

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) By entry of March 5, 2008, in *In the Matter of the Amendment of Rules 4901:2-5-01 and 4901:2-5-02 and the Rescission of Rules 4901:2-5-03, 4901:2-5-05, and 4901:2-5-06, Ohio Administrative Code*, Case No. 07-1095-TR-ORD (07-1095), the Commission approved amendments to Chapter 4901:2-5, Ohio Administrative Code (O.A.C.), including a revision to Rule 4901:2-5-01, O.A.C., which was, in part, initiated to insure compliance with the Federal Motor Carrier Safety Rules (FMCSR). This revision eliminated an exemption from the definition of a motor vehicle so that private commercial motor vehicles (CMVs) with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or in the absence of the GVWR or GCWR, the gross vehicle weight or gross combination weight between 10,001 and 26,000 pounds, operating in intrastate commerce, would now be subject to the Commission's safety jurisdiction.
- (2) Because of the nature of the change to Rule 4901:2-5-01, O.A.C., the Commission believed that it would not be in the best interests of the industry to proceed with active enforcement without first undertaking an education and outreach program. As a result, on June 9, 2010, the Commission issued a supplemental entry in 07-1095 that, among other things, directed that safety violations cited against carriers and/or drivers operating CMVs between 10,001 and 26,000 pounds

GVWR or GCWR, in intrastate commerce, would not be assessed a civil forfeiture or monetary penalty until January 1, 2011, except in specified situations.

- (3) Subsequent to the June 9, 2010 entry, the Commission initiated this case, pursuant to Section 119.032, Revised Code, which 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.
- (4) By entries of July 29, 2010, and August 17, 2010, in this case, the Commission extended the time period within which interested parties could file comments on proposed changes to Chapter 4901:2-5, O.A.C. In addition, in response to some of the comments filed in this docket, the Commission staff developed an education and outreach program, and corresponded with numerous carrier and industry associations, and conducted a number of seminars, to assist affected companies relative to compliance with the Commission's motor carrier safety regulations, and updated the Commission's website with information about the rules.
- (5) Further, on October 19, 2010, the Commission held a technical conference to discuss the motor carrier safety rules in Chapter 4901:2-5, O.A.C., the period of time necessary for education and outreach prior to assessment of civil forfeitures, education and outreach efforts that could be provided by the Commission prior to enforcement, and any other matters that would assist impacted businesses to transition and comply with the safety rules.
- (6) On November 17, 2010, the staff of the Commission filed a memorandum noting that, despite its efforts to provide outreach to affected industry and trade association representatives, there remains much uncertainty and confusion about the motor carrier

safety rules in Chapter 4901:2-5, O.A.C., for many companies and most of those companies need additional time within which to bring their operations into compliance with the rules. Therefore, staff recommended that the Commission consider extending its previously directed stay of active enforcement from January 1, 2011, to January 1, 2012. Further, staff recommended that enforcement of the rules at issue continue in the manner as directed in the June 9, 2010 entry in 07-1095. Finally, staff recommended that the Commission continue its education, outreach efforts, and dialogue with the industry and consider any proposed revisions to the rules that might be less burdensome on the industry without compromising on safety.

- (7) The Commission believes that the transportation community now subject to safety regulation under Chapter 4901:2-5, O.A.C., is unprepared for such regulation and the Commission believes that its duty is to assist the industry in that regard. Further, the Commission believes that it would not be fair to assess forfeitures for safety regulation violations committed by these newly affected entities until its education and outreach efforts have been accomplished. Therefore, the Commission declares that, until January 1, 2012, safety violations cited against carriers and/or drivers operating CMVs between 10,001 and 26,000 pounds GVWR or GCWR in intrastate commerce will not be assessed a civil forfeiture or monetary penalty, except in circumstances discussed below. This transitional period is intended to educate drivers and motor carriers. State motor carrier enforcement personnel should advise the driver/carrier of the violations and use the inspection as an opportunity to educate the driver/carrier. However, during this phase, enforcement may be taken only in cases where egregious violations of the safety regulations are

discovered. Egregious violations are those showing a blatant disregard for safety by the carrier or operator.

- (8) Enforcement personnel should also exercise discretion relative to the discovery of out-of-service violations discovered during an inspection involving a driver or vehicle now subject to Commission regulation under revised Rule 4901:2-5-01, O.A.C. Carriers and/or drivers should not be placed out-of-service at the roadside if it is determined that the vehicle may be safely moved a reasonable distance to resolve the violation.
- (9) We would note that, during the stay of enforcement, the Commission's staff will continue its outreach program to affected industry to ensure impacted businesses have a clear understanding and can transition and comply with these safety rules. In addition, we will establish a process in subsequent entries that will allow further comment by interested parties on these rules. Further, we will consider reasonable and appropriate revisions to the rules that simplify the provisions, address their appropriate applicability, and provide a means of mitigating financial burdens relating to compliance. Any revision will only be considered in the context of not compromising the safety goals of the rules. In addition, the Commission will keep parties informed via email and posting developments on these rules on our Website. Interested parties may subscribe to the Commission's Transportation Email List Serve at www.puco.ohio.gov/PUCO/Docketing by clicking on Industry Listserve Sign Up.

It is, therefore,

ORDERED, That the safety violations cited against carriers and/or drivers operating CMVs between 10,001 and 26,000 pounds GVW in intrastate commerce will not be assessed a civil forfeiture or monetary penalty until January 1, 2012, except in situations discussed herein. It is, further,

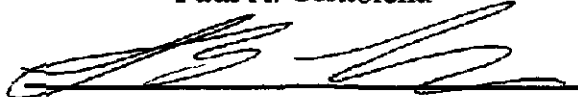
ORDERED, That a copy of this entry be served upon the Ohio Aggregates & Industrial Minerals Association, Ohio Concrete/Ohio Ready Mixed Concrete Association, Anderson Concrete Corporation, Transportation Advocacy Group of Northwest Ohio, and The Ohio Trucking Association, Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Gas Company, the Ohio Gas Association, Ohio Cable Telecommunications Association, Columbus Southern Power Ohio Power, Columbia Gas of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion East Ohio, Vectren Energy Delivery of Ohio, Inc., Dayton Power and Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Telecom Association, Duke Energy Ohio, Inc., AEP Ohio, Ohio Automobile Dealers Association, Ohio Oil and Gas Association, Flexible Pavements of Ohio, Ohio Petroleum Marketers & Convenience Store Association, Ohio Contractors Association, Ohio Nursery & Landscape Association, Ohio Roofing Contractors Association, Ohio Soft Drink Association, Ohio Lawn care Association, Ohio Grocers Association, Ohio Pest Management Association, Ohio Home Builders Association, Ohio Construction Suppliers Association, Volunteers of America Greater Ohio, Ohio Coin Machine Association, and all other interested persons of record.

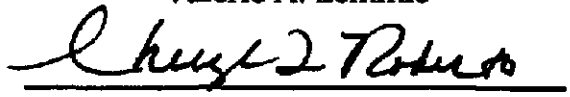
THE PUBLIC UTILITIES COMMISSION OF OHIO


 Alan R. Schriber, Chairman


 Paul A. Centolella


 Valerie A. Lemmie



 Steven D. Lesser


 Cheryl L. Roberto

SEF/sc

Entered in the Journal

~~NOV 22 2010~~


 Renee J. Jenkins
 Secretary