

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE SECRETARY
Statutory Authority: 21 Delaware Code, Section 6901(c) (21 **Del.C.** §6901(c))
2 **DE Admin. Code** 1301

FINAL

ORDER

1301 Nonconsensual Towing

NATURE OF THE PROCEEDINGS

The Delaware Department of Safety and Homeland Security (DSHS), in compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 21 of the Delaware Code, Chapter 69, Section 6901(c), proposed to amend its regulations on Nonconsensual Towing to promote public safety for nonconsensual towing initiated by the Delaware State Police. The proposed amendments sought to revise DSHS's existing Regulation 1301. The proposed amendments were published in the Register Regulations and provided for a public comment period through August 5, 2022. 26 **DE Reg.** 40 (07/01/22). DSHS received and considered public comments from three parties. After considering the comments, DSHS proposed to further amend the regulations. The proposed revised regulations were then published at 26 **DE Reg.** 304 (October 1, 2022). DSHS resubmitted a Regulatory Flexibility Analysis and Impact Statement for the proposed amended regulations, as required by 29 **Del. C.** Ch. 104. DSHS again solicited written comments from the public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the *Delaware Register of Regulations*. The public comment period was open from October 1, 2022 through November 4, 2022. During this period, DSHS received no public comments.

FINDINGS OF FACT

The public was given the required notice of DSHS's intention to adopt the proposed revised regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed regulation was submitted. No public comments were submitted to DSHS. Thus, DSHS finds that the proposed revised regulation should be adopted as submitted by DSHS.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by DSHS pursuant to 21 **Del. C.** 6901(c). The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, DSHS does hereby ORDER this 22nd day of December 2022 that the amended regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 22nd day of December 2022.

Delaware Department of Safety and Homeland Security
Nathaniel McQueen Jr., Secretary
12/22/2022

1301 Nonconsensual Towing

1.0 Authority and Statement of Purpose

- 1.1 Pursuant to ~~Section 6901(c) of Title 21 of the Delaware Code~~, the Department of Public Safety proposes to ~~adopt regulations~~ The following regulations are promulgated pursuant to 21 Del.C. §6901(c) for nonconsensual towing of abandoned or disabled vehicles, ~~or~~ and vehicles ~~from left at~~ the scene of an accident or arrest. These regulations do not ~~apply if prohibit~~ a vehicle owner or driver ~~requests a specific towing service,~~ unless, in the opinion of the Division of State Police, there may be an unreasonable time delay or traffic safety hazard from using a tow company of their choice provided no public safety concern exists.

1.0 ~~Statement of Purpose~~

- 1.2 The purpose of these regulations is to protect and promote the public safety and to maintain hazard-free streets and highways ~~by:~~ by, among other things, requiring tow vehicles and equipment to meet minimum specifications; requiring tow truck operators to be licensed and insured; and requiring tow companies and to hire only competent and responsible drivers; and by creating a more drivers. The regulations also attempt to create an equitable and uniform system of handling towing calls.

2.0 Definitions

“Approved Tower” means a towing operator that has applied to the Division for certification and been approved by the Division after meeting all criteria for approval, including but not limited to the inspection of the operator’s tow ~~vehicle(s)~~ vehicles.

~~“The Department”~~ means the Department of Public Safety.

~~“The Division”~~ means the Delaware Division of State Police.

~~“The Troop”~~ means the State Police Troop or, where appropriate, the officers and troopers thereof.

“Tow vehicle” means a motor vehicle altered or designed for, and used in the business of towing vehicles by means of a flat bed or other specially designed truck that is equipped with a tow sling, tow bar, tow plate or wheel lift apparatus, attached to the rear of the truck; or a crane or hoist that is attached to the bed or frame of the tow vehicle. Wrecker, garage tow truck, and slide back or roll back car carriers are synonymous with and included within the definition of “tow vehicle.”

