

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: _____ Public Utilities Commission of Ohio (PUCO)

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Regulation/Package Title: _____ Ohio Adm.Code Chapter 4901:2-5 / Safety Standards

Rule Number(s):

4901:2-5-01	4901:2-5-05	4901:2-5-11	4901:2-5-15
4901:2-5-02	4901:2-5-07	4901:2-5-12	
4901:2-5-03	4901:2-5-08	4901:2-5-13	
4901:2-5-04	4901:2-5-10	4901:2-5-14	

Date: _____ January 15, 2014

Rule Type:

☒ New ☒ 5-Year Review ☒ No Change
☒ Amended ☒ Rescinded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.

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.

The draft rules contain revisions to the safety standards applicable to motor carriers, excepted carriers, hazardous materials transporters, and offerors. More specifically:

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- (a) In Ohio Adm.Code 4901:2-5-01, Staff proposes adding new definitions and modifying current definitions to provide additional clarity to the Ohio Admin. Code Chapter 4901:2-5 and to align the new and modified definitions with changes to the Revised Code.
- (b) Staff proposes to replace current Ohio Adm.Code 4901:2-5-02 with a rule that defines the chapter's intended purpose and scope, adds waiver language, and indicates which version of the Code of Federal Regulations (C.F.R.) has been incorporated.
- (c) Staff proposes to replace current Ohio Adm.Code 4901:2-5-03 with a rule that is substantively similar to current Ohio Adm.Code 4901:2-5-02, with revisions. Staff suggests language to clarify which regulations are applicable to each type of regulated entity. In addition, Staff proposes changing maximum driving time limitations for motor carriers engaged in the intrastate transportation of construction materials and equipment. The current rule prohibits a motor carrier to allow a driver to drive more than twelve hours following eight consecutive hours off duty, or for any period after having been on duty sixteen hours following eight consecutive hours off duty. The Federal Motor Carrier Safety Administration (F.M.C.S.A.) found the Commission's eight hours off duty requirement to be incompatible with 49 C.F.R. 395.3, which concerns maximum driving time for property carrying vehicles, and 49 C.F.R. 350.341(e), which concerns hours of service for drivers. Therefore, to become compatible with federal law, staff proposes language that prohibits a driver to drive more than twelve hours following ten consecutive hours off duty, or for any period after having been on duty sixteen hours following ten consecutive hours off duty.
- (d) Staff proposes changing Ohio Adm.Code 4901:2-5-04 to clarify who can perform a medical examination for purposes of provisional medical certification (PRC). This change ensures consistency with 49 C.F.R. 391.42, which requires that only medical examiners that are listed on the National Registry of Certified Medical Examiners can perform medical examinations of commercial motor vehicle (CMV) drivers. Staff also suggests minor revisions to the PRC process to ensure that applicants receive confirmation when their applications are approved, and to provide a means by which enforcement personnel can determine during a roadside inspection if a provisional medical certificate is valid.

