for collection pursuant to the provisions of ORS 818.225, the commission may collect the amount due in the same manner that it would collect any taxes due under ORS chapter 767. Interest and penalties for delinquent payments shall be calculated in the same manner that interest and penalties are calculated under ORS 767.840 and 767.850.

(2) An audit conducted by the commission pursuant to its authority under ORS chapter 767 may include an examination of records of the carrier pertaining to the road use assessment fee imposed under ORS 818.225. If the audit shows that movement by a carrier exceeds the mileage authorized by a single-trip nondivisible load permit, the commission shall determine the amount of the road use assessment fee that is due. The commission shall collect the amount due and may impose any penalties or additional assessments authorized by ORS chapter 767 for delinquent payment of taxes. [1989 c.992 §17]

Note: 767.862 was added to and made a part of ORS chapter 767 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

767.863 Payment of taxes and fees by credit card; rules. For payment of any weight-mile taxes and fees, the commission may:

(1) Accept payment of taxes and fees by credit card. Any payment made by credit card shall be for the full amount of the tax or fee, except that a surcharge may be added to the amount tendered by the customer to offset fees charged to the commission for acceptance and use of the credit card.

(2) Adopt reasonable rules as necessary or proper for the administration of this section. [1991 c.256 §2]

Note: 767.863 was added to and made a part of ORS chapter 767 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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 commission 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 commission may issue a warrant under the commission's official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that 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 commission and pay to the commission 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, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and 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 recorded. Thereupon the amount of the warrant so recorded 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.

(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 services in executing the warrant, to be added to and collected as a part of the warrant liability.

(4) In the discretion of the commission, 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 the commission 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; 1983 c.696 §29]

Note: The amendments to 767.865 by section 15, chapter 407, Oregon Laws 1991, become operative January 1, 1993. See section 39, chapter 407, Oregon Laws 1991. The text that is operative on and after January 1, 1993, is set forth for the user's convenience.

767.865. (1) If any tax, or fee in lieu of tax, reported due, or any final assessment made by the commission 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 commission may issue a warrant under the commission's official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that 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 commission and pay to the commission 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, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and 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 recorded. Thereupon the amount of the warrant so recorded 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.

(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 services in executing the warrant, to be added to and collected as a part of the warrant liability.

(4) In the discretion of the commission, 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 the commission 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.

(5) The procedures authorized by this section may also be used for collection of any fees and penalties imposed on persons registering vehicles under ORS chapter 768.

767.870 Deposit or bond to secure payment of fees, taxes, charges and penalties. (1) If the commission finds it necessary in order to insure the collection of any fees, taxes, charges or penalties imposed upon a carrier pursuant to this chapter or ORS 818.225, the commission may at the time and as a condition of granting a certificate or permit, or continuing the same, or as a condition of issuing a motor vehicle registration device, require a carrier to deposit and keep on deposit with the commission a sum in an amount determined proper by the commission, taking into account the nature and scope of the carrier's operations. Moneys deposited under this section shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The deposit required may be increased or reduced by the commission at any time. In determining the necessity for an applicant or carrier to maintain a deposit the commission shall consider the applicant or carrier's financial capability and responsibility and the commission'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 carrier's authority.

(2) To secure payment of sums payable by the carrier the commission may accept in lieu of such deposit:

(a) A bond in the form prescribed by the commission; or

(b) Bonds, negotiable by delivery, of the State of Oregon, school districts therein, or obligations of the United States, or obligations for which the faith of the United States is pledged for the payment of both principal and interest, equal in amount to the amount of the requested deposit.

(3) So long as the deposit remains unencumbered the depositor is entitled to collect the interest upon the securities described in paragraph (b) of subsection (2) of this section. The commission shall hold the securities upon such terms as the commission 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 commission. The State Treasurer and the surety of the treasurer shall be liable upon the official bond of the treasurer for their safekeeping. The depositors shall reimburse the State Treasurer for any expenses incurred by the treasurer in the mailing, insuring, shipping or delivering of any such securities, or of the interest coupons attached thereto as they mature.

(4) If a carrier ceases to be a carrier under this chapter, within a reasonable time of the receipt by the commission of all payments due, the commission 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.

(5) 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 commission shall become final 10 days after service of the order upon the applicant or carrier concerned. [Formerly 767.380; 1975 c.692 §32; 1989 c.966 §70; 1989 c.992 §18]

767.875 Use of collection agency to obtain moneys due. (1) In carrying out the duties under ORS 767.860, the commission 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 commission may engage the services by entering into agreements to pay reasonable charges on a contingent fee or other basis.

(2) The commission 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]

Note: The amendments to 767.875 by section 16, chapter 407, Oregon Laws 1991, become operative January 1, 1993. See section 39, chapter 407, Oregon Laws 1991. The text that is operative on and after January 1, 1993, is set forth for the user's convenience.

767.875. (1) In carrying out the duties under ORS 767.860, the commission 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 and ORS chapter 768. The commission may engage the services by entering into agreements to pay reasonable charges on a contingent fee or other basis.

(2) The commission may assign to the collection agency, for collection purposes only, any of the fees, taxes, penalties and moneys due the state under this chapter and ORS chapter 768.

