

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
REVIEW OF OHIO ADM.CODE CHAPTER  
4901:2-7, FORFEITURES AND  
COMPLIANCE ORDERS.

CASE NO. 21-561-TR-ORD

## ENTRY

Entered in the Journal on July 28, 2021

### I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed amendments to Ohio Adm.Code Chapter 4901:2-7, its rules regarding forfeitures and compliance orders, do so no later than September 1, 2021, and September 15, 2021, respectively.

### II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require 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 Commission opened this docket to review the forfeiture and compliance order rules in Ohio Adm.Code Chapter 4901:2-7.

{¶ 3} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;

- (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.

{¶ 5} On June 29, 2021, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to Ohio Adm.Code Chapter 4901:2-7. No stakeholders attended the workshop.

{¶ 6} The Commission and Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:2-7. As a result of that review, Staff recommends changing Ohio Adm.Code 4901:2-7-10(B), which outlines the means by which a respondent may have a conference with Staff to discuss violations and forfeitures. The rule currently provides an option for an in-person conference with Staff, which is proposed to be changed to a video conference option. The rule also provides for options to hold the conference by telephone or through written communications, which Staff does not propose to change. Staff also recommends changing Ohio Adm.Code 4901:2-7-11(C), which requires that settlement agreements to pay forfeitures over a certain dollar amount must be approved by the Commission. Staff proposes increasing the dollar figure that would require Commission approval from \$5,000 to \$10,000.

{¶ 7} Attached to this Entry are the proposed changes to Ohio Adm.Code Chapter 4901:2-7 (Attachment A) and the BIA (Attachment B), which are also posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Entry only. All interested persons are directed to input case number 21-561-TR-ORD into the Case Lookup box to view this Entry, as well as the proposed changes, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 8} The Commission requests comments on the proposed modifications from interested persons to assist in the review required by R.C. 111.15 and R.C. 106.03. Comments should be filed, via electronic filing or in hard copy, by September 1, 2021. Reply comments should be filed by September 15, 2021.

### III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than September 1, 2021, and September 15, 2021, respectively. It is, further,

{¶ 11} ORDERED, That a copy of this Entry, with the rules and the BIA, be submitted to CSI, in accordance with R.C. 121.82. It is, further,

{¶ 12} ORDERED, That a copy of this Entry be sent to the transportation list-serve. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon the Ohio Petroleum Marketers Association, National Tank Truck Carriers, Inc., Ohio State Highway Patrol, the Ohio Trucking Association, Ohio Department of Public Safety, Ohio Department of Transportation, Ohio Association of Chiefs of Police, Buckeye State Sheriff's Association, Ohio Association of Movers, Ohio Municipal League, County Commissioners' Association of Ohio, Ohio Township Association, WreckMaster Inc. USA, Towing and Recovery Association of America, North American Towing Academy, American Towing and Recovery Institute, Ohio Insurance Institute, Towing and Recovery Association of Ohio, AAA Ohio, and all other interested persons of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

JWS/kck

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**NO CHANGE**

**4901:2-7-01 Definitions.**

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Days," when used to compute any period of time prescribed or allowed by these rules, shall not include the date of the act or event from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- (C) "Director" means the director of the commission's transportation department or the director's designee.
- (D) "Filing" means delivery to the commission's docketing division in accordance with rule 4901-1-02 of the Administrative Code.
- (E) "Hearing" means all proceedings before the commission involving a violation, commencing with the filing of a request for administrative hearing and concluding with the issuance of a final order of the commission.
- (F) "Parties" means the staff, the respondent, and any persons permitted to intervene in accordance with rule 4901-1-11 of the Administrative Code, after commencement of a hearing.
- (G) "Person" has the same meaning as in section 1.59 of the Revised Code.
- (H) "Report of violation" means the information provided to staff in accordance with rule 4901:2-7-04 of the Administrative Code, or as a result of an inspection conducted pursuant to rule 4901-2-5-13 of the Administrative Code, including any documentary, photographic, or other evidence collected regarding the violation.
- (I) "Respondent" means a person that the staff has determined may be responsible for a violation.
- (J) "Staff" means employees of the transportation department of the commission to whom responsibility has been delegated for administering the provisions of section 4923.99 of the Revised Code, as applicable.
- (K) "Violation" means any conduct, act, or failure to act, prohibited by Chapters 4921. and 4923. of the Revised Code, and rules adopted thereunder, or commission order.

