

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
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Regulation/Package Title: Forfeiture and Compliance Orders

Rule Number(s): Chapter 4901: 2-7

Date: December 16, 2015

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☒ Rescinded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 proposed revisions to the rules in Ohio Adm.Code Chapter 4901:2-7 are in accordance with the state of Ohio's 5-year rule review procedures. R.C. 111.15 requires 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 rules in Chapter 4901:2-7 concern civil forfeiture and

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compliance rules applicable to regulated entities including motor carriers, hazardous materials transporters, drivers, and shippers operating in Ohio.

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

Rule	Statutory Authority - Ohio Revised Code
4901:2-7-01	4901.13, 4905.81, 4923.99
4901:2-7-02	4901.13, 4905.81, 4923.99
4901:2-7-03	4901.13, 4905.81, 4923.99
4901:2-7-04	4901.13, 4905.81, 4923.99
4901:2-7-05	4901.13, 4905.81, 4923.99
4901:2-7-07	4901.13, 4905.81, 4923.99
4901:2-7-08	4901.13, 4905.81, 4923.99
4901:2-7-09	4901.13, 4905.81, 4923.99
4901:2-7-10	4901.13, 4905.81, 4923.99
4901:2-7-11	4901.13, 4905.81, 4923.99
4901:2-7-12	4901.13, 4905.81, 4923.99
4901:2-7-13	4901.13, 4905.81, 4923.99
4901:2-7-14	4901.13, 4905.81, 4923.99
4901:2-7-15	4901.13, 4905.81, 4923.99
4901:2-7-16	4901.13, 4905.81, 4923.99
4901:2-7-17	4901.13, 4905.81, 4923.99
4901:2-7-18	4901.13, 4905.81, 4923.99
4901:2-7-20	4901.13, 4905.81, 4923.99
4901:2-7-21	4901.13, 4905.81, 4923.99
4901:2-7-22	4901.13, 4905.81, 4923.99

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.

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. 350.21(u)). 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

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Code govern the proceedings of the Commission to assess civil forfeitures and make compliance orders as authorized by that section.

- 4. 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.

- 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 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.

- 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 Chapters 4921 and 4923, Revised Code, to ensure safe and efficient transportation of persons and property within the state. Section 4923.99, Revised Code, 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.

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.*

The Commission conducted a workshop on November 19, 2015, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review for Ohio Adm.Code Chapter

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4901:2-7 is 15-1719-TR-ORD. The entry providing notice of the workshop was 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, and the transportation list serve.

8. 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.

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?

No scientific data was provided or considered. In adopting any changes to these rules, the Commission takes into account all feedback from stakeholders and the general public.

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 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.

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 Commission did not consider a performance based regulation. The rules in Ohio Adm.Code Chapter 4901:2-7 are primarily administrative in nature and are required by the Revised Code.

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 4901:2-7 duplicates the rules of other state entities, the Ohio Department of Transportation (ODOT) was notified of the workshop described in paragraph 7 of this BIA. ODOT has not indicated that Ohio Adm.Code Chapter 4901:2-7 duplicates any of its rules.

The Commission has also reviewed other Ohio regulations and found no duplicates, nor have any duplicates been identified by any stakeholder.

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 4901:2-7 was in the aforementioned workshop on November 19, 2015; as already indicated, no stakeholders attended. Next, the Commission will issue an entry containing the rules, to which stakeholders will have another opportunity to comment. Finally, following the comment period specified in the entry, the Commission will issue a finding and order adopting the rules. As noted above, 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, and the transportation list serve have been notified that this O.A.C. chapter is under review by staff, and these entities can provide feedback to Staff concerning the efficiency and effectiveness of the rules in this chapter.

These rules are universally applicable to all regulated entities and all are provided appropriate due process with respect to any cited violation.

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;**

Rules in Ohio Adm.Code Chapter 4901:2-7 apply to all regulated entities that are subject to Commission jurisdiction.

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

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.

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

The Commission stresses that business impacts resulting from the proposed revisions are expected to be positive impacts. The Commission believes that the revisions afford a more streamlined and efficient process. The Commission is the only state agency charged with insuring 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, Revised Code 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

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

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

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 4901:2-7 do not impose fines or penalties for failure to comply.

18. 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.