

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of the Rules Concerning Forfeitures and) Case No. 11-809-TR-ORD
Compliance Orders Contained in Chapter)
4901:2-7, 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 each of its rules and to determine whether to continue its rules without change, amend its rules, or rescind its rules. The current review date for the rules contained in Chapter 4901:2-7, Ohio Administrative Code (O.A.C.), is May 31, 2011. The rules govern all proceedings of the Commission to assess forfeitures and make compliance orders as authorized by Sections 4905.83, 4919.99, 4921.99, and 4923.99, Revised Code.
- (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 - (a) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;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 properly 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) By entry of March 2, 2011, the Commission requested that interested persons file comments on proposed amendments to the Commission's rules governing forfeitures and compliance orders, as found in Chapter 4901:2-7, O.A.C. A number of amendments were proposed that were intended to reduce mailing and associated costs, as well as to clarify and correct other issues. No comments were filed on any of the proposed rule amendments.
- (5) Upon further review, Staff recommends, in addition to the amendments proposed in the attachment to the entry of March 2, 2011, that Rule 4901:2-7-19, O.A.C., pertaining to evidentiary hearings, be rescinded. As shown on the attachment to the present entry, a key provision of the existing rule would be added to Rule 4901:2-7-16, O.A.C., which relates to the conduct of hearings, and the remaining provisions would be eliminated as unnecessary. These amendments are intended to minimize the total number of rules in Chapter 4901:2-7, O.A.C., while leaving the remaining rules more effective and efficient.

Further, in the proposed rules attached to the entry of March 2, 2011, Staff proposed to combine the main provisions of Rules 4901:2-7-06 and 4901:2-7-07, O.A.C., pertaining to the amount of forfeiture and the notice of intent to assess forfeiture, respectively, into new Rule 4901:2-7-07, O.A.C., with the remaining provisions to be eliminated as unnecessary. Additionally, as modified, Rule 4901:2-7-11, O.A.C., regarding settlement agreements, would enumerate specific factors that Staff may consider in negotiating a settlement agreement, in addition to any matters as justice may require. Staff is proposing no additional amendments to these rules. However, the attachment to the entry of March 2, 2011, showed only the proposed rules as they would read if adopted, and did not show all of the changes to the existing rules. The attachment to the current entry shows all of the proposed amendments to Rules 4901:2-7-06, -07, and -11, O.A.C., so that the existing and proposed rules may be easily compared.

- (6) The Commission requests comments from interested persons on the proposed rules attached to this entry. Comments should be filed in this docket, in writing, with the Commission's Docketing Division by May 12, 2011.

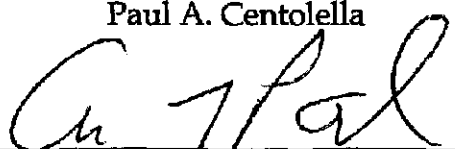
It is, therefore,

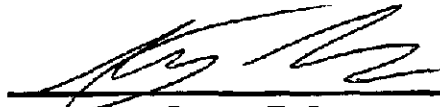

ORDERED, That comments on the attached rules be filed in accordance with finding (6). It is, further,

ORDERED, That a copy of this entry and the attached rules be served upon the Ohio State Highway Patrol, Ohio Trucking Association, Ohio Association of Movers, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


 Todd A. Sritchler, Chairman

 Paul A. Centolella

 Andre T. Porter


 Steven D. Lesser

 Cheryl L. Roberto

SJP/sc

Entered in the Journal

APR 27 2011



Betty McCauley
Secretary

~~4901:2-7-06~~ ~~Amount of forfeiture.~~

~~(A) When staff has reason to believe that a person has committed a violation, it may serve a notice of intent to assess forfeiture under this chapter. In determining the amount of any forfeiture to be assessed, staff and the commission shall consider:~~

- ~~(1) The nature and circumstances of the violation.~~
- ~~(2) The extent and gravity of the violation.~~
- ~~(3) The degree of the respondent's culpability.~~
- ~~(4) The respondent's history of violations, including but not limited to prior "violations" as defined under this chapter and any other available information concerning the respondent's safety of operations.~~
- ~~(5) The respondent's ability to pay.~~
- ~~(6) The effect on the respondent's ability to continue in business.~~
- ~~(7) Such other matters as justice may require.~~

~~(B) When staff has reason to believe that a person is engaging in a pattern of violations, it may serve a notice of intent to make compliance order under this chapter. Any such order shall be reasonably calculated to prevent future violations.~~

4901:2-7-07 Notice of intent to assess forfeiture.

- | (A) Within ninety days of discovery of a violation, but no later than one year following the violation, the staff may serve a "notice of intent to assess forfeiture" for that violation upon one or more respondents. The notice of intent to assess forfeiture shall contain:
 - | (1A) An identification of the date of the violation and person, vehicle, or facility concerning which the violation occurred.
 - | (2B) Reference to the statute, rule or regulation, or order of the commission -that was violated.
 - | (3C) A brief description of the manner in which the violation is alleged to have occurred.
 - | (4D) The amount of the forfeiture intended to be assessed.
 - | (5E) A statement that respondent's failure to serve timely a request for conference shall constitute a waiver of respondent's right to further contest liability to the state for the forfeiture described in the notice.
 - | (6F) A description of the manner in which the respondent may make payment of the forfeiture.
 - | (7G) Instructions regarding the manner in which the respondent may serve a timely request for conference to contest the occurrence of the violation or the amount of the forfeiture.
- | (B) In determining the amount of any forfeiture to be assessed, staff shall consider:
 - (1) The nature and circumstances of the violation.
 - (2) The extent and gravity of the violation.
 - (3) The degree of the respondent's culpability.
 - (4) The respondent's history of violations, including, but not limited to, prior "violations" as defined under this chapter and any other available information concerning the respondent's safety of operations.

4901:2-7-11 Settlement agreements.

- (A) Should the parties reach agreement regarding the occurrence of a violation, the amount of a forfeiture to be assessed, or the nature of a compliance order to be made, the agreement may be reduced to writing in a "settlement agreement." Such an agreement shall be signed by the ~~transportation department~~ director and by the respondent, and shall be fully binding upon the commission and the respondent upon execution, except as otherwise provided in this rule.
- (B) A settlement agreement may contain an agreed forfeiture, an agreed compliance order, another agreed remedy, or withdrawal of the violation, regardless of the remedy specified in the notice.
- (C) Settlement agreements providing for the payment of forfeitures of ~~five~~ one thousand dollars or more for any violation shall not be effective until approved by and made the order of the commission.
- (D) ~~The commission may, on its own motion, make the provisions of any duly executed settlement agreement the order of the commission. Proper execution of a settlement agreement constitutes a full and complete waiver by respondent of its right to prior notification of or to contest any such proceeding of the commission.~~ In negotiating a settlement agreement, staff may consider any matters as justice may require, including, but not limited to:-
- (1) Mitigating circumstances relevant to the occurrence of the violation.
 - (2) The respondent's ability to pay.
 - (3) The effect on the respondent's ability to continue in business.
 - (4) Imposition of remedies to assure future compliance other than those specified in the notice.
- (E) ~~In the event a respondent has failed to comply with the provisions of a settlement agreement for a period exceeding thirty days, the commission may, on its own motion, commence a citation proceeding to order the respondent to appear and show cause why the settlement agreement should not be vacated. If the commission finds that a respondent has failed to comply with the provisions of a settlement agreement, the commission may vacate the settlement agreement and adopt as its order the relief set forth in the notice or notices concerning any violations subject to the settlement agreement.~~

4901:2-7-16 Conduct of hearing.

- (A) Unless otherwise provided in this chapter, all hearings shall be conducted in accordance with Chapter 4901-1 of the Administrative Code.
- (B) Subsequent to a respondent filing a request for administrative hearing pursuant to rule 4901:2-7-13 of the Administrative Code, ~~Unless otherwise ordered by the commission or agreed by the parties,~~ a prehearing conference shall be scheduled in accordance with rule 4901-1-26 of the Administrative Code, **unless otherwise ordered by the commission or agreed by the parties** ~~within thirty days of filing of a request for administrative hearing pursuant to Chapter 4901:2-13 of the Administrative Code.~~
- (C) The commission, the legal director, the deputy legal director, or an attorney examiner shall assign the time and place for an evidentiary hearing. The evidentiary hearing may consist of written stipulations, oral testimony, or such other evidence which is admitted.

~~4901:2-7-19 Evidentiary hearing.~~

~~Unless otherwise ordered by the commission or agreed by the parties, an evidentiary hearing shall be scheduled within sixty days after the prehearing conference. The evidentiary hearing may consist of written stipulations, oral testimony, or such other evidence which is admitted. A final commission order shall be issued within ninety days of the conclusion of the evidentiary hearing unless otherwise ordered by the commission or agreed by the parties.~~