

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF OHIO ADM.CODE CHAPTERS
4901-5, 4901:2-5, AND 4901:2-13.

CASE NOS. 19-145-TR-ORD
19-146-TR-ORD
19-147-TR-ORD

ENTRY

Entered in the Journal on August 26, 2020

I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed amendments to Ohio Adm.Code Chapters 4901:2-5 and 4901:2-13 do so no later than September 18, 2020, and September 25, 2020, respectively. Staff does not propose amendments to Ohio Adm.Code Chapter 4901-5.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require 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. At this time, the Commission is reviewing Ohio Adm.Code Chapter 4901-5, concerning the Commission's procedures in motor carrier and railroad cases; Ohio Adm.Code Chapter 4901:2-5, concerning safety standards applicable to the operations of motor carriers, excepted carriers, hazardous materials transporters, and offerors; and Ohio Adm.Code Chapter 4901:2-13, addressing motor carrier insurance requirements.

{¶ 3} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;

- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the joint committee on agency rule review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, 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 R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.

{¶ 5} On March 28, 2019, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to Ohio Adm.Code Chapters 4901-5, 4901:2-5, and 4901:2-13. No stakeholders attended the workshop.

{¶ 6} Staff has evaluated the rules contained in these chapters. Following its review, Staff recommends continuing Ohio Adm.Code Chapter 4901-5 without change. However, Staff recommends the following amendments to Ohio Adm.Code Chapters 4901:2-5 and 4901:2-13:

- (a) Ohio Adm.Code 4901:2-5-02(C) and 4901:2-13-02(C) currently incorporate by reference portions of the Code of Federal Regulations (C.F.R.) governing the transportation of persons or property in intrastate and interstate commerce within Ohio, in accordance with the C.F.R. as it existed on July 25, 2018, and as of July 23, 2014, respectively. For the purpose of recognizing updates in the C.F.R., the draft language aligns these Ohio rule chapters' rules with the version of the C.F.R. effective as of August 26, 2020.
- (b) Due to a newly incorporated medical certification process in 49 C.F.R. 391.46, which now allows drivers diagnosed with diabetes mellitus treated with insulin for control to obtain a medical certification to operate commercial motor vehicles (CMV) in interstate commerce, the current medical certification process in Ohio that enabled these drivers to obtain a provisional medical certificate to operate CMVs in intrastate commerce in lieu of being able to operate interstate is no longer needed. Staff proposes adding the provision Ohio Adm.Code 4901:2-5-04(C)(10) to inform drivers with this diagnosis that no provisional medical certificates will be issued or renewed by the Commission beginning July 1, 2021, since the federal process may now be used to obtain such medical certification.

- (c) Staff proposes including a new provision, Ohio Adm.Code 4901:2-5-13(C), stating that drivers who fail to cooperate with reasonable requests during CMV inspections, may be placed out of service until such time that the inspection can be completed.
- (d) Staffs proposes changing the length of the “planting and harvesting season” in Ohio Adm.Code 4901:2-5-15 so that it lasts the whole year. This revision recognizes that farming activities are ongoing throughout the year.
- (e) Ohio Adm.Code 4901:2-13-05(C) currently requires motor carriers to file evidence of vehicular liability insurance required by Ohio Adm.Code 4901:2-13-04 that lasts for a period not less than a year or is continuous until canceled. The proposed revision changes the restriction as to how long the filed policy must be in effect, allowing the policy to last for any specified period or be continuous until canceled.

{¶ 7} Attached to this Entry are the proposed amendments to Ohio Adm.Code Chapters 4901:2-5 and 4901:2-13, as well as the no-change chapter Ohio Adm.Code 4901-5, (Attachments A, C, and E) and the BIAs (Attachment B, D, and F), which are also posted on the Commission’s Docketing Information System (DIS) website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Entry only. All interested persons are directed either to input one of the case numbers listed in the case caption above into the Case Lookup box in DIS to view the corresponding documents, or to contact the Commission’s Docketing Division to request a paper copy.

{¶ 8} The Commission requests comments from interested persons to assist in the review required by R.C. 111.15 and R.C. 106.03. Comments should be filed, via electronic filing or in hard copy, by September 18, 2020. Reply comments should be filed by September 25, 2020. All interested persons are directed to file their comments in the respective case dockets for each rule chapter.

III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than September 18, 2020, and September 25, 2020, respectively, and file these comments in each rule chapter's respective case docket for. It is, further,

{¶ 11} ORDERED, That a copy of this Entry, with the rules and the BIA, be submitted to CSI, in accordance with R.C. 121.82. It is, further,

{¶ 12} ORDERED, That a copy of this Entry be served upon all the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all other interested persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MJS/hac

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NO CHANGE

4901-5-01 Definitions.

As used in this chapter:

- (A) "Certificate" means a certificate of public convenience and necessity issued under Chapter 4921. of the Revised Code.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "For-hire motor carrier" has the same meaning as in section 4921.01 of the Revised Code.

NO CHANGE

4901-5-02 Purpose and scope.

- (A) This chapter governs the cancellation of certificates, procedures for filing railroad complaints, and the subjects of complaints.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirements of this chapter, other than a requirement mandated by state, for good cause shown.

NO CHANGE

4901-5-03 Cancellation of certificates and citations.

- (A) The commission may, pursuant to the provisions of section 4921.07 of the Revised Code, for good cause revoke, suspend, alter or amend any certificate issued by it.
- (B) Citation order - Citations shall be commenced by the issuance of an order requiring the for-hire motor carrier to show cause why its certificate should not be revoked, altered or amended. Such order shall set forth the facts on which the citation is based. The citation order shall require the respondent to file a written answer within fifteen days of the effective date of the order.

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- (C) Answer - The respondent must answer the order to show cause within fifteen days of its effective date. Such answer shall either admit or deny each separate allegation of the order to show cause. The answer shall state what corrections, if any, have been made of the practices complained of in the order to show cause. If an allegation is denied, the answer must set forth the facts upon which such denials are based.
- (D) Hearing on citation - If a respondent fails to answer an order to show cause, the commission shall proceed to revoke authority. If an answer is filed by the respondent, the matter shall be promptly 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.

NO CHANGE

4901-5-04 Complaints.

All complaints filed against a for-hire motor carrier under section 4905.26 of the Revised Code shall be governed by rule 4901-9-01 of the Administrative Code.

NO CHANGE

4901-5-05 Railroad complaints.

(A) Complaint and conference

- (1) Complaints under sections 4905.04 and 4907.08 of the Revised Code shall be made in writing, setting forth briefly the facts alleged to constitute a violation of the Revised Code, Administrative Code, or commission order, or to support the promulgation of an order under section 4905.04 of the Revised Code. The name of the railroad or railroads complained against shall be stated in full and the address of the complainant and the name and address of complainant's attorney, if any, must appear upon the complaint.
- (2) Two or more complaints involving the same principle, subject, or state of facts may be included in one complaint. One or more persons may join in one complaint against one or

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more railroads if the subject matter of the complaint involves substantially the same principle, subject, or state of facts.

- (3) The complaint shall be mailed or delivered to: "Public Utilities Commission of Ohio, Railroad Division, 180 East Broad Street, Columbus, Ohio 43215-3893."
- (4) The complaint shall aver that a reasonable but unsuccessful effort has been made by the parties to reach an amicable agreement. Such complaint shall be referred to the railroad division for an investigation and the preparation of a report. The railroad division shall serve copies of the report upon all parties in the case. The railroad division shall promptly proceed to hold a conference with the involved parties attempting an equitable satisfaction of the complaint without necessitating a formal hearing. The terms of the agreement arrived at through such an informal conference shall be reduced to writing and the matter would then be considered closed. Should the informal conference fail to bring about an agreement, the matter shall be docketed and assigned a formal case number.
- (5) The commission will then formally serve another copy of the complaint upon each respondent with a notice to satisfy or answer the complaint.

(B) Answers

- (1) Unless otherwise ordered by the commission, a railroad shall file its answer within twenty days from service of the complaint by the commission.
- (2) The answer shall be filed with the commission and a copy served upon the complainant. The answer shall specifically admit or deny the material allegations of the complaint and may set forth the facts which will be relied upon to support any such denial. If a railroad satisfies the complaint before answering, such fact without other matter may be set forth in the answer. If the cause of the complaint is removed after the filing and service of an answer, but before hearing, the railroad shall forthwith advise the commission. The filing of an answer constitutes a waiver of all matters, other than jurisdiction, which could be objected to by motion. In case of a failure to answer without cause, the commission will take such proof of facts as it deems proper and will make such order as it deems appropriate in the premises.
- (3) When a complaint is properly subject to objection by motion, such motion shall be made before or concurrent with filing an answer except any motion attacking the jurisdiction of the commission.