- (e) Staff proposes new Ohio Adm.Code 4901:2-5-05 to codify Commission policy on regulatory relief to ensure consistency with the Revised Code and federal regulations.
- (f) In Ohio Adm.Code 4901:2-5-07 Staff proposes changes to make the rule clearer and easier to comprehend. Staff also suggests adding a provision allowing enforcement personnel to place a vehicle out of service if a for-hire intrastate motor carrier does not have a valid certificate of public convenience and necessity. Finally, Staff adds citations to the C.F.R., applicable to motor vehicles operating in interstate commerce, in order to ensure regulatory compatibility with federal requirements.
- (g) In Ohio Adm.Code 4901:2-5-10 Staff proposes changes to simplify the requirements for marking a CMV by providing a citation to the C.F.R. CMV markings consist of the name of the motor carrier and the motor carrier's identification number issued by the F.M.C.S.A., or the identification number issued by the Commission, preceded by the letters P.U.C.O.
- (h) Staff adds language to clarify to which entities Ohio Adm.Code 4901:2-5-11 applies. In addition, Ohio Adm.Code 4901:2-5-11 presently requires that if a CMV is inspected and the driver cannot arrive at the motor carrier's terminal within 24 hours, the driver must immediately mail the inspection report to the motor carrier. Staff proposes adding language to allow for electronic transmission of the inspection report to the motor carrier. Finally, Ohio Adm.Code 4901:2-5-11 presently requires that within 15 days after a CMV inspection, a motor carrier must correct any violations or defects noted on the inspection report, certify on the report that such corrections have been made, and mail the report to the Commission address that is indicated on the report. Staff proposes adding language to allow a motor carrier, excepted carrier, or hazardous material transporter to make such certification electronically.
- (i) Staff proposes to rescind Ohio Adm.Code 4901:2-5-12, as the referenced reports are provided as a matter of course and are public records.
- (j) Staff suggests changes to Ohio Adm.Code 4901:2-5-13 to greatly improve its organization, readability, and ease of comprehension. Staff also proposes language to expand the criteria by which enforcement personnel determine which entities to inspect, and which more accurately reflects the myriad of activities such enforcement personnel are engaged in. Similarly, Staff suggests changes that better clarify the standards by which reviews of regulated entities shall be conducted.

- (k) In Ohio Adm.Code 4901:2-5-14 Staff adds language to clarify which entities the rule applies to.
- (l) 49 C.F.R. 395.1(K) and Ohio Adm.Code 4901:2-5-15 concern maximum hours of service for drivers engaged in agricultural operations during planting and harvesting season. Staff proposes amending Ohio Adm.Code 4901:2-5-15 so that the citation to federal law indicates 49 C.F.R. 395.1(K), rather than 49 C.F.R. 395.1(L).

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule	Statutory Authority Ohio Revised Code
4901:2-5-01	4905.04, 4923.04
4901:2-5-02	4905.04, 4923.04
4901:2-5-03	4905.04, 4923.04
4901:2-5-04	4905.04, 4923.04
4901:2-5-05	4905.04, 4923.04
4901:2-5-07	4905.04, 4923.04
4901:2-5-08	4905.04, 4923.04
4901:2-5-10	4905.04, 4923.04
4901:2-5-11	4905.04, 4923.04
4901:2-5-13	4905.04, 4923.04
4901:2-5-14	4905.04, 4923.04
4901:2-5-15	4905.04, 4923.04

- 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.**

Ohio receives federal funding via a grant under the Motor Carrier Safety Assistance Program (MCSAP). To continue to be part of MCSAP, Ohio rules must be compatible with federal

law. Consequently, in Case No. 13-1106-TR-ORD, Staff is proposing revisions and amendments to Ohio Adm.Code Chapter 4901:2-5 that enable the Commission to maintain consistency and compatibility with federal law that the Commission enforces. The federal regulations, as adopted in Ohio Adm.Code 4901:2-5-03, are the federal motor carrier safety rules and the federal hazardous materials rules, i.e. 49 C.F.R. 40, 367, 380, 382, 383, 385, 386, 387, and 390 to 397, as well as 49 C.F.R. 107, subparts f and g, and 49 C.F.R. 171 to 180.

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

Not applicable, as staff's proposed revisions are to better ensure that the Commission's rules are consistent and compatible with federal rules.

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)?

Ohio Adm.Code 4901:2-5-02, titled Purpose and Scope, states that this chapter governs establishment and enforcement of safety standards applicable to the operations of motor carriers, excepted carriers, hazardous materials transporters, and offerors.

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

The Commission monitors compliance with the federal motor carrier safety rules and the federal hazardous materials rules through enforcement actions against motor carriers, excepted carriers, hazardous materials transporters, and offerors.

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.

