

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Chapter 4901:2-5, Ohio Administrative) Case No. 13-1106-TR-ORD
Code, Safety Standards.)

ENTRY

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission has established this docket in order to conduct an evaluation of Ohio Adm.Code Chapter 4901:2-5, concerning safety standards applicable to motor carriers and offerors of hazardous materials.
- (2) R.C. 119.032(C) requires that the Commission determine:
 - (a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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) Whether the rules need amendment or rescission to give more flexibility at the local level;
 - (c) Whether the rules need amendment to eliminate unnecessary paperwork; and
 - (d) Whether the rules duplicate, overlap with, or conflict with other rules.
- (3) In addition, on January 10, 2011, the Governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties;

and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.

- (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules that adversely affect businesses. 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 business impact analysis (BIA).
- (5) By Entry issued June 17, 2013, the Commission scheduled a workshop at the offices of the Commission on July 22, 2013, to elicit feedback on any proposed revisions to the rules which Staff may have and to permit stakeholders to propose their own revisions to the rules for Staff's consideration. The workshop was held as scheduled. Only one stakeholder was present at the workshop; he made no comments concerning Ohio Adm.Code Chapter 4901:2-5.
- (6) Staff's proposed changes to Ohio Adm.Code Chapter 4901:2-5 are as follows:
 - (a) In Ohio Adm.Code 4901:2-5-01, Staff proposes adding new definitions and modifying current definitions to provide additional clarity to Ohio Adm.Code Chapter 4901:2-5 and to align and make consistent the new or modified definitions with changes to the Revised Code.
 - (b) Staff proposes to replace current Ohio Adm.Code 4901:2-5-02 with a rule that defines the chapter's intended purpose and scope, adds waiver language, and indicates which version of the Code of Federal Regulations (C.F.R.) has been incorporated.
 - (c) Staff proposes to replace current Ohio Adm.Code 4901:2-5-03 with a rule that is substantively similar to current Ohio Adm.Code 4901:2-5-02,

with revisions. Staff suggests language to clarify which regulations are applicable to each type of regulated entity. In addition, Staff proposes changing maximum driving time limitations for motor carriers engaged in the intrastate transportation of construction materials and equipment. The current rule prohibits a motor carrier to allow a driver to drive more than twelve hours following eight consecutive hours off duty, or for any period after having been on duty sixteen hours following eight consecutive hours off duty. The Federal Motor Carrier Safety Administration (F.M.C.S.A.) found the Commission's eight hours off duty requirement to be incompatible with 49 C.F.R. 395.3, which concerns maximum driving time for property carrying vehicles, and 49 C.F.R. 350.341(e) which concerns hours of service for drivers. Therefore, to become compatible with federal law, Staff proposes language that prohibits a motor carrier from allowing a driver to drive more than twelve hours following ten consecutive hours off duty, or for any period after having been on duty sixteen hours following ten consecutive hours off duty.

- (d) Staff proposes changing Ohio Adm.Code 4901:2-5-04 to clarify who can perform a medical examination for purposes of provisional medical certification (PRC). This change ensures consistency with 49 C.F.R. 391.42, which requires that only medical examiners that are listed on the National Registry of Certified Medical Examiners can perform medical examinations of commercial motor vehicle (CMV) drivers. Staff also suggests minor revisions to the PRC process to ensure that applicants receive confirmation when their applications are approved, and to provide a means by which enforcement personnel can determine during a roadside inspection if a provisional medical certificate is valid.
- (e) Staff proposes new Ohio Adm.Code 4901:2-5-05 to codify Commission policy on regulatory relief

to ensure consistency with the Revised Code and federal regulations.

