

(1) any documents indicating remedial efforts the requestor has undertaken to prevent the unlawful disclosure of motor vehicle records,

(2) any documents indicating agreements between the requestor and third parties receiving resold or redisclosed motor vehicle records, and

(3) a statement that the requestor will notify the department before reselling or redisclosing any motor vehicle records for the time period prescribed by the department, including all of the information required under §217.127(b) of this title (relating to Records Maintained by Recipients Who Resell or Redisclose Personal Information). The notification must include the name, address, and contact information of the third party requesting resold or redisclosed motor vehicle records, and must include the form(s) used to verify the third party's lawful purpose in obtaining motor vehicle records.

(c) Failure to comply with any of the terms of this section or a re-offense of the service agreement will result in the termination of the service agreement and the permanent inability to receive motor vehicle records.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter A, General Provisions, §219.2, Definitions; and Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §219.34, North Texas Intermodal Permit; and §219.36, Intermodal Shipping Container Port Permit, with changes to the proposed text as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1249). These rules will be republished. The department also adopts amendments to §219.35, Fluid Milk Transport Permit without changes to the proposed text, and this rule will not be republished.

EXPLANATION OF AMENDMENTS

The 85th Legislature, Regular Session, 2017, authorized three new permits for overweight vehicle combinations. Amendments to §§219.2, 219.34, 219.35, and 219.36 implement House Bill 2319, Senate Bill 1383, and Senate Bill 1524 by defining and clarifying terms that are used in these bills.

The department defines the terms "roll stability support safety system" and "truck blind spot systems" because industry and enforcement personnel could interpret these terms to mean different things. These terms were included in House Bill 2319, Senate Bill 1383, and Senate Bill 1524 to attempt to make these permitted vehicles safer. The department's definitions focus on

safety. For example, the roll stability support safety system is defined to require an electronic system. The manual actions or perceptions of a human driver do not qualify as a "roll stability support safety system" because a human driver might not be capable of detecting or preventing instability problems as well as an electronic system.

An amendment to §219.34 and §219.36 clarifies the term "approximately 647 inches," and an amendment to §219.36 clarifies the term "approximately 612 inches." These terms state the authorized distance between the front axle of the truck-tractor and the last axle of the semitrailer in the combinations that are eligible for permits under §219.34 and §219.36.

The department received calls from industry representatives who wanted to know how the department interpreted these terms because industry wanted to exceed these numbers. For example, a manufacturer told one motor carrier that they have equipment in production that exceeded the 612-inch requirement by 46 inches.

The Legislature did not define these terms in House Bill 2319 or Senate Bill 1524. In construing a statute, the Code Construction Act says a court may consider the object sought to be attained, the consequences of a particular construction, the administrative construction of the statute, etc. See Government Code, §311.023.

The Legislature used the terms "approximately 647 inches" and "approximately 612 inches" to ensure a certain distance between the applicable axles to minimize or prevent damage to roadways that could be caused by the excess weight of the permitted vehicles. The department discussed this issue with the Texas Department of Transportation (TxDOT) because they design and maintain roadways on which the permitted vehicles could travel. The department also discussed this issue with the Texas Department of Public Safety (DPS) because they enforce laws and rules regarding weight. Further, the department discussed this issue at TxDOT's Oversize and Overweight Stakeholder Workshop on November 20, 2017, when an industry representative asked for clarification on the meaning of the terms "approximately 612 inches" and "approximately 647 inches."

In defining these terms, the department focused on the object sought to be attained, which is to minimize or prevent damage that could be caused by the excess weight of the permitted vehicles. The department also focused on the consequences of a particular interpretation or construction of the terms. TxDOT stated that distances below 612 inches or 647 inches could have a significant impact on their assessment of bridges and may result in additional load postings. Also, industry only asked if the distance could go above 612 and 647 inches, so they could purchase equipment that is currently in production.

