

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Chapters)
4901-5, 4901:2-13, and 4901:3-1, Ohio) Case No. 04-1111-TR-ORD
Administrative Code.)

FINDING AND ORDER

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in the chapters under review in the case address the procedures to be followed in motor carrier cases, the filing of insurance by motor carriers, and matters applicable to railroads.
- (2) Section 119.032(C), Revised Code, requires the Commission to determine whether:
 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted.
 - (b) The rules need amendment or rescission to give more flexibility at the local level.
 - (c) The rules need amendment to eliminate unnecessary paperwork.
 - (d) The rules duplicate, overlap with, or conflict with other rules.
- (3) By entry issued August 25, 2004, the Commission issued proposed changes to the rules in Chapters 4901-5, 4901:2-13, and 4901:3-1, Ohio Administrative Code (O.A.C.), for comment. The Commission recommended deletion of several rules and the relocation of several rules to eliminate gaps caused by deletion of rules. The Commission also recommended minor changes to various rules. No comments were received to the Commission's proposed changes.

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- (4) The Commission recommended the following changes in the August 25, 2004, entry:

<u>Rule Number</u>	<u>Suggested Changes</u>
4901-5-01	Rescind definition of "railroad" and "contract carrier"
4901-5-02	Rescind existing rule and appendices regarding procedures applicable to motor carrier cases and adopt new rule entitled "Cancellation of certificates or permits" (relocation of existing Rule 4901-5-10)
4901-5-03	Rescind existing rule regarding applications to transfer authority and adopt new rule entitled "Citations" (relocation of existing Rule 4901-5-11)
4901-5-04	Rescind existing rule regarding publication of notice and adopt new rule entitled "Complaints" (relocation of existing Rule 4901-5-12)
4901-5-05	Rescind existing rule regarding contracts of contract carriers and adopt new rule entitled "Railroad complaints" (relocation of existing Rule 4901-5-20)
4901-5-06	Rescind existing rule regarding approval of contracts and adopt new rule entitled "Complaints relating to dangerous crossings under Section 4907.47 of the Revised Code" (relocation of existing Rule 4901-5-21)
4901-5-07	Adopt new rule entitled "Railroad employee safety rules" (relocation of existing Rule 4901-5-22)
4901-5-08	Adopt new rule entitled "Reparation and damage claims" (relocation of existing Rule 4901-5-24)
4901-5-09	Adopt new rule entitled "Statement justifying rate change" (relocation of existing Rule 4901-5-25)
4901-5-10	Rescind existing rule regarding cancellation of certificates or permits and adopt new rule entitled "Tariff suspensions" (relocation of existing Rule 4901-5-26)

- 4901-5-11 Rescind existing rule regarding citations and adopt new rule entitled "Procedure to be followed in motor bus abandonment cases" (relocation of existing Rule 4901-5-27)
- 4901-5-12 Rescind existing rule regarding complaints and adopt new rule entitled "Transportation of waste products" (relocation of Rule 491-5-30)
- 4901-5-13 Rescind existing rule regarding applications to abandon and adopt new rule entitled "Sanitary drinking water" (relocation of existing Rule 4901-5-31)
- 4901-5-14 Rescind rule regarding publication of notice in abandonment cases
- 4901-5-15 Rescind rule regarding failure to operate by certificate holder
- 4901-5-16 Rescind rule regarding applications to suspend service
- 4901-5-17 Rescind rule regarding reinstatement of a certificate or permit after cancellation or revocation
- 4901-5-18 Rescind rule regarding dual operations
- 4901-5-19 Rescind rule regarding operation over irregular routes
- 4901-5-20 Rescind rule regarding railroad complaints
- 4901-5-21 Rescind rule regarding complaints relating to dangerous crossings
- 4901-5-22 Rescind rule regarding railroad employee safety rules
- 4901-5-23 Rescind rule regarding diminishment of railroad service
- 4901-5-24 Rescind rule regarding reparation and damage claims
- 4901-5-25 Rescind rule regarding statement justifying rate change
- 4901-5-26 Rescind rule regarding tariff suspension
- 4901-5-27 Rescind rule regarding motor bus abandonment cases
- 4901-5-28 Rescind rule regarding establishment of commercial zones
- 4901-5-29 No existing rule
- 4901-5-30 Rescind rule regarding transportation of waste products