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(C) Investigation report

- (1) The written report and recommendation of this commission's railroad division, prepared in connection with the settlement conference, shall be filed with the docketing division if the complaint is filed.
- (2) Not later than fifteen days before the first day of hearing, either party to the complaint may file a written request that a supplemental investigation and report be made by the railroad division. The supplemental report shall be filed with the docketing division and served on the parties.
- (3) Any party or the staff may request that either or both reports be received into evidence. Staff shall be made available at the hearing for examination concerning the reports.

(D) Orders to show cause

- (1) If a complaint or a staff report of investigation indicates a violation of the Revised Code, Administrative Code, or of an order of the commission, the commission may issue an order to the railroad to show cause.
- (2) A copy of such order shall be served by the commission upon each of the parties to such proceeding in such manner as the commission directs.

(E) Hearings

- (1) Upon finding that reasonable grounds for complaint exist, the commission, the legal director, or the attorney examiner assigned to the case shall assign a time and place for hearing and cause reasonable notice to be given to all parties.
- (2) The burden of proof in a complaint proceeding is on the complainant.
- (3) Matters of practice and procedure not specifically covered by rules in this chapter shall be governed by the applicable provisions of Chapter 4901-1 of the Administrative Code.

(F) Designation of agent by railroad

Every railroad defined in sections 4907.02 and 4907.03 of the Revised Code shall designate an agent upon whom notices and papers required under this rule shall be served, and shall advise the commission, in writing, of the name and address of such agent.

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NO CHANGE

4901-5-06 Complaints relating to dangerous crossings under section 4907.47 of the Revised Code.

(A) Complaints under section 4907.47 of the Revised Code relative to the adequacy of protective devices at a public highway grade crossing shall be made in writing and shall set forth:

- (1) The name and location of the subject crossing.
- (2) The name of each railroad which operates over the subject crossing.
- (3) The name of the governmental unit which has jurisdiction over the public road at the subject crossing.
- (4) An allegation that the crossing is dangerous together with a general statement as to the conditions which the complainant believes make the crossing dangerous within the meaning of section 4907.47 of the Revised Code.
- (5) The address of the complainant and the name and address of the complainant's attorney, if any.

(B) Two or more persons having an interest in the outcome of the proceeding may join in one complaint.

The commission may, on its own motion or the motion of any proper person, join as a party any railroad which operates over the subject crossing, or any governmental unit which has jurisdiction over the public road at the crossing, which was not included in the original complaint. The commission may, on its own motion or the motion of any proper person, dismiss the complaint insofar as it pertains to any railroad which does not operate over the subject crossing or any governmental unit which does not have jurisdiction over the public road at the crossing.

(C) The commission shall cause a copy of the complaint together with a notice to answer or otherwise plead within a specified period of time to be served by certified mail upon each railroad operating at the crossing. The commission shall also cause a copy of the complaint, and entry relating thereto, to be served upon each governmental unit having jurisdiction over the public road at the crossing.

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The commission shall serve all parties with notice of all hearings on the complaint. Said notice shall be made at least fifteen days prior to the date of hearing.

(D) Service of papers required by other provisions of this rule shall be made on the governmental units having control of the public roads at the subject crossings as follows:

- (1) Township roads - on the clerk of the board of township trustees.
- (2) County roads - on the clerk of the board of county commissioners.
- (3) City streets - on the mayor of the city.
- (4) State highways - on the director of the department of transportation.

In the event the public road at the subject crossing is under the jurisdiction of more than one governmental unit, all required service shall be made on the proper official of each governmental unit affected

(E) Upon receipt of the answer to such complaint or, in the event that the respondent railroad fails to file an answer within the time provided, immediately after the answer date, or, in the event a party to answer otherwise pleads, upon order of the commission, the railroad division of the commission shall cause an investigation to be made of the conditions existing at the subject crossing and thereafter shall submit to the commission a written report of its findings. The commission shall serve copies of such report upon all parties to the case.

(F) Matters of practice and procedure not specifically covered by this rule shall be governed by the applicable provisions of Chapter 4901-1 of the Administrative Code.

NO CHANGE

4901-5-07 Railroad employee safety rules.

Complaints relating solely to the elimination of a dangerous and hazardous condition due to the growth of weeds and vegetation or insufficient or unsanitary drinking water and/or containers

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on locomotives and cabooses shall initially be handled under the informal procedure outlined in paragraph (A)(3) of rule 4901-5-05 of the Administrative Code.

NO CHANGE

4901-5-08 Reparation and damage claims.

Complaints filed under section 4907.57 of the Revised Code shall be accompanied by any supporting affidavits and exhibits. Blank forms of complaint will be furnished by the commission upon request.

NO CHANGE

4901-5-09 Statement justifying rate change.

Whenever there is filed with the commission under section 4907.27 of the Revised Code a tariff schedule stating a new individual or joint rate or charge or any new individual or joint classification or any new individual or joint regulation or practice affecting any rate or charge, such schedule shall be accompanied by a concise statement setting forth, generally, the reasons prompting its filing.

NO CHANGE

4901-5-10 Tariff suspensions.

- (A) Suspension of a rate, charge, classification, regulation, or practice under section 4909.27 of the Revised Code will not ordinarily be made unless a request for suspension is filed with the public utilities commission at least ten days before the effective date fixed in the schedule.
- (B) A request for suspension must reference the tariffs at issue by its Ohio or PUCO tariff number and must make specific reference to the parts thereof complained against, together with a brief statement of the grounds that justify the suspension. In such cases, a copy of the request for

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suspension shall be served upon all parties in accordance with rule 4901-1-05 of the Administrative Code.

NO CHANGE

4901-5-12 Transportation of waste products.

(A) Definition of waste.

- (1) The term "waste," as used in this chapter, includes, but is not restricted to, industrial, commercial, and residential garbage, cesspool or septic tank cleanings, and any commodity or substance discarded by the owner thereof with the purpose of abandonment. "Waste" is not included in the term "property" as used in Chapters 4921. and 4923. of the Revised Code when defining transportation for hire subject to regulation by the commission.
- (2) The term "waste" does not include industrial or commercial scrap or by-products transported for recycling, reclamation, or reuse in any form where the shipper retains an interest or title in the property.

(B) Transportation of waste.

The transportation of waste as defined in paragraph (A)(1) of this rule is not subject to regulation by the commission.

(C) Transportation of valuable scrap or by-products.

The for-hire transportation of commodities or substances of the types described in paragraph (A)(2) of this rule is subject to the criteria established by law for obtaining a certificate.

(D) Safety regulation of waste transportation.

Nothing in this rule shall exempt from safety regulation by the commission the transportation of waste by a motor carrier.

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NO CHANGE

4901-5-13 Sanitary drinking water.

Every railroad operating in whole or in part within the state of Ohio shall equip each controlling locomotive and each caboose while in use in this state with sufficient sanitary drinking water and cups, or individual water containers. No water container shall be opened and placed in service without dating, be in use in excess of thirty days thereafter, or be used for any purpose other than holding sanitary water.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122

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Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Procedure in Motor Carrier Cases

Rule Number(s): 4901-5-01, 4901-5-02, 4901-5-03, 4901-5-04, 4901-5-05, 4901-5-06, 4901-5-07, 4901-5-08, 4901-5-09, 4901-5-10, 4901-5-12, 4901-5-13

Date of Submission for CSI Review: August 26, 2020

Public Comment Period End Date: September 25, 2020

Rule Type/Number of Rules:

☐ New/____(FYR? ____)

☒ No Change/12 rules (FYR? Yes)

☐ Amended/____(FYR? ____)

☐ Rescinded/____ rules (FYR? ____)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an

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adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

This chapter sets forth procedures to be followed in citation cases applicable to for-hire motor carriers and procedures used in complaint cases applicable to railroads. This is a no change chapter. There are no amendments or revisions proposed by Staff.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Rule	Statutory Authority/Amplification Ohio Revised Code
4901-5-01	4901.13, 4921.07 4923.04, 4921.01
4901-5-02	4901.13, 4905.06, 4905.04, 4907.08
4901-5-03	4901.13, 4907.08, 4921.07
4901-5-04	4901.13, 4905.06, 4905.26, 4905.04, 4921.01
4901-5-05	4901.13, 4905.06, 4905.04, 4907.03, 4907.08
4901-5-06	4901.13, 4905.06, 4907.08, 4907.24
4901-5-07	4901.13, 4905.06, 4905.04, 4907.24
4901-5-08	4901.13, 4905.06, 4905.04, 4907.24, 4907.57
4901-5-09	4901.13, 4905.06, 4907.24, 4909.27
4901-5-10	4901.13, 4905.06, 4909.27, 4921.0733
4901-5-12	4901.13, 4905.06, 4923.04, 4905.04, 4923.04
4901-5-13	4901.13, 4905.06, 4905.04, 4907.08

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
If yes, please briefly explain the source and substance of the federal requirement.

This rule does not implement a federal requirement.

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

Not applicable.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The purpose of this chapter is to provide procedures for the Commission to commence proceedings to suspend or revoke a motor carrier's certificate and the process by which a motor carrier can contest such an action. It also provides the procedures for filing complaints against railroads.

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

The Commission will measure success by whether the affected carriers or interested persons fail to follow the procedures set forth for addressing suspension and for filing complaints.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On February 12, 2019, in Case No. 19-145-TR-ORD, the Commission issued an entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 28, 2019, to listen to stakeholders' concerns concerning the rule. The entry was served upon the Ohio Trucking

Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol (OSHP), the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, Ohio State Legislative Board/United Transportation Union, and all interested persons of record. The workshop was conducted as scheduled on March 28, 2019.

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

No stakeholders were present at the workshop.

However, the Commission 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.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternative regulations were considered. The Commission is authorized by statute to establish procedures for the processing of railroad complaints and for citations of motor carriers.

13. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The Commission did not consider a performance-based regulation. The rules in this chapter are primarily regulatory in nature and are required by the Ohio Revised Code.

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

The Commission has reviewed other Ohio regulations and did not find any duplication of

regulations. Also, neither ODOT nor OSHP, who were notified of the workshop described in paragraph 9 of this BIA, have indicated that this chapter duplicates any of their rules.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Stakeholders' first opportunity to comment on Ohio Adm.Code 4901-5, was in the aforementioned workshop on March 28, 2019; as already stated, no stakeholders were present. Next, the Commission will issue an entry indicating certain rules within Ohio Adm.Code 4901-5 will be amended. Finally, following the comment period specified in the entry, the Commission will issue a Finding and Order amending the rule. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, OSHP, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, Ohio State Legislative Board/United Transportation Union, and all interested persons of record will receive notice that this chapter will not be amended.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

The impacted business community consists of for-hire motor carriers and regulated railroads.

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

The current rules impact the identified business community because they impose costs in responding to complaints and citation orders.

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 cost of these rules involves the time required by motor carriers or railroads to respond to citation orders and complaints.

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

The purpose of this chapter is to set rules to establish procedures for for-hire motor carriers to respond to citation orders and for railroads to respond to complaints. The interest of ensuring compliance with safety rules exceeds the routine and mandatory time and expense of motor carriers and railroads in responding.

Regulatory Flexibility

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

No. These rules do not apply to small businesses.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

When a complaint is filed against a railroad, a conference is first held between the parties to resolve the matter. If unsuccessful, the matter is treated as a formal complaint and the complainant party may choose to proceed to a formal hearing. In some cases, a fine may be assessed and, depending on evidence and testimony at the hearing, the Commission may determine that a reduced or waived fine is appropriate. Also, similar to the process outlined above, parties against whom fines are assessed for motor carrier safety and hazardous materials violations can request a conference with Staff to discuss alleged violations. The conference may result in Staff reducing or waiving the fine, depending on the nature and circumstances of the violation, as well as other factors that the regulated entity might disclose at the conference. If matters are not resolved at the conference, the motor carrier, excepted carrier, hazardous materials transporter, or offeror may choose to proceed to a hearing. Depending on evidence and testimony presented at the hearing, the Commission may determine that a reduced or waived fine is appropriate.

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

Staff works with regulated entities to assist them with the applicable requirements and provides guidance on how to achieve compliance.

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NO CHANGE

4901:2-13-01 Definitions.

- (A) "Cargo liability" means liability for loss or damage to household goods belonging to individual shippers and coming into possession of a for-hire motor carrier in connection with its transportation service.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Evidence of security" means a surety bond, policy of insurance, or certificate of insurance issued to a motor carrier to satisfy the financial responsibility requirements set forth in this chapter.
- (D) "Financial responsibility" means the financial reserves (e.g. insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this chapter covering public liability and cargo liability.
- (E) "For-hire motor carrier" has the same meaning as in section 4921.01 of the Revised Code.
- (F) "Gross combination weight rating" has the same meaning as in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code.
- (G) "Gross vehicle weight rating" has the same meaning as in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code.
- (H) "Hazardous material" has the same meaning as in 49 C.F.R. 171.8, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code.
- (I) "Household goods" has the same meaning as in section 4921.01 of the Revised Code.
- (J) "Interstate commerce" has the same meaning as in section 4921.01 of the Revised Code.
- (K) "Intrastate commerce" means any trade, traffic, or transportation within Ohio which does not meet the definition of interstate commerce.
- (L) "Motor carrier" includes all for-hire motor carriers and private motor carriers operating in intrastate commerce.
- (M) "Motor vehicle" has the same meaning as in section 4921.01 of the Revised Code.

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- (N) "Private motor carrier" has the same meaning as in section 4923.01 of the Revised Code.
- (O) "Public Liability" means liability for bodily injury or property damage and includes liability for environmental restoration.

AMENDED

4901:2-13-02 Purpose and scope.

- (A) This chapter governs the establishment of insurance requirements applicable to motor carriers operating in intrastate commerce.
- (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 was effective on August 26, 2020~~July 23, 2014~~.

NO CHANGE

4901:2-13-03 Minimum levels of financial responsibility.

No motor carrier shall operate a motor vehicle in intrastate commerce unless the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in this rule.

- (A) For-hire motor carriers engaged in the transportation of property in intrastate commerce, and not subject to paragraph (D) or (E) of this rule, shall maintain minimum levels of financial responsibility covering public liability in an amount of seven hundred fifty thousand dollars, unless the for-hire motor carrier exclusively operates motor vehicles with a gross vehicle weight rating or a gross combination weight rating of less than ten thousand one pounds, in which event the for-hire motor carrier shall maintain minimum levels of financial responsibility covering public liability in an amount of three hundred thousand dollars.

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- (B) For-hire motor carriers, engaged in the transportation of household goods in intrastate commerce, shall maintain minimum levels of financial responsibility covering cargo liability in an amount of:
- (1) Five thousand dollars for loss of or damage to household goods carried on any one motor vehicle; and
 - (2) Ten thousand dollars for loss of or damage to, or aggregate of losses or damages of or to, household goods occurring at any one time or place.
- (C) For-hire motor carriers, engaged in the transportation of passengers in intrastate commerce, shall maintain minimum levels of financial responsibility covering public liability in an amount of:
- (1) Five million dollars if operating vehicles with a seating capacity of sixteen passengers or more including the driver; or
 - (2) One million five hundred thousand dollars if operating vehicles with a seating capacity of fifteen passengers or less including the driver.
- (D) For-hire motor carriers and private motor carriers engaged in the transportation of the following hazardous materials in intrastate commerce shall maintain minimum levels of financial responsibility covering public liability in an amount of five million dollars:
- (1) Hazardous substances as defined in 49 C.F.R. 171.8, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of thirty-five hundred water gallons.
 - (2) Class 1.1, 1.2, and 1.3 materials as defined in 49 C.F.R. 173.50, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, in any quantity.
 - (3) Class 2.3, Hazard Zone A materials as defined in 49 C.F.R. 173.115 and 173.116, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, in any quantity.
 - (4) Class 6.1, Packing Group I, Hazard Zone A materials as defined in 49 C.F.R. 173.132 and 173.133, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, in any quantity.

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- (5) Class 2.1 or 2.2 materials as defined in 49 C.F.R. 173.115, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, in containment systems with capacities in excess of 3,500 water gallons.
- (6) Highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. 173.403, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code.
- (E) For-hire motor carriers and private motor carriers engaged in the transportation of the following hazardous materials in intrastate commerce shall maintain minimum levels of financial responsibility covering public liability in an amount of one million dollars:
 - (1) Oil listed in 49 C.F.R. 172.101, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, in any quantity.
 - (2) Hazardous waste, hazardous materials, and hazardous substances defined in 49 C.F.R. 171.8, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, and listed in 49 C.F.R. 172.101, as effective on the date referenced in paragraph (C) of rule 4901:2-13-02 of the Administrative Code, but not mentioned in paragraph (D) of this rule, in any quantity.

NO CHANGE

4901:2-13-04 Financial responsibility filing requirements.

- (A) No for-hire motor carrier that is subject to section 4921.09 of the Revised Code, shall engage in intrastate commerce, and no certificate of public convenience and necessity shall be issued to a for-hire motor carrier, or remain in effect, unless it has filed with and has had approved by the commission evidence of financial responsibility covering public liability in the amounts set forth in rule 4901:2-13-03 of the Administrative Code.
- (B) Evidence of financial responsibility covering cargo liability in the amounts set forth in rule 4901:2-13-03 of the Administrative Code must be filed by all for-hire motor carriers engaged in the transportation of household goods in intrastate commerce. However, bus companies operating in intrastate commerce are not required to do so.
- (C) Separate evidence of financial responsibility shall be filed with the commission for each for-hire motor carrier holding a certificate of public convenience and necessity. A for-hire motor carrier

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shall cause such evidence of financial responsibility to be filed with the commission by the insurer.

