

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTERS 4901:2-6, 4901:2-8,
4901:2-21, AND 4901:3-1 OF THE OHIO
ADMINISTRATIVE CODE.

CASE NO. 18-254-TR-ORD

ENTRY

Entered in the Journal on July 25, 2018

I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments or reply comments with the Commission regarding proposed rescission of Ohio Adm.Code Chapter 4901:2-6 and proposed amendments to Ohio Adm.Code Chapters 4901:2-8, 4901:2-21, and 4901:3-1 do so no later than August 3, 2018, and August 10, 2018, respectively.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded. The Commission has opened this docket to review Ohio Adm.Code Chapters 4901:2-6, 4901:2-8, 4901:2-21, and 4901:3-1, which contains the hazardous materials carrier registration, highway routing of non-radioactive hazardous materials, registration of intrastate motor carriers, and general provisions governing railroads.

{¶ 3} In performing this review, R.C. 106.03(A) requires the Commission to 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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 text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74 and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
- (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} The Commission must also consider several factors set forth in Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative" and issued by Governor Kasich on January 10, 2011. Under the Common Sense Initiative, the Commission must review its rules to determine the impact a rule has on small businesses; attempt to balance the critical objectives of regulation with the cost of compliance by regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome. The Commission must

also assess whether a rule has had negative, unintended consequences or has unnecessarily impeded business growth.

{¶ 5} Also, under R.C. 121.82, in the course of developing draft rules, the Commission must evaluate whether those rules will have an adverse effect on businesses and prepare a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the Commission is tasked to incorporate features into the draft rules to eliminate or adequately reduce the adverse business impact. R.C. 121.82 also requires the Commission to provide a copy of the draft rules and BIA to the Common Sense Initiative office for comment.

{¶ 6} On March 27, 2018, the Commission held a workshop in this proceeding to enable interested stakeholders to comment on proposed rescission of Ohio Adm.Code Chapter 4901:2-6 and proposed amendments to Ohio Adm.Code Chapters 4901:2-8, 4901:2-21, and 4901:3-1. No stakeholders attended the workshop.

{¶ 7} The Commission and Staff have evaluated the rules contained in Ohio Adm.Code Chapters 4901:2-6, 4901:2-8, 4901:2-21, and 4901:3-1. The Commission proposes rescinding Ohio Adm.Code Chapter 4901:2-6, regarding registration of hazardous materials carriers, because the Alliance for Uniform Hazmat Registration Program was eliminated with the passage of the 2017-2019 state budget. Ohio Adm.Code Chapter 4901:2-8 addresses highway routing of hazardous materials; proposed minor amendments in this chapter direct the reader to Ohio Adm.Code Rule 4901:2-5-02 for the effective date of adopted federal regulations referenced in Ohio Adm.Code Chapter 4901:2-8. Centralizing into one rule the effective date of adopted federal regulations eliminates the likelihood of inconsistent adoption dates in other Ohio Adm.Code Chapters concerning motor carrier registration, carriers of hazardous materials, and railroads. Ohio Adm.Code Chapter 4901:2-21 concerns registration of intrastate for-hire motor carriers; proposed amendments reflect the transition to the Commission's new online application and registration system. Finally, Ohio Adm.Code Chapter 4901:3-1

concerns standards for railroad track clearances and railroad bridge inspections. The Commission proposes rescinding language in Ohio Adm.Code 4901:3-1-02(D) requiring a walkway or railing along at least one side of railroad bridges. This language to be rescinded has been pre-empted by the Federal Railroad Administration, pursuant to *Norfolk Western Railway Company v. Public Utilities Commission of Ohio*, 926 F.2d 567 (February 27, 1991).

{¶ 8} Attached to this Entry are the proposed revisions to Ohio Adm.Code Chapters 4901:2-6, 4901:2-8, 4901:2-21, and 4901:3-1 (Attachment A) and the BIA (Attachment B), which are also posted on the Commission's Docketing Information System 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 to input case number 18-254 into the Case Lookup box to view this Entry, as well as the proposed changes, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 9} The Commission requests comments from interested persons to assist in the review required by R.C. 111.15, R.C. 106.03, and Executive Order 2011-01K. Comments should be filed, via electronic filing or in hard copy, by August 3, 2018. Reply comments should be filed by August 10, 2018.

III. ORDER

{¶ 10} It is, therefore,

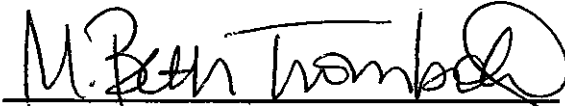
{¶ 11} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than August 3, 2018, and August 10, 2018, respectively. It is, further,

{¶ 12} 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,

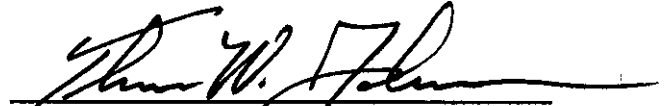
{¶ 13} ORDERED, That a copy of this Entry be served upon all the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation, Ohio State Highway Patrol, Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of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

