

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of)
Chapters 4901:2-13, 4901:3-1, and 4901-5,) Case No. 09-30-TR-ORD
Ohio 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 4901-5, Ohio Administrative Code, (O.A.C.), sets forth the requirements for procedure in motor carrier cases, while Chapter 4901:2-13, O.A.C., establishes requirements for motor carrier insurance, and Chapter 4901:3-1, O.A.C., sets forth general provisions regarding railroads.
- (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 - (a) Whether the rule should be continued without amendment, be amended or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;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) The staff of the Commission proposes no changes to Chapter 4901:3-1, O.A.C. In addition, staff proposes only one change to Chapter 4901-5, O.A.C., specifically, the deletion of Rule 4901-5-11, O.A.C., which concerns the procedure to be followed in motor bus abandonment cases. Staff recommends deletion of this rule because, while motor buses must register with the

Commission and are subject to the Federal Motor Carrier Safety Rules, such carriers are no longer subject to the economic regulation of the Commission. A copy of the rules contained in Chapters 4901-5 and 4901:3-1, O.A.C., are attached to this entry.

- (4) Finally, staff has prepared amendments to some of the rules contained in Chapter 4901:2-13, O.A.C. A copy of the proposed amended rules is attached to this entry. The more substantive changes include the following :
- (a) Staff recommends that a reference to Section 4919.77, Revised Code, be added to Rule 4901:2-13-01, O.A.C. With this change, motor carriers covered under the Unified Carrier Registration system would be added to those required to file insurance with the Commission, if such carriers operate in intrastate commerce. Thus, such carriers would have to file a certificate of insurance with the Commission, but would not need to provide proof of insurance every year.
 - (b) Staff proposes amending Rule 4901:2-13-02, O.A.C., so that the Commission's insurance requirements, which have not been updated since 1999, will be consistent with insurance requirements in the Federal Motor Carrier Safety Rules. Insurance requirements would increase from \$300,000 to \$750,000 for intrastate for-hire and private motor carriers of property. Any carrier that fails to maintain insurance and whose authority has been revoked under Rule 4901:2-13-08, O.A.C., would be placed out of service until the carrier has satisfied the insurance requirements. Insurance requirements for intrastate for-hire and private motor carriers of passengers would increase from the current range of \$450,000 minimum, \$650,000 maximum, to \$1.5 million minimum, \$5.0 million maximum.
 - (c) Staff recommends the addition of language to Rule 4901:2-13-05, O.A.C., specifying that evidence of insurance shall be filed with the Commission by the insurer, in the form set forth by the Commission. The addition of such language simply clarifies the Commission's current policies and practices.

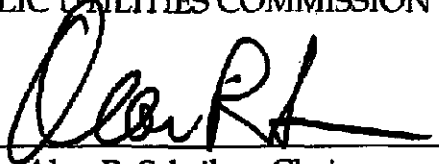
- (d) Staff recommends amending Rule 4901:2-13-08, O.A.C., to clarify that a carrier's authority is revoked after thirty days from the date of the cancellation or expiration of an insurance policy. Under additional proposed language, if a temporary suspension of a carrier's operations is granted by the Commission, the temporary suspension would not exceed thirty days, at which time the carrier must provide proof of insurance or face cancellation of operating authority by the Commission. Further, the carrier would be forbidden from operating until the temporary suspension is removed via a filing with the Commission, using forms prescribed by the Commission.
 - (e) Staff proposes amending Rule 4901:2-13-09, O.A.C., to state that when a carrier's right to operate is suspended under this rule for more than thirty days, and the carrier has not filed evidence of insurance with the Commission, the carrier's operating authority shall be revoked pursuant to a Commission order. The current version of this rule refers to a suspension of more than sixty, rather than in excess of thirty, days. The proposed language removes a requirement that the Commission institute a proceeding regarding such revocation.
 - (f) Staff recommends deleting current language in Rule 4901:2-13-10, O.A.C, referring to transfer of operating authority of buses, because such language is no longer appropriate for use. In place of the deleted language, staff proposes language regarding the information that a carrier must provide to the Commission when a carrier seeks to change its name. The proposed language would also require the Commission to create a form to be used for providing the information required by this rule.
- (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 September 3, 2009. Reply comments should be filed by September 10, 2009. All comments must be sent to: The Public Utilities Commission of Ohio, Docketing Division, 13th 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


Alan R. Schriber, Chairman


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JML:ct

Entered in the Journal

AUG 19 2009


Renee J. Jenkins
Secretary

4901:2-13-01 Who must file insurance.