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**NO CHANGE**

**4901:2-7-02 Purpose and scope.**

- (A) This chapter governs all proceedings of the commission to assess forfeitures and make compliance orders as authorized by section 4923.99 of the Revised Code.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

**NO CHANGE**

**4901:2-7-03 Service.**

(A) General provisions

- (1) The official address of the staff is "Public Utilities Commission of Ohio, Transportation Compliance Division, 180 East Broad Street, Columbus, OH 43215-3793".
  - (2) All documents served upon the staff via facsimile transmission must be sent to the facsimile machine in the commission's transportation compliance division at (614) 466-2753.
- (B) Unless provided otherwise by this chapter, service upon the staff may be made by ordinary or certified United States mail, by courier service, by facsimile transmission, by personal service, or via any electronic means that the staff makes available to a respondent to achieve service upon the staff. Service is effective upon receipt except that service by United States mail is complete upon mailing and service by facsimile transmission or electronic means is complete upon transmission.
- (C) Service upon a respondent shall be made by ordinary or certified United States mail, by courier service, by facsimile transmission, by personal service, or via any electronic means that a respondent has consented to for the purpose of receiving service. Service is effective upon receipt by any person, except that service by ordinary or certified United States mail is effective upon mailing and service by facsimile transmission or electronic mail is complete upon transmission. Service upon a respondent by ordinary or certified United States mail shall be made at any of the following:
- (1) If the respondent is a natural person:
    - (a) The address listed on a report of violation.

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- (b) The address listed on the respondent's driver's license or in the records of drivers' licenses maintained by a state.
  - (c) If the respondent has filed a request for conference or otherwise appeared, itself or through an authorized representative, at the address indicated in the appearance or other communication.
  - (d) The respondent's place of employment.
  - (e) The last known address of the respondent.
- (2) If the respondent is other than a natural person:
- (a) If the respondent has filed a request for conference or otherwise appeared, itself or through an authorized representative, at the address indicated in the appearance or other communication.
  - (b) The address listed on an application form submitted pursuant to Chapter 4901:2-6, 4901:2-15, or 4901:2-21 of the Administrative Code, or otherwise designated by the respondent, in writing, with the staff.
  - (c) The address disclosed on a report of violation.
  - (d) Any business address of the respondent.
  - (e) The address of any agent designated by the respondent to receive service on its behalf.
- (D) Once a respondent has served a request for administrative hearing in pursuant to rule 4901:2-7-13 of the Administrative Code, any further service shall be made in accordance with Chapter 4901-1 of the Administrative Code.

**NO CHANGE**

**4901:2-7-04 Investigation and reports of violations.**

- (A) The commission, any commissioner, the legal director, the deputy legal director, or an attorney examiner may issue subpoenas, upon the request of the staff, when the staff has cause to believe that a violation for which a forfeiture may be assessed has been committed. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place

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specified therein. A subpoena may also command such person to produce the papers, documents, or other tangible things described therein. A subpoena issued under this rule shall be served by personal service or by certified United States mail and is effective upon receipt.

- (B) The commission, any commissioner, the legal director, the deputy legal director, or an attorney examiner may, upon his or her own motion or upon motion of the person to whom the subpoena is directed, quash a subpoena if it is unlawful, unreasonable, or oppressive.
- (C) Any person having statutory authority to take enforcement action regarding a violation may transmit a report of violation to staff. The report shall be made on forms prescribed by the director, or shall contain substantially the same information called for on such forms.

**NO CHANGE**

**4901:2-7-05 Notice of apparent violation.**

When the staff receives a report of violation, or otherwise discovers a violation, it may serve a "notice of apparent violation" upon one or more respondents. The notice of apparent violation shall contain:

- (A) An identification of the date of the violation and person, vehicle, or facility concerning which the violation occurred.
- (B) Reference to the statute, rule or regulation, or order of the commission that was violated.
- (C) A brief description of the manner in which the violation is alleged to have occurred.
- (D) Instructions regarding the manner in which the respondent may serve a timely request for conference to contest the violation.
- (E) A notice that failure to contest the violation will conclusively establish the occurrence of the violation.

