

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Review of Chapters 4901:2-6, 4901:2-8,) Case No. 12-2107-TR-ORD
4901:2-21, and 4901:3-1, Ohio)
Administrative Code.)

ENTRY

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. Chapters 4901:2-6, 4901:2-8, 4901:2-21, and 4901:3-1, Ohio Administrative Code (O.A.C.), are now scheduled to be reviewed. The rules in Chapter 4901:2-6, O.A.C., address the registration of hazardous materials carriers. The rules in Chapter 4901:2-8, O.A.C., address highway routing of non-radioactive hazardous materials. The rules in Chapter 4901:2-21, O.A.C., address registration of intrastate motor carriers. The rules in Chapter 4901:3-1, O.A.C., involve minimum track clearances and lateral clearances for railroads.
- (2) Additionally, in accordance with Section 121.82, Revised Code, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis. If there will be an adverse impact on businesses, as defined in Section 107.52, Revised Code, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to Section 121.82, Revised Code, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis. The Commission is to consider any recommendations made by CSI with regard to the draft rules and provide CSI with a memorandum explaining either how CSI's recommendations were incorporated into the rules or why the recommendations were not incorporated into the rules. The Commission has considered the current rule review procedures and revised them to incorporate the new CSI process.
- (3) By entry issued on July 19, 2012, the Commission scheduled a workshop to be held at the offices of the Commission on August 24, 2012, to elicit feedback on any proposed revisions to the rules

which Commission Staff (Staff) may have and permit stakeholders to propose their own revisions to the rules for Staff's consideration.

- (4) The workshop was held as scheduled, however, no stakeholder comments were offered at that time. Subsequently, Staff evaluated the rules contained in Chapters 4901:2-6, 4901:2-8, 4901:2-21, and 4901:3-1, O.A.C., and recommends revisions to several rules.
- (5) Staff is not recommending any substantive changes to the rules in Chapter 4901:2-6, O.A.C., but is revising and reordering the rules provide clarity and improved understandability. Although Staff is not recommending any substantive changes to the manner or method by which a carrier of hazardous materials may obtain a permit from the Commission, or in the cost to obtain a permit, Staff believes that the proposed modifications of the rules in the Chapter will provide a clearer understanding of the requirements.

Proposed Rule 4901:2-6-01 (definitions) revises definitions for certain terms used throughout the rules and adds new terms that are relevant to the Uniform Program of hazardous materials carrier registration. The change to the definition of the term "carrier" is a direct consequence of a statutory change enacted in Amended Substitute House Bill 487 (effective June 11, 2012). Currently, entities that are not considered to be "motor carriers" when engaged in certain types of transportation in intrastate commerce are exempt from the requirements of this Chapter. However, the changes to Sections 4921.01 and 4923.02, Revised Code, now specifically provide that these entities are not relieved from compliance with hazardous-material regulation. As a result, Staff has modified Rule 4901:2-6-01, O.A.C., to be consistent with Section 4921.01 and 4923.01, Revised Code, so that the term "carrier" no longer contains the exemption. As the regulations implement a uniform program for hazardous materials registration, in which a number of states participate, this change will also promote uniform enforcement of the permitting requirement so that any entity engaging in the transportation of hazardous materials, in commerce, is treated equally and predictably.

Proposed Rule 4901:2-6-02 (purpose and scope) updates a reference to the appropriate date of the Code of Federal Regulations.

Proposed Rule 4901:2-6-03 (registration of carriers of hazardous materials) now more accurately describes the requirements to

obtain a permit and consolidates many of the provisions in the current rules related to the several parts of the uniform application.

Proposed Rule 4901:2-6-04 (supplemental information) revises the rule to explain how an applicant would provide additional information regarding its application to the Staff.

Proposed Rule 4901:2-6-06 (term of uniform program registration and uniform program permit) provides greater clarity as to a carrier's annual registration renewal requirements.

Proposed Rule 4901:2-6-05 (fees) adds references to the Ohio Revised Code and more clearly defines how the fees are to be calculated.

Finally, proposed Rules 4901:2-6-07 (standards for the suspension or revocation of a uniform program permit), 4901:2-6-08 (proceedings related to the suspension or revocation of a uniform program permit, and 4901:2-6-09 (notices of deficiency and alternative dispute resolution), while substantively similar to the current rules providing for the suspension and revocation of a permit, have been revised to ensure consistency with the administrative procedures described in other Commission rules, and to ensure that due process is afforded to any carrier found not to be in compliance.

Proposed Rule 4901:2-6-08 (suspension and revocation of a permit) explains the procedural steps followed in the event a certificate was to be suspended or revoked.

- (6) Staff is not recommending any substantive changes to the rules in Chapter 4901:2-8, O.A.C., but is revising and reordering the rules to an extent that also provides clarity and greater understandability.

Proposed Rule 4901:2-8-01 (definitions) adds definitions for new terms used throughout the Chapter and revises the definition for "hazardous material" to make it consistent with other provisions of Chapter 4901:2, O.A.C.

Proposed Rule 4901:2-8-02 (purpose and scope) explains the purpose of the rules in this Chapter.

Proposed Rule 4901:2-8-03 (establishment of routing designations) more specifically delineates how routing designations shall be established.

Proposed Rule 4901:2-8-04 (routing designations) mirrors existing Rule 4901:2-8-03, O.A.C.

- (7) Staff is not recommending any substantive changes to Chapter 4901:2-21, O.A.C., which contains rules regarding the manner by which a for-hire motor carrier may obtain a certificate of public convenience and necessity (certificate) from the Commission. Rather, almost all of the changes are textual in nature.

Proposed Rule 4901:2-21-01 (definitions), adds definitions for new terms used throughout the Chapter and revises the definitions for others to align them with Amended Substitute House Bill 487 and other provisions of Chapter 4901:2, O.A.C.

Proposed Rule 4901:2-21-02 (purpose and scope) is revised to reflect the change in the definition of "motor carrier".

Rule 4901:2-21-03, O.A.C., has been changed to eliminate the prescriptive list of information that an applicant for a certificate must provide. Instead, proposed Rule 4901:2-21-03 (registration application) states that the Commission shall provide to applicants an application form that may change from time to time. This change provides additional flexibility for Staff to revise the application form as necessary and consistent with other Commission rules involving the completion of forms. The proposed rule also adds a new requirement that applicants for a certificate obtain a registration number from the United States Department of Transportation (USDOT). Staff believes that this requirement will not place any undue burden on applicants, as there is no cost to obtain a USDOT number and it can be quickly obtained online. Moreover, the requirement will promote a more uniform approach to registration for businesses and to enforcement for the Commission.

Proposed Rule 4901:2-21-04 (supplementation of information) is revised to more accurately reflect the information that is provided to supplement an application.

Proposed Rule 4901:2-21-05 (certificate of public convenience and necessity) provides a clearer explanation of the information that is to be included in an application for a certificate.

Proposed Rule 4901:2-21-06 (annual update of a certificate) clarifies which for-hire carriers are required to annually update their

certificates and obtain new tax receipts, and reflects the statutory change in Amended Substitute House Bill 487 related to the time of year those carriers must do so.

Proposed Rule 4901:2-21-07 (suspension and revocation of a certificate) implements Amended Substitute House Bill 487 by delineating the procedures and timelines by which a certificate can be suspended or revoked, and ensuring that due process is afforded to certificated entities found to be in noncompliance. The proposed rule is also consistent with Section 4921.07, Revised Code, in terms of the reasons that a certificate may be suspended or revoked, and the timeframe of which a suspended motor carrier may remedy the deficiencies prompting the suspension.

- (8) Staff is not proposing any changes to the rules in Chapter 4901:3-1, O.A.C.
- (9) Staff's proposed changes to Chapters 4901:2-6, 4901:2-8, 4901:2-21, O.A.C., and Chapter 4901:3-1, O.A.C., as well as the business impact analysis for these packages of rules, are attached to this entry as Attachments A and B, respectively.
- (10) In order to avoid needless production of paper copies, the Commission will serve a paper copy of this entry only and will make Staff's proposed changes to Chapters 4901:2-6, 4901:2-8, 4901:2-21, and 4901:3-1, O.A.C., as well as the business impact analysis for this package of rules, available online at: www.puco.ohio.gov/puco/rules. All interested persons may download the proposed rules and the business impact analysis from the above website, or contact the Commission's Docketing Division to be sent a paper copy.
- (11) The Commission requests comments from interested persons to assist in the review required by Section 119.032(C), Revised Code, and Executive Order 2011-01K. Comments on the draft rules and/or on the business impact analysis contained in Attachments A and B, respectively, should be filed, either via electronic filing or in hard copy, by October 30, 2012. Reply comments should be filed by November 9, 2012.

