

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of)	Case No. 07-1020-TR-ORD
Chapters 4901:2-6 and 4901:2-8,)	Case No. 07-1021-TR-ORD
Ohio Administrative Code.)	

FINDING AND ORDER

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies, every five years, to conduct a review of each of its rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules.
- (2) Section 119.032(C), Revised Code, requires that the Commission determine whether:
 - (a) The rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;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) The rule needs amendment or rescission to give more flexibility at the local level;
 - (c) The rule needs amendment to eliminate unnecessary paperwork; and
 - (d) The rule duplicates, overlaps with, or conflicts with other rules.
- (3) In making the determinations required by Section 119.032(C), Revised Code, the Commission considered those matters set forth in that section, as well as the continued need for these rules, the nature of any complaints or comments received concerning these rules, and any relevant factors that have changed in subject matter area affected by the rule.

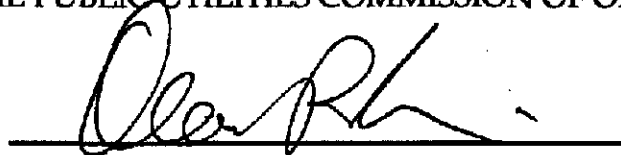
- (4) In addition, on February 12, 2008, the governor of the state of Ohio issued Executive Order 2008-04S (executive order), entitled "Implementing Common Sense Business Regulation," which sets forth several factors to be considered in the promulgation of rules and requires the Commission to review its existing body of promulgated rules. Specifically, among other things, the Commission must review its rules to ensure that each of its rules is needed in order to implement the underlying statute; must amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that unnecessarily impede economic growth, or that have had unintended negative consequences; and must reduce or eliminate areas of regulation where federal regulation now adequately regulates the subject matter.
- (5) Previously, the Commission issued an entry of public notice and comment on Chapters 4901:2-6 and 2-8, Ohio Administrative Code (O.A.C.). The comment period expired, and no comments were filed. Following the initial comment period, staff made additional revisions to the rules in Chapters 4901:2-6 and 2-8, O.A.C., and the Commission believes it appropriate to allow a short additional comment period. Therefore, any interested person may file comments in this docket, in writing, with the Commission's Docketing Division by May 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 rules be filed in accordance with Finding (5). It is, further,

ORDERED, That a copy of this entry be served upon the Ohio State Highway Patrol, Ohio Rail Association, the Ohio Trucking Association. The Northeast Ohio Areawide Coordinating Agency, National Tank Truck Carriers, Inc., Ohio Environmental Council, Ohio Petroleum Marketers & Convenience Store Association, Ohio Petroleum Council, Ohio Environmental Protection Agency, Division of Hazardous Waste Management, Ohio Propane Gas Association, Ohio Chemistry Technology Council, and any other interested parties of record.

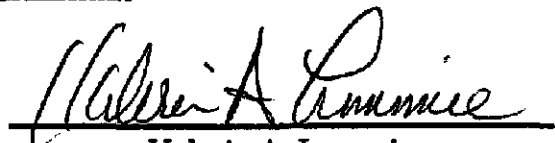
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



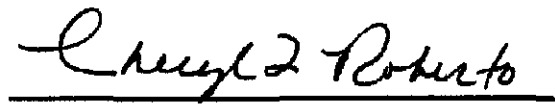
Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser

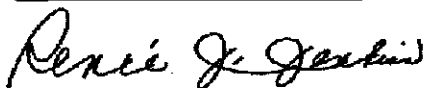


Cheryl L. Roberto

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Entered in the Journal

MAY 19 2010



Renee J. Jenkins
Secretary

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4901:2-6-01 Definitions.

- (A) "Applicant" means any carrier who submits a uniform registration and permit application to the commission.
- (B) "Carrier" means any carrier subject to rules adopted under section 4919.76 of the Revised Code, motor transportation company as defined in section 4921.02 of the Revised Code, contract carrier by motor vehicle as defined in section 4923.02 of the Revised Code, or private motor carrier as defined in section 4923.20 of the Revised Code, which transports the following in commerce into, within, or through this state:
- (1) Hazardous materials of a type and amount that requires the transport vehicle to be placarded pursuant to 49 C.F.R. 172, as referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.
 - (2) Hazardous substances or marine pollutants when transported in bulk packagings as defined by 49 C.F.R. 171.8, as referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.
 - (3) Hazardous waste of a type and amount that requires the shipment to be accompanied by a uniform hazardous waste manifest pursuant to 40 C.F.R. 262, as referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Hazardous material" means a substance or material, including a hazardous substance, which has been determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and which has been so designated in 49 C.F.R. 171 to 180, as referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.
- (E) "Hazardous waste" means any material that is subject to the hazardous waste manifest requirements of the United States environmental protection agency specified in 40 C.F.R. 262, as referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.
- (F) "Knowingly" means a person acts knowingly if either of the following applies:
- (1) The person has actual knowledge of the facts giving rise to a violation.
 - (2) A reasonable person acting in the circumstances and exercising due care would have such knowledge.

