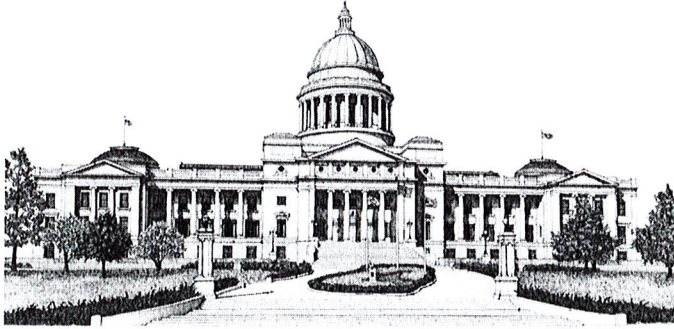


ARKANSAS REGISTER

Transmittal Sheet

Use only for FINAL and EMERGENCY RULES



Secretary of State
John Thurston
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Little Rock, Arkansas 72201-1094
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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Labor and Licensing

Department Arkansas Towing & Recovery Board

Contact Steven Rogers E-mail steven.rogers@arkansas.gov Phone 501-827-4212

Statutory Authority for Promulgating Rules A.C.A. § 27-50-1203

Rule Title: Rules of the Arkansas Towing & Recovery Board

Intended Effective Date
(Check One)

Date


<input type="checkbox"/> Emergency (ACA 25-15-204)	Legal Notice Published	<u>07/03 - 07/05/2022</u>
<input checked="" type="checkbox"/> 10 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	<u>08/05/2022</u>
<input type="checkbox"/> Other _____ (Must be more than 10 days after filing date.)	Reviewed by Legislative Council	<u>09/16/2022</u>
	Adopted by State Agency	<u>08/05/2022</u>

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Miles Morgan miles.morgan@arkansas.gov 09/16/2022
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature
501-682-4500 miles.morgan@arkansas.gov

Phone Number E-mail Address
Associate General Counsel

Title
09/16/2022

Date

**ADMINISTRATIVE RULES OF THE ARKANSAS TOWING AND
RECOVERY BOARD**

Rules effective as of
October 1, 2022

**Arkansas Towing and Recovery Board
Arkansas Department of Labor and Licensing
7418 North Hill Boulevard
North Little Rock, Arkansas 72116
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ARKANSAS TOWING & RECOVERY BOARD RULES
PURSUANT TO ARKANSAS CODE ANNOTATED 27-50-1201 et seq.

APPLICABILITY

- RULE 1: DEFINITIONS
- RULE 2: EXEMPTIONS AND OUT-OF-STATE TOW VEHICLES
- RULE 3: GENERAL ORGANIZATION OF THE BOARD
- RULE 4: POWERS OF THE BOARD
- RULE 5: HEARING PROVISIONS
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- RULE 16: POSTING VEHICLES ON WEBSITE

APPLICABILITY

These Rules promulgated by the Arkansas Towing & Recovery Board, pursuant to Act 1061 of 2011 and Ark. Code Ann. § 27-50-1201 *et seq.*, shall apply to a person:

(1) Engaged in the towing or storage of vehicles in the State of Arkansas and that is hired to tow or store the vehicle or;

(2) Performs vehicle immobilization services.

(3) A person is “hired to store” if that person secures a vehicle(s) subject to registration for compensation, consideration, or commercial purposes.

(4) A person is “hired to tow” if that person operates a tow vehicle(s) for compensation, consideration, or commercial purposes, but does not include operation of a tow vehicle(s) to transport or otherwise facilitate the movement of a vehicle(s) that is owned by the operator or the operator's employer.

(5) Tow vehicles used for noncommercial purposes; including without limitation tow vehicles used:

(A) For personal use;

(B) For transporting historic, special interests or antique vehicles; or

(C) As a parade tow vehicle.

RULE 1: DEFINITIONS

For purposes of these Rules promulgated by the Arkansas Towing & Recovery Board pursuant to Ark. Code Ann. §27-50-1201 *et seq.* as now or hereafter amended, the following definitions, unless the text otherwise requires, shall apply:

1.1 “**THE BOARD**” hereinafter referred to shall mean the ARKANSAS TOWING AND RECOVERY BOARD.

1.2 “**THE DIRECTOR**” hereinafter referred to shall mean the Director for the Board, or any other person authorized by the Board to administer its Rules.

1.3 “**TOWING INDUSTRY**” hereinafter referred to shall mean the use of tow vehicle(s) by any person, individual, partnership, corporation, association, or other entity, to tow, recover, upright, transport, or otherwise facilitate the movement of vehicles on Arkansas’s public roadways, and/or storage of vehicles including the solicitation of tow vehicle services.

1.4 “**VEHICLE**” hereinafter referred to shall mean any device by which persons or things may be transported upon a public roadway and is of the type subject to registration or any other form of transportation which may not be titled or subject to registration.

1.5 “**TOW VEHICLE**” hereinafter referred to shall mean any motor vehicle and/or related equipment subject to registration in the State of Arkansas which is used to tow, recover, upright, transport or otherwise facilitate the movement of vehicles on public roadways.

1.6 “**TOW BUSINESS LICENSE**” hereinafter referred to shall mean a certificate issued annually by the Board entitling any person, individual, partnership, corporation, association, or other entity to engage in the towing business.

1.7 “**LICENSEE**” hereinafter referred to shall mean any person, individual, partnership, corporation, association, or other entity holding a valid License issued by the Board.

1.8 “**EQUIPMENT**” hereinafter referred to shall mean any vehicle and/or related equipment used by a licensee or their employee to recover, clean-up, upright, transport, or to otherwise facilitate movement of vehicles on public roadways.

1.9 “**NON-CONSENT**” hereinafter referred to shall mean the towing, storage, or recovery of any unattended or abandoned vehicle, any disabled or inoperative vehicle or a vehicle subject to impound or removal by law enforcement without the expressed or implied permission of the vehicle owner, operator, agent or person in charge of the vehicle.

1.10 “**CONSENT**” means towing, storage, or recovery of any vehicle, which towing, storage or recovery is done with the permission of the owner or other person in charge of the vehicle.

1.11 “**TOW VEHICLE SAFETY PERMIT**” hereinafter referred to shall mean a decal issued annually by the Board to be affixed to the windshield of any tow vehicle operated by a licensed tow business displaying the year in which the permit is valid.

1.12 “**RECOVER/RECOVERY**” anything outside of the normal scope of a standard tow, to include the following: (each to be itemized on an invoice)

A. “**WINCHING**” additional use of cable and winch needed to recover or reposition a vehicle and for the purpose of invoicing, not to include cable and winch used to pull a vehicle up on rollback or trailer in a standard tow

B. **“LABOR”** additional manpower or time required to prepare a vehicle beyond the normal scope of a standard tow, may include but is not limited to site clean-up, unloading of freight, tarping, securing vehicle parts and contents or other recovery related services.

1.13 **“STORAGE”** a daily fee required by a towing company to secure and safely store a vehicle, to include release of vehicle during normal/reasonable business hours.

1.14 **“ADMINISTRATIVE FEE”** a fee charged for the time, clerical services and use of an office for the itemized invoicing of a recovery, tow, or storage bill and related processing. An administrative fee should reflect the effort needed to process a vehicle as required by law.

1.15 **“STANDARD TOW”** any tow of a vehicle subject to registration, removed from private property, accident scene, side of the roadway towed in a fashion regularly accepted as routine, to include a tow vehicle operator, preparation for the tow, response time, hook- up, loading, unloading, and transportation back to facility within a reasonable operating perimeter.

1.16 **“PERSON”** means any individual, partnership, corporation, association, or other entity.

1.17 **“FUEL SURCHARGE”** a surcharge determined by calculating a cents per mile rate utilizing the current weekly average for fuel as determined by the US Department of Energy for the Gulf Coast Region PADD3 which rises above the prior year’s annual average to offset the fluctuating cost of fuel. Beginning and ending mileage shall be documented on tow receipt.

1.18 **“AFTER HOURS RELEASE”** a fee charged by a towing/storage firm to arrange for the release of a vehicle and/or personal property at the request of the owner or other person authorized to retrieve the vehicle, after normal/reasonable business hours.

1.19 **“SET OUT FEE”** a fee charged by a towing/storage firm related to extraordinary or extenuating circumstances above and beyond the standard practice of releasing a vehicle.

1.20 **“NOTIFICATION FEE”** a fee charged by a towing/storage firm for the actual expenses incurred with meeting the notification requirements set forth in Ark. Code Ann. §27-50-1208(c)(1),

however, it is not to be charged prior to two (2) business day after the date the towing/storage firm receives the vehicle, and not to exceed amount set forth in Rule 10.3.

