

**MEMORANDUM**

TO: Angela Hawkins, Public Utilities Commission of Ohio

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: March 5, 2018

RE: **CSI Review – Towing and Storage of Motor Vehicles (OAC 4901:2-24-01, 4901:2-24-02, and 4901:2-24-03)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 3 new rules proposed by the Public Utilities Commission of Ohio (PUCO). The comment period was opened on January 3, 2017 and was held open through January 19, 2018. The rule package was submitted to the CSI Office on February 3, 2018. Two comments were received during this time. A Finding and Order was issued by the PUCO on February 28, 2018.

ORC 4921.25, amended by House Bill 341 of the 131st General Assembly, directs PUCO to establish maximum fees in rule for the towing and storage of motor vehicles. The fees had been previously set in statute since 2000 at a rate of \$90 for towing and \$12 per day of storage. For a vehicle with a gross vehicle weight rating (GVWR) over 10,000 pounds, the rate was set at \$150 for towing and \$20 per day of storage. In adopting the proposed rules, PUCO intends to effectively increase the maximum towing and storage fees in line with changes in the Consumer Price Index (CPI) since 2000.

As part of the early stakeholder outreach process, the PUCO held a workshop to receive feedback from stakeholders and the general public on April 5, 2017. The BIA notes that eight stakeholders attended the workshop; as a result, PUCO received suggestions that the increase reflect at least the change in CPI, that the fees be based on a flat rate rather than multiple factors, and that the fees should vary based on GVWR in a three-tier system. Stakeholders also indicated that certain costs of business have risen faster than the CPI, such as employee wages and benefits, truck repair costs, and insurance. PUCO agreed with stakeholders that a flat fee increased in line with the CPI was appropriate, however, determined that there was not sufficient evidence to support the creation of a third GVWR tier or to incorporate the costs that had increased faster than the CPI.

PUCO received two comments during the CSI public comment period, both calling for a more substantial increase to the maximum fees. A comment from the Towing and Recovering Association of Ohio (TRAO) asserted that the cost of equipment, insurance, and additional regulatory requirements has increased faster than inflation, citing an internal survey, as well as manufacturers' cost sheets. TRAO also notes that the proposed fee increase closely matches the maximum towing and storage fees implemented by the City of Columbus in 2008. A representative for the Association of Professional Towing- Ohio (APTO) recommended maximum fees of \$143 for vehicles under 10,001 pounds GVWR and \$228 for vehicles equal to or greater than 10,001 pounds GVWR. APTO cites additional regulatory responsibilities, as well as increased costs for equipment and insurance.

PUCO issued its Finding and Order in response to comments on February 28, 2018. PUCO agreed to update the fee increase to reflect the most recent CPI data, but declined to incorporate any additional increases to the fee limit. PUCO reasons that the proposed rules implement a 44 percent increase to towing rates that have not been changed for 18 years. PUCO noted APTO's admission that calculating cost per tow is difficult, and found the sample size of the evidence presented by both parties to be insufficient to justify additional fee increases. In addition, with regards to comparisons with City of Columbus towing rates, PUCO notes that the impounding and storage for a government entity entails a "universe of costs" that are not entirely applicable to private towing companies.

The rules impact for-hire motor carriers that tow or store motor vehicles under contract with a private property owner. The impacted business community must conduct operations under the maximum fees set by PUCO. In addition, ORC 4923.99 stipulates that a business violation of the rules may be liable to the state for a forfeiture of up to \$25,000 per day per violation, subject to the due process provisions outlined in ORC 4923.99. The BIA notes that Ohio law had previously established maximum towing and storage fees, and that recent changes to the law has shifted the responsibility of setting the maximum fees to PUCO. While, the law now authorizes PUCO to assess a forfeiture for non-compliance, the rule gives PUCO the flexibility to reduce the forfeiture amount based on certain factors. In addition, PUCO may waive requirements in the rule based on an application or motion filed by a party, for good cause shown.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Public Utilities Commission of Ohio should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

CC: Emily Kaylor, Lt. Governor's Office