THE PUBLIC UTILITIES COMMISSION OF OHIO

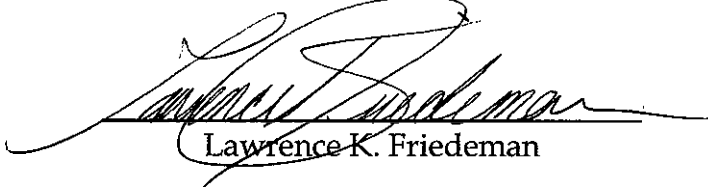
Asim Z. Haque, Chairman



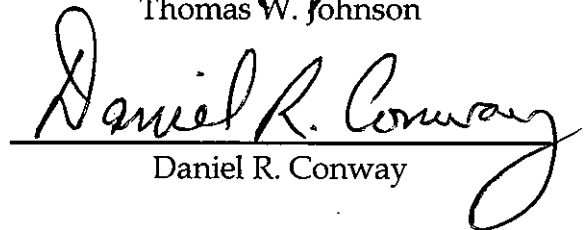
M. Beth Trombold



Thomas W. Johnson



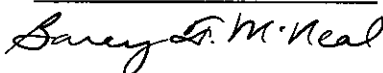
Lawrence K. Friedeman



Daniel R. Conway

JML/sc

Entered in the Journal **JUL 25 2018**



Barcy F. McNeal
Secretary

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RESCIND

4901:2-6-01 Definitions.

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

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

RESCIND

~~4901:2-6-02 Purpose and scope.~~

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

- (A) ~~The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.~~

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- ~~(B) — Each citation contained within this chapter that is made to a section of the United States code or to a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on March 13, 2013.~~

RESCIND

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

- ~~(A) — No carrier may transport hazardous materials, in commerce, into, within, or through this state unless such carrier has registered with, and has received a uniform program permit from, the commission or a reciprocity state.~~
- ~~(B) — Each carrier shall register with and apply for a uniform program permit from its base state as determined in accordance with the terms of the uniform application.~~
- ~~(C) — A carrier that designates Ohio as its base state pursuant to paragraph (B) of this rule shall register with and obtain a permit from the commission prior to transporting hazardous materials into, within, or through this state.~~
- ~~(D) — A carrier, other than a carrier of hazardous wastes, that designates Ohio as its base state pursuant to paragraph (B) of this rule shall file parts I, II and IV of the uniform application with the commission and pay the applicable fees pursuant to rule 4901:2-6-05 of the Administrative Code. Upon an applicant's compliance with this paragraph, the staff shall issue a registration credential and permit to the applicant. If the staff denies issuance of registration credential and permit for failure of the applicant to meet the requirements of this paragraph, the applicant may file a petition and request for hearing with the commission for the issuance of the registration credential and permit.~~
- ~~(E) — A carrier of hazardous wastes that designates Ohio as its base state pursuant to paragraph (B) of this rule shall file parts I, II, III, and IV of the uniform application with the commission and pay the applicable fees pursuant to rule 4901:2-6-05 of the Administrative Code. Upon an applicant's compliance with this paragraph, the staff shall issue a registration credential and permit to the applicant. If the staff denies issuance of registration credential and permit for failure of the applicant to meet the requirements of~~

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this rule, the applicant may file a petition and request for hearing with the commission for the issuance of the registration credential and permit.

- (F) ~~A carrier that designates a reciprocity state as its base state pursuant to paragraph (B) of this rule shall register with and obtain a permit from that state, with the appropriate apportioned per motor vehicle registration fees paid for this state pursuant to paragraph (B) of rule 4901:2-6-05 of the Administrative Code, prior to transporting hazardous materials into, within, or through this state. If such carrier transports hazardous wastes it shall file part III of the uniform application with and obtain a permit from that state that specifically authorizes the transportation of hazardous wastes before transporting hazardous wastes into, within, or through this state.~~
- (G) ~~A carrier shall maintain a copy of the registration credential in each motor vehicle used to transport hazardous materials. The registration credential and permit are not transferable between carriers. The original registration credential shall be maintained at the carrier's principal place of business, and shall be available for inspection during normal business hours.~~

RESCIND

~~4901:2-6-04 Supplementation of information.~~

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

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~~4901:2-6-05 Fees.~~

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

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

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

RESCIND

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

- ~~(A) No carrier may transport hazardous materials, in commerce, into, within, or through this state if the commission, or a reciprocity state, has suspended or revoked the uniform program permit of such carrier. No carrier which has been issued a uniform program permit by a reciprocity state may transport hazardous materials, in commerce, into, within, or through this state if the commission has ordered the suspension of the transportation of hazardous materials into, within, or through this state by such carrier.~~
- ~~(B) The commission may, after notice and an opportunity for hearing pursuant to rule 4901:2-6-08 of the Administrative Code, suspend or revoke the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into,~~

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~~within, or through this state by a carrier issued a uniform program permit by a reciprocity state, if the commission determines that:~~

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

RESCIND

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

- ~~(A) — A proceeding to suspend or revoke the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into, within, or through this state by a carrier issued a uniform program permit by a reciprocity state, shall be initiated by the filing of a staff report recommending the actions to be taken by the commission. The staff report shall be served upon the carrier by ordinary or certified United States mail.~~
- ~~(B) — Upon the filing of a staff report, the commission shall order the respondent to show cause why the commission should not adopt the staff's recommendations as its order. The order shall require the respondent to file a written answer within fifteen days of the effective date of the order. The order shall be served upon the respondent by ordinary or certified United States mail.~~