AMENDED

4901:2-13-05 General requirements.

- (A) Evidence of security required under the rules of this chapter must be issued by an insurance or bonding company authorized to do business in Ohio by the Ohio department of insurance.
- (B) Each type of coverage (e.g. public liability, cargo liability) may be written with multiple companies or with a single company.
- (C) Evidence of security written for filing with the commission pursuant to rule 4901:2-13-04 of the Administrative Code may be for a specified period ~~of not less than one year~~ or continuous until canceled. Continuous coverage is preferred by the commission.
- (D) Evidence of security written for filing with the commission pursuant to rule 4901:2-13-04 of the Administrative Code shall be written in the full and correct name of the applicant for or the holder of a certificate of public convenience and necessity and, whenever necessary, such policy, certificate, or bond shall be amended to show the name or names of the legal or personal representatives, trustees and receivers, engaging or proposing to engage as a for-hire motor carrier. Evidence of security shall also show the address and principal place of business of the insured for-hire motor carrier or legal representative.

NO CHANGE

4901:2-13-08 Expiration and cancellation of insurance; rescission of cancellation.

- (A) When evidence of security required to be on file with the commission pursuant to rule 4901:2-13-04 of the Administrative Code is to be canceled short of the specified term or expiration date specified therein, the commission requires not less than ten days' written notice of cancellation. Notice of cancellation shall be given to the commission by the insurer in the form set forth by the commission.
- (B) Notice to rescind cancellation and reinstate an insurance policy or surety bond shall be given to the commission in the form set forth by the commission.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Agency Contact Info: Attention: Angela Hawkins, Legal Director
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Regulation/Package Title: Insurance

Rule Number(s): 4901:2-13-01, 4901:2-13-02, 4901:2-13-03, 4901:2-13-04, 4901:2-13-05, 4901:2-13-08

Date of Submission for CSI Review: August 26, 2020

Public Comment Period End Date: September 25, 2020

Rule Type/Number of Rules:

☐ New/ (FYR?)

☒ Amended/ 2 rules (FYR? Yes)

☒ No Change/ 4 rules (FYR? Yes)

☐ Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies

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should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:2-13 promulgates rules pertaining to liability insurance coverage for motor carriers. Among other things, the rules identify which motor carriers are required to maintain insurance, the amount of insurance coverage required, and the minimum period of coverage.

Current language in Ohio Adm.Code 4901:2-13-02(C) refers to Code of Federal Regulations (CFR) citations in Ohio Adm.Code Chapter 4901:2-13. Specifically, the current language states that the citations incorporate by reference the particular version of the CFR that was

effective as of July 23, 2014. The draft language changes this date to August 26, 2020, to recognize updates in the CFR since the previous date in the Ohio Adm.Code.

Current language in Ohio Adm.Code 4901:2-13-05(C) allows motor carriers to file evidence of security required by Ohio Adm.Code 4901:2-13-04 that lasts for not less than a year or is continuous until canceled. The revision to Ohio Adm.Code 4901:2-13-05(C) allows evidence of the security to last for a specified period or be continuous until canceled.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Rule	Statutory Authority/Amplification Ohio Revised Code
4901:2-13-01	4921.09
4901:2-13-02	4921.09
4901:2-13-03	4921.09, 4921.03, 4923.04
4901:2-13-04	4921.09
4901:2-13-05	4921.09
4901:2-13-08	4921.09

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

This rule, in part, implements a federal requirement. Ohio receives federal funding via a grant under the Motor Carrier Safety Assistance Program (MCSAP). To continue to be part of MCSAP, Ohio rules must be compatible with federal law. Consequently, in Case No. 19-146-TR-ORD, Staff proposes to update the effective date for the CFR rules referred in Ohio Adm.Code 4901:2-13.

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

Not applicable, as staff's proposed revisions are to better ensure that the Commission's rules are consistent and compatible with federal rules.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The purpose of this chapter is to set rules that protect the public against loss from the death of or bodily injuries to persons and for loss of or damage to property (except cargo) resulting from the negligence of a motor carrier.

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

The Commission will measure success by whether the motor carrier makes the required filings and whether such filings adhere to the provisions in Ohio Adm.Code 4901:2-13.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On February 12, 2019, in Case No. 19-146-TR-ORD, the Commission issued an entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 28, 2019, to listen to stakeholders' concerns concerning the rule. The entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol (OSHP), the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, Ohio State Legislative Board/United Transportation Union, and all interested persons of record. The workshop was conducted as scheduled on March 28, 2019.

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

No stakeholders were present at the workshop.

However, the Commission 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.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternatives were considered as the rules in Ohio Adm.Code Chapter 4901:2-13 implement federal regulations and are designed to protect the public against loss from the death of or bodily injuries to persons and for loss of or damage to property resulting from the negligence of a motor carrier.

13. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The Commission did not consider a performance-based regulation. The rules in this chapter are primarily regulatory in nature and are required by the Ohio Revised Code.

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

The Commission reviewed motor carrier insurance provisions to eliminate duplications and provisions that are no longer applicable.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Stakeholders' first opportunity to comment on Ohio Adm.Code 4901:2-13, was in the aforementioned workshop on March 28, 2019; as already stated, no stakeholders were present. Next, the Commission will issue an entry indicating certain rules within Ohio Adm.Code 4901:2-13 will be amended. Finally, following the comment period specified in the entry, the Commission will issue a Finding and Order amending the rule. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, OSHP, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, Ohio State Legislative Board/United Transportation Union, and all interested persons of record will receive notice that this chapter will not be amended.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

Pursuant to R.C. 4921.09, this chapter applies to all motor carriers.

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

The rules impact the identified business community because they impose filing requirements and maintenance of vehicular liability insurance.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The adverse impact involves the time and expense of purchasing and maintaining motor carrier liability insurance and then filing evidence of that insurance with the Commission.

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

The purpose of this chapter is to set rules to protect the public against loss from the death of or bodily injuries to persons and for loss of or damage to property resulting from the negligence

of a motor carrier. This interest far exceeds the routine and mandatory time and expense of purchasing and maintaining motor carrier liability insurance.

Regulatory Flexibility

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

No. These regulations do not provide any exceptions specifically applicable to small businesses.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

If a motor carrier is assessed a civil forfeiture pursuant to R.C. 4923.99 for insufficient levels of insurance, the Commission may consider a reduction of the forfeiture if the motor carrier cures the deficiency in a timely manner.

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

Staff works with regulated entities to assist them with the applicable requirements and provides guidance on how to achieve compliance.

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NO CHANGE

4901:2-5-01 Definitions.

- (A) "Authorized personnel" means employees of the commission's transportation department authorized to conduct inspections of motor vehicles and drivers, and employees of the state highway patrol designated by the superintendent to conduct inspections of motor vehicles and drivers.
- (B) "Commercial motor vehicle" when used in connection with a motor carrier operating in intrastate commerce, has the same meaning as in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, when operated by a for-hire motor carrier, and the same meaning as in 49 C.F.R. 383.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, when operated by a private motor carrier.
- (C) "Commercial vehicle safety plan" has the same meaning as in 49 C.F.R. 350.105, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (D) "Commission" means the public utilities commission of Ohio.
- (E) "Excepted carrier" means a person excepted as a for-hire motor carrier under divisions (B)(1) to (B)(9) of section 4923.01 of the Revised Code or a person excepted as a private motor carrier under divisions (A)(1) to (A)(9) of section 4923.02 of the Revised Code.
- (F) "For-hire motor carrier" has the same meaning as in section 4923.01 of the Revised Code.
- (G) "Hazardous material" has the same meaning as in 49 C.F.R. 171.8, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (H) "Hazardous materials transporter" means a person engaged in the highway transportation of hazardous materials, in intrastate commerce, by motor vehicles that are not commercial motor vehicles.
- (I) "Immediate destination" is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

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- (J) "Imminent hazard" means any condition of a motor vehicle, driver, or operation which is likely to result in serious injury or death if not discontinued immediately.
- (K) "Inspection report" means the "Driver Vehicle Examination Report" prescribed by the U.S. department of transportation pursuant to 49 C.F.R. 396.9, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, to record the results of inspections conducted by authorized personnel.
- (L) "Interstate commerce" has the same meaning as in section 4923.01 of the Revised Code.
- (M) "Intrastate commerce" means any trade, traffic, or transportation within Ohio which does not meet the definition of interstate commerce.
- (N) "Medical examiner" has the same meaning as in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (O) "Motor carrier" includes all for-hire motor carriers and private motor carriers operating commercial motor vehicles in intrastate commerce. "Motor carrier" also includes those defined in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, operating in Ohio in interstate commerce.
- (P) "Motor Carrier Safety Assistance Program" is the federal grant program described in 49 C.F.R. 350.101, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (Q) "Motor vehicle" has the same definition as in section 4921.01 of the Revised Code and includes commercial motor vehicles.
- (R) "Offeror" means any person that is subject to the regulations contained in 49 C.F.R. 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, by reason of offering hazardous materials for transportation by motor vehicle into, within, or through Ohio.
- (S) "Private motor carrier" has the same meaning as in section 4923.01 of the Revised Code.
- (T) "Public highway" has the same meaning as in section 4923.01 of the Revised Code.
- (U) "Transportation of construction materials and equipment" means the transportation of construction and pavement materials, construction equipment, and construction maintenance

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vehicles, by a driver to or from an active construction site (a construction site between mobilization of equipment and materials to the site to the final completion of the construction project) within a fifty air mile radius of the normal work reporting location of the driver. This definition shall not apply to the transportation of hazardous materials in a quantity requiring placarding pursuant to 49 C.F.R. 172, subpart f, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.