- (A) No motor carrier subject to section 4919.77, 4921.11 or 4923.08 of the Revised Code, shall engage in intrastate commerce in Ohio, and no certificate or permit shall be issued to a motor carrier, or remain in effect, unless that motor carrier has filed with and had approved by the commission a certificate of liability insurance or bond, in forms set forth by the commission, insuring the motor carrier, and shippers employing contract motor carriers, to protect the public against loss sustained by reason of the death of or bodily injuries to persons and for loss of or damage to property (except cargo) resulting from the negligence of that motor carrier. The certificate of insurance shall be amended by the attachment of an insurance endorsement in a form set forth by the commission.
- (B) Cargo insurance must be filed by all household goods carriers within the state of Ohio. However, bus companies operating within the state of Ohio do not need to file proof of cargo insurance coverage with the commission.

4901:2-13-02 Amounts of insurance.

- (A) ~~Motor carriers: Bodily injury liability and property damage liability transportation companies operating for-hire in the state of Ohio pursuant to chapter 4921 of the Revised Code shall maintain insurance as required under 49 CFR 387.9 effective as March 26, 2009.~~

	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 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: Private motor carriers operating in the state of~~

Ohio pursuant to chapter 4923 of the Revised Code shall maintain insurance as required under 49 CFR 387.303(a)(2) effective as of February 1, 2009.

\$20,000

- (C) Motor transportation companies operating for-hire in the state of Ohio pursuant to chapter 4921 of the Revised Code engaged in the transportation of passengers shall maintain insurance as required under 49 CFR 387.33 effective as of February 1, 2009.**
- (D) Private motor carriers operating in the state of Ohio pursuant to chapter 4923 of the Revised Code engaged in the transportation of passengers shall maintain insurance as required under 49 CFR 387.303(b)(1)(ii) effective as of February 1, 2009.**
- (E) Any motor transportation company or private motor carrier that fails to maintain insurance under this section whose authority to operate has been revoked pursuant to 4901:2-13-08 shall be placed out of service pursuant to 4905:2-5-07. Such order shall remain in effect until such time as the carrier has satisfied the requirements of this section and the motor transportation company or private motor carrier's status has been re-instated.**
- (F) Motor carriers of hazardous materials, hazardous substances, or hazardous wastes as defined in 49 C.F.R. 387.3 (B) shall maintain insurance**

As required by 49 C.F.R. 387 effective as of ~~August 31, 2005~~ March 26, 2009.

- (G) Motor transportation companies operating for-hire in the state of Ohio pursuant to 4921 or private motor carriers operating in the state of Ohio companies pursuant to chapter 4923 of the Revised Code engaged in the transportation of oil listed in 49 CFR 172.101, or of hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101 in any quantity, shall maintain minimum insurance limits of \$1,000,000.**

4901:2-13-03 Who may issue insurance or bond.

The insurance or bond required under these rules must be issued by an insurance or bonding company authorized to do business in Ohio by the Ohio department of insurance.

4901:2-13-04 Coverage by multiple companies.

Each type of insurance, bodily injury, property damage, and cargo, may be written with multiple companies or with a single company.

4901:2-13-05 Separate filings.

- (A) A separate insurance certificate or bond shall be filed ~~with~~ with the commission for each motor carrier holding operating authority from this commission.
- (B) Evidence of insurance shall be filed with the Commission by the insurer in the form set forth by the Commission.

4901:2-13-06 Name and address of insured.

Insurance policies, certificates and bonds shall be written in the full and correct name of the applicant for or the holder of motor carrier authority issued by this commission and, whenever necessary, such insurance or bond shall be amended to show the name or names of the legal or personal representatives, trustees and receivers, engaging or proposing to engage in the exercise of the motor carrier authority issued by this commission. Such insurance or bond shall also show the address and principal place of business of the insured motor carrier or legal representative.

4901:2-13-07 Period of coverage.

Insurance written for filing with this commission may be for a period of not less than one year or continuous until canceled. Continuous coverage is preferred by the commission.

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

- (A) When the insurance or bond required under this chapter is to be canceled short of the specified term or expiration date specified therein, 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 30 days after the expiration or cancellation of the policy 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 and if granted by the commission may last no more than thirty days, upon which time a carrier shall provide proof of insurance. Otherwise, the carrier's authority shall be revoked by the Commission. If a temporary suspension is granted under this section, a motor carrier shall be prohibited from operating until the temporary suspension has been removed through a filing with the commission. Such a filing shall be made on forms prescribed by the commission and shall include proof that the expired or canceled insurance has been restored.

