



Economic Impact Analysis Virginia Department of Planning and Budget

24 VAC 27-30 – Regulations Governing the Practice of Towing and Recovery Operators Board for Towing and Recovery Operators November 23, 2007

Summary of the Proposed Amendments to Regulation

Chapters 874 and 891 of the 2006 Acts of Assembly established the Board for Towing and Recovery Operators (Board), whose operation became effective on July 1, 2006. This legislation also specifies in Code of Virginia Section § 46.2-2805 that the Board shall establish the qualifications of applicants for licensure, levy and collect fees for licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Board, revoke, suspend, or fail to renew a license for violation of this chapter or enumerated in regulations promulgated by the Board etc. Further, the legislation specifies in Section § 46.2-2812 that “On and after July 1, 2008, it shall be unlawful for any person to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license.” Consequently, the Board proposes to promulgate its initial Regulations Governing the Practice of Towing and Recovery Operators. The proposed regulations include: 1) requirements for towing operator’s licensure, 2) requirements for license renewal (including continuing education), 3) standards of practice, 4) what constitutes unprofessional conduct, 5) exemptions from regulation, 6) requirements for drivers, and 7) fees, etc.

Result of Analysis

The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact

According to the Board rogue towing operators have provided significant harm to citizens of the Commonwealth and to honest operators through activities such as: 1) engaging in false advertising, 2) predatory towing, 3) impersonating other towing operators, 4) charging for services not rendered, 5) operating without locally required business licenses, 6) charging fees that vary depending on how expensive the towed vehicle appeared to be or what it appeared the customer could afford to pay, 7) failing to carry business insurance and damaging vehicles due to conducting towing activities with inappropriate equipment, giving vehicle owners no insurance recourse by which to secure repairs for their damaged vehicles 8) failing to inform local law enforcement entities that vehicles had been towed from private property thereby causing the vehicles' owners to have to search, sometimes over several days, for their vehicles while incurring additive storage fees, and 9) overcharging through refusal to give change, etc. These proposed regulations are designed to protect the public and honest operators from such dishonest and incompetent operators.

Requirements for towing operator's licensure

The proposed regulations include numerous general requirements for towing and recovery operator licensure, most of which produce marginal or no cost to the operators. For example, operators must: 1) provide the name of the individual or business entity under which the applicant intends to be licensed, plus any and all trade or fictitious names under which the operator conducts or offers towing and recovery services, 2) advise the board of the physical addresses of the principal office and all additional satellite facilities, 3) designate a Responsible Individual who shall be responsible for assuring that the operator conforms to all applicable state, federal or local laws and regulations related to those towing and recovery services offered, 4) list the principal owners' names and all other individuals involved in the management and operation of the business, and 5) provide the board with information indicating all tow trucks owned, leased or used by the operator.

Additionally, the Board may refuse to issue a license or tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant or any individual who is an owner, manager or other person involved in the management or operation of the applicant's business, it finds that the applicant is unfit to engage

in providing towing and recovery services. To the extent that the Board in practice does deny licensure to individuals who could legally have operated prior to these regulations, this will be very costly to those denied licensure. The denial, of course, is intended to protect the public from operators who are considered a significant risk to the public through potential illegal activities or incompetence.

The proposed regulations include the following three sections: Operator's licensure without examination, Operator's licensure by examination, and Operator's licensure by endorsement. Pursuant to Code Section § 46.2-2822, operators who were active prior to January 1, 2006 are not required to "successfully complete an examination as a prerequisite for obtaining a license as an operator." They must simply submit an application, certify in writing that the Responsible Individual has read and understands the laws and regulations governing towing and recovery services and pay a \$500 application fee, pay a \$10 decal fee for each tow truck, and pay \$50 for each driver beyond the first driver whose fee is covered by the application fee.

Operators who were not active prior to January 1, 2006 have additional requirements. In order to obtain a Class A Operator license,¹ operators who were not active prior to January 1, 2006 must submit evidence of passage by the principal owner or Responsible Individual of all sections of Level I and of Level II of the Towing and Recovery Association of America's (TRAA) certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. TRAA charges a total of \$260 for its Level I and II tests and study guides.² In order to obtain a Class B Operator license,³ operators who were not active prior to January 1, 2006 must submit evidence of passage by the principal owner or Responsible Individual of all sections of Level I of TRAA's certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. TRAA charges \$100 for its Level I test and study guide.⁴ Operators who were not active prior to January 1, 2006 are also required to pass an open book jurisprudence examination provided by the board on the laws and regulations governing towing and recovery operators. In addition to the \$500 application fee, \$10 decal fee for each tow truck, \$50 for each driver beyond the first driver, and fees for the

¹ Class A Operators may tow vehicles of an unlimited gross vehicle weight.

² Source: Towing and Recovery Association of America's website (<http://www.towserver.net/certification.htm>) accessed on November 23, 2007

³ Class B Operators may tow vehicles of a gross vehicle weight of 26,000 pounds or less.

tests and study guides, these operators will incur time costs associated with studying for and taking the TRAA and jurisprudence examinations.

The proposed regulations also include requirements for operator's licensure by endorsement. Operator's licensure by endorsement includes all the same requirements as Operator's licensure by examination, plus "evidence that he has been actively engaged in towing and recovery services in another state for the past five consecutive years" and "a statement from a government entity in the state in which he has been conducting business or businesses in the past five consecutive years that the applicant's business has not violated or been disciplined for violation of the other state's laws and regulations governing towing and recovery services." Thus, there does not appear to be any incentive to pursue licensure by endorsement since the operator can obtain licensure by complying with the Operator's licensure by examination requirements without the additional hassle of obtaining statements from other governmental entities.

Requirements for license renewal (including continuing education)

The Board proposes to require that licenses be renewed annually by completing a renewal application and paying the annual \$500 license renewal fee, \$10 decal fee for each tow truck, and \$50 for each driver beyond the first driver whose fee is covered by the license renewal fee. The proposed regulations also include a requirement for continuing education to become effective July 1, 2011. "Each application for operator's license renewal shall be conditioned upon ... eight hours of continuing education taken by the principal owner or Responsible individual" during the previous year, "and an additional four hours of continuing education taken by each of the tow truck drivers employed by the applicant during the previous licensing period and employed by the operator at the time the operator submits his license renewal application." According to the Board, WreckMaster has offered a weekend (approximately 16 hours) continuing education course for \$395. Also AAA has offered some free training to members.

The Board has indicated that it intends to evaluate the feedback it receives during the public comment period and at the public hearing and, by deferring the effective date of this section of the regulations, will have time to make additional changes to these requirements if

⁴ Source: Towing and Recovery Association of America's website (<http://www.towserver.net/certification.htm>) accessed on November 23, 2007.

necessary. According to the Board, changes in laws, motor vehicles, and towing equipment make periodic continuing education necessary in order to maintain competent business practices and provision of towing and recovery services. Insufficient information exists to accurately assess the benefits of continuing towing education and to compare those benefits to the costs.

Standards of practice

The proposed regulations include a standards of practice section which begins with the following statement: “Violations of any standard of practice set out in this section may be subject to board disciplinary actions or sanctions, including suspension or revocation of an operator’s license and imposition of civil penalties.” Complying with all applicable federal, state and local laws, such as U.S. Department of Transportation and Virginia Department of Motor Vehicles regulations, state and local building and zoning codes, local business licenses, Worker’s Compensation insurance, etc., are listed under standards of practice. These are not new requirements, but the prospect of losing the legal right to sell towing services for failure to follow these other laws may increase the probability that some operators closely comply with those laws. Thus, requiring compliance with other state and local laws as a prerequisite for maintaining an operator’s license may be beneficial to the Commonwealth in that other laws may consequently be more likely followed.

The proposed standards of practice also include insurance requirements for operators which mirror tow truck registration requirements by the Department of Motor Vehicles (DMV) under Code of Virginia Title 46.2. As mentioned earlier, failure to carry business insurance and damaging vehicles due to conducting towing activities with inappropriate equipment, giving vehicle owners no insurance recourse by which to secure repairs for their damaged vehicles, has been an ongoing problem. Though insurance is already required under DMV rules, firms may have a reduced practical ability to sell towing services without insurance if they cannot obtain initial licensure or license renewal without sufficient insurance. Thus this requirement may help alleviate one of the ongoing problems enumerated above.

