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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.

Subchapter B. Regulations Governing Transportation Safety.

Section 4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 382, 385, 386, 387, 390-393, and 395-397 including all interpretations thereto. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely; and,

(4) the minimum levels of financial responsibility required to be maintained by motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce.

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

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

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

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

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

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) regional highway administrator means the director of the Texas Department of Public Safety;

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

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, Section 548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate.

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, Section 648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; and,

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; and,

(D) a vehicle transporting hazardous material requiring a placard.

(2) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, Section 548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(3) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(4) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(5) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "registration" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter 643, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under subsection 4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(5) shall be the responsibility of the motor carrier and not the department or the State of Texas.

(6) 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 also adopted except as otherwise excluded.

(7) 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 health and safety.

Section 4.12. Exemptions and Exceptions.

(a) Exemptions. Exemptions to the adoptions in section 4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, Sections 644.052-644.054, and are adopted as follows:

(1) Such regulations shall not apply to the following vehicles when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting a seed cotton module; or,

(D) concrete pumps.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following eight consecutive hours off duty. Drivers in intrastate commerce may not drive after having

been on duty 15 hours, following eight consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for eight consecutive hours.

(3) Drivers in intrastate commerce who are not transporting hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Parts 40 and 382.

(4) The maintenance of any type of government form, separate company form, driver's record of duty status, or a driver's daily log is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the owner has another method by which he keeps, as a business record, the date, time and location of the delivery of product or service so that a general record of the driver's hours of service may be compiled; or

(B) another law requires or specifies the maintenance of delivery tickets, sales invoices, or other documents which show the date of delivery and quantity of merchandise delivered, so that a general record of the driver's hours of service may be compiled; and

(C) the business records generally include the following information:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day; and

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, Part 395.8(j)(2) for drivers used for the first time or intermittently.

(5) The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(6) Unless otherwise specified, a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, Section 548.001(1) is subject to the record keeping requirements in Title 49, Code of

Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(7) Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except 391.11(b)(4) and Subpart E, Parts 393, 395, and 396, except Section 396.17.

(b) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, Section 644.053, are as follows:

(1) Title 49, Code of Federal Regulations, Part 393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more hours off-duty.

(3) Drivers of vehicles operating in intrastate transportation claiming the 150 air mile radius exemption in subsection (a)(4) of this section must return to the work reporting location and be released from work within 12 consecutive hours.

(4) Title 49, Code of Federal Regulations, Part 391.11b(1), is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age.

(5) Title 49, Code of Federal Regulations, Part 391.11b(2), is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(6) Texas Transportation Code, Section 547.401 and Section 547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations 571.121) applicable to the vehicle at the time it was manufactured.

(7) Texas Transportation Code, Chapter 642, concerning identifying markings on commercial motor vehicles shall take precedence over Title 49, Code of Federal Regulations, Part 390.21, for vehicles operated in intrastate commerce.

(8) Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, Part 390.23(a)(2) is not applicable to intrastate motor carriers making residential deliveries of heating fuels, public utilities as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, and the Texas Water

Code and charged with the responsibility for maintaining essential services to the public to protect health and safety provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months.

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has been on duty for more than 70 hours in seven days.

Section 4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a fixed-site facility, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Uniform Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of two million or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States; or,

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States, or

(B) a county with a population of 2.2 million or more.

(6) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Uniform Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 30 level one inspections.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course;

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course;

(C) successfully complete a Cargo Tank Inspection Course.

(D) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections.

(4) Motor Coach. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce motor coach requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Motor Coach Inspection Course;

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 24 level one inspections.

(5) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(6) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training.

(B) Perform a minimum of 32 Level I or Level V inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I or II) shall be conducted on vehicles containing non-bulk quantities of hazardous materials.

(D) If the officer is certified to perform cargo tank/bulk packaging inspections, at least eight inspections (Levels I or II) shall be conducted on vehicles transporting hazardous materials in cargo tanks.