- (f) In Ohio Adm.Code 4901:2-5-07 Staff proposes changes to make the rule clearer and easier to comprehend. Staff also suggests adding a provision allowing enforcement personnel to place a vehicle out of service if a for-hire intrastate motor carrier does not have a valid certificate of public convenience and necessity. Finally, Staff adds citations to the C.F.R. applicable to motor vehicles operating in interstate commerce, in order to ensure regulatory compatibility with federal requirements.
- (g) In Ohio Adm.Code 4901:2-5-10 Staff proposes changes to simplify the requirements for marking a CMV by providing a citation to the C.F.R. CMV markings consist of the name of the motor carrier and the motor carrier's identification number issued by the F.M.C.S.A., or the identification number issued by the Commission, preceded by the letters P.U.C.O.
- (h) Staff adds language to clarify to which entities the current Ohio Adm.Code 4901:2-5-11 applies. In addition, Ohio Adm.Code 4901:2-5-11 presently requires that if a CMV is inspected and the driver cannot arrive at the motor carrier's terminal within 24 hours, the driver must immediately mail the inspection report to the motor carrier. Staff proposes adding language to allow for electronic transmission of the inspection report to the motor carrier. Finally, Ohio Adm.Code 4901:2-5-11 presently requires that within 15 days after a CMV inspection, a motor carrier must correct any violations or defects noted on the inspection report, certify on the report that such corrections have been made, and mail the report to the Commission address that is indicated on the report. Staff proposes adding language to allow a motor carrier, excepted carrier, or

hazardous materials transporter make such certification electronically.

- (i) Staff proposes to rescind Ohio Adm.Code 4901:2-5-12, as the referenced reports are provided as a matter of course and are public records.
 - (j) Staff suggests changes to Ohio Adm.Code 4901:2-5-13 to improve its organization, readability, and ease of comprehension. Staff also proposes language to expand the criteria by which enforcement personnel conduct inspections, and which more accurately reflects the activities enforcement personnel are engaged in. Similarly, Staff suggests changes that clarify the standards by which reviews of regulated entities shall be conducted.
 - (k) In Ohio Adm.Code 4901:2-5-14 Staff adds language to clarify which entities are subject to the rule.
 - (l) 49 C.F.R. 395.1(K) and Ohio Adm.Code 4901:2-5-15 concern maximum hours of service for drivers engaged in agricultural operations during planting and harvesting season. Staff proposes amending Ohio Adm.Code 4901:2-5-15 so that the citation to federal law indicates 49 C.F.R. 395.1(K), rather than 395.1(L).
- (7) In order to minimize costs of operation, the Commission is no longer serving paper copies of the rule or BIA attachments. The adopted rule changes and corresponding BIAs are available at: www.puco.ohio.gov/puco/rules. Any person wishing to receive paper copies of these documents should contact the Commission's Docketing Division at (614) 466-4095.
- (8) The Commission requests comments from interested persons to assist in the review required by R.C. 119.032(C) and Executive Order 2011-01K. Comments on the draft rules and/or on the BIA contained in the attachments should be filed, either via electronic filing or in hard copy, by January 29, 2014. Reply comments should be filed by February 12, 2014.


It is, therefore,

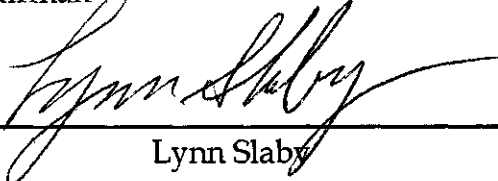
ORDERED, That all interested persons file comments on the proposed rule changes and BIA contained in the attachments by January 29, 2014, and file reply comments by February 12, 2014. It is, further,

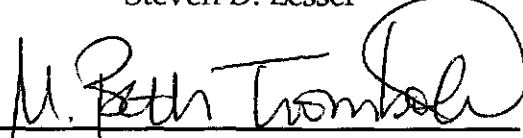
ORDERED, That a notice or copy of this entry without the attached rules or business impact analysis be served upon Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Farm Bureau Federation, the Transportation list-serve, and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


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby


M. Beth Trombold


Asim Z. Haque

JML/dah

Entered in the Journal

JAN 15 2014


Barcy F. McNeal

Barcy F. McNeal
Secretary

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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 section 4923.01(B)(1) through (B)(9) of the Revised Code or a person excepted as a private motor carrier under section 4923.02(A)(1) through (A)(9) 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.
- (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.

