

41 N.J.R. 2206(a)

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## **RULE PROPOSALS**

### **LAW AND PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS**

41 N.J.R. 2206(a)

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

[Click here to view Interested Persons Statement](#)

#### **OFFICE OF THE DIRECTOR**

##### **Towing Companies**

Authorized By: David M. Szuchman, Director, Division of Consumer Affairs.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-158.

Submit written comments by July 31, 2009 to:

David M. Szuchman, Director  
State of New Jersey  
Division of Consumer Affairs  
Office of the Director  
P.O. Box 45027  
Newark, New Jersey 07101

The agency proposal follows:

#### **Summary**

The Predatory Towing Prevention Act, P.L. 2007, c. 193 ([N.J.S.A. 56:13-7](#) et seq.) sought to regulate the towing business in the State. In anticipation of the April 16, 2009 effective date of the Act's provisions requiring towing companies to register and file tariffs with the Division of Consumer Affairs (Division), the Division proposed rules at [41 N.J.R. 716\(a\)](#). P.L. 2009, c. 39, enacted on April 16, 2009, substantially

revises the Act, among other things to eliminate the registration requirements. The Division is withdrawing the original proposal and proposing these new rules.

The Act as amended imposes practice standards on persons who engage in private property and other non-consensual towing of motor vehicles. While the majority of towing companies are reputable, some towing companies engage in predatory towing practices that victimize consumers, such as charging excessive fees. The Director of the Division is proposing new N.J.A.C. 13:45A-31 to implement the Act and regulate towing companies to prevent predatory practices in tows from private property and other non-consensual tows.

Proposed new N.J.A.C. 13:45A-31.1 sets forth the purpose and scope of Subchapter 31. Proposed new N.J.A.C. 13:45A-31.2 defines words and phrases used in proposed new Subchapter 31. These definitions set forth the services that are included in a basic tow and additional towing services for a motor vehicle involved in an accident. They also clarify that any tows that are not initiated by the owner of the motor vehicle, including those arranged by law enforcement, are non-consensual tows.

Proposed new N.J.A.C. 13:45A-31.3 requires towing companies to obtain specific levels of liability, garage keeper legal liability and "on-hook" coverage insurance. Insurance policies must be obtained from a company doing business in the State.

Proposed new N.J.A.C. 13:45A-31.4 sets forth the private property and other nonconsensual towing services for which towing companies may charge fees. The services include the basic tow and additional services for a motor vehicle involved in an accident. The rule permits the Director to order a towing company to refund moneys paid for towing services if, after a good faith effort, a towing company and a consumer cannot resolve a dispute over fees and the Director finds that the towing company charged a fee for private property or other non-consensual towing that was unreasonable. A towing company that engages in private property or other non-consensual towing must take a towed motor vehicle to the company's storage facility that is closest to the site from which the motor vehicle is being towed and must record on its bill the time the motor vehicle is delivered to the storage facility. A towing company that engages in private property towing or other non-consensual towing is permitted to use and charge for special equipment to recover a motor vehicle in appropriate circumstances.

Pursuant to proposed new N.J.A.C. 13:45A-31.5, a fee for private property towing or other non-consensual towing will be presumed to be unreasonable if it is more than 25 percent higher than the fee charged by the towing company for the same towing services performed with the consent of the owner or operator of a motor vehicle, or if it is more than 50 percent higher than the fee charged for such services by other towing companies in the municipality from which the vehicle was towed. A fee will also be presumed unreasonable if it exceeds the maximum amount allowed under an applicable municipal ordinance.

Proposed new N.J.A.C. 13:45A-31.6 sets forth requirements for towing a motor vehicle from private property. It requires a towing company to have a written contract with the owner of the property before a vehicle can be towed. It also requires specific information to appear on signs on the private property and for the towing company to have authorization to tow a particular motor vehicle. The rule exempts from these requirements towing a motor vehicle that is blocking access to a driveway or if the private property is a single-family unit or an owner-occupied

property of not more than six units. Different requirements apply to tows from a residential community in which parking spaces are specifically assigned to residents.

Proposed new N.J.A.C. 13:45A-31.7 requires a towing company that engages in private property towing or other non-consensual towing to have storage facilities that are open to the public between 8:00 A.M. and 6:00 P.M. at least five days a week. Towing companies that engage in private property towing or other non-consensual towing are also required to provide for after-hours release of stored vehicles.