(E) If the officer is certified to perform motorcoach/bus inspections, at least eight of the inspections (Levels I or V) shall be conducted on motorcoaches/buses.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Inspection, the General Hazardous Materials Inspection Course, the Cargo Tank/Bulk Packaging Inspection Course, and/or the Motorcoach/Bus Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

Section 4.14. Municipal and County Certification Requirements.

(a) Certain peace officers from an authorized municipality or county may be trained and certified to enforce the federal safety regulations provided the municipality or county:

(1) executes a Memorandum of Understanding with the department concerning the working policies and procedures of the inspection program whereby the resources of all agencies will be maximized, duplication of efforts will be minimized, and uniformity in the inspection program will be maintained;

(2) implements a program that ensures their officers are conducting the inspections following the guidelines approved by the department;

(3) implements a program that ensures their officers perform the required number of inspections annually and successfully complete the required annual certification training to maintain the officers' certification;

(4) agrees to suspend immediately any officer that fails to maintain their certification or that fails to perform the inspections following the guidelines approved by the department;

(5) provides a list to the department by January 31st of each year of the officers that have been suspended and are no longer certified;

(6) provides all roadside inspection data to the department through electronic systems that are compatible with the department's system within 15 business days of the inspection.

(b) Substantial non compliance with the provisions of the Memorandum of Understanding or the training, officer certification, or data-sharing requirements by the municipality or county, will constitute grounds to decertify the municipality's or county's authority to enforce the federal safety regulations.

(c) The failure of a municipality or county to show activity to the department within a twelve (12) month period will constitute grounds to decertify the municipality or county.

(d) Each municipality or county that has peace officers trained and certified to enforce the federal safety regulations shall be required to update and renew their Memorandum of Understanding with the department every two years after the effective date of the initial Memorandum of Understanding with the department. If the initial Memorandum of Understanding with the department does not have an effective date shown, then the effective date shall be the date of acceptance by the department.

Section 4.15. Safety Audit Program.

(a) Safety Audit Program. The rules in this subsection, as authorized by Texas Transportation Code, Section 644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety

rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) Definitions specific to the Safety Audit Program are as follows:

(A) Compliance Review means an on-site examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(B) Culpability means an evaluation of the blame worthiness of the violator's conduct or actions.

(C) Imminent Hazard means any condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(D) Satisfactory Safety Rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, Part 385.5 and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(E) Conditional Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4.

(F) Unsatisfactory Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4.

(G) For the purposes of collection of the administrative penalty, Final Departmental Decision is defined as:

(i) the most recent claim letter issued to a motor carrier who fails to pay or becomes delinquent in the payment of an administrative penalty as outlined in section 4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties)

(ii) the most recent claim letter issued to a motor carrier who fails to request an informal hearing or an administrative hearing within 20 business days of receipt of the Notice of Claim; or

(iii) a Final Order issued from an administrative hearing as outlined in this subchapter.

(2) Inspection of Premises.

(A) Authority to Inspect. An officer or a non-commissioned employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code, Section 644.155.

(B) Entry of Premises. The officer or employee of the department may conduct the inspection:

(i) at a reasonable time;

(ii) on stating the purpose of the inspection; and

(iii) by presenting to the motor carrier;

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code, Section 644.104, is liable to the state for a civil penalty not to exceed \$1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code, Section 644.151.

(iii) Each day a person refuses to permit an inspection constitutes a separate violation for purposes of imposing a penalty.