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- (C) ~~A respondent upon whom an order described in paragraph (B) of this rule has been served must answer the order to show cause within fifteen days of its effective date. This response shall be in writing and shall contain a detailed statement indicating why the actions recommended by staff may be unjustified, mitigating circumstances or subsequent remedial measures undertaken in regards to the issues raised in the staff report, and any other information relevant to the proposed actions.~~
- (D) ~~If a respondent fails to answer the order to show cause, the commission may issue an order adopting the staff's recommendations and/or issue any other orders the commission deems necessary. If an answer is filed by the respondent, the matter shall be assigned for hearing unless the answer of the respondent is deemed to be satisfactory, in which event the order to show cause may be dismissed. Such hearing shall be conducted in accordance with Chapter 4901-1 of the Administrative Code.~~

RESCIND

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

- (A) ~~The staff may issue a "notice of deficiency" to a respondent before it files a staff report pursuant to rule 4901:2-6-08 of the Administrative Code. The notice shall indicate the nature of the deficiencies prompting the notice, instructions regarding the manner in which the respondent may serve a response upon the staff, and a statement of the actions that the commission may take if the respondent fails to remedy the deficiencies raised in the notice. The notice shall be served upon the respondent by ordinary United States mail, facsimile transmission, or electronic mail if the respondent to be served has consented to receive service by electronic mail.~~
- (B) ~~A respondent upon whom a "notice of deficiency" has been served may serve a response upon the staff within thirty days of service of the notice. The response shall be in writing and shall contain a detailed statement indicating why the issuance of the notice may be unjustified, mitigating circumstances or subsequent remedial measures undertaken in regards to the issues raised in the notice, and any other information relevant to the issues raised in the notice. The response shall be served upon the staff by ordinary United States mail, facsimile transmission, or electronic mail.~~

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- (C) ~~If the response filed under paragraph (B) of this rule demonstrates to the satisfaction of the staff that the causes for the issuance of the "notice of deficiency" have been remedied, the staff shall rescind the notice and notify the respondent in writing.~~
- (D) ~~No offers of settlement or statements made during discussions of settlement in regards to a "notice of deficiency," or a response to any such notice served upon the staff, shall be admissible in any subsequent evidentiary hearing regarding the subject matter of such a notice or response.~~
- (E) ~~The purpose of this rule is to provide an alternative dispute resolution process. A determination by the staff to issue or not to issue a "notice of deficiency" shall not in any way prejudice the right of the commission to suspend or revoke the uniform program permit of a carrier, or order the suspension of the transportation of hazardous materials into, within, or through this state by a carrier issued a uniform program permit by a reciprocity state.~~

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	<u>Public Utilities Commission of Ohio (PUCO)</u>
	<u>Attention: Nick Walstra, Chief Legal Atty./Transportation</u>
	<u>Phone: 614-466-0659 Fax: 614-728-8373</u>
	<u>nick.walstra@puco.ohio.gov</u>
Regulation/Package Title:	<u>Chapter 4901:2-6 / Hazardous Materials Carriers Registration</u>
	<u>Case No. 18-254-TR-ORD</u>
Rule Number(s):	<u>4901:2-6-01 Definitions</u>
	<u>4901:2-6-02 Purpose and scope</u>
	<u>4901:2-6-03 Determination of base state</u>
	<u>4901:2-6-04 Supplementation of information</u>
	<u>4901:2-6-05 Fees</u>
	<u>4901:2-6-06 Term of uniform program registration and</u>
	<u>uniform program permit</u>
	<u>4901:2-6-07 Standards for the suspension or revocation</u>
	<u>of a uniform program permit</u>
	<u>4901:2-6-08 Proceedings related to the suspension or</u>
	<u>revocation of a uniform program permit</u>
	<u>4901:2-6-09 Notices of deficiency and alternative dispute</u>
	<u>resolution</u>
Date:	<u>July 25, 2018</u>
Rule Type:	<input checked="" type="checkbox"/> Five Year Review <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.**

Ohio Adm.Code Chapter 4901:2-6 contains requirements for the registration and permitting of hazardous materials carriers and the conditions under which a permit may be suspended or revoked. These regulations implemented R.C. 4921.15 and 4921.16, which authorized the Commission to adopt rules applicable to the uniform registration and permitting of carriers in a manner authorized by the Hazardous Materials Transportation Uniform Safety Act of 1990, out of which the Alliance for Uniform Hazmat Transportation Procedures (Alliance) was established.

R.C. 4921.15 and 4921.16 were repealed on September 29, 2017 as part of the biennial budget considerations in Am. Sub. H.B. 49 of the 132nd General Assembly. Consequently, the provisions of Ohio Adm.Code Chapter 4901:2-6 are no longer applicable and will be rescinded.

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

R.C. 4905.81, 4921.15, and 4921.16

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

The regulations did not implement a federal requirement, but the Uniform Program was recognized by federal law.

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

Not applicable.

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

The rules in this chapter established standards as required by R.C. 4921.15 and 4921.16 for the registration and permitting of carriers of hazardous materials operating in Ohio. The rules governed the process by which carriers would meet requirements under the law. The public purpose of these rules was to create (1) a uniform and objective process for the

issuance of a permit and (2) a consistent and objective process by which a permit could be suspended or revoked.

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

The Commission is required by statute to enforce the requirements of R.C. Chapter 4921 to ensure a safe and efficient transportation of hazardous materials, in commerce, within the state. The Commission monitored the compliance with these rules through enforcement actions against drivers and carriers.

Development of the Regulation

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

On March 15, 2018, in Case No. 18-254-TR-ORD, the Commission issued an entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 27, 2018, to listen stakeholders' concerns concerning the rules. The Entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of record. The workshop was conducted as scheduled on March 27, 2018.

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

No stakeholders 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.

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

Not applicable.

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

No alternative regulations were considered, because the rules implemented the statutory requirement to register and issue permits in accordance with the uniform procedures adopted by the Alliance. Accordingly, the Commission adopted rules that it considered best suited to meet these goals.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The sole outcome desired for the rules was that carriers of hazardous materials register and receive a permit before transporting hazardous materials, in commerce, within this state. The options for achieving this outcome were limited by the statute as well as by matter of practicality. Therefore, the Commission did not consider a performance-based regulation.

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

It was unlikely that Ohio Adm.Code Chapter 4901:2-6 duplicated the rules of other state entities; however, ODOT was notified of the workshop as described in paragraph 7 of this BIA, but ODOT did not indicate that Ohio Adm.Code Chapter 4901:2-6 duplicated any of its rules.

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

Stakeholders' first opportunity to comment on Ohio Adm.Code Chapter 4901:2-21 was in the aforementioned workshop on March 27, 2018; as already stated, no stakeholders were present. Next, the Commission will issue an Entry indicating Ohio Adm.Code Chapter 4901:2-6 will be rescinded. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order rescinding the chapter. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the railroad list-serve, and all interested persons of record will receive notice that this Ohio Adm.Code chapter will be rescinded.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

The rules in Ohio Adm.Code Chapter 4901:2-6 applied to all persons transporting hazardous materials, in commerce, within this state.

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

The rules impacted the identified business community in that applicants had to meet all the requirements of the Uniform Program including completing an application and paying all applicable fees.

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

The impact was primarily in terms of time and dollars spent by regulated entities filing an application with the Commission for a permit and paying the applicable fees. With rescission of the rules, this adverse impact will be eliminated.

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

The Commission is the only state agency charged with ensuring that the highway transportation of hazardous materials is conducted in a safe and efficient manner. Additionally, R.C. 4921.15 and 4921.19 directed the Commission to adopt rules to carry out the purposes of these statutes.

Regulatory Flexibility

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

No. The rules in Ohio Adm.Code Chapter 4901:2-6 implemented statutory requirements that the Commission must apply uniformly to carriers of hazardous materials.

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

The rules in Ohio Adm.Code Chapter 4901:2-6 did not impose fines or penalties for failure to comply.

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

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

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AMENDED

4901:2-8-01 Definitions.

[Comment: For dates of references to a section of either the United States Code or a regulation in the Code of Federal Regulations, see rule 4901:2-5-02 of the Administrative Code.]

As used in this chapter:

- (A) "Carrier" means any person, engaged in the highway transportation of hazardous materials, in commerce, into, within, or through this state.
- (B) "Designated routes" means those highway routes on which hazardous materials must be transported.
- (C) "Hazardous materials" means nonradioactive hazardous materials of a type or in a quantity that requires the transport vehicle to be placarded pursuant to 49 C.F.R. 172, as effective on the date referenced in paragraph (C) of rule ~~4901:2-8-02~~4901:2-5-02 of the Administrative Code.
- (D) "Restricted routes" means those highway routes on which hazardous materials may not be transported.
- (E) "Routing designation" means any regulation, limitation, or restriction applicable to the highway transportation of hazardous materials over a specific highway route or portion of a route.

AMENDED

4901:2-8-02 Purpose and scope.

- (A) This chapter governs all proceedings of the commission to establish routing designations applicable to the highways transportation of nonradioactive hazardous materials, in commerce, into, within, or through, this state as authorized by section 4923.11 of the Revised Code.

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- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (C) Each citation contained within this chapter that is made to a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that as effective on March 13, 2013 as effective on the date referenced in paragraph (C) of rule 4901:2-5-02 of the Administrative Code.

AMENDED

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

[Comment: For dates of references to a section of either the United States Code or a regulation in the Code of Federal Regulations, see rule 4901:2-5-02 of the Administrative Code.]

- (A) Other than routing designations recognized by the United States department of transportation, routing designations shall be established in accordance with 49 C.F.R. 397, as effective on the date referenced in paragraph (C) of rule 4901:2-85-02 of the Administrative Code.
- (B) No carrier transporting hazardous materials into, within, or through, this state shall fail to comply with routing designations recognized by the United States department of transportation or established in accordance with this rule.

NO CHANGE

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

- (A) As used in this rule, "northeast Ohio" means the following counties in the state of Ohio: Cuyahoga, Geauga, Lake, Lorain, Medina.
- (B) As used in this rule, "through transportation" means the transportation of hazardous materials which has neither a place of origin nor a destination in northeast Ohio.

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- (C) The following routes shall be designated routes for the through transportation of hazardous materials in northeast Ohio:
- (1) Interstate 90 from the Lake/Ashtabula county line to interstate 271 in Lake county.
 - (2) Interstate 80 and interstate 80/90 (Ohio Turnpike) from gate 13 in Portage county to the Lorain/Erie county line.
 - (3) Interstate 271 from interstate 90 in Lake county to interstate 71 in Medina county.
 - (4) Interstate 77 from interstate 80 in Cuyahoga county to interstate 271 in Summit county.
 - (5) Interstate 71 from interstate 80 in Cuyahoga county to Medina/Wayne county line.
 - (6) Interstate 480 from interstate 80, gate 13 in Portage county to interstate 271 in Summit county.
 - (7) Interstate 480 from interstate 480N in Cuyahoga county to interstate 80 in Lorain county.
 - (8) Interstate 480N from interstate 271 to interstate 480 in Cuyahoga county.
- (D) The following routes shall be restricted routes for the through transportation of hazardous materials in northeast Ohio:
- (1) Interstate 90 from interstate 271 in Lake county to interstate 80/90 in Lorain county.
 - (2) Interstate 71 from interstate 80 to interstate 90 in Cuyahoga county.
 - (3) Interstate 77 from interstate 80 to interstate 90 in Cuyahoga county.
 - (4) Interstate 490 from interstate 90 to interstate 77 in Cuyahoga county.
 - (5) State route 2 from state route 44 to interstate 90 in Lake county.
 - (6) State route 44 from state route 2 to interstate 90 in Lake county.

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- (7) Interstate 480 from interstate 271 to interstate 480N in Cuyahoga county.
- (8) Any other highway or state or local road not otherwise designated for the transportation of hazardous materials by this rule.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Nick Walstra, Chief Legal Atty./Transportation
	Phone: 614-466-0659 Fax: 614-728-8373
	nick.walstra@puco.ohio.gov
Regulation/Package Title:	Chapter 4901:2-8
	Hazardous Materials Highway Routing (Non-Radioactive)
	Case No. 18-254-TR-ORD
Rule Number(s):	4901:2-8-01 Definitions
	4901:2-8-02 Purpose and scope
	4901:2-8-03 Establishment of routing designations
	4901:2-8-04 Routing designations for northeast Ohio
Date:	July 25, 2018
Rule Type:	<input checked="" type="checkbox"/> Five Year Review <input checked="" type="checkbox"/> Amended <input checked="" type="checkbox"/> No Change

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

Regulatory Intent

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

Ohio Adm.Code Chapter 4901:2-8 sets forth the procedures to establish routing designations applicable to the highway transportation of nonradioactive hazardous materials through Ohio.

The proposed changes to this chapter are nonsubstantive in nature. The changes delete language that specifies the effective date for federal regulations that are adopted, and instead provide a cross-reference to Ohio Adm.Code 4901:2-5-02, in which the effective date is indicated. By consolidating the designation of an effective date only to Ohio Adm.Code 4901:2-5-02, the likelihood of inconsistent adoption dates inserted into other Commission rules is eliminated.

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

R.C. 4905.81 and 4923.11

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

The rules in this chapter implement the federal requirement regarding routing pursuant to 49 Code of Federal Regulations (C.F.R.) 397.61. 49 C.F.R. 397.61 contains routing requirements and procedures that states and Native American tribes must follow if they establish, maintain, or enforce routing designations over which a non-radioactive hazardous material, in quantities requiring placarding, may or may not be transported by a motor vehicle.

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

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

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

Because of train derailments and cargo tank accidents involving hazardous materials that resulted in evacuations during 1986 and 1987, in 1994 Governor Voinovich designated the Commission as the state routing agency for the highway transportation of nonradioactive hazardous materials. Following that designation, the Commission approved these rules regarding specific routes for areas of northeast Ohio upon which nonradioactive hazardous materials can be transported. The rules ensure that the identification of specific routes will be developed and designated to ensure the safe and efficient transportation of nonradioactive hazardous materials in Ohio.

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

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

Development of the Regulation

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

On March 15, 2018, in Case No. 18-254-TR-ORD, the Commission issued an Entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 27, 2018, to listen to any proposed rules changes proposed by stakeholders. The Entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of record. The workshop was conducted as scheduled on March 27, 2018.

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

No stakeholders attended the workshop.

The Commission also grants other opportunities for stakeholders to provide input on proposed rule revisions, including through the Commission call center and through the formal comment period of the rule review process. All stakeholder comments provided during the formal comment period are reviewed and addressed by the Commission.

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

Not applicable.

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

No alternative regulations were considered, because routing designations for the transportation of nonradioactive hazardous materials are clearly a critical safety issue. Further, the Commission is bound by standards set forth in federal law regarding how routing designations may be established. Accordingly, the Commission adopted rules that it considers best suited to meet this goal.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules ensure that transporters of nonradioactive hazardous materials only use certain routes that have been approved by the Commission. The only way to achieve compliance by regulated entities is to travel on the designated routes. Therefore, the agency did not consider a performance-based regulation.

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

Although it is unlikely that Ohio Adm.Code Chapter 4901:2-8 duplicates the rules of other state entities, ODOT was notified of the workshop described in paragraph 7 of this BIA. ODOT has not indicated that the rules in Ohio Adm.Code Chapter 4901:2-8 duplicates any of its rules.

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

Stakeholders' first opportunity to comment on Ohio Adm.Code Chapter 4901:2-8 was in the aforementioned workshop on March 27, 2018; as already indicated, no stakeholders were present. Next, the Commission will issue an Entry containing the rules, to which stakeholders will have another opportunity to comment. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the rules. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc.,

ODOT, Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of record have been notified that that this O.A.C. chapter is under review by Staff, and these entities can provide feedback to Staff concerning the efficiency and effectiveness of the rules in this chapter.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

Rules in Ohio Adm.Code Chapter 4901:2-8 apply to all regulated motor carriers that are subject to Commission and U.S. Department of Transportation (USDOT) jurisdiction.

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

The rules impact the identified business community, in that there may be a time cost to comply with requirements for routing vehicles on specific routes.

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

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

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

The Commission is the only state agency charged with ensuring that the transportation of non-radioactive hazardous materials is conducted in a safe and efficient manner. Additionally, R.C. 4923.11 directs the Commission to adopt rules to carry out that section. It is notable that the regulated community had no comments at the public workshop, nor has there been any indication from stakeholders that the rules in this chapter are particularly onerous.

Regulatory Flexibility

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

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

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

The rules in Ohio Adm.Code Chapter 4901:2-8 do not impose fines or penalties for failure to comply.

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

Commission staff works with motor carriers to assist such companies with compliance. Routing designations are appropriately marked to insure that affected commercial motor carriers are clearly on notice as to the designated routes for the transportation of non-radioactive hazardous materials.

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AMENDED

4901:2-21-01 Definitions.

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

NO CHANGE

4901:2-21-02 Purpose and scope.

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

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AMENDED

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

- (A) No for-hire motor carrier may operate in intrastate commerce within this state unless such for-hire motor carrier has registered with the commission and has a current and valid certificate issued by the commission pursuant to this chapter.
- (B) To register with the commission, an applicant must submit a complete and accurate online application-form containing the certifications required by Chapter 4921. of the Revised Code and any other information or certifications deemed necessary by the commission. The online application-form may change from time-to-time without further commission entry. Staff will maintain, and post on the commission's website, the most recent version of the online application in the Certificate Application or a successor system and will provide a link to applicants upon request.
- (C) An applicant must obtain an identification number issued by the United States department of transportation before submitting an online application-form to the commission.

NO CHANGE

4901:2-21-04 Supplementation of information.

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

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AMENDED

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

- (A) Following ~~receipt submission~~ of a completed online application form submitted by an applicant pursuant to rule 4901:2-21-03 of the Administrative Code, the staff shall approve the application~~issue a certificate and tax receipts~~, provided that the applicant also meets the following requirements:
- (1) Has properly filed proof of insurance with the staff, pursuant to Chapter 4901:2-13 of the Administrative Code;~~and~~
 - (2) Has paid all applicable taxes and fees calculated in accordance with section 4921.19 of the Revised Code;~~and~~
 - (3) Is not in default on any civil forfeiture imposed pursuant to section 4923.99 of the Revised Code;~~and~~
 - (4) The application lacks any missing or incorrect information.
- (B) Upon approval of an application, staff shall notify the applicant via electronic mail and publish the certificate and tax receipt online in the Certificate Application.
- (C) If the staff ~~denies issuance of~~ rejects an application for a certificate for failure of the applicant to meet the requirements of paragraph (A) of this rule, staff shall notify the applicant via electronic mail, and the applicant may file a petition and request for hearing with the commission Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3793 for the issuance of the certificate.

AMENDED

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

- (A) This rule applies to:
- (1) Every for-hire motor carrier operating solely in intrastate commerce; and

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- (2) Every for-hire motor carrier engaged in the transportation of household goods holding a certificate granted pursuant to this chapter.
- (B) Every for-hire motor carrier identified in paragraph (A) of this rule shall, annually between the first day of May and the thirtieth day of June, update its information relative to its certificate by submitting a complete and accurate annual update form that is substantially the same as the application form prescribed under rule 4901:2-21-03 of the Administrative Code. The annual update form may change from time-to-time without further commission entry. Staff will maintain, ~~and post on the commission's website,~~ the most recent version of the annual update form in the Certificate Application or a successor to system and will provide a link to applicants upon request.
- (C) Following ~~receipt submission~~ of a completed annual update form, the staff shall ~~issue tax receipts,~~ approve the annual update form, provided that the ~~for-hire motor carrier applicant~~ also meets the following requirements:
- (1) Has properly filed proof of insurance with the staff, pursuant to Chapter 4901:2-13 of the Administrative Code; ~~and~~
 - (2) Has paid all applicable taxes and fees calculated in accordance with section 4921.19 of the Revised Code; ~~and~~
 - (3) Is not in default on any civil forfeiture imposed pursuant to section 4923.99 of the Revised Code; and
 - (4) The annual update form lacks any missing or incorrect information.
- ~~(D)~~ Upon approval of an annual update form, staff shall notify the applicant via electronic mail and publish the updated certificate and tax receipt online in the Certificate Application.
- ~~(DE)~~ If the staff denies issuance of tax receipts, rejects an annual update form for failure of the for-hire motor carrier applicant to meet the requirements of paragraph (C) of this rule, staff shall notify the applicant via electronic mail, and the for-hire motor carrier applicant may file a petition and request for hearing with the commission Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3793 for the issuance of tax receipts.

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AMENDED

4901:2-21-07 Suspension and revocation of a certificate of public convenience and necessity.

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

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

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

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Nick Walstra, Chief Legal Atty./Transportation
	Phone: 614-466-0659 Fax: 614-728-8373
	nick.walstra@puco.ohio.gov
Regulation/Package Title:	Chapter 4901:2-21
	Registration of Intrastate Property Carriers
	Case No. 18-254-TR-ORD
Rule Number(s):	4901:2-21-01 Definitions
	4901:2-21-02 Purpose and Scope
	4901:2-21-03 Registration of for-hire carriers
	4901:2-21-04 Supplementation of information
	4901:2-21-05 Certificate of public convenience and necessity
	4901:2-21-06 Annual update of a certificate of public convenience and necessity
	4901:2-21-07 Suspension and revocation of a certificate of public convenience
Date:	July 25, 2018
Rule Type:	<input checked="" type="checkbox"/> Five Year Review <input checked="" type="checkbox"/> Amended <input checked="" type="checkbox"/> No Change

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

Regulatory Intent

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

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

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

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

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

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

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

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

Not applicable.

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

The rules in this chapter establish standards as required by R.C. 4905.81, 4921.03, 4921.04, 4921.05, 4921.07, 4921.08, 4921.13, and 4923.03, Revised Code for the certification of for-hire motor carriers operating in Ohio. The rules in this chapter govern the process by which for-hire motor carriers will meet their requirements under the law. The public purpose of these rules is to create (1) a uniform and objective process for the issuance of a certificate of public convenience and necessity and (2) a consistent and objective process by which a certificate can be suspended or revoked. The agency believes these regulations are the minimum required to implement the statutory requirements.

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

The Commission is required by statute to enforce the requirements of R.C. 4921 to ensure a safe and efficient transportation of persons and property within the state. The Commission monitors the compliance with these rules through enforcement actions against drivers and carriers.

Development of the Regulation

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

On March 15, 2018, in Case No. 18-254-TR-ORD, the Commission issued an Entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 27, 2018, to listen to any rules changes proposed by stakeholders. The Entry was served upon the Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of record. The workshop was conducted as scheduled on March 27, 2018.

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

No stakeholders attended the workshop.

The Commission also grants other opportunities for stakeholders to provide input on proposed rule revisions, including through the Commission call center and through the formal comment period of the rule review process. All stakeholder comments provided during the formal comment period are reviewed and addressed by the Commission.

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

Not applicable.

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

No alternative regulations were considered, because the rules mirror the statutory requirements placed upon the Commission and for-hire motor carriers pursuant to R.C. 4905.81, 4921.03, 4921.04, 4921.05, 4921.07, 4921.08, 4921.13, and 4923.03. Accordingly, the Commission adopted rules that it considers best suited to meet these goals.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The sole outcome desired by these rules is that for-hire motor carriers fulfill the statutory requirements of R.C. Chapter 4921 before operating. The options for achieving this outcome are limited by the statute as well as by matter of practicality. Therefore, the Commission did not consider a performance-based regulation.

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

Although it is unlikely that Ohio Adm.Code Chapter 4901:2-21 duplicates the rules of other state entities, ODOT was notified of the workshop described in paragraph 7 of this BIA. ODOT has not indicated that Ohio Adm.Code 4901:2-21 duplicates any of its rules.

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

Stakeholders' first opportunity to comment on Ohio Adm.Code Chapter 4901:2-21 was in the aforementioned workshop on March 27, 2018; as already indicated, no stakeholders attended the workshop. Next, the Commission will issue an Entry containing the rules, to which stakeholders will have another opportunity to comment. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the rules. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the Railroad list-serve, and all interested persons of record have been notified that that this O.A.C. chapter is under review by Staff, and these entities can provide feedback to Staff concerning the efficiency and effectiveness of the rules in this chapter.

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

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

Rules in Ohio Adm.Code Chapter 4901:2-21 apply to all regulated motor carriers that are subject to Commission jurisdiction.

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

The rules impact the identified business community, in that the applicant must meet all the requirements of R.C. Chapter 4921, including completing an application, obtaining the necessary insurance, and paying all applicable taxes and fees in the amount required by that chapter.

- c. **Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.***

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

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

The Commission is the only state agency charged with ensuring that the highway transportation of persons and property is conducted in a safe and efficient manner. Additionally, the Revised Code directs the Commission to adopt rules to carry out R.C. 4905.81, 4921.03, 4921.04, 4921.05, 4921.07, 4921.08, 4921.13, and 4923.03. It is notable that the regulated community was not in attendance at the public workshop, nor has there been any indication from stakeholders that the rules in this chapter are particularly onerous.

Regulatory Flexibility

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

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

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

The rules in Ohio Adm.Code Chapter 4901:2-21 do not impose fines or penalties for failure to comply.

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

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

*****DRAFT - NOT FOR FILING*****

NO CHANGE

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

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

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- (E) This rule applies to any railroad defined in section 4907.02 of the Revised Code, in the construction of new yards or in the reconstruction of existing yards, except any extensions or realignments of existing tracks, after February 24, 1958, and railroads shall construct said tracks in compliance with the minimum track clearance standards herein prescribed after February 24, 1958, except any extensions or realignments of existing tracks or unless otherwise ordered by the commission.

AMENDED

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

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

NO CHANGE

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

- (A) Application
- The provisions of this rule shall apply to all railroad companies subject to the jurisdiction of this commission.

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(B) Definitions

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

(C) Reports

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

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(D) Records

Every railroad company subject to these rules shall file with this commission a complete list of all bridges located entirely or partly within the boundaries of the state of Ohio for which they are wholly or partially responsible for the inspection, maintenance and repair. They shall also file and maintain with the commission an up-to-date map showing the name, number or other description and location of each such structure.

(E) Inspection

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

(2) Inspection and progress reports to be filed.

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

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

(b) At any time a bridge passing over a public highway is found to be in an unsafe condition or constitutes a safety hazard to the public use of said highway, a copy of the reports referred to in the foregoing paragraph shall be given to the public authority having jurisdiction over such highways.

(c) The railroads shall notify the commission whenever maintenance and repair work to correct such conditions is in progress, which shall require special operational restrictions or limitations due to the nature of the work in progress.

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

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

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	<u>Public Utilities Commission of Ohio (PUCO)</u>
	<u>Attention: Nick Walstra, Chief Legal Atty./Transportation</u>
	<u>Phone: 614-466-0659 Fax: 614-728-8373</u>
	<u>nick.walstra@puco.ohio.gov</u>
Regulation/Package Title:	<u>Chapter 4901:3-1</u>
	<u>Railroads, Street, Suburban and Interurban Railroads</u>
	<u>Case No. 18-254-TR-ORD</u>
Rule Number(s):	<u>4901:3-1-01 Minimum track clearances for new railroad</u>
	<u>track construction or reconstruction of yard</u>
	<u>tracks of railroads operating within the</u>
	<u>state of Ohio</u>
	<u>4901:3-1-02 Lateral track clearances for permanent</u>
	<u>structures</u>
	<u>4901:3-1-03 Inspection, maintenance and safety of</u>
	<u>railroad bridges</u>
Date:	<u>July 25, 2018</u>
Rule Type:	<input checked="" type="checkbox"/> Five Year Review <input checked="" type="checkbox"/> Amended <input checked="" type="checkbox"/> No Change

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

Regulatory Intent

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

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

In this Business Impact Analysis (BIA), the Commission will focus upon the only proposed change to this chapter. The Commission proposes that Ohio Adm.Code 4901:3-1-02(D), which requires a walkway or railing along at least one side of all bridges and trestles from which trainmen may work, be rescinded. Ohio Adm.Code 4901:3-1-02(D) has been pre-empted by the Federal Railroad Administration, pursuant to *Norfolk Western Railway Company v. Public Utilities Commission of Ohio*, 926 F2d 567 (February 27, 1991).

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

R.C. 4901:13, 4906.06, 4907.02, 4963.42, and 4963.43, Revised Code

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

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

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

Not applicable.

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

The rules in this chapter establish standards as required by R.C. 4931.67 to be met by railroads to ensure sufficient clearance between railroad tracks and structures, so that railroad

bridges are structurally maintained in accordance with the provisions of the American Railway Engineering and Maintenance of Way Association Code of Rules for inspection of bridges.

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

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

Development of the Regulation

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

On March 15, 2018, in Case No. 18-254-TR-ORD, the Commission issued an Entry by U.S. Mail and e-mail indicating that a workshop would be conducted on March 27, 2018, to listen to any rule changes proposed by stakeholders. The Entry was served upon Ohio Trucking Association, National Tank Truck Carriers, Inc., Ohio Department of Transportation (ODOT), Ohio State Highway Patrol, the Ohio Railroad Association, the Transportation list-serve, the railroad list-serve, and all interested persons of record.

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

No stakeholders attended the workshop.

The Commission also grants other opportunities for stakeholders to provide input on proposed rule revisions, including through the Commission call center and through the formal comment period of the rule review process. All stakeholder comments provided during the formal comment period are reviewed and addressed by the Commission.

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

Not applicable.

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

No alternative regulations were considered, as track clearance between railroad track and structures are clearly critical safety issues. Accordingly, the Commission adopted rules that it considers best suited to meet these goals.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules are performance-based only in the sense that, for example, the rules require certain permits to be approved by the Commission if less than minimum clearance is sought and require annual railroad bridge inspection reports to be filed with the Commission. Primarily, the rules in Ohio Adm.Code Chapter 4901:3-1 are regulatory in nature as required by the Revised Code.

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

Although it is unlikely that Ohio Adm.Code Chapter 4901:3-1 duplicates the rules of other state entities, ODOT was notified of the workshop described in paragraph 7 of this BIA. ODOT has not indicated that Ohio Adm.Code 4901:3-1 duplicates any of its rules.

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

Stakeholders' first opportunity to comment on Ohio Adm.Code 4901:3-1 was in the aforementioned workshop on August 24, 2012; as already indicated, stakeholders suggested no proposed changes to the rules in the chapter. Next, the Commission will issue an Entry containing the rules, to which stakeholders will have another opportunity to comment. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the rules. As noted above, the Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT, Ohio State Highway Patrol, and Ohio Railroad Association, and the Ohio State Legislative Board/United Transportation Union have been

notified that that this Ohio Adm.Code chapter is under review by Staff, and these entities can provide feedback to Staff concerning the efficiency and effectiveness of the rules in this chapter.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

Rules in Ohio Adm.Code Chapter 4901:3-1 apply to all regulated railroads that are subject to Commission jurisdiction.

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

The rules impact the identified business community, in that there is a time cost to comply with requirements for (a) reporting of information regarding bridge inspections, and (b) reporting of information of applications for less than minimum railroad track clearance.

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

The impact will primarily be in terms of time spent by the railroads. The amount of time involved will vary with the requirement. For example, concerning Ohio Adm.Code 4901:3-1-01, railroads must file an application for less than standard lateral and vertical clearances between railroad track and structures.

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

The Commission is the only state agency charged with overseeing railroad safety and the safety of motorists at highway-rail grade crossings. Additionally, the Ohio Revised Code directs the Commission to adopt rules to carry out R.C. 4963.41 and 4963.42. It is notable that the regulated community had no comments at the public workshop, nor has there been any indication from stakeholders that the rules in this chapter are particularly onerous.

Regulatory Flexibility

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

Yes. Ohio Adm. Code 4901:3-1-01 allows railroads to apply for less than minimum track clearance between tracks and adjacent permanent structures.

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

The rules in Ohio Adm. Code Chapter 4901:3-1 do not impose fines or penalties for failure to comply.

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

Commission staff works with railroads to assist such companies with compliance.