

MARK-UP

RULE 1: DEFINITIONS

For purposes of these Regulations promulgated by the Arkansas Towing & Recovery Board pursuant to ~~Act 899 of 1989 and/or Acts 1000 of 1993 and 250, 381, 392 and 841 of 1997, the same being~~ Arkansas Code Annotated 27-50-1201 et seq. , as now or hereafter amended, the following definitions, unless the text otherwise requires, shall apply:

1.16 “Person” means any individual, partnership, corporation, association, or other entity.

1.17 “Hire to Store” means the securing a vehicle(s) subject to registration for compensation, consideration, or commercial purposes.

1.18 “Hire to Tow” means operating a tow vehicle(s) for compensation, consideration or commercial purposes, but does not include operating a tow vehicle(s) to transport or otherwise facilitate the movement of a vehicle(s) that is owned by the operator or the operator's employer.

RULE 2: EXEMPTIONS

The Rules and Regulations promulgated pursuant to ~~Arkansas Act 1000 of 1993 as amended by Acts 250, 381, 392 and 841 of 1997, the same being~~ Arkansas Code Annotated 27-50-1201 et seq., as now or hereafter amended, shall not apply to the following:

A. Car carriers capable of carrying five (5) or more vehicles and ~~which that~~ have ~~authority granted by federal Interstate Commerce Commission~~ Federal Motor Carrier Safety Administration authority ~~or its successor(s).~~

B. Tow vehicles owned by a governmental entity and not used for commercial purposes.

C. If in compliance with § 27-35-112 tow vehicles that are;

1. Registered in another state;

2. Operating under Federal Motor Carrier Safety Administration authority;

and

3. Not regularly doing business or soliciting business ~~which do not regularly do business or solicit business~~ in the State of Arkansas. ~~However, any tow vehicle for which this exemption is claimed must be in compliance with 27-35-112.~~

D. A tow vehicle which is used by its owner in his private affairs, provided such tow vehicle shall not be used as an instrument to facilitate the movement of vehicles not owned by the operator or the operator's employer. ~~in any business or commercial venture.~~

RULE 5: HEARING PROVISIONS

5.11 A penalty assessed by the Board shall be paid no later than fifteen (15) days after the conclusion of the appeals process under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

5.12 If a towing company fails to pay a fine or installment payment as provided under Rule 5.11, the Board may cause the suspension of the tow vehicle license plate of the owner of the entity or individual by providing written notice to the Office of Motor Vehicles of the Revenue Division of the Department of Finance and Administration of failure to pay.

A. The notice of the failure to pay the fine ordered by the Board shall contain the following information:

1. The name of the entity or individual that is subject to the fine;
2. The vehicle identification number or other identifying information for the vehicle owned by the entity or individual that is the subject of the fine;
3. The date the board imposed the fine;
4. The amount of the fine;

5. The date the fine or installment payment became delinquent;

6. The amount of the fine or installment payments that remain delinquent.

B. When the fine or installment payment(s) paid or brought current, the Board will notify the Office of Motor Vehicle within two(2) business days by written notice including the information provided for in Rule 5.12 (A).

RULE 6: LICENSE AND TOW VEHICLE SAFETY PERMIT REQUIREMENTS

6.1 Subsequent to July 1, 1994, any member of the towing industry providing non-consent and/or consent towing services is required to obtain from the Board, and renew annually, a Tow Safety License authorizing the business to engage in towing and related services.

6.2 Subsequent to July 1, 1994, any tow vehicle as defined in A.C.A. 27-50-1201 et seq. and these Rules and Regulations which is not exempt under provisions of Rule 2 of these regulations and is being operated on Arkansas's public roadways, is required to have a valid Tow Vehicle Safety Permit issued by the Board for that vehicle displayed on its windshield.

A. Any tow vehicle used to provide non-consent towing and related services is to display a valid non-consent Tow Vehicle Safety Permit issued by the Board for that vehicle. Such tow vehicle may also be used to provide consent towing and related services.

B. Any tow vehicle used to provide only consent towing and related services is to display a valid consent Tow Vehicle Safety Permit issued by the Board for that vehicle. Such vehicle shall not be used to provide non-consent towing and related services, except if utilized in conjunction with a current certificate of insurance on file with the Board for other services rendered as part of non-consent towing, provided, however any usage of the tow vehicle in conjunction with non-consent towing shall have coverage in compliance with the insurance requirements of Rule 9.2 of these Rules and Regulations.

