



126th MAINE LEGISLATURE

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Legislative Document

No. 494

S.P. 187

In Senate, February 19, 2013

An Act Regarding Maine Commercial Motor Carrier Safety Regulations

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MAZUREK of Knox.
Cosponsored by Representative: PARRY of Arundel.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 29-A MRSA §555, sub-§2**, as amended by PL 2011, c. 164, §1, is further
3 amended to read:

4 **2. Adoption of federal regulations.** The bureau may adopt ~~rules~~ a rule to
5 incorporate by reference federal regulations in 49 Code of Federal Regulations, Parts 40,
6 382, 383, 385, 390, 391, 392, 393, 395 and 396, and appendices, as amended, and may
7 adopt amendments to those federal regulations. The following provisions apply to the
8 adoption of federal regulations under this section.

9 A. Except as provided in paragraph A-1, the Maine Administrative Procedure Act
10 does not apply to the adoption by reference of federal regulations under this
11 subsection.

12 A-1. ~~A~~ The rule adopted by the bureau under this subsection is a major substantive
13 rule as defined in Title 5, chapter 375, subchapter 2-A if ~~it~~ either:

14 ~~(1) Adopts by reference any provision of the federal regulations described under~~
15 ~~this subsection that would result in a modification of the substance or effect of~~
16 ~~any amendment to the federal regulations adopted by the bureau and in effect on~~
17 ~~the effective date of this paragraph; or~~

18 ~~(2) Adopts an amendment to any federal regulation described under this~~
19 ~~subsection.~~

20 (3) A proposed amendment of the rule substantively changes a provision of the
21 version of the rule that exists at the time the amendment is proposed; or

22 (4) A proposed replacement of the rule by another rule authorized by this
23 subsection substantively differs from the version of the rule that exists at the time
24 the replacement rule is proposed.

25 A-2. The bureau may not adopt any rule that exempts motor carriers, vehicles or
26 drivers transporting hazardous materials of a type or quantity that requires the vehicle
27 to be marked or placarded in accordance with 49 Code of Federal Regulations, Part
28 172 from any federal regulation adopted and incorporated by reference into any rule
29 adopted by the bureau pursuant to this subsection. Notwithstanding paragraph A-1,
30 the Maine Administrative Procedure Act does not apply to the amendment of any rule
31 consistent with the prohibition set forth in this paragraph.

32 C. For ~~every~~ the rule adopted under this subsection:

33 (1) The bureau shall file with the Secretary of State:

34 (a) A certified copy of the rule;

35 (b) A published copy of the federal regulation or amendment as printed in
36 the Federal Register; and

37 (c) Annually, a published copy of the updated volume of the Code of Federal
38 Regulations containing the federal regulation.

1 The bureau shall make available for inspection at no charge, and for copying at actual
2 cost, a current published copy of the referenced federal regulations.

3 D. The Secretary of State shall publish, pursuant to Title 5, section 8053, subsection
4 5, a notice containing the following information:

5 (1) A statement that the rule has been adopted and its effective date;

6 (2) A brief description of the substance of the rule and the referenced federal
7 regulation or amendment; and

8 (3) The addresses at which copies of the rule and the federal regulation or
9 amendment may be obtained.

10 E. The Secretary of State shall maintain and make available at the Secretary of
11 State's office for inspection at no charge, and for copying or purchase at actual cost,
12 current copies of ~~these rules~~ the rule and include ~~them~~ it within the compilations
13 subject to Title 5, section 8056, subsection 3, paragraphs A-1 and B. The Secretary
14 of State shall also make available for inspection at no charge and for copying at
15 actual cost a current published copy of the referenced federal regulations and
16 amendments.

17 F. A rule adopted under this section may not take effect until at least 5 days after
18 filing with the Secretary of State, except that, if the bureau finds that immediate
19 adoption of the rule is necessary to avoid an immediate threat to public health, safety
20 or general welfare, the bureau may adopt the rule as an emergency rule in accordance
21 with Title 5, section 8054, and that rule takes effect immediately.

22 **SUMMARY**

23 Current law requires any change to a rule adopted by the Department of Public
24 Safety, Bureau of State Police that incorporates by reference federal regulations to be
25 major substantive rulemaking, even if the change being made is a change that is being
26 made to the federal regulations. This bill instead requires only substantive changes to the
27 rule incorporating by reference the federal regulations to be major substantive
28 rulemaking.