

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's     )  
Review of Chapter 4901:2-21, Ohio     ) Case No. 11-1091-TR-ORD  
Administrative Code.                     )

ENTRY

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies, every five years, to conduct a review of its rules and determine whether to continue the rules without change, amend the rules, or rescind the rules. Chapter 4901:2-21, Ohio Administrative Code (O.A.C.), sets forth the requirements for registration of motor carriers operating for hire, in intrastate commerce, within Ohio.
- (2) Section 119.032(C), Revised Code, requires that the Commission determine:
  - (a) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;
  - (b) Whether the rule needs amendment or rescission to give more flexibility at the local level;
  - (c) Whether the rule needs amendment to eliminate unnecessary paperwork; and
  - (d) Whether the rule duplicates, overlaps with, or conflicts with other rules.
- (3) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant,

inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

- (4) Staff has prepared amendments, and in some instances recommends rescission, of the rules contained in Chapter 4901:2-21, O.A.C. Staff's proposals are attached to this entry. A summary of the proposals is as follows:

- (a) To be consistent with requirements of the Legislative Service Commission and the Joint Committee on Agency Rule Review that the first rule in an O.A.C. chapter contain definitions for that chapter, Staff proposes that current Rule 4901:2-21-01, O.A.C., concerning the purpose and scope of rules in Chapter 4901:2-21, O.A.C., be rescinded and reenacted as Rule 4901:2-21-02, O.A.C., and that current Rule 4901:2-21-02, O.A.C., concerning definitions of words within Chapter 4901:2-21, O.A.C., be rescinded and reenacted as Rule 4901:2-21-01, O.A.C.

In addition, staff proposes that reenacted Rule 4901:2-21-02, O.A.C., be amended with language allowing the Commission, upon application or motion filed by a party, to waive any requirement of Chapter 4901:2-21, O.A.C., other than a requirement mandated by statute, for good cause. Staff also proposes to amend reenacted Rule 4901:2-21-01, O.A.C., to delete the definition of "terminal," since information regarding a carrier's terminal is no longer required.

- (b) Staff recommends rescinding all language in Rule 4901:2-21-03, O.A.C., and reenacting that rule with new language. Staff states that its proposed language will make it easier to understand what must be done to comply with the Commission's requirements by splitting registration requirements into two rules. Rule 4901:2-21-03, O.A.C., proposes requirements for obtaining an initial Certificate of Public Convenience and Necessity (CPCN), which every carrier operating in intrastate commerce in Ohio must comply with before commencing operations in the state. In

conjunction with this, proposed new Rule 4901:2-21-09, O.A.C., which is discussed below, outlines requirements for annual renewal of the CPCN for carriers that will operate solely in intrastate commerce within Ohio. Previously, these two different requirements were contained in one rule, which created confusion as to what was required of carriers. Proposed Rule 4901:2-21-03, O.A.C., also reflects staff's recommendation to eliminate requirements that are not explicitly mandated by law or are not necessary to ensure proper regulation of the industry, thereby reducing the work necessary for a carrier to register with the Commission. Finally, proposed Rule 4901:2-21-03, O.A.C., requires a carrier to provide its e-mail address, which will enable the Commission to communicate with carriers in a more efficient and cost-effective manner.

- (c) Staff proposes adding language to Rule 4901:2-21-04(A), O.A.C., clarifying that failure of a carrier to respond to a request for additional information will result in rejection of the carrier's CPCN application. Although this is the current practice, staff believes it is important to clearly indicate the consequences of not complying with such requests. Further, Staff proposes deleting language in Rule 4901:2-13-04(B), O.A.C., requiring a carrier holding a CPCN to notify the Commission within 15 days of any change in its USDOT safety rating. Staff notes that this language only pertains to carriers that have a USDOT number, of which carriers operating solely within Ohio are not required to obtain, and that electronic means to obtain the safety rating of carriers with USDOT numbers already exist. Therefore, such a requirement is not necessary. In addition, Staff proposes language clarifying that all carriers holding a CPCN must report changes to information contained in the registration application within 15 days. This change would ensure that information relative to all carriers operating in intrastate commerce would remain up-to-date and available to the Commission and the public.

- (d) Staff recommends rescinding Rule 4901:2-21-05, O.A.C., because language specifying when a carrier must file a registration application will be contained in new language proposed in Rule 4901:2-21-09(A), O.A.C.
- (e) Staff proposes no changes to Rule 4901:2-21-06, O.A.C., which requires carriers operating in intrastate commerce to register with the Commission, and prohibits a person from falsifying or failing to submit to the Commission information required under Chapter 4901:2-21, O.A.C.
- (f) Staff proposes deleting language in Rule 4901:2-21-07(A)(1), O.A.C., which states that a carrier having an unsatisfactory USDOT safety rating cannot receive a CPCN. Staff recommends this deletion because carriers operating solely in intrastate commerce are not required to obtain a USDOT number, and for interstate carriers that have a USDOT number, the Commission has already adopted requirements allowing the Commission to place a carrier out-of-service, upon a determination that a carrier's safety performance is unacceptable. In addition, staff proposes new language clarifying that, to obtain a CPCN, a carrier must pay current and past taxes and fees, and cannot be in default for any civil forfeiture owed to the Commission. Finally, staff proposes amending existing language to clarify that, if a carrier's CPCN application is denied, the carrier can petition the Commission for issuance of the certificate.
- (g) Staff proposes deleting language in Rule 4901:2-21-08(A), O.A.C., requiring that, when a household goods carrier submits a CPCN application, the carrier must provide proof of cargo liability insurance and information regarding whether a tariff has been filed with the Commission. Staff explains that, when reviewing a CPCN application, it automatically checks the Commission's records to determine the presence of insurance and tariff information, so there

