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Adopted Rulemaking Action

Name of Agency: Texas Department of Public Safety

Agency Code: 201

Title: 37 Part: 1

Chapter: 4. Commercial Vehicle Regulations and Enforcement Procedures

Subchapter: A. Regulations Governing Hazardous Materials

Division:

TAC Section Number(s): Section 4.1, Section 4.2

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New Amendment Repeal Adoption by Reference

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I verify that I have reviewed the submitted document and that it conforms to all applicable Texas Register filing requirements. The submitted document has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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The Texas Department of Public adopts new Chapter 4, Subchapters A-D, Sections 4.1, 4.2, 4.11-4.20, 4.31-4.37, and 4.51-4.55, concerning Commercial Vehicle Regulations and Enforcement Procedures, without changes to the proposed text as published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10094-10108).

The adoption of this new chapter 4 is filed simultaneously with the adopted repeal of current Chapter 4 (Capitol Police) in its entirety and current sections 3.59, 3.62, 3.74, 3.101, 3.111, 11.1-11.5, 11.51-11.53, 11.61, 21.6, 23.101, and 23.102. The department is also simultaneously adopting new rules relating to Capitol Police which are now located in 37 TAC Chapter 3. Because sections 3.59, 3.62, 3.74, 3.101, 3.111, 11.1-11.5, 11.51-11.53, 11.61, 21.6, 23.101, and 23.102 all pertain to some type of commercial vehicle enforcement procedures, they are also being simultaneously adopted as new sections within this new Chapter 4. The department believes that by combining all commercial vehicle enforcement regulations and procedures into one chapter, the public and motor carriers will have greater access to the rules promulgated by the agency that address commercial vehicle enforcement procedures.

Subchapter A: Regulations Governing Hazardous Materials. This subchapter contains all of the regulations that address the safe transportation of hazardous materials and the procedures for the mitigation of hazardous material transportation emergencies. The subchapter incorporates amendments and changes made to the Federal Hazardous Material Regulations by the U.S. Department of Transportation, thereby ensuring that the department's rule for the transportation of hazardous material reflects current federal regulations.

Subchapter B: Regulations governing Transportation Safety. This subchapter contains all of the regulations that address the safe operation of commercial motor vehicles in Texas. This subchapter incorporates changes made to Texas Transportation Code, Chapters 548 and 644, by the 78th Texas Legislature, Regular Session (2003) in Senate Bill 1184 and House Bill 3588. The rules incorporate changes to the definition of the term "commercial vehicle," changes to the procedures used by the department in the assessment of administrative penalties, changes in the hours of service regulations for commercial vehicles operating intrastate, and incorporate recent changes made to the Federal Motor Carrier Safety Regulations by the U.S. Department of Transportation.

Subchapter C: Commercial Vehicle Registration and Inspection Enforcement. This subchapter consolidates the basic enforcement guidelines for the registration requirements of commercial motor vehicles into one subchapter so that the public and motor carriers will have greater access to these rules. The subchapter also incorporates the commercial motor vehicle compulsory inspection program into one subchapter so that the public and motor carriers will have greater access to these rules. Changes to the term "commercial vehicle" are incorporated into the rules per the requirements of Senate Bill 1184 and House Bill 3588.

Subchapter D: Commercial Vehicle Weight, Length, and Size Enforcement. This subchapter consolidates the requirements for weighing and reducing excess cargo from

loaded vehicles, the minimum standards for scales used for law enforcement purposes, and the methods used by the department to determine allowable vehicle length into one subchapter so that the public and motor carriers will have greater access to these rules.

On December 30, 2003, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the new sections. No person(s) appeared at the public hearing nor were any comment(s) received.

The new sections are adopted pursuant to Texas Government Code, Sections 411.004(3), 411.006(4) and 411.018, which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and which authorizes the director to adopt rules regulating the safe operation of commercial motor vehicles and the safe transportation of hazardous materials; and Texas Transportation Code, Section 548.002 and Section 644.003.

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES.

Subchapter A. Regulations Governing Hazardous Materials.

Section 4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171-173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce.

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, Section 643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) regional highway administrator means the director of the Texas Department of Public Safety or the designee of the director;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) Except as provided in paragraph (5) of this subsection concerning the reporting of hazardous materials incidents, the federal hazardous materials regulations, adopted herein, will apply to vehicles transporting hazardous materials as a cargo or part of a cargo when operated upon the streets and highways of this state.

(3) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171-173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(4) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, Section 173.315(m).

(5) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, Section 171.15 and Section 171.16 for shipments of hazardous materials by highway or rail is adopted by the department. Notices of the hazardous material incidents must be provided to the department's Motor Carrier Bureau, by telephone at (512) 424-2051 or fax at (512) 424-5712 and in writing to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0522.

(6) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, Section 173.8.

(7) Regulations and exceptions adopted herein are applicable to intrastate drivers and vehicles. All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 382, 385, 386, 387, 390-393 and 395-397 and all interpretations thereto pertaining to interstate drivers and vehicles are adopted.

(8) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(9) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and Section 4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

Section 4.2. On-Site Coordination of Hazardous Material Transportation Emergencies.

(a) The Texas Department of Public Safety will be responsible for on-site coordination of transportation emergencies for all unincorporated areas and may assume the on-site coordination role within cities when requested to do so by local government.

(b) The initial Texas Department of Public Safety commissioned law enforcement officer who responds, on site, will be responsible for the on-site coordination of transportation emergencies, as provided in subsection (c) of this section. This officer shall perform the coordination responsibility until relieved by appropriate Department of Public Safety authority or the incident is concluded.

(c) On-site coordination of hazardous material transportation emergencies may include, but not be limited to:

(1) assessing the seriousness and magnitude of the incident;

(2) identifying the type of hazardous material;

(3) notifying the appropriate communications center;

(4) controlling access to the location;

(5) determining if evacuation is necessary;

(6) assisting in evacuation;

(7) providing safe traffic control;

(8) notifying and communicating with special response teams;

(9) communicating with transportation carrier;

(10) notifying and requesting appropriate state agency response teams;

(11) responding to any other emergency needs; and

(12) performing any other functions necessary to facilitate a safe and successful conclusion of the incident.

(d) Officers of the department have duty to make emergency rules when normal operating procedures prove inadequate pursuant to Section 3.42 of this title (relating to Making of Emergency Rules).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on .

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety