

Business Impact Analysis
Chapter 4901:2-7 Forfeiture and Compliance Orders
Case No. 21-561-TR-ORD
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Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Case No. 21-561-TR-ORD

Forfeiture and Compliance Orders

Rule Number(s): Ohio Adm.Code Chapter 4901:2-7

Date of Submission for CSI Review: July 28, 2021

Public Comment Period End Date: September 15, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/16 rules (FYR? Yes)

Amended/2 rules (FYR? Yes)

Rescinded/___ rules (FYR? ___)

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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 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 proposed revisions to Ohio Adm.Code Chapter 4901:2-7 are in accordance with the state of Ohio's five-year rule review procedures. R.C. 111.15(B) and 106.03(A) require all state

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agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The rules in Chapter 4901:2-7 concern civil forfeiture and compliance rules applicable to regulated entities including motor carriers, hazardous materials transporters, drivers, and shippers operating in Ohio.

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.

The amendments are made in response to R.C. 111.15(B) and 106.03(A), which require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The statutory authority for the Commission to adopt the rules in Ohio Adm.Code Chapter 4901:2-7 is found in R.C. 4901.13, R.C. 4905.81, and R.C. 4923.99.

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.

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. 350.201(c) and 49 C.F.R. 350.207(a)(2)). 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 Code govern the proceedings of the Commission to assess civil forfeitures and make compliance orders as authorized by that section.

5. 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.

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 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.

7. 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 of the Revised Code to ensure safe and efficient transportation of persons and property within the state. R.C. 4923.99 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.

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.

No, 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.

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The Commission conducted a workshop via Webex on June 29, 2021, to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:2-7 is 21-561-TR-ORD. The entry providing notice of the workshop was served upon the transportation industry list serve, as well as various state and regional economic development organizations, industry trade associations, and other interested stakeholders.

10. 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.

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?

No scientific data was provided or considered. In drafting the required amendments for this chapter, the Commission takes into account feedback from stakeholders and the general public.

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 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.

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.

No performance-based regulations were considered. The rules contained in Ohio Adm.Code Chapter 4901:2-7 are primarily regulatory in nature and are required by the Revised Code.

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

The Commission has widely publicized notice of the consideration of these rules to those individuals in the transportation industry, as well as other governmental organizations and interest groups, including the Ohio Department of Transportation. The Commission has reviewed other Ohio regulations and found no duplicate, nor has a duplicate regulation been identified by any stakeholder.

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.

The Commission conducted a remote workshop on June 29, 2021, to receive feedback from interested stakeholders and the general public. Next, the Commission has issued an Entry that sets forth the Commission staff's proposed amendments to the rules, and stakeholders then can file written comments and reply comments. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the rules. All potential stakeholders will be notified that this chapter is under review by the Commission staff and they will be provided an opportunity for feedback concerning the rules in this chapter. Thus, stakeholders will have the opportunity to express whether the proposed rules will be applied consistently and predictably.

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 scope of the business community impacted by Ohio Adm.Code Chapter 4901:2-7 includes all regulated entities that are subject to Commission jurisdiction, including motor carriers, hazardous materials transporters, drivers, and shippers operating in Ohio.

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

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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.

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

The Commission has not identified an adverse impact on business as a result of the proposed revisions. In fact, the business impacts resulting from the proposed revisions are expected to be positive impacts. The Commission is the only state agency charged with ensuring 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, 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

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

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

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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?

Not applicable, as there are no fines and penalties for failure to comply with Ohio Adm.Code Chapter 4901:2-7.

20. 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.