“Towing” means the transportation on the streets and highways of the State of Delaware of damaged, disabled, unattended or abandoned vehicles together with personal effects ~~and/or~~ or cargo by tow trucks. Wrecking or wrecker service, tow car service, and garage tow truck service are synonymous with and included within the definition of “towing.”

“Troop” means one or more of the numbered (1, 2, 3, 4, 5, 6, 7, and 9) Division troops located throughout the state.

“Troop Area” means the ~~areas of the numbered State Police troops (1, 2, 3, 4, 5, 6, 7, and 9)~~ geographical area or territory of each Troop.

~~“Special Assigned Area”~~ means a geographical part of the Troop Area as determined by the Troop Commander for the purpose of designating one or more Approved Towers to service that area.

3.0 Tow Vehicles and Equipment

- 3.1 Tow vehicles shall not exceed the manufacturer’s gross vehicle weight or the manufacturer’s rated capacity for the towing assembly. All tow vehicle components (winches, booms, wire rope, clamps, thimbles, sheaves, guides, controls, blocks, slings, chains, hooks, and hydraulic components) must be maintained in good condition at all times.
- 3.2 The minimum standards for each class of tow vehicles shall be determined solely by the manufacturer’s specifications for the capabilities and capacities of the tow vehicles and towing equipment.
- 3.2.1 Class “A” Tow Vehicles - Minimum Specifications
- 3.2.1.1 A gross vehicle weight of at least 10,000 pounds. A crane and a winch with a rating of at least four tons must be mounted on the chassis. A roll back bed may substitute for the crane.
- 3.2.1.2 A wire rope attached to each tow vehicle winch at least 100 feet long with a minimum thickness of 3/8 inches.
- 3.2.1.3 A tow sling or wheel lift manufactured to prevent damage to the vehicle.
- 3.2.1.4 At least two safety chains to be attached between the tow vehicle and the towed vehicle.
- 3.2.2 Class “B” Tow Vehicles - Minimum Specifications
- 3.2.2.1 A gross vehicle weight rating of at least 17,500 pounds. A complete crane and winch having a rating of at least ten tons must be mounted on the chassis. A roll back bed may substitute for the crane.

- 3.2.2.2 A wire rope attached to each winch at least 100 feet long with a minimum thickness of $\frac{1}{2}$ inches.
- 3.2.2.3 A tow sling or wheel lift, or underreach manufactured to prevent damage to the vehicle.
- 3.2.2.4 A minimum of two safety chains to be attached between the tow vehicle and the towed vehicle.
- 3.2.2.5 At least two portable tail, stop and signal lamps with mounting brackets or mounting clips. The lens shall be red in color, and the lens' diameter shall be at least three inches.
- 3.2.3 Class "C" Tow Vehicles - Minimum Specifications
 - 3.2.3.1 A gross vehicle rating of at least 30,000 pounds. A complete crane and winch having a rating of at least twenty-five (25) tons must be mounted on the chassis.
 - 3.2.3.2 A wire rope attached to each winch at least 150 feet long with a minimum thickness of $\frac{5}{8}$ inches.
 - 3.2.3.3 Brakes constructed to comply with federal motor carrier safety regulations and the Delaware motor vehicle code where applicable.
 - 3.2.3.4 A tow sling or wheel lift, or underreach manufactured to prevent damage to the vehicle.
 - 3.2.3.5 At least two safety chains to be attached between the tow vehicle and the towed vehicles, or combination of vehicles.
 - 3.2.3.6 At least two portable tail, stop and signal lamps with mounting brackets or mounting clips. The lens shall be red in color, and the lens' diameter shall be at least three inches.
- 3.2.4 Accessories
 - 3.2.4.1 Each tow vehicle shall be commercially lettered with the operator's business name, city, state, and telephone number visible from both sides of the vehicle, in permanent letters at least 2 $\frac{1}{2}$ inches high.
 - 3.2.4.2 Each tow vehicle shall be equipped at all times as required by the Delaware motor vehicle code and with the following accessories:
 - 3.2.4.2.1 An amber rotor beam or strobe light mounted on the top so as to be seen when in use from front, rear, and both sides. Such beam or light is to be used only when there is a hazardous condition.
 - 3.2.4.2.2 Minimum of two work lights on the rear.
 - 3.2.4.2.3 One snatch block for each winch with matching manufacturer's rating.
 - 3.2.4.2.4 A set of scotch blocks for wheels, metal type with tail gate chains, or hydraulic rear extendable scotch blocks (Class B and C vehicles only).
 - 3.2.4.2.5 External air hookup and hoses (Class C vehicles only).
 - 3.2.4.2.6 A set of nylon recovery straps or chains rated at 25,000 pounds (Class B and C vehicles only).
 - 3.2.4.2.7 At least one broom, shovel, axe, crowbar or pry bar, set of jumper cables, flashlight, and fire extinguisher.
 - 3.2.4.2.8 Box or container to carry debris.
 - 3.2.4.2.9 Sand or commercial oil and grease absorber for a reasonably small cleanup that does not require the intervention of the Department of Natural Resources and Environmental Control.