Additionally, the standards of practice also include a number of other requirements that if enforced by plausible threat of revocation of an operator’s license and imposition of civil penalties will likely help reduce the incidence of dishonest or incompetent towing service. Such additional standards of practice include: employing only tow truck drivers who comply with the

board's requirements for drivers, having the licensee's trade name clearly indicated on all of the operator's tow trucks, retaining for a minimum of one year records of services and fees charged or collected, only using equipment designed and rated for the type of vehicle being transported, allowing an authorized agent of the board to review and inspect records and equipment, and for all operators engaged in towing passenger vehicles without the consent of their owners prominently displaying a comprehensive list of all their fees for towing and recovery on the basis of such charges.

Requirements for drivers

The Board proposes to require that tow truck drivers (or their operator) pay a \$50 driver authorization documentation fee, plus the prevailing fee required by state and federal police authorities for reviewing the fingerprints submitted by the applicant and processing the criminal history background checks required by the statutes and these regulations. According to the Board, national (FBI) and Virginia (State Police) criminal background checks and fingerprinting cost from \$37.50 to \$50 per person. Applicants for tow truck documentation authorization must also sign a statement verifying that they are not required to register as a sex offender under any state, federal or local law, or the law of any country. The board shall refuse to issue a tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services as a tow truck driver. Drivers must also have a valid driver's license applicable to the type of truck to be driven. The above requirements are all clearly designed to help protect public safety.

Fees

The Board proposes the following fees.

<u>License Item</u>	<u>Fee</u>
<u>Initial Fee Structure/Application Fee</u> (Includes the fee for one driver authorization)	<u>\$500</u>
<u>Annual License Renewal, Class A Operator</u> (Includes the fee for one driver authorization)	<u>\$500</u>
<u>Annual License Renewal, Class B Operator</u>	<u>\$500</u>

<u>(Includes the fee for one driver authorization)</u>	
<u>Annual tow truck decal, per vehicle</u>	<u>\$10</u>
<u>Annual driver authorization documentation, per driver</u>	<u>\$50</u>
<u>Late renewal (operator, truck decal and driver)</u>	<u>150 percent of renewal fee</u>
<u>Reinstatement following revocation or suspension of license</u>	<u>\$1000</u>
<u>Verification of licensure to another jurisdiction or government entity</u>	<u>\$25</u>
<u>Returned check</u>	<u>\$35</u>
<u>Duplicate copy of license, tow truck decal or driver authorization</u>	<u>\$10</u>
<u>Out-of-state temporary trip permit (each permit)</u>	<u>\$50</u>

Businesses and Entities Affected

Approximately 2,200 towing operators and 9,000 to 10,000 drivers are estimated to be affected. All of the businesses in this industry fit the Code of Virginia definition of a small business.⁵

Localities Particularly Affected

There are no localities that should expect a disproportionate impact from these regulations.

Projected Impact on Employment

The proposed regulations may have a negative impact on employment for operators who are only marginally profitable.

Effects on the Use and Value of Private Property

The fees under the proposed regulations will have a small negative impact on the value of operators. On the other hand, honest well-run operators may end up with more business and consequently greater profits if unscrupulous and poorly-run operators leave the industry due to the enforcement of the Code and regulations.

⁵ Source: Board for Towing and Recovery Operators

Small Businesses: Costs and Other Effects

Licensure fees, tow truck decal fees, driver authorization fees, examination fees, continuing education fees, and time spent on exam preparation and continuation education will all increase costs for small businesses. As mentioned above though, honest well-run operators may end up with more business and consequently greater profits if unscrupulous and poorly-run operators leave the industry due to the enforcement of the Code and regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both meet statutory requirements and reduce adverse impact.

Real Estate Development Costs

The proposed regulations will not likely have a significant effect on real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the

regulation. The analysis presented above represents DPB's best estimate of these economic impacts.