

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).<sup>1</sup> Under 49 C.F.R. 350.333, a state law or regulation must apply to all segments of the motor carrier industry (i.e., for-hire and private motor carriers of property and passengers and, under 49 C.F.R. 350.341(b) state laws and regulations applicable to intrastate commerce may not grant exemptions based upon the type of transportation being performed.
- (2) This revision eliminated the following language from the definition of a motor vehicle:

Motor vehicle does not include any vehicle operated within Ohio in intrastate commerce by a private motor carrier as defined in section 4923.20 of the Revised Code, which is not a commercial motor vehicle as defined in 49 C.F.R. 383.5, as effective on March 29, 2006, as amended.

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<sup>1</sup> Commission staff had also proposed revising the hours-of-service requirements in Rule 4901:2-5-02, O.A.C.; however, based on comments received, those revisions will also not be made at this time.

As a result, 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, which were previously exempt from the Commission's safety jurisdiction, were now subject to the Commission's safety jurisdiction.

- (3) Because of the nature of the change to Rule 4901:2-5-01, O.A.C., the Commission determined that it would not be in the best interests of impacted businesses 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 motor 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.
- (4) Subsequent to the June 9, 2010 entry, the Commission initiated this case, pursuant to Section 119.032, Revised Code, which requires all state agencies, every five years, to conduct a review of its rules and determine whether to continue their rules without change, amend their rules, or rescind their rules.
- (5) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

- (6) 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.
- (7) On November 23, 2010, the Commission issued a supplemental entry in this case extending the active enforcement stay of the rules until January 1, 2012. The Commission found that, despite its efforts to provide outreach to affected industry and trade association representatives, there remained much uncertainty and confusion about the revisions to 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.
- (8) By entry of January 19, 2011, the Commission scheduled and held regional "Listening Sessions" in Grove City, Middletown, Akron, Findlay, and Cambridge, Ohio, to receive input from interested parties about the operational burdens and financial costs of compliance with these rules. The Commission also indicated that it would consider any proposed revisions to the rules that might be less burdensome on the industry without compromising on safety.
- (9) Based on the comments, feedback, and concerns the Commission has received, we have concluded that changes to rules in Chapter 4901:2-5, O.A.C., are appropriate. Further, in order to relieve confusion while we are continuing our review and considering changes, we are temporarily amending Rule 4901:2-5-01, O.A.C., to reinstate the exemption for private motor carriers in intrastate commerce with a GVWR between 10,001 and 26,000 pounds, as previously contained in this rule. This action will return all such affected motor vehicles to their status prior to the most recent revision to the rules in

Chapter 4901:2-5, O.A.C. Therefore, Rule 4901:2-5-01, O.A.C., should be revised accordingly and filed with the Joint Committee on Agency Rule Review (JCARR).

- (10) To support the Commission in our continuing review, we direct staff to prepare, within 90 days, a report containing an analysis and recommendations for amendments to Chapter 4901:2-5, O.A.C., governing intrastate "for-hire" and "not-for-hire" private motor carriers operating vehicles between 10,001 and 26,000 pounds GVWR. In preparing this report, staff shall take into account:
- (A) Inspection and safety data relative to inter- and intrastate vehicles at varying weight classes and for both "for-hire" and "not-for-hire" carriers;
  - (B) Executive Order 2011-01K issued by the Governor on January 10, 2011, entitled "Establishing the Common Sense Initiative," by considering the impact that any proposed rule change would have on small businesses; attempts to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; without sacrificing the safety of the citizens of Ohio; and
  - (C) The requirements of the Motor Carrier Safety Assistance Program Tolerance Guidelines (Title 40 Part 350 Section 341) which set forth the limited deviations from the Federal Motor Carrier Safety Regulations which are permitted in State laws and regulations governing motor carriers, commercial vehicle drivers and commercial vehicles engaged in intrastate commerce and not subject to Federal jurisdiction while still maintaining eligibility for federal matching funds.
- (11) In addition to the revision to Rule 4901:2-5-01, O.A.C., the Commission staff has recommended, and we find

appropriate, revisions to Rules 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-07, 4901:2-5-10, and 4901:2-5-15, O.A.C., which only modify references and definitions in these rules to reflect consistency with the Code of Federal Regulations.

- (12) Accordingly, the Commission finds that existing Rules 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-07, 4901:2-5-10, and 4901:2-5-15, O.A.C., should be amended as shown on the attachment and should be filed with the JCARR, the secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. In addition, existing Rules 4901:2-5-08, 4901:2-5-11, 4901:2-5-12, 4901:2-5-13, and 4901:2-5-14, O.A.C., should remain in effect without any changes and should be filed as no change rules with JCARR, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code.

In addition,

It is, therefore,

ORDERED,. That staff review Chapter 4901:2-5, O.A.C. and report back to the Commission in accordance with this entry. It is, further,

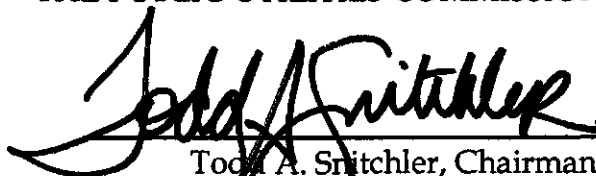
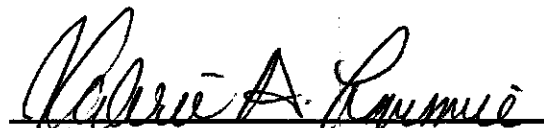
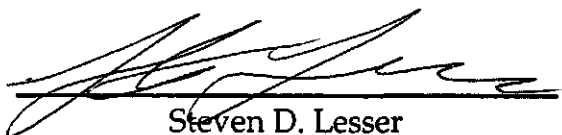
ORDERED, That attached amended Rules 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-07, 4901:2-5-10, and 4901:2-5-15, O.A.C., be filed with the JCARR, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That Rules 4901:2-5-08, 4901:2-5-11, 4901:2-5-12, 4901:2-5-13, and 4901:2-5-14, O.A.C., be filed as no change rules with JCARR, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

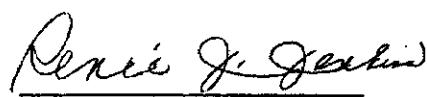
ORDERED, That these final rules be effective on the earliest day permitted by law. Unless ordered otherwise by the Commission or JCARR, the next review date for Chapter 4901:2-5, O.A.C., is November 30, 2014. It is, further,

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, Greater Ohio Showmen's Association, and all other interested persons of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman  
Paul A. Centolella  
Valerie A. Lemmie  
Steven D. Lesser  
Cheryl L. Roberto

SEF/sc

Entered in the Journal **MAR 16 2011**  
Renee J. Jenkins  
Secretary

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4901:2-5-01      **Definitions, knowledge of rules and regulations required.**

- (A) "Motor carrier," as used in this chapter, includes all motor transportation companies transporting persons or property as defined in section 4921.02 of the Revised Code, and all private motor carriers or contract carriers by motor vehicle transporting persons or property as defined in section 4923.02 of the Revised Code, and all private motor carriers as defined in section 4923.20 of the Revised Code. "Motor carrier" also includes any and all carriers by motor vehicle operating in Ohio in interstate commerce which are subject to the regulations contained in 49 C.F.R. 171 to 180, 383, or 390 to 397. as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code. Owners and drivers of motor vehicles leased to motor carriers are subject to these rules and regulations during the periods covered by such lease agreements. "Motor carrier" includes all officers, agents, representatives, and employees of carriers by motor vehicle responsible for the management, maintenance, operation, or driving of motor vehicles, or the hiring, supervision, training, assigning, or dispatching of drivers of motor vehicles.
- (B) "Motor vehicle," as used in this chapter, means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in this state in the transportation of passengers or property, or any combination thereof, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derives from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. Motor vehicle does not include any vehicle operated within Ohio in intrastate commerce by a private motor carrier as defined in section 4923.20 of the Revised Code, which is not a commercial motor vehicle as defined in 49 C.F.R. 383.5, as effective on March 16, 2011, as amended.
- (C) "Offeror" as used in this chapter, means any individual, firm, co-partnership, corporation, company, association or joint-stock association, or trustee, receiver, assignee, or personal representative thereof, who is subject to the regulations contained in 49 C.F.R. 171 to 180, as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, by reason of offering hazardous materials for transportation by motor carrier in, into or through Ohio, or by performing any of the functions assigned to an offeror of hazardous materials by those regulations.
- (D) These rules are applicable to transportation in motor vehicles by motor carriers and to offerors of hazardous materials.
- (E) Every motor carrier and offeror shall be instructed in, familiar with, and comply with the applicable rules in this chapter.

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(F) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown, from which no waiver is permitted.

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4901:2-5-02

**Adoption of U.S. department of transportation safety standards.**

- (A) The public utilities commission of Ohio hereby adopts the provisions of the motor carrier safety regulations of the U.S. department of transportation contained in 49 C.F.R. 40, 107, subparts f and g, 367, 380, 382, 383, 385, 386, 387 and 390 to 397, unless specifically excluded or modified by a rule of this commission, and those portions of the hazardous materials transportation regulations contained in 49 C.F.R. 171 to 180, as are applicable to transportation or offering for transportation by motor vehicle, as effective on the date referenced in paragraph (G) of this rule. All motor carriers operating in intrastate commerce within Ohio shall conduct their operations in accordance with those regulations and the provisions of this chapter. With respect to such regulations as applicable to intrastate motor carriers, any notices or requests permitted or required to be made to the U.S. department of transportation or officials thereof under 49 C.F.R. 390 to 397 shall instead be made to the director of the commission's transportation department.
- (B) All motor carriers engaged in interstate commerce in Ohio shall operate in conformity with all regulations of the U.S. department of transportation, which have been adopted by this commission. Violation of any such federal regulation by any motor carrier engaged in interstate commerce in Ohio shall constitute a violation of this commission's rules.
- (C) All offerors shall operate in conformity with all applicable regulations of the U.S. department of transportation, which have been adopted by this commission. Violation of any such federal regulation by any offeror shall constitute a violation of this commission's rules.
- (D) Enforcement of those portions of 49 C.F.R. 171 to 180 as are applicable to transportation or offering for transportation of hazardous materials by motor vehicle shall be subject to any exemptions granted by the U.S. department of transportation pursuant to 49 C.F.R. 107 and shall be consistent with interpretations issued by the pipeline and hazardous materials safety research and special programs administration, U.S. department of transportation.
- (E) Title 49 C.F.R. 395.3, maximum driving time, does not apply to private motor carriers engaged in the intrastate transportation of construction materials and equipment. As to such carriers, the following maximum driving time limitations apply:
- (1) No private motor carrier engaged in the intrastate transportation of construction materials and equipment shall permit or require any driver used by it to drive nor shall any such driver drive:
- (a) More than twelve hours following eight consecutive hours off duty; or

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- (b) For any period after having been on duty sixteen hours following eight consecutive hours off duty.
- (2) No private motor carrier engaged in the intrastate transportation of construction materials and equipment shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after:
  - (a) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or
  - (b) Having been on duty eighty hours in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.
- (3) Paragraphs (E)(1) and (E)(2) of this rule shall not apply when the commission grants regulatory relief from the hours-of-service requirements. Relief may be granted when such action is consistent with regulatory relief issued by the United States department of transportation ~~federal highway administration~~ for carriers in interstate commerce or whenever the commission finds it necessary, in case of severe weather conditions, earthquake, flood, drought, fire, famine, epidemic, pestilence, unusual interruption of any public utility services, or other calamitous visitation or disaster, to grant relief to any motor carrier when transporting passengers or property in intrastate commerce within Ohio. Because emergency situations are often unforeseeable, the commission may designate one or more of its employees to issue a document granting the relief.
- (F) For purposes of this rule, "transportation of construction materials and equipment" means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between mobilization of equipment and materials to the site to the final completion of the construction project) within a fifty air mile radius of the normal work reporting location of the driver. This definition shall not apply to the transportation of material found by the United States secretary of transportation to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding pursuant to 49 C.F.R. 172, subpart f.
- (G) Each citation contained within this chapter that is made to a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on March 16, 2011 ~~March 1, 2008~~.

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4901:2-5-03      **Applicability of safety standards to lightweight vehicles.**

When a motor carrier operates a vehicle under authority of the public utilities commission of Ohio pursuant to section 4921.07 or 4923.04 of the Revised Code, and that vehicle is not subject to the provisions of rule 4901:2-5-02 of the Administrative Code, the motor carrier shall:

- (A) Comply with the standards for equipment and loads set forth in sections 4513.021 to 4513.17 and 4513.19 to 4513.32 of the Revised Code.
- (B) Be licensed to operate a motor vehicle as required by section 4507.02 of the Revised Code.
- (C) Comply with standards identical to those concerning the operation of motor vehicles set forth in 49 C.F.R. 392.3 to 392.5 as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code ~~March 29, 2006~~.
- (D) Provided that the vehicle is designed and utilized for the transportation of passengers, comply with all hours of service and recordkeeping requirements of 49 C.F.R. 395 as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code ~~March 29, 2006~~.

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4901:2-5-04      Qualifications of drivers.

- (A) No motor carrier shall operate or permit the operation of a motor vehicle in intrastate commerce within Ohio by a person under the age of eighteen years. No motor carrier shall operate or permit the operation of a motor vehicle hauling an amount of hazardous materials requiring the display of placards, pursuant to 49 CFR, subtitle B, chapter 1, subchapter C, in intrastate commerce within Ohio by a person under the age of twenty-one years.
- (B) The provisions in 49 C.F.R. 391.21 (applications for employment), and 391.23 (investigations and inquiries), and 391.35 (written examinations), as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code-March 29, 2006, shall not apply to a driver operating in intrastate commerce within Ohio who has been a single employer regularly employed driver as defined in 49 C.F.R. 390.5, 395.2(f), as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, March 29, 2006, of a private motor carrier as defined in section 4923.20 of the Revised Code, for a continuous period which began before January 1, 1987, so long as he continues to be a regularly employed driver of that private motor carrier.
- (C) Persons who on or before December 7, 1988, were employed or self-employed in occupations which required the operation of commercial motor vehicles, who cannot be medically certified under the requirements of 49 C.F.R. 391.41, as effective on - the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code-March 29, 2006, may obtain provisional medical certification for driving in intrastate commerce within Ohio under the following conditions:
- (1) A driver may obtain a packet of materials prescribed by the public utilities commission of Ohio's ~~commission's~~ transportation department to be used by the driver, his employer, and the examining physician in conducting a physical examination for provisional medical certification. Included in the packet will be instructions to assist the physician in making his evaluation.
  - (2) Prior to visiting the physician, the driver and any employing carrier shall certify the conditions of the driver's employment, including date employment commenced, size and type of vehicles operated, hours operated per day, distances from normal work reporting location traveled, whether hazardous materials are transported in quantities which must be placarded, any other work activities performed in connection with or in addition to driving, accident history, and such additional information as is required by the commission's transportation department.
  - (3) The physician shall conduct his examination as required by 49 C.F.R. 391.43, as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code-March 29, 2006, and shall complete the examination form

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prescribed by that part. If the examining physician finds that the driver cannot be certified because of a condition set forth in 49 C.F.R. 391.41(b)(1) to (b)(11), as effective the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code~~March 29, 2006~~, but that the driver can safely operate certain commercial motor vehicles under certain limited conditions, the physician may provisionally certify the driver. No driver may be provisionally be certified who uses drugs or has a clinical diagnosis of alcoholism within the meaning of 49 C.F.R. 391.41(b)(12) or (b)(13), as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code. -~~March 29, 2006~~.

- (4) To provisionally certify a driver, the physician must complete the "Medical Examiner's Provisional Certificate" prescribed by the commission's transportation department, in lieu of the "Medical Examiner's Certificate" prescribed in 49 C.F.R. 391.43, as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code~~March 29, 2006~~. On the certificate, the physician shall indicate the limitations on the driver's activities under which the physician finds the driver can safely operate a motor vehicle, including but not limited to restrictions on the size and type of vehicle operated, hours operated per day, distances from normal work reporting location traveled, and any other work activities performed in addition to driving.
- (5) One copy of the certificate shall be furnished to the driver and one copy shall be furnished to the motor carrier that employs him. An additional copy shall be mailed to the commission's transportation department within seven days of the certification by the physician. The provisional certificate shall be effective on the date of mailing to the commission's transportation department. A copy of the driver's and employer's certificate, examination form, and provisional medical certificate shall be kept in the employer's driver qualification file in the same manner as the medical certificate, as required by 49 C.F.R. 391.51, as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code~~March 29, 2006~~.
- (6) Notwithstanding the provisions of 49 C.F.R. 391.45(b), as effective on ~~March 29, 2006~~the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, a person who cannot meet the requirements of 49C.F.R. 391.41, as effective on ~~March 29, 2006~~the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, must be medically examined and provisionally certified in accordance with this rule if that person has not been medically examined and certified or provisionally certified within the preceding twelve months, or such shorter time as the certifying physician may prescribe.
- (7) Except as otherwise provided by this rule, the medical examiner's provisional certificate shall be treated as medical examiner's certificate for all purposes as provided in 49 C.F.R. 390 to 396, as effective on ~~March 29, 2006~~the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code.

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- (8) Provisional medical certification under this rule shall be ineffective to qualify a driver to drive in interstate commerce, to transport hazardous materials which are required to be placarded as provided in 49 C.F.R. 170 to 179, as effective on ~~March 29, 2006~~ the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, to transport passengers for hire, to operate a vehicle designed to carry sixteen or more passengers including the driver, or to operate a commercial motor vehicle beyond the scope of any restrictions indicated by the examining physician.
- (9) The commission may revoke the provisional medical certification issued by the physician upon its finding that continued operations by the driver constitute an unreasonable risk of harm to the public, due to the specifics of the medical condition, or the nature of the driving responsibilities in which he is engaged.

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4901:2-5-07

**Out-of-service vehicles and drivers.**

(A) Authorized employees of the commission's transportation department, and employees of the state highway patrol designated by the superintendent to conduct commercial vehicle inspections, may declare "out-of-service":

- (1) Any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or breakdown.
- (2) Any motor vehicle which is being operated in violation of 49 C.F.R. 171 to 180, 383 or 387, as effective on ~~March 29, 2006~~ the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, to such an extent that information regarding the presence of hazardous materials is inadequate for use of emergency responders in providing protection to the public.
- (3) Any driver who meets the "out-of-service" criteria set forth in 49 C.F.R. 392.5 or 395.13, as effective on ~~March 29, 2006~~ the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, or is not properly licensed to operate a motor vehicle as required by section 4507.02 of the Revised Code.

(B) In determining whether a vehicle or driver shall be placed "out of service," authorized employees of the commission's transportation department and employees of the state highway patrol designated by the superintendent to conduct commercial vehicle inspections shall utilize the North American standard "out-of-service" criteria adopted and disseminated by the U.S. department of transportation.

(C) The following drivers and vehicles shall be considered to be out of service and under an out-of-service order:

- (1) Those declared out of service in accordance with paragraph (A) of this rule, or under comparable laws or regulations of another federal, state, Canadian, or Mexican jurisdiction.
- (2) Those declared "out of service" by the U.S. department of transportation in accordance with 49 C.F.R. 386.72, ~~386.83, 386.84,~~ 392.5, ~~392.9a,~~ 395.13, and 396.9, as effective on ~~March 29, 2006~~ the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code, or compatible laws, or the North American standard out-of-service criteria.
- (3) Those declared out of service by an "imminent hazard" order issued in accordance with rule 4901:2-5-14 of the Administrative Code.

(D) Vehicles declared "out of service" may be marked with an appropriate sticker, which shall not be removed until the vehicle is no longer out of service. Drivers declared "out of service" shall remain out of service until such time as they are qualified to

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drive a commercial motor vehicle and meet all conditions established in the law, rule, or out-of-service order upon which their out-of-service status was based.

(E) No motor carrier shall operate or permit the operation of a motor vehicle by a driver who is "out of service" nor shall any driver operate such a vehicle until the period specified in paragraph (C) of this rule has elapsed. No motor carrier shall operate or permit the operation of a motor vehicle nor shall any driver operate a vehicle which is "out of service" except under the following conditions:

(1) The motor vehicle may be towed by an emergency towing vehicle equipped with a crane or hoist.

(2) The motor vehicle may be removed for storage or repair directly to a location approved by authorized employees of the commission's transportation department or employees of the state highway patrol designated by the superintendent to conduct commercial vehicle inspections.

(3) If the vehicle is located beside the traveled portion of highway, or contains hazardous materials and is located in an area where parking of hazardous materials is not permitted, it shall be escorted by authorized employees of the commission's transportation department or employees of the state highway patrol designated by the superintendent to conduct commercial vehicle inspections to the nearest safe location unless that employee determines that it would be less safe to move the vehicle.

(F) Motor carriers shall comply with any additional measures or conditions as directed by the commission's transportation department for the purpose of enforcing this rule.

(G) This rule shall not be interpreted to supersede any more stringent federal requirement adopted by the commission.

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4901:2-5-08      **Mud flaps.**

No motor carrier shall operate a motor vehicle, the gross weight of which, with load, exceeds three tons, on the public highways in Ohio unless the rearmost wheels of the vehicle or combination of vehicles are equipped with wheel protectors as required by section 5577.11 of the Revised Code.

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4901:2-5-10      **Marking of vehicles.**

(A) All motor carriers shall display the following information on both sides of all self-propelled motor vehicles operated within Ohio in intrastate commerce:

- (1) The legal name or a single trade name of the motor carrier operating the commercial motor vehicle.
- (2) The identification number issued by the public utilities commission of Ohio (-PUCO) preceded by the letters PUCO or the identification number issued by the United States department of transportation (USDOT) preceded by the letters USDOT.
- (3) If the name of any person other than the operating carrier appears on the commercial motor vehicle, the name of the operating carrier must be followed by the information required by paragraphs (A)(1) and (A)(2) of this rule and be preceded by the words "operated by."
- (4) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this rule.

(B) Size, shape, location and color of markings shall be as follows:

- (1) The markings must appear on both sides of the self-propelled motor vehicle.
- (2) The markings must be in letters that contrast sharply in color with the background on which the letters are placed.
- (3) The markings must be readily legible during daylight hours, from a distance of fifty feet (fifteen point two four meters) while the commercial motor vehicle is stationary.
- (4) The markings must be kept and maintained in a manner that retains the legibility required by paragraph (B)(2) of this rule.

(C) The director of the commission's transportation department may grant a written exemption from the requirements of paragraphs (A) and (B) of this rule, based upon a written application and showing that prior to January 1, 1987, the motor carrier used an alternative marking system which provided adequate notification of the ownership and identity of equipment. Based upon a written application and showing that display of the required information would pose a security hazard to the vehicle, its contents or occupants, the director of the commission's transportation department may permit display of the federal motor carrier USDOT number in lieu of company name.

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(D) Paragraphs (A) and (B) of this rule shall not apply to self-propelled vehicles without drivers leased by private motor carriers from a person, co-partnership or corporation whose principal business is the leasing of equipment without drivers for compensation, when each of the following conditions applies:

(1) The lease period is for a period not in excess of thirty calendar days.

(2) The lessor remains responsible for routine maintenance of the vehicle.

(3) The vehicle is conspicuously marked with the name of the lessor.

(4) A signed copy or summary of the lease showing the name, city and state of the lessee, duration of the lease, and party responsible for routine maintenance of the vehicle, is carried aboard the vehicle.

(E) No motor carrier shall display the identification of another motor carrier or other entity with intent to deceive the public or law enforcement personnel as to the true identity of the operating motor carrier, nor shall any motor carrier transmit an electronic signal falsely identifying itself as another motor carrier or other entity.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-5-11      **Inspection of vehicles; reports.**

- (A) No motor carrier shall knowingly, recklessly or negligently fail to submit to a vehicle inspection conducted by commission employees, nor shall any motor carrier deviate from its route for the purpose of circumventing or evading a motor vehicle inspection by commission employees.
- (B) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier operating the motor vehicle within twenty-four hours. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle within twenty-four hours, the driver shall immediately mail the report to the motor carrier.
- (C) Each motor carrier shall examine each report of an inspection of any motor vehicle operated by the motor carrier, and shall correct any violations or defects noted within fifteen days following the inspection. Within fifteen days following the inspection, the motor carrier shall certify that all violations noted have been corrected by completing the appropriate portion of the inspection form and returning it to the enforcement section of the commission's transportation department. No motor carrier shall falsely certify that repairs have been completed.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-5-12      **Safety-net reports.**

Upon written request to the commission's transportation department and payment of a fee established by the commission, a "Safety-Net Report" will be supplied by the commission. The "Safety-Net Report" shall consist of a summary of motor vehicle inspection results for a single carrier for the previous three years, not including the current or the preceding quarter. A "Safety-Net Report" will not include results of inspections which occurred prior to February 1, 1987. There will be no charge to supply a carrier with a copy of its own "Safety-Net Report".

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**4901:2-5-13      Inspection program.**

(A) For the purpose of enforcing the provisions of Chapters 4901:2-1, 4901:2-3, 4901:2-15, and 4901:2-17 of the Administrative Code, and Chapters 4919., 4921., and 4923. of the Revised Code, authorized employees of the commission's transportation department may:

(1) Enter the premises and motor vehicles of any offeror or motor carrier to inspect documents required by the rules and statutes listed in paragraph (A) of this rule, and inspect motor vehicles, including cargo, operating under the rules and statutes in paragraph (A) of this rule.

(2) Enter the premises and motor vehicles of any offeror or motor carrier to interview employees of the offeror or motor carrier.

(B) Documents, motor vehicles, cargo, and employees are subject to inspection or interview when required by or operated under the rules and statutes listed in paragraph (A) of this rule, and when located:

(1) On premises owned or controlled by an offeror or motor carrier.

(2) Upon any public roadway, public property, or private property open to the public.

(3) On any other premises if the inspection is conducted with permission of the owner or person in control of the property.

(C) Authorized employees of the commission's transportation department shall utilize the following criteria in determining which documents, motor vehicles, and cargo to inspect and which employees of an offeror or motor carrier to interview:

(1) Complaints received and processed by the commission's transportation department headquarters staff and issued to field employees.

