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FAX

OHIO AGGREGATES & INDUSTRIAL MINERALS ASSOCIATION

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January 29, 2014

PUCO Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RECEIVED-DOCKETING DIV
2014 JAN 30 AM 11:45
PUCO

On behalf of the *Ohio Aggregates & Industrial Minerals Association (OAIMA)*, we respectfully provide the following comments to:

**Proposed Rule Changes and Request for Comments, Case No. 13-1106-TR-ORD.
Concerning Rule 4901:2-5-03 (B)**

The Construction Hours of Service Exception provides those hauling and delivering aggregate and construction materials the added flexibility that is necessary during the short construction season.

Staff has proposed increasing the number of hours in the off duty status from 8 to 10 hours separating the 16 hours on duty. If the required off duty hours separating each on duty shift were changed to 10 hours off duty, this would push back the driver's starting time by two hours each consecutive day. The construction exception was created to maximize the limited amount of good weather needed by the aggregate and construction industry. Motor Carriers must coordinate their driver's hours with the entire construction industry during the peak construction season. Setting the starting time back by two hours each consecutive day does not allow the motor carrier to maximize the limited construction season and the limited number of drivers. In fact, it reduces the amount of time the motor carrier can schedule the driver during that peak construction season.

Staff unsuccessfully attempted to remove the Construction Hours of Service Exception in 2009. Requiring the additional 2 hours off duty between each 16 hours on duty shift would essentially remove the exception because the exception would no longer be productive or workable.

The members of the OAIMA and construction industry in Ohio are still in the process of recovery from the economic recession that started in 2008. Staff's attempt to satisfy the federal government during this continued economic recession is not timely. This unnecessary burden to the motor carrier has not been validated by the PUCO as necessary to preserve highway safety.

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**Proposed Rule Changes and Request for Comments,
Case No. 13-1106-TR-ORD.
Concerning Rule 4901:2-5-03 (H)**

This regulatory relief is afforded to a very small portion of the industry, private carriers, operating within a 50 mile radius of the facility. Ironically, the PUCO provides complete and unlimited exclusion of carriers working on road projects and hours of service exceptions to heating oil and propane transporters due to the extreme cold conditions during this winter. As well as the FMCSA has provided total relief of the hours of service to the utilities industry based upon their needs of flexibility and the lack of crash statistics that reflect a crash problem associated with driving long hours. This exception is limited to a 50 mile radius, has not negatively impacted traffic safety and does not necessarily increase the number of hours the drivers drive. In fact, during the peak of the construction season, much of the drivers' time spent on tasks other than driving.

This exception has been effective since 1998 and the PUCO has not provided any evidence that public safety has been compromised. Additionally, the FMCSA has not threatened to withhold any MCSAP funding due to incompatible rules. This exception has provided the industry with the needed flexibility and has not adversely affected the motoring public and therefore, should not be changed.

We respectfully, ask the PUCO to leave the minimum number of hours of off duty at 8 hours between each on duty shift of 16 hours.

Concerning 4501:2-5-04 (C) (1)

Staff has proposed changes to this rule to establish the beginning date of May 21, 2014 to require a driver to obtain a medical certification from a medical examiner who is listed on the National Registry of Certified Medical Examiners administered by the USDOT. The unanswered question is will the USDOT meet that May 21, 2014 deadline to have that program operational. PUCO should consider removing the language until the USDOT in fact have that system is operational.

FMCSA has recently extended the deadline for states to have the CDL driver's medical certification on the state's driver record which in an important step in that process. PUCO would be wise to postpone this requirement until proof of USDOT's ability to meet their deadline.

Concerning 4501:2-5-10

Staff proposed adding a provision to allow enforcement to place a vehicle "out of service" if a for-hire intrastate motor carrier does not have a valid certificate of public convenience and necessity. Staff should agree that the PUCO does not have the infrastructure or the resources necessary to provide the registration services needed by the industry. The PUCO does not offer same day service during renewal of the annual tax payments, insurance filings or civil forfeiture payments. A carrier cannot accomplish

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these payments electronically as promised to the industry when PUCO implemented PRISM. Staff should work towards providing that service to the industry before pursuing authority to placing vehicles out of service for the lack of documents that cannot be obtained in an efficient manner.

Placing a driver or vehicle or carrier out of service at the roadside is extremely expensive and a great hardship to those involved. This is especially true during the short construction season when timely deliveries of construction materials are critical. Additionally, there are many safety related issues associated with vehicle, driver and load disposition based on geographical area, weather, accommodation issues and a host of other factors that come into play. Out of service determinations should be reserved for safety reasons and not be punitive in its application.

In summary:

- We ask that the PUCO retain the requirement for 8 off duty hours between shifts. The current Construction Exception has not adversely affected highway safety and staff has failed to show any justification for the change.
- PUCO should delay the "medical examination" requirement until the USDOT has completed their National Registry of Medical Examiners.
- PUCO should apply the out of service authority to violations of the safety rules that meet the PUCO's own definition of Imminent Hazard found in 4901:2-5-01 (J) not administrative or economic rule violations. The out of service authority should not be used in a punitive manner, but used to preserve highway safety.

Respectfully Submitted,



Patrick A. Jacomet
Executive Director
Ohio Aggregates & Industrial Minerals Association