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- (K) "Inspection report" means the Driver Vehicle Examination Report prescribed by the United States 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 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 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

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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.

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 January 15, 2014.

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 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

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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 this 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.
- (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:

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- (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 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 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.

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

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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. Beginning on May 21, 2014, the medical examiner must be listed on the National Registry of Certified Medical Examiners administered by the United States 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 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

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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 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

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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.

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 United States department of transportation for carriers in interstate commerce.
- (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 United States 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 United States department of transportation.

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- (2) When the United States 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 (B)(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 United States department of transportation or the commission, shall be qualified to operate under the regulatory relief.
 - (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 180 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 paragraphs (A) or (C) of this rule shall be construed to relieve a person from compliance with the regulations of the United States 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

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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 United States 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 United States 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.

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 (CVSA).
- (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.

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- (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 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 United States 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.

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- (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.

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 United States 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 PUCO, in lieu of company name.

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- (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.

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.

“Rescind”

4901:2-5-12 Safety-net reports.

~~Upon written request to the commission's transportation department and payment of a fee established by the commission, a "Safety Net Report" will be supplied by~~

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~~the commission. The "Safety Net Report" shall consist of a summary of motor vehicle inspection results for a single carrier for the previous three years, not including the current or the preceding quarter. A "Safety Net Report" will not include results of inspections which occurred prior to February 1, 1987. There will be no charge to supply a carrier with a copy of its own "Safety Net Report".~~

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:

- (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.

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- (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 United States 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.
 - (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.

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- (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 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 United States 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 United States 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.

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- (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 United States 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.

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 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

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than seven days and no more than fifteen days following the request for hearing.
All hearings shall be conducted in accordance with Chapter 4901:1 of the
Administrative Code.

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 March first through November thirtieth of each year.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)			
	Attention: Scott Farkas, Chief Legal Atty./Transportation			
	Phone: 614-466-8057 Fax: 614-728-8373			
	Scott.Farkas@puc.state.oh.us			
Regulation/Package Title:	Ohio Adm.Code Chapter 4901:2-5 / Safety Standards			
Rule Number(s):				
	4901:2-5-01	4901:2-5-05	4901:2-5-11	4901:2-5-15
	4901:2-5-02	4901:2-5-07	4901:2-5-12	
	4901:2-5-03	4901:2-5-08	4901:2-5-13	
	4901:2-5-04	4901:2-5-10	4901:2-5-14	
Date:	January 15, 2014			
Rule Type:				
	<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review	<input checked="" type="checkbox"/> No Change	
	<input checked="" type="checkbox"/> Amended	<input checked="" type="checkbox"/> Rescinded		