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4901:2-6-02

Purpose and scope.

This chapter governs procedures for the uniform registration and uniform permitting of carriers of hazardous materials.

(A) Pursuant to its jurisdiction under Title 49 of the Revised Code, the commission may for good cause shown as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.

(B) Each citation contained within this chapter that is made to a section of the United States code or 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 19, 2010.

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4901:2-6-03

Determination of base state.

(A) Each applicant shall determine its base state pursuant to the following priority:

(1) If a motor carrier operates only in a state or states that require the uniform program registration (part I) and uniform program permit (part II) the motor carrier's base state shall be:

(a) The state that is the motor carrier's principal place of business, i.e., where the applicant maintains its central records related to the transportation of hazardous materials, or

(b) If the state that is the motor carrier's principal place of business is not participating in the uniform program, the state that is a participating jurisdiction in which the motor carrier records the most miles traveled based on the percentages reported in the uniform program registration application.

(2) If a motor carrier operates in one or more states that require the uniform program permit, the motor carrier's base state shall be:

(a) The state that is the motor carrier's principal place of business, if such a state is a participating jurisdiction and requires the national permit; or

(b) If the state that is the motor carrier's principal place of business is not a participating jurisdiction or does not require the national permit, the state that is a signatory and requires the national permit in which the motor carrier records the most miles traveled.

(c) If the applicant transports hazardous waste in a state that requires the part III disclosure, the applicant should still submit its application to the state identified above regardless of whether it requires part III. That state, if not a part III state, will subcontract with the part III state in which the applicant reports the most miles in the uniform program registration application.

(3) A motor carrier may request that the governing board approve a participating jurisdiction as the base state other than that identified by the method above, if, and only if, the following criteria are satisfied:

(a) Such request is not based on an attempt by the motor carrier to circumvent any requirement of the uniform program or avoid enforcement of the program requirements by its current base state or any other participating jurisdiction;

(b) Approval of the request will improve administration of the uniform program; and

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(c) The governing board consults with the jurisdiction that would otherwise be the base state and such jurisdiction concurs with the motor carrier's request.

(B) Each applicant shall register with and apply for a permit from its base state as determined by this rule. If the base state of the applicant is the state of Ohio, the applicant shall register with and apply for a permit from the commission.

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4901:2-6-04

Part I uniform program registration application form.

- (A) A carrier shall register with the commission by completing and submitting a uniform program registration form promulgated by the commission. This form may change from time to time without further commission entry.
- (B) Staff will maintain a current, updated copy to provide to applicants. A copy of the form will be posted on the commission's web site.
- (C) The applicant shall complete the uniform program registration form in its entirety and supply all required attachments and affidavits.
- (D) Failure to utilize the current uniform program registration form, as well as failure to include the required attachments, may result in immediate dismissal of the new application.

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4901:2-6-05

Part II uniform program permit form.

- (A) A carrier shall apply for a uniform program permit to transport hazardous waste from the commission by completing and submitting a uniform program permit form promulgated by the commission. This form may change from time to time without further commission entry.
- (B) Staff will maintain a current, updated copy to provide to applicants. A copy of the form will be posted on the commission's web site.
- (C) The applicant shall complete the uniform program permit form in its entirety and supply all required attachments and affidavits.
- (D) Failure to utilize the current uniform program permit form, as well as failure to include the required attachments, may result in immediate dismissal of the new application.

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4901:2-6-06

**Part III additional information required from motor carriers
of hazardous waste.**

- (A) Carriers that transport hazardous waste shall complete and submit all additional information required by the commission on forms promulgated by the commission. This form may change from time to time without further commission entry.**
- (B) Staff will maintain a current, updated copy of all forms to provide to applicants. A copy of the form will be posted on the commission's web site.**
- (C) The applicant shall complete all requisite forms in their entirety and supply all required attachments and affidavits.**

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4901:2-6-08

Supplementation of information.

- (A) Upon a written request from the staff, each applicant shall provide any additional information related to information requested in the uniform registration and/or uniform permit application necessary for the processing of a uniform registration and/or uniform permit application within fifteen days, unless otherwise agreed to by the applicant and the staff.
- (B) Each applicant shall notify the commission within thirty days of any change in the applicant's safety rating issued by the United States department of transportation ~~USDOT~~ and if any insurance policy, reported to the commission pursuant to paragraph (E) of rule 4901:2-6-05 of the Administrative Code is ~~cancelled without being replaced or the cancellation of any insurance policy unless it is replaced, without interruption,~~ by similar or higher coverage.
- (C) Each applicant shall report to the commission, in writing, any additions or other changes to the information provided ~~disclosed on the part III disclosure form~~ in accordance with rule 4901:2-6-06 of the Administrative Code, within ninety days after the date of such addition or change.

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4901:2-6-09 Fees.

- (A) The processing fee for a uniform program registration and/or uniform program permit application shall be fifty dollars.
- (B) Each applicant shall submit an apportioned per vehicle registration fee. This fee shall be calculated by rounding up to the nearest whole number the product of the number of power units reported by the applicant times the Ohio international registration plan percentage reported by the applicant times the percentage of hazardous materials activity reported by the applicant times the registration fee of twenty dollars per vehicle.
- (C) The fee to submit a –part III disclosure form in accordance with rule 4901:2-6-06 of the Administrative Code shall be six hundred dollars.
- (D) In the event that an applicant submits an inaccurate or incomplete part III disclosure form that ~~which~~ requires additional investigation by the staff, the commission may, after notice and an opportunity for a hearing pursuant to Chapter 4901-1 of the Administrative Code, assess a fee for such additional investigation, to be calculated at the rate of thirty dollars per hour for each hour of additional investigation by the staff, but not to exceed six hundred dollars.
- (E) Each applicant shall submit the registration fee for each reciprocity state in which the applicant operated in the previous calendar year. The commission shall distribute fees collected on behalf of reciprocity states to the appropriate reciprocity state and pay any fees required by the alliance for uniform hazmat transportation procedures-repository of the hazardous materials alliance.

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4901:2-6-10 ***Term of uniform program registration and uniform program permit.***

- (A) Each carrier shall file a uniform program ~~part-I~~ registration application described in rule 4901:2-6-04 of the Administrative Code on an annual basis.
- (B) The term of the uniform program permit to transport hazardous materials shall be for three years from the permit issue date ~~registration date established by this rule.~~

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4901:2-6-11 Standards for the suspension, revocation or denial of a uniform program permit.

The commission may, after notice and an opportunity for hearing pursuant to rule 4901:2-6-12 of the Administrative Code, suspend or revoke or deny an application for a uniform program permit, the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into, within or through this state by a carrier issued a uniform program permit by a reciprocity state, if the commission determines that:

- (A) Such carrier has been issued an "unsatisfactory" safety rating by the United States department of transportation USDOT federal highway administration, pursuant to 49 C.F.R. 385, referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code ~~as effective on November 30, 2002.~~
- (B) Such carrier has knowingly falsified a material fact in a uniform program registration or uniform program permit application.
- (C) Such carrier has violated the federal hazardous materials regulations ~~regulations~~, 49 C.F.R. 171 to 180, the federal motor carrier safety regulations, 49 C.F.R. 382, 383, 387, 390 to 397, or its state equivalents, or any order of the commission issued to secure compliance with any such division or rule when transporting hazardous materials or offering hazardous materials for transportation, and such violation poses an imminent hazard to the public or the environment.
- (D) Such carrier has exhibited reckless disregard for the public and the environment, pursuant to the following factors:
 - (1) Whether such carrier has engaged in a pattern of violations of the hazardous materials regulations, 49 C.F.R. 171 to 180, the federal motor carrier safety regulations, 49 C.F.R. 40, 382, 383, 387, 390 to 397, as referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code, or its state equivalents, not complied with any ~~an~~ order of the commission issued to secure compliance with the hazardous materials regulations or the federal motor carrier safety regulations when transporting hazardous materials or offering hazardous materials for transportation, or ~~of~~ regulations for the management of hazardous waste issued pursuant to the Resource Conservation and Recovery Act, as amended, or its state equivalents, including consideration of the number of truck-miles such carrier transports hazardous materials within the state and the number of vehicles in such carriers fleet.
 - (2) The actual or potential level of environmental damage resulting from any incident or finding of violation of the provisions enumerated above.
 - (3) The response by the carrier to any incident or findings of violation of the provisions enumerated above.

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- (4) Such carrier's history of violations for the past three years.
 - (5) Any mitigating factors such carrier chooses to present at a hearing before the commission.
 - (6) Such other matters as justice requires.
- ~~(E) The federal hazardous materials regulations, 49 C.F.R. 171 to 180 and the federal motor carrier safety regulations, 49 C.F.R. 40, 382, 383, 387, and 390 to 397, as effective on November 30, 2002.~~

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4901:2-6-12 **Proceedings related to the suspension, revocation or denial of a uniform program permit.**

- (A) A proceeding ~~Proceeding~~ for the suspension or ~~revocation of~~ or the denial of an application for, the uniform program permit of a carrier shall be initiated by the filing of a staff report recommending the suspension, revocation, or the denial of an application for the uniform permit of such carrier. This staff report shall be served upon the carrier by ordinary United States mail.
- (B) Upon the filing of a staff report, the commission shall ~~issue an order in the proceeding ordering the carrier to show cause why its uniform program permit should not be suspended or, revoked or it application denied.~~ This order shall be served upon the carrier by certified mail, return receipt requested.
- (C) A carrier which has been served with an order pursuant to paragraph (B) of this rule may file a response within fifteen days of service of the order. This response shall be in writing and may include a detailed statement why the actions proposed to be taken by staff may be unjustified, mitigating circumstances regarding the proposed action, including subsequent remedial measures undertaken by the carrier to address any issues raised in the notice, and any other information relevant to the proposed action and/or a request for an evidentiary hearing.
- (D) Within fifteen days, but no earlier than seven days, after the filing of a response under paragraph (C) of this rule, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case, shall issue an entry scheduling ~~shall hold~~ an evidentiary hearing. The evidentiary hearing may consist of written stipulations, oral testimony, or such other evidence which is admitted.
- (E) A final commission order suspending ~~or, revoking,~~ or denying an application for the uniform program permit of the carrier shall be issued within ninety days after the conclusion of the evidentiary hearing, unless otherwise ordered by the commission.
- (F) Except as otherwise provided by this rule, all proceedings under this rule shall be conducted in accordance with Chapter 4901-1 of the Administrative Code.

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4901:2-6-13 Notices of intent to suspend, revoke or deny.

- (A) The staff may issue a "~~notice~~Notice of ~~intent~~Intent to ~~suspend~~Suspend", "~~notice~~Notice of ~~intent~~Intent to ~~revoke~~Revoke" or "~~notice~~Notice of ~~intent~~Intent to ~~deny~~Deny" to a carrier before it files a staff report recommending to the commission the suspension, revocation or denial of a uniform program permit. The notice shall contain the action proposed to be taken by the staff, a brief statement of the basis for such action, and instructions regarding the manner in which the carrier may serve a response upon the staff.
- (B) A carrier to whom a "~~notice~~Notice of ~~intent~~Intent to ~~suspend~~Suspend", "~~notice~~Notice of ~~intent~~Intent to ~~revoke~~Revoke" or "~~notice~~Notice of ~~intent~~Intent to ~~deny~~Deny" has been served may serve a response upon the staff. The response shall be in writing and shall contain a detailed statement why the actions proposed to be taken by staff may be unjustified, mitigating circumstances regarding the proposed action, including subsequent remedial measures undertaken by the carrier to address any issues raised in the notice, and any other information relevant to the proposed action.
- (C) A "~~notice~~Notice of ~~intent~~Intent to ~~suspend~~Suspend", a "~~notice~~Notice of ~~intent~~Intent to ~~revoke~~Revoke", a "~~notice~~Notice of ~~intent~~Intent to ~~deny~~Deny" or a response to any such notice may be served by ordinary United States mail or by email or facsimile transmission. Service by ordinary United States mail is complete upon mailing, and service by facsimile transmission is complete upon transmission.
- (D) No offers or discussion of settlement of information contained in a "~~notice~~Notice of ~~intent~~Intent to ~~suspend~~Suspend", a "~~notice~~Notice of ~~intent~~Intent to ~~revoke~~Revoke", a "~~notice~~Notice of ~~intent~~Intent to ~~deny~~Deny" or a response to any such notice served upon the staff shall be admissible in any subsequent administrative hearing regarding the subject matter of such a notice or response.
- (E) The purpose of this rule is to provide an alternative dispute resolution process in order to avoid litigation. A determination by the staff to issue or not to issue a "~~notice~~Notice of ~~intent~~Intent to ~~suspend~~Suspend", "~~notice~~Notice of ~~intent~~Intent to ~~revoke~~Revoke" or "~~notice~~Notice of ~~intent~~Intent to ~~deny~~Deny" shall not in any way prejudice the right of the commission to suspend, or revoke or to deny an application for the uniform permit of any carrier.

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4901:2-6-14 **Prohibitions.**

- (A) No carrier may transport hazardous materials, in commerce, into, within, or through this state unless such carriers has registered with, and received a uniform program - permit from, the commission or a reciprocity state.
- (B) No carrier may transport hazardous waste, in commerce, into, within, or through this state unless such carrier has submitted a "Part III Disclosure Form" described in rule 4901:2-6-06 of the Administrative Code with its uniform program permit application and has received a uniform permit from the commission or a reciprocity state.
- (C) No carrier may transport hazardous materials, in commerce, into, within, or through this state if the commission, or a reciprocity state, has suspended, or revoked or denied the application for the uniform program permit of such carrier. No carrier which has been issued a uniform program permit by a reciprocity state may transport hazardous materials, in commerce, into, within, or through this state if the commission has ordered the suspension of the transportation of hazardous materials into, within, or through this state by such carrier.
- (D) No person shall knowingly falsify or fail to submit to the commission any data, reports, records, or other information required to be submitted under this chapter.

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4901:2-8-01

Definitions.

As used in this chapter:

- (A) "Designated routes" means those highway routes on which hazardous materials must be transported.
- (B) "Hazardous materials" means nonradioactive hazardous materials in quantities requiring placards by 49 C.F.R. 172, as effective on May 19, 2010.
- (C) "Restricted routes" means those highway routes on which hazardous materials may not be transported.

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4901:2-8-02

Purpose and scope.

- (A) This chapter governs all proceedings of the commission to establish routing designations applicable to the highways transportation of nonradioactive hazardous materials, in quantities requiring placards by 49 C.F.R. 172, as referenced in paragraph (C) of this rule, into, through, or with in this state as authorized by section 4905.81 of the Revised Code.
- (B) Pursuant to its jurisdiction under Title 49 of the Revised Code, the commission may for good cause shown as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.
- (C) Each citation contained within this chapter that is made to a section of the United States code or 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 as effective on May 19, 2010.

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4901:2-8-03

Northeast Ohio.

- (A) As used in this rule, "northeast Ohio" means the following counties in the state of Ohio: Cuyahoga, Geauga, Lake, Lorain, Medina.
- (B) As used in this rule, "through transportation" means the transportation of hazardous materials which has neither a place of origin nor a destination in northeast Ohio.
- (C) The following routes shall be designated routes for the through transportation of hazardous materials in northeast Ohio:
- (1) Interstate 90 from the Lake/Ashtabula county line to interstate 271 in Lake county.;
 - (2) Interstate 80 and interstate 80/90 (Ohio Turnpike) from gate 13 in Portage county to the Lorain/Erie county line.;
 - (3) Interstate 271 from interstate 90 in Lake county to interstate 71 in Medina county.;
 - (4) Interstate 77 from interstate 80 in Cuyahoga county to interstate 271 in Summit county.;
 - (5) Interstate 71 from interstate 80 in Cuyahoga county to Medina/Wayne county line.;
 - (6) Interstate 480 from interstate 80, gate 13 in Portage county to interstate 271 in Summit county.;
 - (7) Interstate 480 from interstate 480N in Cuyahoga county to interstate 80 in Lorain county.;
 - (8) Interstate 480N from interstate 271 to interstate 480 in Cuyahoga county.
- (D) The following routes shall be restricted routes for the through transportation of hazardous materials in northeast Ohio:
- (1) Interstate 90 from interstate 271 in Lake county to interstate 80/90 in Lorain county.;

- (2) Interstate 71 from interstate 80 to interstate 90 in Cuyahoga county,;
- (3) Interstate 77 from interstate 80 to interstate 90 in Cuyahoga county,;
- (4) Interstate 490 from interstate 90 to interstate 77 in Cuyahoga county,;
- (5) State route 2 from state route 44 to interstate 90 in Lake county,;
- (6) State route 44 from state route 2 to interstate 90 in Lake county,;
- (7) Interstate 480 from interstate 271 to interstate 480N in Cuyahoga county,; and
- (8) Any other highway or state or local road not otherwise designated for the transportation of hazardous materials by this rule.

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4901:2-8-04

Prohibitions.

No motor carrier shall transport hazardous materials into, through or within the state of Ohio unless the motor carrier operates in compliance with this chapter.