

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of)
its Rules for Safety Standards at Chapter) Case No. 09-223-TR-ORD
4901:2-5, Ohio Administrative Code.)

ENTRY

The Commission finds:

- (1) By entry of March 5, 2008, in *In the Matter of the Amendment of Rules 4901:2-5-01 and 4901:2-5-02 and the Rescission of Rules 4901:2-5-03, 4901:2-5-05, and 4901:2-5-06, Ohio Administrative Code*, Case No. 07-1095-TR-ORD (07-1095), the Commission approved amendments to Chapter 4901:2-5, Ohio Administrative Code (O.A.C.), including a revision to Rule 4901:2-5-01, O.A.C., which was, in part, initiated to insure compliance with the Federal Motor Carrier Safety Rules (FMCSR). This revision eliminated an exemption from the definition of a motor vehicle so that private commercial motor vehicles (CMVs) with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or in the absence of the GVWR or GCWR, the gross vehicle weight or gross combination weight between 10,001 and 26,000 pounds, operating in intrastate commerce, would now be subject to the Commission's safety jurisdiction.
- (2) Because of the nature of the change to Rule 4901:2-5-01, O.A.C., the Commission believed that it would not be in the best interests of the industry to proceed with active enforcement without first undertaking an education and outreach program. As a result, on June 9, 2010, the Commission issued a supplemental entry in 07-1095 that, among other things, directed that safety violations cited against carriers and/or drivers operating CMVs between 10,001 and 26,000 pounds GVWR or GCWR, in intrastate commerce, would not be assessed a civil forfeiture or monetary penalty until January 1, 2011, except in specified situations.
- (3) On October 19, 2010, the Commission held a technical conference to discuss the motor carrier safety rules in Chapter 4901:2-5, O.A.C., the period of time necessary for education and outreach prior to assessment of civil forfeitures, education and outreach efforts that could be provided by the Commission prior to enforcement, and any other matters that would assist impacted businesses to transition and comply with the safety rules.

- (4) On November 23, 2010, the Commission issued a subsequent entry in this case extending the active enforcement stay until January 1, 2012, finding that, despite its efforts to provide outreach to affected industry and trade association representatives, there remained much uncertainty and confusion about the motor carrier safety rules in Chapter 4901:2-5, O.A.C., for many companies and most of those companies needed additional time within which to bring their operations into compliance with the rules. The Commission directed staff to continue its education and outreach efforts, and dialogue with the industry and consider any proposed revisions to the rules that might be less burdensome on the industry without compromising on safety.
- (5) Since the Commission began its education and outreach efforts relative to these rules, staff has made dozens of personal appearances at carrier and industry events and meetings to discuss the rules and answer questions from the regulated community. In addition, staff has responded to hundreds of telephone and electronic requests for information relative to the rules. Despite the outreach efforts by staff, there appears to be a number of misconceptions and inaccuracies regarding the adoption of these rules that the Commission would like to address. The Commission's motor carrier safety rules for vehicles weighing less than 26,000 pounds and operated exclusively in intrastate commerce:
- Do not require drivers to obtain a Commercial Drivers License (except when transporting applicable hazardous materials).
 - Do not require drivers to maintain log books where operations do not extend beyond 150 miles from the driver's reporting location.
 - Are not applicable to vehicles weighing less than 10,001 pounds engaged in any activity, including snow plowing.
 - During weather emergencies, the Commission has the authority to waive hours of service compliance for vehicles over 10,001 pounds engaged in snow plowing and/or the delivery of essential materials.
 - Allow for driver road testing to be certified by a company employee (the carrier need not pay any outside contractor for this service).

- Allow for a qualified company employee to certify annual vehicle inspections (the carrier need not pay any outside contractor for this service).
 - Allow for specific exemptions from compliance for specific industries.
- (6) Despite the progress that has been made relative to education and outreach, the wealth of operational information shared by affected carriers, and identification of compliance issues faced by the newly regulated community, the Commission has received little information about the financial impact of compliance.
- (7) While the Commission believes that adoption of these rules will result in improving safety on Ohio's highways as set forth in our November 23, 2010, entry, the Commission will consider any proposed revisions to the rules that might be less burdensome on the industry without compromising on safety. Proposed revisions will be considered to abate financial as well as operational burdens.
- (8) In order to receive information from the regulated community that may be considered by the Commission in its decision relative to the financial and operational impact compliance with these rules may create, the Commission will schedule the following regional "Listening Sessions" to receive input from any interested party about the operational burden and financial cost of compliance:

Wednesday, February 9, 2011, 5:00 p.m. to 6:30 p.m.,
Grove City Municipal Building, Council Chambers, 4035
Broadway, Grove City, Ohio 43123.

Tuesday, February 22, 2011, 5:00 p.m. to 6:30 p.m., City
Building, City Council Chambers, Lower Level, 1
Donham Plaza, Middletown, Ohio 45042.

Wednesday, February 23, 2011, 5:00 p.m. to 6:30 p.m.,
Oliver R. Ocasek Government Center Auditorium, 161
South High Street, Akron, Ohio 44038.

Thursday, February 24, 2011, 5:00 p.m. to 6:30 p.m.,
Findlay Municipal Building, Council Chambers, First
Floor, 318 Dorney Plaza, Findlay, Ohio 45840.

Tuesday, March 1, 2011, 5:00 p.m. to 6:30 p.m., Cambridge
Municipal Court, Suite 1, 150 Highland Avenue,
Cambridge, Ohio 43725.