AMENDED

4901:2-5-02 Purpose and scope.

- (A) This chapter governs the establishment and enforcement of safety standards applicable to the operations of motor carriers, excepted carriers, hazardous materials transporters, and offerors.
- (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 was effective on August 26, 2020~~July 25, 2018~~.

NO CHANGE

4901:2-5-03 Adoption and applicability of U.S. department of transportation safety standards.

- (A) The commission hereby adopts the provisions of the regulations of the U.S. department of transportation contained in 49 C.F.R. 40, 367, 380, 382, 383, 385, 386, 387, and 390 to 397, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, unless specifically excluded or modified by a rule of this commission, and those portions of the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on

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the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as are applicable to transportation or offering for transportation of hazardous materials by motor vehicle. A violation by any person subject to these regulations shall constitute a violation of the commission's rules.

- (B) All motor carriers operating in intrastate commerce shall conduct their operations in accordance with the provisions of this chapter and the regulations adopted pursuant to paragraph (A) of this rule. With respect to such regulations as applicable to motor carriers operating in intrastate commerce, any notices or requests permitted or required to be made to the U.S. department of transportation or officials thereof shall instead be made to the director of the commission's transportation department.
- (C) All motor carriers engaged in interstate commerce within Ohio shall operate in conformity with all regulations of the U.S. department of transportation, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (D) All offerors shall operate in conformity with the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (E) All hazardous materials transporters shall operate in conformity with the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (F) All excepted carriers shall operate in conformity with the regulations of the U.S. department of transportation contained in 49 C.F.R. 383, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code. as applicable, and the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to paragraph (A) of this rule.
- (G) Enforcement of the regulations adopted pursuant to paragraph (A) of this rule, shall be subject to any exemptions granted by the U.S. department of transportation and shall be consistent with interpretations issued by the U.S. department of transportation.

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- (H) Title 49 C.F.R. 395.3, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, does not apply to motor carriers engaged in the intrastate transportation of construction materials and equipment. As to such carriers, the following maximum driving time limitations apply:
- (1) No motor carrier engaged in the intrastate transportation of construction materials and equipment shall permit or require any driver used by it to drive nor shall any such driver drive:
 - (a) More than twelve hours following ten consecutive hours off duty; or
 - (b) For any period after having been on duty sixteen hours following ten consecutive hours off duty.
 - (2) No motor carrier engaged in the intrastate transportation of construction materials and equipment shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after:
 - (a) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or
 - (b) Having been on duty eighty hours in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.
 - (3) In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more successive hours.
 - (4) Paragraphs (H)(1) (H)(2), and (H)(3) of this rule shall not apply when the commission grants applicable regulatory relief from the hours-of-service requirements pursuant to rule 4901:2-5-05 of the Administrative Code.

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4901:2-5-04 Qualifications of drivers.

- (A) No motor carrier, excepted carrier, or hazardous materials transporter shall operate or permit the operation of a motor vehicle in intrastate commerce by a person under the age of eighteen years. No motor carrier, or excepted carrier, shall operate or permit the operation of a commercial motor vehicle transporting hazardous materials in a quantity or of a type that requires the motor vehicle to be placarded pursuant to 49 C.F.R. 172, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, in intrastate commerce, by a person under the age of twenty-one years.
- (B) The provisions in 49 C.F.R. 391.21 (applications for employment), and 391.23 (investigations and inquiries), as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, shall not apply to a driver operating in intrastate commerce who has been a single employer driver as defined in 49 C.F.R. 390.5, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, of a motor carrier, for a continuous period which began before January 1, 1987, so long as the driver continues to be a regularly employed driver of that motor carrier.
- (C) Persons who on or before December 7, 1988, were employed or self-employed in occupations which required the operation of commercial motor vehicles, who cannot be medically certified under the requirements of 49 C.F.R. 391.41, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, may obtain provisional medical certification for operating commercial motor vehicles in intrastate commerce under the following conditions:
 - (1) A driver may obtain a packet of materials prescribed by the commission to be used by the driver and the medical examiner in conducting a medical examination for provisional medical certification. The medical examiner must be listed on the "National Registry of Certified Medical Examiners" administered by the U.S. department of transportation and current on all requirements to perform an examination for a provisional medical certification. Included in the packet will be instructions to assist the medical examiner in making an evaluation.
 - (2) Prior to visiting the medical examiner, a driver shall submit to the commission a completed "Certification of Driver Employment" form on which the driver shall certify the conditions

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of the driver's past and current employment, including employer name and contact information, dates of employment, size and type of vehicles operated, types of cargo transported, accident history, and any additional information deemed necessary by the commission. After reviewing the driver's employment history and experience, the commission shall return a copy of the "Certification of Driver Employment" form to the driver and provide the driver with the "Medical Examiner's Provisional Certificate" form, prescribed by the commission, for the medical examiner to complete.

- (3) The medical examination shall be performed in accordance with 49 C.F.R. 391.43, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, and shall be recorded on the examination form prescribed by that part. If the medical examiner finds that the driver cannot be certified in accordance with 49 C.F.R. 391.41 as effective the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, but that the driver can safely operate commercial motor vehicles under certain conditions, the medical examiner may provisionally certify the driver.
- (4) To provisionally certify a driver, the medical examiner must complete the "Medical Examiner's Provisional Certificate" in lieu of the "Medical Examiner's Certificate" prescribed in 49 C.F.R. 391.43, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code. The medical examiner shall indicate on the provisional certificate the limitations under which the medical examiner finds the driver can safely operate a commercial motor vehicle, including but not limited to, restrictions on the size and type of vehicle operated, hours operated per day, and any other work activities performed in addition to driving. A copy of the provisional certificate shall be provided to the driver.
- (5) A copy of the completed provisional certificate shall be submitted to the commission. The commission shall confirm receipt by placing a stamp upon the provisional certificate and then returning a copy of it to the driver. A provisional certificate shall not be effective unless stamped by the commission. The driver shall provide a copy of the provisional certificate to the driver's employer, which shall be kept in the employer's driver qualification file in the same manner as the medical examiner's certificate, as required by 49 C.F.R. 391.51, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code. A driver must possess a copy of the provisional certificate at all times when operating a commercial motor vehicle.
- (6) A driver who has obtained provisional medical certification shall be re-examined one year from the date of the medical examination, or such shorter time as the medical examiner may

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prescribe, and shall obtain a new provisional certificate pursuant to the requirements of this rule, except that the driver shall not be required to submit a new "Certification of Driver Employment" form prior to obtaining a "Medical Examiner's Provisional Certificate" form from the commission.

- (7) Except as otherwise provided by this rule, the medical examiner's provisional certificate shall be treated as medical examiner's certificate for all purposes as provided in 49 C.F.R. 390 to 396, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (8) Provisional medical certification under this rule shall be ineffective to qualify a driver to drive in interstate commerce, to transport hazardous materials in a quantity or of a type that requires the motor vehicle to be placarded pursuant to 49 C.F.R. 172, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, to transport passengers for hire, to operate a motor vehicle designed to transport sixteen or more passengers, including the driver, or to operate a commercial motor vehicle beyond the scope of any restrictions indicated by the medical examiner.
- (9) After notice and opportunity for a hearing conducted pursuant to Chapter 4901-1 of the Administrative Code, the commission may invalidate the provisional medical certification issued by the medical examiner upon its finding that continued operations by the driver constitute an unreasonable risk of harm to the public.

(10) Beginning July 1, 2021, no provisional medical certificates for drivers with diabetes mellitus treated with insulin for control will be issued or renewed.

NO CHANGE

4901:2-5-05 Relief from regulation.

- (A) The commission may grant a motor carrier operating in intrastate commerce, a temporary exemption from some or all provisions of this chapter when any of the following apply:
 - (1) When such action is consistent with regulatory relief issued by the U.S. department of transportation for carriers in interstate commerce.

