

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela Hawkins, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373
Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Motor Carrier Safety Standards

Rule Number(s): 4901:2-05-02(C)

Date: November 9, 2016

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☐ Rescinded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 Public Utilities Commission of Ohio has adopted safety standards applicable to the drivers and motor carriers that operate commercial motor vehicles (CMV) that reflect the requirements of the Federal Motor Carrier Safety Administration

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

CSIOhio@governor.ohio.gov

(FMCSA), as effective on May 14, 2014. On December 16, 2015, the FMCSA issued new rules applicable to hours of service requirements for drivers of commercial motor vehicles. These rules became effective on February 16, 2016. The Public Utilities Commission of Ohio has determined that it is appropriate to revise the date in Ohio Adm.Code 4901:2-5-02(C) such that it reflects the new rules adopted by the FMCSR. Thereby ensuring that drivers of CMVs operate in conformity with the rules adopted by the FMCSA and ensure the safety of the traveling public.

In order to effectuate this revision, the Commission has determined that Ohio Adm.Code 4901:2-5-02(C) should be amended on an emergency basis pursuant to R.C. 111.15(B)(2). In the 120-day time period during which the emergency rule is in effect, the Commission has initiated a rulemaking proceeding to consider adoption of the amendment to Ohio Adm.Code 4901:2-5-02(C) on a permanent basis.

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

| Rule | Statutory Authority - Ohio Revised Code |
|-------------|--|
| 4901:2-5-02 | 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.

The amendment to Ohio Adm.Code Chapter 4901:2-5 is being proposed consistent with the Commission's regulation of motor carriers and drivers of commercial motor vehicles, including federal requirements found in the Federal Motor Carrier Safety Administration, 49 C.F.R. 40, 42, 383, 387, 390-397.

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

The regulations in Ohio Adm.Code Chapter 4901:2-5 include provisions specifically required by the federal government and specifically required by the state of Ohio.

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 contained in Ohio Adm.Code Chapter 4901:2-5 govern the transportation of persons or property in intrastate and interstate commerce and require all motor carriers engaged intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission.

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

The rule contained in this chapter governs motor carrier safety proceedings to investigate and determine an operator's compliance with the regulations adopted by the Federal Motor Carrier Safety Administration, as well as to investigate and determine whether an operator of a commercial motor vehicle operates so as to ensure the safety of the traveling public. The Commission will measure the success of the regulation in terms of positive results from motor carrier investigations and inspections of commercial motor vehicles and drivers of commercial motor vehicles to ensure compliance with the motor carrier safety code. The Commission can also monitor any complaints that are made to its hotline by consumers, as well as information that is reported by Ohio State Highway Patrol.

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 will conduct a workshop on November 25, 2016, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code 4901:2-5-02(C) is 16-2182-TR-ORD. The Entry providing notice of the workshop was served upon all National Tank Truck Carriers Inc., Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Trucking Association, Ohio Association of Movers, Ohio Farm Bureau, and the Commission's 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?

The Commission will consider all comments provided by the stakeholders in attendance at the workshop, as well as all comments that are filed in the docket regarding the amendment of Ohio Adm.Code 4901:2-5-02(C).

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 considered in the amendment of the rule or the measurable outcomes of the rule. In adopting revisions to Ohio Adm.Code 4901:2-5-02(C), the Commission will take into account feedback from stakeholders and the general public regarding the effectiveness and efficiency of the currently effective rule and how the rule can be improved. In addition to the workshop, stakeholder and public feedback can be made directly to the Commission by filing comments.

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 alternatives were considered as the rules in Ohio Adm.Code Chapter 4901:2-5 implement federal and Ohio motor carrier safety regulations.

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 rules in Ohio Adm.Code Chapter 4901:2-5 are performance-based only in the sense that, for example, they require that certain information be reported to inspectors of the Commission and the Ohio Highway Patrol. Primarily, the rules in Ohio Adm.Code Chapter 4901:1-16 are regulatory in nature as required by the Revised Code.

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

The Commission has reviewed other Ohio regulations and did not find any duplication of regulations.

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.

Upon completion of the rule review process, any changes made to Ohio Adm.Code 4901:2-5-02(C) will be attached to the Commission's decision in Case No. 16-2182-TR-ORD and served upon National Tank Truck Carriers Inc., Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Trucking Association, Ohio Association of Movers, Ohio Farm Bureau, and the Commission's -transportation list-serve. The opportunity for continued feedback and input from the regulated community always exists and better ensures that the implementation of the rules in the chapter will occur smoothly. The Commission's Transportation Division implements measures to ensure consistent and predictable application of the regulations.

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 scope of the business community impacted by the rules under review includes drivers and operators of commercial motor vehicles that are regulated by the Commission.

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

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while maintaining the safety of the traveling public.

Ohio Adm.Code 4901:2-5-02(C) requires that the rules adopted by the Commission reflect the regulations issued by the FMCSA as effective on February 16, 2016.

- 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 4901:2-5-02(C). The rule has been reviewed in an effort to minimize any adverse impact on business, where feasible, while ensuring the public safety. Transportation staff works with regulated entities to effectuate and minimize the cost of compliance. The impact in terms of time or expense will, in most instances, be small, if there is any impact at all.

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

The Commission believes that any business impacts resulting from the proposed revisions are expected to be positive impacts. The Commission determined that the proposed amendment to Ohio Adm.Code 4901:2-5-02(C) is essential to ensure the operational safety of the citizens of the state of Ohio.

Regulatory Flexibility

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

No, there is not an exemption or alternative means of compliance for small businesses. The rules address requirements of the FMCSA that were effective on February 16, 2016, and ensure the Commission's rules reflect the most current safety regulations of the FMCSA. Accordingly, an exemption from compliance would not be appropriate and could pose a hazard or danger to the public.

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 amendment of Ohio Adm.Code Chapter 4901:2-5 is not focused on seeking penalties for paperwork or first-time offenses. Fines and penalties for violating Ohio Adm.Code Chapter 4901:2-5 may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and will not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation, unless such violation falls within one of the exceptions set forth in paragraph (C) of R.C. 119.14.

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

The Commission Staff works with small regulated companies to ensure compliance with the rules in all respects. In this rulemaking proceeding, all stakeholders and the general public have been invited to participate in the workshop, in order to provide the Commission Staff with potential revisions to Ohio Adm.Code 4901:2-5-02(C) to minimize or eliminate any adverse effects on business. Small businesses may contact the Commission at any time and may submit written comments on the proposed revisions during the public comment period.