

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Ohio)
Adm.Code Chapter 4901:2-22 Concerning) Case No. 15-463-TR-ORD
Rules Related to the Towing of Motor)
Vehicles.)

ENTRY

The Commission finds:

- (1) The 130th Ohio General Assembly adopted Amended Substitute Senate Bill 274 (S.B. 274) to amend R.C. 4513.60 and R.C. 4921.25. Newly adopted R.C. 4921.25 directed the Commission to adopt rules pursuant to R.C. 111.15 in order to carry out this new chapter. The Commission has opened this docket in order to consider and adopt new rules pursuant to R.C. 4921.25(B). Rules to be adopted by the Commission include but are not limited to establishing: the scope of safety regulations applicable to the towing of motor vehicles, the safety standards for the type of equipment necessary to safely remove and tow vehicles, the safety standards for the removal of a vehicle from a private tow-away zone, and an after-hours fee.
- (2) The Commission notes that, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review any proposed rules to determine the impact that a rule has on small businesses and attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties.
- (3) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C.

121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis.

- (4) On May 5, 2015, Staff held a workshop in this proceeding to enable interested stakeholders to offer proposals for Staff's consideration in the initial adoption of rules to be adopted as Ohio Adm.Code Chapter 4901:2-22. At the workshop, Staff gave an overview of the rulemaking process and described the rules that Staff is proposing for comment. 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 specifications, load and resistance calculations, after-hours retrieval fees, equipment safety, training, and tow truck vehicle operations. (Workshop Tr.)
- (5) Staff has reviewed R.C. Chapter 4921 and the comments offered at the workshop. Staff now proposes the attached rules for comment to implement R.C. Chapter 4921.
- (6) Staff's proposed rules are attached as Ohio Adm.Code Chapter 4901:2-22 (Attachment A) and the BIA (Attachment B), and are posted on the Commission's Docketing Information System (DIS) 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. Interested persons are directed to input the case number 15-463-TR-ORD into the Case Lookup Box to view this Entry, as well as Staff's proposed rules and the BIA or to contact the Commission's Docketing Division to request a paper copy.
- (7) The Commission requests comments from interested persons to assist in the review required by R.C. 111.15 and Executive Order 2011-01K. Comments should be filed, via electronic filing or in hard copy, by October 30, 2015, and reply comments by November 13, 2015.

It is, therefore,

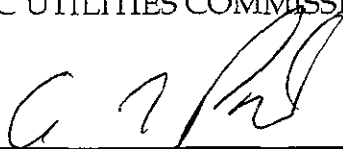
ORDERED, That all interested persons or entities wishing to file comments with the Commission regarding the proposed rules and the BIA do so no later than October 30, 2015, and reply comments by November 13, 2015. It is, further,

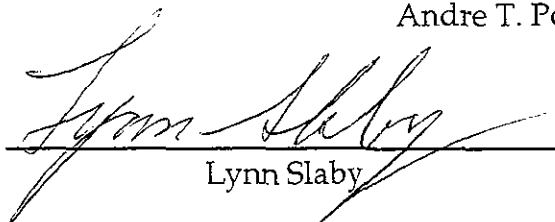
ORDERED, That a copy of this Entry, with the attached rules and the BIA, be submitted to CSI in accordance with R.C. 121.82. It is, further,

ORDERED, That notice of this Entry be served via the transportation industry list-serves. It is, further,

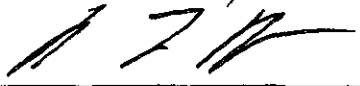
ORDERED, That a copy of this Entry be served upon the Ohio State Highway Patrol, Ohio Trucking Association, Ohio Department of Transportation, Ohio Association of Chiefs of Police, Buckeye State Sheriff's Association, Ohio Municipal League, County Commissioners' Association of Ohio, Ohio Township Association, 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, and AAA Ohio.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman

Lynn Slaby

M. Beth Trombold


Asim Z. Haque

Thomas W. Johnson

SEF/dah

Entered in the Journal

OCT 14 2015



Barcy F. McNeal
Secretary

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela M. Hawkins, Legal Director
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Angela.Hawkins@puc.state.oh.us
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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: October 14, 2015

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.

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	4513.67

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

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.

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.

4901:2-22-01 Definitions.