- (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.

4901:2-13-09 Reinstatement after insurance revocation.

- (A) Motor carriers shall not operate without insurance. Whenever a cargo and/or bodily injury and property damage certificate of insurance or bond is canceled during its term, or lapses for any reason, and is not replaced by another insurance certificate or bond fully complying with the commission's insurance requirement, written notice shall be given to the holder of the certificate or permit. Such notice shall contain a statement that the right to operate under such certificate or permit is suspended and that all operations must cease. The notice shall be forwarded to the involved motor carrier, by certified mail.
- (B) If the involved motor carrier files a satisfactory insurance certificate or bond, the motor carrier shall be given written notice indicating that operations may be resumed on the effective date of the insurance filing. A copy shall likewise be filed with all departments of the commission concerned with motor carriers.
- (C) Whenever a motor carrier's right to operate is suspended under this rule for more than ~~sixty~~ thirty days, and the carrier has not filed evidence of insurance with the commission, the operating authority shall be ~~subject to revocation~~ revoked pursuant to a commission order. ~~The commission's transportation department shall initiate a proceeding after the sixty day period has elapsed in accordance with rules 4901-5-10 and 4901-5-11 of the Administrative Code.~~

- (D) If a motor carrier files replacement insurance coverage that is not retroactive to date of expiration or lapse, the transportation department shall conduct an audit of the carrier to determine if any operations occurred during the period of cancelled or lapsed insurance coverage.

4901:2-13-10 Transfer of motor carrier authority.

~~When the commission authorizes by order the temporary or permanent transfer of operating authority of regular route buses, the transferor may terminate insurance coverage, provided that no operations are conducted by the transferor after the date of such termination. The transferee may not operate until authorized and the required insurance has been filed with the commission in the name of the transferee.~~

- (A) Each time that a motor carrier's name changes, or, one or more carrier operations are merged, the motor carrier shall file with the Commission a form that contains at a minimum the following information:
- (1) Applicant's previous legal name(s) and doing business as (D.B.A.) name(s);
 - (2) Applicant's current legal name and doing business as (D.B.A.) name;
 - (3) Applicant's mailing address;
 - (4) Applicant's street address, if the location where records are kept is different from mailing address;
 - (5) Street address of principal place of business of applicant;
 - (6) Name of person to whom communications regarding the application should be directed;
 - (7) Title of person to whom communications regarding the application should be directed;
 - (8) Telephone number of person to whom communications regarding the application should be directed;
 - (9) Facsimile transmission number of person to whom communications regarding the application should be directed;
 - (10) Applicant's e-mail address;
 - (11) United State Department of Transportation Number.

4901:2-13-11 Insurance records.

Insurance policies, certificates and bonds accepted by the commission shall under no circumstances be removed from the files of the commission except under subpoena and after their purpose has been served shall be returned to the commission's files. Upon written request by the insurer or the insured, certificates or bonds may be released from the commission's files for the purpose of correcting errors or for substitution of new policies, certificates or bonds without any lapse of coverage upon tender of new policies, certificates or bonds.

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.

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.

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

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 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.

4901-5-01 Definitions.

As used in this chapter:

- (A) "Certificate" means a certificate of public convenience and necessity issued under Chapter 4921. of the Revised Code. "Certificated operator" means the holder of a certificate of public convenience and necessity.
- (B) "Permit" means a contract motor carrier permit or private motor carrier permit issued under Chapter 4923. of the Revised Code.

4901-5-02 Cancellation of certificates.

The commission may, pursuant to the provisions of section 4921.10 or 4923.14 of the Revised Code, for good cause revoke, suspend, alter or amend any permit or certificate issued by it.

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.

4901-5-04 Complaints.

All complaints filed against a motor transportation company under section 4905.26 of the Revised Code shall be governed by rule 4901-9-01 of the Administrative Code.

4901-5-05 Railroad complaints.

