

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) Section 119.032, Revised Code, 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. Chapter 4901:2-5, Ohio Administrative Code (O.A.C.), sets forth the rules for safety standards for motor transportation companies and drivers.
- (2) Section 119.032(C), Revised Code, requires that the Commission determine:
 - (a) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;
 - (b) Whether the rule needs amendment or rescission to give more flexibility at the local level;
 - (c) Whether the rule needs amendment to eliminate unnecessary paperwork; and
 - (d) Whether the rule duplicates, overlaps with, or conflicts with other rules.
- (3) By entry of June 24, 2009, the Commission sought comments on proposed amendments to some of the rules contained in this chapter including the elimination of the exemption of maximum driving time rules as they relate to private motor carriers engaged in the intrastate transportation of construction materials and equipment. Staff also recommended the adoption of three sections of the federal regulations in Rule 4901:2-5-02(A) and the update of the effective date to 2009, in order to insure that the rules are in compliance with Federal Motor Carrier Safety Act. In addition, staff recommended that

Rules (E) and (F), which address special hours of service standards for intrastate private carriers of construction materials, be deleted.

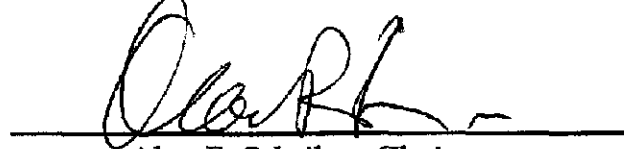
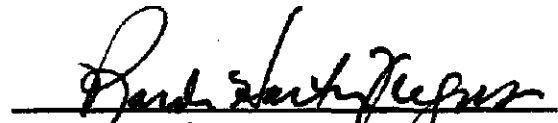
- (4) Comments on these proposed amendments were filed by Ohio Aggregates & Industrial Minerals Association, Ohio Concrete/Ohio Ready Mixed Concrete Association, Anderson Concrete Corporation, Transportation Advocacy Group of Northwest Ohio, and The Ohio Trucking Association.
- (5) Upon review of the filed comments, the staff has proposed that its initial modifications to this rule be further changed so that both for-hire and private motor carriers involved in the intrastate transportation of construction equipment and materials would be eligible for the exemption. According to staff, the proposed amendments also would bring the amount of off-duty and driving time eligibility consistent with the federal safety standards. In addition, the proposed changes would simplify the compliance and enforcement to the hours of service rules. A copy of the proposed amended rule is attached to this entry.
- (6) The Commission requests comments from interested persons to assist in the review required by Section 119.032(C), Revised Code. Comments should be filed in this docket, in writing, with the Commission's Docketing Division by March 31, 2010. All comments must be sent to: The Public Utilities Commission of Ohio, Docketing Division, 11th floor, 180 East Broad Street, Columbus, Ohio 43215.

It is, therefore,

ORDERED, That comments on the attached amended rule be filed in accordance with Finding (6). It is, further,

ORDERED, That a copy of this entry be served upon the Ohio Petroleum Marketers Association, the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Aggregates & Industrial Minerals Association, Ohio Concrete/Ohio Ready Mixed Concrete Association, Anderson Concrete Corporation, Transportation Advocacy Group of Northwest Ohio, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman
Paul A. Centolella
Ronda Hartman Fergus
Valerie A. Lemmie
Cheryl L. Roberto

SEF/vrm

Entered in the Journal

MAR 10 2010Renee J. Jenkins
Secretary

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, 367, 380, 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 as on the date referenced in paragraph (~~GH~~) 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 or motor transportation company engaged in the intrastate transportation of construction materials and equipment shall

permit or require any driver used by it to drive a commercial motor vehicle, nor shall any driver drive a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after:

- (a) More than ~~twelve~~ eleven cumulative hours following ~~eight~~ ten consecutive hours off duty; or
 - (b) For any period after ~~having been on duty sixteen hours~~ the end of the fourteenth hour after coming on duty following ~~eight~~ ten consecutive hours off duty.
 - (c) A driver engaged in the intrastate transportation of construction materials and equipment is exempt from the requirements in (E)(1)(b) if the driver has returned to the driver's normal work reporting location and the motor carrier released the driver from duty at that location for the previous five duty tours the driver has worked; the driver has returned to the normal work reporting location and the carrier releases the driver from duty within sixteen hours after coming on duty following ten consecutive hours off duty; and the driver has not taken this exemption within the previous six consecutive days, except when the driver has begun a new seven- or eight-day period with the beginning of any off-duty period of twenty-four or more consecutive hours.
- (2) No private motor carrier or motor transportation company 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 a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after:
- (a) Having been on duty ~~seventy~~ sixty 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~~ seventy hours in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

Any period of seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more consecutive hours.

- (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) A driver operating a property-carrying commercial motor vehicle for which a commercial driver's license is not required under Title 49 C.F.R. 383 must operate in accordance with the requirements in 49 C.F.R. 395.1(e)(2).
- (G) 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 placards pursuant to 49 C.F.R. 172, subpart f.
- (GH) 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~~2010.