- (A) "Advertisement" means any written communication to the public in connection with an offer or sale of any towing service but does not include a listing of a carrier name, address, and telephone number in a yellow or white pages listing, if that is the only information provided in the listing.
- (B) "Boom" means a structural member of a tow truck that extends from a mast to support the load and to hold, extend, or lift a load free of the ground and clear of the tow truck body, and may be operated mechanically or hydraulically.
- (C) "Breaking strength rating" means the maximum weight or load, as established by the manufacturer of the equipment, that equipment can bear under ideal laboratory conditions, without breaking or being damaged.
- (D) "Certificate number" means the identification number issued to a for-hire motor carrier by the Commission pursuant to the rules in chapter 4901:2-21 of the Administrative Code.
- (E) "Commission" means the public utilities commission of Ohio.
- (F) "For-hire motor carrier" has the same meaning as in section 4923.01 of the Revised Code.
- (G) "Front axle weight" means that gross axle weight of the front axle.
- (H) "Gross axle weight" means the weight, in pounds, that an individual axle actually weighs. The curb weight of an individual axle.
- (I) "Gross axle weight rating" means the value specified by the manufacturer as the maximum load carrying capacity of a single axle.
- (J) "Mast" means a structure that houses the boom and winches.
- (K) "Motor vehicle" has the same meaning as in section 4921.01 of the Revised Code.
- (L) "Overhang" means the distance, in inches, from the center of the lift point to the center of the rear axle of the tow truck.
- (M) "Safe towing capacity" means the maximum load that does not cause more than a fifty percent loss of a tow truck's original unloaded front axle weight. Safe towing capacity shall be determined by multiplying one half of a tow truck's

front axle weight by its wheelbase divided by the overhang (one-half times front axle weight, times wheelbase/overhang).

- (N) "Safety device" means a device used as a secondary coupling system to connect the tow truck and towed motor vehicle and to help prevent separation of a towed motor vehicle from the tow truck.
- (O) "Storage facility" means any place to which such a for-hire motor carrier delivers a motor vehicle towed pursuant to section 4513.501 of the Revised Code.
- (P) "Thimble" means a shield to protect a cable at a hook assembly.
- (Q) "Tow bar" means a device used to tow a motor vehicle that allows all four wheels to remain on the ground.
- (R) "Tow dolly" means a carriage used to support the wheels of the trailing end of a towed motor vehicle whenever it is necessary to keep the wheels of the towed motor vehicle from touching the road.
- (S) "Tow sling" means a device used to lift and tow a motor vehicle with part of the load supported on rubber belts.
- (T) "Tow truck" means a motor vehicle that is equipped with towing equipment and used in the business of recovering or transporting a disabled, illegally parked, or abandoned motor vehicle, or a motor vehicle involved in an accident.
- (U) "Towing device" means any item including but not limited to a wire rope, chain, cable, hook, or strap used in support of a piece of towing equipment to pull, lift, support, suspend, secure or tow a motor vehicle.
- (V) "Towing equipment" means any mechanism including but not limited to a boom, winch, wheel lift, under lift, tow sling, or tow bar affixed to a tow truck to pull, lift, support, suspend, secure, or tow a motor vehicle.
- (W) "Towing service" has the same meaning as in section 4513.67 of the Revised Code
- (X) "Under lift" means a device used for towing a motor vehicle by lifting with forks one end of the towed motor vehicle from under the axle or other structural member.

- (Y) "Wheelbase" means the distance, in inches, from the centerline of the front axle to the centerline of the rear axle.
- (Z) "Wheel lift" means a device extending from a tow truck and fitted under one set of wheels of a towed motor vehicle to cradle and lift one end of the towed motor vehicle by the wheels.
- (AA) "Winch" means a device used to wind or unwind cable that is used to pull, hoist, raise or lower a load.
- (BB) "Working load limit" means the maximum weight or load, as established by the manufacturer of the equipment, that equipment can bear under normal operating conditions.

4901:2-22-02 Purpose and Scope.

- (A) This chapter governs the establishment of safety standards and other requirements applicable to the operations of for-hire motor carriers engaged in the towing of motor vehicles.
- (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.

4901:2-22-03 Safety Standards.

- (A) A tow truck may not be used to tow a motor vehicle that weighs in excess of that tow truck's safe towing capacity.
- (B) Any towing equipment utilized to lift a portion of a motor vehicle off the ground so it may be towed shall be installed on the appropriate chassis as recommended by the towing equipment manufacturer and shall not be used in a manner in which the gross axle weight rating of the tow truck's rear axle is exceeded.
- (C) A tow dolly shall not be used in a manner that exceeds the manufacturer's maximum load rating and speed recommendations.
- (D) Any towing equipment or towing devices shall be used in a manner that will not damage the towed motor vehicle.
- (E) All towing equipment and towing devices used in conjunction with such towing equipment, shall not be used in a manner that causes the working load limit of such equipment and devices to be exceeded.

