

BEFORE


THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Rule)
4901:2-5-02, Ohio Administrative Code.) Case No. 05-1243-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 commission 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 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 October 17, 2003. Since October 17, 2003, the United States Department of Transportation has issued numerous 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's or

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driver's regulatory burden. However, there are some substantive changes to the FMCSRs and HMRs that should be highlighted in this rulemaking.

- (4) On October 30, 2003, the Research and Special Programs Administration (RSPA) issued a final rule clarifying the applicability of the HMRs to specific loading and unloading operations and storage of hazardous materials during transportation. This final rule was effective October 1, 2004.
- (5) On December 3, 2003, RSPA issued a final rule which revised incident reporting requirements of the HMRs and the hazardous materials incident report form. The revisions were designed to assure an increase in the usefulness of data collected for risk analysis and management by government and industry and, where possible, to provide relief from regulatory requirements.
- (6) On December 31, 2003, the Federal Motor Carrier Safety Administration (FMCSA) issued a final rule which provided for the use of a single form to be used when regulated industries undertake drug and alcohol testing of their employees.
- (7) On December 31, 2003, RSPA issued a final rule amending the HMRs to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMRs.
- (8) On January 26, 2004, RSPA issued a final rule amending requirements in the HMRs pertaining to the transportation of radioactive materials based on changes contained in the International Atomic Energy Agency (IAEA) publication, entitled "IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Material," 1996 Edition, No. TS-R-1. The purpose of this amendment is to harmonize requirements of the HMR with international standards for radioactive materials as well as to promulgate other DOT-initiated requirements.
- (9) On February 10, 2004, the RSPA revised procedures for applying for an exemption from the HMRs. The revision now requires certain applicants to certify compliance with provisions of the Safe Explosives Act. In addition, this rule adopted requirements

that carriers and vessel operators comply with applicable licensing requirements for drivers and crewmen, respectively.

- (10) On March 30, 2004, the FMCSA issued a final rule establishing standards for minimum training requirements for operators of longer combination vehicles and requirements for the instructors who train these operators. The rule became effective June 1, 2004. Additionally, on May 21, 2004, the FMCSA issued another final rule establishing requirements for mandatory training on four specific topics for entry-level operators of commercial motor vehicles who are required to obtain commercial drivers licenses. This action on the part of FMCSA was in response to a study that found that private sector training of entry-level drivers was inadequate.
- (11) On May 26, 2004, RSPA published a final rule to update and clarify requirements in the HMRs applicable to incident reporting requirements and the HMR incident report.
- (12) On June 3, 2004, the FMCSA revised its requirements concerning fuel tank fill rates for gasoline and methanol fueled light duty vehicles contained in Subpart E of the FMCSRs. The purpose of the rule is to remove a conflict between the fuel tank fill rate requirements of the FMCSRs and those of the Environmental Protection Agency for vehicles up to 14,000 pounds Gross Vehicle Weight Rating. The rule was effective July 6, 2004.
- (13) On June 30, 2004, the FMCSA issued a final rule establishing a national safety permit program for motor carriers that transport certain hazardous materials in interstate and intrastate commerce. The rule became effective July 30, 2004, but compliance was not required until January 1, 2005.
- (14) On November 4, 2004, the RSPA issued a final rule amending the HMRs to improve hazard communication for hazardous materials transportation. Revisions adopted in the rule include permitting the use of the Pantone Formula, an industry guide for colors, for hazard warning labels and placards, expanding the use of labels specified in the Compressed Gas Association Pamphlet C-7 on cylinders used to transport gases to all modes of transportation, requiring a NON-ODORIZED marking on certain tank cars containing un-odorized liquefied petroleum gas, and allowing a FUMIGANT marking to be removed from a

transport vehicle or freight container before the lading is unloaded if the vehicle has undergone sufficient aeration. The effective date of this rule is October 1, 2005.

- (15) On January 24, 2005, RSPA issued a final rule amending the HMRs to incorporate into the regulations, the provisions of certain widely used exemptions which have established a history of safety and which may be converted into regulations for general use. The effective date of this rule was March 25, 2005.
- (16) On August 15, 2005, FMCSA issued a final rule amending part 393 of the FMCSRs. The amendments are intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems and components; resolve inconsistencies between part 939 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards; and codify certain FMCSA regulatory guidance concerning the establishment of new or more stringent requirements. The effective date of this rule is September 14, 2005.
- (17) On August 25, 2005, the FMCSA issued a final rule governing hours of service for commercial motor vehicle drivers. The rule addresses requirements for driving, duty and off-duty time, a recovery period, sleeper berth, and new requirements for short-haul drivers. The rule became effective October 1, 2005.
- (18) 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 FMCSR's and HMRs. This amendment states that the Commission has adopted the federal regulations as they were effective on October 12, 2005 and meets the requirements of Sections 111.15, and 121.75 of the Revised Code.
- (19) 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 Wednesday, October 26, 2005.

It is, therefore,

ORDERED, That a comment period, expiring on October 26, 2005 be established for public comments on the attached rule. 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 and the Ohio Propane Gas Association.

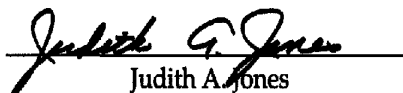
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Ronda Hartman Feigus



Judith A. Jones

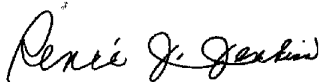
Donald L. Mason

Clarence D. Rogers, Jr.

EW:sm

Entered in the Journal

OCT 12 2005



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 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 such federal regulations 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, or

(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.

HISTORY: Eff 10-19-63; 11-30-63; 1-23-64; 4-12-67; 5-31-64; 7-1-64; 6-12-65; 2-17-67; 11-23-70; 9-5-77; 11-11-78; 3-19-87; 12-25-87; 12-15-88; 10-28-90; 4-25-92; 7-7-97; 6-25-98; 11-18-98; 5-5-00 (Emer.); 9-27-01; 12-27-01; 11-8-02; 9-26-03; 1-5-04; 2-12-04

Rule promulgated under: RC 111.15

Rule authorized by: RC 4921.04, 4923.03

Rule amplifies: RC 4921.03, 4923.20

RC 119.032 review dates: 11/30/04, 1/5/04, 11/30/04