

Attachment B
Business Impact Analysis
Chapter 4901:2-24
Rates for Towing, Storage, and Retrieval of Motor Vehicles
Case No. 17-713-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 4901:2-24
Adoption of Rules Related to Rates for Towing and Storage of Motor Vehicles

Rule Number(s): 4901:2-24-01, 4901:2-24-02 and 4901:2-24-03

Date: January 3, 2018

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 Rescinded	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 rule implements Amended Substitute House Bill 341 of the 131st General Assembly to establish, pursuant to R.C. 4921.25(B), fees for towing and storage of motor vehicles.

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

Rule	Statutory Authority Ohio Revised Code
4901:2-24-01	4921.25
4901:2-24-02	4921.25
4901:2-24-03	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 rule does not implement a federal requirement and is 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.**

The rules are unrelated to a federal requirement, and, as such, 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)?

In Am. Sub. H.B. 341 of the 131st General Assembly, the PUCO was directed to establish maximum fees that may be charged by a for-hire motor carrier engaged in the towing of motor vehicles or a storage facility that accepts such vehicles under sections [4513.60](#) and [4513.601](#) of the Revised Code. The PUCO has not made an independent determination that such regulation is necessary, because no discretionary authority was granted in the authorizing legislation.

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

The Commission will monitor feedback from towing/storage companies regarding the rates established by the rule. In addition, the Commission will track the number of customer complaints concerning towing/storage fees that exceed the maximum rates established by the rule.

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 April 5, 2017, in Case No. 17-713-TR-ORD, the Commission issued an Entry by U.S. mail and e-mail scheduling a workshop for April 21, 2017, to provide notice of the development of new rules under Ohio Adm.Code Chapter 4901:2-24. 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, Fraternal Order of Police of Ohio Inc., Association of Professional Towing-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?

Eight stakeholders attended the workshop and addressed issues concerning maximum rates for towing and storage of motor vehicles.

Generally, the stakeholders offered the following information with respect to the current costs of towing and storing a motor vehicle under sections [4513.60](#) and [4513.601](#) of the Revised Code:

- a. At a minimum, the maximum fees established by the PUCO should reflect an adjustment based on the increase in the Consumer Price Index (CPI) from the fees established by law in June 1, 2000;
- b. The maximum fee established should be a flat fee, as opposed to a rate based on other factors, such as vehicle weight, condition or mileage;
- c. The maximum fee should vary based on the gross vehicle weight rating of the motor vehicle and there should be three gross vehicle weight rating tiers, instead of two tiers;
- d. Employee wages, including Ohio's minimum wage, have increased at a rate greater than the CPI since the current fees were established on June 1, 2000;
- e. Employee health insurance costs have increased at a rate greater than the CPI since the current fees were established June 1, 2000;
- f. Truck repair costs have increased at a rate greater than the CPI since the current fees were established June 1, 2000;
- g. Insurance, including comprehensive and general liability as well as Workers' Compensation premiums, have increased at a rate greater than the CPI since the current fees were established June 1, 2000.

In reviewing this information, the PUCO determined that an increase in maximum fees to reflect the increase in the CPI from the fees established by law on June 1, 2000 was appropriate, but additional increases based on the other cost factors described by stakeholders could not be justified in light of the information submitted by stakeholders.

In particular, a stakeholder identified \$93.51 as its average cost per tow, which was only slightly greater than the current maximum fee established in law - \$90 for a vehicle with a gross vehicle weight less than 10,001 pounds. The increase based on CPI proposed in the draft rules should account for the increase in costs demonstrated by this particular stakeholder, while allowing for cost differences that vary across the towing industry based on factors such as population density and volume.

The PUCO agreed with stakeholders that a flat fee was appropriate because, although towing services operating in different parts of the state experienced different rates of different types of cost increases, the overall rate of such costs increases was similar.

The PUCO did not agree with stakeholders on the establishment of a “middle” tier for maximum fees for towing a motor vehicle vehicles greater than 10,001 pounds, but less than 20,000 to 26,000 pounds because such a distinction between the “middle” tier and “top” tier could not be justified in light of the information submitted by stakeholders.

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 maximum rates for towing and storage 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. Ohio Adm.Code 4901:2-24-01, 4901:2-24-02 and 4901:2-24-03 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 publicized notice of the consideration of the rules to parties in the towing industry, as well as governmental and law enforcement organizations. No stakeholder has indicated that the proposed new rules Ohio Adm.Code 4901:2-24-01, 4901:2-24-02 and 4901:2-24-03, adopted pursuant to R.C. 4921.25(B), will duplicate 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 April 5, 2017, in Case No. 17-713-TR-ORD, the Commission issued an Entry by U.S. mail and e-mail scheduling a workshop for April 21, 2017, to provide notice of consideration of the development of rules for maximum towing and storage fees under Ohio Adm.Code Chapter 4901:2-24, and elicit feedback from interested stakeholders. Next, the Commission will issue an Entry that sets forth Staff's proposed rules, to which stakeholders will have opportunity to file written comments. Finally, following the comment period specified in the Entry, the Commission will issue a Finding and Order adopting the proposed rules. All potential stakeholders will be notified that towing and storage rules are under review by Staff; stakeholders will be provided an opportunity for feedback concerning the rules. 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 for-hire motor carriers that tow and/or store motor vehicles from private property under a contract with the private property owner.

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

There will be limited adverse impact resulting from adoption of the proposed rule. Ohio law had previously established maximum rates for non-consensual towing and storage of a motor vehicle on June 1, 2000. Recent law changes shifted the responsibility to set this maximum rate to the PUCO, which is being done through the proposed rules. While the rule still limits the maximum rates charged, setting maximum rates was required by the authorizing legislation.

To develop the proposed rates, the PUCO adjusted the prior maximum rates, increasing the permitted maximum rates for towing and storage in a manner consistent with the CPI over the relevant time period. As such, the proposed rules creates less of an adverse impact on the regulated business than the law previously in place.

However, it is important to note that when the proposed rules become effective, section 4923.99 of the Revised Code provides that a towing service or storage facility violating the rules may be liable to the state for a forfeiture of no more than \$25,000 per day per violation. A towing service or storage facility charged with such a violation is entitled to the due process described in section 4923.99 of the Revised Code and the rules adopted thereunder.

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.*

Towing services and storage facilities must currently operate in accordance with the maximum towing and storage fees set by statute; consequently, the Commission’s proposed increase of such maximum fees should create little or no adverse impact. To the extent that the PUCO receives comments from the regulated community indicating that the proposed increase in rates is insufficient to avoid a significant adverse impact, the PUCO will consider revisions to address such concerns. Thus far, insufficient data and evidence has been provided to justify a change that goes beyond simply adjusting the rates to reflect inflationary changes that have occurred since the time when the original rates were enacted in Revised Code.

Similarly, the PUCO is unable to quantify the expected adverse impact associated with forfeitures assessed against towing services and storage facilities found to be in violation of the proposed rules. Because the PUCO was only recently granted the authority to assess such forfeitures, no internal or external data exists regarding the number of reported violations. Further, the amount of such forfeitures is also unknown because the PUCO has not had occasion to review the relevant facts during an administrative hearing and issue an order.

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

The regulatory intent of the proposed rules is to fulfill the requirements of the R.C. 4921.25, which requires that the PUCO set maximum rates for nonconsensual towing and storage of motor vehicles. In reviewing feedback from stakeholders to identify and address any adverse impact beyond what was otherwise required by law, the PUCO determined that a facially neutral formula to increase maximum rates would best account for the increased costs experienced by towing services and storage facilities that have occurred since the maximum rates were first established in law. While imperfect, increasing maximum rates using the CPI alone is simpler for the towing services and storage facilities than trying to account for prevailing wages, health care costs, gas rates and other factors that can vary dramatically among the regulated business community.

Similarly, although changes to law allow the PUCO to assess a forfeiture upon a towing service or storage facility charging an amount in excess of the maximum rates described in the proposed rules, the amount of the forfeiture associated with each violation may be reduced based on a number of factors, such as prior history of violations, business impact, demonstration that the towing service or storage facility has come into compliance, etc.

Further, the PUCO is permitted to waive the requirements described in the rules upon an application or motion filed by a party, for good cause shown.

Regulatory Flexibility

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

No. Section 4921.25 of the Revised Code requires the PUCO to establish the maximum fees for all for-hire motor carriers. As such, the PUCO does not have the statutory authority to establish an exemption or alternative means of compliance for small businesses.

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. Per Sections 4513.60 and 4513.601 of the Ohio Revised Code, a for-hire motor carrier that charges fees in excess of those established by PUCO in the proposed rule is guilty of a minor misdemeanor. Furthermore, 4513.611 permits a vehicle owner to file a civil action when they believe a violation of the law has occurred. Finally, the PUCO has authority to assess a forfeiture in an amount not to exceed \$25,000 for violations of Chapter 4921 or 4923 of the Revised Code or rules adopted thereunder. Because these rules would be adopted under R.C. 4921.25, the PUCO could assess such a forfeiture following notice and opportunity for a hearing. Such violations may be reduced or waived upon good cause shown and are subject to an adjudicatory process with full appeal rights that may be exercised by the parties to the case.

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

Upon adoption of the rules, Staff will notify all towing services that are registered in the state of Ohio. The notice will include a fact sheet that describes the newly established maximum fees in a format that's easy to read and understand.

The PUCO will update the "Industry" and "Consumer" pages of the "Motor Carrier" section of its website to include the fact sheet, as well as other helpful information for registered towing services.

PUCO will also issue a press release that includes basic information about the maximum fees.

Finally, Staff of the PUCO will be available to handle inquiries from the public or industry, and will be available to provide in-person training upon request by a towing service or storage facility.