

53 N.J.R. 1503(a)

VOLUME 53, ISSUE 17, SEPTEMBER 7, 2021

RULE ADOPTIONS

Reporter

53 N.J.R. 1503(a)

NJ - New Jersey Register > 2021 > SEPTEMBER > SEPTEMBER 7, 2021 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS

Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > OFFICE OF THE DIRECTOR

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:45A-31.2, 31.4, 31.5, and 31.6

Text

Storage Fees, Municipal Fees, and Booting Vehicles

Proposed: November 18, 2019, at 51 N.J.R. 1667(a) (see also 52 N.J.R. 197(a)). (The notice of proposal would have expired on November 18, 2020, but was extended by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022).

Adopted: July 8, 2021, by Kaitlin A. Caruso, Acting Director, Division of Consumer Affairs.

Filed: July 28, 2021, as R.2021 d.092, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 56:13-19; and P.L. 2018, c. 165.

Effective Date: September 7, 2021.

Expiration Date: January 16, 2026.

Summary of Public Comments and Agency Responses:

The official comment period ended February 28, 2020. The Director received comments from the following individuals:

1. Michael Sassano, Recovery Solutions and Title L.L.C.
2. John Tumino
3. Michael Salemme, Garden State Towing Association
4. Mary Leigh Barbusin, Executive Director, Garden State Towing Association
5. Dennis J. Boyce
6. John H. Glass, President, Garden State Towing Association, Inc.
7. Richard Wills, Managing Director, Excel Guard Corp
8. Matthew J. Giacobbe, Cleary, Giacobbe, Alfieri, Jacobs, LLC
9. Mark E. Margiotta, Esq.

1. COMMENT: Three commenters asked the Director to extend the comment period so they would have time to draft comments. RESPONSE: The Director extended the comment period from January 17, 2020, to February 28, 2020 through a notice published in the New Jersey Register on February 18, 2020, at 52 N.J.R. 197(a).

2. COMMENT: A commenter contends that the amendments will have an economic impact on towing companies as they do not clarify that some [page=1504] fees are permissible. The commenter contends the amendments conflict with State law.

RESPONSE: The proposed amendments recognized that some fees are permissible, specifically those charged for a tow authorized by a law enforcement officer and set forth in the fee schedule of a municipality or other political subdivision. The Economic Impact statement in the notice of proposal recognized that there would be a positive economic impact for towing companies as they would be able to charge these fees. The amendments at N.J.A.C. 13:45A-31.2, 31.4, 31.5, and 31.6 and P.L. 2018, c. 165, do not authorize any other fees. The amendments do not conflict with State law; they conform to the provisions at P.L. 2018, c. 165.

3. COMMENT: A commenter recommends that N.J.A.C. 13:45A-31.4 be amended to remove the phrase "or other non-consensual towing" from the regulation. The commenter's amendments would establish that the regulation of fees would only apply to private property towing.

RESPONSE: N.J.S.A. 56:13-14 requires the Director to "establish a schedule of private property and other non-consensual towing and related storage services for which a towing company may charge a service fee." Changing N.J.A.C. 13:45A-31.4 as the commenter recommends would conflict with this statutory requirement.

4. COMMENT: A commenter contends that N.J.A.C. 13:45A-31.4 should only apply when a towing company engages in private property towing. The commenter contends the rule should allow towing companies to charge a fee for additional services if they are performed.

RESPONSE: As discussed in the Response to Comment 3, N.J.S.A. 56:13-14 requires the Director to establish a schedule for non-consensual towing services and N.J.A.C. 13:45A-31.4 cannot, consistent with the statute, be changed to remove reference to non-consensual towing services.

N.J.A.C. 13:45A-3.14, as proposed, allows a towing company to charge for additional services provided when a motor vehicle is involved in an accident. When a motor vehicle has not been involved in an accident, a towing company can only charge a flat fee for a basic tow. The Director believes this provision ensures that consumers are charged an appropriate fee when a private property or non-consensual tow is performed and will not change N.J.A.C. 13:45A-31.4 as the commenter recommends.

5. COMMENT: A commenter contends that the regulations must be amended to allow property owners to tow vehicles from their property. The commenter contends that towing companies will not tow vehicles from private property as they are afraid that they will be sued or fined.