It is, therefore,

ORDERED, That all interested persons file comments on the proposed rule changes and business impact analysis contained in Attachments A and B, respectively, by October 30, 2012, and file reply comments by November 9, 2012. It is, further,

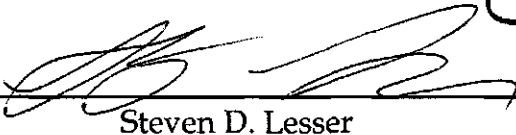
ORDERED, That a copy of this entry with the attached rules and business impact analysis be submitted to CSI in accordance with Section 121.82, Revised Code. It is, further,

ORDERED, That a copy of this entry without the attached rules or business impact analysis be served upon Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, the Ohio Railroad Association, the Ohio Farm Bureau Federation, the Transportation list-serve, the Railroad list-serve, and all other interested persons of record.

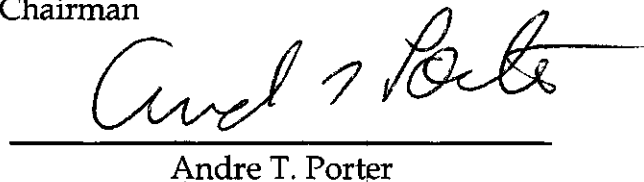
THE PUBLIC UTILITIES COMMISSION OF OHIO



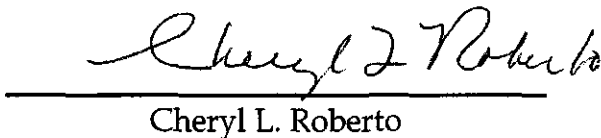
Todd A. Snitchler, Chairman



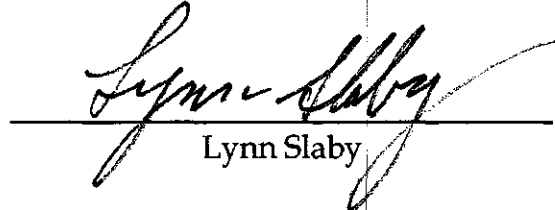
Steven D. Lesser



Andre T. Porter



Cheryl L. Roberto

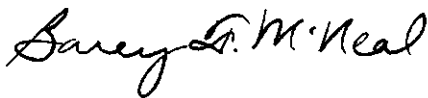


Lynn Slaby

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Entered in the Journal

OCT 17 2012



Barcy F. McNeal
Secretary

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4901:2-6-01 Definitions.

- (A) "Applicant" means any carrier that submits to the Commission the required application forms necessary to receive a uniform program registration and permit credential.
- (B) "Base state" means the state selected by a carrier pursuant to the uniform application.
- (C) "Carrier" means any person, engaged in the highway transportation of hazardous materials, in commerce, into, within, or through this state.
- (D) "Commission" means the public utilities commission of Ohio.
- (E) "Credential" means the document issued by the base state indicating that a carrier has successfully registered and received a permit allowing it to transport hazardous materials in the base state and in reciprocity states.
- (F) "Hazardous material" means any of the following:
 - (1) Hazardous materials of a type or in a quantity that requires the transport vehicle to be placarded pursuant to 49 C.F.R. 172, as effective on the date referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code;
or
 - (2) Hazardous wastes.
- (G) "Hazardous waste" means any material of a type or in a quantity that requires the shipment to be accompanied by a uniform hazardous waste manifest pursuant to 40 C.F.R. 262, as effective on the date referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.
- (H) "Knowingly" means a person acts knowingly if either of the following applies:
 - (1) The person has actual knowledge of the facts giving rise to a violation.
 - (2) A reasonable person acting in the circumstances and exercising due care would have such knowledge.
- (I) "Reciprocity state" means a jurisdiction with which the commission has entered a reciprocity agreement regarding the uniform registration and uniform permitting of carriers of hazardous materials.
- (J) "Registration" means the process by which a motor carrier of hazardous

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materials is identified by the base state.

- (K) "Respondent" means a carrier upon whom an order to show cause or a notice of deficiency has been served.
- (L) "Staff" means employees of the transportation department of the commission.
- (M) "Uniform application" means the uniform motor carrier registration and permit application form and accompanying documents established under the uniform program.
- (N) "Uniform program" means the forms and procedures developed pursuant to "Hazardous Materials Transportation Uniform Safety Act of 1990", United States Code, Title 49, Section 5119, known as the Alliance for Uniform Hazmat Transportation Procedures in reports submitted to the U.S. Department of Transportation in 1993 and 1996, as modified and amended pursuant to 49 U.S.C. 5119(b), and as effective on the date referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.
- (O) "Uniform program permit" or "permit" means the authority granted to qualified carriers to transport hazardous materials, in commerce, into, within, or through this state.

4901:2-6-02 Purpose and scope.

This chapter governs procedures for the uniform registration and uniform permitting of carriers of hazardous materials.

- (A) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (B) Each citation contained within this chapter that is made to a section of the United States code or to a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on ~~May 19, 2010~~ October 17, 2012.

4901:2-6-03 Determination of base state.

- (A) No carrier may transport hazardous materials, in commerce, into, within, or through this state unless such carrier has registered with, and has received a uniform program permit from, the commission or a reciprocity state.

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- (B) Each carrier shall register with and apply for a uniform program permit from its base state as determined in accordance with the terms of the uniform application.
- (C) A carrier that designates Ohio as its base state pursuant to paragraph (B) of this rule shall register with and obtain a permit from the commission prior to transporting hazardous materials into, within, or through this state.
- (D) A carrier, other than a carrier of hazardous wastes, that designates Ohio as its base state pursuant to paragraph (B) of this rule shall file parts I, II and IV of the uniform application with the commission and pay the applicable fees pursuant to rule 4901:2-6-05 of the Administrative Code. Upon an applicant's compliance with this paragraph, the staff shall issue a registration credential and permit to the applicant. If the staff denies issuance of registration credential and permit for failure of the applicant to meet the requirements of this paragraph, the applicant may file a petition and request for hearing with the commission for the issuance of the registration credential and permit.
- (E) A carrier of hazardous wastes that designates Ohio as its base state pursuant to paragraph (B) of this rule shall file parts I, II, III, and IV of the uniform application with the commission and pay the applicable fees pursuant to rule 4901:2-6-05 of the Administrative Code. Upon an applicant's compliance with this paragraph, the staff shall issue a registration credential and permit to the applicant. If the staff denies issuance of registration credential and permit for failure of the applicant to meet the requirements of this rule, the applicant may file a petition and request for hearing with the commission for the issuance of the registration credential and permit.
- (F) A carrier that designates a reciprocity state as its base state pursuant to paragraph (B) of this rule shall register with and obtain a permit from that state, with the appropriate apportioned per-motor vehicle registration fees paid for this state pursuant to rule 4901:2-6-05(B) of the Administrative code, prior to transporting hazardous materials into, within, or through this state. If such carrier transports hazardous wastes it shall file part III of the uniform application with and obtain a permit from that state that specifically authorizes the transportation of hazardous wastes before transporting hazardous wastes into, within, or through this state.
- (G) A carrier shall maintain a copy of the registration credential in each motor vehicle used to transport hazardous materials. The registration credential and permit are not transferable between carriers. The original registration credential

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shall be maintained at the carrier's principal place of business, and shall be available for inspection during normal business hours.

4901:2-6-04 Supplementation of information.

- (A) Upon a written request from the staff, an applicant shall provide any additional information necessary for the processing of a uniform application within fifteen days, unless otherwise agreed to by the applicant and the staff.
- (B) A carrier that has filed part III of the uniform application shall report to the commission, in writing, any changes to the information provided in the filing within ninety days after the date of such change.

