

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

<b>Agency Name:</b>	Public Utilities Commission of Ohio (PUCO)
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<b>Regulation/Package Title:</b>	Chapter 4901:2-6 / Hazardous Materials Carriers Registration Case No. 18-254-TR-ORD
<b>Rule Number(s):</b>	4901:2-6-01 Definitions
	4901:2-6-02 Purpose and scope
	4901:2-6-03 Determination of base state
	4901:2-6-04 Supplementation of information
	4901:2-6-05 Fees
	4901:2-6-06 Term of uniform program registration and uniform program permit
	4901:2-6-07 Standards for the suspension or revocation of a uniform program permit
	4901:2-6-08 Proceedings related to the suspension or revocation of a uniform program permit
	4901:2-6-09 Notices of deficiency and alternative dispute resolution
<b>Date:</b>	July 25, 2018
<b>Rule Type:</b>	<input checked="" type="checkbox"/> Five Year Review <input checked="" type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Regulatory Intent**

- 1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.**

Ohio Adm.Code Chapter 4901:2-6 contains requirements for the registration and permitting of hazardous materials carriers and the conditions under which a permit may be suspended or revoked. These regulations implemented R.C. 4921.15 and 4921.16, which authorized the Commission to adopt rules applicable to the uniform registration and permitting of carriers in a manner authorized by the Hazardous Materials Transportation Uniform Safety Act of 1990, out of which the Alliance for Uniform Hazmat Transportation Procedures (Alliance) was established.

R.C. 4921.15 and 4921.16 were repealed on September 29, 2017 as part of the biennial budget considerations in Am. Sub. H.B. 49 of the 132<sup>nd</sup> General Assembly. Consequently, the provisions of Ohio Adm.Code Chapter 4901:2-6 are no longer applicable and will be rescinded.

- 2. Please list the Ohio statutes authorizing the Agency to adopt this regulation.**

R.C. 4905.81, 4921.15, and 4921.16

- 3. 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.**

The regulations did not implement a federal requirement, but the Uniform Program was recognized by federal law.

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

Not applicable.

- 5. 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 rules in this chapter established standards as required by R.C. 4921.15 and 4921.16 for the registration and permitting of carriers of hazardous materials operating in Ohio. The rules governed the process by which carriers would meet requirements under the law. The public purpose of these rules was to create (1) a uniform and objective process for the

issuance of a permit and (2) a consistent and objective process by which a permit could be suspended or revoked.

**6. 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 R.C. Chapter 4921 to ensure a safe and efficient transportation of hazardous materials, in commerce, within the state. The Commission monitored the compliance with these rules through enforcement actions against drivers and carriers.

**Development of the Regulation**

**7. 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.***

On March 15, 2018, in Case No. 18-254-TR-ORD, the Commission issued an entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 27, 2018, to listen stakeholders' concerns concerning the rules. The Entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of record. The workshop was conducted as scheduled on March 27, 2018.

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

No stakeholders were present at the workshop.

However, the Commission grants other opportunities for stakeholders to provide input on proposed rule revisions, including through the Commission call center and through the formal comment period of the rule review process. All stakeholder comments provided during the formal comment period are reviewed and addressed by the Commission.

**9. 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?**

Not applicable.

**10. 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 considered, because the rules implemented the statutory requirement to register and issue permits in accordance with the uniform procedures adopted by the Alliance. Accordingly, the Commission adopted rules that it considered best suited to meet these goals.

**11. 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.*

The sole outcome desired for the rules was that carriers of hazardous materials register and receive a permit before transporting hazardous materials, in commerce, within this state. The options for achieving this outcome were limited by the statute as well as by matter of practicality. Therefore, the Commission did not consider a performance-based regulation.

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

It was unlikely that Ohio Adm.Code Chapter 4901:2-6 duplicated the rules of other state entities; however, ODOT was notified of the workshop as described in paragraph 7 of this BIA, but ODOT did not indicate that Ohio Adm.Code Chapter 4901:2-6 duplicated any of its rules.

**13. 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.**

Stakeholders' first opportunity to comment on Ohio Adm.Code Chapter 4901:2-21 was in the aforementioned workshop on March 27, 2018; as already stated, no stakeholders were present. Next, the Commission will issue an Entry indicating Ohio Adm.Code Chapter 4901:2-6 will be rescinded. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order rescinding the chapter. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the railroad list-serve, and all interested persons of record will receive notice that this Ohio Adm.Code chapter will be rescinded.

**Adverse Impact to Business**

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

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

The rules in Ohio Adm.Code Chapter 4901:2-6 applied to all persons transporting hazardous materials, in commerce, within this state.

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

The rules impacted the identified business community in that applicants had to meet all the requirements of the Uniform Program including completing an application and paying all applicable fees.

**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 impact was primarily in terms of time and dollars spent by regulated entities filing an application with the Commission for a permit and paying the applicable fees. With rescission of the rules, this adverse impact will be eliminated.

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

The Commission is the only state agency charged with ensuring that the highway transportation of hazardous materials is conducted in a safe and efficient manner. Additionally, R.C. 4921.15 and 4921.19 directed the Commission to adopt rules to carry out the purposes of these statutes.

**Regulatory Flexibility**

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

No. The rules in Ohio Adm.Code Chapter 4901:2-6 implemented statutory requirements that the Commission must apply uniformly to carriers of hazardous materials.

**17. 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?**

The rules in Ohio Adm.Code Chapter 4901:2-6 did not impose fines or penalties for failure to comply.

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

Commission staff works with regulated entities to assist them with the applicable requirements and provides guidance on how to achieve compliance.