



SPONSOR: Sen. Bunting & Rep. Atkins  
Sens. Ennis & Hall-Long;  
Reps. Kenton & Walker

DELAWARE STATE SENATE  
146th GENERAL ASSEMBLY

SENATE BILL NO. 254

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE AS IT RELATES TO THE HAZARDOUS MATERIALS TRANSPORTATION ACT AND TITLE 21 OF THE DELAWARE CODE AS IT RELATES TO MOTOR CARRIER SAFETY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29, Chapter 82, of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8224. Definitions.

~~(b) This act shall not apply to the transportation of those hazardous materials cited below from retailer to final end user, or between final end users from farm to farm in approved containers and in the amounts and manner specified.~~

~~(1) Agricultural pesticides classified as Class B Poison or Flammable by these regulations, when moved in quantities of 5,000 pounds or less (aggregate gross weight) or 500 gallons or less volume in solution;~~

~~(2) Gasoline, diesel fuels, oils, lubricants and liquefied petroleum gas, when moved in quantities of 1,100 gallons or less;~~

~~(3) Ammonium nitrate fertilizer, when moved in quantities of 16,000 pounds (aggregate gross weight) or less;~~

~~(4) Anhydrous ammonia when transported in a cargo tank (commonly known as a nurse tank and considered an implement of husbandry) operated by private carriers exclusively for agricultural purposes, provided the cargo tank:~~

~~a. Has a minimum design pressure of 250 pounds per square inch (p.s.i.) and meets the requirements of the ASME code in effect at the time of manufacture and is marked accordingly;~~

~~b. Is equipped with safety relief valves meeting the requirements of CGA Pamphlet S12;~~

~~c. Is painted white or aluminum;~~

~~d. Has a capacity of 2,000 gallons or less;~~

~~e. Is loaded to a filling density of 56 percent of water density (85 percent of volume capacity);~~

~~f. Is securely mounted on a farm wagon.~~

~~(5) Formulated agricultural chemicals not listed in subsection a or subsection c of this section which are offered for transportation in less than case lot quantities, or when repackaged, if all of the following conditions are met:~~

~~a. Inside packagings are enclosed in strong outside packagings. Inside liquid packagings are cushioned, if necessary, to prevent breakage and leakage.~~

~~b. Each inside packaging does not exceed 2 1/2 gallons capacity for liquids or 25 pounds for dry materials.~~

~~c. Gross weight of less than case or repackaged lots is not over 100 pounds in each vehicle.~~

~~d. Transportation is authorized only by private motor vehicle between a final distribution point and the ultimate point of application, if that distance does not exceed 100 miles.~~

~~(6) Formulated liquid agricultural chemicals in specification packagings of 55 gallons capacity, or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices may be transported by a private motor carrier between a final distribution point and an ultimate point of application or loading aboard an aircraft for aerial application.~~

§ 8225. Adoption of federal requirements.

(a) The State hereby adopts the following parts of the Code of Federal Regulations (hereinafter sometimes referred to as C.F.R.), being Title 49, Part 107, Subpart F and G, Subchapter C of Chapter I, Parts 171 through 180 and Parts 393 and 397 of Subchapter B, Chapter III, unless otherwise stated in this section, being lawfully promulgated pursuant to the federal "Hazardous Materials Transportation Act" (P. L. 93-633; 49 U.S.C. § 1801 et seq. [repealed]). ~~The following sections of the federal regulations shall be excluded:~~

~~(1) Section 171.15 Immediate notice of certain hazardous materials incidents.~~

~~(2) Section 171.15 Detailed hazardous materials incident reports.~~

~~(3) Section 175.45 Reporting hazardous materials incidents. [repealed]~~

~~(4) Section 177.824(f) Reporting requirements for MC 330 and MC 331 cargo tanks. [repealed]~~

(b) Exceptions.

(1) For other than a Class 2 material, the transportation of an agricultural product over roadways as defined in 21 Del. C. § 101(58) between fields of the same farm is excepted from the requirements of Title 49, Chapter 1, Subchapter C of the Code of Federal Regulations. Transportation of the hazardous material is subject to the following conditions:

a. It is transported by a farmer who is an intrastate private motor carrier; and

b. The movement of the agricultural product conforms to requirements of the State in which it is transported and is specifically authorized by a State statute or regulation in effect before October 1, 1998.

