

Search RULE ADOPTIONS  
VOLUME 42, ISSUE 2  
ISSUE DATE: JANUARY 19, 2010  
LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
OFFICE OF THE DIRECTOR

**Adopted New Rules: N.J.A.C. 13:45A-31**

**Towing Companies**

Proposed: June 1, 2009 at 41 N.J.R. 2206(a).

Adopted: October 8, 2009 by David M. Szuchman, Director, Division of Consumer Affairs.

Filed: December 16, 2009 as R.2010 d.017, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6).

Authority: P.L. 2007, c. 193 and P.L. 2009, c. 39.

Effective Date: January 19, 2010.

Expiration Date: March 21, 2011.

**Federal Standards Statement**

49 U.S.C. §14501 preempts states from regulating prices, routes or services of motor carriers. This preemption does not prevent states from regulating safety or imposing insurance requirements on motor carriers, or regulating pricing for non-consensual towing. The adopted new rules do not impose price, route or service requirements on towing companies engaging in consensual towing services. As the adopted new rules do not regulate towing practices that are Federally preempted, and as there are no Federal laws or standards applicable to the regulation of non-consensual towing, a Federal standards analysis is not required.

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\*** ; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

**SUBCHAPTER 31. PRIVATE PROPERTY AND NON-CONSENSUAL TOWING COMPANIES**

13:45A-31.1 Purpose and scope

The purpose of this subchapter is to implement the provisions of P.L. 2007, c. 193 as amended by P.L. 2009, c. 39 (N.J.S.A. 56:13-7 et seq.), which regulate private property and other non-consensual towing.

13:45A-31.2 Words and phrases defined

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Basic tow" means private property towing **\*and other non-consensual towing\*** as defined in this section and other

ancillary services that include the following: arriving at the site from which a motor vehicle will be towed; 15 minutes waiting time; hooking a motor vehicle to, or loading a motor vehicle onto, a tow truck; transporting a motor vehicle to a storage facility; unhooking or unloading a motor vehicle from the tow truck; and situating the motor vehicle in the space in which it will be stored. "Basic tow" also includes issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; issuing an itemized bill; three trips to the motor vehicle in storage, which, if applicable, include making a vehicle available to an insurance appraiser or adjuster; issuing documents for the release of a [page=506] motor vehicle to its owner or other person authorized to take the motor vehicle; and retrieving a motor vehicle from storage during the hours in which the storage facility is open.

"Consensual towing" means towing a motor vehicle when the owner or operator of the motor vehicle has consented to have the towing company tow the motor vehicle.

"Consumer" means a natural person.

"Decoupling" means releasing a motor vehicle to its owner or operator when the motor vehicle has been, or is about to be, hooked to or lifted by a tow truck, but prior to the motor vehicle actually having been moved or removed from the property.

"Director" means the Director of the New Jersey Division of Consumer Affairs.

"Division" means the New Jersey Division of Consumer Affairs.

"Flat bed tow truck" means a tow truck designed to transport a motor vehicle by means of raising the motor vehicle from road level up onto a hydraulic bed for transporting purposes.

"Motor vehicle" includes all vehicles propelled other than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles, motorized scooters, motorized wheelchairs and motorized skateboards.

"Non-consensual towing" means the towing of a motor vehicle without the consent of the owner or operator of the vehicle. "Non-consensual towing" includes towing a motor vehicle when law enforcement orders the vehicle to be towed whether or not the owner or operator consents.

"Person" means an individual, sole proprietorship, partnership, corporation, limited liability company or any other business entity.

"Private property towing" means non-consensual towing from private property or from a storage facility by a motor vehicle of a consumer's motor vehicle that is parked illegally, parked during a time at which such parking is not permitted or otherwise parked without authorization or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. This term shall not include the towing of a motor vehicle that has been abandoned on private property in violation of N.J.S.A. 39:4-56.5, provided that the abandoned vehicle is reported to the appropriate law enforcement agency prior to removal and the vehicle is removed in accordance with N.J.S.A. 39:4-56.6.

"Private property towing company" means a person offering or performing private property towing services.

"Secure storage facility" means a storage facility that is either completely indoors or is surrounded by a fence, wall or other man-made barrier that is at least six feet high and is lighted from dusk to dawn.

"Site clean-up" means the use of absorbents to soak up any liquids from a motor vehicle at the site from which a motor vehicle will be towed.

"Storage facility" means a space at which motor vehicles that have been towed are stored.

"Tarping" means covering a motor vehicle to prevent weather damage.

"Tow truck" means a motor vehicle equipped with a boom or booms, winches, slings, tilt beds or similar equipment designed for the towing or recovery of motor vehicles.

"Towing" means the moving or removing from public or private property or from a storage facility by a motor vehicle of a consumer's **\*non-commercial\*** motor vehicle that is damaged as a result of an accident or otherwise disabled, recovered after being stolen or is parked illegally or otherwise without authorization, parked during a time at which such parking is not permitted or otherwise parked without authorization or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. Dues or other charges of clubs or associations, which provide towing services to club or association members shall not be considered a service charge for purposes of this definition.

"Towing company" means a person offering or performing towing services.

"Transmission disconnect" means manipulating a motor vehicle's transmission, so that the motor vehicle may be towed.

"Vehicle" means any device in, upon or by which a person or property is or may be transported upon a highway.

"Waiting time" means any time a towing company spends at the site from which a motor vehicle will be towed, during which the towing company is prevented from performing any work by another individual, beyond the time included as part of a basic tow.

"Winching" means the process of moving a motor vehicle by the use of chains, nylon slings or additional lengths of winch cable from a position that is not accessible for direct hook up for towing a motor vehicle. "Winching" includes recovering a motor vehicle that is not on the road and righting a motor vehicle that is on its side or upside down, but does not include pulling a motor vehicle onto a flatbed tow truck.

"Window wrap" means any material used to cover motor vehicle windows that have been damaged.

#### 13:45A-31.3 Liability insurance

(a) The minimum amounts of insurance a towing company shall secure and maintain are:

1. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is up to 26,000 pounds, for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of \$ 750,000, single limit; and
2. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is more than 26,000 pounds, for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of \$ 1,000,000, single limit.

(b) A towing company shall also secure and maintain, for every tow truck, insurance that covers garage keeper legal liability in the amount of \$ 100,000, and "on-hook" coverage, either as an endorsement on the insurance required by (a) above or in the amount of \$ 100,000.

(c) The insurance required by (a) and (b) above shall be obtained from an insurance company authorized to do business in New Jersey .

#### 13:45A-31.4 Schedule of other non-consensual towing and storage services

(a) A towing company that engages in private property towing or other non-consensual towing may charge fees for the following services:

1. Basic tow, which shall be a flat fee; and
2. In the case of a motor vehicle involved in an accident the following additional services, if actually performed:

- i. Waiting time in excess of 15 minutes, which shall be calculated based upon each 15 minutes spent at the site from which a motor vehicle will be towed, with fewer than 15 minutes rounded up to 15;
  - ii. Brush cleaning, including collection of debris that can be picked up by hand, which shall be a flat fee;
  - iii. Site clean-up, which shall be calculated based upon the number of bags of absorbent used;
  - iv. Winching, which shall be based upon each one-half hour spent performing winching;
  - v. The use of window wrap, which shall be a flat fee;
  - vi. Tarping, which shall be a flat fee;
  - vii. Transmission disconnect, a flat fee, which shall be charged only if a motor vehicle is locked and the towing company is unable to obtain the keys for the motor vehicle;
  - viii. Use of a flat bed tow truck, a flat fee, which shall be charged if a motor vehicle can be transported only by a flat bed tow truck;
  - ix. Use of special equipment other than the first tow truck to recover a motor vehicle that cannot be recovered by winching or pieces of a motor vehicle that cannot be moved by hand, which may be both a labor and an equipment charge billed in half-hour increments;
  - x. Decoupling;
  - xi. Storage at a towing company's storage facility;
  - xii. More than three trips to the motor vehicle in storage, which may be invoiced as an administrative fee, which shall be a flat fee; and
  - xiii. Releasing a motor vehicle from a towing company's storage facility after normal business hours or on weekends, which shall be a flat fee.
- (b) A towing company that engages in private property towing or other non-consensual towing shall not charge for the use of a flat bed tow truck if a motor vehicle can safely be towed in an upright position by another [page=507] type of tow truck, even if the private property towing company chooses to use a flat bed tow truck for the tow.
- (c) A towing company that engages in private property towing or other non-consensual towing may charge for the tolls it incurs driving to the site from which a motor vehicle will be towed and while towing the motor vehicle from that site to the towing company's storage facility.
- (d) A towing company that engages in private property towing or other non-consensual towing shall calculate storage fees based upon full 24-hour periods a motor vehicle is in the storage facility. For example, if a motor vehicle is towed to a storage facility at 7:00 P.M. on one day and the owner of the motor vehicle picks up the motor vehicle before 7:00 P.M. the next day, the towing company shall charge the owner of the motor vehicle only for one day of storage. If a motor vehicle is stored for more than 24 hours, but less than 48 hours, the towing company may charge for two days of storage.
- (e) A towing company shall not charge any fee for private property towing or other nonconsensual towing and related storage services not included in (a) above.
- (f) If a towing company charges a consumer a fee for a private property or other non-consensual towing service that is disputed by the consumer, the parties shall use good faith efforts to resolve the dispute. If the parties are unable to resolve the dispute and the Director determines the fee to be unreasonable under N.J.A.C. 13:45A-31.5, the Director may order the towing company to reimburse the consumer for an amount equal to the difference between the charged

fee and a reasonable fee, plus interest, as calculated pursuant to (g) below.

(g) The interest rate imposed pursuant to (f) above shall be based on the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment of the Department of the Treasury.

(h) A towing company performing a private property tow or other non-consensual tow shall take the motor vehicle being towed to the towing company's storage facility having the capacity to receive it that is nearest to the site from which the motor vehicle is towed.

(i) A bill for a private property tow or other non-consensual tow shall include the time at which a towed motor vehicle was delivered to a towing company's storage facility.

#### 13:45A-31.5 Unreasonable fees

(a) A fee for private property towing or other non-consensual towing services, and storage services, shall be presumed unreasonable if it is:

1. More than 25 percent higher than the fee charged by the towing company or storage facility for the same services when provided with the consent of the owner or operator of the motor vehicle; or
2. More than 50 percent higher than the fee charged for such other non-consensual towing or related storage service by other towing companies or storage facilities operating in the municipality from which the vehicle was towed.

(b) Notwithstanding (a) above, a fee will be presumed unreasonable if it exceeds the maximum amount that may be charged for the service according to a schedule of fees set forth in a municipal ordinance adopted pursuant to section 1 of P.L. 1979, c. 101 (N.J.S.A. 40:48-2.49) **\*from the municipality in which the vehicle to be towed is situated\*** .

#### 13:45A-31.6 Towing motor vehicles from private property

(a) A private property towing company shall not remove a motor vehicle from private property without the consent of the owner or operator of the motor vehicle, unless:

1. The private property towing company has entered into a written contract with the owner of the private property to provide private property towing services;
2. The owner of the private property has posted a sign, in a conspicuous place at each vehicular entrance, at least 36 inches high and 36 inches wide stating:
  - i. The purposes for which parking is authorized and the times during which such parking is permitted;
  - ii. That unauthorized parking is prohibited and unauthorized motor vehicles will be towed at the owner's expense;
  - iii. The name, address and telephone number of the private property towing company that will perform the private property towing;
  - iv. The charges for the private property towing and storage of towed motor vehicles;
  - v. The street address of the storage facility where towed motor vehicles can be redeemed after payment of the posted charges and the times during which a motor vehicle may be redeemed; and
  - vi. That a consumer may contact the Division of Consumer Affairs by calling 1-800-242-5846, prompt number 4;
3. The property owner has authorized the private property towing company to remove the motor vehicle; and
4. The private property towing company tows the motor vehicle to a secure storage facility having the capacity to

receive it that is nearest to the site from which the motor vehicle is towed.

(b) The provisions of (a) above shall not apply if a motor vehicle is parked:

1. On a lot or parcel on which is situated a single-family unit;
2. On a lot or parcel on which is situated an owner occupied multi-unit structure of not more than six units; or
3. In front of any driveway or garage entrance where the motor vehicle is blocking access to that driveway or entrance.

(c) The provisions of (a)2 above shall not apply if the private property from which the motor vehicle is to be towed is a residential community in which parking spaces are assigned to community residents and:

1. The assigned spaces are clearly marked as such;
2. There is documented approval from the private property owner authorizing the removal of the motor vehicle; and
3. A sign is posted in a conspicuous place at all vehicular entrances that:
  - i. States that unauthorized parking in an assigned space is prohibited;
  - ii. States that unauthorized vehicles will be towed at the owner's expense; and
  - iii. Includes information, or a telephone number, enabling the motor vehicle owner or operator to obtain information as to the location of the towed motor vehicle.

(d) The exemption in (c) above shall not apply to a private parking lot or parcel owned or assigned to a commercial or other nonresidential entity located in the residential community.

#### 13:45A-31.7 Storage facilities

(a) A towing company that engages in private property towing or other non-consensual towing shall tow motor vehicles only to storage facilities that:

1. Have business offices open to the public between 8:00 A.M. and 6:00 P.M. at least five days a week; and
2. Are secure storage facilities.

(b) A towing company that engages in private property towing or other non-consensual towing shall provide or arrange for after-hours release of stored motor vehicles.

**\*(c) A towing company that does not release a stored motor vehicle to its owner, or other person authorized to take the motor vehicle, during normal business hours when requested, as required by (a)1 above, shall not charge a fee for after-hours release of the stored motor vehicle.\***

#### 13:45A-31.8 Private property towing practices

(a) A private property towing company shall not provide any benefit to a person for information regarding a motor vehicle that may be towed from private property.

(b) A private property towing company shall not refuse to release to the owner or operator, a motor vehicle that has been hooked or lifted but not removed from private property.

(c) A private property towing company releasing a motor vehicle pursuant to (b) above may charge the owner or operator of the motor vehicle a decoupling fee; it shall not charge the owner or operator any other fees.

### 13:45A-31.9 Recordkeeping

(a) A towing company that performs private property or other non-consensual towing shall retain, for three years, the following records:

1. Invoices for both consensual towing and non-consensual towing services;

2. Job orders;

[page=508] 3. Documentation of waiting time;

4. Logs, which shall include the time when a towed motor vehicle was delivered to the \*[private property]\* towing company's storage facility **\*from a private property or other non-consensual tow\*** and the date and purpose of each trip to the motor vehicle in storage;

5. Documents relating to private property and other non-consensual towing services performed and rates charged for services; and

6. Any contracts under which the private property towing company is authorized to perform private property towing services.

(b) A towing company that engages in private property towing or other non-consensual towing shall make records retained pursuant to (a) above available for review by the Division upon request.

### 13:45A-31.10 Violations

A violation of any of the rules in this subchapter shall be considered an unlawful practice under P.L. 1960, c. 39 (N.J.S.A. 56:8-1 et seq.).