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BULLETIN

TO: Carriers Performing Involuntary Towing, Insurance Companies, Law Enforcement and Public Authorities

FROM: Brian F. Cristy, Director, Transportation Oversight Division

DATE: September 12, 2012

SUBJECT: Maximum Charges for Involuntary Towing and Storage of Motor Vehicles

THIS BULLETIN SUPERSEDES ALL PREVIOUS BULLETINS ISSUED BY THE DEPARTMENT OF PUBLIC UTILITIES REGARDING INVOLUNTARY TOWING

On June 1, 2007, the Department of Public Utilities ("Department") issued a Bulletin in which it described the maximum rates and charges allowed for vehicles involuntarily towed within the Commonwealth of Massachusetts ("2007 Bulletin"). The 2007 Bulletin expressly prohibited certain additional charges commonly imposed by carriers for services not included in the maximum rate or otherwise allowed under the regulation. This Bulletin updates and supersedes the 2007 Bulletin in order to clarify the scope and application of the Department's involuntary tow laws and regulations.

The Department's regulations set a maximum rate of \$90.00 for the involuntary towing of non-commercial vehicles, such as those ordered by the police or private property owners. See G.L. c. 159B, § 6B, G.L. c. 266, § 120D, and 220 CMR § 272.00 et seq. The maximum rate takes into account all of the services necessary to perform an involuntary tow, including one hour of service and/or waiting time (calculated from the time the carrier arrives at the scene) and up to five miles. A carrier may impose additional charges under the regulations for extra time, labor, mileage, and equipment provided that the carrier clearly indicates these charges on its tow slips

and invoices. The regulation also allows a carrier to apply a fuel surcharge, which the Department calculates and publishes on its website on a monthly basis. Carriers may not apply a different fuel surcharge rate other than the rate published by the Department for that month. Keep in mind that all of these regulations govern the costs associated with the transportation of the vehicle from the scene to the tow company's place of business.

However, the Department does not regulate the maximum rates and charges for certain additional services commonly provided by tow companies. These services include:

- Administrative fees, except those imposed on carriers under contract with a city or town or law enforcement
- Postage or mailing fees
- Protective covering (e.g. a tarp or plastic wrap)
- Absorbent materials (e.g. Speedy Dry)
- License plate and battery removal
- Vehicle and debris cleanup

If the removal of a vehicle requires additional time or labor, or requires the carrier to obtain and deploy equipment outside its capabilities, the regulations provide for such circumstances and their associated costs. Otherwise, any fees other than those expressly allowed under the Department's regulations fall outside Department jurisdiction and should be reconciled between the carrier and the vehicle owner or insurer.

The Legislature has set by statute the maximum rate for non-commercial vehicles stored by carriers following an involuntary tow ("the Statute"). See G.L. c. 159B, § 6B. Under the Statute, carriers may charge \$35.00 "per twenty-four hour period." Although the Department does not regulate the storage fee, it has historically interpreted one 24-hour period to begin from the time a towed vehicle enters the carrier's yard. Further, the \$35.00 fee applies only to "lighted, outside storage facilities enclosed by a secure fence or other secure barrier at least six feet in height." Absent these provisions, the carrier is only entitled to half the statutory amount (i.e. \$17.50 per 24-hour period). Please note that the Statute does not address, nor does the Department regulate, "gate" or "yard" fees. However, the issue of gate or yard fees may be addressed by contract or other means between the carrier and others.

Finally, the Statute gives the carrier a lien on a towed vehicle; the carrier may refuse to release the vehicle pending full payment of the charges, even if those charges are in dispute. See G.L. c. 159B, § 6B; see also G.L. c. 255, § 39A. The Department recommends that carriers disclose all costs associated with the handling of any vehicle that was towed without the consent of the owner or operator rather than impose fees without the owner, operator or insurance company's knowledge.

The Department issues this Bulletin to inform interested parties about the laws and regulations that govern involuntary towing within the Commonwealth and to clarify the Department's role specific to such laws and regulations.



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BULLETIN

TO: Carriers Performing Involuntary Towing
FROM: Brian F. Cristy, Director, Transportation Oversight Division
DATE: March 20, 2017
SUBJECT: Department Tow Audit Program

Recently the Transportation Oversight Division (“Division”) of the Department of Public Utilities (“Department”) began an audit program devoted to ensuring that tow companies holding a Certificate of Compliance issued by the Department adhere to the proper rates for involuntary tows pursuant to M.G.L. c. 159B § 6B and 220 C.M.R. § 272.00. In order to conduct the audit in fair manner, each month the Division’s Towing Auditor selects a number of tow companies at random and then sends an audit notification letter to the selected tow companies requesting the submission of 90 days of tow slips/invoices. The Towing Auditor then reviews the tow company’s submitted documents against the Department’s tow regulations, 220 CMR § 272.00, to identify any violations. As of February 28, 2017, the Department has completed 41 tow audits. Thus far, the Division has identified over \$500,000 in violations, and each of the 41 audited tow companies has paid a fine and signed a Consent Agreement.

The Department has determined that the vast majority of violations identified center around mileage charges, storage charges, and, to a lesser extent, labor charges associated with charging for extra time or an extra person at the scene of the tow without properly recording beginning and end times on the tow slips/invoices.

First, regarding mileage charges, many tow slips indicated that mileage beyond the

first five miles of a tow was charged, however, the beginning and ending odometer readings from the towing vehicle were not recorded. Although the Department understands that many tow companies currently use the trip odometer readings to record mileage, 220 C.M.R. § 272 requires that the actual service vehicle odometer readings be recorded on the tow slip and be used to calculate mileage.¹

Second, the Department found that some tow slips indicated that the tow company included the first five miles of the tow in the total miles charged for the tow. This is in violation of 220 C.M.R. § 272, Table 1, which specifically states that the rate per mile over five miles is \$3.00 per mile. Therefore, in many instances, the tow company should have reduced the total miles charged by 5 miles.

Third, there were several instances where the tow slips indicated that the towed vehicle was properly charged at \$35.00 per 24 hour period for storage, as required in M.G.L. c. 159B §6B, but did not indicate when the vehicle was released. It is important to include the release date on the tow slip in order to prove that the tow company charged the correct amount for storage. Something as simple as a “P/U (date)” on the bottom of a tow slip will prove the amount of vehicle storage being charged. Also, please keep in mind, a violation occurs when the tow operator uses a calendar clock rather than a 24 hour clock which is required by M.G.L. c. 159B, § 6B.

Finally, with regard to the labor charges for extra time and/or an extra person during an involuntary tow, the Department found many instances where either the beginning or end times were recorded on tow slips, but not both. There were also instances where the times were not included on the slip at all. The failure to record this information on a tow slip is in violation of 220 C.M.R. § 272.00, Table 1 & NOTE 1.²

The purpose of the Division’s tow audit program is to ensure that regulated tow carriers performing “involuntary” tows adhere to the requirements established by statute, rules and regulations including, but not limited to, charging the correct amounts and

¹ 220 C.M.R. § 272, NOTE 3, states that “mileage is based on round trip mileage from garage to return thereto. The carrier will establish the mileage from the service vehicle odometer and must include the odometer readings on the tow slip.”

² 220 C.M.R. § 272.00, Table 1 states “Rate Per Man Hour: \$32.00 or any fraction thereof. Additional Labor is to be computed from time of leaving the carrier’s garage until return thereto. Minimum charge - One Hour.” 220 C.M.R. § 272.00, NOTE 1 states “A \$35.00 per half-hour per vehicle charge may be assessed after one hour at the scene when necessary to remove the disabled vehicle; or if requested by police or other public authority. Starting and ending time must be recorded on the tow slip.”

providing consumers with proper documentation. To assist carriers, enclosed please find copies of relevant state statutes and Department regulations specific to involuntary tows.