4.0 Approved Towers

- 4.1 Applications for status as an Approved Tower shall be made in writing and under oath to the Division on forms provided by the Division. The application shall contain all information required therein and shall be ~~sent~~ directed to the Division's Traffic Control Section, Delaware State Police, P.O. Box 430, Dover, Delaware 19903-0430.
- 4.2 The Traffic Control Section shall review each application for form and completeness. The applicant must attach to the application:
 - 4.2.1 ~~business~~ Business license;
 - 4.2.2 ~~proof~~ Proof of insurance for all towing vehicles;
 - 4.2.3 ~~the~~ The driving record for each driver;
 - 4.2.4 ~~a~~ A criminal background record for each driver, and authorization for the Division to conduct future criminal background checks; and
 - 4.2.5 ~~schedule~~ Schedule of towing and storage rates.
- 4.3 ~~If the application is in good order, the Traffic Control~~ An application shall be approved if it includes all of the information and documents required by these regulations and otherwise demonstrates compliance with these regulations and applicable law. The Traffic Section will notify the applicant in writing that it has been conferred Approved Tower status, and send a copy of the application and approval to the Troop.

- 4.4 No tower will be considered for approved status unless it has continuously been in the towing business for at least twelve (12) months prior to the date the application is received. No tower will be considered for approved status unless it has at least two vehicles meeting all of the specifications in these regulations.
- 4.5 No later than January 31 of each year (but not earlier than January 2), each Approved Tower shall complete and return to the Troop Traffic Section a renewal form to be provided by the Division. The renewal form shall attest, under oath, that all of the information in the original application ~~form is either~~ remains correct and complete, ~~and/or or~~ notify the Division of any changes in the information in the original application ~~form or since~~ the last renewal form. The renewal form shall ~~attach~~ include a copy of the Approved Tower's business license, proof of insurance for each towing vehicle, driving record for each driver, and schedule of rates for towing and storage services. The renewal form ~~does not need to attach~~ shall also include criminal background records ~~except for employees newly hired or re-hired for any employee hired~~ since the date of the original application or last renewal form. The Division ~~reserves the right, based on prior authorization, to~~ may also conduct its own criminal background checks on ~~employees~~ any new or existing employee of Approved Towers.
- 4.6 An Approved Tower must notify the Troop Traffic Section in writing within ten days of the date of any change in the information supplied on the original application. For example, if the Approved Tower hires a new driver or buys a new towing vehicle, then that information must be provided to the Troop in writing.
- 4.6.1 Vehicles and Equipment
- 4.6.1.1 ~~As soon as practicable after the filing~~ Upon submission of an application, the Traffic Control Section will inspect the applicant's tow ~~vehicle(s)~~ vehicles and equipment to determine if they are fit for operation and otherwise in compliance with these regulations and the motor vehicle and traffic laws and federal motor carrier safety regulations, including but not limited to U.S. Department of Transportation rules or regulations. ~~Thereafter, the~~ The Troop in whose Troop Area the Approved Tower is assigned may conduct periodic or random inspections to determine if ~~a tow vehicle continues~~ tow vehicles continue to meet all federal, state, and local standards. If, at any time, the Troop finds that a tow vehicle does not meet the minimum specifications for its class, or is not in compliance with any federal, state, or local standards, the Troop shall immediately stop using the services of that Approved Tower until such repairs are made and the tow vehicle is re-inspected by the Troop.