(3) Compliance Review Audits. A Compliance Review will be conducted based upon the following criteria:

(A) unsatisfactory safety assessment factor evaluations;

(B) written complaints concerning unsafe operation of commercial motor vehicles which are substantiated by documentation. Complaints for the purpose of this criterion include involvement in a fatality accident or the receipt of a 24-hour out-of-service notification based on violation(s) of Title 49, Code of Federal Regulations, Parts 392.4 or 392.5 or Texas Transportation Code, Section 522.101;

(C) follow-up investigations of motor carriers that have been the subject of an enforcement action, an administrative penalty, or the assessment of an Unsatisfactory Safety Rating from the immediately previous Compliance Review;

(D) requests from the legislature and state or federal agencies;

(E) request for a safety rating determination; or

(F) a hazardous material incident as described in section 4.1(b)(5) of this title (relating to Transportation of Hazardous Materials).

(4) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, Part 385.7. The following safety ratings will be assigned:

(i) Satisfactory Safety Rating;

(ii) Conditional Safety Rating;

(iii) Unsatisfactory Safety Rating.

(C) The provisions of Title 49, Code of Federal Regulations, Part 385.13 relating to “unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts” is hereby adopted by the department and is applicable to intrastate motor carriers except that intrastate motor carriers transporting more than 15 passengers or hazardous materials are prohibited from operation on the 61st calendar day after notice of the proposed unsatisfactory safety rating; all other intrastate motor carriers are prohibited from operation on the 76th calendar day after notice of the proposed unsatisfactory safety rating.

(D) The department will provide written notification to the motor carrier of the assigned safety rating by mailing an official notice of proposed safety rating certified, return receipt requested, U.S. mail within 30 business days of the close out date of the compliance review. A satisfactory safety rating is final upon mailing notice within 30 business days of the compliance review. Within 5 business days of the expiration of the time periods set out in subsection (a)(4)(C) of this section, the department will provide written notification of the final conditional or unsatisfactory safety rating by mailing an official notice of final safety rating via certified, return receipt requested, U.S. mail.

(i) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

(ii) A notification of an "unsatisfactory" safety rating will also include a notice that the motor carrier will be subject to the provisions of Title 49, Code of Federal Regulations, Part 385.13 which prohibit motor carriers rated "unsatisfactory" from operating a commercial motor vehicle to transport:

(I) hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations; or

(II) more than 15 passengers, including the driver.

(E) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, Part 385.13 will be subject to a civil suit filed by the attorney general from a request from the director of the Texas Department of Public Safety. Each day of operation constitutes a separate violation.

(F) A request for a change in or a departmental review of a safety rating must be submitted in writing to: Texas Department of Public Safety, Manager-Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0521. Such request(s) must meet the requirements provided for in this subsection.

(G) Change to Safety Rating based on Corrective Actions. A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(i) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in Title 49 Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the department to consider.

(ii) The department will make a final determination on the request for change based upon the documentation the motor carrier submits, a streamlined compliance review and any additional relevant information. The review will be conducted by the director's designee(s); the streamlined compliance review will be conducted by a field compliance review investigator.

(iii) The department will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" or "conditional" safety rating in the following time periods after receipt of the motor carrier's request: (1) within 30 calendar days for motor carriers transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials; or (2) within 45 calendar days for all other motor carriers.

(iv) The filing of a request for a change to a proposed or final safety rating under this section does not stay the 60 calendar day period specified in this subsection for motor

carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to the Federal Motor Carrier Safety Regulations and state regulations and the department cannot make a final determination within the 60 calendar day period, the period before the proposed safety rating becomes final may be extended for up to 10 calendar days at the discretion of the department.

(v) The department may allow a motor carrier with a proposed rating of “unsatisfactory” (except those transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials) to continue to operate in intrastate commerce for up to 60 calendar days beyond the 75 calendar days specified in the proposed rating, if the department determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 76th day after the date of the notice of the proposed “unsatisfactory” rating.

(vi) If the department determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in Title 49, Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4, the department will notify the motor carrier in writing of its upgraded safety rating. An upgraded safety rating is final upon notification.

(vii) If the department determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in Title 49, Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4, the department will notify the motor carrier in writing.

(viii) Any motor carrier whose request for change is denied in accordance with this subsection may request a departmental review under the procedures of subsection (a)(4)(H) of this section. The motor carrier must make the request within 90 calendar days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any departmental review.