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

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

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- (a) In Ohio Adm.Code 4901:2-5-01, Staff proposes adding new definitions and modifying current definitions to provide additional clarity to the Ohio Admin. Code Chapter 4901:2-5 and to align the new and modified definitions with changes to the Revised Code.
- (b) Staff proposes to replace current Ohio Adm.Code 4901:2-5-02 with a rule that defines the chapter's intended purpose and scope, adds waiver language, and indicates which version of the Code of Federal Regulations (C.F.R.) has been incorporated.
- (c) Staff proposes to replace current Ohio Adm.Code 4901:2-5-03 with a rule that is substantively similar to current Ohio Adm.Code 4901:2-5-02, with revisions. Staff suggests language to clarify which regulations are applicable to each type of regulated entity. In addition, Staff proposes changing maximum driving time limitations for motor carriers engaged in the intrastate transportation of construction materials and equipment. The current rule prohibits a motor carrier to allow a driver to drive more than twelve hours following eight consecutive hours off duty, or for any period after having been on duty sixteen hours following eight consecutive hours off duty. The Federal Motor Carrier Safety Administration (F.M.C.S.A.) found the Commission's eight hours off duty requirement to be incompatible with 49 C.F.R. 395.3, which concerns maximum driving time for property carrying vehicles, and 49 C.F.R. 350.341(e), which concerns hours of service for drivers. Therefore, to become compatible with federal law, staff proposes language that prohibits a driver to drive more than twelve hours following ten consecutive hours off duty, or for any period after having been on duty sixteen hours following ten consecutive hours off duty.
- (d) Staff proposes changing Ohio Adm.Code 4901:2-5-04 to clarify who can perform a medical examination for purposes of provisional medical certification (PRC). This change ensures consistency with 49 C.F.R. 391.42, which requires that only medical examiners that are listed on the National Registry of Certified Medical Examiners can perform medical examinations of commercial motor vehicle (CMV) drivers. Staff also suggests minor revisions to the PRC process to ensure that applicants receive confirmation when their applications are approved, and to provide a means by which enforcement personnel can determine during a roadside inspection if a provisional medical certificate is valid.

- (e) Staff proposes new Ohio Adm.Code 4901:2-5-05 to codify Commission policy on regulatory relief to ensure consistency with the Revised Code and federal regulations.
- (f) In Ohio Adm.Code 4901:2-5-07 Staff proposes changes to make the rule clearer and easier to comprehend. Staff also suggests adding a provision allowing enforcement personnel to place a vehicle out of service if a for-hire intrastate motor carrier does not have a valid certificate of public convenience and necessity. Finally, Staff adds citations to the C.F.R., applicable to motor vehicles operating in interstate commerce, in order to ensure regulatory compatibility with federal requirements.
- (g) In Ohio Adm.Code 4901:2-5-10 Staff proposes changes to simplify the requirements for marking a CMV by providing a citation to the C.F.R. CMV markings consist of the name of the motor carrier and the motor carrier's identification number issued by the F.M.C.S.A., or the identification number issued by the Commission, preceded by the letters P.U.C.O.
- (h) Staff adds language to clarify to which entities Ohio Adm.Code 4901:2-5-11 applies. In addition, Ohio Adm.Code 4901:2-5-11 presently requires that if a CMV is inspected and the driver cannot arrive at the motor carrier's terminal within 24 hours, the driver must immediately mail the inspection report to the motor carrier. Staff proposes adding language to allow for electronic transmission of the inspection report to the motor carrier. Finally, Ohio Adm.Code 4901:2-5-11 presently requires that within 15 days after a CMV inspection, a motor carrier must correct any violations or defects noted on the inspection report, certify on the report that such corrections have been made, and mail the report to the Commission address that is indicated on the report. Staff proposes adding language to allow a motor carrier, excepted carrier, or hazardous material transporter to make such certification electronically.
- (i) Staff proposes to rescind Ohio Adm.Code 4901:2-5-12, as the referenced reports are provided as a matter of course and are public records.
- (j) Staff suggests changes to Ohio Adm.Code 4901:2-5-13 to greatly improve its organization, readability, and ease of comprehension. Staff also proposes language to expand the criteria by which enforcement personnel determine which entities to inspect, and which more accurately reflects the myriad of activities such enforcement personnel are engaged in. Similarly, Staff suggests changes that better clarify the standards by which reviews of regulated entities shall be conducted.

- (k) In Ohio Adm.Code 4901:2-5-14 Staff adds language to clarify which entities the rule applies to.
- (l) 49 C.F.R. 395.1(K) and Ohio Adm.Code 4901:2-5-15 concern maximum hours of service for drivers engaged in agricultural operations during planting and harvesting season. Staff proposes amending Ohio Adm.Code 4901:2-5-15 so that the citation to federal law indicates 49 C.F.R. 395.1(K), rather than 49 C.F.R. 395.1(L).

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

Rule	Statutory Authority Ohio Revised Code
4901:2-5-01	4905.04, 4923.04
4901:2-5-02	4905.04, 4923.04
4901:2-5-03	4905.04, 4923.04
4901:2-5-04	4905.04, 4923.04
4901:2-5-05	4905.04, 4923.04
4901:2-5-07	4905.04, 4923.04
4901:2-5-08	4905.04, 4923.04
4901:2-5-10	4905.04, 4923.04
4901:2-5-11	4905.04, 4923.04
4901:2-5-13	4905.04, 4923.04
4901:2-5-14	4905.04, 4923.04
4901:2-5-15	4905.04, 4923.04

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

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

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law. Consequently, in Case No. 13-1106-TR-ORD, Staff is proposing revisions and amendments to Ohio Adm.Code Chapter 4901:2-5 that enable the Commission to maintain consistency and compatibility with federal law that the Commission enforces. The federal regulations, as adopted in Ohio Adm.Code 4901:2-5-03, are the federal motor carrier safety rules and the federal hazardous materials rules, i.e. 49 C.F.R. 40, 367, 380, 382, 383, 385, 386, 387, and 390 to 397, as well as 49 C.F.R. 107, subparts f and g, and 49 C.F.R. 171 to 180.

- 4. 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.

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

Ohio Adm.Code 4901:2-5-02, titled Purpose and Scope, states that this chapter governs establishment and enforcement of safety standards applicable to the operations of motor carriers, excepted carriers, hazardous materials transporters, and offerors.

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

The Commission monitors compliance with the federal motor carrier safety rules and the federal hazardous materials rules through enforcement actions against motor carriers, excepted carriers, hazardous materials transporters, and offerors.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.**

Stakeholders include the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (O.D.O.T.), Ohio State Highway Patrol (O.S.P.), Ohio Farm Bureau Federation, and the PUCO Transportation Department list-serve. Service was made by U.S. Mail and the list serve via a Commission entry in *In re Comm. Review of Chapter 4901:2-5, Ohio Adm.Code, Regarding Transportation Safety Standards*, Case No. 13-1106-TR-ORD, Entry (June 17, 2013), indicating a July 22, 2013, workshop at the Commission.

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

Only one stakeholder was present at the workshop; he provided no comments. Stakeholders will have additional opportunity to comment following issuance of Staff's proposed revisions in a Commission Entry on January 15, 2014.

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

Not applicable.

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

No alternative regulations were considered. The Commission is authorized by statute to establish and enforce safety standards applicable to motor carriers, excepted carriers, hazardous materials transporters, and offerors; further, as indicated in response to question #1 above regarding participation in MCSAP, Ohio rules must be compatible with federal law. Accordingly, the Commission adopted federal rules to attain this goal.

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

The outcome intended by the motor carrier safety rules and the hazardous materials rules is enhanced safety for motor carriers, excepted carriers, hazardous materials transporters, and offerors. The options for achieving this outcome are limited by state and federal requirements that comprise such rules. Therefore, the Commission did not consider a performance-based regulation.

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

Although it is unlikely that Ohio Adm.Code Chapter 4901:2-5 duplicates the rules of the O.D.O.T. and O.S.P., these two parties were notified of the workshop described in paragraph 7 of this BIA. Neither O.D.O.T. nor O.S.P. have indicated that Ohio Adm.Code Chapter 4901:2-5 duplicates any of their rules.

