

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs is proposing to amend a rule relating to towing vehicles to make the rates prescribed therein consistent with applicable sections of the Administrative Code and other Rules. This proposed rule would also amend the subdivision regarding the liability insurance that applicants for a tow license must carry.

When and where is the hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Monday, November 26, 2018. The hearing will be in the Department of Consumer Affairs hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax comments to the Department of Consumer Affairs at (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins on Monday, November 26, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. Written comments must be submitted on or before 5:00 PM on Monday, November 26, 2018.

What if I need assistance to participate in the hearing? You must tell DCA's External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Wednesday, November 21, 2018.

This location has the following accessibility option(s) available: The hearing room at 42 Broadway, 5th Floor, New York, NY 10004 is wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes the Department of Consumer Affairs to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-525 of the New York City Administrative Code authorize DCA to make these proposed amendments. These proposed amendments were not included in the regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because they were not contemplated when the Department published the agenda.

Where can I find the Department of Consumer Affairs' rules? The Department of Consumer Affairs' rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Working with the City's rulemaking agencies, the Law Department, the Office of Management and Budget, and the Office of Operations conducted a retrospective rules review of the City's existing rules, identifying rules that should be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance.

This review identified that certain rates prescribed in Title 6, Section 2-368 of the Rules of the City of New York were inconsistent with the rates required in Subchapter 31 of Title 20 of the New York City Administrative Code. Specifically, Sections 20-509 and 20-509.1 dictate specific charges for the towing and storage of vehicles that are different than rates provided in Section 2-368. The Department of Consumer Affairs is proposing to amend Section 2-368, to correct this inconsistency. This proposed amendment would also remain consistent with Title 34, Section 4-07(i)(3) of the Rules of the City of New York, which is a Department of Transportation rule that references Section 2-368.

This proposed rule would also amend the subdivision regarding the liability insurance that applicants for a tow license must carry. The Law Department recommended to DCA that references to "personal injury" in Section 2-362(d) be changed to "injury". This recommendation was made to align the text of this rule with the common usage in the insurance industry. Commercial automobile insurance policies typically do not use the phrase "personal injury" and instead use "bodily injury." Use of "injury" without qualification in this proposed rule will ensure that applicants obtain sufficient liability insurance policies.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-525 of the New York City Administrative Code authorize the Department of Consumer Affairs to make these proposed amendments.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Subdivision d of Section 2-362 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-362 Applications for a License to Engage in Towing.

(d) Every such applicant shall furnish a copy of a Certificate of Insurance as proof that every tow truck to be used by such applicant under this license is insured under a liability insurance policy as follows: Not less than two hundred thousand dollars for [personal] injury or death of any one person resulting from any one accident; not less than five hundred thousand dollars for [personal] injury or death [of two or more persons resulting] from any one accident; and not less than fifty thousand dollars for injury to or destruction of property of one or more persons resulting from any one accident. The licensee shall notify the Commissioner of any modification,

amendment, cancellation or substitution of any such insurance policy within 10 days of receipt by the licensee of notice to the licensee of any such modification, amendment, cancellation or substitutions. Notice to the Commissioner shall be made by regular mail to the License Issuance Division of the Department.

§ 2. Section 2-368 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-368 Rates and Charges.

(a) [Unless specifically provided otherwise by law or rule, the maximum rates as prescribed for towing are:

- (1) \$50 for the first mile or part thereof within the City of New York.
- (2) \$4.00 for each additional mile or part thereof within the City of New York.

(3) All tolls required to be paid while towing a vehicle.] Charges for the towing of disabled passenger vehicles from an arterial roadway by an arterial tow permittee authorized by the commissioner of transportation or the police commissioner shall be \$125 for the first ten miles or fraction thereof, \$4 for each additional mile or fraction thereof, and all tolls required to be paid while towing the vehicle.

(b) [The maximum rates as prescribed for storage are \$15.00 maximum for each calendar day for the first three days of storage and \$17.00 for the fourth calendar day of storage and each calendar day thereafter. The calendar day the vehicle is towed shall be counted for this purpose.] Charges for the storage of vehicles following a towing of a disabled passenger vehicle from an arterial roadway by an arterial tow permittee shall not exceed \$25 for each twenty-four hours or fraction thereof for the first three days of storage and \$27 for the fourth day of storage and each day thereafter.

(c) [The rates in subdivision (a) shall not apply to:

- (1) the towing of vehicles exceeding six thousand pounds;
- (2) the towing of vehicles that are less than six thousand pounds that have commercial license plates and a maximum gross vehicle weight of at least six thousand pounds; or

(3) the towing of motor vehicles pursuant to a contract which was in existence prior to the need for the towing of such vehicles, provided that such motor vehicles are either owned or leased by the person who entered into such contract.] Charges for the towing of vehicles shall not exceed \$100 plus all tolls required to be paid while towing the vehicle; provided, however, that where a motor vehicle has been booted by a person licensed pursuant to subchapter 32 of chapter 2 of title 20 of the New York City Administrative Code in a private lot as defined in paragraph 3 of subdivision b of section 20-531 of such subchapter and such vehicle is subsequently towed, no additional charge may be imposed for the towing of such vehicle. The rates in this subdivision shall not apply to the towing of motor vehicles pursuant to a contract which was in existence prior to the need for the towing of such vehicles, provided that such motor vehicles are either owned or leased by the person who entered into such contract.

(d) [The rates in subdivision (b) shall not apply to:

(1) the storage of vehicles exceeding six thousand pounds;

(2) the storage of motor vehicles that are less than six thousand pounds that have commercial license plates and a maximum gross vehicle weight exceeding six thousand pounds; or

(3) the storage of motor vehicles pursuant to a contract which was in existence prior to the need for storage of such vehicles, provided that such motor vehicles are either owned or leased by the person who entered into such contract. Charges for the storage of vehicles shall not exceed \$25 for each twenty-four hours or fraction thereof for the first three days of storage and \$27 dollars for the fourth day of storage and each day thereafter. The rates in this subdivision shall not apply to the storage of motor vehicles pursuant to a contract which was in existence prior to the need for storage of such vehicles, provided that such motor vehicles are either owned or leased by the person who entered into such contract.

(e) [For towing to a destination outside the City of New York an agreement as to the charge for towing must be made before the start of the trip. Such charges shall not exceed \$3.50 per mile from the City line to the point of destination. All other towing rates as described in subdivisions (a), (b) and (c) apply to all tows originating in the City of New York.] Towing and storage rates for vehicles other than passenger vehicles are provided for by Section 4-07(i) of Chapter 4 of Title 34 of the Rules of the City of New York.

(f) (1) Where unusual preparation is required before a vehicle can be towed, additional charges may be imposed not to exceed \$12.00 per tow truck for each 1/4 hour or part thereof, provided, however, that no such charge may be imposed or collected if an accident vehicle is towed pursuant to the Directed Accident Response Program. Unusual preparation includes winching or righting a vehicle or any other preparation necessary to put the vehicle in a position where it can be hooked or raised to the tow truck.

(2) Notwithstanding paragraph one of this subdivision, a towing company which has towed a vehicle to its storage facilities may charge an additional amount not to exceed \$25 for the positioning of such vehicle for removal from such storage facilities by the tow truck of another towing company that is capable of towing three or more vehicles simultaneously. Such other towing company must be licensed or otherwise exempt from the licensing provisions of subchapter 31 of chapter 2 of title 20 of the New York City Administrative Code, or must be based outside of New York City and thereby not be required to be licensed pursuant to such provisions of the New York City Administrative Code.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Governing Tow Operators

REFERENCE NUMBER: DCA-77

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because a cure mechanism for violations of the rates charged for towing would be impractical under the circumstances.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 17, 2018
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Tow Operators

REFERENCE NUMBER: 2018 RG 050

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 16, 2018