

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Rule           )  
4901:2-5-02, Ohio Administrative Code.        ) Case No. 09-1928-TR-ORD

ENTRY

The Commission finds:

- (1) The Commission files its administrative rules pursuant to the requirements of Section 111.15 of the Revised Code. In accordance with the requirements of that section, the Commission must file a proposed rule with the secretary of state, the legislative service commission and the Joint Commission on Agency Rule Review (JCARR) before the rule can become effective.
- (2) On October 24, 2007, the Commission issued an entry in Case No. 07-1095-TR-ORD that provided notice and opportunity for comment regarding the amendment and rescission of certain rules in Chapter 4901:2-5, Ohio Administrative Code (O.A.C.).
- (4) Former Rule 4901:2-5-05, O.A.C., provided that the "hours of service" regulations contained in,

Title 49, C.F.R. 395, shall not apply to any motor carrier when transporting passengers or property in intrastate commerce within Ohio with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, unusual interruption of electric, gas, telephone or pipeline service, or other calamitous visitation or disaster.

The regulations in 49 C.F.R. 395 set forth the hours-of-service regulations for drivers in interstate commerce. The hours-of-service rules for intrastate commerce are found in Rule 4901:2-5-02(E), O.A.C.

- (5) On March 5, 2008, following a period of time in which no comments were received, the Commission issued an entry that,

in part, inadvertently rescinded the Commission's ability to grant any relief from hours-of-service regulations.

- (6) The ability to grant relief from hours-of-service regulations for drivers in intrastate commerce is necessary for the safety of the citizens of Ohio during times of emergency and to insure that motor carriers can respond in the event that an emergency occurs. Therefore, we are amending Rule 4901:2-5-02 by adding paragraph (E)(3) to authorize the Commission to grant relief from intrastate hours-of-service regulations when certain events occur. The attached amended Rule 4901:2-5-02 should be adopted and filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission.
- (7) To preserve the public health and safety, proposed amended Rule 4901:2-5-02 should also be filed as an emergency rule, pursuant to Division (2)(B) of Section 111.15, Revised Code, to ensure that, if an emergency arises during the next 90 days, the Commission has the ability to act while the proposed rule is subject to legislative review at JCARR.

It is, therefore,

ORDERED, That attached amended Rule 4901:2-5-02, O.A.C., be adopted and 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 Section 111.15, Revised Code. It is, further,

ORDERED, That the rule be effective on the earliest day permitted by law. Unless ordered otherwise by the Commission or the Joint Committee on Agency Rule Review, the next review date for Rule 4901:2-5-02, O.A.C., is November 30, 2014. It is, further,

ORDERED, That proposed amended Rule 4901:2-5-02 be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission as an emergency rule, pursuant to Division (2)(B) of Section 111.15, Revised Code. It is, further,

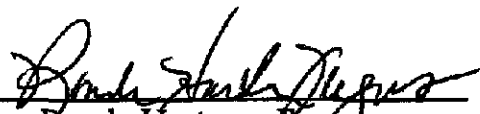
ORDERED, That a copy of this entry and the attached rule be served upon the Ohio State Highway Patrol, Ohio Railroad Association, Ohio Trucking Association, and Ohio Household Goods Movers Association.

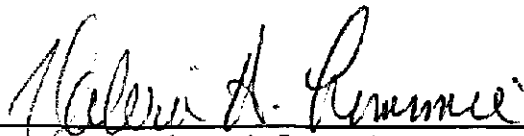
ORDERED, That a copy of this entry and the attached rule be served upon the Ohio State Highway Patrol, Ohio Railroad Association, Ohio Trucking Association, and Ohio Household Goods Movers Association.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

  
Ronda Hartman Fergus

  
Valerie A. Lemmie

  
Cheryl L. Roberto

SEF:ct

Entered in the Journal

DEC 16 2009



Renee J. Jenkins  
Secretary

**\*\*\* DRAFT - NOT YET FILED \*\*\***

4901:2-5-02

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

- (A) The commission 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, 382, 383, 385, 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 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

(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 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 1, 2008.