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

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 may be 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; 1977 c.253 §38]

767.882 Multijurisdictional agreement for collection of weight-mile taxes; rules. (1) The commission may enter into an agreement with the authorized representatives of any jurisdiction that imposes weight-mile taxes, in order to form a multijurisdictional agreement for the singular collection of the total weight-mile taxes claimed due by any of the jurisdictions that are party to the agreement. An agreement established under authority granted by this section:

(a) May allow motor carriers to pay the total weight-mile taxes that are claimed due to any jurisdiction that is a party to the agreement.

(b) May provide for collection of all weight-mile taxes claimed due by any party to the agreement, on vehicles that are engaged in interjurisdictional commerce or combined interjurisdictional and intrajurisdictional commerce.

(c) May include provisions necessary to facilitate the determination and distribution of weight-mile tax moneys among the various jurisdictions.

(d) May provide that the commission may deny any person further benefits under the agreement until all taxes have been paid, if the commission determines that the person should have paid additional taxes.

(e) May provide for arrangements with agencies of this state and other jurisdictions for joint audits of owners of vehicles availing themselves of this agreement and for the exchange of audit information on those owners.

(f) May authorize the commission to suspend or cancel any benefits under the agreement, if the person violates any of the terms or conditions of the agreement or violates any law or rule of this state relating to vehicles.

(2) The commission may adopt any rules the commission deems necessary to effectuate and administer the provisions of an agreement entered into under this section. Nothing in an agreement shall affect the right of the commission to adopt rules as described in this section.

(3) An agreement shall be in writing and shall be filed with the commission within 10 days after execution or the effective date of the agreement, whichever is later.

(4) Nothing in an agreement shall affect the right of the commission to act under this section.

(5) An agreement shall not provide for any benefit, exemption or privilege with respect to any other fees or taxes levied or assessed against the use of highways or use or ownership of vehicles except weight-mile taxes, fees and requirements. [1991 c.259 §2]

Note: 767.882 was added to and made a part of ORS chapter 767 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Regulation and Enforcement)

767.885 [1971 c.655 §227; repealed by 1977 c.253 §43]

767.890 [1971 c.655 §228; repealed by 1977 c.253 §43]

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

(1) Prescribe such methods and means as the commission 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 the Oregon Vehicle Code. [1971 c.655 §229; 1985 c.16 §472]

767.900 [1971 c.655 §230; repealed by 1977 c.253 §43]

(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 commission, 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 commission, 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 commission 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 commission. [Formerly 767.600]

PENALTIES

767.990 Penalties. (1) Except as otherwise provided in subsection (2) of this section, every person who violates or procures, aids or abets violation of this chapter and any person who refuses or fails to obey any order, decision or rule, made under or pursuant to this chapter, shall be punished, upon conviction, by a fine of not less than $10 nor more than $500. Violation of any provision of this chapter is a Class A traffic infraction.

(2) Violation of an out-of-service notice issued under authority of the commission is a Class A misdemeanor. [Amended by 1971 c.655 §194; 1977 c.253 §39; 1989 c.289 §1; 1991 c.537 §1]

767.992 [1971 c.655 §231; repealed by 1977 c.253 §43]

767.993 Penalty for violation of hazardous waste regulations. (1) A person is subject to the penalties under this section if the person knowingly:

(a) Transports any hazardous waste listed under ORS 466.005 or rules adopted thereunder to a facility that does not have appropriate authority to receive the waste under ORS 466.005 to 466.385 and 466.890.

(b) Disposes of any hazardous waste listed under ORS 466.005 or rules adopted thereunder without appropriate authority under ORS 466.005 to 466.385 and 466.890.

(c) Materially violates terms of any permit or authority issued to the person under this chapter or ORS 466.005 to 466.385 and 466.890 in the transporting or disposing of hazardous waste.

(d) Makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with requirements under this chapter for the safe transportation of hazardous wastes.

(e) Fails to include material information required under rules of the commission in

any application for any permit or authority to transport hazardous waste under this chapter.

(f) Violates any rules adopted by the commission concerning the transportation of hazardous wastes.

(2) Violation of this section is subject to the penalty of a fine of not more than $10,000 for each day of violation, imprisonment of not more than six months, or both. [1981 c.680 §4]

767.995 Penalty for violation of out-of-service notice or driver equipment compliance form provisions; rules. (1) In addition to any other penalties provided by law, the commission may impose a penalty of not more than $1,000 for:

(a) Violation of the provisions of an out-of-service notice issued by the commission or its authorized representative in conjunction with a safety inspection;

(b) Submittal of a false certification to the commission on a driver equipment compliance check form; or

(c) Failure by a motor carrier to return to the commission as required by rule a driver equipment compliance check form.

(2) Each violation specified in subsection (1) of this section is a separate offense, and in the case of a continuing violation, each 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) A penalty shall not be imposed under this section except by order following complaint as provided in ORS 756.500 to 756.610. Such proceedings shall be commenced within two years following the date of the violation.

(4) The commission may reduce any penalty provided for in this section on such terms as the commission considers proper if:

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

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

(5) If the amount of the penalty is not paid to the commission, the Attorney General, at the request of the commission, 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 commission. 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.

(6) The commission shall adopt rules describing the driver equipment compliance check form referred to in subsection (1) of this section. [1989 c.442 §2]