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- (2) When the chairperson of the commission or the chairperson's designee has declared a transportation-specific emergency due to severe weather conditions, earthquake, flood, drought, fire, famine, epidemic, pestilence, unusual interruption of any public utility services, or other calamitous visitation or disaster.
- (3) When the governor of this state has declared an emergency.
- (B) Because situations necessitating temporary exemption pursuant to paragraph (A) of this rule are often unforeseeable, the commission may designate one or more of its employees to issue a document granting such exemptions.
- (C) The director of the commission's transportation department may grant regulatory relief to motor carriers operating in intrastate commerce from the hours of service regulations when any of the following apply:
 - (1) When the U.S. department of transportation has issued a notice granting regulatory relief to motor carriers in interstate commerce. The relief shall be equivalent in scope, coverage, and duration to that granted by the U.S. department of transportation.
 - (2) When the U.S. department of transportation has not acted and an application for regulatory relief is made by a motor carrier or trade association representing motor carriers pursuant to the following procedure:
 - (a) The applicant shall submit to the director a request for regulatory relief which shall include an explanation of the circumstances necessitating the requested regulatory relief and how the circumstances have impacted motor carrier operations.
 - (b) Following receipt of a request, the director may grant temporary regulatory relief in cases where the applicant has stated adequate grounds for relief. The notice granting temporary regulatory relief shall be in writing, signed by the director, and shall state the scope, coverage, and duration of the relief.
 - (c) Regulatory relief granted pursuant to paragraph (C)(2) of this rule is subject to the following limitations and conditions:
 - (i) No motor carrier that has been declared out-of-service, has had its authority to operate revoked, or otherwise has been ordered to cease operations, by the U.S. department of transportation or the commission, shall be qualified to operate under the regulatory relief.

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- (ii) A motor carrier operating under the regulatory relief shall keep a copy of the notice granting regulatory relief in each motor vehicle operating under such relief and shall maintain it at the motor carrier's principal place of business for one hundred eighty days from the expiration of the relief.
 - (iii) Nothing in a grant of regulatory relief shall limit or otherwise alter a motor carrier's duty to monitor its drivers, to maintain record of duty status in conformance with 49 C.F.R. 395, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, and to ensure its drivers are not operating while ill, fatigued, impaired, or otherwise unable to safely operate a commercial motor vehicle.
- (D) No exemption or other relief from regulation granted pursuant to paragraph (A) or (C) of this rule shall be construed to relieve a person from compliance with the regulations of the U.S. department of transportation contained in 49 C.F.R. 383, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, and the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, as applicable, which have been adopted by the commission pursuant to rule 4901:2-5-03 of the Administrative Code.
- (E) The commission may, upon its own motion or upon a request by a motor carrier or other interested party:
 - (1) Submit an application to the U.S. department of transportation to obtain an exemption for state laws and regulations for specific industries involved in intrastate commerce, pursuant to 49 C.F.R. 350.343, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
 - (2) Submit an application to the U.S. department of transportation for a variance from the federal motor carrier safety regulations for intrastate commerce pursuant to 49 C.F.R. 350.345, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.

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NO CHANGE

4901:2-5-07 Out-of-service vehicles and drivers.

(A) Authorized personnel may declare "out-of-service":

- (1) Any commercial motor vehicle, operated by a motor carrier, which by reason of its mechanical condition or loading would likely cause an accident or breakdown.
- (2) Any motor vehicle or driver that is found to be in violation of rule 4901:2-5-03 of the Administrative Code, as applicable, and such violation meets the "North American Standard Out-of-Service Criteria" adopted and disseminated by the "Commercial Motor Vehicle Safety Alliance."
- (3) Any motor vehicle or driver operating in violation of an "imminent hazard" order issued in accordance with rule 4901:2-5-14 of the Administrative Code.
- (4) Any motor vehicle being operated in intrastate commerce by a for-hire motor carrier that does not have a current and valid certificate of public convenience and necessity pursuant to the rules in Chapter 4901:2-21 of the Administrative Code.

(B) Motor vehicles declared "out of service" shall be marked with an appropriate sticker, which shall not be removed until the defects prompting the out-of-service declaration have been satisfactorily remedied so that the out-of-service condition no longer exists.

(C) Drivers declared "out-of-service" shall remain out-of-service until such time that all conditions required by law, rule, or the out-of-service declaration have been met.

(D) No person shall operate or permit the operation of a motor vehicle that has been declared "out of service," or permit a driver that has been declared "out-of-service", to operate a commercial motor vehicle except under the following conditions:

- (1) The motor vehicle may be towed in accordance with 49 C.F.R. 396.9, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (2) If the motor vehicle is located beside the traveled portion of a highway, or contains hazardous materials and is located at a place where parking of hazardous materials is not permitted it

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may be escorted by authorized personnel to the nearest safe location, provided that doing so would enhance public safety more so than if the motor vehicle was not relocated.

- (E) In addition to vehicles and drivers declared "out-of-service" pursuant to paragraph (A) of this rule, the following shall be considered to be "out-of-service":
- (1) A motor vehicle or driver that has been declared "out-of-service" by another federal, state, Canadian, or Mexican jurisdiction, until such time that the out-of-service condition has been satisfactorily remedied.
 - (2) Motor vehicles being operated in interstate commerce by a motor carrier that has been declared "out-of-service", has had its authority to operate revoked, or otherwise has been ordered to cease operations by the U.S. department of transportation in accordance with 49 C.F.R. 385.13, 385.105, 385.111, 385.308, 385.325, 385.337, 386.72, 386.83, 386.84, and 392.9a, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
 - (3) Motor vehicles being operated in intrastate commerce by a motor carrier that is under an out-of-service order issued pursuant to 49 C.F.R. 385.13 or 386.72, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.
- (F) All persons subject to this rule shall comply with any additional measures or conditions as directed by authorized personnel for the purpose of enforcing this rule.
- (G) This rule shall not be interpreted to supersede any more stringent federal requirement adopted by the commission.

NO CHANGE

4901:2-5-08 Mud flaps.

No motor carrier shall operate a motor vehicle, the gross weight of which, with load, exceeds three tons, on the public highways in Ohio unless the rearmost wheels of the vehicle or combination of vehicles are equipped with wheel protectors as required by section 5577.11 of the Revised Code.

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NO CHANGE

4901:2-5-10 Marking of vehicles.

- (A) All motor carriers operating in intrastate commerce shall comply with the marking requirements of 49 C.F.R. 390.21, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, except:
- (1) The identification number issued by the commission preceded by the letters PUCO may be displayed in lieu of a U.S. department of transportation (USDOT) number.
 - (2) Private motor carriers operating in intrastate commerce are not required to display a USDOT or PUCO number.
- (B) The director of the commission's transportation department may grant a written exemption from any or all of the requirements of paragraph (A) of this rule, based upon a written application and showing that prior to January 1, 1987, the motor carrier used an alternative marking system which provided adequate notification of the ownership and identity of equipment. Based upon a written application and showing that display of the required information would pose a security hazard to the vehicle, its contents or occupants, the director of the commission's transportation department may permit display of the USDOT number, or the identification number issued by the commission, in lieu of company name.
- (C) A motor carrier granted an exemption pursuant to this rule shall keep a copy of the notice granting the exemption in each motor vehicle operated by the motor carrier and shall maintain it at the motor carrier's principal place of business.
- (D) No motor carrier shall display the identification of another motor carrier or other entity, nor shall any motor carrier transmit an electronic signal falsely identifying itself as another motor carrier or other entity.

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NO CHANGE

4901:2-5-11 Inspection of vehicles; reports.

- (A) No motor carrier, excepted carrier, or hazardous materials transporter shall fail to submit to an inspection conducted by authorized personnel pursuant to rule 4901:2-5-13 of the Administrative Code, nor shall any motor carrier, excepted carrier, or hazardous materials transporter deviate from its route for the purpose of circumventing or evading an inspection.
- (B) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier, excepted carrier, or hazardous materials transporter operating the motor vehicle within twenty-four hours. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier, excepted carrier, or hazardous materials transporter operating the vehicle within twenty-four hours, the driver shall immediately mail or electronically transmit the report to the motor carrier, excepted carrier, or hazardous materials transporter.
- (C) Each motor carrier, excepted carrier, or hazardous materials transporter shall examine the inspection report and ensure that any violations or defects noted on the report are corrected prior to the motor vehicle's next dispatch. The motor carrier, excepted carrier, or hazardous materials transporter shall, within fifteen days following the inspection, certify that all violations noted have been corrected by completing the appropriate portion of the inspection form and returning it to the address indicated on the inspection report, or by certifying it electronically. No person shall falsely certify that violations have been corrected.

AMENDED

4901:2-5-13 Inspection program.