(A) Complaint and conference

- (1) Complaints under sections 4905.04 and 4907.08 of the Revised Code shall be made in writing, setting forth briefly the facts alleged to constitute a violation of the Revised Code, Administrative Code, or commission order, or to support the promulgation of an order under section 4905.04 of the Revised Code. The name of the railroad or railroads complained against shall be stated in full and the address of the complainant and the name and address of complaint's attorney, if any, must appear upon the complaint.
- (2) Two or more complaints involving the same principle, subject, or state of facts may be included in one complaint. One or more persons may join in one complaint against one or more railroads if the subject matter of the complaint involves substantially the same principle, subject, or state of facts.
- (3) The complaint shall be mailed or delivered to: "Public Utilities Commission of Ohio, Railroad Division, 180 East Broad Street, Columbus, Ohio 43215-3893."
- (4) The complaint shall aver that a reasonable but unsuccessful effort has been made by the parties to reach an amicable agreement. Such complaint shall be referred to the railroad division for an investigation and the preparation of a report. The railroad division shall serve copies of the report upon all parties in the case. The railroad division shall promptly proceed to hold a conference with the involved parties attempting an equitable satisfaction of the complaint without necessitating a formal hearing. The terms of the agreement arrived at through such an informal conference shall be reduced to writing and the matter would then be considered closed. Should the informal conference fail to bring about an agreement, the matter shall be docketed and assigned a formal case number.
- (5) The commission will then formally serve another copy of the complaint upon each respondent with a notice to satisfy or answer the complaint.

(B) Answers

- (1) Unless otherwise ordered by the commission, a railroad shall file its answer within twenty days from service of the complaint by the commission..
- (2) The answer shall be filed with the commission and a copy served upon the complainant. The answer shall specifically admit or deny the material allegations of the complaint and may set forth the facts which will be relied upon to support any such denial. If a railroad satisfies the complaint before answering, such fact without other matter may be set forth in the answer. If the cause of the complaint is removed after the filing and service of an answer, but before hearing, the railroad shall forthwith advise the commission. The filing of an answer constitutes a waiver of all matters, other than jurisdiction, which could be objected to by motion. In case of a failure to answer without cause, the commission will take such proof of facts as it deems proper and will make such order as it deems appropriate in the premises.
- (3) When a complaint is properly subject to objection by motion, such motion shall be made before or concurrent with filing an answer except any motion attacking the jurisdiction of the commission.

(C) Investigation report

- (1) The written report and recommendation of this commission's railroad division, prepared in connection with the settlement conference, shall be filed with the docketing division if the complaint is filed.
- (2) Not later than fifteen days before the first day of hearing, either party to the complaint may file a written request that a supplemental investigation and report be made by the railroad division. The supplemental report shall be filed with the docketing division and served on the parties.
- (3) Any party or the staff may request that either or both reports be received into evidence. Staff shall be made available at the hearing for examination concerning the reports.

(D) Orders to show cause

- (1) If a complaint or a staff report of investigation indicates a violation of the Revised Code, Administrative Code, or of an order of the commission, the commission may issue an order to the railroad to show cause.
- (2) A copy of such order shall be served by the commission upon each of the parties to such proceeding in such manner as the commission directs.

(E) Hearings

- (1) Upon finding that reasonable grounds for complaint exist, the commission, the legal director, or the attorney examiner assigned to the case shall assign a time and place for hearing and cause reasonable notice to be given to all parties.
- (2) The burden of proof in a complaint proceeding is on the complainant.
- (3) Matters of practice and procedure not specifically covered by rules in this chapter shall be governed by the applicable provisions of Chapter 4901-1 of the Administrative Code.

(F) Designation of agent by railroad

Every railroad defined in sections 4907.02 and 4907.03 of the Revised Code shall designate an agent upon whom notices and papers required under this rule shall be served, and shall advise the commission, in writing, of the name and address of such agent.

4901-5-06 Complaints relating to dangerous crossings under section 4907.47 of the Revised Code.

(A) Complaints under section 4907.47 of the Revised Code relative to the adequacy of protective devices at a public highway grade crossing shall be made in writing and shall set forth:

- (1) The name and location of the subject crossing.
- (2) The name of each railroad which operates over the subject crossing.
- (3) The name of the governmental unit which has jurisdiction over the public road at the subject crossing.
- (4) An allegation that the crossing is dangerous together with a general statement as to the conditions which the complainant believes make the crossing dangerous within the meaning of section 4907.47 of the Revised Code.
- (5) The address of the complainant and the name and address of the complainant's attorney, if any.

- (B) Two or more persons having an interest in the outcome of the proceeding may join in one complaint.

The commission may, on its own motion or the motion of any proper person, join as a party any railroad which operates over the subject crossing, or any governmental unit which has jurisdiction over the public road at the crossing, which was not included in the original complaint. The commission may, on its own motion or the motion of any proper person, dismiss the complaint insofar as it pertains to any railroad which does not operate over the subject crossing or any governmental unit which does not have jurisdiction over the public road at the crossing.