Proposed new N.J.A.C. 13:45A-31.8 requires certain private property towing practices and prohibits others.

Proposed new N.J.A.C. 13:45A-31.9 establishes recordkeeping requirements for towing companies that engage in private property towing or other non-consensual towing.

Proposed new [N.J.A.C. 13:31](#).10 provides that a violation of any of the rules in Subchapter 31 is a violation of the Consumer Fraud Act, P.L. 1960, c. 193 ([N.J.S.A. 56:8-1](#)).

As the Division has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to [N.J.A.C. 1:30-3.3](#).

### **Social Impact**

The proposed new rules will have a positive impact on consumers whose vehicles are towed in New Jersey. The new rules require that all towing companies have insurance. They discourage towing companies from charging unreasonable fees by creating a presumption that fees are unreasonable if they are a specified percentage above charges for the same services in a consensual tow or a different percentage above non-consensual fees charged by other towing companies in the municipality. The new rules set forth the private property and other nonconsensual towing services for which towing companies may charge, standardizing the services for which consumers may be charged directly or through insurance. The new rules require that motorists have notice that vehicles parked on private property without authorization may be towed. Private property towing companies may tow motor vehicles from private property only when a sign has been posted that alerts consumers to the possibility that their vehicles may be towed and the identity of the private property towing company that tows motor vehicles from that private property. The new rules also impose requirements on towing companies that engage in private property and other non-consensual towing, so that consumers are treated fairly and uniformly.

Towing companies that engage in private property and other non-consensual towing will benefit from having clear standards that provide guidance as to how they may legally engage in the practice of private property and other non-consensual towing.

### **Economic Impact**

Under the proposed new rules, all towing companies will incur costs to obtain insurance. But the types and amounts of insurance required by the [page=2207]

new rules are the same as those required for registering a tow truck with the Motor Vehicle Commission under [N.J.S.A. 39:3-84.8](#). The new rules set forth the private property and other non-consensual towing services for which a towing company may charge. The rules may have an economic impact on towing companies as they group tasks into standardized services for which tow companies may charge. The new rules create a presumption that a towing company's private property and other non-consensual towing fees are unreasonable if they are more than 25 percent higher than the towing company's fees for the same services performed on a consensual basis or if they are more than 50 percent higher than the non-consensual fees for such services charged by other towing companies in the municipality. This provision may have an economic impact on certain towing companies that engage in predatory pricing. The new rules also set forth recordkeeping requirements for towing companies that do private property and other non-consensual towing. The cost of keeping records in compliance with these rules will be borne by the towing companies. The new rules should have a positive economic impact on consumers because they will protect consumers from predatory pricing by towing companies for private property and other non-consensual tows.

### **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 proposed new rules do not impose price, route or service requirements on towing companies engaging in consensual towing services. As the new rules do 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.

### **Jobs Impact**

The Division does not believe that the proposed new rules will either increase or decrease the number of jobs in New Jersey.

### **Agriculture Industry Impact**

The Division does not expect the proposed new rules to have any impact on the agriculture industry in the State.

### **Regulatory Flexibility Analysis**

It is likely that the majority of towing companies employ fewer than 100 full-time individuals and will be considered "small businesses" under the Regulatory Flexibility Act (the Act), [N.J.S.A. 52:14B-16](#) et seq.

The costs imposed on small businesses by the proposed new rules will be the same costs that are imposed on all towing companies as set forth in the Economic Impact statement. The Director does not believe that towing companies will need to employ any professional services to comply with the proposed new rules. The proposed new rules do not impose any reporting requirements, but do impose compliance and recordkeeping requirements as detailed in the Summary.

As the compliance and recordkeeping requirements contained in the new rules are

necessary to adequately regulate towing companies performing non-consensual tows and protect consumers whose motor vehicles are towed, the Director believes that the rules must be uniformly applied to all towing companies and no exemptions are provided based on the size of the towing business.

### **Smart Growth Impact**

The proposed new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

### **Housing Affordability Impact**

The proposed new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed new rules concern practice requirements for towing companies.

### **Smart Growth Development Impact**

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed new rules concern practice requirements for towing companies.

**Full text** of the proposed new rules follows:

## **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 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 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.

[page=2208] "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 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 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:

[page=209] 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](#)).

### 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.

#### 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;
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 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.).