4901:2-6-05 Fees.

- (A) The processing fee for a uniform application submitted to the commission shall be in the amount provided for in section 4921.19 of the Revised Code.
- (B) The apportioned per vehicle registration fee required by the uniform application shall be determined by multiplying the following and then rounding up to the nearest whole number:
 - (1) The percentage of an applicant's activity in this state, as calculated in accordance with section 4921.19 of the Revised Code; times
 - (2) The percentage of the applicant's business that is hazardous-materials-related, as calculated in accordance with section 4921.19 of the Revised Code; times
 - (3) The number of motor vehicles owned or operated by the applicant; times
 - (4) A per-motor vehicle fee of twenty dollars.
- (C) The processing fee for part III of the uniform application shall be in the amount provided for in section 4921.19 of the Revised Code. Should additional investigation by the staff be required to obtain any necessary information not included in part III of the uniform application, the commission may, after notice and an opportunity for a hearing pursuant to Chapter 4901-1 of the Administrative Code, order such applicant to pay an additional fee in the amount provided for in section 4921.19 of the Revised Code.
- (D) Each applicant shall submit the applicable fees for each reciprocity state in which the applicant operated in the previous calendar year, in accordance with

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the terms of the uniform application. The commission shall distribute fees collected on behalf of reciprocity states to the appropriate reciprocity state and pay any fees required by the alliance for uniform hazmat transportation procedures.

4901:2-6-06 Term of uniform program registration and uniform program permit.

- (A) The term of the uniform program permit issued to a carrier pursuant to Rule 4901:2-6-03 of the Administrative Code shall be for three years from the date issued unless the carrier fails to renew its annual registration pursuant to paragraph (B) of this rule.
- (B) Each carrier that has designated Ohio as its base state pursuant to rule 4901:2-6-03 of the Administrative Code shall renew its registration on an annual basis by filing with the commission parts I and IV of the uniform application (short form), and paying the fees described in paragraphs (A) and (B) of rule 4901:2-6-05 of the Administrative Code. Upon a carrier's compliance with this paragraph, the commission shall issue a registration credential to the carrier. A registration credential is valid for one year from the date issued.
- (C) A carrier that has designated a reciprocity state as its base state shall renew its registration with that state on an annual basis, with the appropriate apportioned per-motor vehicle registration fees paid for this state pursuant to rule 4901:2-6-05(B) of the Administrative Code.

4901:2-6-07 Standards for the suspension or revocation of a uniform program permit.

- (A) No carrier may transport hazardous materials, in commerce, into, within, or through this state if the commission, or a reciprocity state, has suspended or revoked the uniform program permit of such carrier. No carrier which has been issued a uniform program permit by a reciprocity state may transport hazardous materials, in commerce, into, within, or through this state if the commission has ordered the suspension of the transportation of hazardous materials into, within, or through this state by such carrier.
- (B) The commission may, after notice and an opportunity for hearing pursuant to rule 4901:2-6-12 of the Administrative Code, suspend or revoke the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into, within, or through this state by a carrier issued a

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uniform program permit by a reciprocity state, if the commission determines that:

- (1) Such carrier has been issued an "unsatisfactory" safety rating by the United States department of transportation.
- (2) Such carrier is under a current out of service order issued by United States department of transportation.
- (3) Such carrier has knowingly made a materially false or misleading statement on a uniform application.
- (4) Such carrier has engaged in a pattern of violations of the commission's rules or has failed to comply with any order of the commission issued to secure compliance with the commission's rules.
- (5) Conditions are present that would render such carrier unable to maintain any certifications required by the uniform application.

4901:2-6-08 Proceedings related to the suspension or revocation of a uniform program permit.

- (A) A proceeding to suspend or revoke the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into, within, or through this state by a carrier issued a uniform program permit by a reciprocity state, shall be initiated by the filing of a staff report recommending the actions to be taken by the commission. The staff report shall be served upon the carrier by ordinary or certified United States mail.
- (B) Upon the filing of a staff report, the commission shall order the respondent to show cause why the commission should not adopt the staff's recommendations as its order. The order shall require the respondent to file a written answer within fifteen days of the effective date of the order. The order shall be served upon the respondent by ordinary or certified United States mail.
- (C) A respondent upon whom an order described in paragraph (B) of this rule has been served must answer the order to show cause within fifteen days of its effective date. This response shall be in writing and shall contain a detailed statement indicating why the actions recommended by staff may be unjustified, mitigating circumstances or subsequent remedial measures undertaken in regards to the issues raised in the staff report, and any other information relevant to the proposed actions.

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- (D) If a respondent fails to answer the order to show cause, the commission may issue an order adopting the staff's recommendations and/or issue any other orders the commission deems necessary. If an answer is filed by the respondent, the matter shall be assigned for hearing unless the answer of the respondent is deemed to be satisfactory, in which event the order to show cause may be dismissed. Such hearing shall be conducted in accordance with Chapter 4901-1 of the Administrative Code.

4901:2-6-09 Notices of deficiency and alternative dispute resolution.

- (A) The staff may issue a "notice of deficiency" to a respondent before it files a staff report pursuant to rule 4901:2-6-08 of the Administrative Code. The notice shall indicate the nature of the deficiencies prompting the notice, instructions regarding the manner in which the respondent may serve a response upon the staff, and a statement of the actions that the commission may take if the respondent fails to remedy the deficiencies raised in the notice. The notice shall be served upon the respondent by ordinary United States mail, facsimile transmission, or electronic mail if the respondent to be served has consented to receive service by electronic mail.
- (B) A respondent upon whom a "notice of deficiency" has been served may serve a response upon the staff within thirty days of service of the notice. The response shall be in writing and shall contain a detailed statement indicating why the issuance of the notice may be unjustified, mitigating circumstances or subsequent remedial measures undertaken in regards to the issues raised in the notice, and any other information relevant to the issues raised in the notice. The response shall be served upon the staff by ordinary United States mail, facsimile transmission, or electronic mail.
- (C) If the response filed under paragraph (B) demonstrates to the satisfaction of the staff that the causes for the issuance of the "notice of deficiency" have been remedied, the staff shall rescind the notice and notify the respondent in writing.
- (D) No offers of settlement or statements made during discussions of settlement in regards to a "notice of deficiency," or a response to any such notice served upon the staff, shall be admissible in any subsequent evidentiary hearing regarding the subject matter of such a notice or response.
- (E) The purpose of this rule is to provide an alternative dispute resolution process. A determination by the staff to issue or not to issue a "notice of deficiency" shall

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not in any way prejudice the right of the commission to suspend or revoke the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into, within, or through this state by a carrier issued a uniform program permit by a reciprocity state.

"RULE 4901:2-6-10 - RESCINDED"

~~4901:2-6-10 Term of uniform program registration and uniform program permit.~~

- ~~(A) Each carrier shall file a uniform program registration application described in rule 4901:2-6-04 of the Administrative Code on an annual basis.~~
- ~~(B) The term of the uniform program permit to transport hazardous materials, described in rule 4901:2-6-05 of the Administrative Code shall be for three years from the permit issue date.~~

"RULE 4901:2-6-11 - RESCINDED"

~~4901:2-6-11 Standards for the suspension, revocation or denial of a uniform program permit.~~

~~The commission may, after notice and an opportunity for hearing pursuant to rule 4901:2-6-12 of the Administrative Code, deny an application for a uniform program permit, suspend or revoke the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into, within or through this state by a carrier issued a uniform program permit by a reciprocity state, if the commission determines that:~~

- ~~(A) Such carrier has been issued an "unsatisfactory" safety rating by the United States department of transportation federal motor carrier safety administration, pursuant to 49 C.F.R. 385, referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code.~~
- ~~(B) Such carrier has knowingly falsified a material fact in a uniform program registration or uniform program permit application.~~
- ~~(C) Such carrier has violated the federal hazardous materials regulations, 49 C.F.R. 171 to 180, the federal motor carrier safety regulations, 49 C.F.R. 382, 383, 387, 390 to 397, or its state equivalents, or any order of the commission issued to secure compliance with any such division or rule when transporting hazardous~~

