

Attachment F
Chapter 4901:12-21, Ohio Adm.Code
Registration of Intrastate Property Carriers
Case No. 18-254-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 Property Carriers
Case No. 18-254-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

Date: July 25, 2018

Rule Type: ☒ Five Year Review ☒ Amended ☒ 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.

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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.**

Ohio Adm.Code Chapter 4901:2-21 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.

This Business Impact Analysis (BIA) discusses minor changes proposed for this Ohio Adm.Code chapter, reflecting that the application and registration process for carriers to obtain a certificate of public convenience and necessity is shifting to a new online system. The proposed changes define “certificate application” with references to the Commission’s online platform; require that Staff notify an applicant by electronic mail that the certificate application or the application to annually update the certificate has been denied; and, if the certificate application or update to the application is denied, describe how to file a petition and request for hearing.

- 2. Please list the Ohio statute authorizing the Agency to adopt these regulations.**

R.C. 4905.81, 4921.01, 4921.03, 4921.04, 4921.05, 4921.07, 4921.08, 4921.10, 4921.13, and 4923.03

- 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 R.C. 4905.81, 4921.03, 4921.04, 4921.05, 4921.07, 4921.08, 4921.13, and 4923.03, Revised Code for the certification of for-hire motor carriers operating in Ohio. The rules in this chapter govern the process by which for-hire motor carriers will meet their requirements under the law. The public purpose of these rules is to create (1) a uniform and objective process for the issuance of a certificate of public convenience and necessity and (2) a consistent and objective process by which a certificate can be suspended or revoked. 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 R.C. 4921 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 March 15, 2018, in Case No. 18-254-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 any rules changes proposed by stakeholders. The Entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol, 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 attended the workshop.

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 R.C. 4905.81, 4921.03, 4921.04, 4921.05, 4921.07, 4921.08, 4921.13, and 4923.03. 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 R.C. Chapter 4921 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 Ohio Adm.Code Chapter 4901:2-21 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 Ohio Adm.Code 4901:2-21 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 Ohio Adm.Code Chapter 4901:2-21 was in the aforementioned workshop on March 27, 2018; as already indicated, no stakeholders attended the workshop. 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, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of record have been notified 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 Ohio Adm.Code Chapter 4901:2-21 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 R.C. Chapter 4921, including completing an application, obtaining the necessary insurance, and paying all applicable taxes and fees in the amount required by that chapter.

- 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 or to annually update 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 ensuring that the highway transportation of persons and property is conducted in a safe and efficient manner. Additionally, the Revised Code directs the Commission to adopt rules to carry out R.C. 4905.81, 4921.03, 4921.04, 4921.05, 4921.07, 4921.08, 4921.13, and 4923.03. It is notable that the regulated community was not in attendance 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 Ohio Adm.Code Chapter 4901:2-21 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 Ohio Adm.Code Chapter 4901:2-21 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.