RESPONSE: The rules permit towing companies to perform private property towing.

6. COMMENT: A commenter recommends that N.J.A.C. 13:45A-31.4 be amended to permit towing companies to charge a notification fee for sending a notice to an owner of a vehicle that has been towed.

RESPONSE: Towing companies are not prohibited from sending a notification to the owner of a towed motor vehicle. The cost of sending such notifications would be incorporated into the flat fee charged for a basic tow pursuant to N.J.A.C. 13:45A-31.4(a)1.

7. COMMENT: A commenter recommends that N.J.A.C. 13:45A-31.4(a)1 be amended to clarify that a basic tow includes any ancillary services that are components of a routine tow.

RESPONSE: The definition of "basic tow" at N.J.A.C. 13:45A-31.2 establishes the ancillary services that are the components of a routine

tow. It is unnecessary to change N.J.A.C. 13:45A-31.4(a)1 as the commenter recommends.

8. COMMENT: A commenter asks how he should determine rates for towing services when there are no town ordinances that set a fee schedule for towing.

RESPONSE: The Director does not set fees for towing services; a towing company can determine the fees it will charge, as long as those fees are not unreasonable, as established at N.J.A.C. 13:45A-31.5.

9. COMMENT: N.J.A.C. 13:45A-31.4(a)2 permits a towing company to charge fees for additional services when a motor vehicle is involved in an accident. The regulation provides a list of the services for which a fee can be charged. A commenter recommends that N.J.A.C. 13:45A-31.4(a)2 be amended to remove reference to a motor vehicle being involved in an accident and to permit a towing company to charge these fees when it provides private property towing services.

RESPONSE: The definition of "basic tow" at N.J.A.C. 13:45A-31.2 includes all of the components that are part of every tow. This definition prevents towing companies from charging separate fees for services that are components of every tow. The items listed at N.J.A.C. 13:45A-31.4(a)2 are additional services that are specific to the towing of motor vehicles involved in accidents. A consumer who does not need these additional services for non-accident towing, should not have to pay for these services as part of a basic tow.

10. COMMENT: A commenter contends that town ordinances do not have rates for booting and asks what the fee schedule should be for booting.

RESPONSE: The Director does not set fees for towing services, including fees for removing of immobilization devices, such as booting. A towing company can determine the fee it will charge for removing an immobilization device, as long as that fee is not unreasonable, as established at N.J.A.C. 13:45A-31.5.

11. COMMENT: N.J.A.C. 13:45A-31.4(a)3 would permit towing companies to charge a fee for the removal of an immobilization device, such as a booting device or a windshield obstruction device, when no other fee has been charged pursuant to N.J.A.C. 13:45A-31.4(a)1 or 2. A commenter recommends that the Director not adopt N.J.A.C. 13:45A-31.4(a)3 and instead amend N.J.A.C. 13:45A-31.4(a)2 to include removing an immobilization device. As discussed in the Response to Comment 9, the commenter also recommended that N.J.A.C. 13:45A-31.4(a)2 be amended so that it only applied to private property towing services.

RESPONSE: The commenter's recommended amendment would permit a towing company to charge a fee for removing an immobilization device, such as a booting device or a windshield obstruction device, from a motor vehicle in addition to the fees charged for towing the motor vehicle. This would be contrary to the intent of N.J.A.C. 13:45A-31.4(a)3, which is to permit a towing company to charge a fee for removing an immobilization device only when the motor vehicle has not been towed. The Director will not change the rule as the commenter recommends.

12. COMMENT: A commenter asks that consumers be required to take part in a mediation process before bringing a complaint to the Division of Consumer Affairs.

RESPONSE: Consumers are not required to engage in mediation prior to bringing a complaint to the Division. N.J.A.C. 13:45A-31.4(f) requires a towing company to attempt to resolve a dispute with a consumer if the consumer disputes a fee charged by the towing company. If a consumer does not dispute a fee with a towing company and decides to complain directly to the Division, the Division will consider that complaint as it would any other complaint. The Director declines to make changes to this process as part of this rulemaking.