**NO CHANGE**

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

- (A) Within ninety days of the receipt of a report of violation, or the discovery of a violation, but no later than one year following the date the violation occurred, the staff may serve a "notice of



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intent to assess forfeiture" for that violation upon one or more respondents. The notice of intent to assess forfeiture shall contain:

- (1) An identification of the date of the violation and person, vehicle, or facility concerning which the violation occurred.
- (2) Reference to the statute, rule or regulation, or order of the commission that was violated.
- (3) A brief description of the manner in which the violation is alleged to have occurred.
- (4) The amount of the forfeiture intended to be assessed.
- (5) A statement that respondent's failure to serve a timely 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.
- (6) A description of the manner in which the respondent may make payment of the forfeiture.
- (7) 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, and any other available information concerning the respondent's operations.

**NO CHANGE**

**4901:2-7-08 Notice of intent to make compliance order.**

When staff has reason to believe that a person or entity has committed one or more violations, staff may serve a "notice of intent to make compliance order" upon one or more respondents. Any such order shall be reasonably calculated to prevent future violations. The notice of intent to make compliance order shall contain:

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- (A) An identification of the date of each violation and person, vehicle, or facility concerning which the violation occurred.
- (B) Reference to the statute, rule or regulation, or order of the commission that was violated.
- (C) A brief description of the manner in which each violation is alleged to have occurred.
- (D) The language of the compliance order intended to be made.
- (E) A statement that respondent's failure to serve timely a request for conference shall constitute a waiver of respondent's right to further contest the making of the order described in the notice.
- (F) Instructions regarding the manner in which the respondent may serve a timely request for conference to contest the making of the compliance order.

**NO CHANGE**

**4901:2-7-09 Combined notices.**

One or more timely notices directed to a single respondent may be combined or merged in any combination.

**AMENDED**

**4901:2-7-10 Request for conference.**

- (A) A respondent upon whom a notice of apparent violation, a notice of intent to assess forfeiture, a notice of intent to make compliance order, or a combined notice has been served may, within thirty days, serve upon staff a "request for conference." The request for conference shall be in writing, and may be in any legible form which identifies the matter to be discussed and communicates respondent's desire to have a conference concerning the matter. The request for conference shall contain the name, address, and telephone number of the respondent or the respondent's authorized representative.
- (B) The conference may occur ~~in person~~ via video conference, by telephone, or through written communications, and may be held with the respondent or the respondent's authorized

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representative. The respondent shall have the opportunity to present reasons why the violation did not occur as alleged, mitigating circumstances regarding the amount of the forfeiture, reasons why the compliance order may be unjustified, or any other information relevant to the action proposed to be taken.

- (C) The staff shall notify the respondent of the date and time of the settlement conference by service of a scheduling notice, at least fourteen days prior to the date and time established for the conference, unless otherwise agreed by the staff and the respondent.
- (D) Unless contained in or otherwise provided in a settlement agreement, no statement or conduct occurring in a settlement conference is admissible in any hearing regarding the violation.

**AMENDED**

**4901:2-7-11 Settlement agreements.**

- (A) Should the staff and the respondent 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 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 of apparent violation, notice of intent to assess forfeiture, notice of intent to make compliance order, or a combined notice.
- (C) Settlement agreements providing for the payment of forfeitures of ~~five~~ten thousand dollars or more for any violation shall not be effective until approved by and made the order of the commission.
- (D) 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.

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- (4) Imposition of remedies to assure future compliance other than those specified in the notice.
- (E) Notwithstanding paragraph (A) of rule 4901:2-7-11 of the Administrative Code, a respondent shall be deemed to have accepted the terms of a settlement agreement, if the settlement agreement only requires the respondent to pay an agreed forfeiture and the respondent pays that forfeiture.

**NO CHANGE**

**4901:2-7-12 Notice of preliminary determination.**

Following service of a notice of apparent violation, a notice of intent to assess forfeiture, a notice of intent to make compliance order, or a combined notice, the staff may serve a "notice of preliminary determination" upon the respondent. The notice of preliminary determination shall be signed by the director and shall contain:

- (A) An identification of the date of the violation and person, vehicle, or facility concerning which the violation occurred.
- (B) Reference to the statute, rule or regulation, or order of the commission which was violated.
- (C) A brief description of the violation, the amount of the forfeiture intended to be assessed, or the language of the compliance order intended to be made.
- (D) Instructions regarding the manner in which the respondent may serve a timely request for administrative hearing to contest the alleged violation, the proposed forfeiture, or the making of the compliance order.
- (E) A notice that failure to file a request for administrative hearing will conclusively establish the occurrence of the violation described in the notice of preliminary determination and will constitute a waiver of the right of the respondent to contest liability to the state for the forfeiture proposed in the notice of preliminary determination or the right of the respondent to contest the making of the compliance order proposed in the notice of preliminary determination.

