

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Rule        )  
4901:2-5-02, Ohio Administrative Code.        ) Case No. 02-730-TR-ORD

ENTRY

The Commission finds:

- (1) On December 17, 2001, the Commission filed with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission (LSC), and the Secretary of State an amendment to Rule 4901:2-5-02, Ohio Administrative Code (O.A.C.), in its final form. This rule was amended to include Appendices A and B (Appendices) which contain the Federal Motor Carrier Safety Regulations (FMCSRs) in 49 C.F.R. Parts 382, 383, 387, and 390 through 397 and the Federal Hazardous Materials Regulations (HMRs) contained in 49 C.F.R. Parts 171 through 180. This rule became effective on December 27, 2001.
- (2) The Motor Carrier Safety Assistance Program (MCSAP) is a federal grant program that provides financial assistance to Ohio to enforce the FMCSRs and the 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) On May 2, 2002, the Commission issued an Entry for public notice and comment on the Commission's proposed adoption of 49 CFR Part 40, which includes certain requirements relating to alcohol and drug testing requirements for the motor carrier industry and gas pipeline safety. No comments were filed in the docket.
- (4) On June 18, 2002 the Governor signed into law Substitute Senate Bill 265, which will be effective September 17, 2002. S.B. 265 permits a state agency to incorporate by reference federal law and provides guidelines on how to do so. The Bill specifically includes new Sections 121.71 through 121.76 of the Revised Code. Section 121.72 of the Revised Code states that an agency which adopts a rule that incorporates material by reference must explain in the rule how to obtain a copy of the incorporated material and part of that explanation must include whether the material is available in a depository library or on a website. In addition, if the material that is incorporated by reference is subject to change the agency must

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specify the particular date or version of the text that is incorporated by reference.

- (5) As a result of Substitute Senate Bill 265, the Commission is approving proposed Rule 4901:2-5-02, which (a) adopts 49 CFR Part 40 by reference; (b) in place of appendices a and b which contained the FMCSRs and the HMRs, adopts the FMCSRs and HMRs by reference; (c) specifies the website where the reference materials is located; and (d) specifies the dated version of the referenced material.
- (6) Rule 4901:2-5-02, O.A.C. should be amended and filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission and the Secretary of State. Unless otherwise ordered by the Commission or the Joint Committee on Agency Rule Review, the five-year review date for the proposed amended rule should coincide with the next five-year review date of the rules contained in Chapter 4901:2-5, O.A.C., which is November 30, 2004.

It is therefore,

ORDERED, That the attached proposed Rule 4901:2-5-02, O.A.C., be adopted. It is, further,

ORDERED, That a copy of Rule 4901:2-5-02, O.A.C., as amended, be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission and the Secretary of State pursuant to Section 111.15, O.R.C. It is, further,

ORDERED, That the five-year review date for Rule 4901:2-5-02, O.A.C., shall coincide with the five-year review date of the rules contained in Chapter 4901:2-5, O.A.C., which is November 30, 2004. It is, further,


ORDERED, That a copy of this Entry and the Attachment, be served upon the Ohio State Highway Patrol, Ohio Trucking Association, Ohio Association of Movers, Ohio Petroleum Marketers Association, Ohio Propane Gas Association, Ohio Independent Drivers Association, Hazardous Materials Advisory Council, and American Trucking Association.

4901:2-5-02

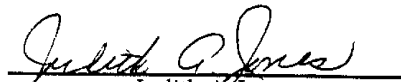
**4901:2-5-02 Adoption of U.S. department of transportation safety standards.**

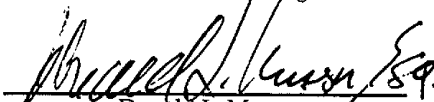
- (A) The commission hereby adopts the provisions of the motor carrier safety regulations of the U.S. department of transportation contained in Title 49, CFR Parts 40, 382, 383, 387 and 390 through 397, ~~in appendix A to this rule~~, unless specifically excluded or modified by a rule of this commission, and those portions of the hazardous materials transportation regulations contained in Title 49, CFR Parts 171 through 180, ~~in appendix B to this rule~~, as are applicable to transportation or offering for transportation by motor vehicle THAT ARE EFFECTIVE ON JULY 15, 2002. TITLE 49, CFR PARTS 40, 171 THROUGH 180, 382, 383, 387, AND 390 THROUGH 397 IS AVAILABLE AT THE OFFICES OF THE COMMISSION, 180 EAST BROAD STREET, COLUMBUS, OHIO 43215, AND THE FOLLOWING WEBSITE: [HTTP://WWW.ACCESS.GPO.GOV/NARA/CFR/CFRHTML 00/ TITLE 49/49TAB 00.HTML](http://www.access.gpo.gov/nara/cfr/cfrhtml/00/title_49/49tab_00.html). 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 Title 49, CFR Parts 390 through 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 Title 49, CFR Parts 171 through 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 Title 49, CFR Part 107 and shall be consistent with interpretations issued by the research and special programs administration, U.S. department of transportation.
- (E) Title 49, CFR Part 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; or

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Ronda Hartman Fergus

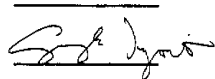
  
Judith A. Jones

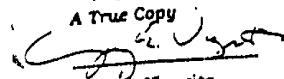
  
Donald L. Mason

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Clarence D. Rogers, Jr.

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Gary E. Vigorito  
Secretary

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Secretary

- (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 Title 49 U.S.C. 5103 in a quantity requiring placarding pursuant to Title 49 CFR part 172, subpart f.