13. COMMENT: A commenter points out that P.L. 2018, c. 165, permits a towing company to charge a fee for a non-consensual tow if the tow is authorized by a law enforcement officer and the fee is from a duly-authorized fee schedule established by a municipality or other political subdivision of this State. The commenter also points out that N.J.A.C. 13:45A-31.4(g)1 and 2 and 31.5(c)1 and 2 permit a towing company to charge a fee for a non-consensual tow if the tow is authorized by a law enforcement officer and the fee has been established by a municipal ordinance or resolution or a contract between a municipality and the towing company. The commenter contends that leaving out reference to "or other political subdivision in this State" in these regulations will cause confusion and will lead to litigation claims. The commenter recommends that the phrase "or other political subdivisions in this State" be added at N.J.A.C. 13:45-31.4(g)1 and 2 and 31.5(c)1 and 2.

RESPONSE: The Director has changed N.J.A.C. 13:45-31.4(g)1 and 2 and 31.5(c)1 and 2 to include the phrase "or other political subdivisions in this State."

14. COMMENT: N.J.A.C. 13:45A-31.4(g) permits a towing company to charge a reasonable fee for non-consensual towing or related storage services if the tow is authorized by a law enforcement officer and the fee has been established by a municipal ordinance or a contract between a municipality and the towing company. A commenter recommends that this

provision be deleted and a new N.J.A.C. 13:45A-31.4(a)2 be adopted that permits a towing company to charge a reasonable fee for non-consensual towing or storage services when the tow is authorized by a law [page=1505] enforcement officer. Such a fee could include the removal of an immobilization or booting device or a windshield obstruction device. There would be a rebuttable presumption that towing service fees, where reasonable, and are not excessive if they are charged according to a fee schedule established by municipal ordinance or by a contract between the municipality and the towing company.

RESPONSE: The commenters' recommended amendments would permit a towing company to charge a fee for removing an immobilization device in addition to a fee for towing a motor vehicle authorized by a law enforcement officer. This would be contrary to the Division's intent, which was to allow a towing company to charge a fee for the removal of an immobilization device only when the towing company does not charge a fee to tow the motor vehicle. The Director will not change the rule as the commenter recommends.

15. COMMENT: N.J.A.C. 13:45A-31.5 establishes standards for determining when a fee for private property towing or other non-consensual towing services are unreasonable. A commenter recommends that this rule be amended so that the existing provisions would only apply to private property towing.

RESPONSE: N.J.S.A. 56:13-14 establishes standards for determining if a fee for private property or other non-consensual towing services is unreasonable. As the statutory provision authorizing N.J.A.C. 13:45A-31.5 applies to non-consensual towing services, the Director will not change N.J.A.C. 13:45A-31.5 so that it applies solely to private property towing.

16. COMMENT: A commenter contends that N.J.A.C. 13:45A-31.5 should only address fees for private property towing. The rule establishes that a fee will be presumed unreasonable if it is more than 25 percent higher than the fee charged for the same services when provided with the consent of the owner of a motor vehicle, or if it is 50 percent higher than the fee charged by other towing companies operating in the same municipality from which the vehicle was towed. The commenter contends that these provisions are unclear and misleading. The commenter contends that this language should apply only to decoupling fees when an owner does not want a vehicle towed. The commenter contends that many towing companies no longer provide private property towing as the regulations are not clear.

RESPONSE: As discussed in the response to prior comments, N.J.S.A. 56:13-14 establishes that provisions regarding unreasonable fees

applies to both private property and non-consensual towing and the Director will not change N.J.A.C. 13:45A-31.5 so that it only applies to private property towing. N.J.S.A. 56:13-14 also establishes the 25 percent/50 percent standards for determining whether a fee is unreasonable. The Director will not change these statutorily dictated standards. The rules accurately reflect the statutory requirements at N.J.S.A. 56:13-14.

17. COMMENT: N.J.A.C. 13:45A-31.5(c) establishes that there is a rebuttable presumption of reasonableness for a fee charged for non-consensual towing if the tow is authorized by a law enforcement officer and the fee has been established in a municipal ordinance or a contract between the municipality and the towing company. A commenter recommends that N.J.A.C. 13:45A-31.5(c) be rewritten so that a fee for non-consensual towing or related storage services authorized by a law enforcement officer would be presumed to be reasonable if charged according to a fee schedule established by municipal ordinance or by contract between the municipality and the towing company.

