

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 381 Department or Agency Alabama Law Enforcement Agency

Rule No. 760-X-1-25

Rule Title: Nonconsensual Towing

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? No

Is there another, less restrictive method of regulation available that could adequately protect the public? n/a

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? n/a

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer *Hel Taylor*

Date 9/18/18

(DATE FILED)
(STAMP)

APA-2

Alabama Law Enforcement Agency

NOTICE OF INTENDED ACTION

AGENCY NAME:

Alabama Law Enforcement Agency

RULE NO. & TITLE:

760-X-1-.25
Nonconsensual Towing

INTENDED ACTION:

New rule

SUBSTANCE OF PROPOSED ACTION:

Establish rules governing the use of towing and recovery services for nonconsensual towing directed by the agency of commercial motor vehicles and approve towing and recovery services rates.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

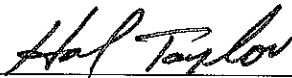
Written comments may be directed to Tim McCollum, ALEA, P.O. Box 1511, Montgomery, Alabama 36102-1511.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

November 3, 2018

CONTACT PERSON AT AGENCY:

F. Tim McCollum
Assistant Attorney General
P.O. Box 1511
Montgomery, Alabama 36102-1511



Secretary Hal Taylor

NEW RULE

760-X-1-.25 Nonconsensual Towing

The Alabama Law Enforcement Agency shall establish rules governing the use of towing and recovery services for nonconsensual towing directed by the agency of commercial motor vehicles and shall approve towing and recovery services rates as reasonable based on what is customary in practice of the industry.

(1) Definitions and Abbreviations

- (a) Agency – the Alabama Law Enforcement Agency (ALEA)
- (b) Approved Rates – The rates for services of towing operations annually approved by the Agency, updated by April 1 of each calendar year, a copy of which shall be maintained at the Agency Headquarters.
- (c) Motor Vehicle – A vehicle intended primarily for use and operation on the public roads and highways which is self-propelled.
- (d) Nonconsensual Towing – The moving, transporting, or recovery of a commercial vehicle by a towing and recovery service without the prior consent or authorization of the owner or operator of the vehicle.
- (e) Towing – The moving, transporting, or recovery from private property or from a storage facility of a person's commercial motor vehicle, the moving or removing of an unclaimed motor vehicle, as defined in Code of Alabama, 1975 § 32-8-84, or the immobilization of or preparation for moving or removing of the commercial motor vehicle, for which a fee is charged, either directly or indirectly.
- (f) Towing and Recovery Service – An individual or business entity that provides towing and recovery services at the direction of a law enforcement officer of the agency in exchange for a fee or charge.
- (g) Commercial Motor Vehicle – Any motor vehicle as defined by 49 C.F.R. Part 390.5.

(h) Trooper Commander - The commander of a troop/division, or his/her designee.

(I) Medium Duty Vehicle - the towing, transport, and recovery of a vehicle with a gross vehicle weight rating of 10,001 pounds to 26,000 pounds.

(j) Heavy Duty Vehicle - the towing, transport, and recovery of a vehicle with a gross vehicle weight rating of 26,001 pounds and greater.

(2) Service Charge Dispute Resolution Process

(a) Upon a dispute over fees and charges related to towing and recovery services for nonconsensual towing, the commercial motor vehicle owner or the motor vehicle owner's designee must file a written complaint with the towing and recovery service provider and the trooper commander or his/her designee within three (3) business days of receipt of invoice for the services provided.

(b) Upon receipt of the written complaint challenging the fees and charges, the towing and recovery service shall cease any and all storage charges that would incur during the complaint review procedure.

(c) Upon a dispute on an unpaid invoice, the towing and recovery service provider may file a complaint after thirty (30) days of the date of the invoice but no later than ninety (90) days after that same date.

(d) If no agreement for cost adjustments can be made by the commercial motor vehicle owner or the commercial motor vehicle owner's designee and the towing and recovery service within seven (7) days from the date of the submission of the complaint under subdivision (a) or (b), the complaint shall be reviewed by the trooper commander or his/her designee with jurisdiction over the location upon which the vehicle was located at the time of towing and recovery. The trooper commander or his/her designee shall make a determination on the complaint within three (3) business days as follows:

(1) If the trooper commander or his/her designee determines that the fees are reasonable, the towing and recovery service may submit additional charges for any and all storage fees that have incurred during the complaint procedure.

(2) If the trooper commander or his/her designee finds the towing and recovery charges to be in excess of the reasonable rates that are customary practice of the industry, the trooper commander or his/her designee may adjust the charges accordingly and require the towing and recovery service to comply with the revised fees and charges.

(3) Disciplinary Actions

(a) Any towing and recovery service who violates any provision within this title shall be subject to disciplinary action subject to Department of Public Safety Division Towing and Recovery Services Rules and Regulations including, but not limited to, a fine for each violation not to exceed Five Hundred Dollars (\$500.00.)

(4) Appeal Procedures

(a) Any determination or order by the agency may be appealed in accordance with the Alabama Administrative Procedure Act.

(b) The party who appeals the finding of the trooper commander or his/her designee is entitled to an administrative hearing. In all administrative hearings conducted pursuant to a request under Code of Alabama, 1975, §41-27-61, the Hearing Officer designated by the Secretary of ALEA, in addition to all other matters required by law to be determined, shall ascertain whether the findings of the trooper commander should be upheld.

(c) A request for an administrative hearing may be made by written request mailed to ALEA, DPS Division, Highway Patrol, P.O. Box 1511, Montgomery, Alabama 36102-1511.

(d) The request shall be received by the agency within thirty (30) days of the notice mail date. Failure to request an administrative hearing within the prescribed time shall constitute a waiver of the person's right to an administrative hearing and judicial review.

(e) If an appeal is timely made, the finding of the trooper commander or his/her designee shall be stayed until the result of the hearing is final.

(f) The hearing shall be scheduled as quickly as practicable and not more than thirty (30) days after the filing of the request for a hearing.

(g) The hearing shall be held at a location designated by the Secretary unless the parties agree to a different location.

(h) ALEA shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least five (5) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(i) The hearing shall be before an ALEA hearing officer or other hearing officer appointed by ALEA.

(j) The hearing will be strictly administrative in nature, and will be informal.

(k) The sole issue at the hearing will be whether the trooper commander or his/her designee's determination should be upheld.

(l) The ALEA hearing officer or other hearing officer appointed by ALEA may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant documents.

(m) The ALEA hearing officer or other hearing officer appointed by ALEA shall make a final determination that either upholds the trooper commander or his/her designee's determination or amends the determination.

(n) If the trooper commander or his/her designee's determination is upheld, compliance with the determination shall be imposed.

(o) Within thirty-five (35) days of the issuance of a final order, a person may file a petition in the circuit court of the county where the towing services were provided, the county of the complainant's residence or place of business, or Montgomery County for judicial review.

Author: F. Tim McCollum, Jeffrey Jordan

Statutory Authority: Code of Ala. 1975, §§ 41-27-60 through 41-27-63.

History: Filed September 20, 2018