is no need to burden carriers with such requirements when a CPCN application is filed.

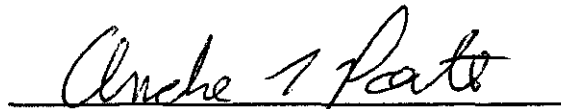

- (h) Staff proposes new Rule 4901:2-21-09, O.A.C., regarding payment of the annual tax required of common carriers by Section 4921.18, Revised Code. As indicated above, while Rule 4901:2-21-03, O.A.C., applies to all for-hire carriers operating in intrastate commerce, proposed Rule 4901:2-21-09, O.A.C., applies only to for-hire carriers engaged solely in intrastate commerce, i.e., carriers that are not part of Uniform Carrier Registration program. Since carriers in the UCR program are only required to make an initial filing with a state for their intrastate operations and subsequently maintain up-to-date insurance and CPCN information, the requirement to pay an annual tax is no longer applicable for carriers operating in both interstate and intrastate commerce. Therefore, under this rule, only those for-hire carriers that operate solely in intrastate commerce will be required to annually update their CPCN and pay the aforementioned required tax. The proposed language will allow staff to deny issuance of the tax receipt for the same reasons as in Rule 4901:2-21-03, O.A.C, and will allow a carrier to petition the Commission if the carrier believes that staff improperly denied issuance of the tax receipt.
- (5) The Commission requests comments from interested persons to assist in the review required by Section 119.031(C), Revised Code. Comments should be filed in this docket, in writing, with the Commission's Docketing Division by May 20, 2011. Reply comments should be filed by May 27, 2011. All comments must be sent to: The Public Utilities Commission of Ohio, Docketing Division, 11<sup>th</sup> Floor, 180 East Broad Street, Columbus, Ohio 43215.

It is, therefore,

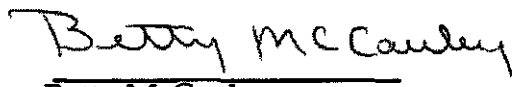
ORDERED, That comments on the attached amended rules be filed in accordance with Finding (5). It is, further,

ORDERED, That a copy of this Entry be served upon the Ohio Petroleum Marketers Association, the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, the Ohio Railroad Association, and all other interested persons of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman  
Paul A. Centolella  
Steven D. Lesser  
Andre T. Porter  
Cheryl L. Roberto

JML/dah

Entered in the Journal  
**MAY 04 2011**  
Betty McCauley  
Secretary

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-21-01

Definitions.

- (A) "Applicant" means any carrier who submits a registration application to the commission.
- (B) "Carrier" means any carrier engaged in the transportation of property, for hire, subject to rules adopted under section 4919.79 of the Revised Code, motor transportation company as defined in section 4921.02 of the Revised Code, or contract carrier by motor vehicle as defined in section 4923.02 of the Revised Code.
- (C) "Staff" means employees of the transportation department of the commission.
- (D) "Intrastate commerce" means transportation from one point in this state to another point in this state, and transportation within, into, or from this state where such transportation is not subject to the jurisdiction of the United States secretary of transportation or the surface transportation board pursuant to 49 U.S.C. 13506(6).

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-21-02

**Purpose and scope.**

- (A) This chapter governs the registration of motor carriers operating for hire, in intrastate commerce, within this state.
- (B) The commission may, upon application or upon a motion filed by a party, waive any requirement of this chapter, for good cause shown, other than a requirement mandated by statute from which no waiver is permitted.



**Registration application.**

- (A) Before commencing operations in the state of Ohio a carrier must register with the public utilities commission of Ohio.
- (B) To register with the commission, a carrier must complete and submit a registration application form promulgated by the commission containing the following information:
- (1) Applicant legal name and doing business as (D.B.A.), if applicable;
  - (2) Applicant mailing address;
  - (3) Applicant street address, if the location where records are kept is different from mailing address;
  - (4) Street address of principal place of business of applicant;
  - (5) Name of person to whom communications regarding the application should be directed;
  - (6) Title of person to whom communications regarding the application should be directed;
  - (7) Telephone number of person to whom communications regarding the application should be directed;
  - (8) Facsimile transmission number of person to whom communications regarding the application should be directed;
  - (9) Applicant's email address;
  - (10) Whether the applicant is a sole proprietorship, partnership, corporation, or otherwise;
  - (11) A certification, initialed by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant, containing the following statement: "I certify that, to the best of my knowledge, applicant is aware of and in compliance with all applicable state and federal laws, rules and regulations pertaining to motor carrier operations including but not limited to the federal motor carrier safety regulations; the federal hazardous materials regulations and the state motor carrier regulations.";
  - (12) A certification by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant, containing the following statement: "I certify that, to the best of my knowledge and after due investigation, information contained in this application is true, accurate, and complete." The application shall be signed and dated by the responsible official certifying the application including the title and telephone number of the official;

