

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Rule )  
4901:2-5-02, Ohio Administrative Code. ) Case No. 03-2064-TR-ORD

ENTRY

The Commission finds:

- (1) The Commission files its administrative rules pursuant to the requirements of Section 111.15, of the Revised Code. In accordance with the requirements of this section the Commission must file its proposed amended rules with the secretary of state, the legislative service commission and the joint committee on agency rule review before the rule can become effective. In addition, this section also requires the Commission to comply with Sections 121.71 to 121.76 of the Revised Code when it incorporates by reference federal rules. This amendment is proposed in accordance with the requirements of Section 111.15, Revised Code.
- (2) The Motor Carrier Safety Assistance Program (MCSAP) is a federal grant program that provides financial assistance to Ohio to enforce the Federal Motor Carrier Safety Regulations (FMCSRs) and the Federal Hazardous Materials Regulations (HMRs) in an effort to reduce the number and severity of commercial motor vehicle accidents. To receive grant funds Ohio must meet the conditions contained in 49 C.F.R. 350.201. One of these conditions requires Ohio safety laws to be compatible with the FMCSRs and the HMRs. In addition, Ohio is required to designate a lead state agency that is responsible for ensuring that it meets the conditions required to receive MCSAP funds. The Public Utilities Commission of Ohio (PUCO) has been designated as that lead agency.
- (3) Rule 4901:2-5-02, Ohio Administrative Code (O.A.C.), incorporates by reference the FMCSRs and the HMRs as they were effective on March 27, 2003. Since March 27, 2003, the United States Department of Transportation has issued 14 final rules and/or interim final rules published in the Federal Register that have not been adopted by the Commission. Most of the final rules issued by the United States Department of Transportation (USDOT) contain technical amendments and clarifications and are not intended to affect a motor carrier or driver's regulatory burden. However, there are two substantive changes to the Federal Motor Carrier Safety Regulations and the Federal Hazardous Material Regulations that should be highlighted in this rulemaking.

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- (4) On April 18, 2003, the USDOT, Research and Special Programs Administration published a Final Rule (FR) pertaining to new cargo tank requirements. These amendments are intended to increase the safety of cargo tanks transporting materials, provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators, and manufacturers of cargo tank motor vehicles. (68 Fed. Reg. 19258 (2003)).
- (5) On April 28, 2003, the USDOT, Federal Motor Carrier Safety Administration (FMCSA) published a FR pertaining to new hours of service requirements. These amendments are intended to provide drivers with a better opportunity to sleep, and thereby reduce the incidence of crashes attributed in whole or in part to drivers operating commercial motor vehicles while drowsy, tired, or fatigued. This action is necessary because the FMCSA estimates that between 196 and 585 fatalities occur each year on the nation's roads because of drowsy, tired, or fatigued drivers. FMCSA estimates that when this new rule is adhered to it will save between 24 and 75 lives each year. (68 Fed. Reg. 22456 (2003)).
- (6) Consequently, this Entry seeks comments from all interested persons on the proposed amendment to Rule 4901:2-5-02, O.A.C. which is attached to this Entry. The proposed amendment changes the date that the Commission's rule incorporates by reference the FMCSRs and HMRs. This amendment states that the Commission has adopted the federal regulations as they were effective on October 17, 2003 and meets the requirements of Sections 111.15, and 121.75 of the Revised Code.
- (7) A fourteen-day comment period is established for the attached rules. Interested persons are requested to file their comments, in writing, with the Commission Docketing Division, 180 East Broad Street, Columbus, Ohio, 43215, by Monday, October 31, 2003.

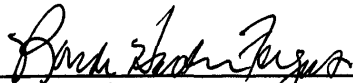
It is, therefore,

ORDERED, That a comment period, expiring on October 31, 2003 be established for public comments on the attached rules. It is, further,

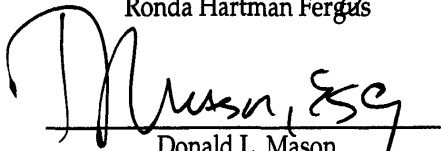
ORDERED, That a copy of this Entry and the Attachments, be served upon the Ohio State Highway Patrol, Ohio Trucking Association, Ohio Association of Movers, Ohio Petroleum Marketers Association, and the Ohio Propane Gas Association.

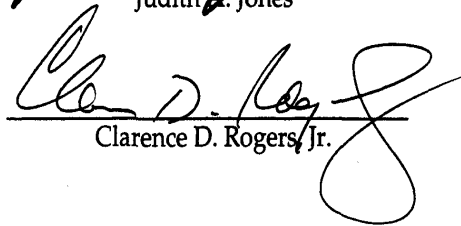
THE PUBLIC UTILITIES COMMISSION OF OHIO

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Alan R. Schriber, Chairman

  
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Ronda Hartman Fergus

  
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Judith A. Jones

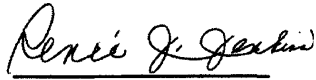
  
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Donald L. Mason

  
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Clarence D. Rogers, Jr.

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Entered in the Journal

**OCT 15 2003**

  
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Renee J. Jenkins

Renee 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, 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 on ~~March 27~~ OCTOBER 17, 2003. 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 engaged in the intrastate transportation of construction materials and equipment shall permit or require any driver used by it to drive nor shall any such driver drive:
    - (a) More than twelve hours following eight consecutive hours off duty;
    - (b) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

- (2) No private motor carrier 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, regardless of the number of motor carriers using the driver's services, for any period after:
  - (a) Having been on duty seventy 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 hours in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.
  
- (F) 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 placarding pursuant to 49 C.F.R. 172, subpart f.