

Staff's Proposed Amendments for Chapter 4901:2-21
Registration of Intrastate Motor Carriers
Case No. 12-2107-TR-ORD

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CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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Regulation/Package Title: Chapter 4901:2-21/ Registration of Intrastate Motor Carriers
Case No. 12-2107-TR-ORD

Rule Number(s):

| | |
|--------------|--|
| 4901:2-21-01 | Definitions |
| 4901:2-21-02 | Purpose and Scope |
| 4901:2-21-03 | Registration of for-hire carriers |
| 4901:2-21-04 | Supplementation of information |
| 4901:2-21-05 | Certificate of public convenience and necessity |
| 4901:2-21-06 | Annual update of a certificate of public convenience and necessity |
| 4901:2-21-07 | Suspension and Revocation of a certificate of public convenience and necessity |

Date: October 17, 2012

Rule Type:

| | |
|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input checked="" type="checkbox"/> Rescinded |
| | <input type="checkbox"/> No Change |

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.

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Chapter 4901:2-21, Ohio Administrative Code (O.A.C.), sets forth requirements for the registration of intrastate for-hire motor carriers, the issuance of certificates of public convenience and necessity, and the conditions under which a certificate may be suspended or revoked.

In this Business Impact Analysis (BIA), the Commission will focus upon those rules that require a for-hire motor carrier to obtain a certificate of public convenience and necessity. The proposed changes to this chapter do not change the manner or method for issuance of a certificate. The only proposed change that would be a new requirement is that applicants for a certificate will be required to obtain a registration number from the US Department of Transportation (USDOT), for which there is no cost. This will promote a more uniform approach to registration and enforcement. Otherwise, the proposed changes to these rules include minor changes to some of the definitions for certain terms used throughout the rules and a revising the order that the rules are listed, in order to provide a clearer understanding of the requirements for motor carriers under Chapter 4921 of the Revised Code. Finally, the proposed rules set forth the procedures for suspension and revocation of a certificate as required by that section, which the current rules do not address.

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

Sections 4921.03, 4921.05, 4921.07, 4921.09, 4921.13, and 4921.19 Revised Code.

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.

No rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

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

Not applicable.

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 in this chapter establish standards as required by Sections 4921.03, 4921.05, 4921.07, 4921.09, 4921.13, and 4921.19 Revised Code, for the certification of for-hire motor carriers operating in Ohio. The rules in this chapter simply govern the process by which for-hire motor carriers will meet their requirements under the law. The public purpose of these rules are to establish (1) a uniform and objective process for the issuance of a certificate of public convenience and necessity and (2) establish a consistent and objective process by which a certificate can be suspended or revoked. Except for the new requirement that applicants obtain a USDOT number, at no-cost, as part of the registration process (permitted by Section 4921.05, Revised Code as information deemed necessary by the Commission) these rules do not create any requirements beyond those mandated by statute. The agency believes these regulations are the minimum required to implement the statutory requirements.

6. 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 Chapter 4921, Revised Code, to ensure a safe and efficient transportation of persons and property within the state. The Commission monitors the compliance with these rules through enforcement actions against drivers and carriers.

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 July 19, 2012, in Case No. 12-2107-RR-ORD, the Commission issued an entry by U.S. Mail and e-mail indicating that a workshop would be conducted on August 24, 2012, to listen to any proposed rules changes proposed by stakeholders. The entry was served upon all regulated railroad companies, the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol, and the Ohio State Legislative Board/United Transportation Union. The workshop was conducted as scheduled on August 24, 2012.

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

In attendance at the workshop conducted on August 24, 2012, in Case No. 12-2107-RR-ORD were AT&T Ohio (AT&T) and the United Transportation Union. Neither AT&T nor the United Transportation Union provided comments or objections to the proposed revisions to the rule. The Commission notes the reason more stakeholder input was not provided is because the proposed revisions are noncontroversial and a result of Am. Sub. H.B. 487.

The Commission also 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 rules mirror the statutory requirements placed upon the Commission, and for-hire motor carriers pursuant to Sections 4921.03, 4921.05, 4921.07, 4921.09, 4921.11, 4921.13, and 4921.19, Revised Code. Accordingly, the Commission adopted rules that it considers 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 sole outcome desired by these rules is that for-hire motor carriers fulfill the statutory requirements of Chapter 4921 of the Revised Code before operating. The options for achieving this outcome are limited by the statute as well as by matter

of practicality. 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 Chapter 4901:2-21, O.A.C., duplicates the rules of other state entities, ODOT was notified of the workshop described in paragraph 7 of this BIA. ODOT has not indicated that Section 4901:2-21, O.A.C., duplicates any of its 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 Chapter 4901:2-21, O.A.C., was in the aforementioned workshop on August 24, 2012; as already indicated, stakeholders suggested no proposed changes to the rules in the chapter. Next, the Commission will issue an entry containing 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. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, Ohio State Highway Patrol, and Ohio Railroad Association, and the Ohio State Legislative Board/United Transportation Union have been notified that that this O.A.C. chapter is under review by staff, and these entities can provide feedback to Staff concerning the efficiency and effectiveness of the rules in this chapter.

These rules are universally applicable to all for-hire motor carriers and there is little to no discretion on the part of the Commission as to who is eligible to receive a certificate of public convenience and necessity. As long as the applicant fulfills the requirements, the certificate will be issued. Further, the standards for suspension and revocation of a certificate are objective in nature so that they will be applied consistently and predictably for the regulated community.

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;

Rules in Chapter 4901:2-21, O.A.C., apply to all regulated motor carriers that are subject to Commission jurisdiction.

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

The rules impact the identified business community, in that the applicant must meet all the requirements of Chapter 4921 of the Revised Code including completing an application, obtaining the necessary insurance, and paying all applicable taxes and fees in the amount required by that chapter. The proposed rule also requires applicants to obtain a USDOT number, which can be obtained quickly online, and for which there is no cost.

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 impact will primarily be in terms of time and dollars spent by motor carriers in filing an application with the Commission for a certificate, paying applicable taxes and fees, as well as obtaining proper insurance. The application form collects basic demographic and business information and should take an applicant no longer than 15-30 minutes to complete.

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

The Commission is the only state agency charged with insuring 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 Sections 4921.03, 4921.05, 4921.07, 4921.09, 4921.11, 4921.13, and

4921.19, Revised Code. 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

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

No. The rules in Section 4901:2-21, O.A.C., implement statutory requirements that the Commission must apply to for-hire motor carriers. Thus, any alternative means of compliance would not be appropriate.

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 rules in Chapter 4901:2-21, O.A.C., do not impose fines or penalties for failure to comply.

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

Commission staff works with motor carriers to assist such companies with the applicable requirements and provides guidance on how to achieve compliance.