

**THE FEDERAL MOTOR CARRIER SAFETY ACT
REGULATIONS CAN CREATE THE MINIMUM LEGAL
STANDARD OF CONDUCT BY TRUCKERS AND CARRIERS
WHEN OPERATING TRUCKS IN TEXAS**

For quite some time both federal and state courts have struggled with whether the Federal Motor Carrier Safety Act ("FMCSA") should establish the minimum standard of care by truck drivers and the carriers when operating in Texas. The struggle it seems has been multi faceted but may in part be lack of understanding of the doctrine of federal pre-emption by state court judges and the difficult legal enactment that the Texas legislature and Texas agencies followed in adopting the FMCSA explicitly.

The Federal Motor Carrier Safety Act ("FMCSA") and the regulations promulgated there under apply to motor carriers nationwide, and impose, inter alia, specific safety procedures to be used by commercial drivers under specific road conditions. See, e.g., 49 C.F.R. 390.3, 392.2. While the regulations stemming from the FMCSA are not intended in all respects to pre-empt state law, in instances where "a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with." 49 C.F.R. 392.2.

Texas has adopted the bulk of the Federal Regulations pertaining to motor carriers. The Texas Transportation Code defines a "federal safety

regulation” to mean “a federal hazardous material regulation or a federal motor carrier safety regulation.” TEX. TRANS. CODE § 644.001(6). A “federal motor carrier safety regulation” is defined as “a federal regulation in Subtitle A, Title 49, or Subchapter B, Chapter III, Subtitle B, Title 49, Code of Federal Regulations.” Id. § 644.001(5).

The Transportation Code further provides that a “rule adopted under this chapter must be consistent with federal regulations, including federal safety regulations.” Id. § 644.051(b). In addition, the “director may adopt all or part of the federal safety regulations by reference.” Id. § 644.051(c). The director of the Texas Department of Public Safety has, in fact, incorporated by reference the Federal Motor Carrier Safety Regulations.¹ 37TEX.ADM.CODE §4.11 (a). Accordingly, the Federal Motor Carrier Safety Regulations (hereinafter also referred to as the “Safety Regulations”) have been adopted as Texas state law.

Thus if the Federal regulations create specific requirements regarding the operation of the commercial trucks to which it applies, the regulations should provide at least a minimum standard. A stricter standard for commercial trucks than for passenger vehicles is reasonable due to the basic size and weight differences between trucks and passenger vehicles. Basic

¹ Section 4.11 of the Texas Administrative Code provides: “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, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through October 1, 2008. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through October 1, 2008.” 37 TAC § 4.11(a). In addition, the predecessor statute, Section 3.62 of the Texas Administrative Code, similarly adopted regulations in effect.

physics is the cornerstone of the need for stricter standards for trucks. The destructive energy force of an 80,000 pound truck traveling at 55 miles an hour carries a infinitely greater destructive force than a 3000 pound passenger vehicle at the same speed or greater. The destructive force of the loaded truck is exponentially far greater than a passenger vehicle at the same or even greater speeds. Furthermore, the stopping distance of the heavy weight truck is likewise far greater than that of a passenger vehicle. The bottom line is that commercial trucks create a far greater danger than passenger vehicle is the basis for holding truckers and commercial trucking companies to the higher standard set forth in the Federal Motor Carrier Safety Act. Federal regulations carry the authority of legal pre-emption as noted in *Hickson v. Martinez*, 7007 S.W.2d 919, 927 (Tex. App. - Dallas 1985, writ ref'd n.r.e.). The circumstances of the *Hickson* case, which involved federal regulations concerning medical treatment, prompted the Dallas Court of Appeals to hold that the federal regulations are not hearsay but a command.

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