1.21 **"VEHICLE IMMOBILIZATION SERVICE"** means a person operating or directing others to attach a wheel clamp or other industry recognized device used to temporarily render a vehicle immobile.

1.22 **"WHEEL CLAMP"** means a device attached to a wheel of a vehicle that is intended to render the vehicle immobile.

1.23 **"TOW BUSINESS" OR "TOWING BUSINESS"** a corporation or a business entity with an alternate DBA name, filed with the Secretary of State or a DBA (Doing Business As) properly filed with the county clerk (A.C.A. §4-70-203) and regulated by the Board to be used exclusively for the operation of a tow facility, vehicle immobilization company, or a storage facility which:

- (A) Dispatches tow vehicles for non-consent or consent towing and repossession;
- (B) Stores vehicles; and
- (C) Conducts business with the general public;

1.24 **"CONSUMER COMPLAINT"** a complaint filed by a person with a vested interest as determined by the Board in the vehicle including without limitation and in accordance with the Arkansas Administrative Procedures Act the:

- A. Owner of the towed vehicle or his or her agent
- B. Lien holder of the vehicle
- C. Company that insured the towed vehicle or is liable for the damages: or
- D. Law enforcement agency.

1.25 **"OWNER PREFERENCE"** means the right of the owner, the owners agent or a competent occupant of a disabled or inoperable vehicle subject to non-consent towing, storage or recovery to request some responsible and reasonable person, gratuitous bailee, bailee for hire or properly licensed or permitted tow facility to take charge and care of the vehicle.

1.26 “OWNER PREFERENCE COMPLAINT” a complaint concerning a violation of subchapter Ark. Code Ann. §27-50-1201 *et seq.* and the circumstances associated with owner preference and consent towing verses a non-consent tow may be reviewed by the board and subsequently filed with the Board (Ark. Code Ann. §27-50-1221) by:

- A. Vehicle owner
- B. Lien holder
- C. Insurance provider: or
- D. Law enforcement officer.

1.27 “BUSINESS LICENSE NUMBER” a five (5) digit number which will be assigned to each tow business which must be permanently affixed to any permitted tow vehicle in the following manner:

- A. the Business License Number must be preceded by the letters ATRB; and
- B. the letters NC must follow the five (5) digit number if the tow vehicle is permitted as non-consent or the letter C if the tow vehicle is permitted as consent; and
- C. the business license number along with the letters must be placed in a conspicuous place near the business name on each side of the tow vehicle; and
- D. the numbers and letters must be two inches (2”) in height and easily visible from a distance of fifty (50”) feet.

1.28 “UNATTENDED” means any vehicle which is subject to non-consent towing and all of the rules and requirements to a non-consent tow shall apply. *See* Ark. Code Ann. §27-50-1202(12).

1.29 “COMMERCIAL PURPOSES” means towing, recovery or transporting of a vehicle that is associated with a business regardless of the current vehicles ownership status or whether charges were paid by a third party for services.

1.30 “PERSONAL USE” means towing, recovery transporting of a vehicle that is not associated with a business and is not used for commercial purposes as defined in this section.

1.31 “REPOSESSION” means towing, storage, or recovery of a vehicle by the vehicle lienholder, agent, or other person working on behalf of the lien holder.

RULE 2: EXEMPTIONS AND OUT-OF-STATE TOW VEHICLES

The Rules promulgated pursuant to Ark. Code Ann. §27-50-1201 *et seq.*, as now or hereafter amended, shall not apply to the following:

- A. Car carriers capable of carrying five (5) or more vehicles and that have obtained Federal Motor Carrier Safety Administration operating authority; and
- B. Tow vehicles owned by a governmental entity and not used for commercial purposes.
- C. If in compliance with Ark. Code Ann. §27-35-112 tow vehicles that are:
 - 1. Licensed in another state only if;
 - (a) The wrecker or similar vehicle is requested by the owner or the operator of the vehicle to be towed;
 - (b) The vehicle is not being towed as a result of a collision that occurred within this state; and
 - (c) The vehicle is being towed in either direction across the border between Arkansas and a neighboring state or through Arkansas in transit to another state;
 - 2. Operating under Federal Motor Carrier Safety Administration authority; and
 - 3. Not regularly doing business or soliciting business in the State of Arkansas;
- D. A tow vehicle which is used by its owner in their private affairs, provided such tow vehicle shall not be used to facilitate the movement of vehicles not owned by the owner of the vehicle or by

an employee of the owner. The burden shall be upon the owner of the tow vehicle to prove personal ownership of the vehicle being towed; and

E. A wrecker or tow vehicle if the vehicle is licensed in an incorporated city or town in a state adjoining an Arkansas city or incorporated town that is divided by a state line and the city or town in the adjoining state is of greater population than the Arkansas city or town.

RULE 3: GENERAL ORGANIZATION OF THE BOARD

3.1 The Arkansas Towing and Recovery Board shall meet at least once in each quarter at the call of the chairperson and shall continue in session until business is completed insofar as possible. Five (5) members of the Board shall constitute a quorum.

3.2 Meetings of the Board shall be held on dates and at times and locations selected by the chairperson of the Board.

3.3 Special meetings of the Board may be called at any time by the chairperson, or in their absence the vice chairperson or the acting chairperson.

3.4 The Board shall elect a chairperson annually from the membership of the Board.

3.5 Any person desiring to appear before the Board at any meeting on any matter within the jurisdiction of the Board shall, at least ten (10) business days prior to such meeting, file with the chairperson or the Director a written request in which the nature and purpose of the appearance shall be clearly and precisely stated in sufficient detail to fully apprise the Board of the basis and extent of the business. This requirement may be waived at any meeting only by majority consent of the Board members present and voting on the matter, provided, when such a request is in the nature of a complaint against a member of the towing industry under the provisions of Ark. Code Ann. §27-50-1201 *et seq.*, as now or hereafter amended, the provisions of Rule 5 shall apply.

3.6 The Director shall arrange the order of business of all meetings of the Board and shall, at least ten (10) business days prior thereto, notify all persons who are to appear before the Board at such meeting of the place, the date and the time of the meeting.

3.7 The Director shall keep and maintain on file in the Board's office a record of all proceedings of the Board. The Director shall also keep on file in the Board's office copies of all orders issued by the Board, for a period not less than three (3) years.

3.8 The Board shall be governed by the Arkansas Administrative Procedures Act, the same being Ark. Code Ann. §15-15-201 *et seq.*, as amended from time to time, and the Arkansas Freedom of Information Act, the same being Ark. Code Ann. §25-19-101 *et seq.*, as amended from time to time.

3.9 All legal process and all documents required by law to be served upon or filed with the Board shall be served or filed with the Director at the official address of the Board.

3.10 For any issue pertaining to the conduct of a Board meeting not addressed by the Rules or the Arkansas Administrative Procedures Act the latest edition of the Roberts Rules of Order shall serve as a guide.

RULE 4: POWERS OF THE BOARD

4.1 The Board shall have the power to promulgate Rules, in the manner provided by the Arkansas Administrative Procedures Act, same being Ark. Code Ann. §23-25-201 *et seq.*, as amended from time to time, necessary to carry out the intent of Ark. Code Ann. §27-50-1201 *et seq.*, as amended from time to time, and to regulate the vehicle immobilization, non-consent towing/storage and/or consent towing industry, including but not limited to:

A. Establishing reasonable licensing, insurance and safety equipment requirements for any person, individual, firm, association, company, partnership, corporation, non-profit organization, institution, or other similar legal entity engaging in vehicle immobilization, non-consent towing/storage and/or consent towing and/or related services, for safety purposes and,

B. Establishing reasonable safety equipment requirements for any tow vehicle as defined in Rule 1.3.

C. Establishing a procedure to accept and investigate consumer complaints or a Board

initiated action for a vehicle owner, lien holder or insurance company related to any violation associated with a non-consent tow, recovery, storage and/or vehicle immobilization services.

D. Determining and sanctioning excessive or unnecessary non-consensual towing, recovery, storage fees and vehicle immobilization services charged to consumers.

E. Requiring all entities permitted, licensed, or regulated under Ark. Code Ann. §27-50-1201 *et seq.*, to provide to the Board all documents in response to information requests by the Board to the investigation of consumer complaints or Board complaints against the licensee within ten (10) business days.

F. Requiring all entities permitted, licensed, or regulated by Ark. Code Ann. §27-50-1201 *et seq.*, to maintain a copy of their current maximum rate schedule with the Arkansas Towing and Recovery Board and posted in a conspicuous place and readily accessible to the public.

4.2 The Board shall have the authority to set fees for towing business licenses, vehicle immobilization business license, and for tow vehicle safety permits issued to members of the towing industry.

