

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Chapter)
4901:2-9, of the Ohio Administrative Code) Case No. 10-166-TR-ORD
Regarding the Shipment of Nuclear)
Materials.)

ENTRY

The Commission finds:

- (1) Sections 4163.07 and 4905.801, Revised Code, provide that no person shall transport or cause to be transported any shipment of high-level radioactive waste, spent nuclear fuel, transuranic waste, or any quantity of special nuclear material or by-product material within, into, or through the state, unless the person provides notice to the executive director of the emergency management agency of the state, who shall immediately notify the Commission, and pays a fee to the Commission.
- (2) Section 4905.802, Revised Code, provides that all fees collected under Section 4905.801, Revised Code, shall be used for: (1) state and local expenses, including inspections, escorts, security, emergency management services, and accident response; (2) planning, coordination, education, and training of emergency response providers, law enforcement agencies, and other appropriate state or local entities; (3) purchase and maintenance of monitoring, medical, safety, or emergency response equipment and supplies; (4) administrative costs of the Commission and other state or local entities; (5) other similar expenses determined by the Commission to be appropriate.
- (3) Section 4905.802(B)(1), Revised Code, provides that the Commission may adopt rules as necessary to implement Sections 4905.801 and 4905.802, Revised Code.
- (4) The staff of the Commission has prepared proposed rules in accordance with Section 4905.802(B)(1), Revised Code. These rules govern the establishment, payment, and crediting of fees applicable to the transportation of high-level radioactive waste, spent nuclear fuel, and transuranic waste material within, into or through this state by railroad or motor carrier and the

creation of the radioactive waste transportation fund. A copy of the proposed rules is attached to this entry.

- (5) The Commission requests comments from interested persons to assist in the review of staff's proposed rules. Comments should be filed by April 7, 2010. Reply comments should be filed by April 21, 2010. All comments should include Case No. 10-166-TR-ORD and be sent to: Public Utilities Commission of Ohio, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215.

It is, therefore,

ORDERED, That comments on the attached rules be filed in accordance with Finding (5). It is, further,

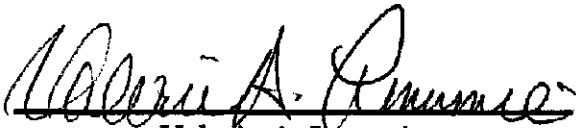
ORDERED, That a copy of this entry, with the attached rules, be served upon the Ohio Trucking Association, Ohio Railway Association, Ohio Department of Health, Ohio Department of Public Safety, Ohio Department of Transportation, Ohio Emergency Management Agency, Ohio Association of Chiefs of Police, Buckeye State Sheriff's Association, Ohio State Firefighters Association, Ohio Fire Chief's Association, Ohio Association of Professional Fire Fighters, Ohio Municipal League, County Commissioners' Association of Ohio, Ohio Township Association, The Emergency Management Association of Ohio, U.S. Department of Energy, MDS Nordion, Steris Corporation, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

Paul A. Centolella



Valerie A. Lemmie

Ronda Hartman Fergus



Cheryl L. Roberto

SEF/sc

Entered in the Journal

MAR 17 2010



Renee J. Jenkins
Secretary

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4901:2-9-01 Definitions.

As used in this chapter:

- (A) "Cask" means a "radioactive package" or "packaging" as defined in section 173.403 of Title 49 of the Code of Federal Regulations (C.F.R.).
- (B) "C.F.R." means code of federal regulations.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Motor Carrier" means a "private motor carrier" as defined in section 4923.02 of the Revised Code or a "motor transportation company" as defined in 4921.02 of the Revised Code.
- (E) "Railroad" has the same meaning as defined in section 4907.02 of the Revised Code.
- (F) "Shipment" has the same meaning as defined in section 4163.07 of the Revised Code.
- (G) "Shipper" has the same meaning as a "person who offers hazardous materials" as defined in section 171.8 of Title 49 of the C.F.R., effective in accordance with paragraph (B) of rule 4901:2-9-01 of the Administrative Code.

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4901:2-9-02

Purpose and scope.

- (A) This chapter governs the establishment, payment and crediting of fees applicable to the transportation of material subject to division (A)(1) of section 4163.07 of the Revised Code within, into or through the state of Ohio by railroad or motor carrier and the creation of the radioactive waste transportation fund.
- (B) The regulations established in 49 Code of Federal Regulations (C.F.R.) 171.8, 100 through 185, and 173.403, shall be the versions adopted in final form.

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4901:2-9-03

Fees.

(A) For each shipment within, into, or through the state of Ohio, at least four days prior to the date of the shipment of a material subject to division (A)(1) of section 4163.07 of the Revised Code, but not excluded by section 4905.801 of the Revised Code, a motor carrier or railroad shall pay to the commission the following:

(1) Two thousand five hundred dollars for each shipment by a motor carrier;

(2) Four thousand five hundred dollars for the first cask designated for transport by rail; and

(3) Three thousand dollars for each additional cask designated for transport by rail that is shipped by the same person or entity in the same shipment.

(B) Payments shall be made using a certified check or money order payable to "Treasurer, state of Ohio", and mailed along with all requisite forms as provided in rule 4901:2-9-04 of the Administrative Code, to the director of transportation, or public utilities commission of Ohio designee, 180 E. Broad Street, Columbus, Ohio 43215-3793.

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4901:2-9-04

Payment of fees.

(A) A motor carrier or railroad required to pay fees pursuant to rule 4901:2-9-03 of the Administrative Code, shall submit payment and all requisite forms prescribed by the commission. Such forms shall, at a minimum, contain all of the following:

(1) The name of the entity that will be responsible for the shipment, including any doing business as (dba) names;

(2) Contact person including name, title, organization name, email address, phone number(s); and address of physical principal place of business, including city, state, and zip code. Post office (PO) boxes are not acceptable;

(3) In the case of a motor carrier, the motor carrier's United States department of transportation number shall also be provided;

(4) The date of the shipment;

(5) The shipment origin;

(6) The shipment destination;

(7) List of radionuclides required to be documented on the hazardous material shipping paper(s) and label(s) as specified in Subpart C of Title 49, sections 100 through 185 of the C.F.R. effective in accordance with paragraph (B) of rule 4901:2-9-01 of the Administrative Code, and the activity of those radionuclides described in systems international units;

(8) For shipments by motor carriers, the state that will perform the commercial vehicle safety alliance, level VI inspection, prior to the arrival of the shipment in the state of Ohio;

(9) For rail shipments, the number of casks that will be shipped;

(10) The total amount of fees due; and

(11) The total amount of fees being paid.

(B) Upon payment and satisfactory completion of all forms, each motor carrier or railroad shall be issued a receipt that shall serve as proof that payment has been made.

(C) In the event that a form is incomplete, the commission shall, in a timely manner, contact the motor carrier or railroad using the contact information of record on file with the commission; to advise on all deficiencies of the forms in order that the

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motor carrier or railroad can correct any inadequacies. The motor carrier is responsible for providing the commission with updated contact information.

- (D) The receipt shall be retained by the driver on the vehicle during the shipment.
- (E) At the conclusion of the shipment, the driver shall provide the receipt to the motor carrier which shall retain the receipt for a period of 18 months from the date of the shipment.
- (F) Should a shipment be delayed or rescheduled to a date other than that which was contained in the original application, a motor carrier or railroad may request to change the applicable date. Such requests shall be made in writing to the commission and submitted immediately once the change of date is known. Any fees paid for the original shipment date shall be applied to the new date and a revised receipt shall be issued.

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4901:2-9-05

Refund of payments.

(A) A motor carrier or railroad required to pay fees pursuant to rule 4901:2-9-03 of the Administrative Code may request a refund of payments made for the following reasons:

(1) The planned shipment was canceled or rerouted, and did not nor will pass through the state of Ohio;

(2) For a railroad shipment, the number of casks that were shipped through the state of Ohio was less than the amount that was originally paid for under rule 4901:2-9-03 of the Administrative Code; or

(3) An escort by a state or local police agency was provided.

(B) The amount of such refund shall be equivalent to the actual incurred costs of the police agency, but shall not exceed the amount paid minus the costs incurred by the commission related to the shipment.

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4901:2-9-06 Penalties.

- (A) Whoever violates section 4905.801 (A) of the Revised Code shall be liable for a civil penalty in an amount not to exceed ten times the amount of the fee that is due under rule 4901:2-9-03 of the Administrative Code.
- (B) In the administration of such violations, the commission shall follow the procedures set forth in section 4901:2-7 of the Administrative Code.

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4901:2-9-07

Radioactive waste transportation fund.

(A) The commission shall administer a program to oversee shipments of radioactive materials that meet the definition of section 4163.07 of the Revised Code. Such a program shall include, but not be limited to, all of the following:

(1) Processing of applications and payments by motor carriers and railroads related to shipments of nuclear materials;

(2) Administration of the radioactive waste transportation fund;

(3) Radioactive materials survey, commercial vehicle inspection, and escort of shipments;

(4) Assessment of civil forfeitures for violations;

(5) Planning, monitoring, coordinating, educating, and training related to shipments of radioactive materials;

(6) Purchase and maintenance of monitoring and medical, safety equipment and supplies;

(7) Costs related to the administration of the program.

(B) To the extent the commission incurs expenses related to sections 4163.07, 4905.801 or 4905.802 of the Revised Code, reimbursement shall be made to the commission for such activities from the radioactive waste transportation fund.

(C) To the extent a state agency or local government incurs expenses pursuant to section 4905.802 of the Revised Code, a state agency or local governmental entity may request, from the commission, reimbursement of such expenses as they relate to the transportation of radioactive materials subject to division (A)(1) of section 4163.07 of the Revised Code for the following purposes:

(1) Inspections, escorts, security, and emergency management services;

(2) Accident response;

(3) Planning, monitoring, coordinating, educating, and training of emergency response providers, law enforcement agencies, and other appropriate entities;

(4) Purchase and maintenance of monitoring, medical, safety or emergency response equipment and supplies;

(5) Administrative costs;

- (6) Any other expenses deemed appropriate by the commission.
- (D) A state or local government seeking reimbursement under division (C) of this rule shall provide to the commission the following information:

 - (1) A list of items purchased containing the name of each item, description, vendor, price paid, date of purchase, reason for purchase, and its purpose;
 - (2) A detailed description of what the item will be used for;
 - (3) How often it is anticipated the item will be used;
 - (4) The source of all funds used to pay for the item;
 - (5) A justification of why the item was purchased;
 - (6) The total amount of the expense incurred, less the total amount reimbursed or eligible to be reimbursed under other state or federal programs.
- (E) To the extent funds are available, an application(s) for reimbursement (AFR) under this rule shall be processed on an annual basis.

 - (1) An AFR will be solicited by staff of the commission prior to the end of each fiscal year;
 - (2) Staff of the commission shall review each AFR for completeness;
 - (3) The director of the transportation department shall make recommendations to the commission as to which AFR should be approved and the amount of the refund;
 - (4) The commission shall review all AFRs and make awards through an order of the commission based upon the merits of each request.
- (F) To the extent an expense incurred has been reimbursed, is eligible to be reimbursed, or has been paid for through other state or federal funding sources, the total amount eligible to be reimbursed shall be the total amount of the expense incurred less the total amount reimbursed or eligible to be reimbursed from other sources.