4901:5-31	Rescind rule regarding sanitary drinking water
4901:5-32	Rescind rule regarding temporary authority
4901:2-13-01	No change
4901:2-13-02	Update current date of 49 C.F.R. 387
4901:2-13-03	No change
4901:2-13-04	No change
4901:2-13-05	No change
4901:2-13-06	No change
4901:2-13-07	No change
4901:2-13-08	Clarify notification requirement
4901:2-13-09	No change
4901:2-13-10	No change
4901:2-13-11	No change
4901:3-1-01	Adopt new rule entitled "Minimum track clearances for new railroad track construction or reconstruction of yard tracks of railroads operating within the state of Ohio" (relocation of existing Rule 4901:3-1-04)
4901:3-1-02	Adopt new rule entitled "Lateral clearance for permanent structures" (relocation of existing Rule 4901:3-1-05)
4901:3-1-03	Adopt new rule entitled "Inspection, maintenance and safety of railroad bridges" (relocation of existing Rule 4901:3-1-08)
4901:3-1-04	Rescind existing rule regarding minimum track clearances
4901:3-1-05	Rescind existing rule regarding lateral clearances for permanent structures
4901:3-1-06	No existing rule
4901:3-1-07	No existing rule
4901:3-1-08	Rescind existing rule regarding inspection, maintenance, and safety of railroad bridges

- (5) Upon further review of the rules, the Commission finds that additional revisions are required to the proposals set forth in the Commission's August 25, 2004, entry. In addition to the following described changes, minor unsubstantive revisions for grammar and punctuation, language clarification, revisions to the number of copies to be filed, and sentence rotation were made to the proposed rules:

<u>Rule Number</u>	<u>Change Made</u>
4901-5-03(A)	Revised third sentence to delete the option that a citation order may be served in person.
4901-5-03(B)	Delete the phrase "denials of allegations contained in the answer must set forth" and insert "if an allegation is denied, the answer must set forth." Delete the requirement that the answer be verified.
4901-5-05	Proposed new Rule 4901-5-05 – Substantial changes are being made to this rule. Many of the changes are merely to clarify the language of the rule. Other changes state where a complaint should be mailed (new paragraph [A][3]); provide for service of the complaint upon the railroad by ordinary mail rather than certified or registered mail (new paragraph [A][5]); clarify the time period for the railroad to file its answer (paragraph [B][1]); delete the language that permits the railroad which is the subject of the complaint to request a hearing and the requirement that the complainant then also file a request for hearing (existing paragraph [C][1]) because, if a settlement is not reached and reasonable grounds for complaint exist, the matter will be set for hearing (new paragraph [E][1]); require parties to the complaint to request a supplemental staff investigation and report not later than fifteen days prior to the hearing instead of ten days (new paragraph [C][2]); and delete specific directives regarding procedures to be followed at a hearing and insert language to clarify that matters of practice and procedure not specifically addressed in the rule shall be governed by the Commission's rules of practice and procedure in Chapter 4901-1, O.A.C. (new paragraph [E][3] and existing paragraphs [F], [H], and [I]). Interested persons are encouraged to compare closely the proposed new rule to existing Rule 4901-5-20.

- 4901-5-06 Delete paragraph (C) which requires a complainant to furnish an original and one copy of its complaint and revise paragraph (G) (which becomes paragraph (F) after the deletion of (C)) to clarify that, unless otherwise discussed in the rule, the Commission's rules of practice and procedure will apply to dangerous crossing complaint cases.
 - 4901:2-13-02(C) Update the reference to the current date of 49 C.F.R. 387.
 - 4901:2-13-08(A) Clarify the requirement to notify the Commission when a bond or insurance is canceled prior to the expiration date.
 - 4901:3-1-01(E) Change "extensions of realignments" to "extensions or realignments."
 - 4901:3-1-03(A) Change "this rule of the code of rules and regulations shall apply" to "this rule shall apply."
 - 4901:3-1-03(C)(1) Change "American Railway Engineers Association" to "American Railway Engineering and Maintenance of Way Association."
 - and (E)(1)
 - 4901:3-1-03(E)(3) Change "under the provisions of the Revised Code and the rules of practice of this commission" to "under the provisions of the Revised Code."
- (6) Although the Commission believes that no interested person will find the additional changes to be objectionable, the Commission will delay for 30 days the filing of the rules at issue in this case. If no applications for rehearing are filed, then the proposed rescissions, the existing rules without change, the proposed amended rules, and the proposed new rules and the related appendices will be filed. If an application for rehearing is filed, the filing will be delayed until the Commission orders otherwise.
- (7) Unless otherwise ordered by the Commission or the Joint Committee on Agency Rule Review, the five-year review date for these rules will be May 31, 2009.