6.3 The Director shall issue License and/or Tow Vehicle Safety Permit(s) to any

member of the towing industry, which makes proper application reflecting qualifications required by the Board in these Rules and Regulations are met.

A. No License authorizing a business to engage, or to continue to engage, in towing and related services shall be issued until a sufficient application is filed with the Board. For purposes of these Regulations, a sufficient application for a Towing Business Safety License shall include:

(1) Information Sheet provided by the Board as part of the application completed in its entirety.

(2) Current Certificate(s) of Insurance reflecting minimum insurance coverage as prescribed by the Board in Rule 9.2 of these Regulations, and

(3) Fee as prescribed by the Board for a Towing Business Safety License.

B. No Tow Vehicle Safety Permit authorizing operation of a tow vehicle on public roadways in the State of Arkansas shall be issued until a sufficient Tow Vehicle Safety Permit application is filed with the Board. For purposes of these Regulations, a sufficient Tow Vehicle Safety Permit application shall include:

(1) Information Sheet provided by the Board as part of the application completed in its entirety. (Separate Information Sheets are not required when application is for license AND permit(s).)

(2) Inspection Form provided by the Board as part of the application reflecting Rule 7 equipment requirements are met, and that the tow vehicle was examined by a certified law enforcement officer (municipal, county, or state) who so verifies by his/her signature on the Inspection Form, along with Badge # and Agency.

(3) Pictures showing the following views

(a) ~~The License-Tow Vehicle registration tag on the tow vehicle for~~
which the permit is being requested,

(b) Driver side view of the towing vehicle showing both the name and
phone number of the business; ~~Name and phone number of business, and~~

(c) Passenger side view of the towing vehicle showing both name and
phone number of the business.

~~(e) Type of towing equipment such as: Towing
apparatus, Dollies, Trailer, .~~

(4) Tow Vehicle Safety Permit fee prescribed by the Board.

(5) Current Certificate(s) of Insurance reflecting minimum insurance
coverage as prescribed by the Board in Rule 9.2 of these Regulations.

C. No showing of public convenience or necessity need be made in support of
an application for a towing business safety License and/or a Tow Vehicle Safety Permit.

D. It shall be the responsibility of the Licensee to post Certificate of License
in a prominent location, viewable by the public, in the Licensee's place of business.

E. It shall be the responsibility of the Tow Vehicle Safety Permit holder to
affix the Tow Vehicle Safety Permit to the lower portion, driver's side, of the windshield in the
vehicle for which the Board issued the Permit.

6.4 Licenses and Tow Vehicle Safety Permits are nontransferable, from one owner to
another, from one tow vehicle to another.

A. If a Licensee ceases to be involved in the towing business, the License
issued to that business shall be returned to the Board within ten (10) days. (Any change in
ownership of a towing business nullifies the License issued to the previous owner.)

B. Any Tow Vehicle Safety Permit holder who takes ~~out of service~~ a tow
vehicle ~~out of service, for which the Board issued a Tow Vehicle Safety Permit,~~ shall remove

and destroy the Permit, and shall notify the Board the tow vehicle is removed from his fleet with in ten (10) days.

(1) A Tow Vehicle Safety Permit can only be displayed on a tow vehicle owned by the towing business to which the Board issued the Permit.

(2) A Tow Vehicle Safety Permit can only be displayed on the tow vehicle for which the Permit was issued by the Board.

6.5 A towing business License or a Tow Vehicle Safety Permit shall be issued only to a legal entity, and shall not be issued to a fictitious name. E.g., Bob Smith owns a wrecker service. Bob Smith's Wrecker Service ~~does not~~ does not constitute a legal entity. Bob Smith, or Bob Smith dba Bob Smith's Wrecker Service, or Bob_Smith's Wrecker Service, Inc. ~~does~~ does constitute a legal entity in that Bob Smith is identified as legal owner of the wrecker service.

A. Each separate location of a towing business shall require a separate License.

B. The name in which a member of the towing industry is registered with the Board must correspond with name of the insured as identified on the Certificate(s) of Insurance issued to the Board for that towing business.

