

certification that it has a program providing for an initial drug test for anyone seeking to be a commuter service driver;

UV. a copy of the applicant's written preventive maintenance program for its motor vehicles as required by 18.3.4.11 NMAC;

VW. a contact person, ~~and~~ telephone number and/or **email address** for the commission to ~~call~~ **use** in the event of a **question, inquiry or** complaint;

WX. the ~~notarized~~ **verified** oath of the applicant **pursuant to Section 65-2A-3(MMM) NMSA 1978**, attesting that all statements in the application are true and correct;

XY. the application fee required by Section 65-2A-36 NMSA 1978; and

YZ. a statement disclosing any other operating authority(ies) owned or operated by the applicant including any partial interest in any other operating authority(ies), **and certifying that the operating authority sought in the application does not duplicate the operating authority of the same kind and for the same territory already held by the motor carrier.**

18.3.12.6 OBJECTIVE: The purpose of this rule is to establish requirements for towing services subject to the limitations ~~in~~ **and policy of** 49 U.S.C. 14501. **The clearing of public highways and roads is a matter of public safety, which cannot be reasonably accomplished by state and local law enforcement officials, unless uniform maximum rates for service are required for tows requested or directed by law enforcement or other safety officials. Public safety also requires secure storage yards for vehicles and reasonable access to towed vehicles, and particularly requires reasonably rapid access to operable vehicles that have been towed as the result of trespass tows, which may unexpectedly deprive members of the public of transportation as well as the personal items stored in their vehicle. Reasonable proximity of the carrier's office and books and records is required for efficient and effective inspections of safety and financial responsibility requirements, as well as the public's ability to retrieve towed vehicles.**

18.3.12.7 DEFINITIONS: In addition to the definitions in Section 65-2A-3 NMSA 1978 and 18.3.1.7 NMAC, as used in this rule:

A. **MVD** means the motor vehicle division of the New Mexico taxation and revenue department;

B. **consensual tow means a motor vehicle tow which has not been directed or requested by a law enforcement official, and for which actual consent has been obtained by the towing service from the owner or operator of the vehicle prior to the tow;**

C. **nonconsensual tow has the meaning given in Section 65-2A-3(JJ) NMSA 1978 for purposes of this rule, regardless of whether the owner or operator of the towed vehicle has consented to a tow requested or directed by a law enforcement official;**

D. B. **normal business hours** means any eight (8) hours between the hours of 8:00 a.m. to 5:00 p.m. excluding one (1) hour lunch on every weekday excluding state recognized holidays;

E. C. **owner of a motor vehicle** means a person who holds legal title to a motor vehicle or a person legally entitled to possession of the motor vehicle;

F. D. **proof of ownership** means a certificate of title, evidence of current registration of a motor vehicle or other legal documentation of ownership ~~such as~~ **including but not limited to** the vehicle owner's delegation of the power of attorney, ~~or~~ assignment of agent by notarized letter, **or a document from MVD or other reliable source identifying the current registered owner**, and sufficient other documentation to identify an individual as the person described in the documents or as the person's agent;

G. public directive tow means any nonconsensual motor vehicle tow performed at the direction or request of a law enforcement official, including tows assigned by law enforcement agencies through a rotational call system, regardless of whether the owner or operator of the towed vehicle ever consented to the tow;

H. E. storage means the safekeeping of motor vehicles entrusted to the custody of a towing service;

I. trespass tow means the nonconsensual tow of a motor vehicle which is illegally parked on property other than a public roadway, for which actual consent has been obtained by the towing service from the owner or lessee of the private property or the owner's or lessee's agent prior to the tow and for which actual consent has not been obtained by the towing service from the owner or operator of the vehicle prior to the tow, but does not include a motor vehicle tow performed at the request or direction of a law enforcement official;

J. F. unclaimed motor vehicle means a vehicle that has been placed in a storage or impound lot to which no owner or lienholder of record has asserted a valid claim after required attempts to contact the owner and lienholder have been made has the meaning given in Section 66-1-4.18 NMSA 1978.

18.3.12.14 AUTHORIZATION AND PROCEDURE FOR MOVING MOTOR VEHICLES:

A. A towing service shall only perform the following tows:

(1) By consent. A warranted towing service may perform a consensual tow pursuant to the procedures specified in this rule and other applicable rules.

(2) By directive. A warranted towing service may perform a motor vehicle tow explicitly ordered by a law enforcement officer. In the event of a tow explicitly ordered by a law enforcement official, the towing service shall attempt to first obtain written authorization from a law enforcement officer and a written inventory of the contents of the vehicle. If the towing service is unable to first obtain a written authorization and inventory from a law enforcement officer, the towing service shall obtain the name of the officer ordering the tow, the agency that employs the officer, and any other identifying employment information, such as badge number, and shall perform its own inventory of the contents of the vehicle.

~~A. Written authorization required.~~

~~(1) Law enforcement requests. No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle which the towing service has been ordered to tow by law enforcement without having first obtained written authorization from a law enforcement officer and a written inventory of the contents of the vehicle, except:~~

(3) (a) Necessary for public safety. (a) Of necessity: A warranted towing service may perform a motor vehicle tow necessary for public safety, but only for the distance necessary to remove the hazard to other motor vehicles using the highway and only where:

(a) (i) when no law enforcement officer is available within a period of three (3) or more hours; and

(b) (ii) the accident or abandonment has occurred at a point on the highway which may be dangerous to other motor vehicles using the highway and it is not possible to detour other motor

vehicles around the damaged or disabled motor vehicle. ~~; the motor vehicle shall be moved only the distance necessary to remove the hazard to other motor vehicles using the highway;~~

~~(b) By order: when a law enforcement officer explicitly orders a towing service to tow the motor vehicle without written authorization; the towing service shall obtain the name of the officer ordering the tow and the agency that employs the officer.~~

(4) (2) Trespass Tows. Motor vehicles illegally parked on private property.

No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on property other than a public roadway without having first obtained written authorization from the owner or lessee of the ~~private~~ property, or the owner's or lessee's agent. ~~if the motor vehicle is illegally parked on private property;~~ Written authorization shall include the name and signature of the owner or lessee of the property or the name and signature of the property owner's or lessee's agent if different, the location of the private property, the amount of time the motor vehicle has been on the private property, a description of the vehicle, and the date and time the towing service removed the vehicle from the private property, and a statement by the owner, lessee or agent that the vehicle is illegally parked.

(a) Before towing a motor vehicle that is illegally parked on private property, the towing service shall take a digital photograph or photographs of the motor vehicle showing its position on the private property.

(b) No towing service shall attach hoisting or towing devices or move, tow or molest in any way, any motor vehicle illegally parked on commercial property or at an apartment unless the property contains signs notifying the public that illegally parked motor vehicles may be towed. Before towing a motor vehicle that is illegally parked on commercial property or at an apartment, the towing service shall take a digital photograph or photographs of the signage notifying the public that illegally parked motor vehicles may be towed.

B. Additional requirements. When towing motor vehicles, a towing service shall:

- (1) ensure that at least two wheels of the motor vehicle, front or rear, are clear of the highway;
 - (2) use a cradle or bar to provide a rigid space between the motor vehicle and the tow truck;
- and
- (3) use a cradle or rigid bar without lifting the front or rear wheels if the total gross weight of the motor vehicle, including lading, exceeds ten thousand (10,000) pounds.

C. Prohibitions. A towing service shall not:

- (1) pay or refund, directly or indirectly, any remuneration or anything of value to a private property owner or agent for the ability to perform nonconsensual tows on the private property;
- (2) transport a motor vehicle of any type by pushing;
- (3) transport a disabled motor vehicle on a dolly or other wheeled auxiliary device, except when the auxiliary device is specifically designed for, and used only for, the towing of disabled motor vehicles;
- (4) use a wheeled auxiliary device unless it is necessary to prevent further mechanical damage to the motor vehicle being moved; or
- (5) use a wheeled auxiliary device unless the nature of the existing damage prohibits moving the motor vehicle in any other way.

18.3.12.20 DEADHEAD MILEAGE: Except as otherwise provided in this rule, a towing service may ~~shall use deadheading only~~ assess deadhead mileage charges when performing a nonconsensual tow of a vehicle, and unless it is requested by the owner or operator of the towed vehicle asks or directs the towing service to tow the vehicle to a location other than the towing service's ~~not towing a motor vehicle to its~~ base of operation or ~~to a~~ storage facility. When A towing service shall calculating deadhead mileage charges in such case, miles as deadhead mileage shall not exceed total mileage less loaded mileage.

A. Total mileage calculation. Total mileage shall equal the sum of:

- (1) the mileage from the base of operation to the loading pick up point;
- (2) the mileage from the loading pick-up point to the destination; and
- (3) the mileage from the destination back to the original base of operation.

B. Loaded mileage calculation. Loaded mileage shall equal the number of miles from the loading pick-up point to the destination.

~~C. When deadhead mileage charges optional. A towing service may, but is not required to, assess allowable deadhead mileage charges during normal business hours and within municipal limits.~~

~~CD. **Excess deadhead mileage charges.** A towing service performing a public directive tow may shall assess excess deadhead mileage charges for the unloaded mileage from its base of operation to the scene and from the scene back to its base of operation when the vehicle needs to be recovered, but the vehicle is not towed. entire distance when it is called to pull a stuck but otherwise operable motor vehicle out of ice, snow, mud, or sand, and the vehicle is not towed to another location. Excess deadhead charges shall be in addition to:~~

~~_____ (1) tariffed charges for the first mile or less, if the service can be rendered within thirty (30) minutes; or~~

~~_____ (2) hourly charges for accessorial services, if more than thirty (30) minutes is required to render the service.~~

18.3.12.21 TOWING MULTIPLE VEHICLES IN ONE TRIP: When a towing service tows two (2) or more disabled vehicles during one trip, it ~~shall~~ may charge the reasonable and appropriate tariff rates for the second and succeeding motor vehicles as though each were an independent tow, including but not limited to separate charges for hookup, mileage, etc. for each vehicle, the day or night charge for the first mile or less, determined by the hour the service is requested, plus the deadhead mileage charge for each vehicle, provided that a towing service may not bill for the same mileage for unrelated tows.

18.3.12.23 STORAGE FACILITIES: Towing service includes the storage of motor vehicles. Towing service begins when the motor vehicle is entrusted to the towing service and ends when the towing service delivers the motor vehicle to the owner or the owner's agent. Storage begins when the motor vehicle arrives at the storage facility and ends when the motor vehicle leaves the storage facility.

A. Storage Facility.

A towing service that performs performing nonconsensual tows must maintain at least one (1) of the following classes of storage facility:

- (a) Type 1 - a fenced and locked area;
- (b) Type 2 - a fenced, lighted, and locked area; or
- (c) Type 3 - an enclosed, roofed and locked structure.

B. Office Location.

A towing service ~~that performs performing~~ nonconsensual tows must have its office located either ~~be located at~~ within or in the immediate vicinity of the storage facility. For purposes of this rule, "immediate vicinity" means the area within one-quarter mile (1320 feet) measured as the straight line distance between the property line of the storage facility and the property line of the property within which the office is located.

C. Staffing and Access.

(1) A towing service that performs trespass tows ~~or~~ must have a person ~~at~~ working in an office that is within or in the immediate vicinity of the storage facility during normal business hours who is able to provide the services specified in Subsections A and ~~Paragraphs (1) and (2) of Subsection~~ B of 18.3.12.24 NMAC.

(2) A towing service that performs public directive tows must have a person working at, or available to meet with the public at, the storage facility or the office in the immediate vicinity of the storage facility by appointment during normal business hours within two hours from the time of telephone call requesting an appointment, who is able to provide the services specified in Subsections A and B of 18.3.12.24 NMAC.

D. Required Signage.

(1) The office of a towing service shall have prominent signage which may be read by a person in a passing vehicle, providing the name, address and contact telephone number of the towing service. If the office is not located within the storage facility, the office signage shall also include the address of the storage facility.

(2) If the storage facility is not located where the towing service office is located, the storage facility shall have prominent signage which may be read by a person in a passing vehicle, providing the name of the towing service, the address of the storage facility, the address of the towing service office, and the contact telephone number of the towing service.

E. Lists or Logs of Nonconsensually Towed Vehicles

(1) A towing service that performs nonconsensual tows must maintain the following records in addition to all other records required by rule:

(a) a list or log of each and all vehicles currently held in the storage yard which were towed to the storage yard as the result of a trespass tow; and

(b) a list or log of each and all vehicles currently held in the storage yard which were towed to the storage yard as the result of a public directive tow.

(2) Each list or log required in this rule shall be available to provide to an employee of the transportation division of the commission or for transmission to the transportation division of the commission upon the request or directive of an employee of the transportation division of the commission. Each list or log shall contain, for each vehicle required to be listed:

(a) a description of the vehicle, including the make, model, model year, color and vehicle identification number;

(b) the date that the vehicle was towed to the storage yard;

(c) whether the owner of the vehicle or a representative of the owner has been allowed access to the vehicle, and if so, the name of the person allowed access and the date of each access; and

(d) whether the vehicle has been legally abandoned, surrendered or transferred for charges by the owner, and, if so, the type and date of legal transfer.

18.3.12.24 INSPECTION AND RELEASE OF TOWED MOTOR VEHICLES:

D. Towing services ~~may~~ shall accept payment in cash. Additionally, towing services shall accept payment ~~or by either credit card or by check.~~ Towing services shall post in a conspicuous location at their place of business which ~~alternative forms of payment, credit card or check, is~~ are accepted. Nothing in this rule shall be deemed to restrict the forms of payment that a towing service may accept.