The department, TxDOT, and DPS agree that 612 inches and 647 inches are the minimum distances allowed; however, the permitted vehicles can exceed these distances. TxDOT did not suggest a specific maximum distance; however, they stated the longer the distance, the better. DPS pointed out the potential benefit of not listing a maximum distance in case a manufacturer or engineer designs equipment that exceeds whatever maximum distance the department might establish in §219.34 and §219.36. The amendments establish the maximum distance, so the department's personnel and industry have a clear maximum distance.

Other amendments to §219.2 delete an incorrect statutory reference and update the language to be internally consistent.

COMMENTS

The department received comments from Kwik Equipment Sales, LLC (Kwik) and the Texas Trucking Association (TXTA).

Kwik requested the department to increase the proposed 10 percent tolerance to a 15 percent tolerance on the 100,000-pound Intermodal Shipping Container Port Permit under §219.36(n), which includes the term "approximately 612 inches." Kwik stated that if the tolerance remained at 10 percent, this permit would be useless, and would probably never be used by anyone in the industry.

TXTA requested the department to increase the proposed 10 percent tolerance to a 15 percent tolerance on the following permits: 1) the 93,000-pound North Texas Intermodal Permit under §219.34(k); 2) the 93,000-pound Intermodal Shipping Container Port Permit under §219.36(m); and 3) the 100,000-pound Intermodal Shipping Container Port Permit under §219.36(n). Based on the data TXTA has seen, they feel that the 15 percent tolerance would allow the permittees to better utilize the overweight permits, while still being compliant with the maximum axle weight limitations contained in statute. TXTA agrees that the following distances specified in House Bill 2319 and Senate Bill 1524 are minimum distances: "approximately 612 inches" and "approximately 647 inches."

TXTA also requested the department to modify the proposed definition for "truck blind spot systems" because the proposed definition could be interpreted to require the systems to detect objects in all positions located to the rear of the driver's seat in the truck-tractor. Although truck blind spot systems detect objects in the lanes that are adjacent to the lane in which the truck-tractor and semitrailer are operating, the systems don't detect objects in all positions located to the rear of the driver's seat in the truck-tractor.

RESPONSE

The department adopts §219.34 and §219.36 with amendments to increase the 10 percent tolerance to a 15 percent tolerance on the following permits: 1) the 93,000-pound North Texas Intermodal Permit under §219.34(k); 2) the 93,000-pound Intermodal Shipping Container Port Permit under §219.36(m); and 3) the 100,000-pound Intermodal Shipping Container Port Permit under §219.36(n). These amendments allow the permittees to better utilize the overweight permits while still being compliant with the maximum axle weight limitations contained in statute. Also, these amendments do not change the length limitation on the semitrailer under Transportation Code, §621.204(a).

The department adopts §219.2 with amendments to modify the definition for "truck blind spot systems" to make it clear that these systems don't detect objects in all positions located to the rear of the driver's seat. The department worked with DPS to modify the definition.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §219.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce

Transportation Code, Chapter 623; and more specifically, Transportation Code §623.407(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Vehicles Transporting Fluid Milk; and Transportation Code, §623.411(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Intermodal Shipping Containers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §§219.34 - 219.36

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code §623.407(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Vehicles Transporting Fluid Milk; and Transportation Code, §623.411(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Intermodal Shipping Containers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623.

§219.35. *Fluid Milk Transport Permit.*

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting fluid milk under the provisions of Transportation Code, Chapter 623, Subchapter U, as added by Chapter 750 (S.B. 1383), Acts of the 85th Legislature, Regular Session, 2017.

(b) Application for permit.

(1) To qualify for a fluid milk transport permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

- (A) name and address of the applicant;
- (B) name of contact person and telephone number or email address;
- (C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and
- (D) a list of counties in which the vehicle will be operated.

(3) The application shall be accompanied by the total annual permit fee of \$1,200.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(e) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(f) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

- (1) on the expiration of the permit;
- (2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

(g) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(1) visibility of less than 2/10 of one mile; or

(2) weather conditions such as wind, rain, ice, sleet, or snow.

(h) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(i) Construction or maintenance areas.

(1) The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(j) Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(k) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(l) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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