

Chapter 4901:2-5, Ohio Adm.Code
Safety Rules and Regulations for Motor Carriers
and for Shippers of Hazardous Materials
Case No. 22-692-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

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

Ohio Adm.Code Chapter 4901:2-5 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, 4901:121-15

Date of Submission for CSI Review: September 21, 2022

Public Comment Period End Date: October 19, 2022

Rule Type/Number of Rules:

New/___ rules

No Change/2 rules (FYR? Yes)

Amended/10 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Rescinded/___ rules (FYR?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 draft rules contain revisions to the safety standards applicable to motor carriers, excepted carriers, hazardous materials transporters, and offerors.

Any and all amendments to these proposed rules under Chapter 4901:2-5 are made pursuant to Ohio Revised Code 121.951(A)(1) that requires state agencies to reduce their total number of regulatory restrictions. The amendments have been made to streamline the procedure for motor carrier safety compliance.

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/Application Ohio Revised Code
4901-2-5-01	4923.04; 4923.01; 4923.02; 4923.06; 4923.07
4901-2-5-02	4923.04; 4923.07; 4923.03
4901-2-5-03	4923.04
4901-2-5-04	4923.04
4901-2-5-05	4923.04; 4923.02
4901-2-5-07	4923.04; 4923.06; 4923.07; 4921.03
4901-2-5-08	-
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.

Not applicable, as these proposed rules ensure that the Commission's rules are consistent and compatible with federal rules.

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

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

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engaged intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission.

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 July 25, 2022, in Case No. 22-692-TR-ORD, the Commission issued an Entry indicating that a workshop would be conducted on August 23, 2022, to listen to stakeholders' concerns concerning rules in this chapter. The Entry was served upon the Ohio Petroleum Marketers Association, National Tank Truck Carriers, Inc., Ohio State Highway Patrol, the Ohio

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Trucking Association, Ohio Department of Public Safety, Ohio Department of Transportation, Ohio Association of Chiefs of Police, Buckeye State Sheriff's Association, Ohio Municipal League, County Commissioners' Association of Ohio, Ohio Township Association, WreckMaster Inc. USA, Towing and Recovery Association of America, North American Towing Academy, American Towing and Recovery Institute, Ohio Insurance Institute, Towing and Recovery Association of Ohio, AAA Ohio, all household goods carriers, Ohio Association of Movers, Ohio Brokers of household goods as identified by the Federal Motor Carrier Safety Administration, and the transportation list-serve. The workshop was conducted as scheduled.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No comments were provided by stakeholders 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?

Not applicable. No scientific data was directly provided or considered.

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 standards applicable to regulated entities that transport household goods. These rules provide the requirements for any person who is involved in the transportation of household goods. The Commission will consider any alternative proposals put forth in comments filed by stakeholders and the general public.

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. Neither ODOT nor OSHP, who were notified of the workshop, have indicated that this chapter duplicates any 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.

The Commission conducted a workshop on August 23, 2022, to consider any rule changes proposed by stakeholders. Next, the Commission has issued an Entry containing Staff's proposed changes to 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. All potential stakeholders will be notified that this chapter is under review by Staff and they will be provided an opportunity for feedback concerning the proposed changes to the rules in the chapter. Thus, stakeholders will have an opportunity to provide feedback to Staff concerning the efficiency and effectiveness of the rules in this chapter.

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 includes 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. Regulated entities should anticipate a minimal impact related to adhering to certification updates and cooperating with Commission personnel during inspections, when applicable.

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 for the business community because the purpose of the rule change is to remove regulatory restrictions.

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. Regulated entities 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.