It is, therefore,

ORDERED, That existing rules 4901-5-02 to 4901-5-06, 4901-5-10 to 4901-5-28, 4901-5-30 to 4901-5-32, 4901:3-1-04, 4901:3-1-05, and 4901:3-1-08 be rescinded. It is, further,

ORDERED, That existing rules 4901:2-13-01, 4901:2-13-03 to 4901:2-13-07, and 4901:2-13-9 to 4901:2-13-11 be filed without change with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State, pursuant to Section 111.15, Revised Code. It is, further,

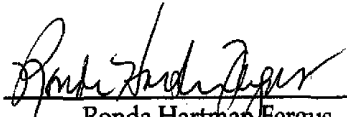
ORDERED, That proposed amended rules 4901-5-01, 4901:2-13-02, and 4901:2-13-08 be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State, pursuant to Section 111.15, Revised Code. It is, further,

ORDERED, That proposed new rules 4901-5-02 to 4901-5-13 and 4901:3-1-01 to 4901:3-1-03 be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State, pursuant to Section 111.15, Revised Code. It is, further,

ORDERED, That a copy of this entry, with the attached rules be served upon the Ohio State Highway Patrol, Ohio Rail Association, Ohio Trucking Association, Ohio Household Movers Association, the United Transportation Union, Ohio Bus Association, and the Brotherhood of Locomotive Engineers.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman



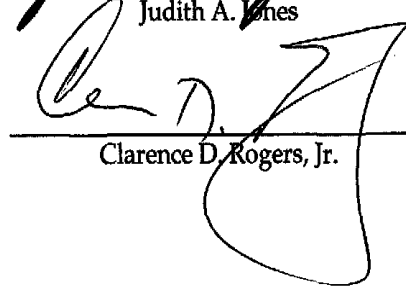
Ronda Hartman Fergus



Judith A. Jones



Donald L. Mason



Clarence D. Rogers, Jr.

EW:geb

Entered in the Journal

SEP 7 2005



Renee J. Jenkins

Renee J. Jenkins
Secretary

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4901-5-03 Citations.

- (A) Citation order - Citations shall be commenced by the issuance of an order requiring the grantee to show cause why his certificate or permit should not be revoked, altered or amended. Such order shall set forth the facts on which the citation is based. The citation order shall require the respondent to file a written answer within fifteen days of the effective date of the order. Such orders shall be served on the respondent by registered or certified mail. Acknowledgement of service shall be obtained in each case.
- (B) Answer - The respondent must answer the order to show cause within fifteen days of its effective date. Such answer shall either admit or deny each separate allegation of the order to show cause. The answer shall state what corrections, if any, have been made of the practices complained of in the order to show cause. If an allegation is denied, the answer must set forth the facts upon which such denials are based.
- (C) Hearing on citation - If a respondent fails to answer an order to show cause, the commission shall proceed to revoke authority. If an answer is filed by the respondent, the matter shall be promptly assigned for hearing unless the answer of the respondent is deemed to be satisfactory, in which event the order to show cause may be dismissed.

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4901-5-10 Tariff suspensions.

(A) Suspension of a rate, charge, classification, regulation, or practice under section 4909.27 of the Revised Code will not ordinarily be made unless a request for suspension is filed with the public utilities commission at least ten days before the effective date fixed in the schedule.

(B) A request for suspension must reference the tariffs at issue by its Ohio or PUCO tariff number and must make specific reference to the parts thereof complained against, together with a brief statement of the grounds that justify the suspension. In such cases, a copy of the request for suspension shall be served upon all parties in accordance with rule 4901-1-05 of the Administrative Code.

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4901:2-13-02 **Amounts of insurance.**

(A) Motor carriers: Bodily injury liability and property damage liability.

	Amount for bodily injuries to or death of one person	Amount for bodily injuries to or death of all persons injured or killed in any one accident	Amount for loss or damage in any one accident to property of others (excluding cargo)
Trucking equipment	\$ 100,000	\$ 300,000	\$ 50,000
passenger Passenger equipment (seating capacity):			
7 passengers or less	100,000	300,000	50,000
8 to 12 passengers, incl.	100,000	350,000	50,000
13 to 20 passengers, incl.	100,000	400,000	50,000
21 to 31 passengers, incl.	100,000	450,000	50,000
31 passengers or more	100,000	500,000	50,000

(B) Motor carriers: Freight cargo liability.