Stakeholders include the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (O.D.O.T.), Ohio State Highway Patrol (O.S.P.), Ohio Farm Bureau Federation, and the PUCO Transportation Department list-serve. Service was made by U.S. Mail and the list serve via a Commission entry in In re Comm. Review of Chapter 4901:2-5, Ohio Adm.Code, Regarding Transportation Safety Standards, Case No. 13-1106-TR-ORD, Entry (June 17, 2013), indicating a July 22, 2013, workshop at the Commission.

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

Only one stakeholder was present at the workshop; he provided no comments. Stakeholders will have additional opportunity to comment following issuance of Staff's proposed revisions in a Commission Entry on January 15, 2014.

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. The Commission is authorized by statute to establish and enforce safety standards applicable to motor carriers, excepted carriers, hazardous materials transporters, and offerors; further, as indicated in response to question #1 above regarding participation in MCSAP, Ohio rules must be compatible with federal law. Accordingly, the Commission adopted federal rules to attain this goal.

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 outcome intended by the motor carrier safety rules and the hazardous materials rules is enhanced safety for motor carriers, excepted carriers, hazardous materials transporters, and offerors. The options for achieving this outcome are limited by state and federal requirements that comprise such rules. 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?

Although it is unlikely that Ohio Adm.Code Chapter 4901:2-5 duplicates the rules of the O.D.O.T. and O.S.P., these two parties were notified of the workshop described in paragraph 7 of this BIA. Neither O.D.O.T. nor O.S.P. have indicated that Ohio Adm.Code Chapter 4901:2-5 duplicates any of their 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.

As noted above, in In re Comm. Review of Chapter 4901:2-5, Ohio Adm.Code, Regarding Transportation Safety Standards, Case No. 13-1106-TR-ORD, Entry (June 17, 2013), the Commission scheduled a July 22, 2013, workshop to listen to stakeholder comments regarding proposed changes to the rules in the chapter. The entry was issued by U.S. Mail and e-mail. Only one stakeholder appeared at the workshop; that stakeholder made no comments. Next, the Commission will issue an entry on January 15, 2014, containing Staff's proposed changes to the rules, to which stakeholders will have another opportunity to comment. Following the comment period specified in the entry, the Commission will issue a finding and order adopting the proposed rules changes. Stakeholders may also file applications for rehearing, pursuant to R.C. 4903.10, regarding the finding and order. Stakeholders include the Ohio Trucking Association, National Tank Truck Carriers, Inc., O.D.O.T., O.S.P., Ohio Farm Bureau Federation, and the Commission's Transportation Department list-serve.

Adverse Impact to Business

14. 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;

The impacted business community consists of motor carriers, excepted carriers, hazardous materials transporters, and offerors.

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

The nature of the adverse impact consists of employer time and/or expense for compliance, and can vary with the particular rule that a motor carrier, excepted carrier, hazardous materials transporter, or offeror must comply with.

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.

Under Ohio Adm.Code 4901:2-5-03, the Commission adopts U.S. Department of Transportation (U.S.D.O.T.) rules for motor carriers, and applies those rules to

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interstate and intrastate motor carriers. In addition, under Ohio Adm.Code 4901:2-5-03, the Commission adopts U.S.D.O.T. rules applicable to hazardous materials offerors and hazardous materials transporters, as well as excepted carriers. The adverse impact consists of time/expense for such entities to comply with the applicable rules.

The adverse impact of Ohio Adm.Code 4901:2-5-04 consists of the time/expense for a commercial motor vehicle driver to obtain provisional medical certification and to keep such certification current on an annual basis.

The adverse impact of Ohio Adm.Code 4901:2-5-05, only exists if the U.S.D.O.T. has not issued a notice granting regulatory relief, and a motor carrier elects to submit a request for such relief to the Commission, explaining the circumstances necessitating the relief and how the circumstances have impacted the carrier's operations.

The adverse impact of Ohio Adm.Code 4901:2-5-07 consists of the time/expense for a motor carrier to correct the violations present in a motor vehicle that has been declared out-of-service.