- (A) For the purpose of enforcing the provisions of Chapters 4921. and 4923. of the Revised Code, and Chapter 4901:2-5 of the Administrative Code, authorized personnel may enter in or upon any motor vehicle of any motor carrier, excepted carrier, or hazardous materials transporter, to inspect the motor vehicle, driver, documents, or cargo. Such inspections shall be conducted in accordance with the following guidelines:

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- (1) Motor vehicles, drivers, documents, or cargo are subject to inspection when located:
 - (a) Upon any public roadway, public property, or private property open to the public.
 - (b) On any other premises if the inspection is conducted with permission of the owner or person in control of the property.
- (2) Authorized personnel shall utilize the following criteria in determining which motor vehicles, drivers, documents, or cargo to inspect:
 - (a) Complaints received and processed by the headquarters staff of the commission's transportation department, or staff of the highway patrol, and issued to field employees.
 - (b) Observed possible violations of any statutes and rules identified in paragraph (A) of this rule.
 - (c) Knowledge that a driver or motor vehicle was recently inspected and had been declared "out-of-service" at the time of inspection, or that the motor carrier, excepted carrier, or hazardous materials transporter was found to be operating without required authority, registration, permits, or insurance, as applicable.
 - (d) Motor vehicles, motor carriers, excepted carriers, and hazardous materials transporters designated by the headquarters staff of the commission's transportation department as "special interest".
 - (e) Any uniform statistical selection procedure, such as every fifth motor vehicle or every motor vehicle entering an inspection site.
 - (f) Any inspection selection system developed by the U.S. department of transportation.
 - (g) By request of a peace officer or state trooper at an accident scene or traffic stop.
 - (h) In response to an incident involving the release or possible release of hazardous materials.
 - (i) Any motor vehicle transporting radioactive materials for which pre-notification is required by, and made pursuant to, section 4163.07 of the Revised Code.
 - (j) Passenger carrying motor vehicles at a point of origin or destination.

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- (k) Any bus, as defined in section 4513.50 of the Revised Code, operating in intrastate commerce, that does not have on display the safety inspection decal required pursuant to section 4513.51 of the Revised Code.
- (l) By request of the U.S. department of transportation.
- (3) Results of an inspection conducted pursuant to paragraph (A) of this rule shall be recorded on an inspection report.
- (4) Authorized personnel may enter in and upon any area of a motor vehicle as necessary to complete their duties (except for knowingly entering portions of the motor vehicle used exclusively for the personal possessions of the driver), and enter any cargo area or compartment. If a cargo area of a motor vehicle is locked or sealed, the operator of the motor vehicle shall provide immediate access to the cargo area. When the operator is unable to provide immediate access to a locked or sealed cargo area, authorized personnel may use the necessary force to enter the cargo area. Any breakage of a lock or seal shall be annotated on the inspection report. A lock or seal that is broken by authorized personnel shall be replaced with a numbered seal.
- (5) Motor carriers, excepted carriers, and hazardous materials transporters shall provide authorized personnel with reasonably expeditious access to any documents or property necessary to conduct an inspection pursuant to paragraph (A) of this rule.
- (6) To determine whether a substance being transported on a motor vehicle is a hazardous material, authorized personnel may obtain a sample.
- (7) An inspection report may be amended at any time subsequent to an inspection as further investigation or the discovery of additional information warrants. The motor carrier, excepted carrier, or hazardous materials transporter that was subject to the inspection shall be notified of any amendments.
- (B) Authorized employees of the commission's transportation department may enter in or upon the premises of any motor carrier, excepted carrier, hazardous materials transporter, or offeror to interview employees and examine any motor vehicles, records, documents, or property, for the purpose of assessing its compliance with the provisions of Chapters 4921. and 4923. of the Revised Code, and Chapter 4901:2-5 of the Administrative Code. Authorized employees of the commission's transportation department may also require that any motor carrier, excepted carrier, hazardous materials transporter, or offeror provide records, documents, or property to

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be examined off-site. All examinations shall be conducted in accordance with the following guidelines:

- (1) Authorized employees of the commission's transportation department shall utilize the following criteria in determining which motor carriers, excepted carriers, hazardous materials transporters, and offerors to select for examination:
 - (a) Pursuant to standards established by the U.S. department of transportation in connection with this state's participation in the "Motor Carrier Safety Assistance Program."
 - (b) Pursuant to criteria authorized by this state's commercial vehicle safety plan submitted to and approved by the U.S. department of transportation in connection with this state's participation in the "Motor Carrier Safety Assistance Program."
 - (c) Complaints processed by the commission's transportation department headquarters staff.
- (2) Examinations shall be conducted in a manner consistent with 49 C.F.R. 385, as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, and the standards and protocols of the U.S. department of transportation as required by virtue of this state's participation in the "Motor Carrier Safety Assistance Program."
- (3) Motor carriers, excepted carriers, hazardous materials transporters, and offerors shall provide authorized employees of the commission's transportation department with reasonably expeditious access to employees, motor vehicles, records, documents, or property as necessary to conduct an examination pursuant to paragraph (B) of this rule.

(C) Any driver who fails to cooperate with reasonable requests during a driver/vehicle inspection, may be placed out of service until such a time as the inspection can be completed.

NO CHANGE

4901:2-5-14 Imminent hazard.

- (A) Whenever it is determined that a violation of Chapters 4921. or 4923. of the Revised Code, or Chapter 4901:2-5 of the Administrative Code poses an imminent hazard to safety, the commission may order a motor carrier, excepted carrier, or hazardous materials transporter to

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cease all or part of its intrastate operations in this state. In making any such order, no restrictions shall be imposed on any motor carrier, excepted carrier, or hazardous materials transporter beyond that required to abate the hazard.

- (B) Upon the issuance of an order under this rule, the motor carrier, excepted carrier, hazardous materials transporter shall comply immediately with such order. An order to a motor carrier, excepted carrier, or hazardous materials transporter to cease all or part of its operations shall not prevent motor vehicles in transit at the time the order is served from proceeding to their immediate destination, unless any such motor vehicle or driver is specifically ordered out-of-service forthwith. However, motor carriers, excepted carriers, or hazardous materials transporters proceeding to their immediate destination shall be subject to compliance with the commission's order upon arrival.
- (C) The commission may, prior to issuing an order under this rule, order a motor carrier, excepted carrier, or hazardous materials transporter to show cause why the commission should not issue an order requiring that it cease all or part of its operations; or the commission may issue an order under this rule without a prior hearing, provided that the motor carrier, excepted carrier, or hazardous materials transporter may request a hearing within thirty days after the issuance of such order. The commission shall schedule a hearing requested under this rule no less than seven days and no more than fifteen days following the request for hearing. All hearings shall be conducted in accordance with division 4901:1 of the Administrative Code.

AMENDED

4901:2-5-15 Planting and harvesting season.

For the purposes of 49 C.F.R. 395.1(K), as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code, the "planting and harvesting season" in the state of Ohio shall be January~~March~~ first through December thirty-first~~November thirtieth~~ of each year.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

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Regulation/Package Title: Safety Standards

Rule Number(s): 4901:2-5-01, 4901:2-5-02, 4901:2-5-03, 4901:2-5-04, 4901:2-5-05, 4901:2-5-07, 4901:2-5-08, 4901:2-5-10, 4901:2-5-11, 4901:2-5-13, 4901:2-5-14, 4901:1-21-15

Date of Submission for CSI Review: August 26, 2020

Public Comment Period End Date: September 25, 2020

Rule Type/Number of Rules:

☐ New/ (FYR?)

☒ Amended/ 4 rules (FYR? Yes)

☐ No Change/ 8 rules (FYR? Yes)

☐ Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an

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adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

The draft rules contain revisions to the safety standards applicable to motor carriers, excepted carriers, hazardous materials transporters, and offerors. More specifically:

- (a) Current language in Ohio Adm.Code 4901:2-5-02(C) refers to Code of Federal Regulations (CFR) citations in Ohio Adm.Code Chapter 4901:2-5. Specifically, the current language states that the citations incorporate by reference the particular version of the CFR that was

effective as of July 25, 2018. The draft language changes this date to August 26, 2020, to recognize updates in the CFR since the previous date in the Ohio Adm.Code.