4.3 The Board shall have authority to impose penalties for late license and/or permit renewal application filings in an amount not to exceed the amount of fee(s) due for the license and/or permit(s) renewal(s).

A. Penalty for late License renewal application filings shall be at rate of \$5.00 per day, not to exceed amount of fee due for the license renewal.

B. Penalty for late Permit renewal application filings shall be at rate of \$1⁰⁰.00 per day, per Permit, not to exceed amount of fee due for the permit renewal.

4.4 The Board shall have authority to establish requirements and qualifications for issuance of licenses and tow vehicle safety permits to vehicle immobilization, non-consent towing/storage and/or consent towing companies as defined in these Rules

4.5 The Board shall have authority to initiate a complaint or to investigate consumer complaints related to overcharging for non-consensual towing, storage, recovery and/or vehicle immobilization service

fees, alleged violations of the provisions of Arkansas Code Annotated 27-50-1101 and 27-50-1201 *et seq.*, as now or hereafter amended, and Board Rules promulgated pursuant thereto, and the authority to pursue any remedies pursuant thereto.

4.6 The Board shall have the authority to design application forms pursuant to these Rules, as now or hereafter amended, for tow business licenses, for tow vehicle safety permits, and other forms, documents, and applications necessary to implement the rules and to require the filing of same with the Board. The Director shall keep on file a copy of each application form adopted by the Board, referencing Minutes of meeting(s) during which such form is approved.

4.7 The Board shall have the authority to issue and renew licenses and tow vehicle safety permits pursuant to Ark. Code Ann. §27-50-1201 *et seq.* and these Rules as now or hereafter amended.

4.8 The Board shall have the authority to refuse to renew, to suspend and to revoke any license or tow vehicle safety permit for any violation of Ark. Code Ann. §§27-50-1101 and 27-50-1201 *et seq.*, as now or hereafter amended, or any Rule promulgated pursuant thereto.

4.9 Any vehicle immobilization, non-consent towing/storage and/or consent towing company determined by the Board, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Administrative Procedures Act of Arkansas as amended from time to time, to have committed an act that is in violation of Ark. Code Ann. §27-50-1201 *et seq.*, as now or hereafter amended, or any Rule promulgated pursuant thereto, is subject to civil penalties, including monetary penalties, not to exceed five thousand dollars (\$5000) per offense or the suspension or revocation of any license or permit or both. Each act of violation constitutes a distinct and separate offense. Nothing in this section shall be construed to limit the right to seek judicial review of any determination of the Arkansas Towing and Recovery Board pursuant to the provisions of the Administrative Procedures Act, Ark. Code Ann. §25-15-201

4.10 In the conduct of any investigation, or hearing pursuant to any investigation, the officer conducting the hearing may administer oaths and may require testimony or evidence to be given under oath.

4.11 The Board shall have the authority to direct the execution of a summons, citation, or subpoena.

4.12 The Board shall have the authority to require, and to set minimum amounts of coverage for, liability, on-hook, drive-away, and premises insurance on the part of each Licensee.

4.13 The Board shall have the authority to establish minimum safety equipment requirements for any tow vehicle as defined in Rule 1.5.

4.14 The Board shall have the authority to establish maximum amount charged for notification required by Ark. Code Ann. §27-50-1208, as now or hereafter amended, to be sent to a vehicle owner(s) and/or lien holder(s).

4.15 The Board shall have the authority to issue fines between fifty dollars (\$50.00) and two hundred fifty dollars (\$250.00) for failure to comply with the signage provisions required by Ark. Code Ann. §27-50-1217, as now or hereafter amended.

RULE 5: COMPLAINT AND HEARING PROVISIONS

5.1 The Board shall resolve a consumer complaint within forty-five (45) calendar days after receiving the complaint.

5.2 The following guidelines shall apply to consumer complaints filed:

A. Complainant(s) must respond to a request from Board staff for additional information within ten (10) days.

(1). Failure to respond to the request for additional information is grounds for immediate dismissal of the complaint.

(2) Complainant may file a written request for an extension of time with the Board.

(3) The written request for an extension must be submitted to Board office with in ten (10) days after receiving request for additional information.

(4) If extension is granted, the Board investigator shall notify the tow company in writing of the extension.

B. The towing business must respond to a request from the Board staff for

information as well as any follow-up which may be relevant to the complaint, as determined by Board staff.

All information must be received within ten (10) business days after receiving the request;

(1) Failure to respond to a written request by a tow company will result in a daily fine of up to twenty-five dollars (\$25.00) per day until the information requested is received by the Board staff.

(2) The tow company may file a written request for an extension of time with the Board.

(3) The written request for an extension must be submitted to the Board office within ten (10) days of the post marked date of request for additional information.

(4) If the extension is granted, the Board investigator will notify the tow company in writing of the extension.

C. The Board may extend the period for the resolution of a complaint when conditions warrant such action.

5.3 Any hearing to be conducted by the Board may be held during a regular Board meeting, or a special Board meeting may be convened for that purpose.

5.4 The Director shall have authority to delay or to deny approval of any application for a license or tow vehicle safety permit if the applicant fails to meet the minimum requirements and the qualifications set by the Board. Said delay or denial shall be in writing to the applicant, stating the reason for the delay or the denial. Any applicant whose application is denied shall be advised of their right to appeal the denial to the Board.

5.5 An applicant who has been denied a license or tow vehicle safety permit by the Director may appeal by notifying the Board in writing within fifteen (15) days of date of Notice of Denial.

5.6 In the event it is determined by the Director that a license or permit has been issued in error, or that accounting records and/or bank statement reflects proper amount of license and/or permit fees was not received, the Director shall have authority to summarily suspend or revoke said license and/or permit. In such circumstance, or in the event of suspension of any licensee or permit pursuant to Rule 9.4, as now or hereafter amended, the licensed business shall be notified in writing via certified mail of his right to a hearing before the Board. If the licensed business fails to submit a request in writing for a hearing before the Board within the fifteen (15) days prescribed in Rule 5.5, said suspension or revocation shall become final. Upon decision to hold formal hearing to consider suspension or revocation of any license or tow vehicle safety permit issued by the Board pursuant to Ark. Code Ann. §§27-50-1101 and 27-50-1201 *et seq.*, as now or hereafter amended, or the Rules promulgated pursuant thereto, the Board shall notify the licensed business of his right to such hearing before the Board.

5.7 If, as the result of its own investigation, or as result of an investigation of any consumer complaint filed against a licensed business, it is determined by the Board that sufficient evidence exists that a licensed business' conduct constitutes a violation of Ark. Code Ann. §§27-50-1101 and 27-50-1201 *et seq.*, as now or hereafter amended, or the Rules promulgated pursuant thereto, the Board may invoke the following resolutions: fine respondent as set forth in Rule 4.9, reprimand respondent, suspend or revoke any license or permit issued to respondent, award financial restitution to the complainant, and/or any combination of the above at the discretion of the Board. The Board shall provide no less than fifteen (15) days advance written notice to the licensed business of said hearing.

A. Said notice shall inform respondent of alleged facts or conduct warranting a hearing and shall contain information of the right to claim, within ten (10) business days of date of notification, a hearing to appeal intended action of the Board; provided,

B. If the Board finds the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license and/or permit

may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

5.8 All evidence, including records and documents in the possession of the Board of which it desires to consider, shall be offered, and made a part of the record in the hearing. Any respondent whose rights may be affected by said hearing shall have the right to appear personally and by counsel to introduce evidence in his or its own behalf, to cross-examine witnesses, and to examine any document or other evidence submitted.

5.9 The Board shall not be bound by the technical rules of evidence, and it may admit and give probative value to any evidence which possesses such probative value as would entitle it to be accepted by reasonable and prudent men in the conduct of their affairs, provided however, that the Board shall give effect to the rules of privilege recognized by the law and may exclude incompetent, irrelevant, immaterial, or repetitious evidence and may make rulings to protect witnesses from undue harassment or oppression.

5.10 Financial restitution to the complainant will be considered as part of the penalty by the Board when a towing company or tow owner is found to have violated provisions of the rules promulgated by the Board.

A. Only actual losses which have been incurred by the complainant may be paid as restitution;

B. A payment of financial restitution to the complainant must be determined by the Board;

C. Punitive damages will not be paid to the complainant;

D. This does not waive the complainant 's right to sue in a court of law.

5.11 The Director shall maintain documents and files relative to Board business. All pleadings and motions to be filed relative to any hearing before the Board shall be in duplicate, signed, verified, dated and filed with the Director and held for a period not less than three (3) years.

5.12 In any hearing held for the purpose of affording any applicant the opportunity to show his qualifications to hold a license or tow vehicle safety permit, burden of going forward with the evidence shall be on the applicant. In hearings held for the purpose of reprimanding, suspending, revoking or fining any respondent, burden of going forward shall be on the Board, the Director or the Board's legal counsel.