RULE 7: EQUIPMENT REQUIREMENTS

7.4 For purposes of these Regulations, tow vehicles as defined in these regulations shall be classified as follows:

A. Gross Vehicle Weight Ratings:

Light Duty: 9,000 - 15,000 pounds GVWR.

Medium Duty: 15,001 - 33,000 pounds GVWR.

Heavy Duty: 33,001 pounds and over GVWR. Provided, it is recommended that the owner or

operator of any Light Duty, Medium Duty, or Heavy Duty tow vehicle, observe applicable gross vehicle weight ratings (GVWR) when transporting or attempting to transport, vehicles on public roadways of the State of Arkansas.

B. Any vehicle used in conjunction with a trailer, dolly, or other separately hitched towing-related device to transport or otherwise facilitate the movement of vehicles on public roadways is not a "tow vehicle" as defined in A.C.A. 27-50-1202(10). ~~However, the trailer, dolly, or other separately hitched towing-related device must display a current Tow Vehicle Safety Permit issued by the Board, to be located near the front left side of the trailer, dolly, or other separately hitched towing-related device.~~

(1) Provided, ~~issuance by the Board of a Tow Vehicle Safety Permit for such a~~ trailer, ~~dolly, or other separately hitched towing-related device~~ shall not ~~authorize~~ be use ~~used~~ ~~of that trailer, dolly, or other separately hitched towing-related device~~ to transport or otherwise facilitate the movement of vehicles on public roadways, except when in compliance of the following: Both the vehicle towing such trailer, ~~dolly, or other separately hitched towing-related device~~ and the trailer, ~~dolly, or other separately hitched towing-related device~~ must be in compliance with all Motor Vehicle Laws enacted by the State of Arkansas and all Arkansas State Highway Commission and Arkansas Department of Revenue Regulations applicable thereto, including but not limited to registration, lighting, and braking.

(2) The vehicle towing such trailer, ~~dolly, or other separately hitched towing-related device~~ shall have liability insurance covering injury and/or damage meeting minimum financial responsibility laws of the State of Arkansas;

(3) The weight distribution on the vehicle towing a trailer, ~~dolly, or other separately hitched towing-related device~~ and on the trailer, ~~dolly, or other separately hitched towing-related device~~ shall be coordinated so that the combination is stable during transport. In the absence of evidence to the contrary, a combination of a vehicle towing a trailer,

~~dolly, or other separately hitched towing-related device~~ shall be considered stable when observing the following weight specifications:

a. The laden weight of the vehicle towing a trailer, ~~dolly, or other separately hitched towing-related device~~ shall not exceed the Gross Vehicle Weight Rating (GVWR) of that vehicle;

b. The laden weight of the trailer, ~~dolly, or other separately hitched towing-related device~~ shall not exceed the Gross Trailer Weight Rating (GTWR) of the trailer, ~~dolly, or other separately hitched towing-related device~~; and

c. No axle of the vehicle towing such trailer, ~~dolly, or other separately hitched towing-related device~~ shall have weight in excess of the Gross Axle Weight Rating (GAWR) of that axle.

(4) A trailer, dolly, or other separately hitched towing-related device shall not be utilized as a primary tow vehicle for non-consent towing, but may be utilized by a non-consent towing business in conjunction with other services rendered as part of non-consent towing, provided, however, any usage in conjunction with non-consent towing shall have coverage in compliance with the insurance requirements of Rule 9.2 of these Rules and Regulations.

RULE 8: FEES

8.2 Each application for a towing business safety license shall be accompanied by a license fee of one hundred dollars (\$100). Each application for a tow vehicle safety permit shall be accompanied by a fee of ~~thirty-six (\$36)~~ Forty-eight (48) or ~~three-four dollars (\$3.00)~~ (\$4.00) per permit, per month for remaining months to allow the renewal of a permit to expire at time of Towing Business Safety License resulting in one annual renewal for each operator. Lost or destroyed tow vehicle safety permits will require the purchase of replacement permits at the

current permit fee. Once a Towing Business Safety License and/or Tow Vehicle Safety Permit have been issued, fees are non-refundable.

8.4 A. The initial Tow Vehicle Safety Permit issued to a member of the towing industry for a designated tow vehicle shall expire one year from the month in which it was issued, each subsequent permit issued to that operator shall expire in the same month as the initial Towing Business Safety License issued, if applicable, and annually thereafter, until such time the tow vehicle for which the Permit was issued changes ownership or is otherwise removed from service by the business. Tow Vehicle Safety Permits are not transferable from one vehicle to another or from one owner of the vehicle to another.

8.5 The Director shall send renewal application(s) to each licensee and tow vehicle safety permit holder at least thirty (30) calendar days prior to expiration. Any License or Tow Vehicle Safety Permit for which a sufficient renewal application is received later than 5:00 p.m. on date of expiration is subject to fee for late filing in addition to the original filing fee. (For purposes of these Regulations, "sufficient applications" for License and Tow Vehicle Safety Permit are defined in Rule 6.3(A)(B).) When a timely application for renewal of a license or tow vehicle safety permit is received by the Board, the existing license and permit subject to renewal shall not expire prior to review of the application by Board staff, provided,

A. Such application reviewed after expiration of a license or permit and found to be sufficient ~~is not~~ is not subject to fee for late renewal application filing.

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B. Such application reviewed after expiration of a license or permit and found to be insufficient ~~is~~ is subject to fee for late renewal application filing, effective upon review.

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(1) The business will be notified in writing of any insufficiency(s).

(2) Penalty as provided in Rule 4.3(A)(B) will be assessed from date of notice of insufficiency(s) to the date a sufficient application is received by the Board.

RULE 9: INSURANCE REQUIREMENTS

9.1 The provisions of Rule 9 shall apply to those businesses licensed by the Board to engage in towing and related services. All towing businesses licensed under this Act shall obtain, and keep in continuous effect, all insurance coverage required in Rule 9.2, as it applies. Evidence of said insurance shall be filed with the Board in the form of a valid Certificate of Insurance.

A. Said Certificate of Insurance shall be issued to the Arkansas Towing & Recovery Board at its current mailing address.

B. Said Certificate of Insurance shall have provisions for ~~not more than a thirty (30) business day~~ notice of cancellation or material change in the policy.

C. Said Certificate of Insurance shall display the physical location of each non-consensual towing impound lot for which coverage is extended.

9.2 The minimum coverage provisions insuring the public from loss or damage that may arise to any person or property by reason of the operation of a towing business are as follows:

(A) Each tow vehicle shall have liability insurance covering injury and/or damage, except that to the towed vehicle, for which the tow truck owner is liable. Said coverage shall meet state and federal minimum financial responsibility laws for motor carriers (45CRF387.9).

(B) Each non-consent tow vehicle or consent tow vehicle, used in conjunction with non-consent towing, shall have cargo, on-hook, or similar type insurance in an amount not less than Fifty Thousand Dollars (\$50,000). For purposes of this Rule, on-hook, cargo, or any similar term, is construed to include coverage for losses (property damage) to the vehicle(s) being towed, recovered, up-righted, or transported by the insured, or his agent, where the insured is liable, whether or not such loss is due to the negligence of the insured or his agent.

(C) Each non-consent towing business shall maintain ~~premises~~ liability insurance in an amount not less than Fifty Thousand Dollars (\$50,000) to cover losses from personal injury and/or property damage incurred in the area in which vehicles impounded by the business are stored. (Ex. Garagekeepers Legal Liability)

9.3 Each Licensee shall be responsible for maintaining on file with the Board a valid Certificate of Insurance reflecting current coverage as outlined in Rule 9.2.

9.4 Any Licensee who fails to meet the requirements of Rules 9.1, 9.2 or 9.3 shall have his license and/or permit(s) immediately suspended by the Board. The Director shall notify the Licensee by mail of the suspension, and shall immediately initiate formal hearing procedures.

FINDING AND STATEMENT OF PURPOSE: Act 1061 of 2011 altered the applicability of A.C.A. § 27-50-1201 *et seq.*, declared an emergency, and became effective July 1, 2011. The subchapter now applies to a person engaged in the towing or storage of vehicles in the State of Arkansas *and that is hired to tow or store the vehicle*. Due to the change in the subchapter's applicability and the jurisdiction of the Arkansas Towing and Recovery Board, as well as the July 1, 2011 effective date of Act 1061, the Arkansas Towing and Recovery Board finds that its rules and regulations, as currently written, put the public health, safety and welfare in imminent peril of harm and therefore adopts this rule on an emergency basis, to be effective immediately.