- (F) All towing equipment and towing devices must have permanently affixed, durable, factory identification stating the equipment's working load limit, or must otherwise be readily ascertainable by the operator of a tow truck and enforcement personnel. Equipment may be re-inspected by a recognized re-certification company and if acceptable may be re-certified with a working load limit and a re-certification company identifier. In such instances, the recertified equipment will be deemed acceptable if the operator maintains a copy of the certification of equipment provided the serial number on the equipment corresponds with the certification provided by the manufacturer.
- (G) All towing equipment and towing devices shall be in proper working order and shall:
 - (1) Be designed for, and capable of, performing the task for which it is being used.
 - (2) Not be damaged, weakened, or used in a manner that compromises its ability to perform properly.
 - (3) Only be used in accordance with any manufacturer's recommendations related to its use.
- (H) All wire rope eye loops used on a tow truck shall be protected by a thimble. Thimbles may not be cracked, deformed, worn, loose, or have a strand of wire that slips.
- (I) Cable clamps are prohibited for use on a wire rope.
- (J) A steering wheel locking device shall be required when any motor vehicle is towed using a tow sling or wheel lift.
- (K) Use of a come-a-long, chain, or other similar device may not be used as a substitute for a winch and cable.
- (L) The securement regulations of the U.S. department of transportation adopted under rule 4901:2-5-03 of the Administrative Code shall apply to any tow truck when securing a towed motor vehicle in a manner consistent with those regulations.
- (M) Motor vehicles being towed by a wheel-lift, under-lift, tow bar, tow sling, tow dolly, or similar apparatus shall be secured to such apparatus by appropriate

load securement devices of adequate strength and design to safely couple the motor vehicle to the apparatus.

- (N) Every motor vehicle towed by a tow truck that is not subject to the securement requirements of paragraph (C)(1) of rule 4901:2-22-03 of the Administrative Code, shall be joined by at least two safety devices spaced as far apart as practical to the forward portion of the towed vehicle, with a combined breaking strength rating equal to or greater than the gross weight of the towed vehicle. Acceptable securement devices are chains, cables, or synthetic webbing customarily used for securing a vehicle or load. Safety devices shall be attached in such a way as to prevent vehicle separation upon failure of the primary towing attachment and shall be anchored to both the tow truck and the towed motor vehicle with only enough slack to permit free turning of the towed motor vehicle.

4901:2-22-04 Out-of-Service Criteria.

In addition to the provisions contained in rule 4901:2-5-07 of the Administrative Code, a tow truck may be declared "out-of-service" for the following reasons:

- (A) Towing a motor vehicle or vehicles that weighs in excess of the tow truck's safe towing capacity.
- (B) Use of towing equipment or towing devices in a manner that causes the working load limit of such equipment and devices to be exceeded.
- (C) Use of towing equipment or towing devices that are not in compliance with the requirements of paragraph (B)(2) of rule 4901:2-22-03 of the Administrative Code.
- (D) Use of a come-a-long, chain, or other similar device as a substitute for a winch and cable.
- (E) Failure to secure a towed vehicle as required by paragraph (C) of rule 4901:2-22-03 of the Administrative Code.
- (F) Installation or use of any towing equipment or towing devices in a manner not prescribed by the manufacturer.
- (G) Use of a damaged or defective towing device where such damage or defect meets the "North American Standard Out-of-Service Criteria", as adopted and disseminated by the "Commercial Motor Vehicle Safety Alliance", for tiedowns,

regardless of whether the towing device is being used to pull, lift, support, suspend, secure or tow a motor vehicle.

4901:2-22-05 Adoption of Regulations by Counties and Townships.

- (A) A county or township may adopt, pursuant to a resolution, public safety regulations applicable to a for-hire motor carrier engaged in the towing of motor vehicles under sections 4513.60, 4513.601, and 4513.61 of the Revised Code that:
- (1) Do not address any subject matter for which the Commission has jurisdiction pursuant to title 49 of the Revised Code as it relates to the regulation of motor carriers operating in the state of Ohio, including but not limited to:
 - (a) Registration of a for-hire motor carrier engaged in the towing of motor vehicles;
 - (b) Safety standards or requirements related to a tow truck, towing equipment, and towing devices;
 - (c) The securement of a motor vehicle being towed by a tow truck; and
 - (d) The qualifications of a driver of a tow truck.
 - (2) Prescribe standards for the storage of motor vehicles at a storage facility, and retrieval of motor vehicles from a storage facility, that are not in conflict with standards and requirements established in title 45 or 49 of the Revised Code.
 - (3) Are in accordance with any applicable police powers of that county or township, and not otherwise barred by paragraph (A)(1) of rule 4901:2-22-05 of the Administrative Code, that facilitate the safe and orderly removal of a vehicle towed pursuant to sections 4513.60, 4513.601, and 4513.61 of the Revised Code.
- (B) Upon the adoption of a resolution seeking to implement public safety regulations applicable to a for-hire motor carrier engaged in the towing of motor vehicles under sections 4513.60, 4513.601, and 4513.61 of the Revised Code, a county or township shall provide a copy of the final resolution to director of the Commission's transportation department.

4901:2-22-06 After-Hours Retrieval Fee.

Any after-hours fee charged by a storage facility pursuant to section 4513.69 of the Revised Code shall not exceed the storage facility's reasonable costs of complying with the requirements of that section, but in no instance shall the after-hours retrieval fee exceed seventy-five dollars.

4901:2-22-07 Advertising.

A towing service must include its certificate number on all written advertisements that could reasonably be used by a consumer to determine whether to hire the towing service. It is not required to be displayed on any promotional items, or when the towing service's name is being used in connection with the sponsorship of an activity or event.