5.13 All decisions by the Board shall be in writing and signed by the chairperson of the Board and shall include Findings of Fact and Conclusions of Law separately stated in an appropriate order entered in accordance therewith. A copy of the Findings of Fact and Conclusions of Law and the Order shall be sent to each party of the hearing.

5.14 A penalty assessed by the Board shall be paid no later than fifteen (15) days after the conclusion of the appeals process under the Administrative Procedures Act, Ark. Code Ann. §25-15-201 *et seq.*

5.15 If a towing company fails to pay a fine or installment payment as provided under Rule 5.11, the Board may cause the suspension of the tow vehicle license plate and registration of the owner of the entity or individual by providing written notice to the Office of Motor Vehicles of the Revenue Division of the Department of Finance and Administration of failure to pay.

A. The notice of the failure to pay the fine ordered by the Board shall contain the following information:

- (1) The name of the entity or individual that is subject to the fine;
- (2) The vehicle identification number or other identifying information for the vehicle owned by the entity or individual that is the subject of the fine;
- (3) The date the Board imposed the fine;

- (4) The amount of the fine;
- (5) The date the fine or installment payment became delinquent;
- (6) The amount of the fine or installment payments that remain delinquent.

B. When the fine or installment payment(s) paid or brought current, the Board will notify the Office of Motor Vehicle within two (2) business days by written notice including the information provided for in Rule 5.15 (A).

RULE 6: LICENSE AND TOW VEHICLE SAFETY PERMIT REQUIREMENTS

6.1 A tow business, storage facility, vehicle immobilization company providing vehicle immobilization, non-consent towing/storage and/or consent towing services is required to obtain from the Board, and renew annually, a Tow Business License authorizing the business to engage in vehicle immobilization, non-consent towing/storage and/or consent towing and related services.

A. A vehicle immobilization company does not have to obtain a separate license if the company already has a non-consent towing/storage safety license.

B. A consent tow service is required to obtain a consent registration and permit for each tow vehicle through the Board.

6.2 Any tow vehicle as defined in Ark. Code Ann. §27-50-1201 *et seq.* and these Rules which is not exempt under provisions of Rule 2 and is being operated on Arkansas's public roadways, is required to have a valid Tow Vehicle Safety Permit displayed in the lower left corner of the windshield and a business license number permanently placed on both sides the tow vehicle under the business name issued by the Board.

A. Any tow vehicle used to provide non-consent towing and related services is to display a non-consent Tow Business License Number and an annual Tow Vehicle Safety Permit issued by the Board. Such tow vehicle may also be used to provide consent towing and related services.

B. Any tow vehicle used to provide only consent towing and related services is to display a consent Registration Number and an annual Tow Vehicle Safety Permit issued by the Board. Such vehicle shall not be used to provide non-consent towing and related services.

C. The Tow vehicle Safety Permit must be placed on the tow vehicle for which it is intended immediately upon receipt. Failure to comply with this rule could result in a civil penalty of up to \$5,000.00 and/or the suspension or revocation of tow vehicle permit.

6.3 The Director shall issue a tow business license, a consent registration, a permanent business license number and/or an annual tow vehicle safety permit(s) to any towing, storage, vehicle immobilization company providing vehicle immobilization, non-consent towing/storage and/or consent towing company, which makes proper application reflecting the qualifications required by the Board in these Rules are met.

A. No License authorizing a business to engage, or to continue to engage, in non-consent towing/storage, and/or consent towing and related services shall be issued until a complete application is filed with the Board. For purposes of these Rules, a complete application for a towing business safety License shall include:

(1) Business License Application provided by the Board completed in its entirety.

(2) Current Certificate(s) of Insurance reflecting minimum insurance coverage as prescribed by the Board in Rule 9.2 of these Rules which must include:

- a. the physical address for which the tow business is licensed;
- b. the name or names of the owner;
- c. all tow vehicles used at that location; and,

(3) Fee as prescribed by the Board for a non-consent towing/storage, and/or consent Towing Business License.

(4) A copy of the current maximum rate schedule; (Note: acceptance of a copy of the rate sheet does not constitute or imply approval of fees or rates)

(5) Proof of compliance with all signage requirements:

- (a) Complaint notification process;
- (b) Exterior business location signage.
- (c) Tow rate schedule

(6) Other documents needed to comply with an Enhanced Non-Consent Heavy Duty Tow License found in Rule 15.

B. No registration authorizing a business to engage, or to continue to engage, in consent towing and related services shall be issued until a sufficient application is filed with the Board. For purposes of these Rules, a sufficient application for a towing business safety license shall include:

- (1) Registration Form provided by the Board completed in its entirety.
- (2) Current Certificate(s) of Insurance reflecting minimum insurance coverage as

prescribed by the Board in Rule 9.2 of these Rules which must include:

- a. the physical address for which the tow business is registered;
- b. the name or names of the owner;
- c. all tow vehicles used at that location; and

(3) Fee as prescribed by the Board for a consent registration.

C. No tow vehicle safety permit authorizing operation of a tow vehicle on public roadways in the State of Arkansas shall be issued until a complete Tow Vehicle Safety Permit application is filed with the Board. For purposes of these Rules a complete Tow Vehicle Safety Permit application shall include:

- (1) An updated business license application if needed

(2) Completed Inspection Form approved by the Board as part of the application process, including Rule 7 equipment standards, and that the tow vehicle was examined by a certified law enforcement officer, municipal, county, or state or Board investigator who so verifies by his/her signature on the Tow Vehicle Safety Inspection Form, along with badge number and agency that the tow vehicle meets all of the requirements noted on the form.

(a) If the tow vehicle fails any part of the inspection, deficient items must be noted on the Tow Vehicle Safety Inspection Form and forwarded to the Arkansas Towing and Recovery Board.

(b) All items noted as deficient must be corrected and re-inspected by the same law enforcement agency or a Board investigator before a permit can be issued for that tow vehicle.

(3) Pictures clearly showing the following views

(a) The Tow Vehicle registration tag on the tow vehicle for which the permit is being requested;

(b) Driver side view of the towing vehicle showing both the name and phone number of the business; and

(c) Passenger side view of the towing vehicle showing both name and phone number of the business.

(4) Tow Vehicle Safety Permit fee prescribed by the Board.; and

(5) Current Certificate(s) of Insurance reflecting minimum insurance coverage as prescribed by the Board in Rule 9.2.

D. No vehicle immobilization business license authorizing the use of vehicle immobilization in the State of Arkansas shall be issued until a complete application is filed with the Board. For purposes of these Rules a complete application shall include:

(1) Tow Business License Application provided by the Board as part of the application completed in its entirety and vehicle immobilization device inspection form(s) (Up to 10 immobilization devices can be used on one (1) inspection form for license.)

(2) Pictures showing the following views

(a) The vehicle immobilization devices for which the permit is being requested,

(b) A view of the vehicle immobilization device showing the serial number, name, and phone number of the business;

E. No showing of public convenience or necessity need be made in support of an application for a vehicle immobilization, non-consent towing/storage, and/or consent towing business safety license, a tow vehicle safety permit.

F. It shall be the responsibility of the Licensee to post the non-consent Tow Business License at the place of business and in a prominent location, viewable by the public.

G. It shall be the responsibility of the Licensee to affix the tow vehicle safety permit to the lower portion, driver's side, of the windshield in the tow vehicle for which the Board issued the Permit immediately upon receipt.

H. It shall be the responsibility of the non-consent Licensee to post a sign notifying customers of the consumer complaint process as required by Ark. Code Ann. §27-50-1218.

6.4 Business licenses, business license numbers, consent only registrations and tow vehicle safety permits are nontransferable, from one owner to another, from one tow vehicle to another.

A. If a Licensee ceases to be involved in the towing business or vehicle immobilization business, the business license issued to that business shall be returned to the Board within ten (10) days of ceasing business. (Any change in ownership of a towing business or vehicle immobilization business nullifies the License issued to the previous owner.)

B. Any tow vehicle safety permit holder who sells, disposes of or takes a tow vehicle out of service shall remove and destroy the Permit and shall notify the Board the tow vehicle is removed from his fleet within ten (10) days of the removal.

(1) A tow vehicle safety permit can only be displayed on a tow vehicle owned by the towing business to which the Board issued the Permit.

C. Any non-consent towing business/vehicle immobilization service safety licensee who takes a vehicle immobilization device out of service shall notify the Board the device has been removed from their inventory within ten (10) days of the removal.

6.5 A vehicle immobilization, non-consent towing/storage, and/or consent towing business registration, business license number and/or a tow vehicle safety permit shall be issued only to a legal entity and shall not be issued to a fictitious name. *E.g.*, Bob Smith owns a wrecker service. Bob Smith's Wrecker Service does not constitute a legal entity. Bob Smith, or Bob Smith dba Bob Smith's Wrecker Service, or Bob Smith's Wrecker Service, Inc. does constitute a legal entity in that Bob Smith is identified as legal owner of the wrecker service.

A. Each separate business location of a vehicle immobilization, non-consent towing/storage, and/or consent only towing business shall require a separate license or consent only registration.

B. The name in which a vehicle immobilization, non-consent towing/storage, and/or consent only towing business is registered with the Board must correspond with name of the insured as identified on the Certificate(s) of Insurance issued to the Board for that vehicle immobilization, non-consent towing/storage, and/or consent towing business.

6.6 It is the responsibility of every licensee, and every tow vehicle safety permit holder to notify the Board staff in writing immediately upon any change in name of business, mailing address telephone number and/or physical location of his place of business.

6.7 Any final judgment rendered by a court of competent jurisdiction against a vehicle immobilization, non-consent towing/storage, and/or consent towing business or an owner or employee thereof, arising from ownership or operation of the vehicle immobilization, non-consent towing/storage, and/or consent towing business, including but not limited to towing, up righting, recovery, transporting,

immobilizing, and storage of vehicles, must be satisfied within thirty (30) calendar days. If such judgment is not timely satisfied, the vehicle immobilization, non-consent towing/storage, and/or consent towing business's license and/or tow vehicle safety permit(s) may be suspended until the judgment is satisfied; provided,

A. A release or written agreement signed by the judgment creditor and approved by the Board shall reinstate eligibility; and,

B. If judgment is covered by insurance up to the amount and to the extent required by the Board, this subparagraph shall not apply.

6.8 No application for vehicle immobilization, non-consent towing/storage, and/or consent only registration and/or tow vehicle safety permit shall be approved by the Arkansas Towing & Recovery Board if the applicant has any overdue unpaid civil penalty(s) due and payable to the Board.

RULE 7: EQUIPMENT REQUIREMENTS

7.1 All tow vehicles, which are in use by vehicle immobilization, non-consent towing/storage, and/or consent towing business, shall meet the following requirements:

A. Hold a current Motor Vehicle Registration Certificate and have evidence of such properly displayed on the tow vehicle (*e.g.*, state license plate);

B. Comply with all Motor Vehicle Laws enacted by the State of Arkansas and all Arkansas Department of Transportation and Arkansas Department of Revenue Rules applicable thereto;

C. Maintain a valid tow business license number permanently affixed and a tow vehicle safety permit issued by the Board for that tow vehicle displayed on the lower portion, driver's side, of the tow vehicle's windshield; and

D. If applicable, comply with the additional tow vehicle and equipment standards found in Rule 15 for the Enhanced Non-Consent Heavy Duty Tow License

7.2 All tow vehicles as defined in these rules which operate on Arkansas's public roadways shall have the following minimum equipment installed, or on Board:

A. Fire Extinguisher(s), ABC Type, total capacity of not less than nine (9) pounds.

B. Amber flashing light(s) visible within 360-degree rotation around the tow vehicle, and visible in bright sunlight.

C. Tail, turn and stop lights attached, or to be attached, to the towed or towing vehicle so as to be visible from the rear.

D. Safety chains and/or straps to secure the towed vehicle to the towing vehicle when towing and/or otherwise transporting vehicles on public roadways.

E. Flares, reflective cones, reflective triangle safety signals, or other similar safety devices.

F. Shovel and broom for removing debris from the roadway. (Mandatory only for tow vehicles used in accident recovery; provided however, no tow vehicle shall respond to an accident scene along a public roadway without a broom and shovel on Board.)

G. The name and telephone number of the towing business shall be displayed and permanently affixed on each side of the tow vehicle along with the permanent business license number assigned by the Board, not less than two inches (2") in height so that it is visible and legible from a distance of fifty (50) feet; (i.e. painted or by decal). (Magnetic signs not permanently affixed are not allowed).

H. Light and air brake hookups (required only on tow vehicles being designated "Heavy Duty" for the purpose of these rules and capable of towing semi -truck and trailer vehicles.)

I. Safety straps for wheel lift equipment as required by the equipment manufacturer for securing the towed vehicle to the towing vehicle.

J. Tow vehicles equipped with winches and used for recovery and/or hoisting, and for towing a vehicle during transport, shall have a winch with an 8,000-pound minimum capacity and a minimum 3/8 inch diameter cable size, provided,

(1) Winch capacity and cable size shall increase proportionately with Gross

Vehicle Weight Rating increase,

(2) Come-A-Long, chain, or other similar device, shall not be used as substitute for winch and cable.

K. Any tow vehicle used for hoisting and/or for towing a vehicle during recovery and/or transport shall be equipped with dual rear wheels and shall be rated at a minimum of 9,000 pounds GVWR. provided; however, the owner of a tow vehicle for which the Board issued a tow vehicle safety permit under the Grandfather Provision on or before January 1, 1995, and renewal permits have been issued regularly thereafter, is exempt from the dual wheel and 9,000 GVWR requirements as long as ownership of the tow vehicle does not change and regular renewals continue to be issued by the Board.

L. (1) Any tow vehicle used as a Heavy Duty Tow Vehicle as defined by Rule 7.4 shall be equipped with tandem rear axles and equipped with an under-lift device rated at no less than 12,000 lbs. at full extension. Provided; however, that the owner of a Heavy Duty Tow Vehicle for which the Board issued a tow vehicle safety permit on or before the date of the enactment of this section shall be grand-fathered and shall be exempt from this requirement as long as ownership of the tow vehicle does not change and regular renewals continue to be issued by the Board.

(2) Any tow vehicle used as a Heavy Duty Vehicle without and under-lift shall not be utilized as a primary tow vehicle for non-consent towing, but may be utilized by a non- consent towing business in conjunction with other services rendered as part of non-consent towing, provided, however, any usage in conjunction with non-consent towing shall have coverage in compliance with the insurance requirements of Rule 9.2 of these Rules and must display a current consent Tow Vehicle Safety Permit issued by the Board.

(3) Any tow vehicle used as a Medium Duty Tow Vehicle as defined by Rule 7.4 excluding rollback tow vehicles, shall be equipped with an under-lift device rated at no less than 6500 lbs. at full extension. Provided; however that the owner of a Medium Duty Tow Vehicle for which the

Board issued a tow vehicle safety permit on or before the date of the enactment of this section shall be grand-fathered and shall be exempt from this requirement as long as ownership of the tow vehicle does not change and regular renewals continue to be issued by the Board.

(4) Any tow vehicle used as a Medium Duty Vehicle without and under-lift shall not be utilized as a primary tow vehicle for non-consent towing, but may be utilized by a non- consent towing business in conjunction with other services rendered as part of non-consent towing, provided, however, any usage in conjunction with non-consent towing shall have coverage in compliance with the insurance requirements of Rule 9.2 of these Rules and must display a current consent tow vehicle safety permit issued by the Board.

7.3 It shall be the responsibility of any vehicle immobilization, non-consent towing/storage, and/or consent towing business and his operators to use all of that business’s towing-related equipment and/or vehicle immobilization related equipment knowledgeably and safely.

7.4 For purposes of these Rules tow vehicles shall be classified as follows:

A. Gross Vehicle Weight Ratings:

Light Duty: 9,000 - 15,000 pounds GVWR.

Medium Duty: 15,001 - 33,000 pounds GVWR. Heavy

Duty: 33,001 pounds and over GVWR.

Provided, it is recommended that the owner or operator of any Light Duty, Medium Duty, or Heavy Duty tow vehicle, observe applicable gross vehicle weight ratings (GVWR) when transporting or attempting to transport, vehicles on public roadways of the State of Arkansas.

B. Any vehicle used in conjunction with a trailer, dolly, or other separately hitched towing-related device to transport or otherwise facilitate the movement of vehicles on public roadways is not a “tow vehicle” as defined in Ark. Code Ann. §27-50-1202(10).

(1) Provided, a trailer, shall not be used to transport or otherwise facilitate the movement of vehicles on public roadways, except when in compliance of the following: Both the vehicle towing such

trailer, and the trailer must be in compliance with all Motor Vehicle Laws enacted by the State of Arkansas and all Arkansas Department of Transportation and Arkansas Department of Revenue rules applicable thereto, including but not limited to registration, lighting, and braking.

(2) The vehicle towing such trailer, shall have liability insurance covering injury and/or damage meeting minimum financial responsibility laws of the State of Arkansas;

(3) The weight distribution on the vehicle towing a trailer, and on the trailer shall be stable during transport. In the absence of evidence to the contrary, a combination of a vehicle towing a trailer, shall be considered stable when observing the following weight specifications:

- a. The laden weight of the vehicle towing a trailer shall not exceed the Gross Vehicle Weight Rating (GVWR) of that vehicle;
- b. The laden weight of the trailer shall not exceed the Gross Trailer Weight Rating (GTWR) of the trailer; and
- c. No axle of the vehicle towing such trailer, shall ~~have~~ carry a weight in excess of the Gross Axle Weight Rating (GAWR) of that axle.

(4) A trailer, dolly, or other separately hitched towing-related device shall not be utilized as a primary tow vehicle for non-consent towing, but may be utilized by a non- consent towing business in conjunction with other services rendered as part of non-consent towing, provided, however, any usage in conjunction with non-consent towing shall have coverage in compliance with the insurance requirements of Rule 9.2 of these Rules.

7.5 Any vehicle immobilization, non-consent towing/storage, and/or consent towing business that adds a tow vehicle and/or vehicle immobilization device into service shall, within ten (10) business days:

A. Notify the Board staff of the year, make and type (*E.g.*, wrecker, rollback, hauler, *etc.*);

B. Send to the Board Staff from the licensee's insurance carrier an amended

Certificate of Insurance reflecting the tow vehicle has been added to present coverage;

C. Have the vehicle inspected pursuant to Rule 6.3(B) of these Rules; and

D. Submit to the Board staff a timely application for tow vehicle safety permit.

7.6 All vehicle immobilization and non-consent towing/storage businesses shall use an invoice for each vehicle towed and/or immobilized, each invoice shall explain how all charges were calculated, separately itemizing all fees and charges to owner(s) and lien holders pursuant to Ark. Code Ann. §27-50-1208(b)(2), as now or hereafter amended, and shall furnish, upon request, the owner of the towed or immobilized vehicle, lien-holder, and/or their agent(s) with a duplicate of the said itemized statement, bill or invoice of all charges incurred.

7.7 Each vehicle immobilization device, used by vehicle immobilization and/or non-consent towing/storage business shall meet the following requirements:

A. Comply with all Motor Vehicle Laws enacted by the State of Arkansas and all Arkansas Department of Transportation and Arkansas Department of Revenue rules applicable thereto.

7.8 Each vehicle immobilization device, as defined in these rules shall have the following:

A. The company name, phone numbers, and serial number of the vehicle immobilization and/or, non-consent towing/storage business permanently affixed in a legible manner, and

B. A high visibility color.

RULE 8: FEES

8.1 All fees collected under Arkansas Code Annotated 27-50-1201 *et seq.*, as now or hereafter amended, and the Rules promulgated there to shall be made payable to the Arkansas Towing and Recovery Board. Said fees shall be deposited in the General Operating Fund of the Arkansas Towing and Recovery Board.

8.2 Each application for a vehicle immobilization, non-consent towing/storage tow and/or consent towing business license shall be accompanied by a license fee of one hundred fifty dollars (\$150).

8.3 Each application for a consent only registration shall be accompanied by a registration fee of twenty-five (\$25.00) dollars.

8.4 Each application for a tow vehicle safety permit shall be accompanied by a fee of: seventy-two dollars (\$72.00) for each light duty tow vehicle or each medium duty rollback or medium duty tow vehicle or heavy duty tow vehicle. Tow vehicle safety permit fees may be prorated to correspond with the expiration date of a current tow business license.

8.5 Lost or destroyed tow vehicle safety permits will require the purchase of replacement permits at a permit fee set by the Board. Once a towing business safety license, and/or tow vehicle safety permit has been issued fees are non-refundable.

8.6 The initial Towing Business License issued to a towing/storage/vehicle immobilization company shall expire one year from the month of issuance, and annually thereafter, until such time the business ceases to operate or changes ownership. Licenses are not transferable from one business to another or from one owner to another.

8.7 A. The initial tow vehicle safety permit issued to a non-consent towing/storage or consent towing business for a designated tow vehicle shall expire one year from the month in which it was issued. Tow vehicle safety permits are not transferable from one tow vehicle to another or from one owner of the tow vehicle to another.

8.8 The Director shall send renewal notice to each licensee, holder of a consent only registration and tow vehicle safety permit holder at least thirty (30) calendar days prior to expiration. Any license or tow vehicle safety permit for which a complete renewal application is received later than 4:30 p.m. on date of expiration is subject to fee for late filing in addition to the original filing fee. (For purposes of these Rules “complete applications” for license, registration and tow vehicle safety permit are defined in Rule 6.3.) When a timely application for renewal of a license or tow vehicle safety permit is received by the Board, the existing license and permit subject to renewal shall not expire prior to review of the application by Board staff, provided,

A. Such application reviewed after expiration of a license or permit and found to be sufficient is not subject to fee for late renewal application filing.

B. Such application reviewed after expiration of a license or permit and found to be insufficient is subject to fee for late renewal application filing, effective upon review.

(1) The business will be notified in writing of any insufficiency(s).

(2) Penalty as provided in Rule 4.3(A)(B) will be assessed from date of notice of insufficiency(s) to the date a complete application is received by the Board.

8.9 Any licensee or tow vehicle safety permit holder who fails to submit to the Board a timely and sufficient application for renewal of license and/or permit(s), and continues to work in the vehicle immobilization, non-consent towing/storage, and/or consent towing industry, shall be held liable as outlined in Ark. Code Ann. §§27-50-1101 and 27-50-1201 *et seq.*, as now or hereafter amended, and Rules promulgated by the Board pursuant thereto.

RULE 9: INSURANCE REQUIREMENTS

9.1 The provisions of Rule 9 shall apply to those businesses licensed by the Board to engage in vehicle immobilization, non-consent towing/storage, and/or consent towing and related services. All businesses licensed under this Act shall obtain, and keep in continuous effect, all insurance coverage required in Rule 9.2, as it applies. Evidence of said insurance shall be filed with the Board in the form of a valid Certificate of Insurance.

A. Certificate of Insurance shall be issued to the Arkansas Towing & Recovery Board at its current mailing address.

B. Certificate of Insurance shall have provisions for notice of cancellation or material change, as according to insurance policy.

C. Certificate of Insurance shall display the physical location of each non-consensual towing impound lot for which coverage is extended.

9.2 The minimum coverage provisions ensuring the public from loss or damage that may arise to any person or property by reason of the operation of a vehicle immobilization, non-consent towing and/or storage business are as follows:

A. Each tow vehicle shall have liability insurance covering injury and/or damage, except that to the towed vehicle, for which the tow truck owner is liable. Said coverage shall meet state and federal minimum financial responsibility laws for motor carriers (45CRF387.9).

B. Each non-consent tow vehicle or consent tow vehicle, used in conjunction with non-consent towing, shall have cargo, on-hook, or similar type insurance in an amount not less than Fifty Thousand Dollars (\$50,000) for Light Duty, One Hundred Thousand Dollars (\$100,000) for Medium Duty, and Two Hundred Thousand Dollars (\$200,000) for Heavy Duty [GVWR ratings as per Rule 7.4(A)]. For purposes of this Rule, on-hook, cargo, or any similar term, is construed to include coverage for losses (property damage) to the vehicle(s) being towed, recovered, up-righted, transported, or driven-away by the insured, or his agent, where the insured is liable, whether or not such loss is due to the negligence of the insured or his agent.

C. Each non-consent towing business shall maintain liability insurance in an amount not less than Fifty Thousand Dollars (\$50,000) to cover losses from personal injury and/or property damage incurred in the area in which vehicles impounded by the business are stored. (*E.g.*, Garagekeepers Legal Liability)

9.3 Each Licensee shall be responsible for maintaining on file with the Board a valid Certificate of Insurance reflecting current coverage as outlined in Rule 9.2.

9.4 Any Licensee who fails to meet the requirements of Rules 9.1, 9.2 or 9.3 shall have his license and/or permit(s) immediately suspended by the director on behalf of the Board. The Director shall notify the Licensee by mail of the suspension and shall immediately initiate formal hearing procedures.

9.5 A vehicle immobilization company will be responsible for any damage/liability incurred during the immobilization and subsequent tow and storage of immobilized vehicle by a duly licensed and permitted non-consent towing company.

9.6 A vehicle immobilization company shall be responsible to maintain liability insurance in an amount not less than Fifty Thousand Dollars (\$50,000) to cover losses incurred to property for any liable damage.

RULE 10: CHARGES FOR NOTIFICATIONS

10.1 A. All Licensees shall comply with the requirements for notification to owners and lien holders as provided by Ark. Code Ann. §§27-50-1101(a)(3), 27-50-1208 and 27-50-1209, as amended from time to time. Unless otherwise prescribed by law, any notice required to be given by a Licensee to the registered owner(s) and/or lienholder(s) shall be given to those persons or entities listed as owner(s) and /or lienholder(s) on the records of the Office of Motor Vehicles, Arkansas Crime Information Center records, or the motor vehicle records of any other state if there is reasons to believe the vehicle may be registered in a state other than Arkansas.

B. Vehicle immobilization companies shall place a notification on the vehicle in a conspicuous area stating the following:

- (1) The vehicle has been immobilized;
- (2) The name, location, and local phone number of the company immobilizing vehicle;
- (3) A time limit of 48 hours before vehicle will be towed; and
- (4) The name, location, and phone number of the tow company removing the vehicle after the 48 hours has expired.

10.2 For purposes of the second notice to be given pursuant to Ark. Code Ann. §27-50-1209 not less than thirty (30) days from impoundment but at least fifteen (15) days prior to sale of an unclaimed vehicle, a License shall separately obtain the information as set for in Rule 10.1.

10.3 The charges for sending the notice(s), if any, shall not exceed twenty-five dollars (\$25) per notification, or the actual cost of postage. For the purposes of these rules the total number of notices required

to be sent to the last registered owner(s) and any lien holder(s) of record pursuant to Ark. Code Ann. §§27-50-1208(b)(2) and 27-50-1209(d) after taking possession of a vehicle shall constitute a single notification.

10.4 For purposes of these rules the notification required to be made pursuant to Ark. Code Ann. §§27-50-1208(b)(2) and 27-50-1209(d) each shall constitute a single notification.

10.5 All notification documents must be maintained for a period of not less than three (3) years from the time of the tow or recovery of a vehicle.

Rule 11: EXCESSIVE PRICING FACTORS

The Arkansas Towing and Recovery Board may consider the following factors in determining if the pricing is excessive or unnecessary pursuant to Ark. Code Ann. §27-50-1203(e)(1)(C), and (D):

- A. Tow vehicle(s) required and size of tow vehicle(s);
- B. Total time to accomplish recovery/tow;
- C. Number of regular employees required to safely complete recovery/tow;
- D. Number of extra people needed/used to effectively complete recovery/tow;
- E. Special equipment required to recover or tow;
- F. Location of vehicle recovered/towed;
- G. Hazardous materials or cargo recovery involved in recovery/tow;
- H. Comparison with reasonable prices in region;
- I. Weather conditions;
- J. Computation of days of storage: midnight to midnight is presumed to be a reasonable period; and
- K. Any other relevant information having a direct effect on the pricing of the recovery, towing, storage, and/or vehicle immobilization.

RULE 12: PLACE OF BUSINESS REQUIREMENTS

Any towing business or towing company licensed pursuant to these rules shall utilize business and storage facilities that are:

- A. Located in Arkansas;
- B. Easily accessible to the public;
- C. In compliance with all local state and federal regulations and ordinances;
- D. Utilizing an appropriate and secure filing system for records;
- E Utilizing clear and visible signage displaying the name on the business license issued

by the Board that:

(1) Is a minimum of four (4) feet by six (6) feet in size or meets the criteria established by a municipal zoning ordinance, subdivision regulation or building code: and

(2) Displays the name, physical address, a published telephone number of the towing company and hours of operation: and

F. Sufficient in space to safely secure the vehicles and any personal property stored within.

RULE 13: ISSUANCE OF CITATIONS

13.1 Acting upon probable cause or during an investigation of a Business, an investigator and/or the Director employed by the Board, may cite a licensee for any of the following offenses:

- A. Operating a tow vehicle without a proper permit or license;
- B. Operating a tow vehicle which is out of compliance with the safety and operating

rules prescribed by the Board;

C. Operating a tow vehicle which has not been permitted or licensed as a tow vehicle by the State of Arkansas;

- D. Not responding within the prescribed time frame to a request for information

relating to a consumer complaint. Citations shall be in addition the mandated daily accrual of \$25.00 per day;

E. Failure to properly post required notifications in a conspicuous place as required by the Board; or

F. Failure to meet the basic criteria for an adequate place of business.

13.2 Fines assessed for each violation of this section shall be \$50.00 for the first offense, \$100.00 for the second offense and \$200.00 for the third and each subsequent offense.

13.3. The licensee may pay the fine within fifteen (15) calendar days of receiving the citation or submit an appeal to the Board within the fifteen (15) calendar days.

A. Appeals shall be in writing and shall include the following information:

- (1) Business Name and Address;
- (2) Email Address;
- (3) Daytime Telephone Number;
- (4) Name of Responsible Party and/or Owner;
- (5) Citation Number;
- (6) Permit Number (if applicable);
- (7) Reason for appeal; and
- (8) Supporting evidentiary documentation.

13.4 If the fine is not paid and no notice of an appeal is filed within the fifteen (15) calendar days the director will set the violation and the unpaid fine for a hearing before the board. The licensee will be notified in writing of the first available hearing date.

A. The Board may choose to take the following actions

- (1) Uphold the fine issued by the investigator;

- (2) Uphold the citation requiring additional action for the violation;
- (3) Reduce the fine for the violation; or
- (4) Dismiss the citation.
- (5) Revoke or suspend a license.

RULE 14 SUSPENSION FROM LAW ENFORCEMENT NON-CONSENT ROTATION LIST

14.1 A. A complaint request from law enforcement to remove or suspend a tow company from the non-consent rotation list shall include the following:

- (1) Copy of rotation policy,
- (2) Copy of complaint,
- (3) Copy of supporting documentation of allegations, and
- (4) Signature of the Department Head.

B. Upon receipt of a complaint request from law enforcement to remove or suspend a tow company from the non-consent rotation list, the Director will assign complaint to an investigator to complete following:

- (1) Timeline of investigation to conform with Rule 5.1.
- (2) Determine whether the law enforcement agency's non-consent rotation policy is reasonable; and
- (3) The severity of the violation.

C. The Board may issue fines in addition to removal or suspension of a tow company from the non-consent rotation list.

- (1) A tow company may be suspended from the non-consent rotation list for a first-time violation of the law enforcement agency's policy for up to fifteen (15) days.
- (2) A second offense may result in a suspension of up to thirty (30) days by the law enforcement agency.

(3) A third offense may result in a suspension of a tow company from the non-consent rotation list for up to one (1) year and a fine.

D. The law enforcement agency may request a hearing before the Board for additional sanctions which may include a longer period of suspension from the non-consent rotation list and a fine.

14.2 As provided pursuant to Ark. Code Ann. §27-50-1219(b)(3) and this rule, law enforcement shall establish a non-consent rotation policy.

A. An adopted non-consent rotation policy shall be reasonable and reflect the day-to-day operations of a tow company in the immediate area.

B. A law enforcement agency is not required to establish a non-consent rotation policy pursuant to Ark. Code Ann. §27-50-1219 (b)(1) or this rule if:

(1) The law enforcement agency has an existing non-consent rotation policy or non-consent towing service contract in place; and

(2) The provisions of this section would have a negative impact on the law enforcement agency or non-consent towing service contract.

14.3 A law enforcement agency shall provide each tow company that participates in the non-consent rotation with a copy of the policy and each tow company operator shall acknowledge in writing that he or she has received a copy of the policy.

A. A tow company participating in a non-consent rotation policy administered by law enforcement shall be licensed and permitted by the Board.

B. Failure to properly license or renew with the Board shall result in an immediate suspension until all permits are obtained.

C. In addition to any law enforcement non-consent rotation policy a tow operator

shall comply with all of the statutes and rules administered by the Board.

14.4 Nothing in this act or rule adopted by the Board shall be construed to prohibit a law enforcement agency, city, or county from:

- A. Enforcing any local non-consent towing policies, rules, ordinances, or contracts;
- B. Removing a tow company from the local towing rotation list; or
- C. Assessing a fine, penalty, or other remedy available by law or under its

contracts or policies.

RULE 15 . ENHANCED TOW VEHICLE LICENSE FOR HEAVY DUTY NON-CONSENT ROTATION

15.1 A tow business meeting the definition and standards as defined in this rule may apply for an enhanced license to be designated as a heavy-duty motor vehicle incident management tow facility for participation in a law enforcement rotation program, heavy duty non-consent rotation.

15.2 A tow facility must

A. Complete in its entirety the application for a Heavy-Duty Motor Vehicle Incident Management Tow Facility which includes an on-site inspection by an investigator or the director.

B. Comply with all applicable state and federal laws for a tow business operating in the State of Arkansas.

C. Have at least one (1) person (owner, partner or employee) who has proof of:

(1) documented training through a nationally recognized towing and recovery program in heavy-duty on-scene recovery techniques; or

(2) five (5) years or more experience in the towing and recovery of heavy-duty vehicles that can be verified.

D. Each tow facility owner, partner and employee must complete a minimum of four (4) hours of Traffic Incident Management Training sanctioned by the Arkansas Towing & Recovery Board in a classroom setting or an on-line program sanctioned by the Board.

15.3 A tow vehicle used in the towing and/or recovery by a Heavy-Duty Motor Vehicle Incident Management Tow Facility must:

- A. Meet the criteria in the Required Tow Vehicle & Equipment List established through Rule 14.4 by the Arkansas Towing & Recovery Board.
- B. Successfully pass a Tow Vehicle Safety Inspection administered by the Arkansas Towing & Recovery Board staff including proof of safety inspection by the Arkansas Highway Police for the North American Standard Level I Inspection Procedure of the Commercial Vehicle Safety Alliance; and
- C. Comply with all other applicable state and federal laws.

15.4 The following tow vehicle(s) and equipment must be accessible for use at all times either through ownership, shared with other licensed tow facilities with a common ownership, located within a reasonable distance or available through contract on a 24-hour, seven (7) day a week basis.

A. Items requiring ownership shall include the following:

(1) Required tow vehicles, trailers and other support vehicles:

(a) Two (2) heavy duty tow and recovery vehicles with a combined integrated unit capacity rating of seventy (70) tons established by the manufacturer's specifications (Including but not limited to GVWR, boom capacity, winch rating, wheel lift capacity and wheelbase.) noted on the data plate of the unit.

A rotator may be substituted for one of the tow vehicles.

(b) A medium duty rollback or other similarly configured equipment (such as a Trailer) which could be used in its stead.

(c) Support vehicle, service truck or other vehicle capable of transporting equipment and supplies to the scene in a timely manner.

(d) Skid steer or tractor with a front-loaded bucket and forks.

(2) Required equipment and supplies:

(a) Shovel(s)

(b) Broom(s)

(c) Crowbar(s)

(d) Bolt Cutter(s)

(e) Pike Bar

(f) Sledgehammer(s)

(g) Snatch blocks-Four (4) On each Truck

(h) Hydraulic jacks(s) and one (1) 20 ton mat jack, a high pressure lift jack.

(i) Ladder-20' Type 1A OSHA Standard

(j) Wheel chocks

(k) Hand truck

(l) Pallet jack

(m) Transfer pump, 20 gallon/minute minimum.

(n) 55 gallon drum (2)

(o) Brake release kit

(p) Full set of tools, standard & metric

- (q) Transport chains and binders
- (r) Miscellaneous chains & straps for recovery
- (s) Hardwood cribbing and angle iron (various sizes)
- (t) Heavy duty flashlights
- (u) Acetylene/Oxygen torch with tanks
- (v) Portable air compressor or other means of continuous air supply
- (w) Chop saw
- (x) Impact wrench with sockets
- (y) Light plant or truck mounted auxiliary flood lights

B. Items which may be shared with other tow facilities with common ownership and that can be accessed within thirty (30) minutes or less shall include:

(1) Required tow vehicles, trailers and other support vehicles:

(a) Sliding or traveling axle trailer such as a landoll or a heavy duty low boy trailer or a heavy duty construction trailer.

(b) Box trailer for purposes of transloading cargo and the power unit to move the trailer to the scene.

C. Items that can be rented on a 24-hour, seven (7) day a week basis shall include:

(1) Required tow vehicles, trailers and other support vehicles:

(a) Rough Terrain Forklift

(b) Standard Forklift

- (c) Track Hoe
- (d) Dumpsters and Hoppers
- (e) Dump Truck
- (f) 40 Yard Roll-Offs

15.5 Safety standard for on-scene personnel.

A. Every person working on scene should have Personal Protective Equipment (PPE). Reference, 2009 Edition, Manual on Traffic Devices, Section 6D.03 Worker Safety Consideration, Standard 04. including:

(1) High-visibility apparel meeting Performance Class 2 or 3 requirements of the ANSI/ISEA 107–2004 publication entitled “American National Standard for High-Visibility Safety Apparel and Headwear” (see Section 1A.11), or equivalent revisions, and labeled as meeting the ANSI 107-2004 standard performance for Class 2 or 3 risk exposure;

- (2) Eye protection;
- (3) Head protection;
- (4) Foot protection; and
- (5) Hand protection.

15.6 A law enforcement agency may utilize any properly licensed tow facility to respond to an incident when:

- A. Response time is of the essence; and
- B. A heavy-duty motor vehicle incident management tow facility is not available in or near the local area.

15.7 A Heavy-Duty Motor Vehicle Incident Management Tow Facility must perform in a manner that reflects the intent of Rule 15, to maintain or re-establish traffic flow as quickly as reasonable, enable commerce and protect the safety and well-being of the motoring public.

A. Poor or inadequate on-scene performance by a Heavy-Duty Motor Vehicle Incident Management Tow Facility resulting in lengthy lane closures or unreasonable clean-up times may result in the suspension or revocation of its enhanced license. Criteria for a final determination will include:

- (1) Inability to access tow vehicles or equipment required for the issuance of an enhanced heavy-duty tow license in a timely manner.
- (2) Improper maintenance of tow vehicles or equipment resulting in poor performance and unnecessary time delays.
- (3) Demonstrating inadequate performance due to a lack of training by the owner, partner or employee in accordance with Rule 15.2(C).
- (4) Lack of personnel to operate tow vehicles or utilize equipment in a timely manner.

B. A tow business will not be held accountable for any delay prior to the accident scene being turned over to their care or instructions or requests that may be made by law enforcement or other on-scene state or federal agencies with additional requirements for recovery and/or clean-up.

C. A law enforcement agency that uses an enhanced heavy-duty non consent rotation list and manages a traffic incident may submit to the Board for review a performance/safety related issue.

RULE 16. POSTING VEHICLES ON WEBSITE

16.1 All vehicles, trailers and equipment towed, recovered or stored that have not been claimed:

A. By the owner within forty-five (45) days must be offered for sale through a non-judicial public sale. (A.C.A. §27-50-1210); or

B. A vehicle that is impounded, towed, recovered or stored which has not been properly registered with a state and/or no ownership information may be found must be advertised in accordance with this rule.

16.2 In addition to the advertising requirements requiring publication of vehicles, trailers and equipment in a newspaper of general circulation the same must simultaneously be posted on the tow board website, including:

A. Vehicles, trailers and equipment which have been impounded and no owner or registration information can be found either through a thorough search of the vehicle, law enforcement, vehicle identification number or the Arkansas Office of Motor Vehicle licensing database.

1. This post must occur on or before the 10th business day after the vehicle, trailer or equipment was towed;
2. All posts on the tow board website shall follow the template prescribed and must be filled out completely;
3. Usage fees must be paid at the time the items are posted in accordance with Rule 8 of these rules;
4. Failure to post items meeting the conditions noted above may result in civil penalties of up to five-thousand (5,000) dollars, suspension or revocation of tow business license or both.

B. Any and all vehicles scheduled for a non-judicial public sale must be posted on the tow board website in addition to the required newspaper posting at least fifteen (15) days before the sale.

1. All posts on the tow board website shall follow the template prescribed and must be filled out completely;
2. Usage fees must be paid at the time the items are posted in accordance with Rule 8 of these rules;

3. Failure to post items meeting the conditions noted above may result in civil penalties of up to five-thousand (5,000) dollars, suspension or revocation of tow business license or both.

16.3 The online template must include the following items;

- A. Date and time of sale
- B. Company name and tow business license number
- C. The address of the facility where the non-judicial public sale will occur including the city and county
- D. Type of sale (auction, written bids, online, etc.)
- E. Type and description of item to be offered for sale. (Vehicle, motorcycle, trailer, equipment, etc.)
- F. A thorough description including, if applicable year, make, model, vehicle identification or serial number, license plate number, color, reason for impounding, where the impound occurred, length of trailer, type of equipment, other items which may be included on the template or in the description which may help identify ownership.
- G. Any special or unusual identifying marks or characteristics which may be helpful in determining ownership.

16.4 The search engine for a user or a vehicle, trailer or equipment owner will include:

- A. The last eight (8) digits of the vehicle identification or serial number;
- B. Make
- C. Model

D. Year, and

E. the county where the item was impounded.

16.5 Any person claiming ownership of a vehicle, trailer or piece of equipment must provide proof of ownership and pay all applicable tow, recovery and storage fees before taking possession of the item.

16.6 A tow company must be licensed through the Arkansas Towing & Recovery Board operating with a current, active tow business license and all civil penalties must be paid before posting a vehicle, trailer or piece of equipment on the website.

16.7 Consumers and law enforcement officers may use the website without limitation and at no cost.

16.8 A company (such as a finance institution) may contract with the tow board to develop a program that would allow the use of the database to automatically identify specific vehicles for a monthly fee with the use.

Effective date: _____