

Attachment B

Business Impact Analysis

Chapter 4901:2-22 (Towing of Motor Vehicles)

Case No. 15-463-TR-ORD

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CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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| Regulation/Package Title: | Ohio Adm.Code Chapter 4901:2-22 Towing of Motor Vehicles. |
| Rule Number(s): | 4901:2-22-01 thru 4901:2-22-07 |
| Date: | April 6, 2016 – REVISED 9/9/2016 |
| Rule Type: | <input checked="" type="checkbox"/> New <input type="checkbox"/> 5-Year Review <input type="checkbox"/> No Change <input type="checkbox"/> Amended <input 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 Rescinded |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.

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Regulatory Intent

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

The draft rules implement new law, Senate Bill 274 of the 130th Ohio General Assembly, and House Bill 64 of the 131st General Assembly, regarding the towing of motor vehicles. More specifically:

- (a) Establish the acceptable scope of public safety regulations applicable to a for-hire motor carrier engaged in the towing of motor vehicles under R.C. 4513.60 , 4513.601, or 4513.61 that a county or township may adopt pursuant to a resolution.
- (b) Establish safety standards for the type of equipment necessary to safely remove and tow vehicles based on the type of vehicle being removed or towed.
- (c) Establish standards for the removal of a vehicle from a private tow-away zone by a for-hire motor carrier engaged in the towing of motor vehicles in addition to standards and requirements established under R.C. 4513.601.
- (d) Establish an after-hours retrieval fee for purposes of R.C. 4513.69.
- (e) Establish exemptions from the requirement for towing services to include its certificate number on advertising.

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

| Rule | Statutory Authority Ohio Revised Code |
|--------------|--|
| 4901:2-22-01 | 4921.25 |
| 4901:2-22-02 | 4921.25 |
| 4901:2-22-03 | 4921.25 |
| 4901:2-22-04 | 4921.25 |
| 4901:2-22-05 | 4921.25 |
| 4901:2-22-06 | 4921.25 |
| 4901:2-22-07 | 4921.25 |

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 do not implement a federal requirement and are not being adopted to enable the state to obtain or maintain approval to administer and enforce a federal law or participate in a federal program.

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

These rules do not exceed any federal requirement.

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 purpose of this chapter is to establish safety standards and other requirements applicable to the operations of for-hire motor carriers engaged in the towing of motor vehicles in accordance with R.C. Chapters 4921.25 and 4513.67.

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

The Commission will measure success of these regulations by the degree which the Commission undertakes enforcement actions against for-hire carriers engaged in the towing of motor vehicles, the degree to which safety-related incidents involving tow trucks decrease, the degree to which complaints involving towing services decrease, and the extent to which courts direct the Commission to suspend or revoke tow truck operator certificates.

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 25, 2015, in Case No. 15-463-TR-ORD, the Commission issued an Entry by U.S. mail and e-mail scheduling a workshop for May 5, 2015, to provide notice of adoption of Ohio Adm.Code Chapter 4901:2-22. The Entry was served upon Ohio State Highway Patrol, Ohio Trucking Association, Ohio Department of Transportation, Ohio Association of Chiefs of Police, Buckeye State Sheriff's Association, Ohio Municipal League, County Commissioners' Association of Ohio, Ohio Township Association, WreckMaster Inc. USA, Towing and Recovery Association of America, North American Towing Academy, American Towing and Recovery Institute, Ohio Insurance Institute, Towing and Recovery Association of Ohio, AAA Ohio, and the transportation list-serve, and all other 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?

Nineteen stakeholders spoke at the workshop addressing issues or posing questions involving: the technical requirements for towing vehicles, standards for removal of motor vehicles, towing

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specifications, load and resistance calculations, after-hours retrieval fees, equipment safety, training, and tow truck vehicle operations.

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

Not applicable.

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

No alternative regulations were considered. The PUCO is directed by statute to establish rules concerning the towing of motor vehicles.

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 PUCO did not consider a performance-based regulation. The rules in Ohio Adm.Code Chapter 4901:2-22 are primarily regulatory in nature and are required by the Revised Code.

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

The PUCO has widely publicized notice of the consideration of these rules to those individuals in the towing industry, as well as other governmental organizations, cities, counties, and townships. No stakeholder has indicated that Ohio Adm.Code Chapter 4901:2-22 duplicates any existing Ohio regulations.

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.

On March 25, 2015, in Case No. 15-463-TR-ORD, the Commission issued an Entry by U.S. mail and e-mail scheduling a workshop for May 5, 2015, to provide notice of adoption of Ohio Adm.Code Chapter 4901:2-22. and elicited feedback from interested stakeholders.

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Additionally, stakeholders had an opportunity to propose any additional rules for Staff's consideration before issuing these rules for written comment. Next, the Commission will issue an entry that sets forth Staff's proposed rules, to which stakeholders now have opportunity to file written comments. Finally, following the comment period specified in the Entry, the PUCO will issue a Finding and Order adopting the proposed rules. All potential stakeholders will be notified that this chapter is under review by Staff and they will be provided an opportunity for feedback concerning the rules in the chapter. Thus, stakeholders will have an opportunity to express whether the proposed rules will be applied consistently and predictably.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

The impacted business community consists of motor carriers engaged in towing operations.

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

The proposed rules impact the identified business community in terms employer time for compliance and the cost to ensure that towing equipment is in compliance with the proposed regulations.

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 anticipated adverse impact is expected to be minimal. It is expected that many in the regulated community are currently operating in accordance with many of the proposed standards. To the extent that the PUCO receives comments from the regulated community indicating that the adverse impact of the proposed regulations is likely to be significant, the PUCO will consider revisions to address such concerns.

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

The agency does not make such a determination because the purpose of this chapter is to implement R.C. Chapter 4921.25 as adopted by the Ohio General Assembly.

Regulatory Flexibility

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

No. However, staff will work with regulated entities to assist them with the applicable requirements and provides guidance on how to achieve compliance.

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 proposed regulations in this chapter do not impose fines or penalties. However, the Commission is authorized by law to impose civil forfeitures for violations of the Commission's rules. Parties against whom civil forfeitures are assessed can request a conference with the Staff to discuss the alleged violations. The conference may result in Staff reducing or waiving the fine, depending on the nature and circumstances of the violations, including the fact that the party is a first time offender. If the matter is not resolved at conference, the motor carrier may choose to proceed to a hearing. Depending on the evidence presented at the hearing the Commission may determine that a reduced or waived fine is appropriate.

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

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