(2) A Class 2 material transported over roadways as defined in 21 Del. C. § 101(58) between the fields of the same farm is excepted from subparts G and H of part 172, 49 C.F.R., Chapter 1, Subchapter C., subject to the following conditions:

a. It is transported by a farmer who is an intrastate private motor carrier; and

b. The movement of the agricultural product conforms to requirements of the State in which it is transported and is specifically authorized by a State statute or regulation in effect before October 1, 1998.

-(3) The transportation of an agricultural product to or from a farm, within 40 miles of a farm, is excepted from the requirements in subparts G and H of part 172, 49 C.F.R. Chapter 1, Subchapter C and from its specific packaging requirements when:

a. It is transported by a farmer who is an intrastate private motor carrier;

b. The total amount of agricultural product being transported on a single motor vehicle does not exceed:

(i) 16,094 pounds of ammonium nitrate fertilizer, properly classed as Division 5.1, PG HL, in a bulk packaging (aggregate gross weight) or less; or

(ii) 502 gallons for liquids or gases, or 5,070 for solids, of any other agricultural product;

c. The movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulations in effect before October 1, 1998; and,

d. Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of Title 49, Chapter 1, Subchapter C of the Code of Federal Regulations.

(4) Formulated liquid agricultural products in specification packaging of 58 gallons capacity, or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices may be transported by a private motor carrier between a final distribution point and an ultimate point of application or loading aboard an aircraft for aerial application.

(c) Any person engaged in the transportation or shipment of hazardous materials, either in interstate or intrastate commerce, in the State shall comply with these adopted federal regulations and any federal regulations subsequently adopted by the Commission.

Section 2. Amend §4705(b), Title 21 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

“(b) Amend § 392.5 of Part 392 by adding a new subparagraph (e f) to read as follows: “(e f) Nothing in this section shall preclude prosecution under §4177 of this title.”

#### SYNOPSIS

The purpose of Delaware MCSAP Program is to minimize truck and bus related accidents on Delaware road by regulating the transportation industry and motor carriers and the program is currently funded primarily, if not totally, by a federal MCSAP grant in the approximate amount of \$900,000.00. Failure to comply with the provisions set forth in the C.F.R. and H.M.R. will cause the MCSAP Program to lose at least 50%, if not 100%, of its grant funding. Without federal grant

funds, the MCSAP Program will not be able to regulate the transportation industry and its motor carriers.

This bill amends the Motor Carrier Safety Act Program (MCSAP) as it relates to the transportation of hazardous materials to bring the Delaware MCSAP program into compliance with the Code of Federal Regulations (C.F.R.) and the federal Hazardous Materials Regulations (H.M.R.s). Based on an audit by the Federal Motor Carrier Safety Delaware roadways failed to meet the safety standards required in the C.F.R. ; and (2) in adopting the C.F.R. as it relates to motor carriers, the Delaware statute inadvertently deleted §392.5(c) of Title 49 of the C.F.R. which requires drivers who are under the influence of alcohol as defined by state statute to be immediately placed Out of Service (OOS). This bill amends Title 29, §8224 and §8225 of the Delaware Code by adopting the H.M.R.'s as it relates to certain hazardous materials, which are currently exempted in the Delaware Code, when those hazardous materials are being transported from a commercial retailer to a final end user, thereby bringing Delaware into compliance with federal regulations. Additionally, this amendment will give Delaware the authority to place a driver Out Of Service (OOS) when the driver has violated the alcohol prohibitions contained in 49 C.F.R. § 392.5. 49 C.F.R. § 392.5 requires that a driver who is under the influence of alcohol to be immediately placed Out of Service (OOS) such that they are not permitted to operate or have physical control of their commercial vehicle. Being "in possession of alcohol" does not apply to drivers when they are transporting alcohol as part of their shipment, or when alcohol is in possession or being used by passengers.

Author: Sen. Bunting