RESPONSE: The commenter's recommended amendments do not change the intent or impact of N.J.A.C. 13:45A-31.5(c) and the Director will not change the rule as the commenter recommends.

18. COMMENT: A commenter asks what signage is required to address fees that may be charged regarding towing of commercial vehicles.

RESPONSE: N.J.A.C. 13:45A-31.6(a)2 establishes the signage that is required when a motor vehicle is towed from private property. This rule applies when the motor vehicle being towed is a commercial vehicle.

19. COMMENT: A commenter recommends that the Division impose a deadline for when notification must be sent to the owner or lien holder of a vehicle that has been subject to a non-consensual tow from private property. The commenter points out that statutes and regulations regarding private property towing do not require notifications to owners and lien holders, which can result in towed vehicles being unclaimed for long periods of time.

RESPONSE: Notification to the owners of motor vehicles is not required at N.J.S.A. 56:13-7 et seq., the Predatory Towing Prevention Act. The Director declines to add this requirement to what is required by statute.

Federal Standard Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted amendments.

Full text of the adoption 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-31.2 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 are components of a routine tow 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 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.

"Booting" means the act of placing, on a parked motor vehicle, a mechanical device that is designed to prohibit its usual manner of movement.

. . .

"Immobilization" includes booting, installing a windshield obstruction device, or other means of impeding the usual manner of movement of a vehicle.

"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. "Motor vehicle" also includes commercial motor vehicles as defined at N.J.S.A. 39:1-1.

"Non-consensual towing" means the towing of a motor vehicle without the consent of the owner or operator of the vehicle, regardless of the reason for the tow. "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. The term also includes immobilization of a motor vehicle.

. . .

"Private property towing" means non-consensual towing from private property or from a storage facility by a motor vehicle of a 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.

. . .

"Towing" means the moving or removing from public or private property or from a storage facility by a motor vehicle of a 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, [page=1506] 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.

. . .

"Windshield obstruction device" means a device that attaches to the outside of a motor vehicle windshield, is designed to block the driver's vision and impair the ability to operate the vehicle, and requires special removal to avoid damage to the windshield.

. . .

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.-2. (No change.)

3. Removing an immobilization device, such as a booting device or a windshield obstruction device, when no fee is charged, pursuant to (a)1 or 2 above.

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

(e) Except as set forth ***[in]*** ***at*** (f) and (g) below, a towing company shall not charge any fee for private property towing or other nonconsensual towing and related storage services not included ***[in]*** ***at*** (a) above.

(f) If a motor vehicle is subject to a non-consensual tow authorized by a law enforcement officer, a towing company may charge a reasonable fee for storage of the vehicle.

(g) A towing company may charge a reasonable fee for non-consensual towing or related storage services if the non-consensual towing of a motor vehicle is authorized by a law enforcement officer and the fee has been established by a:

1. ***[Municipal ordinance]*** ***Ordinance*** or resolution ***enacted by a municipality or other political subdivision in this State***; or

2. Contract between a municipality ***or other political subdivision in this State*** and the towing company.

(h) If a towing company charges an owner or operator of a motor vehicle a fee for a private property or other non-consensual towing service that is disputed by the person, 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]*** ***pursuant to*** N.J.A.C. 13:45A-31.5, the Director may order the towing company to reimburse the person for an amount equal to the difference between the charged fee and a reasonable fee, plus interest, as calculated pursuant to (i) below.

(i) The interest rate imposed pursuant to (h) 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.

Recodify existing (h)-(k) as (j)-(m) (No change in text.)

13:45A-31.5 Unreasonable fees

(a)-(b) (No change.)

(c) Notwithstanding (a) and (b) above, there is a rebuttable presumption of reasonableness for a fee charged in connection with non-consensual towing of a motor vehicle if it is authorized by a law enforcement officer and the fee has been established by a:

1. ***[Municipal ordinance]* *Ordinance* or resolution *enacted by a municipality or other political subdivision in this State*;** or
2. Contract between a municipality ***or other political subdivision in this State*** and the towing company.

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 person may contact the Division of Consumer Affairs by calling 1-800-242-5846;

3.-4. (No change.)

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

NEW JERSEY REGISTER

Copyright © 2021 by the New Jersey Office of Administrative Law