- 4.6.2 Drivers
- 4.6.2.1 All tow vehicle drivers must be at least eighteen (18) years of age and have the appropriate driver's license for the Approved Tower's tow vehicle.
- 4.6.2.2 Every driver shall be competent by reason of experience or training to safely operate the type of tow ~~vehicle(s)~~ vehicles certified.
- 4.6.2.3 No driver shall have had within the last ten years: ~~two or more convictions from the date the application is submitted to the Division;~~ more than one conviction for driving under the influence of alcohol or drugs; any criminal conviction involving theft, dishonesty, or fraud; any felony conviction involving or related to the operation of a tow vehicle; or any judgment (civil or criminal) of having operated a tow vehicle in a grossly negligent manner or in a manner showing a reckless disregard for life or property.
- 4.6.2.4 The Division may disqualify particular drivers based upon a determination that they pose an unreasonable risk to public safety, notwithstanding the absence of the disqualifiers set forth in subsection 4.6.2.3 and may deny an application where the applicant does not confirm to the Division's satisfaction that it will not use or employ such drivers.
- 4.6.3 Towing Service
- 4.6.3.1 All vehicles and equipment owned and operated by the Approved Tower must meet the minimum specifications set forth in these regulations.
- 4.6.3.2 All vehicles and equipment owned and operated by the Approved Tower must provide proof of insurance for each tow vehicle to the Division at the time of its application for certification, and each year that the Approved Tower renews its certification, or upon demand by the Division.
- 4.6.3.2.1 The following minimum coverage is required:

Comprehensive Vehicle Liability Insurance	Limits of Liability
Bodily Injury	\$300,000 each occurrence
	\$100,000 each person
Property Damage	\$50,000 each occurrence
Additional Umbrella	\$1,000,000

Garage Liability Insurance	
Bodily Injury	\$100,00 each person
Garage Keeper's Insurance (owned vehicles, hired vehicles, non-owned vehicles)	
Bodily Injury	\$300,000 each occurrence
Property Damage	\$50,000 each occurrence
Worker's Compensation	as required by statute
Employer's Liability Insurance	as required by statute

<u>Comprehensive Vehicle Liability Insurance</u>	<u>Limits of Liability</u>
<u>Combined Single Limit</u>	<u>\$1,000,000</u>
<u>Additional Umbrella</u>	<u>\$1,000,000</u>
<u>Garage Liability Insurance</u>	<u>Limits of Liability</u>
<u>Combined Single Limit</u>	<u>\$1,000,000</u>
<u>Additional Umbrella</u>	<u>\$1,000,000</u>
<u>Garage Keeper's Liability</u>	<u>Limits of Liability</u>
<u>Combined Single Limit</u>	<u>\$1,000,000</u>
<u>Additional Umbrella</u>	<u>\$1,000,000</u>
<u>Workers' Compensation</u>	<u>As required by statute</u>
<u>Employer's Liability</u>	<u>As required by statute</u>

4.6.3.2.2 All insurance policies required shall be issued only by companies authorized to do business in Delaware. Coverage must provide for loss from any vehicle or contents such as radios and computers while being handled, towed or stored by the approved tower. Approved Towers must notify the Division of any modification, amendment, cancellation or substitution of any insurance policy required by these regulations within ten days the Approved Tower learns of the change in circumstances.