- (b) Under Ohio Adm.Code 4901:2-5-04(C), Staff proposed adding provision (C)(10) to inform drivers that, beginning July 1, 2021, the Commission will not be issuing new provisional medical certificates to drivers diagnosed with diabetes mellitus treated with insulin for control or renewing existing certificates for drivers with this condition. Prior to this change, the Commission had issued these types of certificates to drivers with this condition after undergoing a medical examination process outlined in Ohio Adm.Code 4901:2-5-04(C). This rule was first implemented to allow drivers with this condition to operate CMVs in intrastate commerce because the C.F.R., at that time, did not provide a medical waiver for these drivers to operate in interstate commerce. However, the federal rules, pursuant to 49 C.F.R. 391.46, now provide a process for drivers with insulin-dependent diabetes mellitus to obtain qualification to operate CMVs in interstate commerce, obviating the need for a provisional medical waiver at the state level.
- (c) Ohio Adm.Code 4901:2-5-13 consists of the time for a motor carrier, excepted carrier, or hazardous materials transporter to provide authorized Commission personnel with reasonably expeditious access to any documents or property to conduct a motor vehicle inspection. The proposed amendment codifies the already existing expectation that drivers cooperate with reasonable requests made during an inspection.
- (d) The proposed language in Ohio Adm.Code 4901:2-5-15 revises the definition of “planting and harvesting season,” extending the length of the season from March 31 through November 30 to last the entire year. Pursuant to 49 CFR 395.1(K), each state must establish the definition for this term. A majority of states have established this season as lasting the whole year. Furthermore, the change is to recognize that farming activities are ongoing throughout the year.
3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Rule	Statutory Authority/Amplification Ohio Revised Code
4901:2-5-01	4923.04, 4923.01, 4923.02, 4923.04, 4923.06, 4923.07

4901:2-5-02	4923.04, 4923.06, 4923.07
4901:2-5-03	4923.04
4901:2-5-04	4923.04
4901:2-5-05	4923.02, 4923.04
4901:2-5-07	4923.04, 4923.06, 4923.07, 4923.03
4901:2-5-08	4923.04
4901:2-5-10	4923.04
4901:2-5-11	4923.04, 4923.06,
4901:2-5-13	4923.04, 4923.06, 4923.07
4901:2-5-14	4923.04, 4923.15
4901:2-5-15	4923.04

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

Ohio receives federal funding via a grant under the Motor Carrier Safety Assistance Program (MCSAP). To continue to be part of MCSAP, Ohio rules must be compatible with federal law. Consequently, in Case No. 19-147-TR-ORD, Staff proposes to update the effective date for the CFR rules referred in Ohio Adm.Code 4901:2-5.

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

Not applicable, as staff's proposed revisions are to better ensure that the Commission's rules are consistent and compatible with federal rules.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules contained in Ohio Adm.Code Chapter 4901:2-5 govern the transportation of persons or property in intrastate and interstate commerce and require all motor carriers engaged intrastate and interstate commerce in Ohio to operate in conformity with all federal regulations that have been adopted by the Commission.

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

The rule contained in this chapter governs motor carrier safety proceedings to investigate and determine an operator's compliance with the regulations adopted by the Federal Motor Carrier Safety Administration, as well as investigate and determine whether an operator of a CMV operates so as to ensure the safety of the traveling public. The Commission will measure the success of the regulation in terms of positive results from motor carrier investigations and inspections of CMVs and drivers of CMVs to ensure compliance with motor carrier safety code. The Commission can also monitor any complaints that are made to its hotline by consumers, as well as information that is reported by Ohio State Highway Patrol (OSHP).

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On February 12, 2019, in Case No. 19-147-TR-ORD, the Commission issued an entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 28, 2019, to listen to stakeholders' concerns concerning the rule. The entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), OSHP, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve,

Ohio State Legislative Board/United Transportation Union, and all interested persons of record. The workshop was conducted as scheduled on March 28, 2019.

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

No stakeholders were present at the workshop.

However, the Commission 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.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternatives were considered as the rules in Ohio Adm.Code Chapter 4901:2-5 implement federal and Ohio motor carrier safety regulations.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The rules in Ohio Adm.Code 4901:2-5 are performance-based only in the sense that, for example, they require that certain information be reported to inspectors of the Commission and OHSP. Primarily, the rules in this chapter are regulatory in nature, as required by the Ohio Revised Code.

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

The Commission has reviewed other Ohio regulations and did not find any duplication of regulations. Also, neither ODOT nor OSHP, who were notified of the workshop described in

paragraph 9 of this BIA, have indicated that this chapter duplicates any of their rules.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Stakeholders' first opportunity to comment on Ohio Adm.Code 4901:2-5, was in the aforementioned workshop on March 28, 2019; as already stated, no stakeholders were present. Next, the Commission will issue an entry indicating certain rules within Ohio Adm.Code 4901:2-5 will be amended. Finally, following the comment period specified in the entry, the Commission will issue a Finding and Order amending the rule. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, OSHP, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, Ohio State Legislative Board/United Transportation Union, and all interested persons of record will receive notice that the Ohio Adm.Code will be amended.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

The impacted business community consists of motor carriers, excepted carriers, hazardous materials transporters, and offerors.

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

The nature of the adverse impact consists of employer time and/or expense for compliance and can vary with the particular rule that a motor carrier, excepted carrier, hazardous materials transporter, or offeror must comply with. The proposed revisions were drafted in an effort to minimize any adverse impact on business, while maintaining the safety of the traveling public.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a

“representative business.” Please include the source for your information/estimated impact.

The adverse impact of Ohio Adm.Code. 4901:2-5-02 consists of the time for a motor carrier, excepted carrier, hazardous materials transporter, and offeror to comply with the safety standards established and enforced pursuant to Ohio Adm.Code Chapter 4901:2-5. Furthermore, under Ohio Adm.Code 4901:2-5-03, the Commission adopts U.S. Department of Transportation (USDOT) rules for motor carriers and applies those rules to interstate and intrastate motor carriers. In addition, under Ohio Adm.Code 4901:2-5-03, the Commission adopts USDOT rules applicable to hazardous materials offerors and hazardous materials transporters, as well as excepted carriers. The adverse impact consists of time/expense for such entities to comply with the applicable rules.

The adverse impact of Ohio Adm.Code 4901:2-5-04 consists of the time/expense for a CMV driver to obtain provisional medical certification and to keep such certification current on an annual basis. The proposed amendment will save drivers with insulin-dependent diabetes mellitus the time/expense of obtaining provisional medical certification to operate their CMVs in intrastate commerce; however, these drivers will need to obtain the medical certification now offered at the federal level.

The adverse impact of Ohio Adm.Code 4901:2-5-13 consists of the time for a motor carrier, excepted carrier, or hazardous materials transporter to provide authorized Commission personnel with reasonably expeditious access to any documents or property to conduct a motor vehicle inspection. The proposed amendment does not significantly increase this adverse impact since it only codifies the already existing expectation that drivers cooperate with reasonable requests made during an inspection.

49 CFR 395.1(K) requires the state to set a definition for “planting and harvesting season,” which is the purpose of Ohio Adm.Code 4901:2-5-15. The revisions to the current rule do not portend adverse impacts, considering a longer harvest season results in affected carriers being exempt from certain portions of the CFR for a longer period of time.

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

The Commission is charged with ensuring that the highway transportation of persons and property is conducted in a safe and efficient manner. In addition, R.C. 4923.04 directs the Commission to adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate or intrastate commerce, as well as rules applicable to highway

transportation and offering for transportation of hazardous materials by motor carriers. It is notable that the regulated community had no comments at the public workshop, nor has there been any indication from stakeholders that this chapter is particularly onerous.

Regulatory Flexibility

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

The rules in Ohio Adm.Code 4901:2-5 implement motor carrier safety and hazardous materials safety rules that must apply uniformly to all motor carriers, offerors, hazardous materials transporters, and excepted carriers. Further, the potential harm to the public from noncompliance with such rules is the same for small business as it is for large. Thus, any alternative means of compliance would not be appropriate. It must be noted that while Ohio Adm.Code 4901:2-5-05 allows a motor carrier to submit a request for regulatory relief to the Commission and Ohio Adm.Code 4901:2-5-10 allows a motor carrier to apply to the Commission for an exemption from marking requirements, neither rule is specifically intended to provide relief for small business, as motor carriers of any size can file such request. The same applies to the carriers that operate in conformance with Ohio Adm.Code 4901:2-5-15.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Parties against whom fines are assessed for motor carrier safety and hazardous materials violations can request a conference with Staff to discuss alleged violations. The conference may result in Staff reducing or waiving the fine, depending on the nature and circumstances of the violation, as well as other factors that the regulated entity might disclose at the conference. If matters are not resolved at the conference, the motor carrier, excepted carrier, hazardous materials transporter, or offeror may choose to proceed to a hearing. Depending on evidence and testimony presented at the hearing, the Commission may determine that a reduced or waived fine is appropriate.

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

Staff works with regulated entities to assist them with the applicable requirements and provides guidance on how to achieve compliance.

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Summary: Entry directing that all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed amendments to Ohio Adm. Code Chapters 4901:2-5 and 4901:2-13 do so no later than September 18, 2020, and September 25, 2020, respectively. Staff does not propose amendments to Ohio Adm.Code Chapter 4901-5 electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio