

Business Impact Analysis
Chapter 4901:2-22 Towing of Motor Vehicles
Case No. 21-564-TR-ORD
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Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

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Regulation/Package Title (a general description of the rules' substantive content):

Case No. 21-564-TR-ORD

Towing of Motor Vehicles

Rule Number(s): Ohio Adm.Code Chapter 4901:2-22

Date of Submission for CSI Review: August 25, 2021

Public Comment Period End Date: October 14, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/6 rules (FYR? Yes)

Amended/1 rules (FYR? Yes)

Rescinded/___ rules (FYR? ___)

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The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

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

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

The rule(s):

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

Regulatory Intent

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

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

The proposed revisions to Ohio Adm.Code Chapter 4901:2-22 are in accordance with the state of Ohio's five-year rule review procedures. R.C. 111.15(B) and 106.03(A) require all state

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agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The rules in Chapter 4901:2-22 provide for the safety standards for the type of equipment necessary to safely tow motor vehicles, establish standards for the removal of a vehicle, and establish an after-hours retrieval fee. No substantive changes have been proposed to these rules.

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

The amendments are made in response to R.C. 111.15(B) and 106.03(A), which require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue those rules without change, amend the rules, or rescind them.

The statutory authority for the Commission to adopt the rules in Ohio Adm.Code Chapter 4901:2-22 is found in R.C. 4921.25 and R.C. 4513.67.

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

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

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.

5. 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.

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

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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.

7. 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.

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

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

No, not applicable.

Development of the Regulation

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

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

The Commission conducted a workshop via Webex on June 29, 2021, to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:2-22 is 21-564-TR-ORD. The entry providing notice of the workshop was served upon the transportation industry list serve, as well as various state and regional economic development organizations, industry trade associations, and other interested stakeholders.

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

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No stakeholders appeared at the workshop.

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

No scientific data was provided or considered. In drafting the required amendments for this chapter, the Commission takes into account feedback from stakeholders and the general public.

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

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

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

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

No performance-based regulations were considered. The rules contained in Ohio Adm.Code Chapter 4901:2-22 are primarily regulatory in nature and are required by the Revised Code.

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

The Commission has widely publicized notice of the consideration of these rules to those individuals in the transportation industry, as well as other governmental organizations and interest groups. The Commission has reviewed other Ohio regulations and found no duplicate, nor has a duplicate regulation been identified by any stakeholder.

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

The Commission conducted a remote workshop on June 29, 2021, to receive feedback from interested stakeholders and the general public. Next, the Commission has issued an Entry that sets forth the Commission staff's proposed amendments to the rules, and stakeholders then can file written comments and reply comments. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the rules. All potential stakeholders will be notified that this chapter is under review by the Commission staff and they will be provided an opportunity for feedback concerning the rules in this chapter. Thus, stakeholders will have the opportunity to express whether the proposed rules will be applied consistently and predictably.

Adverse Impact to Business

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

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

The scope of the business community impacted by Ohio Adm.Code Chapter 4901:2-22 includes motor carriers engaged in towing operations.

b. Identify the nature of all adverse impact (e.g., 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 because the regulated community is already operating in accordance with the standards. To the extent that the Commission receives comments from the regulated community indicating that the adverse impact of the

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proposed regulations is likely to be significant, the Commission will consider revisions to address such concerns.

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

The Commission does not make such a determination because the purpose of this chapter is to implement R.C. 4921.25. 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

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

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

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

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 Commission staff to discuss the alleged violations. The conference may result in Commission 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.

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

Commission staff works with regulated entities to answer questions and provide guidance on how to achieve compliance.