

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. )

FINDING AND ORDER

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  - (a) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;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 making the determinations required by Section 119.032(C), Revised Code, the Commission is required to consider those matters set forth in Section 119.032(C), Revised Code, as well as the continued need for the rules, the nature of any complaints or comments received concerning these rules, and any relevant factors that have changed in the subject matter area affected by the rules.
- (4) 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.

- (5) On May 4, 2011, the Commission issued an entry of public notice and comment on the proposed rescinding of existing and promulgating new Rules 4901:2-21-01, 4901:2-21-02, 4901:2-21-03, 4901:2-21-04, 4901:2-21-07, 4901:2-21-08 O.A.C., and rescinding Rule 4901:2-21-05, O.A.C. In addition, in the May 4, 2011, entry, the Commission proposed making no changes to Rule 4901:2-21-06, O.A.C. and adopting new Rule 4901:2-21-09, O.A.C. The comment period expired on May 20, 2011, and no comments were filed.

More specifically, new Rule 4901:2-21-01, O.A.C., would delete the definition of "terminal," since information regarding a carrier's terminal is no longer required. New Rule 4901:2-21-02, O.A.C., would allow 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. New Rule 4901:2-21-03, O.A.C., contains only the Commission's requirements to obtain, but not renew, a Certificate of Public Convenience and Necessity (CPCN); renewal procedures for CPCN would be set forth in new Rule 4901:2-21-09, O.A.C. New Rule 4901:2-21-09, O.A.C., would also clarify when a carrier operating solely in intrastate commerce must pay the tax that is required of common carriers by Section 4921.18, Revised Code, and specifies when staff can deny issuance of the tax receipt.

New Rule 4901:2-21-04(A), O.A.C., would clarify that a carrier's CPCN application will be cancelled if that carrier does not respond to a request for additional application information. Carriers holding a CPCN would have to report changes to information contained in the registration application within 15 days. Rule 4901:2-21-05, O.A.C., would be rescinded, because language specifying when a carrier must file a registration application would be contained in new Rule 4901:2-21-09, O.A.C. No changes would

be made to Rule 4901:2-21-06, O.A.C., which requires carriers operating in intrastate commerce to register with the Commission.

Finally, in new Rule 4901:2-21-07, O.A.C., unnecessary language stating that a carrier with an unsatisfactory USDOT safety rating cannot receive a CPCN would be deleted. The deletion would occur because intrastate carriers are not required to obtain a USDOT number and thus would not have a USDOT safety rating. Further, the Commission maintains the authority to revoke or deny the issuance of a CPCN, or place a carrier out-of-service, if there is evidence that a carrier is not operating in compliance with the Commission's safety rules. In addition, language in new Rule 4901:2-21-07, O.A.C., would clarify that a carrier must pay current taxes and fees, and cannot be in default for any civil forfeiture owed to the Commission, for that carrier to obtain a CPCN. Similarly, in new Rule 4901:2-21-08, O.A.C., unnecessary language is deleted that had required a carrier submitting a CPCN application to provide proof of cargo liability insurance and of having filed a tariff at the Commission. Staff proposed the deletion of such language from Rule 4901:2-21-08, O.A.C., because it automatically checks for insurance and tariff information while reviewing a CPCN application.

- (6) Following its review, the Commission finds that existing Rules 4901:2-21-01, 4901:2-21-02, 4901:2-21-03, 4901:2-21-04, 4901:2-21-05, 4901:2-21-07, and 4901:2-21-08, O.A.C., should be rescinded and new Rules 4901:2-21-01, -02, -03, -04, -07, and -08, O.A.C., should be adopted as shown in the attachment; and new Rule 4901:2-21-09, O.A.C., be adopted, as shown in the attachment. In addition, the Commission finds that Rule 4901:2-21-06, O.A.C., should, as shown in the attachment, continue without any changes.

It is, therefore,

ORDERED, That existing Rules 4901:2-21-01, -02, -03, -04, -05, -07, and -08, O.A.C., be rescinded, and new Rules 4901:2-21-01, -02, -03, -04, -07, and -08, O.A.C., as indicated in the attachment, be adopted and filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That existing Rule 4901:2-21-06, O.A.C., be filed as a no change rule with the Joint Committee on Agency Rule Review, the Secretary of State, and the

Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

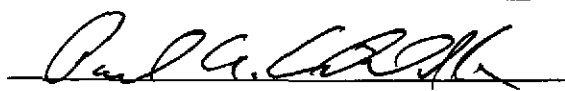
ORDERED, That attached new Rule 4901:2-21-09, O.A.C., be adopted and filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That the amended, reenacted, and new rules be effective on the earliest day permitted by law. Unless ordered otherwise by the Commission, the next review date for Chapter 4901:2-21 is November 30, 2012. It is, further,

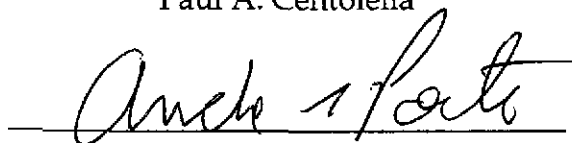
ORDERED, That a copy of this Finding and Order be served upon the Ohio Petroleum Marketers Association, the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, the Ohio Railroad Association, and all other interested persons of record.

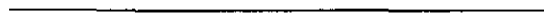
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser

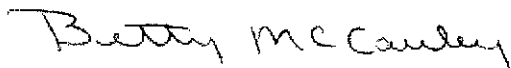
  
Andre T. Porter

  
Cheryl L. Roberto

JML/dah

Entered in the Journal

**JUL 06 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.

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

4901:2-21-03      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's legal name and doing business as (D.B.A.), if applicable;
  - (2) Applicant's mailing address;
  - (3) Applicant's 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,

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

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 and one 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 ten thousand pounds or less, 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 ten thousand pounds or less; or

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



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

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 of 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.