The adverse impact of Ohio Adm.Code 4901:2-5-08 consists of the time/expense for a motor carrier operating a motor vehicle with a gross vehicle weight rating exceeding three tons to install and maintain mud flaps on the rearmost wheels of the motor vehicle.

The adverse impact of Ohio Adm.Code 4901:2-5-10 consists of the time/expense for a motor carrier to comply with marking requirements for a commercial motor vehicle. There is also time/expense involved if a motor carrier voluntarily applies to the Commission for an exemption from the marking requirements; the carrier must prove that before January 1, 1987, it used an alternate marking system and that current marking requirements would pose a security hazard to the vehicle, its contents, or its occupants.

The adverse impact of Ohio Adm.Code 4901:2-5-11 consists of the time/expense for the driver of a commercial motor vehicle who has received an inspection report to mail or electronically submit the inspection report to the motor carrier, excepted carrier, or hazardous materials transporter, at times when the driver is not scheduled to arrive at a terminal or facility of the motor carrier within 24 hours. In addition, within 15 days of the inspection, the motor carrier, excepted carrier, or hazardous materials transporter must correct any violations or defects noted on the inspection report before the motor vehicle's next dispatch, and certify by mail or electronically to the Commission that the repair has been made.

The adverse impact of Ohio Adm.Code 4901:2-5-13 consists of the time for a motor carrier, excepted carrier, or hazardous materials transporter to provide authorized Commission personnel with reasonably expeditious access to any documents or property to conduct an motor vehicle inspection.

The adverse impact of Ohio Adm.Code 4901:2-5-14 consists of the time/expense for a motor carrier, excepted carrier, or hazardous materials transporter to comply with a Commission order directing cessation of all or part of intrastate operations because of an imminent hazard caused by violations of R.C. Chapters 4921 or 4923, or Ohio Adm.Code Chapter 4901:2-5. In addition, there may be time/expense if the Commission, prior to issuing an imminent hazard order, directs the motor carrier, excepted carrier, or hazardous materials transporter to show cause why the Commission should not issue an order requiring cessation of all of the carrier's or transporter's operations. Finally, if the Commission issues such an order without a prior hearing, and the motor carrier, excepted carrier, or hazardous materials transporter requests a hearing within 30 days of the order, there is time/expense involved preparing for the hearing and participating in the hearing.

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

The Commission is charged with ensuring that the highway transportation of persons and property is conducted in a safe and efficient manner. In addition, R.C. 4923.04 directs the Commission to adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate or intrastate commerce, as well as rules applicable to highway transportation and offering for transportation of hazardous materials by motor carriers. 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

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

No. The rules in Ohio Adm.Code 4901:2-5 implement motor carrier safety and hazardous materials safety rules that must apply uniformly to all motor carriers, offerors, hazardous materials transporters, and excepted carriers. Further, the potential harm to the public from noncompliance with such rules is the same for small businesses as it is for large. Thus, any alternative means of compliance would not be appropriate. It must be noted that while Ohio Adm.Code 4901:2-5-05 allows a motor carrier to submit a request for regulatory relief to the Commission and Ohio Adm.Code 4901:2-5-10 allows a motor carrier to apply to the Commission for an exemption from marking requirements, neither rule is specifically

intended to provide relief for small businesses, as motor carriers of any size can file such requests.

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?

Parties against whom fines are assessed for motor carrier safety and hazardous materials violations can request a conference with Staff to discuss alleged violations. The conference may result in Staff reducing or waiving the fine, depending on the nature and circumstances of the violation, as well as other factors that the regulated entity might disclose at the conference. If matters are not resolved at the conference, the motor carrier, excepted carrier, hazardous materials transporter, or offeror may choose to proceed to a hearing. Depending on evidence and testimony presented at the hearing, the Commission may determine that a reduced or waived fine is appropriate.

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

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