

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Chapter 4901:2-5, Ohio Administrative) Case No. 13-1106-TR-ORD
Code, Safety Standards.)

FINDING AND ORDER

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission has established this docket in order to conduct an evaluation of Ohio Adm.Code Chapter 4901:2-5, concerning safety standards applicable to motor carriers and offerors of hazardous materials.
- (2) R.C. 119.032(C) requires that the Commission determine whether:
 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
 - (b) The rules need amendment or rescission to give more flexibility at the local level;
 - (c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;

- (d) The rules duplicate, overlap with, or conflict with other rules; and
 - (e) Whether the rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.
- (3) 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 properly 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.
- (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.
- (5) By Entry issued June 17, 2013, the Commission scheduled a workshop at the offices of the Commission on July 22, 2013, to elicit feedback on any proposed revisions to the rules which Staff may have and to permit stakeholders to propose their own revisions to the rules for Staff's consideration. The workshop was held as scheduled. Only one stakeholder was present at the workshop; he made no comments concerning Ohio Adm.Code Chapter 4901:2-5.
- (6) Staff's proposed changes to Ohio Adm.Code Chapter 4901:2-5 were issued in a January 15, 2014 Entry, which

also established a January 29, 2014 deadline for initial comments and a February 12, 2014 deadline for reply comments. The Entry also contained, pursuant to the requirements of Executive Order 2011-01K and Senate Bill 2 of the 129th General Assembly, a BIA for Ohio Adm.Code Chapter 4901:2-5, to assess and justify any adverse impact the proposed rules have on the business community.

- (7) On January 29, 2014, comments were filed by the Ohio Trucking Association (OTA) regarding Staff's proposals for Ohio Adm.Code 4901:2-5-03, 4901:2-5-04, and 4901:2-5-07.¹ The Ohio Aggregates and Industrial Minerals Association filed comments on January 30, 2014, that address the same rules and contain comments identical to those of OTA. A summary of OTA's remarks and Commission conclusions follows. Any recommended change that is not discussed below or incorporated into the proposed rules should be considered denied.

Comments on Ohio Adm.Code 4901:2-5-03 - Adoption and Applicability of U.S. Department of Transportation Safety Standards

- (8) Paragraph H. Staff proposed amending the rule to prohibit a motor carrier from allowing a driver to drive more than twelve hours following ten consecutive hours off duty, or for any period after having been on duty sixteen hours following ten consecutive hours off duty.
- (9) OTA asserts that the construction hours of service exception provides the trucking industry with flexibility that is necessary for the construction season. OTA contends that if Staff's proposal is adopted, a driver's starting time would be pushed back by two hours each consecutive day, thus reducing the amount of time a motor carrier can schedule a driver during peak season. OTA adds that the Federal Motor Carrier Safety Administration (FMCSA) has not threatened to withhold any Motor Carrier

¹ In its comments, OTA inadvertently identified its comments intended for Ohio Adm.Code 4901:2-5-07 as comments for Ohio Adm.Code 4901:2-5-10.

Safety Assistance Program (MCSAP) funding because Commission rules are incompatible with federal law.

- (10) The Commission declines to adopt OTA's recommendations. We note that, under R.C. 4923.04(A)(1), the Commission adopted rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. In addition, R.C. 4923.04(B) provides that the rules adopted by the Commission shall not be incompatible with requirements of the U.S. Department of Transportation (USDOT). Contrary to OTA's claims, the FMCSA advised the Commission on September 13, 2013, that its review of the Commission's MCSAP indicated that the eight hours off duty requirement is incompatible with 49 C.F.R. 395.3, which mandates maximum driving time for property carrying vehicles, and 49 C.F.R. 350.341(e) which concerns hours of service for drivers. The FMCSA advised that the incompatibility jeopardizes the Commission's continued participation in MCSAP and the receipt of MCSAP funding. FMCSA proposed a timeline of 24 months to resolve the matter. Furthermore, the Commission observes that under proposed Ohio Adm.Code 4901:2-5-05(D)(1) a motor carrier can request that the Commission submit an application to the USDOT to obtain, for specific industries, an intrastate exemption from state laws and regulations.

Comments on Ohio Adm.Code 4901:2-5-04 - Qualifications of Drivers

- (11) Paragraph C. Staff proposed to clarify who can perform a medical examination for purposes of provisional medical certification (PRC). Staff explained that its proposed language ensures consistency with 49 C.F.R. 391.42, which requires that as of May 21, 2014, only medical examiners listed on the National Registry of Certified Medical Examiners (National Registry) can perform medical examinations of commercial motor vehicle (CMV) drivers.
- (12) OTA expresses concern whether the National Registry will be operational by the May 21, 2014, deadline. OTA urges the Commission to remove language referring to the

National Registry until the USDOT has the system operational.

- (13) The Commission understands OTA's concerns, but notes that Staff's proposed language simply makes the PRC process consistent with 49 C.F.R. 391.42. This section provides: "On and after May 21, 2014, each medical examination required under this subpart must be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners." However, taking into account OTA's concerns whether the National Registry will be operational by May 21, 2014, the Commission finds that it is reasonable to delete the May 21, 2014 date from the language that Staff initially recommended. Thus, if the effective date of the National Register is postponed, a driver can have the medical examination performed by the medical examiner that he or she has previously relied upon, or another medical examiner, regardless of whether the driver is seeking PRC.

Comments on Ohio Adm.Code 4901:2-5-07 – Out-of-Service Vehicles and Drivers

- (14) Paragraph (A)(4). Staff proposed allowing enforcement personnel to place a vehicle out of service if a for-hire intrastate motor carrier does not have a valid certificate of public convenience and necessity (CPCN).
- (15) OTA contends that a vehicle should be placed out-of-service only for safety reasons, and not under circumstances when a motor carrier that has registered for many years neglected to re-register before a deadline or when a driver cannot produce a CPCN during a roadside vehicle inspection.
- (16) The Commission declines to adopt OTA's recommendation. Existing Ohio Adm.Code 4901:2-1-02(B) already provides that an intrastate motor carrier that fails to annually register with the Commission and pay the associated tax may be placed out of service under existing Ohio Adm.Code 4901:2-5-07. In addition, the ability to place a motor carrier out of service for failure to obtain and

maintain Ohio operating authority is consistent with the ability to place an interstate motor carrier out of service for not having federal operating authority, pursuant to 49 C.F.R. 392.9a(b). Finally, R.C. 4921.03 states that a for-hire motor carrier may not operate in intrastate commerce unless it has a valid CPCN.

- (17) In conclusion, the Commission finds that existing Ohio Adm.Code 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-05, 4901:2-5-07, 4901:2-5-10, 4902:2-5-11, 4901:2-5-12, 4901:2-5-13, and 4901:2-5-14 should be rescinded; new Ohio Adm.Code 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-05, 4901:2-5-07, 4901:2-5-10, 4902:2-5-11, 4901:2-5-12, 4901:2-5-13, and 4901:2-5-14 should be adopted; amended Ohio Adm.Code 4901:2-5-15 should be adopted as amended; and existing Ohio Adm.Code 4901:2-5-08 should be approved and adopted. In addition, these rules should be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15.

It is, therefore,

ORDERED, That existing Ohio Adm.Code 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-05, 4901:2-5-07, 4901:2-5-10, 4902:2-5-11, 4901:2-5-12, 4901:2-5-13, and 4901:2-5-14 be rescinded; new Ohio Adm.Code 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-05, 4901:2-5-07, 4901:2-5-10, 4902:2-5-11, 4901:2-5-12, 4901:2-5-13, and 4901:2-5-14 be adopted; amended Ohio Adm.Code 4901:2-5-15 be adopted as amended; and existing Ohio Adm.Code 4901:2-5-08 be approved and adopted. It is, further,

ORDERED, That the rescinded and adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:2-5 shall be in compliance with R.C. 119.032. It is, further,

ORDERED, That a copy of this Finding and Order without the attached rules be served upon the Transportation list-serve. It is, further,

ORDERED, That a copy of this Finding and Order without the attached rules be served upon Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Farm Bureau Federation, and any other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

M. Beth Trombold

Lynn Slaby

Asim Z. Haque

JML/sc

Entered in the Journal

MAY 14 2014

Barcy F. McNeal

Barcy F. McNeal
Secretary

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4901:2-5-01 Definitions.

- (A) "Authorized personnel" means employees of the commission's transportation department authorized to conduct inspections of motor vehicles and drivers, and employees of the state highway patrol designated by the superintendent to conduct inspections of motor vehicles and drivers.
- (B) "Commercial motor vehicle" when used in connection with a motor carrier operating in intrastate commerce, has the same meaning as in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, when operated by a for-hire motor carrier, and the same meaning as in 49 C.F.R. 383.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, when operated by a private motor carrier.
- (C) "Commercial vehicle safety plan" has the same meaning as in 49 C.F.R. 350.105, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (D) "Commission" means the public utilities commission of Ohio.
- (E) "Excepted carrier" means a person excepted as a for-hire motor carrier under section 4923.01(B)(1) through (B)(9) of the Revised Code or a person excepted as a private motor carrier under section 4923.02(A)(1) through (A)(9) of the Revised Code.
- (F) "For-hire motor carrier" has the same meaning as in section 4923.01 of the Revised Code.
- (G) "Hazardous material" has the same meaning as in 49 C.F.R. 171.8, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (H) "Hazardous materials transporter" means a person engaged in the highway transportation of hazardous materials, in intrastate commerce, by motor vehicles that are not commercial motor vehicles.
- (I) "Immediate destination" is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.
- (J) "Imminent hazard" means any condition of a motor vehicle, driver, or operation which is likely to result in serious injury or death if not discontinued immediately.

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- (K) "Inspection report" means the Driver Vehicle Examination Report prescribed by the U.S. department of transportation pursuant to 49 C.F.R. 396.9, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, to record the results of inspections conducted by authorized personnel.
- (L) "Interstate commerce" has the same meaning as in section 4923.01 of the Revised Code.
- (M) "Intrastate commerce" means any trade, traffic, or transportation within Ohio which does not meet the definition of interstate commerce.
- (N) "Medical examiner" has the same meaning as in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (O) "Motor carrier" includes all for-hire motor carriers and private motor carriers operating commercial motor vehicles in intrastate commerce. "Motor carrier" also includes those defined in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, operating in Ohio in interstate commerce.
- (P) "Motor Carrier Safety Assistance Program" is the federal grant program described in 49 C.F.R. 350.101, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (Q) "Motor vehicle" has the same definition as in section 4921.01 of the Revised Code and includes commercial motor vehicles.
- (R) "Offeror" means any person that is subject to the regulations contained in 49 C.F.R. 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, by reason of offering hazardous materials for transportation by motor vehicle into, within, or through Ohio.
- (S) "Private motor carrier" has the same meaning as in section 4923.01 of the Revised Code.
- (T) "Public highway" has the same meaning as in 4923.01 of the Revised Code.
- (U) "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

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fifty air mile radius of the normal work reporting location of the driver. This definition shall not apply to the transportation of hazardous materials in a quantity requiring placarding pursuant to 49 C.F.R. 172, subpart f, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.

4901:2-5-02 Purpose and scope.

- (A) This chapter governs the establishment and enforcement of safety standards applicable to the operations of motor carriers, excepted carriers, hazardous materials transporters, and offerors.
- (B) 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.
- (C) 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 May 14, 2014.

4901:2-5-03 Adoption and applicability of U.S. department of transportation safety standards.

- (A) The commission hereby adopts the provisions of the regulations of the U.S. department of transportation contained in 49 C.F.R. 40, 367, 380, 382, 383, 385, 386, 387, and 390 to 397, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, unless specifically excluded or modified by a rule of this commission, and those portions of the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as are applicable to transportation or offering for transportation of hazardous materials by motor vehicle. A violation by any person subject to these regulations shall constitute a violation of the commission's rules.
- (B) All motor carriers operating in intrastate commerce shall conduct their operations in accordance with the provisions of this chapter and the regulations adopted pursuant to paragraph (A) of this rule. With respect to such regulations as applicable to motor carriers operating in intrastate commerce, any notices or requests permitted or required to be made to the U.S. department of transportation

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or officials thereof shall instead be made to the director of the commission's transportation department.

- (C) All motor carriers engaged in interstate commerce within Ohio shall operate in conformity with all regulations of the U.S. department of transportation, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (D) All offerors shall operate in conformity with the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (E) All hazardous materials transporters shall operate in conformity with the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (F) All excepted carriers shall operate in conformity with the regulations of the U.S. department of transportation contained in 49 C.F.R. 383, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code. as applicable, and the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (G) Enforcement of the regulations adopted pursuant to paragraph (A) of this rule, shall be subject to any exemptions granted by the U.S. department of transportation and shall be consistent with interpretations issued by the U.S. department of transportation.
- (H) Title 49 C.F.R. 395.3, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, does not apply to 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 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:

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- (a) More than twelve hours following ten consecutive hours off duty; or
- (b) For any period after having been on duty sixteen hours following ten consecutive hours off duty.
- (2) No 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) In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.
- (4) Paragraphs (H)(1) (H)(2), and (H)(3) of this rule shall not apply when the commission grants applicable regulatory relief from the hours-of-service requirements pursuant to rule 4901:2-5-05 of the Administrative Code.

4901:2-5-04 Qualifications of drivers.

- (A) No motor carrier, excepted carrier, or hazardous materials transporter shall operate or permit the operation of a motor vehicle in intrastate commerce by a person under the age of eighteen years. No motor carrier, or excepted carrier, shall operate or permit the operation of a commercial motor vehicle transporting hazardous materials in a quantity or of a type that requires the motor vehicle to be placarded pursuant to 49 C.F.R. 172, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, in intrastate commerce, 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), as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, shall not apply to a driver

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operating in intrastate commerce who has been a single employer driver as defined in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, of a motor carrier, for a continuous period which began before January 1, 1987, so long as the driver continues to be a regularly employed driver of that 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 (C) of rule 4901:2-5-02 of the Administrative Code, may obtain provisional medical certification for operating commercial motor vehicles in intrastate commerce under the following conditions:

- (1) A driver may obtain a packet of materials prescribed by the commission to be used by the driver and the medical examiner in conducting a medical examination for provisional medical certification. The medical examiner must be listed on the National Registry of Certified Medical Examiners administered by the U.S. department of transportation and current on all requirements to perform an examination for a provisional medical certification. Included in the packet will be instructions to assist the medical examiner in making an evaluation.
- (2) Prior to visiting the medical examiner, a driver shall submit to the commission a completed "Certification of Driver Employment" form on which the driver shall certify the conditions of the driver's past and current employment, including employer name and contact information, dates of employment, size and type of vehicles operated, types of cargo transported, accident history, and any additional information deemed necessary by the commission. After reviewing the driver's employment history and experience, the commission shall return a copy of the "Certification of Driver Employment" form to the driver and provide the driver with the "Medical Examiner's Provisional Certificate" form, prescribed by the commission, for the medical examiner to complete.
- (3) The medical examination shall be performed in accordance with 49 C.F.R. 391.43, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, and shall be recorded on the examination form prescribed by that part. If the medical examiner finds that the driver cannot be certified in accordance with 49 C.F.R. 391.41 as effective the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, but that the

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driver can safely operate commercial motor vehicles under certain conditions, the medical examiner may provisionally certify the driver.

- (4) To provisionally certify a driver, the medical examiner must complete the "Medical Examiner's Provisional Certificate" in lieu of the "Medical Examiner's Certificate" prescribed in 49 C.F.R. 391.43, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code. The medical examiner shall indicate on the provisional certificate the limitations under which the medical examiner finds the driver can safely operate a commercial motor vehicle, including but not limited to, restrictions on the size and type of vehicle operated, hours operated per day, and any other work activities performed in addition to driving. A copy of the provisional certificate shall be provided to the driver.
- (5) A copy of the completed provisional certificate shall be submitted to the commission. The commission shall confirm receipt by placing a stamp upon the provisional certificate and then returning a copy of it to the driver. A provisional certificate shall not be effective unless stamped by the commission. The driver shall provide a copy of the provisional certificate to the driver's employer, which shall be kept in the employer's driver qualification file in the same manner as the medical examiner's certificate, as required by 49 C.F.R. 391.51, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code. A driver must possess a copy of the provisional certificate at all times when operating a commercial motor vehicle.
- (6) A driver who has obtained provisional medical certification shall be re-examined one year from the date of the medical examination, or such shorter time as the medical examiner may prescribe, and shall obtain a new provisional certificate pursuant to the requirements of this rule, except that the driver shall not be required to submit a new "Certification of Driver Employment" form prior to obtaining a "Medical Examiner's Provisional Certificate" form from the commission.
- (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 the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (8) Provisional medical certification under this rule shall be ineffective to qualify a driver to drive in interstate commerce, to transport hazardous materials in a quantity or of a type that requires the motor vehicle to be placarded pursuant

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to 49 C.F.R. 172, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, to transport passengers for hire, to operate a motor vehicle designed to transport sixteen or more passengers, including the driver, or to operate a commercial motor vehicle beyond the scope of any restrictions indicated by the medical examiner.

- (9) After notice and opportunity for a hearing conducted pursuant to Chapter 4901-1 of the Administrative Code, the commission may invalidate the provisional medical certification issued by the medical examiner upon its finding that continued operations by the driver constitute an unreasonable risk of harm to the public.

4901:2-5-05 Relief from regulation.

- (A) The Commission may grant a motor carrier operating in intrastate commerce, a temporary exemption from some or all provisions of this Chapter when any of the following apply:
- (1) When such action is consistent with regulatory relief issued by the U.S. department of transportation for carriers in interstate commerce.
 - (2) When the chairperson of the commission or the chairperson's designee has declared a transportation-specific emergency due to severe weather conditions, earthquake, flood, drought, fire, famine, epidemic, pestilence, unusual interruption of any public utility services, or other calamitous visitation or disaster.
 - (3) When the governor of this state has declared an emergency.
- (B) Because situations necessitating temporary exemption pursuant to paragraph (A) of this rule are often unforeseeable, the commission may designate one or more of its employees to issue a document granting such exemptions.
- (C) The director of the commission's transportation department may grant regulatory relief to motor carriers operating in intrastate commerce from the hours of service regulations when any of the following apply:
- (1) When the U.S. department of transportation has issued a notice granting regulatory relief to motor carriers in interstate commerce. The relief shall be equivalent in scope, coverage, and duration to that granted by the U.S. department of transportation.

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- (2) When the U.S. department of transportation has not acted and an application for regulatory relief is made by a motor carrier or trade association representing motor carriers pursuant to the following procedure:
- (a) The applicant shall submit to the director a request for regulatory relief which shall include an explanation of the circumstances necessitating the requested regulatory relief and how the circumstances have impacted motor carrier operations.
 - (b) Following receipt of a request, the director may grant temporary regulatory relief in cases where the applicant has stated adequate grounds for relief. The notice granting temporary regulatory relief shall be in writing, signed by the director, and shall state the scope, coverage, and duration of the relief.
 - (c) Regulatory relief granted pursuant to paragraph (B)(2) of this rule is subject to the following limitations and conditions:
 - (i) No motor carrier that has been declared out-of-service, has had its authority to operate revoked, or otherwise has been ordered to cease operations, by the U.S. department of transportation or the commission, shall be qualified to operate under the regulatory relief.
 - (ii) A motor carrier operating under the regulatory relief shall keep a copy of the notice granting regulatory relief in each motor vehicle operating under such relief and shall maintain it at the motor carrier's principal place of business for 180 days from the expiration of the relief.
 - (iii) Nothing in a grant of regulatory relief shall limit or otherwise alter a motor carrier's duty to monitor its drivers, to maintain record of duty status in conformance with 49 C.F.R. 395, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, and to ensure its drivers are not operating while ill, fatigued, impaired, or otherwise unable to safely operate a commercial motor vehicle.
- (D) No exemption or other relief from regulation granted pursuant to paragraphs (A) or (C) of this rule shall be construed to relieve a person from compliance with the regulations of the U.S. department of transportation contained in 49 C.F.R. 383, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, and the regulations contained in 49 C.F.R. 107,

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subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to rule 4901:2-5-03 of the Administrative Code.

(E) The commission may, upon its own motion or upon a request by a motor carrier or other interested party:

- (1) Submit an application to the U.S. department of transportation to obtain an exemption for state laws and regulations for specific industries involved in intrastate commerce, pursuant to 49 C.F.R. 350.343, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (2) Submit an application to the U.S. department of transportation for a variance from the federal motor carrier safety regulations for intrastate commerce pursuant to 49 C.F.R. 350.345, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.

4901:2-5-07 Out-of-service vehicles and drivers.

(A) Authorized personnel may declare "out-of-service":

- (1) Any commercial motor vehicle, operated by a motor carrier, which by reason of its mechanical condition or loading would likely cause an accident or breakdown.
- (2) Any motor vehicle or driver that is found to be in violation of rule 4901:2-5-03 of the Administrative Code, as applicable, and such violation meets the North American Standard Out-of-Service Criteria adopted and disseminated by the Commercial Motor Vehicle Safety Alliance.
- (3) Any motor vehicle or driver operating in violation of an "imminent hazard" order issued in accordance with rule 4901:2-5-14 of the Administrative Code.
- (4) Any motor vehicle being operated in intrastate commerce by a for-hire motor carrier that does not have a current and valid certificate of public convenience and necessity pursuant to the rules in Chapter 4901:2-21 of the Administrative Code.

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- (B) Motor vehicles declared "out of service" shall be marked with an appropriate sticker, which shall not be removed until the defects prompting the out-of-service declaration have been satisfactorily remedied so that the out-of-service condition no longer exists.
- (C) Drivers declared "out-of-service" shall remain out-of-service until such time that all conditions required by law, rule, or the out-of-service declaration have been met.
- (D) No person shall operate or permit the operation of a motor vehicle that has been declared "out of service," or permit a driver that has been declared "out-of-service", to operate a commercial motor vehicle except under the following conditions:
 - (1) The motor vehicle may be towed in accordance with 49 C.F.R. 396.9, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
 - (2) If the motor vehicle is located beside the traveled portion of a highway, or contains hazardous materials and is located at a place where parking of hazardous materials is not permitted it may be escorted by authorized personnel to the nearest safe location, provided that doing so would enhance public safety more so than if the motor vehicle was not relocated.
- (E) In addition to vehicles and drivers declared "out-of-service" pursuant to paragraph (A) of this rule, the following shall be considered to be "out-of-service":
 - (1) A motor vehicle or driver that has been declared "out-of-service" by another federal, state, Canadian, or Mexican jurisdiction, until such time that the out-of-service condition has been satisfactorily remedied.
 - (2) Motor vehicles being operated in interstate commerce by a motor carrier that has been declared "out-of-service", has had its authority to operate revoked, or otherwise has been ordered to cease operations by the U.S. department of transportation in accordance with 49 C.F.R. 385.13, 385.105, 385.111, 385.308, 385.325, 385.337, 386.72, 386.83, 386.84, and 392.9a, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
 - (3) Motor vehicles being operated in intrastate commerce by a motor carrier that is under an out-of-service order issued pursuant to 49 C.F.R. 385.13 or 386.72, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.

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- (F) All persons subject to this rule shall comply with any additional measures or conditions as directed by authorized personnel 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.

“No Change”

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.

4901:2-5-10 Marking of vehicles.

- (A) All motor carriers operating in intrastate commerce shall comply with the marking requirements of 49 C.F.R. 390.21, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, except:
- (1) The identification number issued by the commission preceded by the letters PUCO may be displayed in lieu of a U.S. department of transportation (USDOT) number.
 - (2) Private motor carriers operating in intrastate commerce are not required to display a USDOT or PUCO number.
- (B) The director of the commission's transportation department may grant a written exemption from any or all of the requirements of paragraph (A) 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 USDOT number, or the identification number issued by the commission, in lieu of company name.

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- (C) A motor carrier granted an exemption pursuant to this rule shall keep a copy of the notice granting the exemption in each motor vehicle operated by the motor carrier and shall maintain it at the motor carrier's principal place of business.
- (D) No motor carrier shall display the identification of another motor carrier or other entity, nor shall any motor carrier transmit an electronic signal falsely identifying itself as another motor carrier or other entity.

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

- (A) No motor carrier, excepted carrier, or hazardous materials transporter shall fail to submit to an inspection conducted by authorized personnel pursuant to rule 4901:2-5-13 of the Administrative Code, nor shall any motor carrier, excepted carrier, or hazardous materials transporter deviate from its route for the purpose of circumventing or evading an inspection.
- (B) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier, excepted carrier, or hazardous materials transporter 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, excepted carrier, or hazardous materials transporter operating the vehicle within twenty-four hours, the driver shall immediately mail or electronically transmit the report to the motor carrier, excepted carrier, or hazardous materials transporter.
- (C) Each motor carrier, excepted carrier, or hazardous materials transporter shall examine the inspection report and ensure that any violations or defects noted on the report are corrected prior to the motor vehicle's next dispatch. The motor carrier, excepted carrier, or hazardous materials transporter shall, within fifteen days following the inspection, certify that all violations noted have been corrected by completing the appropriate portion of the inspection form and returning it to the address indicated on the inspection report, or by certifying it electronically. No person shall falsely certify that violations have been corrected.

“Rescind”

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~~

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~~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".~~

4901:2-5-13 Inspection program.

(A) For the purpose of enforcing the provisions of Chapters 4921 and 4923 of the Revised Code, and Chapter 4901:2-5 of the Administrative Code, authorized personnel may enter in or upon any motor vehicle of any motor carrier, excepted carrier, or hazardous materials transporter, to inspect the motor vehicle, driver, documents, or cargo. Such inspections shall be conducted in accordance with the following guidelines:

- (1) Motor vehicles, drivers, documents, or cargo are subject to inspection when located:
 - (a) Upon any public roadway, public property, or private property open to the public.
 - (b) On any other premises if the inspection is conducted with permission of the owner or person in control of the property.
- (2) Authorized personnel shall utilize the following criteria in determining which motor vehicles, drivers, documents, or cargo to inspect:
 - (a) Complaints received and processed by the headquarters staff of the commission's transportation department, or staff of the highway patrol, and issued to field employees.
 - (b) Observed possible violations of any statutes and rules identified in paragraph (A) of this rule.
 - (c) Knowledge that a driver or motor vehicle was recently inspected and had been declared "out-of-service" at the time of inspection, or that the motor carrier, excepted carrier, or hazardous materials transporter was found to be operating without required authority, registration, permits, or insurance, as applicable.

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- (d) Motor vehicles, motor carriers, excepted carriers, and hazardous materials transporters designated by the headquarters staff of the commission's transportation department as "special interest".
 - (e) Any uniform statistical selection procedure, such as every fifth motor vehicle or every motor vehicle entering an inspection site.
 - (f) Any inspection selection system developed by the U.S. department of transportation.
 - (g) By request of a peace officer or state trooper at an accident scene or traffic stop.
 - (h) In response to an incident involving the release or possible release of hazardous materials.
 - (i) Any motor vehicle transporting radioactive materials for which pre-notification is required by, and made pursuant to, section 4163.07 of the Revised Code.
 - (j) Passenger carrying motor vehicles at a point of origin or destination.
 - (k) Any bus, as defined in section 4513.50 of the Revised Code, operating in intrastate commerce, that does not have on display the safety inspection decal required pursuant to section 4513.51 of the Revised Code.
 - (l) By request of the U.S. department of transportation.
- (3) Results of an inspection conducted pursuant to paragraph (A) of this rule shall be recorded on an inspection report.
- (4) Authorized personnel may enter in and upon any area of a motor vehicle as necessary to complete their duties (except for knowingly entering portions of the motor vehicle used exclusively for the personal possessions of the driver), and enter any cargo area or compartment. If a cargo area of a motor vehicle is locked or sealed, the operator of the motor vehicle shall provide immediate access to the cargo area. When the operator is unable to provide immediate access to a locked or sealed cargo area, authorized personnel 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 authorized personnel shall be replaced with a numbered seal.

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- (5) Motor carriers, excepted carriers, and hazardous materials transporters shall provide authorized personnel with reasonably expeditious access to any documents or property necessary to conduct an inspection pursuant to paragraph (A) of this rule.
- (6) To determine whether a substance being transported on a motor vehicle is a hazardous material, authorized personnel may obtain a sample.
- (7) An inspection report may be amended at any time subsequent to an inspection as further investigation or the discovery of additional information warrants. The motor carrier, excepted carrier, or hazardous materials transporter that was subject to the inspection shall be notified of any amendments.
- (B) Authorized employees of the commission's transportation department may enter in or upon the premises of any motor carrier, excepted carrier, hazardous materials transporter, or offeror to interview employees and examine any motor vehicles, records, documents, or property, for the purpose of assessing its compliance with the provisions of Chapters 4921 and 4923 of the Revised Code, and Chapter 4901:2-5 of the Administrative Code. Authorized employees of the commission's transportation department may also require that any motor carrier, excepted carrier, hazardous materials transporter, or offeror provide records, documents, or property to be examined off-site. All examinations shall be conducted in accordance with the following guidelines:
 - (1) Authorized employees of the commission's transportation department shall utilize the following criteria in determining which motor carriers, excepted carriers, hazardous materials transporters, and offerors to select for examination:
 - (a) Pursuant to standards established by the U.S. department of transportation in connection with this state's participation in the Motor Carrier Safety Assistance Program.
 - (b) Pursuant to criteria authorized by this state's commercial vehicle safety plan submitted to and approved by the U.S. department of transportation in connection with this state's participation in the Motor Carrier Safety Assistance Program.
 - (c) Complaints processed by the commission's transportation department headquarters staff.

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- (2) Examinations shall be conducted in a manner consistent with 49 C.F.R. 385, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, and the standards and protocols of the U.S. department of transportation as required by virtue of this state's participation in the Motor Carrier Safety Assistance Program.
- (3) Motor carriers, excepted carriers, hazardous materials transporters, and offerors shall provide authorized employees of the commission's transportation department with reasonably expeditious access to employees, motor vehicles, records, documents, or property as necessary to conduct an examination pursuant to paragraph (B) of this rule.

4901:2-5-14 Imminent hazard.

- (A) Whenever it is determined that a violation of Chapters 4921 or 4923 of the Revised Code, or Chapter 4901:2-5 of the Administrative Code poses an imminent hazard to safety, the commission may order a motor carrier, excepted carrier, or hazardous materials transporter to cease all or part of its intrastate operations in this state. In making any such order, no restrictions shall be imposed on any motor carrier, excepted carrier, or hazardous materials transporter beyond that required to abate the hazard.
- (B) Upon the issuance of an order under this rule, the motor carrier, excepted carrier, hazardous materials transporter shall comply immediately with such order. An order to a motor carrier, excepted carrier, or hazardous materials transporter to cease all or part of its operations shall not prevent motor vehicles in transit at the time the order is served from proceeding to their immediate destination, unless any such motor vehicle or driver is specifically ordered out-of-service forthwith. However, motor carriers, excepted carriers, or hazardous materials transporters proceeding to their immediate destination shall be subject to compliance with the commission's order upon arrival.
- (C) The commission may, prior to issuing an order under this rule, order a motor carrier, excepted carrier, or hazardous materials transporter to show cause why the commission should not issue an order requiring that it cease all or part of its operations; or the commission may issue an order under this rule without a prior hearing, provided that the motor carrier, excepted carrier, or hazardous materials transporter 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

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than seven days and no more than fifteen days following the request for hearing.
All hearings shall be conducted in accordance with Chapter 4901:1 of the
Administrative Code.

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

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