- (9) The Secretary of the Commission should cause publication of the legal notice of the Listening Sessions in newspapers of general circulation in Butler, Cuyahoga, Franklin, Guernsey, Hamilton, Hancock, Lucas, Summit, and Warren counties, Ohio, one time not less than seven days prior to the scheduled Listening Sessions. The notice should read as follows:

LEGAL NOTICE

The Public Utilities Commission of Ohio (PUCO) has scheduled Listening Sessions in Case No. 09-233-TR-ORD, *In the Matter of the Commission's Review of its Rules for Safety Standards at Chapter 4901:2-5, Ohio Administrative Code*. The PUCO is responsible for enforcing the Federal Motor Carrier Safety Rules in Ohio. Commercial motor vehicles over 26,000 pounds are already subject to the Federal Motor Carrier Safety Rules. The PUCO recently determined in this case that commercial motor vehicles with a gross vehicle weight of between 10,001 and 26,000 pounds would now be subject to the Federal Motor Carrier Safety Rules. The purpose of the Listening Sessions is to allow motor carriers and drivers who operate commercial motor vehicles whose weight is between 10,001 and 26,000 pounds to inform the PUCO about the operational burdens and financial costs associated with complying with the Federal Motor Carrier Safety Rules. Interested parties who appear at the Listening Sessions should be prepared to address, with specificity, the financial cost of complying with the Rules. If any specific industry believes that their operations should be exempt from the Rules, it should be prepared to explain which rules should not apply to the industry and why they should not apply. The Listening Sessions will be held as follows:

Wednesday, February 9, 2011, 5:00 p.m. to 6:30 p.m.,
Grove City Municipal Building, Council Chambers, 4035
Broadway, Grove City, Ohio 43123.

Tuesday, February 22, 2011, 5:00 p.m. to 6:30 p.m., City
Building, City Council Chamber, Lower Level, 1 Donham
Plaza, Middletown, Ohio 45042.

Wednesday, February 23, 2011, 5:00 p.m. to 6:30 p.m.,
Oliver R. Ocasek Government Center Auditorium, 161
South High Street, Akron, Ohio 44038.

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Findlay Municipal Building, Council Chambers/First
Floor, 318 Dorney Plaza, Findlay, Ohio 45840.

Tuesday, March 1, 2011, 5:00 p.m. to 6:30 p.m., Cambridge
Municipal Court, Suite 1, 150 Highland Avenue,
Cambridge, Ohio 43725.

Further information may be obtained by contacting the
Public Utilities Commission of Ohio, 180 East Broad
Street, Columbus, Ohio 43215-3793, by visiting the PUCO
website at <http://www.puc.state.oh.us>, or by calling the
PUCO hotline at 1-800-686-7826.

- (10) As set forth in the legal notice, the Commission requests that interested parties who desire to offer testimony at these sessions be prepared to address in sufficient detail the financial cost of complying with the Federal Motor Carrier Safety Rules. It would assist the Commission in deciding how to proceed in this area if detailed cost descriptions could be provided for each of the rules at issue.

Further, if any specific industry believes that the Commission should consider an exemption for its operations, the Commission is also soliciting testimony about which rules the newly regulated community believes should not apply to them and why they should not apply.

Although the purpose of the Listening Sessions is for the regulated community to offer into the record of this case insight as to the financial and operational cost of compliance, Commission staff will be present at each of these sessions to answer any questions relative to the rules as they are currently drafted.

- (11) Interested parties are encouraged to continue filing comments in this docket to give the Commission all of the information it needs on which to make an informed decision as to any rule revisions it may propose. Particularly helpful would be comments addressing the financial impact of compliance.

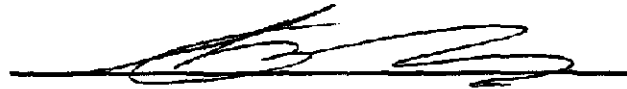
It is, therefore,

ORDERED, That Listening Sessions be held as designated in Finding (8). It is, further,

ORDERED, That the Secretary of the Commission publish notice of the Listening Sessions as directed in Finding (9). It is, further,

ORDERED, That a copy of this entry be served upon the Ohio Aggregates & Industrial Minerals Association, Ohio Concrete/Ohio Ready Mixed Concrete Association, Anderson Concrete Corporation, Transportation Advocacy Group of Northwest Ohio, and The Ohio Trucking Association, Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Gas Company, the Ohio Gas Association, Ohio Cable Telecommunications Association, Columbus Southern Power Ohio Power, Columbia Gas of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion East Ohio, Vectren Energy Delivery of Ohio, Inc., Dayton Power and Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Telecom Association, Duke Energy Ohio, Inc., AEP Ohio, Ohio Automobile Dealers Association, Ohio Oil and Gas Association, Flexible Pavements of Ohio, Ohio Petroleum Marketers & Convenience Store Association, Ohio Contractors Association, Ohio Nursery & Landscape Association, Ohio Roofing Contractors Association, Ohio Soft Drink Association, Ohio Lawn care Association, Ohio Grocers Association, Ohio Pest Management Association, Ohio Home Builders Association, Ohio Construction Suppliers Association, Volunteers of America Greater Ohio, Ohio Coin Machine Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



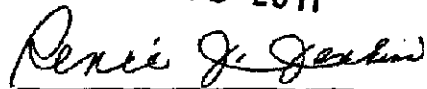
Steven D. Lesser, Chairman


Paul A. Centolella
Valerie A. Lemmie
Cheryl L. Roberto

REM:js

Entered in the Journal

JAN 19 2011



Renee J. Jenkins
Secretary