MEMORANDUM

TO: Angela Hawkins, Chief Legal Counsel, Public Utilities Commission of Ohio

FROM: Mark Hamlin, Director of Regulatory Policy

DATE: July 21, 2014

RE: **CSI Review – Motor Carrier Safety Standards – Case No. 13-1106 (OAC Chapter 4901:2-5)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of thirteen rules being proposed by the Public Utilities Commission of Ohio (PUCO) pursuant to the five-year review required by ORC 119.032. Nine rules are being proposed with amendments,[1] and one is being proposed with no changes. In addition, the PUCO is proposing two new rules – 4901:2-5-02 and 4901:2-5-05 – and is proposing to rescind Rule 4901:2-5-12. The rule package was submitted to the CSI Office for review on January 15, 2014, and the comment and reply comment period ended on February 12, 2014. Two comments were submitted during the CSI review period.

The rule package addresses safety standards for motor carries (as well as excepted carriers and hazardous materials transporters). By virtue of adopting all applicable federal regulations, the PUCO regulates both interstate and intrastate commerce under the rules in this package. The BIA submitted by the PUCO notes that Ohio receives federal funding through the Motor Carrier Safety

[1] The Legislative Service Commission requires that an existing rule being amended by more than 50 percent must be rescinded and replaced by a new rule that has the same rule number. Seven of the nine rules in this package being amended are subject to this "rescind and new" requirement. In addition, the existing 4901:2-5-02 is being amended and renumbered as 4901:2-5-03; a brand new version of 4901:2-5-02 is being proposed.

Assistance Program (MCSAP), and therefore Ohio regulations are required to be consistent and compatible with the federal regulations. Some of the changes being proposed in this rule package are intended to better ensure consistency and compatibility with the federal regulations.

The two comments submitted during the CSI review process – from the Ohio Trucking Association and the Ohio Aggregates & Industrial Minerals Association – raise the same concerns about specific elements of the proposed rules. Most notably, Rule 4901:2-5-03 includes an existing exemption to the federal maximum driving time for carriers engaged in intrastate transportation of construction materials and equipment. However, the proposed amendment increases the number of required off-duty hours in between driving hours from eight to ten. The commenters expressed concern that the proposed amendment will push back the driver's starting time by two hours, and will negatively impact the motor carrier's ability to maximize the limited amount of time (and good weather) in the peak construction season. Moreover, the commenters cite a lack of data supporting a safety concern leading to this change. In its BIA, the PUCO explains that the current eight-hour limit is incompatible with the federal law, and stated in the Commission order dated May 14, 2014 that it has been notified as such by the Federal Motor Carrier Safety Administration.

The commenters also express concerns with a provision of the rules that requires drivers to obtain medical certifications from a provider listed on a national registry administered by the U.S. Department of Transportation. The questions related to whether the federal registry would be in place by the date listed in the rules, and the Commission revised the proposed language in an attempt to address this concern. The final concern submitted in the comments was with language allowing a vehicle to be placed out of service if the carrier does not have a valid certificate of public convenience and necessity. The associations cite the significant financial impact from placing a vehicle out of service, and question whether a carrier otherwise operating in good faith should be sanctioned in this manner for failure to have a valid certificate. However, the Commission again cited federal law and the Ohio Revised Code in justifying this requirement.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the PUCO should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.