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RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
OFFICE OF THE DIRECTOR

Adopted Amendment: N.J.A.C. 13:45A-31.4 and 31.6

Schedule of Other Non-Consensual Towing and Storage Services

Towing Motor Vehicles from Private Property

Proposed: November 7, 2011 at 43 N.J.R. 2734(a).

Adopted: February 23, 2012 by Thomas R. Calcagni, Director, Division of Consumer Affairs.

Filed: March 15, 2012 as R.2012 d.076, **with a substantial and technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 56:13-14(a) and 56:13-19.

Effective Date: April 16, 2012.

Expiration Date: December 14, 2018.

Summary of Public Comments and Agency Responses:

The official comment period ended January 6, 2012. The Director received three comments from the following individuals:

1. Christopher D. Ackerman, Dilworth Paxson, LLP
2. Chuck Leitgeb, Vice President, Insurance Council of New Jersey
3. Deborah A. Wean, Esq., Secretary, New Jersey Manufacturers Insurance Company

1. COMMENT: A commenter is concerned that the amendments to N.J.A.C. 13:45A-31.4 will require towing companies to change their billing format. The commenter asks if the amendments require towing companies to provide the definition of a basic tow and the services provided on a bill or if they permit towing companies to include the definition of a basic tow as an attachment to a bill. The commenter contends that towing companies often use billing forms that they have bought in bulk and these may have to be reprinted in order to comply with the amendments. This would impose an economic hardship on towing companies.

RESPONSE: The proposed amendments to N.J.A.C. 13:45A-31.4 require towing companies to list the services actually performed as a basic tow and do not require towing companies to provide the definition of a basic tow on a bill. There are no rules contained in Subchapter 31 that prevent a bill from being more than one page, so the enumeration of services provided can be on an attachment to a bill. Since towing companies may attach the enumeration of services provided to a bill, there is no reason why they would have to dispose of preprinted forms, and therefore, the Division does not agree that the proposed amendments would impose the economic hardship envisioned by the commenter.

2. COMMENT: One commenter contends that the Division has not considered that the amendments will require towing companies to maintain records in order to demonstrate that they have complied with the amendments. This imposes additional administrative costs on towing companies.

RESPONSE: Pursuant to N.J.A.C. 13:45A-31.9, towing companies are required to maintain records that include invoices for towing services and documents relating to towing services performed and rates charged for services. As towing companies are already maintaining these records, the adopted amendments to N.J.A.C. 13:45A-31.4 do not impose additional recordkeeping requirements and will not impose any additional administrative costs on towing

companies.

3. COMMENT: A commenter recommends that the amendments to N.J.A.C. 13:45A-31.4 be amended upon adoption so that the required information need only be supplied upon a request from a consumer. The commenter contends that this would reduce administrative costs for towing companies.

RESPONSE: The Director adopted the amendments to N.J.A.C. 13:45A-31.4 in order to ensure that every bill for non-consensual towing services is clear as to the services actually provided and the charges for those services. The commenter's recommended changes upon adoption contradict this intent.

4. COMMENT: One commenter points out that violations of N.J.A.C. 13:45A-31 can result in a fine of \$ 10,000. The commenter recommends that the rules be amended so that a violation of the amendments to N.J.A.C. 13:45A-31.4 would result in a significantly lower fine such as \$ 500.00. The commenter contends that this would reduce recordkeeping burdens in that towing companies would not have to keep records that demonstrate they have complied with the amendments in order to avoid a \$ 10,000 fine.

RESPONSE: The penalties for violations of N.J.A.C. 13:45A-31 are established by N.J.S.A. 56:8-13. This statute sets forth that the maximum fine for a violation is \$ 10,000. The Director has determined that it is not appropriate to limit the amount that can be charged for a violation in a rule. The Director points out that the nature of a violation is taken into account before a penalty is imposed so as to not unduly punish a violator.

5. COMMENT: A commenter recommends that the amendments to N.J.A.C. 13:45A-31.4 be amended upon adoption to permit the required information to be provided in a separate attachment to a bill and to permit towing companies to charge an administrative fee for recordkeeping. This would reduce costs on towing companies as they would not need to modify billing templates and would alleviate the burden of keeping records in order to demonstrate compliance with the amendments.

RESPONSE: As stated in response to a prior comment, there are no rules contained in Subchapter 31 that prohibit the required information from being provided as an attachment to a bill. Furthermore, it is unnecessary to change N.J.A.C. 13:45A-31.4 as the commenter recommends. Towing companies are already required to maintain records regarding services provided and rates charged for services pursuant to N.J.A.C. 13:45A-31.9. In addition, the amendments to N.J.A.C. 13:45A-31.4 do not impose additional recordkeeping requirements.

6. COMMENT: Two commenters support the amendments and commend the Director for requiring towing companies to be more open with billing practices.

RESPONSE: The Director thanks the commenters for their support.

7. COMMENT: A commenter recommends that N.J.A.C. 13:45A-31.4(j) be amended to require a bill to include a list of services provided to an insurance company. The commenter contends that insurance companies often receive a bill from towing companies for non-consensual tows stemming from automobile accidents.

RESPONSE: N.J.A.C. 13:45A-31.4(j) requires that any bill for a private property or other non-consensual tow include a list of services provided. The Director intended for this requirement to apply regardless of who receives the bill. The Director is therefore making a change upon adoption to N.J.A.C. 13:45A-31.4(j) to delete the term "consumer" and to replace it with the term "person," as defined at N.J.A.C. 13:45A-31.2, to clarify that this rule applies to any "person," including an insurance company, that is provided with a bill for a private property or other non-consensual tow.

8. COMMENT: One commenter recommends that N.J.A.C. 13:45A-31.4 be amended to include a new subsection that establishes that consumers and insurance companies will not be required to pay for any services that are billed for separately if those services are provided as part of a basic tow.

RESPONSE: The Director declines to establish instances wherein consumers and insurance companies are not required to pay for towing services. N.J.A.C. 13:45A-31 does not address the liability of insurance companies to pay towing bills. The rules address the conduct of towing companies engaged in private property and other non-consensual tows. Therefore, no changes will be made upon adoption as the commenter recommends.

Summary of Agency-Initiated Change:

At N.J.A.C. 13:45A-31.6(a)2vi, the telephone number for the Division is provided as "1-800-242-5846, prompt number 4." The inclusion of the "prompt number" is incorrect and is now deleted.

Federal Standard 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 amendment does not impose price, route, or service requirements on towing [page=1277] companies engaging in consensual towing services. Since the adopted amendment does not regulate

towing practices that are Federally preempted, nor are there Federal laws or standards applicable to the regulation of non-consensual towing, a Federal standards analysis is not required.

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

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

(a)-(i) (No change.)

(j) A bill for a private property tow or other non-consensual tow shall include a list of all services provided to a ***[consumer]*** ***person*** for which the towing company is charging pursuant to (a) above.

(k) A bill for a flat fee rendered for a private property or other non-consensual basic tow shall enumerate the towing services actually performed as part of the basic tow.

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. (No change.)

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.-v. (No change.)

vi. That a consumer may contact the Division of Consumer Affairs by calling 1-800-242-5846***[. prompt number 4]***;

3.-4. (No change.)

(b)-(d) (No change.)