On each straight truck or each tractor-trailer combination used for the transportation of household goods:

\$20,000

(C) Motor carriers of hazardous materials, hazardous substances, or hazardous wastes as defined in Title 49, CFR C.F.R. Part 387.3 (B):

As required by Title 49, CFR C.F.R. Part 387 as amended effective as of August 31, 2005.

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4901:2-13-08 **Expiration and cancellation of insurance; rescission of cancellation.**

- (A) ~~Insurance and bonds filed with the commission shall expire on the date written therein unless sooner canceled by not less than ten days' written notice to the commission by the insurance or bonding company. Motor carriers desiring the cancellation of insurance or bond should notify the insurance or bonding company. The commission recognizes the expiration date written in the insurance or bond and notice from the insurance or bonding company is not required except when~~ When the insurance or bond required under these rules is to be canceled short of the specified term or expiration date specified therein, in which latter event the commission requires not less than ten days' written notice of cancellation. Motor carriers must not operate after the cancellation of insurance unless new coverage has been filed with the commission. Failure to maintain insurance will result in revocation of motor carrier authority unless the motor carrier applies for and obtains authority to temporarily suspend operations. Request for temporary suspension of operations must be filed with the commission not less than fifteen days prior to effective date of expiration or cancellation of policy or bond.
- (B) Notice of cancellation of insurance shall be given to the commission by the insurer in the form set forth by the commission.
- (C) Notice of cancellation of surety bond shall be given to the commission in the form set forth by the commission.
- (D) Notice to rescind cancellation and reinstate insurance or surety bond shall be given to the commission in the form set forth by the commission.

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4901:3-1-01 Minimum track clearances for new railroad track construction or reconstruction of yard tracks of railroads operating within the state of Ohio.

- (A) Each railroad in the state of Ohio shall comply with the track clearance standards established in this rule.
- (B) On any new railroad track construction or reconstruction of yards in Ohio, the lateral clearance between centers of adjacent and parallel railroad tracks covering main lines, passing tracks, and yard tracks over which switching is performed, shall not be less than fourteen feet on tangent tracks and on curved tracks, provided that in specific cases if this commission, after investigation, shall find that it would be unreasonable to require fourteen-foot clearance between track centers, it may by order prescribe lesser clearances.
- (C) Tracks constructed on, under, or adjacent to permanent railroad and highway structures, which structures were constructed previous to February 24, 1958 and were designed to provide less than fourteen-foot clearances for future tracks, are exempt from the provisions of this rule.
- (D) Ladder tracks shall be spaced not less than fifteen feet center to center from any parallel track and when such parallel track is another ladder track that it be spaced not less than eighteen feet center to center, body tracks shall be spaced not less than fourteen feet center to center and when paralleled to main track or important running track the first body track shall be spaced not less than fifteen feet center to center from such track; provided, however, that the commission upon application, when accompanied by a full statement of the conditions existing and the reasons upon which such permit is predicated, may permit any railroad to construct or reconstruct under such conditions, if any, as the commission may prescribe, any track or tracks at lesser clearance than herein required, when in the judgment of this commission, compliance with the clearance prescribed herein is unreasonable or unnecessary, and when lesser clearance would not create a condition unduly hazardous to the employees of such railroad.
- (E) This rule applies to any railroad defined in section 4907.02 of the Revised Code, in the construction of new yards or in the reconstruction of existing yards, except any extensions or realignments of existing tracks, after February 24, 1958, and railroads shall construct said tracks in compliance with the minimum track clearance standards herein prescribed after February 24, 1958, except any extensions or realignments of existing tracks or unless otherwise ordered by the commission.

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4901:3-1-02 **Lateral clearance for permanent structures.**

- (A) Every railroad company, public or private corporation, or person proposing to build any structure or place described in section 4963.42 of the Revised Code which has a lesser clearance than that prescribed in such section shall apply to this commission for a permit to erect such structure or place in the manner prescribed in such section.
- (B) Application for the permit provided for in section 4963.43 of the Revised Code shall be made on blanks furnished by this commission.
- (C) The lateral clearance for such structures are with reference to straight alignment of tracks. On curves, the clearance distance to structures shall be increased so as to have the equivalent clearances, and should be measured from a line perpendicular to the place of the top of the rails.
- (D) A suitable walk and railing from which trainmen may work shall be provided along at least one side of all bridges and coal, ore, or other trestles.

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4901:3-1-03 **Inspection, maintenance and safety of railroad bridges.**

(A) Application

The provisions of this rule shall apply to all railroad companies subject to the jurisdiction of this commission.