4.7 ~~To be eligible to provide towing services in a Troop Area or Special Assigned Area, the Approved Tower~~ Approved Towers must have a principal place of business under their exclusive control and located in that Troop Area or Special Assigned Area which is under the exclusive control of the Approved Tower, is not used by any other towing service, and is the premises listed on the Approved Tower's application their assigned areas. Each Approved Tower must maintain a telephone ~~system at that location~~ number to answer calls from the Troop duty officer twenty-four hours a day, and must maintain at least one tow vehicle and one qualified driver for that place of business. ~~The Approved Tower's place of business shall be open to the public from 8 a.m. to 6 p.m. Monday through Friday, and the business must be available to release stored vehicles on Saturdays from 8 a.m. to 12 noon, and on Sundays and holidays from 12 noon to 4:00 p.m. Towers are not required to be open during holidays and weekends, but must be available upon request to release vehicles during holidays and weekends at no additional charge.~~

4.8 The Approved Tower's storage facility must be located on the same premises or adjacent to its principal place of business ~~in the Troop Area or Special Assigned Area it services.~~ The Approved Tower shall maintain a secure outside storage facility for the control and safekeeping of motor vehicles, enclosed by a fence at least six feet high to deter ~~trespass and trespass, vandalism, and tampering.~~ With the approval of the Troop Commander, an Approved Tower may use a satellite storage facility on a seasonal basis that is not located on or next to its principal place of business if the satellite facility will be more convenient for the public. The Approved Tower will operate that satellite facility in accordance with the conditions ~~of operation in Section 4.4 above and provisions of this regulation.~~

4.9 The Approved Tower must be able to provide emergency service, twenty-four hours a day, seven days a week, 365 days a year within ~~the Troop Area or within a Special Assigned Area if such area is designated.~~ An Approved Trooper can remove itself from the rotation list or Special Assigned Area for a specified time for vacation, sick, family leave or the like by notifying the Troop a reasonable time in advance its assigned area.

5.0 Denial of Approved Tower Status

- 5.1 ~~The Division may refuse to approve an application for Approved Tower status for failure~~ Applications for Approved Tower status may be denied for the following:
- 5.1.1 Failure to provide complete, true, timely, and accurate information on the application, inspection, or renewal forms, or for omitting any material fact on the application, inspection, or renewal forms;
 - 5.1.2 Failure to satisfy or meet any of the requirements of these regulations;
 - 5.1.3 Failure to submit to a tow vehicle inspection; ~~or~~
 - 5.1.4 Failure to have obtain or maintain any federal, state, or local license required for the operation of a towing service or tow vehicle or for its ~~drivers.~~ drivers; or
 - 5.1.5 Any of the reasons set forth below for revocation of approved status.

6.0 Towing Service Allocation System

- 6.1 ~~Based on the needs of public safety, the Troop Commander may designate part of the Troop Area as a Special Assigned Area to be served by one or more Approved Towers taking into account such criteria as, but not limited to, motor vehicle accident statistics; traffic patterns; and other relating to the response time of towing companies; the density of approved towing companies; and prior history of reliable and expeditious towing services.~~
- 6.2 ~~Each Troop Commander shall have the discretion, based on the needs of public safety, to designate one or more Approved Towers to provide all non-consensual towing services in either the Troop Area or a Special Assigned Area. The Troop Commander shall establish the number of Approved Towers based on the need to maintain adequate and timely public service to minimize management of a rotation system. The Troop Commander may revise the number of Approved Towers if he or she finds that the public is not being appropriately served by the existing number of towers.~~
- 6.3 ~~If there are more than one Approved Tower for the Troop Area or Special Assigned Area, they shall be placed on a rotating list and shall be called by the Troop duty officer to remove a wrecked, disabled, stolen or abandoned vehicle, or a vehicle following an arrest, according to the tower's placement on a Troop towing rotation list for that area and according to the tow vehicle classification for the size of the vehicle to be towed. Approved Towers will be called in succession from the top of the list. An Approved Tower shall promptly respond to a call with a tow vehicle classified to meet or exceed the size of the vehicle to be towed. If an Approved Tower truck does not respond to a request for service, that tower shall be rotated to the bottom of the list.~~
- 6.4 ~~Approved Towers will be listed only once on each list and only in the name under which they are certified under these regulations. It is prohibited for an Approved Tower to receive multiple listings or classifications using a different or fictitious name for tow vehicles operating out of the same location or out of different locations within the same Troop Area.~~
- 6.5 ~~Approved Towers shall be on-call twenty-four hours a day, seven days a week, and shall have no more than one day and one night telephone number. Answering services are not permitted for purposes of responding to calls under these regulations. The Approved Tower must acknowledge the rotation call by contacting the duty officer at the Troop within five minutes after the rotation call. If the Approved Tower does not acknowledge the call, or calls to say it will not or cannot respond, then the duty officer shall cancel the call, rotate the Approved Tower to the bottom of the list, and call the next Approved Tower on the list. When an Approved Tower responds to a call to remove an abandoned vehicle, the Approved Tower shall not be rotated to the bottom of the rotation list but shall remain at the top of the list for the next available call.~~
- 6.6 ~~Out-of-area towing requests are permitted in the event of an emergency or the absence of a tow vehicle of proper classification, or the unavailability of any Approved Tower. In the event of specialized recovery requirements not otherwise met by Approved Towers, the Troop may call specialized recovery equipment on a nearest available basis.~~
- 6.1 Troop Commanders may designate one Approved Tower to be the exclusive tower for the Troop Area or may designate multiple Approved Towers for the Troop Area. In making this decision, factors to consider may include:
- 6.1.1 Needs of public safety and efficiency of service;
 - 6.1.2 Traffic patterns and accident statistics;
 - 6.1.3 The density of approved towing companies;
 - 6.1.4 Prior history, if any, of response times and reliable and expeditious towing services; and

6.1.5 Any other factor the Troop Commander, in their sole discretion, may deem relevant.

6.2 If multiple Approved Towers are to serve a Troop Area, they may be assigned specific geographical areas, within the Troop Area, in which each shall be the exclusive tower. Alternatively, towers may be placed on a rotating list for the entire Troop Area. Troop Commanders shall establish the number of Approved Towers based on the factors in subsection 6.1 and to minimize the management of a rotating system. The Troop Commander may revise the number of Approved Towers if there is a determination that the public is not being appropriately served by the existing number of towers.

6.3 Rotating System

6.3.1 Approved Towers shall be called by the Troop to remove vehicles according to the towers' placement on the rotating list, taking into account the tow vehicle classification for the size of the vehicle to be towed. Approved Towers will be called in succession from the top of the list.

6.3.2 The Approved Tower must acknowledge the rotation call by contacting the duty officer at the Troop within five minutes after the rotation call. If the Approved Tower fails to answer or timely return the call, or responds but does not provide adequate assurance of a prompt and reasonable response, the Troop may rotate the Approved Tower to the bottom of the list and call the next Approved Tower.

6.3.3 An Approved Tower shall promptly respond to a call with a tow vehicle classified to meet or exceed the size of the vehicle to be towed. If an Approved Tower truck does not respond to a request for service, or does not maintain a vehicle with the needed classification, that tower shall be rotated to the bottom of the list.

6.3.4 Absent exigent circumstances, when an Approved Tower responds to a call to remove an abandoned vehicle, the Approved Tower shall not be rotated to the bottom of the rotation list but shall remain at the top of the list for the next available call.

6.3.5 Approved Towers will be listed only once on each list and only in the name under which they are certified under these regulations. Approved Tower shall not receive multiple listings or classifications through the use of different or fictitious names.

6.4 Troop Commanders have the discretion to request the assistance of Approved Towers from other approved areas or who are not the next tower on a rotating list where, in their discretion, doing so is needed to address an emergency or other public safety concern. In the event of specialized recovery requirements not otherwise met by Approved Towers, the Troop may call specialized recovery equipment on a nearest available basis.

6.5 In the event an Approved Tower loses approved status, Troop Commanders shall have the sole discretion to redistribute the tower's territory to other Approved Towers.

7.0 Recovery Procedures at Scene of Accident

7.1 Approved Towers shall not use sirens, mechanical or electronic, but shall use rotating beacons or strobes when in the actual process of recovering a vehicle from the scene of an accident, or while towing that vehicle under conditions that present a potential hazard to the public.

7.2 Approved Towers shall sweep all glass and remove all debris from the highway and the right-of-way promptly and prior to leaving the incident or collision scene. Approved Towers shall also spread sand or a commercial oil and grease absorber over small spills of oil, anti-freeze, or other fluids.

7.3 Approved Towers shall follow instructions issued by any on-the-scene Trooper with respect to the preservation of physical evidence that may be lost or contaminated where towing, removing or storage of any wrecked, disabled, or abandoned vehicle is involved.

7.4 When the owner or operator of a vehicle surrenders physical custody of a vehicle, the Trooper shall prepare ~~in triplicate~~ a vehicle storage form with an inventory of its contents and a description of any damage to the vehicle or its contents. The inventory shall ~~be signed by the Trooper and the Approved Tower, and shall~~ indicate whether the Trooper has instructed that the tower should withhold repossession or delivery of the vehicle to the rightful owner or his the owner's agent. ~~The original will be for the Troop records, a copy for the towing service's record, and a copy to be given to the vehicle's owner or agent, to present to the towing service in order to release the vehicle.~~

8.0 Prohibited Acts

8.1 No Approved Tower shall stop at the scene of an accident or at or near a disabled vehicle for the purpose of soliciting an engagement for towing service, unless directed to do so by a Trooper.

8.2 No Approved Tower shall, without authorization from the Troop, move any vehicle from any public highway, street, or other public area when such vehicle has been abandoned, stolen or damaged as the result of an accident, or following an arrest. Approved Towers may move a vehicle damaged as the result of an accident if the removal is for the purpose of extracting a person from the wreckage or to remove an immediate hazard to

life, person, or property. In no event shall any such movement be more than is reasonable or necessary under the circumstances then existing. When movement is necessary, the Approved Tower shall be able to identify the original resting place of the vehicle.

9.0 Rates

- 9.1 Approved Towers shall charge reasonable fees for towing and storage comparable to other towers providing similar services in the Troop Area. Approved Towers shall negotiate in good faith any concerns the Division may have regarding any rates it determines are unreasonable and not commensurate with rates typically charged in similar areas or communities.
- 9.2 The Approved Tower's basic towing or service fees shall be furnished with the certification application and the annual renewal form. These fees should include:
- 9.2.1 ~~the~~ The base tow charges for day and night; storage charges per day;
- 9.2.2 The base charge for use of winch and dollies; and
- 9.2.3 ~~the~~ The base charge for road service for vehicles requiring fuel, battery jumps, belts, etc.
- 9.3 If there is an interim change in any rate charged by the Approved Tower, it must be reported to the Traffic Control Section within ten days.
- 9.4 For vehicles that are required to be stored as evidence, Approved Towers shall negotiate in good faith caps on total storage costs.

10.0 ~~Subcontracting~~ Delegating, Subcontracting, and Assignment

- 10.1 No Approved Tower shall delegate or subcontract, on a formal or informal basis, any request for nonconsensual towing service from the Division, or delegate or request assistance from another tower to respond to such a call, or refer a call to another tower or substitute for each other, unless approved in advance by the Troop for good cause.
- 10.2 ~~An~~ These regulations are not intended to create a binding contract between the Division and Approved Towers. Accordingly, an Approved Tower's certification, place on the towing rotation system, ~~or Special Assigned Area or assigned area~~, cannot be sold, leased, assigned, transferred, pledged, surrendered or otherwise encumbered or disposed of to another towing operator, person, or entity. A successor towing service must make a new application for certification to the Division under these regulations. Upon the sale, lease, assignment, transfer, pledge, surrender, or other encumbrance or disposition of the Approved Tower, its business, name, or all or substantially all of its assets, the certification approval terminates immediately by operation of law and that Approved Tower will be dropped from the approved towing list.
- 10.3 These regulations supersede all prior regulations, contracts, agreements, arrangements, or understandings, formal or informal, regarding nonconsensual towing at the request of the Division. ~~These regulations constitute whatever written notice of termination may have been required by those prior regulations, contracts, agreements, arrangements, or understandings. These regulations will take effect one hundred and twenty (120) days after their final publication in the Delaware State Register to allow towing services that currently do business with the Division to make application to the Division for certification under these regulations.~~

11.0 Loss of Approved Status

- 11.1 The Division may revoke the approved status of any Approved Tower if the Approved Tower or, where applicable, one of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has:
- 11.1.1 ~~(1) violated~~ Violated any of these regulations;
- 11.1.2 ~~(2) made~~ Made a false or misleading statement of fact or omission of a material fact to the Division in connection with the application, inspection, or renewal;
- 11.1.3 ~~(3) subcontracted~~ Subcontracted any towing work;
- 11.1.4 ~~(4) been~~ Been found bankrupt, insolvent, or in receivership;
- 11.1.5 ~~(5) been~~ Been the subject of two or more substantiated complaints within any twelve-month period from citizens about the Approved Tower's nonconsensual towing services, including but not limited to complaints about charging unreasonable rates for towing or storage, or the refusal to release a vehicle after presentation of sufficient proof of ownership and payment of authorized charges;
- 11.1.6 ~~(6) the cancellation or non-renewal of~~ Failed to carry the required insurance on any of the Approved Tower's tow trucks or for the operation of the tower's business, or the loss of any required federal, state or local license required for the operation and driving of a tow vehicle; or

11.1.7 ~~(7) was Been~~ unavailable to respond to a Division dispatch or failed to respond to a Division dispatch on at least three occasions within any six month period, or did not have at least a seventy-five (75) percent response rate for calls within any twelve month period. ~~The Division may also revoke the approved status of any Approved Tower which employs or uses any driver who has, during the period of certification:~~ (8) ~~been convicted of driving under the influence of alcohol, narcotics, or dangerous drugs during the period of certification;~~ (9) ~~has had his or her driver's license suspended or revoked;~~ (10) ~~been convicted of any crime involving theft, fraud or dishonesty, or any felony involving the operation of a tow vehicle, or been adjudged (civilly criminally) to have operated a tow vehicle in a grossly negligent manner or in a manner showing a reckless disregard for life or property;~~ or (11) ~~has imperiled the safety of the public.~~

11.2 The Division may also revoke the approved status of any Approved Tower that continues to employ someone (despite a Division request for them not to employ) who has:

11.2.1 Been convicted of driving under the influence of alcohol, narcotics, or dangerous drugs during the period of certification;

11.2.2 Had their driver's license suspended or revoked;

11.2.3 Been convicted of any crime involving theft, fraud or dishonesty, or any felony involving the operation of a tow vehicle, or been adjudged (civilly or criminally) to have operated a tow vehicle in a grossly negligent manner or in a manner showing a reckless disregard for life or property; or

11.2.4 Imperiled the safety of the public.

~~11.2~~ 11.3 If there is an imminent threat to public safety, the Superintendent or his designee may summarily suspend Approved Tower status in writing with a written statement of reasons. If there is no imminent threat to public safety, the Division shall give notice to the Approved Tower in writing of its intent to revoke its approved status and the reasons therefor. If, within ~~ten~~ thirty days ~~of the date~~ from the date of the receipt of such notice to suspend or revoke, the tower requests a hearing in writing, then the Division will schedule a hearing within ~~thirty~~ sixty days of the tower's request before the Superintendent or his designee. The decision of the Superintendent or his designee shall be in writing and shall be final.

6 DE Reg. 206 (08/01/02)

26 DE Reg. 708 (02/01/23) (Final)