

Ohio Adm.Code Chapter 4901:2-5
 Safety Rules and Regulations for Motor Carriers
 and for Shippers of Hazardous Materials
 Case No. 19-147-TR-ORD
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**Common Sense
Initiative**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Safety Standards

Rule Number(s): 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-05, 4901:2-5-07, 4901:2-5-08, 4901:2-5-10, 4901:2-5-11, 4901:2-5-13, 4901:2-5-14, 4901:1-21-15

Date of Submission for CSI Review: August 26, 2020

Public Comment Period End Date: September 25, 2020

Rule Type/Number of Rules:

☐ New/ (FYR?)

No Change/8 rules (FYR? Yes)

☒ Amended/4 rules (FYR? Yes)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an

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

CSIPublicComments@governor.ohio.gov

adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. 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:

- (a) Current language in Ohio Adm.Code 4901:2-5-02(C) refers to Code of Federal Regulations (CFR) citations in Ohio Adm.Code Chapter 4901:2-5. Specifically, the current language states that the citations incorporate by reference the particular version of the CFR that was

effective as of July 25, 2018. The draft language changes this date to August 26, 2020, to recognize updates in the CFR since the previous date in the Ohio Adm.Code.

- (b) Under Ohio Adm.Code 4901:2-5-04(C), Staff proposed adding provision (C)(10) to inform drivers that, beginning July 1, 2021, the Commission will not be issuing new provisional medical certificates to drivers diagnosed with diabetes mellitus treated with insulin for control or renewing existing certificates for drivers with this condition. Prior to this change, the Commission had issued these types of certificates to drivers with this condition after undergoing a medical examination process outlined in Ohio Adm.Code 4901:2-5-04(C). This rule was first implemented to allow drivers with this condition to operate CMVs in intrastate commerce because the C.F.R., at that time, did not provide a medical waiver for these drivers to operate in interstate commerce. However, the federal rules, pursuant to 49 C.F.R. 391.46, now provide a process for drivers with insulin-dependent diabetes mellitus to obtain qualification to operate CMVs in interstate commerce, obviating the need for a provisional medical waiver at the state level.
 - (c) 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 a motor vehicle inspection. The proposed amendment codifies the already existing expectation that drivers cooperate with reasonable requests made during an inspection.
 - (d) The proposed language in Ohio Adm.Code 4901:2-5-15 revises the definition of “planting and harvesting season,” extending the length of the season from March 31 through November 30 to last the entire year. Pursuant to 49 CFR 395.1(K), each state must establish the definition for this term. A majority of states have established this season as lasting the whole year. Furthermore, the change is to recognize that farming activities are ongoing throughout the year.
3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Rule	Statutory Authority/Amplification Ohio Revised Code
4901:2-5-01	4923.04, 4923.01, 4923.02, 4923.04, 4923.06, 4923.07

4901:2-5-02	4923.04, 4923.06, 4923.07
4901:2-5-03	4923.04
4901:2-5-04	4923.04
4901:2-5-05	4923.02, 4923.04
4901:2-5-07	4923.04, 4923.06, 4923.07, 4923.03
4901:2-5-08	4923.04
4901:2-5-10	4923.04
4901:2-5-11	4923.04, 4923.06,
4901:2-5-13	4923.04, 4923.06, 4923.07
4901:2-5-14	4923.04, 4923.15
4901:2-5-15	4923.04

- 4. 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. 19-147-TR-ORD, Staff proposes to update the effective date for the CFR rules referred in Ohio Adm.Code 4901:2-5.

- 5. 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.

6. 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.

7. 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 investigate and determine whether an operator of a CMV 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 CMVs and drivers of CMVs to ensure compliance with 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 (OSHP).

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. 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 February 12, 2019, in Case No. 19-147-TR-ORD, the Commission issued an entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 28, 2019, 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), OSHP, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve,

Ohio State Legislative Board/United Transportation Union, and all interested persons of record. The workshop was conducted as scheduled on March 28, 2019.

10. 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.

11. 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.

12. 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.

13. 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 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 OHSP. Primarily, the rules in this chapter are regulatory in nature, as required by the Ohio Revised Code.

14. 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. Also, neither ODOT nor OSHP, who were notified of the workshop described in

paragraph 9 of this BIA, have indicated that this chapter duplicates any of their rules.

15. 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, was in the aforementioned workshop on March 28, 2019; as already stated, no stakeholders were present. Next, the Commission will issue an entry indicating certain rules within Ohio Adm.Code 4901:2-5 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, Ohio State Legislative Board/United Transportation Union, and all interested persons of record will receive notice that the Ohio Adm.Code will be amended.

Adverse Impact to Business

16. 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; and

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

b. Identify the nature of all adverse impact (e.g., 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. The proposed revisions were drafted in an effort to minimize any adverse impact on business, while maintaining the safety of the traveling public.

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 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. Furthermore, under Ohio Adm.Code 4901:2-5-03, the Commission adopts U.S. Department of Transportation (USDOT) rules for motor carriers and applies those rules to interstate and intrastate motor carriers. In addition, under Ohio Adm.Code 4901:2-5-03, the Commission adopts USDOT 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 CMV driver to obtain provisional medical certification and to keep such certification current on an annual basis. The proposed amendment will save drivers with insulin-dependent diabetes mellitus the time/expense of obtaining provisional medical certification to operate their CMVs in intrastate commerce; however, these drivers will need to obtain the medical certification now offered at the federal level.

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 a motor vehicle inspection. The proposed amendment does not significantly increase this adverse impact since it only codifies the already existing expectation that drivers cooperate with reasonable requests made during an inspection.

49 CFR 395.1(K) requires the state to set a definition for “planting and harvesting season,” which is the purpose of Ohio Adm.Code 4901:2-5-15. The revisions to the current rule do not portend adverse impacts, considering a longer harvest season results in affected carriers being exempt from certain portions of the CFR for a longer period of time.

17. 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 this chapter is particularly onerous.

Regulatory Flexibility

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

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 business 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 business, as motor carriers of any size can file such request. The same applies to the carriers that operate in conformance with Ohio Adm.Code 4901:2-5-15.

19. 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.

20. 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.