(H) Departmental Review of Safety Rating. A motor carrier may request the department to conduct a departmental review if it believes the department has committed an error in assigning its proposed safety rating in accordance with Title 49, Code of Federal Regulations, Part 385.15(c), Texas Transportation Code Chapter 644, or 37 TAC, Chapter 4 or its final safety rating in accordance with Title 49, Code of Federal Regulations, Part 385.11(b), Texas Transportation Code Chapter 644, or 37 TAC, Chapter 4.

(i) The motor carrier’s request must explain the error it believes the department committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(ii) If a motor carrier has received a notice of a proposed “unsatisfactory” safety rating, it should submit its request within 15 business days from the date of the notice. This time frame will allow the department to issue a written decision before the prohibitions outlined in subsection (a)(4)(C) of this section take effect. Failure to request within this 15 business day period may prevent the department from issuing a final decision before such prohibitions take effect.

(iii) The motor carrier must make a request for an administrative review within 90 calendar days of either the proposed or final safety rating issued in accordance with this subsection, or within 90 calendar days after denial of a request for a change in a safety rating in accordance with subsection (a)(4)(G) of this section.

(iv) The department may ask the motor carrier to submit additional data and attend a conference in Austin, Texas to discuss the safety rating. If the motor carrier does not provide the information requested or does not attend the conference, the department may dismiss its request for review. The review will be conducted by the director’s designee(s).

(v) The department will notify the motor carrier in writing of its decision following the departmental review. The department will complete the review (1) within 30 calendar days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final “unsatisfactory” or “conditional” safety rating; or (2) within 45 calendar days after receiving a request from any other motor carrier that has received a proposed or final “unsatisfactory” or “conditional” safety rating.

(vi) The decision constitutes a final agency decision. Any review of such decision is subject to Texas Government Code Chapter 2001.

(I) The safety rating assigned to a motor carrier will be made available to the public upon request.

(J) Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

Section 4.16. Administrative Penalties, Payment, Collection and Settlement of Penalties.

(a) Administrative Penalties.

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of the Texas Transportation Code, Title 7, Subtitle B, Chapter 522 (relating to Commercial Driver's License), Subtitle C, Chapters 541-600 (relating to the Rules of the Road), and Subtitle F, Chapter 644 (relating to Commercial Motor Vehicles), including any amendments not codified in the Texas Transportation

Code. Each of these provisions relates to the safe operation of a commercial motor vehicle under Texas Transportation Code, Section 644.153(b).

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation, and adopts the Federal Uniform Fine Assessment Program as a method of determining penalty assessment. A penalty under this section may not exceed the maximum penalty provided for a violation of a similar federal safety regulation.

(3) The amount of the administrative penalty shall be determined by taking into account the following factors:

(A) For violations other than those under the hazardous material regulations:

(i) nature of the violation;

(ii) circumstances of the violation;

(iii) extent of the violation;

(iv) gravity of the violation;

(v) degree of culpability;

(vi) history of prior offenses;

(vii) ability to pay;

(viii) the amount necessary to deter future violations;

(ix) effect on ability to continue to do business; and

(x) such other matters as justice and public safety may require.

(B) For hazardous material violations, the factors detailed in paragraph (3)(A) of this section, are considered in addition to the following factors:

(i) any good faith effort to comply with the applicable requirements; and

(ii) any economic benefit resulting from the violation.

(b) Payment, Collection and Settlement of Administrative Penalty.

(1) Payment. A person who is subject to an administrative penalty imposed by the department as authorized by Texas Transportation Code Section 644.153(c) is required to pay the administrative penalty. The administrative penalty may be paid through one of the following options:

(A) Full Payment. Full payment of the administrative penalty in the form of a check, cashier's check, or money order made payable to the Department of Public Safety shall be submitted to the Texas Department of Public Safety, Attn: Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Building P, Austin, Texas 78752-4019.

(B) Installment Payments.

(i) A person(s), firm, or business may, upon approval of the director or the director's designee, be allowed to make installment payments of an administrative penalty, costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state upon submission of adequate proof of inability to pay the full amount of the claim. An application shall be submitted on a form approved by the department.

(ii) The person(s), firm, or business requesting the installment agreement must submit adequate documentation to support the request and make all relevant financial records of the person(s), firm, or business available to the department for inspection and verification.

(iii) In the event of a default of the installment agreement by the person(s), firm, or business, then the remaining balance of the installment agreement will be due immediately.

(iv) Upon default under an installment agreement, the person(s), firm, or business is no longer eligible for installment payments.

(2) Non-Payment of Administrative Penalty. A person who fails to pay, or becomes delinquent in the payment of the administrative penalty imposed by the department as authorized by Texas Transportation Code, Section 644.153(c) shall not operate or direct the operation of a commercial motor vehicle on the highways of this state until such time as the administrative penalty has been remitted to the department. The department will make every effort to collect an administrative penalty once an enforcement action has been deemed as a Final Departmental Decision through the following options:

(A) Issuance of an Impoundment Order. Pursuant to Texas Transportation Code, Section 644.153(o)-(s), the department will issue an impoundment order for the impoundment of any commercial motor vehicle that is operated or directed by the person(s), firm, or business that fails to pay an administrative penalty issued under this subchapter.

(B) Prior to issuing the impoundment order, the department will send a Notice of Claim to the person(s), firm, or business in violation of this subchapter by certified mail, return receipt requested, or by personal service requiring a response within 20 business days. The notice will contain the following language in bold, large face type: "FAILURE TO PAY THIS CLAIM OR RESPOND, AS SPECIFIED IN THE NOTICE OF CLAIM, WITHIN 20 BUSINESS DAYS WILL RESULT IN THIS NOTICE OF CLAIM BEING DEEMED A 'FINAL DEPARTMENT DECISION.' A PERSON WHO IS SUBJECT TO AN ADMINISTRATIVE PENALTY IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, SECTION 644.153 IS REQUIRED TO PAY THE ADMINISTRATIVE PENALTIES OR RESPOND TO THE DEPARTMENT'S NOTICE

OF CLAIM. A PERSON WHO FAILS TO PAY, OR BECOMES DELINQUENT IN THE PAYMENT OF THE ADMINISTRATIVE PENALTIES IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, SECTION 644.153 SHALL NOT OPERATE OR DIRECT THE OPERATION OF A COMMERCIAL MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE UNTIL SUCH TIME AS THE ADMINISTRATIVE PENALTIES HAVE BEEN REMITTED TO THE DEPARTMENT."

(C) The department shall issue an Impoundment Order if the person(s), firm, or business fails to respond as specified to the Notice of Claim within 20 business days. The Impoundment Order will contain the following information:

(i) Motor carrier's name, address, city, zip code and telephone number;

(ii) The motor carrier's Texas Department of Transportation, United States Department of Transportation, or Motor Carrier number, if any;

(iii) The amount of delinquent penalty assessment;

(iv) The date the Impoundment Order was issued;

(v) A contact number for the Motor Carrier Bureau;

(vi) Notice that impoundment will be lifted upon receipt of full payment of the administrative penalty at the Motor Carrier Bureau or the designated Commercial Vehicle Enforcement employee as described in paragraph (5)(C)(i) or (ii) of this subsection; and,

(vii) In bold, conspicuous letters, notice that the carrier is responsible for all costs of storage of the vehicle and its cargo, and towing.

(3) Prior to impounding any vehicle, the trooper shall verify the Impoundment Order is still valid. Verification can only be made by the Manager, Assistant Manager, Motor Carrier Bureau Attorney, or the Motor Carrier Compliance Audit Section Supervisor of the Motor Carrier Bureau. If a trooper is unable to verify the Impoundment Order is in force, then the vehicle shall not be impounded.

(4) Once a vehicle is impounded, the trooper impounding the vehicle shall immediately ensure the motor carrier is notified of impoundment of the vehicle. The trooper will inform the motor carrier of the name, location, and telephone number of the vehicle storage facility where the vehicle is impounded, notice the vehicle will not be released until the administrative penalty has been paid, and a contact number for the Motor Carrier Bureau.

(5) Release of Impounded Vehicles.

(A) To cancel the Impoundment Order and to release a vehicle from impoundment, the motor carrier shall pay the administrative penalty in full.

(B) The payment of the administrative penalty must be for the full amount. The payment must be made by cashier's check or money order payable to the Texas Department of Public Safety.

(C) The payment can be made in one of two ways only:

(i) by sending it to the following address as indicated: Texas Department of Public Safety, Motor Carrier Bureau, MSC 0522, 6200 Guadalupe, Bldg. P, Austin, Texas 78752-4019, Attn: Accounting Clerk, Impoundment Notice; or

(ii) directly to the trooper at the time of the actual impoundment or to any Commercial Vehicle Enforcement employee at any department regional, district or sub-district office.

(D) The impounded vehicle will be released and the impoundment order will be cancelled only upon receipt of payment as specified under paragraph (5)(C)(i) or (ii) of this subsection or if the department refers the case to the attorney general for collection of the amount of the penalty.

Section 4.17. Notification and Hearing Processes.

(a) Notification.

(1) The department will notify a motor carrier of an enforcement action by the issuance of a claim letter.

(2) The notification may be submitted to the motor carrier's last known address as reflected in the records of the department by certified mail, return receipt requested, or personal service. A notification sent by mail shall be presumed to have been received by the motor carrier five days after the date of the mailing.

(3) The motor carrier shall respond within 20 business days of receipt of the claim letter with one of the following options:

(A) Payment of the claim in the full amount as outlined in the claim letter; or

(B) Request, in writing, to make installment payments; or

(C) Request, in writing, an informal hearing; or

(D) Request, in writing, an administrative hearing.

(4) A request under paragraph (3)(C) or (D) of this subsection must contain the following:

(A) A concise statement of the issues to be presented at the hearing, including the occurrence of the violations, the amount of the penalty, or both;

(B) defenses the carrier asserts to the department's claim; and

(C) supporting documents to show defenses and/or financial condition of the carrier.

(5) Failure to respond within 20 business days as outlined in paragraph (3)(A), (B), (C) or (D) of this subsection will deem the claim letter as a Final Departmental Decision.

(b) Informal hearing.

(1) If requested, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee.

(2) An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportunity to respond to the allegations verbally and/or in writing.

(3) After the conclusion of the informal hearing, the hearing officer will issue a Memorandum of Decision, which will be provided to the motor carrier. The Memorandum of Decision will contain the following:

(A) a statement of findings by the hearing officer, including a statement of dismissal of charges, modification of penalties, or affirmation of penalties; and

(B) if the penalties are modified or affirmed, the Memorandum of Decision will be accompanied by a revised claim letter requiring the motor carrier to respond within 20 business days of receipt of claim letter with one of the following options:

(i) Payment of the claim in the full amount as outlined in the claim letter; or

(ii) Request to make installment payments; or

(iii) Request an administrative hearing before the State Office of Administrative Hearings.

(4) Failure to respond as outlined in paragraph (3)(B)(i) or (ii) of this subsection will deem the revised claim letter as a Final Departmental Decision.

(c) Administrative Hearing.

(1) If the motor carrier requests an administrative hearing, as required by subsection (a)(3)(D) or (b)(3)(B)(iii) of this section, the department shall request an administrative hearing before the State Office of Administrative Hearings. The department will provide written notice by certified mail, return receipt requested, or by personal service of such action to the motor carrier. The administrative law judge for the State Office of Administrative Hearings shall issue a proposal for decision setting out the judge's findings

of fact, conclusions of law and recommendations in accordance with agency rules and statutes.

(2) The director may adopt those findings and make it part of the director's order; or the director may, pursuant to Section 2001.058(e), Government Code, increase or decrease the amount of the penalty recommended by the administrative law judge. Notice of the director's order and proposal for decision shall be given to the affected person as required by Chapter 2001, Government Code, and must include a statement that the person is entitled to seek a judicial review of the order. Before the 31st calendar day after the date the director's order becomes final as provided in Section 2001.004, Government Code, the person must:

(A) pay the penalty in full;

(B) pay the penalty in full and file a petition for judicial review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(C) without paying the penalty, file a petition for review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(3) A contested case under this subsection will be governed by Texas Government Code, Chapter 2001, subchapters C and D, Texas Transportation Code, Section 644.153, and 37 TAC, Chapter 29 of this title (relating to General Rules of Practice and Procedure), and not by Title 49, Code of Federal Regulations, Part 386, Subparts D and E.

Section 4.18. Intrastate Operating Authority Out-of-Service Review.

(a) A motor carrier may request a review of the out-of-service order within 10 business days of the issuance of the out-of-service order. A request for a review does not stay the out-of-service order. A request for an out-of-service review must be made in writing and forwarded to the manager of the Motor Carrier Bureau. If requested, a review will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee within 10 business days of the issuance of the out-of-service order. A request for review should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0571 or may be sent by facsimile transmission to (512) 424-5712 or via electronic mail at MotorCarrierBureau@txdps.state.tx.us. The department may conduct the review by telephone conference call. An out-of-service review

should be conducted within 3 business days of the date of receipt of the request for a review.

(b) A request for review under subsection (a) of this subsection must contain the following: a concise statement of the issues to be contested at the review.

(c) Failure to respond as outlined in subsections (a) or (b) of this section will deem the out-of-service order as a Final Department Decision.

Section 4.19. Administrative Action by the Texas Department of Transportation.

(a) The director or the director's designee will determine whether the department will request the Texas Department of Transportation to revoke a registration issued by the Texas Department of Transportation based upon the department's compliance review or safety audit. The director or the director's designee will determine whether the department will request the Texas Department of Transportation to take administrative action against a carrier required to register with the Texas Department of Transportation under Chapter 643 of the Texas Transportation Code.

(b) This determination may be based upon the following:

(1) an unsatisfactory safety rating under Title 49, Code of Federal Regulations, Part 385; and/or

(2) not properly registering as a motor carrier with the Texas Department of Transportation as required in Texas Transportation Code, Chapter 643.

(c) Once the determination has been made the director or the director's designee will forward a letter to the executive director of the Texas Department of Transportation requesting said department initiate an administrative action against the motor carrier.

(d) Any administrative action initiated by the Texas Department of Transportation, pursuant to this section, shall be administered in the manner specified by the rules of the Texas Department of Transportation.

Section 4.20. Animal Health Memorandum of Understanding.

In compliance with the Texas Agriculture Code, Section 161.051, the Department of Public Safety has adopted a joint memorandum of understanding with the Texas Animal Health Commission that provides for Department of Public Safety commissioned officers to check for health papers and permits when stopping a vehicle transporting livestock. The agreement is as follows.

(1) The Texas Animal Health Commission will:

(A) provide information and training to the Department of Public Safety regarding health papers and permits;

(B) investigate possible violations reported by Department of Public Safety officers;

(C) make a proper request for assistance to the Department of Public Safety, chief of the Texas Highway Patrol Division; and

(D) will also notify the chief of the Texas Highway Patrol Division, when appropriate, of the location of Texas Animal Health Commission roadblocks or special night operations.

(2) The Department of Public Safety will:

(A) report potential problems to the Texas Animal Health Commission; and

(B) provide assistance when properly requested by Texas Animal Health Commission staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on .

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