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~~materials or offering hazardous materials for transportation, and such violation poses an imminent hazard to the public or the environment.~~

~~(D) Such carrier has exhibited reckless disregard for the public and the environment, pursuant to the following factors:~~

- ~~(1) Whether such carrier has engaged in a pattern of violations of the hazardous materials regulations, 49 C.F.R. 171 to 180, the federal motor carrier safety regulations, 49 C.F.R. 40, 382, 383, 387, 390 to 397, as referenced in paragraph (B) of rule 4901:2-6-02 of the Administrative Code, or its state equivalents, not complied with any order of the commission issued to secure compliance with the hazardous materials regulations or the federal motor carrier safety regulations when transporting hazardous materials or offering hazardous materials for transportation, or regulations for the management of hazardous waste issued pursuant to the Resource Conservation and Recovery Act, as amended, or its state equivalents, including consideration of the number of truck miles such carrier transports hazardous materials within the state and the number of vehicles in such carriers fleet.~~
- ~~(2) The actual or potential level of environmental damage resulting from any incident or finding of violation of the provisions enumerated above.~~
- ~~(3) The response by the carrier to any incident or findings of violation of the provisions enumerated above.~~
- ~~(4) Such carrier's history of violations for the past three years.~~
- ~~(5) Any mitigating factors such carrier chooses to present at a hearing before the commission.~~
- ~~(6) Such other matters as justice requires.~~

"RULE 4901:2-6-12 - RESCINDED"

~~4901:2-6-12 — Proceedings related to the suspension, revocation or denial of a uniform program permit.~~

- ~~(A) A proceeding for the suspension or revocation of or the denial of an application for a uniform program permit or the existing, uniform program permit of a carrier shall be initiated by the filing of a staff report recommending the suspension, revocation, or denial of an application for the uniform permit of such carrier. This staff report shall be served upon the carrier by ordinary~~

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United States mail.

- ~~(B) Upon the filing of a staff report, the commission shall order the carrier to show cause why its uniform program permit should not be suspended or revoked or its application denied. This order shall be served upon the carrier by certified mail, return receipt requested.~~
- ~~(C) A carrier which has been served with an order pursuant to paragraph (B) of this rule may file a response within fifteen days of service of the order. This response shall be in writing and may include a detailed statement why the actions proposed to be taken by staff may be unjustified, mitigating circumstances regarding the proposed action, including subsequent remedial measures undertaken by the carrier to address any issues raised in the notice, and any other information relevant to the proposed action and/or a request for an evidentiary hearing.~~
- ~~(D) Within fifteen days, but no earlier than seven days, after the filing of a response under paragraph (C) of this rule, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case, shall issue an entry scheduling an evidentiary hearing. The evidentiary hearing may consist of written stipulations, oral testimony, or such other evidence which is admitted.~~
- ~~(E) A final commission order suspending or revoking, or denying an application for the uniform program permit or the existing uniform program permit of the carrier shall be issued within ninety days after the conclusion of the evidentiary hearing, unless otherwise ordered by the commission.~~
- ~~(F) Except as otherwise provided by this rule, all proceedings under this rule shall be conducted in accordance with Chapter 4901-1 of the Administrative Code.~~

"RULE 4901:2-6-13 - RESCINDED"

4901:2-6-13 — Notices of intent to suspend, revoke or deny.

- ~~(A) The staff may issue a "notice of intent to suspend", "notice of intent to revoke" or "notice of intent to deny" to a carrier before it files a staff report recommending to the commission the suspension, revocation or denial of a uniform program permit. The notice shall contain the action proposed to be taken by the staff, a brief statement of the basis for such action, and instructions regarding the manner in which the carrier may serve a response upon the staff.~~

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- ~~(B) A carrier to whom a "notice of intent to suspend", "notice of intent to revoke" or "notice of intent to deny" has been served may serve a response upon the staff. The response shall be in writing and shall contain a detailed statement why the actions proposed to be taken by staff may be unjustified, mitigating circumstances regarding the proposed action, including subsequent remedial measures undertaken by the carrier to address any issues raised in the notice, and any other information relevant to the proposed action.~~
- ~~(C) A "notice of intent to suspend", a "notice of intent to revoke", a "notice of intent to deny" or a response to any such notice may be served by ordinary United States mail or by email or facsimile transmission. Service by ordinary United States mail is complete upon mailing, and service by facsimile transmission is complete upon transmission.~~
- ~~(D) No offers or discussion of settlement of a "notice of intent to suspend", a "notice of intent to revoke", a "notice of intent to deny" or a response to any such notice served upon the staff shall be admissible in any subsequent administrative hearing regarding the subject matter of such a notice or response.~~
- ~~(E) The purpose of this rule is to provide an alternative dispute resolution process in order to avoid litigation. A determination by the staff to issue or not to issue a "notice of intent to suspend", "notice of intent to revoke" or "notice of intent to deny" shall not in any way prejudice the right of the commission to suspend, or revoke or to deny an application for the uniform permit of any carrier.~~

~~"RULE 4901:2-6-14 - RESCINDED"~~

~~4901:2-6-14 Prohibitions.~~

- ~~(A) No carrier may transport hazardous materials, in commerce, into, within, or through this state unless such carriers has registered with, and received a uniform program permit from, the commission or a reciprocity state.~~
- ~~(B) No carrier may transport hazardous waste, in commerce, into, within, or through this state unless such carrier has submitted a "Part III Disclosure Form" described in rule 4901:2-6-06 of the Administrative Code with its uniform program permit application and has received a uniform permit from the commission or a reciprocity state.~~
- ~~(C) No carrier may transport hazardous materials, in commerce, into, within, or through this state if the commission, or a reciprocity state, has suspended, or revoked or denied the application for the uniform program permit of such~~

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~~carrier. No carrier which has been issued a uniform program permit by a reciprocity state may transport hazardous materials, in commerce, into, within, or through this state if the commission has ordered the suspension of the transportation of hazardous materials into, within, or through this state by such carrier.~~

~~(D) No person shall knowingly falsify or fail to submit to the commission any data, reports, records, or other information required to be submitted under this chapter.~~

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4901:2-8-01 Definitions.

As used in this chapter:

- (A) "Carrier" means any person, engaged in the highway transportation of hazardous materials, in commerce, into, within, or through this state.
- (B) "Designated routes" means those highway routes on which hazardous materials must be transported.
- (C) "Hazardous materials" means nonradioactive hazardous materials of a type or in a quantity that requires the transport vehicle to be placarded pursuant to 49 C.F.R. 172, as effective on the date referenced in paragraph (C) of rule 4901:2-8-02 of the Administrative Code.
- (D) "Restricted routes" means those highway routes on which hazardous materials may not be transported.
- (E) "Routing designation" means any regulation, limitation, or restriction applicable to the highway transportation of hazardous materials over a specific highway route or portion of a route.

4901:2-8-02 Purpose and scope.

- (A) This chapter governs all proceedings of the commission to establish routing designations applicable to the highways transportation of nonradioactive hazardous materials, in commerce, into, within, or through, this state as authorized by section 4923.11 of the Revised Code.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (C) Each citation contained within this chapter that is made to a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that as effective on October 17, 2012.

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4901:2-8-03 Establishment of routing designations.

- (A) Other than routing designations recognized by the United States department of transportation, routing designations shall be established in accordance with 49 C.F.R. 397, as effective on the date referenced in paragraph (C) of rule 4901:2-8-02 of the Administrative Code.
- (B) No carrier transporting hazardous materials into, within, or through, this state shall fail to comply with routing designations recognized by the United States department of transportation or established in accordance with this rule.

4901:2-8-04 Routing designations for northeast Ohio.

- (A) As used in this rule, "northeast Ohio" means the following counties in the state of Ohio: Cuyahoga, Geauga, Lake, Lorain, Medina.
- (B) As used in this rule, "through transportation" means the transportation of hazardous materials which has neither a place of origin nor a destination in northeast Ohio.
- (C) The following routes shall be designated routes for the through transportation of hazardous materials in northeast Ohio:
- (1) Interstate 90 from the Lake/Ashtabula county line to interstate 271 in Lake county.
 - (2) Interstate 80 and interstate 80/90 (Ohio Turnpike) from gate 13 in Portage county to the Lorain/Erie county line.
 - (3) Interstate 271 from interstate 90 in Lake county to interstate 71 in Medina county.
 - (4) Interstate 77 from interstate 80 in Cuyahoga county to interstate 271 in Summit county.
 - (5) Interstate 71 from interstate 80 in Cuyahoga county to Medina/Wayne county line.
 - (6) Interstate 480 from interstate 80, gate 13 in Portage county to interstate 271 in Summit county.
 - (7) Interstate 480 from interstate 480N in Cuyahoga county to interstate 80 in

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Lorain county.