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

As noted above, in *In re Comm. Review of Chapter 4901:2-5, Ohio Adm.Code, Regarding Transportation Safety Standards*, Case No. 13-1106-TR-ORD, Entry (June 17, 2013), the Commission scheduled a July 22, 2013, workshop to listen to stakeholder comments regarding proposed changes to the rules in the chapter. The entry was issued by U.S. Mail and e-mail. Only one stakeholder appeared at the workshop; that stakeholder made no comments. Next, the Commission will issue an entry on January 15, 2014, containing Staff's proposed changes to the rules, to which stakeholders will have another opportunity to comment. Following the comment period specified in the entry, the Commission will issue a finding and order adopting the proposed rules changes. Stakeholders may also file applications for rehearing, pursuant to R.C. 4903.10, regarding the finding and order. Stakeholders include the Ohio Trucking Association, National Tank Truck Carriers, Inc., O.D.O.T., O.S.P., Ohio Farm Bureau Federation, and the Commission's Transportation Department list-serve.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

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

b. Identify the nature of the adverse impact (e.g., license 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.

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.*

Under Ohio Adm.Code 4901:2-5-03, the Commission adopts U.S. Department of Transportation (U.S.D.O.T.) rules for motor carriers, and applies those rules to

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interstate and intrastate motor carriers. In addition, under Ohio Adm.Code 4901:2-5-03, the Commission adopts U.S.D.O.T. 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 commercial motor vehicle driver to obtain provisional medical certification and to keep such certification current on an annual basis.

The adverse impact of Ohio Adm.Code 4901:2-5-05, only exists if the U.S.D.O.T. has not issued a notice granting regulatory relief, and a motor carrier elects to submit a request for such relief to the Commission, explaining the circumstances necessitating the relief and how the circumstances have impacted the carrier's operations.

The adverse impact of Ohio Adm.Code 4901:2-5-07 consists of the time/expense for a motor carrier to correct the violations present in a motor vehicle that has been declared out-of-service.

The adverse impact of Ohio Adm.Code 4901:2-5-08 consists of the time/expense for a motor carrier operating a motor vehicle with a gross vehicle weight rating exceeding three tons to install and maintain mud flaps on the rearmost wheels of the motor vehicle.

The adverse impact of Ohio Adm.Code 4901:2-5-10 consists of the time/expense for a motor carrier to comply with marking requirements for a commercial motor vehicle. There is also time/expense involved if a motor carrier voluntarily applies to the Commission for an exemption from the marking requirements; the carrier must prove that before January 1, 1987, it used an alternate marking system and that current marking requirements would pose a security hazard to the vehicle, its contents, or its occupants.

The adverse impact of Ohio Adm.Code 4901:2-5-11 consists of the time/expense for the driver of a commercial motor vehicle who has received an inspection report to mail or electronically submit the inspection report to the motor carrier, excepted carrier, or hazardous materials transporter, at times when the driver is not scheduled to arrive at a terminal or facility of the motor carrier within 24 hours. In addition, within 15 days of the inspection, the motor carrier, excepted carrier, or hazardous materials transporter must correct any violations or defects noted on the inspection report before the motor vehicle's next dispatch, and certify by mail or electronically to the Commission that the repair has been made.

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 an motor vehicle inspection.

The adverse impact of Ohio Adm.Code 4901:2-5-14 consists of the time/expense for a motor carrier, excepted carrier, or hazardous materials transporter to comply with a Commission order directing cessation of all or part of intrastate operations because of an imminent hazard caused by violations of R.C. Chapters 4921 or 4923, or Ohio Adm.Code Chapter 4901:2-5. In addition, there may be time/expense if the Commission, prior to issuing an imminent hazard order, directs the motor carrier, excepted carrier, or hazardous materials transporter to show cause why the Commission should not issue an order requiring cessation of all of the carrier's or transporter's operations. Finally, if the Commission issues such an order without a prior hearing, and the motor carrier, excepted carrier, or hazardous materials transporter requests a hearing within 30 days of the order, there is time/expense involved preparing for the hearing and participating in the hearing.

15. 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 the rules in this chapter are particularly onerous.

Regulatory Flexibility

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

No. The rules in Ohio Adm.Code 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 businesses 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 businesses, as motor carriers of any size can file such requests.

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

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.

18. 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.