

TEXAS DEPARTMENT OF TRANSPORTATION MOTOR CARRIERS

ADOPTED RULES

43 TAC §18.1, §18.2

43 TAC §§18.10, 18.11, 18.13, 18.14, 18.16, 18.18, 18.19

43 TAC §18.31, §18.32

43 TAC §§18.70 - 18.76

PROPOSED RULES

43 TAC §§18.80 - 18.96

43 TAC §§18.100 - 18.104

Written comments on the proposed repeals of §§18.80 - 18.96 and §§18.100 - 18.104 may be submitted to Carol Davis, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 12, 2008.

ADOPTED RULES

43 TAC §18.1, §18.2

43 TAC §§18.10, 18.11, 18.13, 18.14, 18.16, 18.18, 18.19

43 TAC §18.31, §18.32

43 TAC §§18.70 - 18.76

Chapter 18. MOTOR CARRIERS

The Texas Department of Transportation (department) adopts amendments to §18.1, Purpose, §18.2, Definitions, §18.10, Purpose, §18.11, Motor Carrier Registration, §18.13, Application for Motor Carrier Registration, §18.14, Expiration and Renewal of Commercial Motor Vehicle Registration, §18.16, Insurance Requirements; new §18.18, Unified Carrier Registration System; amendments to §18.19, Short-term Lease and Substitute Vehicles, §18.31, Investigations and Inspections of Motor Carrier Records, §18.32, Motor Carrier Records, §18.70, Purpose, §18.71, Administrative Penalties, §18.72, Suspension and Revocation; new §18.73, Administrative Proceedings, §18.74, Settlement Agreements, §18.75, Implications for Nonpayment of Penalties, and §18.76, Registration Suspension Ordered under Family Code, all concerning motor carriers. The amendments to §§18.1, 18.2, 18.10, 18.11, 18.13, 18.14, 18.16, 18.19, 18.31, 18.32, 18.70 - 18.72, and new 18.18, and 18.73 - 18.76 are adopted without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9923) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

The adopted amendments and new sections are necessary to implement the provisions of House Bills 2093 and 2094, 80th Legislature, Regular Session, 2007 and to clarify existing information.

House Bill 2093 provides the department additional regulatory authority over motor carriers and the issuance of overweight and oversize permits. The bill increases the department's authority to investigate, enforce, and impose administrative penalties and sanctions on motor carriers for violations of any statute, rule, or order.

The bill also authorizes the department to enter the federal Unified Carrier Registration (UCR) system. The UCR system replaced the Single State Registration System (SSRS) as of January 1, 2007. As a participant in the UCR system the department will facilitate the federal registration of interstate motor carriers.

In addition to changes to the motor carrier registration enforcement procedures, House Bill 2093 also provided for administrative enforcement of commercial motor vehicle overweight or oversize permit violations. The administrative procedures outlined in these rules will also be used for administrative actions involving violations of Transportation Code, Chapter 623.

House Bill 2094 transfers the regulatory authority for tow trucks and vehicle storage facilities from the department to the Texas Department of Licensing and Regulation (TDLR). As of January 1, 2008 TDLR will be responsible for all aspects of regulating these entities. Due to the transfer of responsibilities, §§18.1, 18.2, 18.10, 18.11, 18.13, 18.14, 18.16, 18.19, and 18.32, are amended to delete references to tow trucks and vehicle storage facilities.

Amendments to §18.2, Definitions, amend the definition of commercial motor vehicle to exclude tow trucks permitted to operate by TDLR and certain motor vehicles registered under the UCR system. Under Transportation Code, §643.002 tow trucks licensed by TDLR are excluded from the motor carrier registration requirements, therefore the provisions of 43 TAC Chapter 18 do not apply. This section also adds the definition of Unified Carrier Registration (UCR) and deletes the definitions of consent and nonconsent tows.

Amendments to §18.14, Expiration and Renewal of Commercial Motor Vehicle Registration, add clarification as to when a motor carrier registered under the federal UCR program must also renew under the state motor carrier registration system. Motor carriers operating as charter buses, household goods movers, and recyclable material and waste carriers are also required to maintain state motor carrier registration. Other motor carriers registered under UCR only have to make an initial state registration if the carrier has never been registered in the state or if for some reason the UCR registration is not continuous. If the UCR registration lapses or is revoked or suspended for any reason the motor carrier must file a new registration packet with the state under the provisions of §18.11.

New §18.18 provides that the state, through the department, will participate in the UCR system. The department participated in the SSRS prior to the implementation of the UCR program. All interstate motor carriers operating in Texas are required to register with the UCR system. The department will provide the service necessary for the motor carriers to submit their UCR registration.

Amendments to §18.31, Investigations and Inspections of Motor Carrier Records, adds that the department can enter a motor carrier's place of business to investigate violations under Transportation Code, Chapter 645. Transportation Code, §645.003 provides the department with the authority to enforce Chapter 645 and rules adopted under that chapter. To enforce the rules and statutes the department must have access to investigate the violations.

Section 18.31 is further amended by adding a new provision to allow investigators to set appointments for records inspections by certified mail or facsimile. The current rules require the two parties to agree to a location and time if the motor carrier's normal business hours are not sufficient. By allowing investigators to set a time for inspection of records motor carriers will be unable avoid sanctions by withholding access to records.

Amendments to §18.32, Motor Carrier Records, reformat the language of subsection (a) by adding proof of registration fee payments to the list of general records that must be maintained by the motor carrier at its principal place of business. The specific language referring to registration receipts under SSRS in paragraph (4) is deleted. The deleted language is no longer necessary since SSRS is no longer operational. However, the department will still require that the motor carrier maintain proof of all registration fee payments.

Amendments to §18.70, Purpose, allow for denial of registration as an administrative sanction for violations of Transportation Code, Chapter 643 or any rule or order adopted under Transportation Code, Chapter 643, as authorized under House Bill 2093.

Amendments to §18.71(a), Definition, delete the definition of "director" as it is no longer necessary to have a specific definition for the director due to the new administrative enforcement process.

Section 18.71(b) and (c) are redesignated as subsections (a) and (b) and are amended by adding rules or orders to the list of violations in which the department can seek administrative penalties. House Bill 2093 increased the department's authority by authorizing administrative sanctions and penalties for violations of any rule adopted under Transportation Code, Chapters 643 or 645 and also any order issued under those chapters.

Section 18.71 is further amended by deleting language that referenced the current administrative enforcement process. Subsections (e) - (j) are deleted. House Bill 2093 established a new administrative hearing process which is detailed in §18.73.

Amendments to §18.72, Suspension and Revocation, address changes to the statute regarding the types of authorized administrative sanctions. In addition to suspending and revoking a motor carrier's registration the department now has the authority to deny registration to a motor carrier who fails to comply with registration requirements. The section is also amended to authorize sanctions for failing to comply with any 43 TAC Chapter 18 rule or any order issued pursuant to an action taken under that chapter.

Amendments to §18.72(b), Department of Public Safety, remove the requirement that the request for administrative action on safety violation suspension come from the executive director of the Department of Public Safety. As amended the rule requires the request to be in writing and to include evidence of the violation. This will streamline this process and allow the department to address safety violations in a timely manner.

Section 18.72(c), the subsection heading is changed from Action without hearing, to Probation. The changes to the subsection provide guidance on the issuance of probation as an administrative sanction. The language provides additional guidance the department will consider in determining whether a motor carrier is eligible for probation. This section also provides that the department will set the length of the probation by reviewing the seriousness of the offense and previous violation by the motor carrier. These guidelines will help ensure that the department is consistent in administering the probation program.

Section 18.72(d), (e), and (g), regarding the administrative process, are deleted because of the new process established by House Bill 2093 and set out in §18.73. The language in subsection (f) regarding child support suspensions is moved to §18.76. The administrative process for these types of suspensions are handled by the Office of the Attorney General. The department does not participate in the hearing process, therefore, separating this type of suspension action in its own section improves the understanding and eliminates confusion as to the department's role.

New §18.73, Administrative Proceedings, is added to provide the notice requirements for the new administrative hearing process. The language tracks Transportation Code, §643.2525 and clarifies the two types of notices mailed to the alleged violator.

New §18.74, Settlement Agreements, details the settlement agreement process. The department can enter into a compromise settlement agreement with an alleged violator any time before the issuance of a final order. This section states that the agreement shall include a clause that allows the department the authority to revoke the agreement if the alleged violator fails to abide by the terms of the agreement. This provision will ensure that the department continues to have authority to enforce future compliance.

New §18.75, Implications for Nonpayment of Penalties, is added to provide the implications for nonpayment of any penalty imposed against a violator. Under the current process the department did not have authority to take additional administrative action if the motor carrier failed to pay the imposed penalties. House Bill 2093 amended Transportation Code, §643.2525(k) to authorize the department to initiate a new administrative action to suspend, revoke, or deny motor carrier registration if the motor carrier fails to pay the penalty or any assessed costs before the 61st day after the day the decision becomes final. This section is amended to comply with the new provisions.

New §18.76, Registration Suspension Ordered under Family Code, includes the substance formerly contained in §18.73(f) regarding motor carrier registration suspensions due to orders issued under Family Code, Chapter 232, relating to payment of child support or possession of or access to a child. The department may suspend registration under this section without following the administrative process under §18.73 of this chapter. The Office of the Attorney General oversees the administrative hearing process for these types of violation. A suspension under this section may be lifted only on receipt of an order under Family Code, §232.013. This section complies with the requirements of Family Code, Chapter 232.

COMMENTS

No comments on the proposed amendments and new sections were received.

Subchapter A. GENERAL PROVISIONS

43 TAC §18.1, §18.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

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.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801654

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: April 17, 2008

Proposal publication date: December 28, 2007

For further information, please call: (512) 463-8683

Subchapter B. MOTOR CARRIER REGISTRATION

43 TAC §§18.10, 18.11, 18.13, 18.14, 18.16, 18.18, 18.19

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

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Subchapter C. RECORDS AND INSPECTIONS

43 TAC §18.31, §18.32

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

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.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801656

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: April 17, 2008

Proposal publication date: December 28, 2007

For further information, please call: (512) 463-8683

Subchapter F. ENFORCEMENT

43 TAC §§18.70 - 18.76

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

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.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801657

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: April 17, 2008

Proposal publication date: December 28, 2007

For further information, please call: (512) 463-8683

PROPOSED RULES

MOTOR CARRIERS

43 TAC §§18.80 - 18.96

43 TAC §§18.100 - 18.104

Chapter 18. MOTOR CARRIERS

The Texas Department of Transportation (department) proposes the repeal of §§18.80 - 18.96, concerning vehicle storage facilities, and §§18.100 - 18.104, concerning nonconsent towing fees schedule.

EXPLANATION OF PROPOSED REPEALS

House Bill 2094, 80th Legislature, Regular Session, 2007, transferred all functions and activities performed by the department relating to tow trucks, towing operations, and vehicle storage facilities to the Department of Licensing and Regulation (TDLR). The transfer of responsibilities occurred on February 1, 2008. The department is no longer involved in the regulation of these entities.

TDLR proposed rules regarding these subjects on February 8, 2007 in 33 *Texas Register* 1027. The rules proposed by TDLR address similar issues and will provide for continued regulation of these entities. House Bill 2094 transferred the rules of the department to TDLR. The repeal of these sections is for the purpose of removing provisions that no longer have legal effect.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals.

Carol Davis, Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT AND COST

Ms. Davis has also determined that for each year of the first five years the repeal of these sections is in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be notification that the department does not regulate tow trucks, tow operations, and vehicle storage facilities. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals of §§18.80 - 18.96 and §§18.100 - 18.104 may be submitted to Carol Davis, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 12, 2008.

Subchapter G. VEHICLE STORAGE FACILITIES

43 TAC §§18.80 - 18.96

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically House Bill 2094, 80th Legislature, Regular Session, 2007.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2303.

§18.80.Purpose and Scope.

§18.81.Applicability.

§18.82.Definitions.

§18.83.Application for Original Vehicle Storage Facility License.

§18.84.Issuance and Renewal of License.

§18.85.Payment of Fees.

§18.86.Insurance Requirements.

§18.87.Notifications Regarding Towed Vehicles.

§18.88.Documentation and Records.

§18.89.Notice of Complaint Procedure.

§18.90.Rights of Owner or Authorized Representative.

§18.91.Facility Requirements.

§18.92.Technical Requirements.

§18.93.Storage Fees and Charges.

§18.94.Sanctions.

§18.95.Criminal Convictions, Insurance, and Family Code.

§18.96.Disposal of Certain Vehicles.

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.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801648

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8683

Subchapter H. NONCONSENT TOWING FEES SCHEDULE

43 TAC §§18.100 - 18.104

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically House Bill 2094, 80th Legislature, Regular Session, 2007.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2303.

§18.100.Purpose and Scope.

§18.101.Filing Nonconsent Towing Fees Schedule.

§18.102.Review of Nonconsent Towing Fees Schedule.

§18.103.Required Posting at Vehicle Storage Facility (VSF).

§18.104.Sanctions.

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.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801649

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8683