- (C) The commission shall cause a copy of the complaint together with a notice to answer or otherwise plead within a specified period of time to be served by certified mail upon each railroad operating at the crossing. The commission shall also cause a copy of the complaint, and entry relating thereto, to be served upon each governmental unit having jurisdiction over the public road at the crossing.

The commission shall serve all parties with notice of all hearings on the complaint. Said notice shall be made at least fifteen days prior to the date of hearing.

- (D) Service of papers required by other provisions of this rule shall be made on the governmental units having control of the public roads at the subject crossings as follows:

- (1) Township roads - on the clerk of the board of township trustees.
- (2) County roads - on the clerk of the board of county commissioners.
- (3) City streets - on the mayor of the city.
- (4) State highways - on the director of the department of transportation.

In the event the public road at the subject crossing is under the jurisdiction of more than one governmental unit, all required service shall be made on the proper official of each governmental unit affected

- (E) Upon receipt of the answer to such complaint or, in the event that the respondent railroad fails to file an answer within the time provided, immediately after the answer date, or, in the event a party to answer otherwise pleads, upon order of the commission, the railroad division of the commission shall cause an investigation to be made of the conditions existing at the subject crossing and thereafter shall

submit to the commission a written report of its findings. The commission shall serve copies of such report upon all parties to the case.

- (F) Matters of practice and procedure not specifically covered by this rule shall be governed by the applicable provisions of Chapter 4901-1 of the Administrative Code.

4901-5-07 Railroad employee safety rules.

Complaints relating solely to the elimination of a dangerous and hazardous condition due to the growth of weeds and vegetation or insufficient or unsanitary drinking water and/or containers on locomotives and cabooses shall initially be handled under the informal procedure outlined in paragraph (A)(3) of rule 4901-5-05 of the Administrative Code.

4901-5-08 Reparation and damage claims.

Complaints filed under section 4907.57 of the Revised Code shall be accompanied by any supporting affidavits and exhibits. Blank forms of complaint will be furnished by the commission upon request.

4901-5-09 Statement justifying rate change.

Whenever there is filed with the commission under section 4907.27 of the Revised Code a tariff schedule stating a new individual or joint rate or charge or any new individual or joint classification or any new individual or joint regulation or practice affecting any rate or charge, such schedule shall be accompanied by a concise statement setting forth, generally, the reasons prompting its filing.

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.

4901-5-11 ~~The procedure to be followed in motor bus abandonment cases.~~

~~Unless otherwise specifically provided, in all cases in which an applicant seeks authority under section 4921.09 of the Revised Code to abandon motor bus operations over any portion of a motor bus route transporting persons in intrastate commerce, in addition to the notice prescribed in that section, the applicant shall:~~

- ~~(A) Serve a written notice upon the mayor of each city or village through which the motor bus sought to be abandoned operates, indicating that such application has been filed.~~
- ~~(B) Serve a written notice upon the prosecuting attorney of each county through which the route or portion thereof sought to be abandoned lies, indicating that such application has been filed.~~
- ~~(C) Post in a conspicuous place in each motor bus operated over such route, as well as in each bus station in the territory affected, a printed notice that such application has been filed. Such notice shall be printed on a card of not less than seven by ten inches in size and in forty eight and ten point type. It shall, in addition to the other information herein required, state: "All interested parties may direct an inquiry to the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793." Said notice shall be posted at least thirty days prior to the hearing of such application.~~
- ~~(D) At the time of public hearing on an application to abandon a motor bus route, the applicant shall offer satisfactory proof of its compliance with the provisions of this rule.~~

4901-5-12 **Transportation of waste products.**

(A) Definition of waste.

- (1) The term "waste," as used in this chapter, includes, but is not restricted to, industrial, commercial, and residential garbage, cesspool or septic tank cleanings, and any commodity or substance discarded by the owner thereof with the purpose of abandonment. "Waste" is not included in the term "property" as used in Chapters 4921. and 4923. of the Revised Code when defining transportation for hire subject to regulation by the commission.

- (2) The term "waste" does not include industrial or commercial scrap or by-products transported for recycling, reclamation, or reuse in any form where the shipper retains an interest or title in the property.

(B) *Transportation of waste.*

The transportation of waste as defined in paragraph (A)(1) of this rule is not subject to regulation by the commission.

(C) *Transportation of valuable scrap or by-products.*

The for-hire transportation of commodities or substances of the types described in paragraph (A)(2) of this rule is subject to the criteria established by law for obtaining a certificate of public convenience and necessity.

(D) *Safety regulation of waste transportation.*

Nothing in this rule shall exempt from safety regulation by the commission the transportation of waste by common, contract, or private carriage.