**NO CHANGE**

**4901:2-7-13 Request for administrative hearing.**

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Within thirty days following service by the staff of a notice of preliminary determination in accordance with rule 4901:2-7-12 of the Administrative Code, the respondent may file a "request for administrative hearing" with the commission's docketing division. The request for administrative hearing shall be in writing and shall contain the name, address, and telephone number of the respondent and the case number assigned to the matter by the staff. The request for administrative hearing shall be signed by the respondent or its authorized representative. A copy of the notice of preliminary determination served by the staff upon the respondent shall be attached to the request for administrative hearing.

**NO CHANGE**

**4901:2-7-14 Default.**

- (A) A respondent upon whom a notice of intent to assess forfeiture has been served who fails within thirty days to pay the amount of the forfeiture stated in the notice or to serve upon staff a request for conference shall be in default. A respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability to the state for the forfeiture described in the notice of intent to assess forfeiture.
- (B) A respondent upon whom a notice of intent to make compliance order has been served who fails to serve upon staff within thirty days a request for conference shall be in default. A respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest the making of the compliance order described in the notice of intent to make compliance order.
- (C) A respondent upon whom a notice of preliminary determination has been served who fails within thirty days to pay the amount of the forfeiture proposed in the notice of preliminary determination or to file with the commission's docketing division a request for administrative hearing shall be in default. A respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability for the forfeiture proposed in the notice of preliminary determination or to contest the making of the compliance order described in the notice of preliminary determination.
- (D) A respondent who has failed to comply with the provisions of a settlement agreement for a period exceeding thirty days shall be in default. A respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability for the

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forfeiture proposed in the notice of intent to assess forfeiture or to contest the making of the compliance order described in the notice of intent to assess forfeiture.

- (E) A respondent who has requested an administrative hearing and fails to appear for the evidentiary hearing shall be in default. A respondent in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability for the forfeiture proposed in the notice of preliminary determination or to contest the making of the compliance order described in the notice of preliminary determination.
- (F) If a respondent is in default, the commission may, on its own motion and without prior notification to respondent, make an order adopting the remedy set out in the notice with respect to which a default has occurred pursuant to this rule. A copy of the order shall be served upon any affected respondent. A respondent that is in default, and has been subjected to an order of the commission, may file an application for rehearing in accordance with rule 4901-1-35 of the Administrative Code.

**NO CHANGE**

**4901:2-7-15 Extensions of time.**

- (A) Prior to a respondent filing a request for an administrative hearing pursuant to rule 4901:2-7-13 of the Administrative Code, any time within which a respondent is required to act under this chapter may be extended by the director, in writing, for good cause shown.
- (B) Prior to a respondent filing a request for an administrative hearing pursuant to rule 4901:2-7-13 of the Administrative Code, any time within which the staff is required to act under this chapter may be extended by the written agreement of the staff and the respondent.

**NO CHANGE**

**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, a prehearing conference shall be scheduled in accordance with

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rule 4901-1-26 of the Administrative Code, unless otherwise ordered by the commission or agreed by the parties.

- (C) Discovery shall be conducted in accordance with rules 4901-1-16 to 4901-1-24 of the Administrative Code except that depositions will be permitted only upon agreement of all parties or motion granted by the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case, which leave shall not be unreasonably withheld.
- (D) 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 that is admitted.