(13) The type of motor carrier operation of the applicant, as defined by whether the applicant is:

(a) A transporter of property, using freight vehicles with a gross vehicle weight rating of ten thousand pounds or more, excluding carriers exclusively engaged in the transportation of household goods; or

(b) A transporter of property, using only freight vehicles with a gross vehicle weight rating of less than ten thousand pounds, excluding carriers exclusively engaged in the transportation of household goods or;

(c) A transporter of household goods; or

(d) A transporter of passengers; or

(e) A transporter engaged in the towing of motor vehicles; or

(f) A transporter of hazardous materials;

(i) In any quantity; or

(ii) In less than placardable quantities in vehicles with a gross vehicle weight rating of less than ten thousand pounds; or

(iii) In placardable quantities of hazardous materials in vehicles with a gross weight rating of less than ten thousand pounds; or

(iv) Requiring one million dollars in public liability and property damage insurance in accordance with 49 C.F.R. 387.9; or

(v) Requiring five million dollars in public liability and property damage insurance in accordance with 49 C.F.R. 387.9.

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4901:2-21-04

## Supplementation of information.

- (A) Upon a written request from the staff, each applicant shall provide, within fifteen days, any additional information necessary for the processing of a registration application. Failure to respond to a request for additional information within this time frame will result in the application being rejected and will necessitate the filing of a new complete application.
- (B) A carrier which is required to obtain a certificate of public convenience and necessity shall notify the staff within fifteen days of any changes to the information contained in the registration application.

**\*\*\* DRAFT - NOT YET FILED \*\*\***

**TO BE RESCINDED**

**4901:2-21-05**

**Term of registration.**

Each carrier shall file a registration application between July first and July fifteenth ,  
each year.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-21-06      **Prohibitions.**

- (A) No carrier may transport property, in intrastate commerce, within this state unless such carrier has registered with the commission pursuant to this chapter.
- (B) No person shall falsify or fail to submit to the commission any data, reports, records, or other information required to be submitted under this chapter.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-21-07

**Certificate of public convenience and necessity.**

(A) Following receipt of a completed registration application from a carrier under 4901:2-21-03, the staff shall issue a certificate of public convenience and necessity, provided that:

(1) The carrier has properly filed proof of public liability security with the staff, pursuant to Chapter 4901:2-13 of the Administrative Code;

(2) All current and past applicable fees and taxes have been paid; and

(3) The carrier is not in default on any civil forfeiture owed to the commission.

(B) If the staff denies issuance of a certificate for failure of the carrier to meet the requirements of paragraph (A) of this rule, the applicant may file a petition with the commission for the issuance of the certificate. The commission shall grant such petition for good cause shown.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-21-08

**Registration application requirements for household goods carriers.**

A carrier transporting household goods shall complete and submit a registration application containing the information required under rule 4901:2-21-03 in addition to the following information:

- (A) The name and title of a person, authorized to negotiate on behalf of the applicant, to whom communications regarding consumer complaints should be directed.
- (B) A certification, initialed by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant, containing the following statement: "I certify that the applicant maintains worker's compensation coverage pursuant to Chapter 4123 of the Revised Code."
- (C) A certification, initialed by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant, containing the following statement: "I certify the applicant maintains unemployment compensation coverage pursuant to Chapter 4141 of the Revised Code."

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:2-21-09

**Annual certificate of public convenience and necessity renewal.**

- (A) On or between the first and the fifteenth days of July of each year, every carrier engaged solely in the business of transporting property in intrastate commerce shall update its registration information relative to its certificate of public convenience and necessity by completing and submitting an application form promulgated by the commission, containing the same information as required under rule 4901:2-21-03 of the Administrative Code.
- (B) Following receipt of a completed application from a carrier under paragraph (A) of this rule the staff shall verify that:
- (1) The carrier has properly filed proof of public liability security with the staff, pursuant to Chapter 4901:2-13 of the Administrative Code;
  - (2) All current and past applicable fees and taxes have been paid; and
  - (3) The carrier is not in default on any civil forfeiture owed to the commission.
- (C) If a carrier complies with all requirements under paragraph (B) of this rule, staff shall issue the applicable receipt.
- (D) If the carrier believes that staff has improperly denied issuance of the applicable receipt under this rule, the carrier may file a petition with the commission for the issuance of the applicable receipt. The commission shall grant such petition for good cause shown.