(8) Interstate 480N from interstate 271 to interstate 480 in Cuyahoga county.

(D) The following routes shall be restricted routes for the through transportation of hazardous materials in northeast Ohio:

(1) Interstate 90 from interstate 271 in Lake county to interstate 80/90 in Lorain county.

(2) Interstate 71 from interstate 80 to interstate 90 in Cuyahoga county.

(3) Interstate 77 from interstate 80 to interstate 90 in Cuyahoga county.

(4) Interstate 490 from interstate 90 to interstate 77 in Cuyahoga county.

(5) State route 2 from state route 44 to interstate 90 in Lake county.

(6) State route 44 from state route 2 to interstate 90 in Lake county.

(7) Interstate 480 from interstate 271 to interstate 480N in Cuyahoga county.

(8) Any other highway or state or local road not otherwise designated for the transportation of hazardous materials by this rule.

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4901:2-21-01 Definitions.

- (A) "Applicant" means any for-hire carrier who submits to the Commission the required application forms necessary to receive a certificate.
- (B) "Certificate" means certificate of public convenience and necessity.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "For-hire motor carrier" has the same meaning as in section 4921.01 of the Revised Code.
- (E) "Household goods" has the same meaning as in section 4921.01 of the Revised Code.
- (F) "Intrastate commerce" has the same meaning as in section 4921.01 of the Revised Code.
- (G) "Register" or "Registration" means the process by which a for-hire motor carrier submits to the Commission, the required application forms necessary to receive a certificate.
- (H) "Staff" means employees of the transportation department of the commission.

4901:2-21-02 Purpose and scope.

- (A) This chapter governs the registration of for-hire motor carriers operating ~~for hire,~~ in intrastate commerce, within this state.
- (B) The commission may, upon application or upon a motion filed by a party, waive any requirement of this chapter, for good cause shown, other than a requirement mandated by statute from which no waiver is permitted.

4901:2-21-03 Registration of for-hire motor carriers.

- (A) No for-hire motor carrier may operate in intrastate commerce within this state unless such for-hire motor carrier has registered with the commission and has a current and valid certificate issued by the commission pursuant to this Chapter.
- (B) To register with the commission, an applicant must submit a complete and accurate application form containing the certifications required by Chapter 4921

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of the Revised Code and any other information or certifications deemed necessary by the commission. The application form may change from time-to-time without further commission entry. Staff will maintain, and post on the commission's website, the most recent version of the application to provide to applicants.

- (C) An applicant must obtain an identification number issued by the United States department of transportation (USDOT) before submitting an application form to the commission.

4901:2-21-04 Supplementation of information.

- (A) Upon a ~~written~~ request from the staff, each applicant shall provide, within fifteen days, any additional information necessary for the processing of a ~~registration~~ an application for a certificate, or for the processing of an annual update form submitted pursuant to rule 4901:2-21-06 of the Administrative Code. Failure to respond to a request for additional information within this time frame will result in the application being rejected and will necessitate the filing of a new complete application or annual update form.
- (B) A for-hire motor carrier ~~which is required to obtain that~~ has obtained a certificate of public convenience and necessity shall notify the staff within fifteen days of any changes to the information contained in the ~~registration~~ application.

4901:2-21-05 Certificate of public convenience and necessity.

- (A) Following receipt of a completed application form submitted by an applicant pursuant to rule 4901:2-21-03 of the Administrative Code, the staff shall issue a certificate and tax receipts, provided that the applicant:
- (1) Has properly filed proof of insurance with the staff, pursuant to Chapter 4901:2-13 of the Administrative Code; and
 - (2) Has paid all applicable taxes and fees calculated in accordance with section 4921.19 of the Revised Code; and
 - (3) Is not in default on any civil forfeiture imposed pursuant to section 4923.99 of the Revised Code.
- (B) If the staff denies issuance of a certificate for failure of the applicant to meet the

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requirements of paragraph (A) of this rule, the applicant may file a petition and request for hearing with the commission for the issuance of the certificate.

4901:2-21-06 Annual update of a certificate of public convenience and necessity.

(A) This rule applies to:

- (1) Every for-hire motor carrier operating solely in intrastate commerce; and
- (2) Every for-hire motor carrier engaged in the transportation of household goods holding a certificate granted pursuant to this Chapter.

(B) Every for-hire motor carrier identified in paragraph (A) of this rule shall, annually between the first day of May and the thirtieth day of June, update its information relative to its certificate by submitting a complete and accurate annual update form that is substantially the same as the application form prescribed under rule 4901:2-21-03 of the Administrative Code. The annual update form may change from time-to-time without further commission entry. Staff will maintain, and post on the commission's website, the most recent version of the annual update form to provide to applicants.

(C) Following receipt of a completed annual update form, the staff shall issue tax receipts, provided that the for-hire motor carrier:

- (1) Has properly filed proof of insurance with the staff, pursuant to Chapter 4901:2-13 of the Administrative Code; and
- (2) Has paid all applicable taxes and fees calculated in accordance with section 4921.19 of the Revised Code; and
- (3) Is not in default on any civil forfeiture imposed pursuant to section 4923.99 of the Revised Code.

(D) If the staff denies issuance of tax receipts for failure of the for-hire motor carrier to meet the requirements of paragraph (C) of this rule, the for-hire motor carrier may file a petition and request for hearing with the commission for the issuance of tax receipts.

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4901:2-21-07 Suspension and Revocation of a Certificate of Public Convenience and Necessity.

- (A) For purposes of this rule, service upon staff shall be by ordinary or certified United States mail, facsimile transmission, or electronic mail. Service upon a for-hire motor carrier shall be by ordinary or certified United States mail, facsimile transmission, or electronic mail if the for-hire motor carrier to be served has consented to receive service by electronic mail.
- (B) A certificate shall be suspended if a for-hire motor carrier does any of the following:
- (1) Fails to meet the annual update requirements of rule 4901:2-21-06 of the Administrative Code.
 - (2) Fails to maintain accurate and current business information with the commission
 - (3) Fails to maintain proper proof of insurance or proper levels of insurance pursuant to Chapter 4901:2-13 of the Administrative Code.
 - (4) Fails to pay all applicable taxes and fees.
 - (5) Is in default on any civil forfeitures imposed pursuant to section 4923.99 of the Revised Code.
- (C) If a for-hire motor carrier's certificate is subject to suspension pursuant to paragraph (B) of this rule, the staff shall serve upon the for-hire motor carrier a notice that its certificate has been suspended and that all intrastate operations must cease immediately. The notice shall indicate the nature of the deficiency prompting the suspension, the means by which the deficiency may be remedied, and instructions regarding the manner in which the respondent may serve a response upon the staff. The notice shall inform the for-hire motor carrier that its certificate shall be subject to revocation if it fails to correct the deficiency within sixty days from the date of the notice.
- (D) A for-hire motor carrier upon whom a notice described in paragraph (C) of this rule has been served may serve a response upon the staff within sixty days of service of the notice. The response shall contain a detailed statement indicating why the issuance of the notice may be unjustified, mitigating circumstances or subsequent remedial measures undertaken in regards to the issues raised in the

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notice, and any other information relevant to the issues raised in the notice.

- (E) If the response served pursuant to paragraph (D) of this rule demonstrates to the satisfaction of the staff that the deficiency has been remedied, the for-hire motor carrier's certificate shall be reinstated and the staff shall serve upon the for-hire motor carrier a notice indicating that its operations may be resumed. If the staff denies reinstatement of the for-hire motor carrier's certificate, the for-hire motor carrier may file a petition and request for hearing with the commission for reinstatement of its certificate.
- (F) A for-hire motor carrier may request that its certificate be temporarily suspended by serving such request upon the staff. The request must indicate the effective date of the suspension. Upon receipt of the request, the staff shall serve upon the for-hire motor carrier a notice that its certificate has been suspended per its request and that all intrastate operations must cease as of the effective date of the suspension. The notice shall inform the for-hire motor carrier that the suspension shall be for no longer than 180 days from the effective date of the suspension and that its certificate shall be subject to revocation if the for-hire motor carrier does not serve upon staff, prior to the expiration of the 180 day period, a request to have its certificate reinstated.
- (G) Upon receipt of a request from a for-hire motor carrier to reinstate its certificate suspended pursuant to paragraph (F) of this rule, the staff shall serve upon the for-hire motor carrier a notice indicating that its operations may be resumed.
- (H) If a for-hire motor carrier that has had its certificate suspended pursuant to this rule fails to take the required action to have its certificate reinstated, the Commission may revoke its certificate pursuant to the provisions of rule 4901-5-03 of the Administrative Code.

~~4901:2-21-08 Registration application requirements for household goods carriers.~~

"RESCINDED RULE"

~~A carrier transporting household goods shall complete and submit a registration application containing the information required under rule 4901:2-21-03 of the Administrative Code in addition to the following information:~~

- ~~(A) The name and title of a person, authorized to negotiate on behalf of the applicant, to whom communications regarding consumer complaints should be~~

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directed.

- ~~(B) A certification, initialed by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant, containing the following statement: "I certify that the applicant maintains worker's compensation coverage pursuant to Chapter 4123. of the Revised Code."~~
- ~~(C) A certification, initialed by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant, containing the following statement: "I certify the applicant maintains unemployment compensation coverage pursuant to Chapter 4141. of the Revised Code."~~

~~4901:2-21-09 Annual certificate of public convenience and necessity renewal.~~

"RESCINDED RULE"

- ~~(A) On or between the first and the fifteenth days of July of each year, every carrier engaged solely in the business of transporting property in intrastate commerce shall update its registration information relative to its certificate of public convenience and necessity by completing and submitting an application form promulgated by the commission, containing the same information as required under rule 4901:2-21-03 of the Administrative Code.~~
- ~~(B) Following receipt of a completed application from a carrier under paragraph (A) of this rule the staff shall verify that:
 - ~~(1) The carrier has properly filed proof of public liability security with the staff, pursuant to Chapter 4901:2-13 of the Administrative Code;~~
 - ~~(2) All current and past applicable fees and taxes have been paid; and~~
 - ~~(3) The carrier is not in default on any civil forfeiture owed to the commission.~~~~
- ~~(C) If a carrier complies with all requirements under paragraph (B) of this rule, staff shall issue the applicable receipt.~~
- ~~(D) If the carrier believes that staff has improperly denied issuance of the applicable receipt under this rule, the carrier may file a petition with the commission for the issuance of the applicable receipt. The commission shall grant such petition for good cause shown.~~

No Changes Proposed by Staff for Chapter 4901:3-1
Minimum Track Clearances and Lateral Clearances for Railroads
Case No. 12-2107-TR-ORD

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4901:3-1-01 Minimum track clearances for new railroad track construction or reconstruction of yard tracks of railroads operating within the state of Ohio.

- (A) Each railroad in the state of Ohio shall comply with the track clearance standards established in this rule.
- (B) On any new railroad track construction or reconstruction of yards in Ohio, the lateral clearance between centers of adjacent and parallel railroad tracks covering main lines, passing tracks, and yard tracks over which switching is performed, shall not be less than fourteen feet on tangent tracks and on curved tracks, provided that in specific cases if this commission, after investigation, shall find that it would be unreasonable to require fourteen-foot clearance between track centers, it may by order prescribe lesser clearances.
- (C) Tracks constructed on, under, or adjacent to permanent railroad and highway structures, which structures were constructed previous to February 24, 1958 and were designed to provide less than fourteen-foot clearances for future tracks, are exempt from the provisions of this rule.
- (D) Ladder tracks shall be spaced not less than fifteen feet center to center from any parallel track and when such parallel track is another ladder track that it be spaced not less than eighteen feet center to center, body tracks shall be spaced not less than fourteen feet center to center and when paralleled to main track or important running track the first body track shall be spaced not less than fifteen feet center to center from such track; provided, however, that the commission upon application, when accompanied by a full statement of the conditions existing and the reasons upon which such permit is predicated, may permit any railroad to construct or reconstruct under such conditions, if any, as the commission may prescribe, any track or tracks at lesser clearance than herein required, when in the judgment of this commission, compliance with the clearance prescribed herein is unreasonable or unnecessary, and when lesser clearance would not create a condition unduly hazardous to the employees of such railroad.
- (E) This rule applies to any railroad defined in section 4907.02 of the Revised Code, in the construction of new yards or in the reconstruction of existing yards, except any extensions or realignments of existing tracks, after February 24, 1958,

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and railroads shall construct said tracks in compliance with the minimum track clearance standards herein prescribed after February 24, 1958, except any extensions or realignments of existing tracks or unless otherwise ordered by the commission.

4901:3-1-02 Lateral clearance for permanent structures.

- (A) Every railroad company, public or private corporation, or person proposing to build any structure or place described in section 4963.42 of the Revised Code which has a lesser clearance than that prescribed in such section shall apply to this commission for a permit to erect such structure or place in the manner prescribed in such section.
- (B) Application for the permit provided for in section 4963.43 of the Revised Code shall be made on blanks furnished by this commission.
- (C) The lateral clearance for such structures are with reference to straight alignment of tracks. On curves, the clearance distance to structures shall be increased so as to have the equivalent clearances, and should be measured from a line perpendicular to the place of the top of the rails.
- (D) A suitable walk and railing from which trainmen may work shall be provided along at least one side of all bridges and coal, ore, or other trestles.

4901:3-1-03 Inspection, maintenance and safety of railroad bridges.

(A) Application

The provisions of this rule shall apply to all railroad companies subject to the jurisdiction of this commission.

(B) Definitions

In the interpretation of this rule of the code governing the inspection, maintenance and safety of railroad bridges in Ohio, the word "bridge" shall mean a structure of ten feet or more clear span or ten feet or more in diameter

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upon which railroad locomotives or cars may travel.

(C) Reports

- (1) Inspection reports as required by this rule and all such additional inspection reports required pursuant to the code of rules for the inspection of bridges as formulated by the "American Railway Engineering and Maintenance of Way Association" shall be filed with this commission within sixty days following the date of such inspection.
- (2) The annual inspection report shall be filed on railroad forms furnished or approved by this commission or on the form shown on exhibit one, appended. The form of report shown in exhibit one covers substantially the required items of inspection contained in the "Manual for Railway Engineering," published by the "American Railway Engineering and Maintenance of Way Association", which covers recommendations for bridge inspection.
- (3) The initial inspection report for each existing bridge or for any bridge constructed after the effective date of this rule shall be filled out in detail, insofar as the bridge parts and numbers listed on the report form are parts of that structure, and rated as per the condition rating schedule included on the report form.
- (4) On all subsequent reports, the detailed reporting of parts and members may be omitted except when the condition of any parts or members is such as to require attention before the next annual inspection, in which cases those parts shall be noted and described as provided for on the inspection report form.
- (5) Each inspection report shall be certified to the public utilities commission of Ohio by a responsible officer of the railroad.

(D) Records

Every railroad company subject to these rules shall file with this commission a complete list of all bridges located entirely or partly within the boundaries of the state of Ohio for which they are wholly or partially responsible for the inspection, maintenance and repair. They shall also file and maintain with the

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commission an up-to-date map showing the name, number or other description and location of each such structure.

(E) Inspection

- (1) Every bridge used for the transportation of freight, passengers or railroad crews shall be inspected annually by the railroad, which is responsible for all or part of the structural maintenance work. Each such inspection shall be made or supervised by a professional engineer and accomplished substantially in accordance with the provisions of the "American Railway Engineering and Maintenance of Way Association" code of rules for inspection of bridges.

(2) Inspection and progress reports to be filed.

- (a) If a railroad company inspection discloses that a bridge is dangerous or unfit for the transportation of passengers, freight or railroad crews, the railroad shall immediately file a report with the commission describing the dangerous condition and what action is being taken to correct that condition.

When any dangerous condition at a bridge is called to the attention of the commission, the commission shall notify the railroad company. The railroad shall immediately file a report with the commission stating what action is being taken to alleviate the dangerous condition.

- (b) At any time a bridge passing over a public highway is found to be in an unsafe condition or constitutes a safety hazard to the public use of said highway, a copy of the reports referred to in the foregoing paragraph shall be given to the public authority having jurisdiction over such highways.
- (c) The railroads shall notify the commission whenever maintenance and repair work to correct such conditions is in progress, which shall require special operational restrictions or limitations due to the nature of the work in progress.
- (d) If such maintenance and repair work involves reconstruction, the nature of which can reasonably be expected to entail a period of sixty calendar

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days or more, the railroad shall furnish a progress report at thirty-day intervals and the final inspection report upon its completion.

- (3) If, as a result of examination of inspection reports, or after complaint or otherwise, the commission has reasonable grounds to believe that a bridge of a railroad is in a condition which renders it dangerous or unfit for the transportation of passengers, freight or railroad crews, it shall forthwith inspect and examine the bridge. Such inspection shall be performed by the commission's staff, and any other qualified person retained by the commission or ordered to be retained by the commission for this purpose, jointly with the railroad's engineering representative; thereafter the commission shall give to the railroad superintendent or other executive officer notice of any adverse finding and of its recommendation for corrective action and an order to show cause why such corrective action should not be taken. After hearing, the commission shall forthwith take such action as is authorized under the provisions of the Revised Code.
 - (4) In any case where the strength and/or safety of any bridge is in question, the railroad shall furnish to the commission, when so requested, a copy of the complete plans and details of the structure, together with a copy of other available data such as stress diagrams, structural, maximum loading and computations so that a firm basis can be established for the disposition of the case.
- (F) Administration and enforcement.

In the matter of the administration and enforcement of the provisions of this rule, the plant property and facilities of each railroad company operating in Ohio shall be made readily accessible to the commission and its staff in the administration and investigation of violations or alleged violations of any of its provisions. Such companies shall provide to the commission or its staff, such reports, supplemental data and information from the books and records of the companies as it shall from time to time request, in the administration and enforcement of the provision of this rule or in the investigation of any violation or alleged violation of this rule.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Scott Farkas, Chief, Transportation Section
(V) Phone: 614/466-8057 **(F)** 614/728-8373
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Regulation/Package Title: Chapter 4901:2-6/ Hazardous Materials Carriers Registration
Case No. 12-2107-TR-ORD

Rule Number(s):

4901:2-6-01	Definitions
4901:2-6-02	Purpose and scope
4901:2-6-03	Registration of carriers of hazardous materials
4901:2-6-04	Supplementation of information
4901:2-6-05	Fees
4901:2-6-06	Term of uniform program registration and uniform program permit
4901:2-6-07	Standards for the suspension or revocation of a uniform program permit
4901:2-6-08	Proceedings related to the suspension or revocation of a uniform program permit
4901:2-6-09	Notices of deficiency and alternative dispute resolution

Date: October 17, 2012

Rule Type:

<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" 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.**

Chapter 4901:2-6, Ohio Administrative Code (O.A.C.), sets forth requirements for the registration and permitting of carriers of hazardous materials and the conditions under which a permit may be suspended or revoked. These regulations implement Sections 4921.15, 4921.16, and 4921.19, Revised Code, which authorize the Commission to adopt rules applicable to the uniform registration and permitting of carriers in a manner authorized by the Hazardous Materials Transportation Uniform Safety Act of 1990, out of which the Alliance for Uniform Hazmat Transportation Procedures (Alliance) was established. The Alliance is a group of states that register, and issue permits to, carriers of hazardous materials in a uniform manner. Ohio has been an Alliance member state since 1993. Under this uniform program, carriers of hazardous materials are required to register only with one of the Alliance member states by submitting a uniform application form and paying a registration fee. The permit issued by that state is then valid in all of the states that are part of the Alliance. The permit is valid for three years, although annual registration is required via a streamlined update form. The uniform program eliminates the need and the administrative burden of applying for individual permits in every state that requires a hazmat permit, while enhancing public safety.

In this Business Impact Analysis (BIA), the Commission will focus upon those rules that (a) require a carrier of hazardous materials to obtain a permit before transporting hazardous materials into, within, or through Ohio, and (b) establish standards and procedures for the suspension and revocation of a permit. For purposes of this analysis, only the impact on Ohio-based carriers will be assessed (the Commission also issues permits to carriers not physically located in Ohio).

The proposed changes to this chapter do not change the manner or method for registration and issuance of a permit, nor do they fundamentally change the process by which a permit can be suspended or revoked. These rules also do not change any requirements or impose any new regulatory burden on entities currently subject to the regulations. It is also important to note that the Commission does not design the application form or the fee structure. Further, the amount of registration fee is set largely by statute, with the exception of the per-motor vehicle fee that is determined by the Commission. The per-motor vehicle fee is currently \$20, and the amount of this fee has not been changed since the inception of the program and is the lowest of all Alliance states (other states' per-motor vehicle fees range from \$30 to \$125).

The only change proposed is that certain entities, currently exempt from these regulations, would now be subject to them. This is a result of a statutory change enacted in Amended Substitute House Bill 487 (effective June 11, 2012). Currently, entities that are not considered to be “motor carriers” when engaged in certain types of transportation in intrastate commerce are exempt from these regulations due to the manner in which the current rule is written. Such entities are identified in Chapter 4921.01(B)(1) through (9), Revised Code, and Chapter 4923.02(A)(1) through (9), Revised Code. However, Sections 4921.01 and 4923.02, Revised Code, now clearly state that the identified exemptions do not apply to the regulation of hazardous materials. As a result, Rule 4901:2-6-01 has been amended so that the exemption is eliminated and currently exempted entities will be required to comply if they are transporting hazardous materials. As the regulations implement a uniform program, this change will also promote uniform enforcement of the permitting requirement so that any entity engaging in the transportation of hazardous materials, in commerce, is treated equally and predictably.

Otherwise, the proposed changes to these rules are non-substantive and are an effort to more clearly describe the requirements for regulated entities. Changes include revisions to some of the definitions for certain terms used throughout the rules, and a revising of the order of the rules, to provide a clearer understanding of the requirements. Finally, the proposed rules set forth the procedures for suspension and revocation to ensure that due process is afforded to any regulated entity found not to be in compliance.

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

Sections 4921.15, 4921.16, 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.

While the regulation does not implement a federal requirement, the Uniform Program is recognized by 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 4921.15, 4921.16, and 4921.19, Revised Code, for the registration and permitting of carriers of hazardous materials operating in Ohio. The rules in this Chapter govern the process by which carriers will meet their requirements under the law. The public purposes of these rules are to establish (1) a uniform and objective process for the issuance of a permit and (2) establish a consistent and objective process by which a permit can be suspended or revoked. Further, the potential harm to the public due to the improper or unsafe transportation of hazardous materials is significant. Registration and permitting provides a means for the Commission to identify the entities that are transporting hazardous materials so that compliance with the federal and state hazardous materials safety regulations can be monitored and proper enforcement can be taken when necessary to protect the public. 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 hazardous materials, in commerce, 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 or 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 implement the statutory requirement to register and issue permits in accordance with the uniform procedures adopted by the Alliance. 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 carriers of hazardous materials register and receive a permit before transporting hazardous materials, in commerce, within this state. 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 4901:2-6, 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 4901:2-6, 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 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 carriers of hazardous materials and there is little to no discretion on the part of the Commission as to who is eligible to receive a permit. As long as the applicant fulfills the requirements, the permit 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 4901:2-6, O.A.C., apply to all persons transporting hazardous materials, in commerce, within this state.

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 the Uniform Program including completing an application and paying all applicable fees.

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 regulated entities filing an application with the Commission for a permit and paying the applicable fees. The application form for a permit collects basic demographic and business information and should take a typical applicant no longer than 30 minutes to complete. However, carriers of hazardous wastes are required to submit additional information and make additional disclosures. The time to compile such information could vary substantially depending on the carrier's operations. On an annual basis each carrier must submit a registration update form that is streamlined and which should take all carriers no longer than 20 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 hazardous materials is conducted in a safe and efficient manner. Additionally, Sections 4921.15, 4921.16, and 4921.19, Revised Code, direct the

Commission to adopt rules to carry out the purposes of these statutes. 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 Chapter 4901:2-6, O.A.C., implement statutory requirements that the Commission must apply uniformly to carriers of hazardous materials. Moreover, the potential harm to the public due to the transportation of hazardous materials is the same for small businesses as it is for large. Thus, any alternative means of compliance would not be appropriate. However, since small businesses are likely operating fewer motor vehicles, the cost of compliance would likely be less than that for larger businesses.

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 4901:2-6, 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 regulated entities to assist them with the applicable requirements and provides guidance on how to achieve compliance.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Scott Farkas, Chief, Transportation Section
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Regulation/Package Title: Chapter 4901:2-8/Highway Routing of Non-Radioactive
Hazardous Materials - Case No. 12-2107-TR-ORD

Rule Number(s):

4901:2-8-01	Definitions
4901:2-8-02	Purpose and Scope
4901:2-8-03	Establishment of Routing Designations
4901:2-8-04	Routing Designations for Northeast Ohio

Date: October 17, 2012

Rule Type:

<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" 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.**

Chapter 4901:2-8, Ohio Administrative Code (O.A.C.), sets forth the procedures for the establishment of routing designations applicable to the highway transportation of nonradioactive hazardous materials through Ohio.

In this Business Impact Analysis (BIA), the Commission will focus upon these rules that (a) establish routing designations for northeast Ohio and (b) set forth the basis for the establishment of such routes.

The proposed changes to this chapter are nonsubstantive in nature.

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

Section 4923.11, 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.**

The rules in this chapter implement the federal requirement regarding routing pursuant to 49 Code of Federal Regulations 397.61. This subpart contains routing requirements and procedures that states and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which a non-radioactive hazardous material in a quantity which requires placarding may or may not be transported by a motor vehicle.

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

This chapter does not include provisions not specifically required by the federal government.

- 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)?**

As a result of train derailments and cargo tank accidents involving hazardous materials causing evacuations that occurred in 1986 and 1987, Governor Voinovich in 1994 designated the Commission as the state routing agency for the highway transportation of nonradioactive hazardous materials. Following such

designation, the Commission approved specific routes for areas of northeast Ohio for the transportation of nonradioactive hazardous materials set forth in these rules. These rules ensure that the identification of specific routes will be appropriately developed and designated to ensure the safe and efficient transportation of nonradioactive hazardous materials through Ohio.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Commission can monitor complaints about the transportation of nonradioactive hazardous materials.

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 Ohio Railroad Association, 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 or 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 routing designations for the transportation of nonradioactive hazardous materials are clearly a critical safety issue. Further, the Commission is bound by standards set forth in federal law as to how routing designations may be established. Accordingly, the Commission adopted rules that it considers best suited to meet this goal.

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 rules ensure that transporters of nonradioactive hazardous materials only use certain routes that have been approved by the Commission. The only way to achieve compliance by regulated entities is to travel on the designated routes. Therefore, the agency 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 4901:2-8, O.A.C., duplicates the rules of other state entities, the ODOT was notified of the workshop described in paragraph 7 of this BIA. ODOT has not indicated that the rules in Chapter 4901:2-8, 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 4901:2-8, 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 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.

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 4901:2-8, O.A.C., apply to all regulated motor carriers that are subject to Commission and U.S. Department of Transportation (USDOT) 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 there may be a time cost to comply with requirements for routing vehicles on specific routes.

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 only impact will be in terms of time spent by motor carriers of nonradioactive hazardous materials that must travel on specific routes within the state of Ohio.

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 transportation of non-radioactive hazardous materials is conducted in a safe and efficient manner. Additionally, Section 4923.11, Revised Code, directs the

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Commission to adopt rules to carry out that section. 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.

Yes. The rules in Chapter 4901:2-8, O.A.C., allow routing designations recognized by the USDOT, which include the identification of alternative routes. Such designations must include consultation with other jurisdictions, and consider such factors as population density, type of highway, types of materials transported, exposure and other risk factors, continuity of routes, effects on commerce, delays in transportation, congestion, and accident history.

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 4901:2-8, 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 compliance. Routing designations are appropriately marked to insure that affected commercial motor carriers are clearly on notice as to the designated routes for the transportation of non-radioactive hazardous materials.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
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Regulation/Package Title:	Chapter 4901:2-21/ Registration of Intrastate Motor Carriers
	Case No. 12-2107-TR-ORD
<u>Rule Number(s):</u>	
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:	<u>October 17, 2012</u>
<u>Rule Type:</u>	
<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" 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 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.

Staff's Proposed Amendments for Chapter 4901:3-1
Minimum Track Clearances and Lateral Clearances for Railroads
Case No. 12-2107-TR-ORD

Page 1 of 6

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
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Regulation/Package Title:	Chapter 4901:3-1 / Minimum Track Clearances and Lateral Clearances for Railroads - Case No. 12-2107-TR-ORD
<u>Rule Number(s):</u>	
4901:3-1-01	Minimum Track Clearances
4901:3-1-02	Lateral Track Clearances
4901:3-1-03	Inspection, Maintenance and Safety of Railroad Bridges
Date:	<u>October 17, 2012</u>
<u>Rule Type:</u>	
<input type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input type="checkbox"/> Amended	<input type="checkbox"/> Rescinded
	<input checked="" 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.**

Chapter 4901:3-1, Ohio Administrative Code (O.A.C.), sets forth requirements for minimum track clearances for new railroad track construction or reconstruction of yard tracks of railroads operating within the state of Ohio, lateral clearance for permanent structures, and inspection, maintenance and safety of railroad bridges.

In this Business Impact Analysis (BIA), the Commission will focus upon those rules that (a) require a permit for railroad track clearance lesser than permitted by rule, (b) require corrective actions by railroads when conditions render bridges unsafe or (c) require the report of information as a condition of compliance.

There are no proposed changes to this chapter.

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

Sections 4963.42 and 4963.43, 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 Section 4931.67, Revised Code, to be met by railroads to ensure sufficient clearance between railroad tracks and structures and so that railroad bridges are structurally maintained in accordance with the provisions of the American Railway Engineering and Maintenance of Way Association Code of Rules for inspection of bridges.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Commission can monitor complaints about railroad bridge safety and clearance between railroad track and structures.

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 Ohio Railroad Association, 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 or 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, as track clearance between railroad track and structures and the structure of railroad bridges are clearly critical safety issues. 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 rules are performance-based only in the sense that, for example, the rules require certain permits to be approved by the Commission if less than minimum clearance is sought and require annual railroad bridge inspection reports to be filed with the Commission. Primarily, the rules in Chapter 4901:3-1, O.A.C., are regulatory in nature as required by the Revised Code.

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 4901:3-1, 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 O.A.C. 4901:3-1 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 4901:3-1, 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 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.

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 4901:3-1, O.A.C., apply to all regulated railroads 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 there is a time cost to comply with requirements for (a) reporting of information regarding bridge inspections, and (b) reporting of information of applications for less than minimum railroad track clearance.

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 spent by the railroads. The amount of time involved will vary with the requirement. For example, concerning Rule 4901:3-1-01, O.A.C., railroads must file an application to for less than standard lateral and vertical clearances between railroad track and structures. Rule 4901:3-1-03, O.A.C., also requires railroads to annually inspect and conduct maintenance to insure the safety of railroad bridges.

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 overseeing railroad safety and the safety of motorists at highway-rail grade crossings. Additionally, the Ohio Revised Code directs the Commission to adopt rules to carry out Sections 4963.41 and 4963.42, 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.

Yes. The rules in Section 4901:3-1-01, O.A.C., allow railroads to apply for less than minimum track clearance between tracks and adjacent permanent structures. However, the rules in Section 4901:3-1-03, O.A.C., address the reporting on inspections of railroad bridges, which is an essential safety matter. 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 4901:3-1, 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 railroads to assist such companies with compliance.