

Attachment B
Chapter 4901:2-5-02, Ohio Adm.Code
Safety Rules/Regulations for Motor Carriers and
Shippers of Hazardous Materials
Case No. 18-399-TR-ORD
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CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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Regulation/Package Title: Ohio Adm.Code Rule 4901:2-5-02 / Purpose and Scope
(of Safety Rules/Regulations of Motor Carriers and Shippers
of Hazardous Materials)
Case No. 18-399-TR-ORD

Rule Number(s): 4901:2-5-02 Purpose and Scope

Date: July 25, 2018

Rule Type: ☒ Amended

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.

Current language in Ohio Adm.Code 4901:2-5-02(C) refers to Code of Federal Regulations (C.F.R.) citations in Ohio Adm.Code Chapter 4901:2-5. Specifically, the current language

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states that the citations incorporate by reference the particular version of the C.F.R. that was effective as of November 9, 2016. The draft language changes to July 25, 2018, the effective date for the C.F.R. citations.

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

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

Yes. Ohio receives federal funding via a grant under the Motor Carrier Safety Assistance Program (MCSAP). To continue to be part of MCSAP, Ohio motor carrier safety rules must be compatible with federal law. Under 49 C.F.R. 350.331, a grant recipient is required to amend its laws or regulations to make them compatible with the Federal Motor Carrier Safety Regulations (FMCSR) no later than three years following the effective date or any newly enacted regulation or amendment. Consequently, in Case No. 18-399-TR-ORD, Staff proposes to update the effective date for the C.F.R. rules referred in Ohio Adm.Code 4901:2-5.

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 ensures that the motor carrier safety regulations enforced by the Public Utilities Commission of Ohio and the Ohio State Highway Patrol are consistent

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with the FMCSR enacted by the United States Department of Transportation. By adopting regulations compatible with the FMCSR, the PUCO not only ensures continued grant funding in support of its efforts to make Ohio's roadways safer, but reduces regulatory complexity for shippers, motor carriers and drivers operating in the state.

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. This includes tracking the impact of enforcement on the number and severity of commercial motor vehicle violations and accidents on Ohio roadways.

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. 18-399-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 to stakeholders' concerns concerning the rule. The Entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol (OSHP), 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 rule implements the requirements in the C.F.R. to ensure eligibility to continue to receive MCSAP grant funds. Accordingly, the Commission adopted a rule 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 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 4901:2-5-02 duplicates any rule of ODOT and OSHP, these two parties were notified of the workshop described in paragraph 7 of this BIA. Neither ODOT nor OSHP have indicated that Ohio Adm.Code 4901:2-5-02 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.

Stakeholders' first opportunity to comment on Ohio Adm.Code 4901:2-5-02 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 4901:2-5-02 will be amended. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order amending the rule. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, OSHP, the Ohio Railroad Association, the Transportation list-serve, the railroad list-serve, and all interested persons of record will receive notice that this O.A.C. rule will be amended.

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 4901:2-5-02 consists of the time for a motor carrier, excepted carrier, hazardous materials transporter, and offeror to comply with the safety standards established and enforced pursuant to Ohio Adm.Code Chapter 4901:2-5.

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 Ohio Adm.Code 4901:2-5-02 is particularly onerous.

Regulatory Flexibility

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

No. The rules established and enforced by Ohio Adm.Code 4901:2-5-02 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.

However, 49 C.F.R. 350.341 does allow the PUCO to request an exemption or alternative means of compliance in limited situations to account for variances in state law. This process is outlined in Ohio Adm.Code 4901:2-5-05(E), which is not currently under review.

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.