(B) Definitions

In the interpretation of this rule of the code governing the inspection, maintenance and safety of railroad bridges in Ohio, the word "bridge" shall mean a structure of ten feet or more clear span or ten feet or more in diameter upon which railroad locomotives or cars may travel.

(C) Reports

- (1) Inspection reports as required by this rule and all such additional inspection reports required pursuant to the code of rules for the inspection of bridges as formulated by the "American Railway Engineering and Maintenance of Way Association" shall be filed with this commission within sixty days following the date of such inspection.
- (2) The annual inspection report shall be filed on railroad forms furnished or approved by this commission or on the form shown on exhibit one, appended. The form of report shown in exhibit one covers substantially the required items of inspection contained in the "Manual for Railway Engineering," published by the "American Railway Engineering and Maintenance of Way Association", which covers recommendations for bridge inspection.
- (3) The initial inspection report for each existing bridge or for any bridge constructed after the effective date of this rule shall be filled out in detail, insofar as the bridge parts and numbers listed on the report form are parts of that structure, and rated as per the condition rating schedule included on the report form.
- (4) On all subsequent reports, the detailed reporting of parts and members may be omitted except when the condition of any parts or members is such as to require attention before the next annual inspection, in which cases those parts shall be noted and described as provided for on the inspection report form.
- (5) Each inspection report shall be certified to the public utilities commission of Ohio by a responsible officer of the railroad.

(D) Records

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Every railroad company subject to these rules shall file with this commission a complete list of all bridges located entirely or partly within the boundaries of the state of Ohio for which they are wholly or partially responsible for the inspection, maintenance and repair. They shall also file and maintain with the commission an up-to-date map showing the name, number or other description and location of each such structure.

(E) Inspection

(1) Every bridge used for the transportation of freight, passengers or railroad crews shall be inspected annually by the railroad, which is responsible for all or part of the structural maintenance work. Each such inspection shall be made or supervised by a professional engineer and accomplished substantially in accordance with the provisions of the "American Railway Engineering and Maintenance of Way Association" code of rules for inspection of bridges.

(2) Inspection and progress reports to be filed.

(a) If a railroad company inspection discloses that a bridge is dangerous or unfit for the transportation of passengers, freight or railroad crews, the railroad shall immediately file a report with the commission describing the dangerous condition and what action is being taken to correct that condition.

When any dangerous condition at a bridge is called to the attention of the commission, the commission shall notify the railroad company. The railroad shall immediately file a report with the commission stating what action is being taken to alleviate the dangerous condition.

(b) At any time a bridge passing over a public highway is found to be in an unsafe condition or constitutes a safety hazard to the public use of said highway, a copy of the reports referred to in the foregoing paragraph shall be given to the public authority having jurisdiction over such highways.

(c) The railroads shall notify the commission whenever maintenance and repair work to correct such conditions is in progress, which shall require special operational restrictions or limitations due to the nature of the work in progress.

(d) If such maintenance and repair work involves reconstruction, the nature of which can reasonably be expected to entail a period of sixty calendar days or more, the railroad shall furnish a progress report at thirty-day intervals and the final inspection report upon its completion.

(3) If, as a result of examination of inspection reports, or after complaint or otherwise, the commission has reasonable grounds to believe that a bridge of a

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railroad is in a condition which renders it dangerous or unfit for the transportation of passengers, freight or railroad crews, it shall forthwith inspect and examine the bridge. Such inspection shall be performed by the commission's staff, and any other qualified person retained by the commission or ordered to be retained by the commission for this purpose, jointly with the railroad's engineering representative; thereafter the commission shall give to the railroad superintendent or other executive officer notice of any adverse finding and of its recommendation for corrective action and an order to show cause why such corrective action should not be taken. After hearing, the commission shall forthwith take such action as is authorized under the provisions of the Revised Code.

- (4) In any case where the strength and/or safety of any bridge is in question, the railroad shall furnish to the commission, when so requested, a copy of the complete plans and details of the structure, together with a copy of other available data such as stress diagrams, structural, maximum loading and computations so that a firm basis can be established for the disposition of the case.

(F) Administration and enforcement.

In the matter of the administration and enforcement of the provisions of this rule, the plant property and facilities of each railroad company operating in Ohio shall be made readily accessible to the commission and its staff in the administration and investigation of violations or alleged violations of any of its provisions. Such companies shall provide to the commission or its staff, such reports, supplemental data and information from the books and records of the companies as it shall from time to time request, in the administration and enforcement of the provision of this rule or in the investigation of any violation or alleged violation of this rule.