(2) Observed possible violations of any rules and statutes listed in paragraph (A) of this rule.

(3) Knowledge that the motor vehicle was recently inspected and had serious safety defects at the time of inspection.

(4) Motor vehicles, motor carriers, and offerors designated by the headquarters staff of the commission's transportation department as "special interest".

(5) Any uniform statistical selection procedure, such as every fifth motor vehicle or every motor vehicle entering an inspection site.

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- (6) Any inspection selection system developed by the federal highway administration and utilizing a carrier or driver's safety performance record as a factor.
- (D) The content and extent of inspections may include but not be limited to examination of the employee's age (if employee is a driver), license to operate the motor vehicle, physical condition (drug or alcohol influence, illness, fatigue), medical examiner's certificate or medical examiner's provisional certificate, record of duty status and hours of service, and possession of controlled substances or alcohol, passenger authorization, vehicle inspection reports, seat belt, brake system, steering mechanism, wheels, tires, coupling devices, suspension, frame, fuel system, exhaust system, windshield and windshield wipers, lighting devices, safety devices, electrical system; cargo securement and authorization; hazardous materials requirements; and any other component, equipment, or device covered by the rules and statutes listed in paragraph (A) of this rule.
- (E) When inspecting documents, motor vehicles, and cargo as provided by this rule, and when interviewing employees of an offeror or motor carrier, employees of the commission's transportation department may enter in and upon any area of a motor vehicle as necessary to complete their duties (except for knowingly entering portions of the cab used exclusively for the personal possessions of the driver), and enter any cargo area or compartment, whether locked, unlocked, sealed, or unsealed.
- (F) Offerors and motor carriers shall provide employees of the commission's transportation department with reasonably expeditious access to documents, employees, motor vehicles, and cargo. If cargo areas of motor vehicles are locked or sealed, the offeror or motor carrier shall provide immediate access to the cargo area. When the offeror or motor carrier is unable to provide immediate access to a locked or sealed cargo area, the commission employee may use the necessary force to enter the cargo area. Any breakage of a lock or seal shall be annotated on the inspection report. A lock or seal that is broken by a commission employee shall be replaced with a numbered seal.
- (G) Employees of the state highway patrol designated by the superintendent to conduct inspections under the federal motor carrier safety assistance program shall follow applicable provisions of this rule while conducting motor vehicle inspections under that program.

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**4901:2-5-14      Imminent hazard.**

- (A) Whenever it is determined that a violation of this chapter poses an imminent hazard to safety, the commission may order a carrier to cease all or part of the carrier's commercial motor vehicle operations in this state. In making any such order, no restrictions shall be imposed on any driver or carrier beyond that required to abate the hazard. In this rule, "imminent hazard" means any condition of vehicle, driver, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately.
- (B) Upon the issuance of an order under this rule, the carrier or driver shall comply immediately with such order. An order to a carrier to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destination, unless any such vehicle or driver is specifically ordered out of service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.
- (C) For purposes of this rule, the term "immediate destination" is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.
- (D) The commission may, prior to issuing an order under this rule, order a carrier to show cause why the commission should not issue an order requiring that a carrier cease all or part of the carrier's commercial motor vehicle operations; or the commission may issue an order under this rule without a prior hearing, provided that the carrier may request a hearing within thirty days after the issuance of such order. The commission shall schedule a hearing requested under this rule no less than seven days and no more than fifteen days following the request for hearing. A hearing under this rule may consist of written stipulations, oral testimony, or such other evidence which is admitted. All hearings shall be conducted in accordance with Chapter 4901:1-11 of the Administrative Code.

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4901:2-5-15      **Planting and harvesting season.**

For the purposes of 49 C.F.R. 395.1(L), as effective on the date referenced in paragraph (G) of rule 4901:2-5-02 of the Administrative Code~~March 29, 2006~~, the "planting and harvesting season" in the state of Ohio shall be March first through November thirtieth of each year.