

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Regarding Maine Commercial Motor Carrier Safety Regulations**

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

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

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

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

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

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

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

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

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

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

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

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

(a) A certified copy of the rule;

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

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

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

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

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

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

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

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

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

## SUMMARY

Current law requires any change to a rule adopted by the Department of Public Safety, Bureau of State Police that incorporates by reference federal regulations to be major substantive rulemaking, even

if the change being made is a change that is being made to the federal regulations. This bill instead requires only substantive changes to the rule incorporating by reference the federal regulations to be major substantive rulemaking.