**NO CHANGE**

**4901:2-7-20 Burden of proof.**

- (A) During the evidentiary hearing, the staff must prove the occurrence of a violation by a preponderance of the evidence.
- (B) If staff is required to establish respondent's history of violations, prior reports of violation relied upon by staff to meet its burden shall constitute prima facie evidence of the occurrence of those violations. Additionally, the staff's reliance on any of the following shall conclusively establish the occurrence of a prior violation:
  - (1) Any final order concerning a prior violation rendered by the commission as the result of a hearing.
  - (2) Any final order concerning a prior violation rendered by the commission in accordance with paragraph (F) of rule 4901:2-7-14 of the Administrative Code.
- (C) Any instance for which staff has served a notice of apparent violation concerning a prior violation, and no request for conference has been served by respondent within the time provided in this chapter, or, for which staff has served a notice of preliminary determination concerning a prior violation, and no request for administrative hearing has been filed by respondent within the time provided in this rule.

**NO CHANGE**

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**4901:2-7-21 Remedy ordered.**

If justified by the evidence in any hearing, the commission may order payment of a forfeiture greater than, less than, or equal to the forfeiture requested in the notice of intent to assess forfeiture or the notice of preliminary determination. The commission is not restricted in the making of any compliance order by the order proposed in the notice of intent to make compliance order or the notice of preliminary determination, if another order is justified by the evidence.

**NO CHANGE**

**4901:2-7-22 Payment of forfeitures.**

- (A) Any forfeiture shall be paid by check, money order, or by any other means the staff makes available to a respondent. A check or money order shall be made payable to "Treasurer, State of Ohio," and shall be mailed or delivered to:

Public Utilities Commission of Ohio  
Transportation Compliance Division  
Attn: CF Processing  
180 East Broad Street  
Columbus, Ohio 43215-3793"

Any instrument of payment shall contain the identifying case number of the violation for which payment is tendered.

- (B) If the only remedy requested with respect to a violation is the payment of a forfeiture, and full payment of the forfeiture demanded in the notice is made prior to the execution of a settlement agreement or any final commission order, full payment constitutes an admission of the occurrence of the violation and shall terminate all further proceedings under this chapter, and Chapter 4901-1 of the Administrative Code, regarding that violation. Full payment under these circumstances shall conclusively establish the occurrence of the violation for purposes of consideration of a respondent's history of violations and for determining the appropriate remedy for any future violation.





**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Common Sense  
Initiative**

**Carrie Kuruc**, Director

## Business Impact Analysis

**Agency, Board, or Commission Name:** Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122, Fax: 614-728-8378, Email: [Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)

**Regulation/Package Title (a general description of the rules' substantive content):**

Case No. 21-561-TR-ORD

Forfeiture and Compliance Orders

**Rule Number(s):** Ohio Adm.Code Chapter 4901:2-7

**Date of Submission for CSI Review:** July 28, 2021

**Public Comment Period End Date:** September 15, 2021

**Rule Type/Number of Rules:**

New/\_\_\_ rules

Amended/2 rules (FYR? Yes)

No Change/16 rules (FYR? Yes)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

The proposed revisions to Ohio Adm.Code Chapter 4901:2-7 are in accordance with the state of Ohio's five-year rule review procedures. R.C. 111.15(B) and 106.03(A) require all state

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agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The rules in Chapter 4901:2-7 concern civil forfeiture and compliance rules applicable to regulated entities including motor carriers, hazardous materials transporters, drivers, and shippers operating in Ohio.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

The amendments are made in response to R.C. 111.15(B) and 106.03(A), which require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The statutory authority for the Commission to adopt the rules in Ohio Adm.Code Chapter 4901:2-7 is found in R.C. 4901.13, R.C. 4905.81, and R.C. 4923.99.

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

One condition for the State to qualify for program funds through the Federal Motor Carrier Safety Assistance Program is that it must adopt and maintain consistent, effective, and reasonable sanctions for violations of the federal motor carrier safety regulations and the hazardous materials regulations (49 C.F.R. 350.201(c) and 49 C.F.R. 350.207(a)(2)). To that end, section 4923.99 of the Revised Code permits the Commission to assess civil forfeitures for such violations. The rules in chapter 4901:2-7 of the Administrative Code govern the proceedings of the Commission to assess civil forfeitures and make compliance orders as authorized by that section.

**5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

As detailed above, the Commission is required to adopt and maintain sanctions for violations of the federal motor carrier safety regulations and the hazardous materials regulations. Federal law does not specify the manner in which the requirement is met.

**6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of these rules is to establish a uniform and objective process for regulated entities to contest any violation for which they have been cited. The agency believes these regulations are the minimum required to ensure that appropriate due process is provided.

