

APA-3

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the 24th day of January, 2019, and filed with the agency secretary on the 23rd day of January, 2019.

AGENCY NAME: Alabama Law Enforcement Agency

Amendment New Repeal (Mark appropriate space)

Rule No. 760.X-1-25

(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

Rule Title: Nonconsensual Towing

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes from written comments

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXVI, ISSUE NO. 12, AAM, DATED September 28, 2019.

Statutory Rulemaking Authority: Code of AL. Sections 41-27-60 through 41-27-63

(Date Filed)
(For LRS Use Only)

REC'D & FILED
JAN 24 2019

LEGISLATIVE SVC AGENCY



Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.

760-X-1-.25 **Nonconsensual Towing.** These rules shall establish procedures governing the use of towing and recovery services for nonconsensual towing directed by the agency of commercial motor vehicles as defined by 49 C.F.R. Part 390.5. The Alabama Law Enforcement Agency shall approve towing and recovery service 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 to reflect market fluctuation within the industry, updated by April 1 of each calendar year, a copy of which shall be maintained at the Agency Headquarters in the Agency's Towing and Recovery Services Policy.

(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 an approved towing and recovery service without the prior consent or authorization of the owner or operator of the vehicle pursuant to the Agency's Towing and Recovery Services Policy.

(e) Towing - The moving, transporting, or recovery from private or public 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, including but not limited to Medium Duty and Heavy Duty Commercial Vehicles.

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

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

(2) Commercial Vehicle Owner to have reasonable access to the vehicle or contents. A commercial vehicle owner or his designee shall have reasonable access to the vehicle during normal operating hours for the towing or recovery business in accordance with the Agency's Towing and Recovery Services Policy.

(3) Security deposit required before removal of tractor or trailer. Before the tractor or trailer belonging to the commercial vehicle owner is removed, the commercial vehicle owner shall pay to the towing or recovery business a security deposit up to two thousand dollars (\$2,000.00).

(4) 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 accrue during the complaint review procedure.

(c) Upon a dispute over 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 or recovery. The trooper commander or his/her designee shall make a determination, in writing, 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 reasonable storage fees that have accrued 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 the 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.

(5) Disciplinary Actions.

Any towing and recovery service that violates any provision within Article 3 of Chapter 27 of Title 41 shall be subject to disciplinary action in accordance with the Agency's Towing and Recovery

Services Policy, including but not limited to a fine for each violation not to exceed Five Hundred Dollars (\$500.00).

(6) Appeal Procedures.

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

(b) The party who appeals 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 or designee 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 party's right to an administrative hearing and judicial review.

(e) If an appeal is timely filed, 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 of ALEA unless all of the parties agree to a different location.

(h) ALEA shall provide a written notice of the time and place of the hearing to all of the

parties 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 Agency 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 to be determined at the hearing will be whether the trooper commander or his/her designee's determination was justified.

(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 written determination that makes both findings of fact and conclusions of law, which shall either uphold the trooper commander or his/her designee's determination or amend the determination.

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

(o) Within thirty-five (35) days of the issuance of a final order, a party 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.

(7) Prohibitions.

(a) The Agency may not receive compensation from a towing and recovery service.

(b) A state trooper or other employee of the Agency may not do any of the following:

1. Receive compensation or receive any other incentive, monetary or otherwise, to use a particular towing and recovery service.

2. Hold any financial interest in a towing and recovery service.

3. Recommend any towing and recovery service in the performance of his or her duties.

(8) Trooper Commander responsibilities. All assignments for towing and recovery services shall be made by the trooper commander or his/her designee with jurisdiction over the location in which the vehicle is located at the time the services are needed and in compliance with the Agency's Towing and Recovery Services Policy.

Author: F. Tim McCollum, Jeffrey Jordan, Jean Brown, Meridith H. Barnes

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

History: New Rule: Filed January 24, 2019; effective March 10, 2019.