**7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Commission is required by statute to enforce the requirements of Chapters 4921 and 4923 of the Revised Code to ensure safe and efficient transportation of persons and property within the state. R.C. 4923.99 requires the Commission to adopt procedural rules providing reasonable notice and opportunity for a hearing before a civil forfeiture is assessed upon a regulated entity. The Commission monitors the compliance with these rules through enforcement actions against regulated entities and these rules ensure anyone cited with a violation of the rules has all appropriate due process.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No, not applicable.

**Development of the Regulation**

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

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The Commission conducted a workshop via Webex on June 29, 2021, to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:2-7 is 21-561-TR-ORD. The entry providing notice of the workshop was served upon the transportation industry list serve, as well as various state and regional economic development organizations, industry trade associations, and other interested stakeholders.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

No stakeholders appeared at the workshop.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was provided or considered. In drafting the required amendments for this chapter, the Commission takes into account feedback from stakeholders and the general public.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternative regulations were recommended. The Commission is authorized by statute to establish and enforce safety standards applicable to regulated entities. These rules provide the administrative procedures for any person who has been charged with a violation of the rules to contest the findings of the Commission's staff.

**13. Did the Agency specifically consider a performance-based regulation? Please explain.**

*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No performance-based regulations were considered. The rules contained in Ohio Adm.Code Chapter 4901:2-7 are primarily regulatory in nature and are required by the Revised Code.

**14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Commission has widely publicized notice of the consideration of these rules to those individuals in the transportation industry, as well as other governmental organizations and interest groups, including the Ohio Department of Transportation. The Commission has reviewed other Ohio regulations and found no duplicate, nor has a duplicate regulation been identified by any stakeholder.

**15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Commission conducted a remote workshop on June 29, 2021, to receive feedback from interested stakeholders and the general public. Next, the Commission has issued an Entry that sets forth the Commission staff's proposed amendments to the rules, and stakeholders then can file written comments and reply comments. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the rules. All potential stakeholders will be notified that this chapter is under review by the Commission staff and they will be provided an opportunity for feedback concerning the rules in this chapter. Thus, stakeholders will have the opportunity to express whether the proposed rules will be applied consistently and predictably.

**Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community; and**

The scope of the business community impacted by Ohio Adm.Code Chapter 4901:2-7 includes all regulated entities that are subject to Commission jurisdiction, including motor carriers, hazardous materials transporters, drivers, and shippers operating in Ohio.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

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The Commission does not believe the rules adversely impact the identified business community as their only purpose is to provide the appropriate due process to contest any violation for which a regulated entity has been cited.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The Commission does not anticipate any adverse impact due to the proposed revisions to Ohio Adm.Code Chapter 4901:2-7, as the rules do not require regulated entities to act. The rules are procedural in nature and simply provide a process by which regulated entities may contest a violation.

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The Commission has not identified an adverse impact on business as a result of the proposed revisions. In fact, the business impacts resulting from the proposed revisions are expected to be positive impacts. The Commission is the only state agency charged with ensuring that the highway transportation of persons and property is conducted in a safe and efficient manner. Additionally, the Ohio Revised Code directs the Commission to adopt rules to carry out the provisions of Chapters 4921 and 4923, including rules to assess civil forfeitures. It is notable that the regulated community had no comments at the public workshop, nor has there been any indication from stakeholders that the rules in this chapter are particularly onerous.

**Regulatory Flexibility**

**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. Regulated entities in Ohio are under the exclusive jurisdiction of the Public Utilities Commission of Ohio and may not be exempted from the requirements in Ohio Adm.Code Chapter 4901:2-7.

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**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Not applicable, as there are no fines and penalties for failure to comply with Ohio Adm.Code Chapter 4901:2-7.

**20. What resources are available to assist small businesses with compliance of the regulation?**

These rules are procedural in nature. Commission staff works with regulated entities to answer questions and provide direction regarding the process by which they can contest violations. Small businesses may contact the Commission at any time and may submit written comments on the proposed revisions during the public comment period once the proposed revisions are filed in the case docket.



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 21-0561-TR-ORD**

Summary: Entry directing that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed amendments to Ohio Adm. Code Chapter 4901:2-7, its rules regarding forfeitures and compliance orders, do so no later than September 1, 2021, and September 15, 2021, respectively electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio