# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 23-145-A February 15, 2024

Investigation by the Department of Public Utilities, on its own motion, commencing a rulemaking pursuant to G.L. c. 30A, § 2; G.L. c. 159B, § 6B; and 220 CMR 2.00 to amend Rates for the Towing of Motor Vehicles at 220 CMR 272.00.

---

ORDER ADOPTING FINAL REGULATIONS

## I. PROCEDURAL BACKGROUND

On December 13, 2023, pursuant to G.L. c. 30A, § 2, the Department of Public Utilities ("Department") adopted emergency regulations ("Emergency Regulations") to implement revisions to 220 CMR 272.00 setting forth the maximum rates for the involuntary towing of passenger and commercial motor vehicles. By this Order, the Department adopts final regulations ("Final Regulations") contained in 220 CMR 272.00, "Rates for the towing of motor vehicles."[1] Pursuant to G.L. c. 159B, § 6B, the Department has the authority to establish the maximum rates for the involuntary towing of passenger and commercial motor vehicles.[2] 220 CMR 272.00. The maximum rates for the involuntary towing of motor vehicles were last adjusted in 2017.[3] Statewide Towing Association, Inc., D.P.U. 13-124-A (2017).

---

1 A clean copy of the Final Regulations is attached to this Order as Appendix A.

2 Involuntary towing consists of police-ordered towing, public authority towing, and trespass towing. Policed-ordered tows and trespass tows may also be referred to as "non-consensual tows." Involuntary towing can occur as a result of a request from law enforcement to remove an abandoned vehicle, a wrecked vehicle, a vehicle driven by a person who has been arrested, or a vehicle seized pursuant to a forfeiture proceeding. Involuntary towing also can occur upon the request of a real property manager (e.g., owners and managers of apartment complexes or shopping centers) authorizing a tow operator to remove vehicles that are improperly parked on a property (e.g., located in a fire lane or designated "no parking" area, parked in a disabled parking stall without displaying a valid disabled parking placard, blocking garages and/or dumpsters, and impeding snow-removal efforts). Statewide Towing Association, Inc., D.P.U. 20-72-A at 3 n.4 (2021), citing Police Ordered Towing, D.P.U. 20148, at 11 (1980).

3 The maximum charges established in 220 CMR 272.00 apply only to the towing and transportation of motor vehicles when said transportation is ordered by the police or other public authority pursuant to G.L. c. 159B, § 6B, or for trespass pursuant to G.L. c. 266, § 120D. 220 CMR 272.02. Rates identified in 220 CMR 272.00 do not apply to towing that results from a call made by a police officer or other public employee at the request of the owner/operator to transport a vehicle to a location other than the carrier's garage.

Pursuant to the requirements of G.L. c. 30A, § 2, notice of this rulemaking was published in The Boston Globe and Boston Herald on December 27, 2023, and in the Massachusetts Register on January 5, 2024. The Department accepted written comments through January 17, 2024, and received several comments from interested parties. The Department received initial comments on January 17, 2024, from the Massachusetts State Police ("MSP"), Massachusetts Public Interest Research Group ("MASSPIRG"), and the Statewide Towing Association, Inc. ("STA"), and a joint comment submitted by the Massachusetts Insurance Federation, American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, and National Insurance Crime Bureau (together, "Insurance Associations").

On January 23, 2024, the Department held a virtual public hearing to receive comments, and seven individuals provided comments at the hearing.[4] The Department received reply comments from STA; Michael Penacho, owner of All Day & All Night Towing; James Godfrey, owner of Godfrey Enterprises Inc.; and John Direnzo, President of STA.

## II. INTRODUCTION

Commenters addressed both the proposed rate increases contained in the Emergency Regulations and additional topics, including consumer protection provisions, that were not proposed for consideration in this proceeding and that the Department has stated will be the

---

220 CMR 272.02. The maximum charges also exclude storage fees established by G.L. c. 159B, § 6B.

4 The following individuals commented at the public hearing: Christopher Stark, Massachusetts Insurance Federation; Nathan Buckler, STA; Kim Lowell, STA; Nicholas Pirro, III, Quality Towing and Recovery, Inc.; Jeremy Procon, Interstate Towing, Inc.; Todd Chase, Ascentium Capital); and Matthew Penacho, All Day & All Night Towing, Inc.

subject of a separate inquiry. Statewide Towing Association, Inc., D.P.U. 22-127, at 13 (2023); Investigation by the Department of Public Utilities, on its own motion, commencing a rulemaking pursuant to G.L. c. 30A, § 2; G.L. c. 159B, § 6B; and 220 CMR 2.00 to amend Rates for the Towing of Motor Vehicles at 220 CMR 272.00, D.P.U. 23-145, Corrected Order Adopting Emergency Regulations ("Emergency Regulations Order") at 4 (December 13, 2023). The Department will not address those suggested additional consumer protection provisions in detail in this Order so that they may be evaluated and subjected to a robust review and comment process in a separate proceeding. Likewise, the Department has stated that, given the consistent and historic difficulty the towing industry has had in meeting the Department's ratemaking and evidentiary standards in support of a rate increase request, we will open a comprehensive investigation to revise the method for establishing maximum rates for involuntary tows and develop protections that ensure consumers are treated fairly and are not subject to unauthorized fees. D.P.U. 23-145, Emergency Regulations Order at 4. We will investigate those issues in that separate inquiry.

## III. FINAL CHANGES TO EMERGENCY REGULATIONS

### A. Comments

The Department received comments both in support of and in opposition to the proposed increase in maximum towing rates. Several commenters supported the proposed rate increase, noting the significant increase in certain costs being incurred by towers without a commensurate increase in maximum rates, which have not increased since 2017 (Tr. at 16). These commenters emphasized that many tow companies are small and family-owned businesses and thus their

accounting and record keeping may not rise to the Department's ratemaking standards, and gave examples of the inflationary pressures on both labor and equipment costs (Tr. at 11-12).

MSP states that it agrees that that the maximum rates established by the Department should be re-calculated to ensure they are in alignment with the actual increases in labor, equipment, insurance, and fuel costs incurred by towers (MSP Comments at 1). MSP further asserts that these rates should be subject to periodic review using a standardized index that would reflect actual increases or decreases of costs which would then be reflected in the codified rates (MSP Comments at 1). MSP urges, however, that the Department should open a rulemaking encompassing the entirety of 220 CMR 272.00 to address the additional issues raised by MSP, including training, visibility, criminal background investigations, insurance requirements, and consumer protections (MSP Comments at 2-6, 9).

MASSPIRG and the Insurance Associations oppose the proposed rate increase, particularly without additional consumer protections (MASSPIRG Comments at 1; Insurance Associations Comments at 1). The Insurance Associations specifically disagree with the use of the Consumer Price Index ("CPI") as a basis for the calculation of the rate increase (Insurance Associations Comments at 1; Tr. at 3-4). The Insurance Associations argue that the law requires that an increase in the towing and related charges be justified by the ability to collect reasonable profits (Insurance Associations Comments at 1). While the Insurance Associations state that they are not opposed to a discussion regarding rate increases and consumer protections, the use of the CPI alone is not enough (Insurance Associations Comments at 2; Tr. at 7).

STA and several of its members voiced their support for the increase in maximum rates (STA Comments at 1; Tr. at 9, 10). STA supports implementation of the Emergency Regulations

and urges the Department to investigate a new method for determining the maximum charges (STA Comments at 1; Tr. at 13; Direnzo Reply Comments at 4). In support of an increase, STA states that costs associated with tows such as the impact of chip shortages and truck production issues, as well as labor, have increased since the last rate increase in 2017 (STA Comments at 6; Tr. at 14; Direnzo Reply Comments at 3). STA argues, however, that the calculated rate increase is not adequate (STA Comments at 6). It notes that certain towing-specific costs have increased significantly more than the approximate 22 percent increase calculated by reference to the Northeast regional CPI in 2017 (STA Comments at 7). It urges that a more appropriate measure of inflation is to measure it against January 2015 instead of June 2017 (STA Comments at 7). STA insists that an increase based on CPI only for towing charges will not sufficiently increase towing revenues because storage revenues are fixed at $35 per day by statute (STA Comments at 8).

B. Analysis and Findings

The Final Regulations increase the maximum rates and charges applicable to involuntary tows in Massachusetts consistent with the rates in the Emergency Regulations. For passenger automobiles:[5] (1) the maximum charge per tow will increase from $108.00 to $132.00; (2) the service and waiting time in excess of one hour will increase from $42.00 to $51.00 per half hour; (3) the additional service vehicle charge will increase from $108.00 to $132.000; (4) the excessive mileage rate will increase from $3.60 per mile to $4.40 per mile; and (5) the additional labor charge will increase from $38.40 per hour to $46.00 per hour. For commercial vehicles:

[5] Unless otherwise specified, the meaning of all terms used herein is as defined in 220 CMR 272.01.

(1) the maximum charge per tow will increase from $108.00 to $132.00; and (2) the excessive mileage rate will increase from $5.40 per mile to $6.60 per mile. The threshold for applying the fuel surcharge set forth in 220 CMR 272.05 will increase from $2.622 to $3.196. The embedded cost of fuel in the basic tow rate used to calculate the fuel surcharge will increase from $7.32 to $8.92. The adjustments are based on the Bureau of Labor Statistics' regional CPI.[6]

The Department notes that maximum towing rates were last adjusted in 2017, costs have risen generally across the entire economy and specifically for the towing industry, and several commenters discussed the impact of inflation on their businesses (Tr. at 16). D.P.U. 22-127, at 6-7; see also Massachusetts Electric Company/Nantucket Electric Company, D.P.U. 23-55, at 13 (2023). Further, it is likely that a comprehensive investigation to revise the method for establishing maximum rates for involuntary tows, and to develop protections that ensure consumers are treated fairly and are not subject to unauthorized fees, will require more time, which can be accommodated following to this rulemaking.

The Department finds that implementing the Final Regulations increasing the maximum rates that may be charged for involuntary tow services is necessary for the preservation of public safety, as it will ensure the continued availability of adequate towing services for disabled vehicles and police-ordered tows. The Department further finds that there are no changes that must be made to the Emergency Regulations. Finally, the Department finds addressing the tow rates separately from the additional issues and potential regulatory changes raised by commenters is appropriate given the public safety implications in the event the number of

6 https://www.bls.gov/regions/northeast/data/xg-tables/ro1xg01.htm.

Department-regulated tow companies and those companies willing and able to respond in a timely manner to police-ordered tows continues to decline.

## IV. ADOPTION OF FINAL REGULATIONS

For the reasons stated above, the Department by this Order adopts the attached Final Regulations 220 CMR 272.00 setting forth the maximum rates for the involuntary towing of passenger and commercial motor vehicles. Because there are no changes to the Emergency Regulations, the Department will file a Notice of Compliance with the Office of the Secretary of the Commonwealth, State Publications and Regulations Division. The Emergency Regulations will become permanent and retain the December 13, 2023, effective date upon publication of the Notice of Compliance and the permanent regulations in the Massachusetts Register. See 950 CMR 20.05(2)(a).

## V. ORDER

Accordingly, after notice, comments, hearing, and due consideration, it is ORDERED: That the regulations, entitled "Rates for the towing of motor vehicles," attached hereto and designated as 220 CMR 272.00, are hereby ADOPTED

By Order of the Department,

James M. Van Nostrand, Chair

Cecile M. Fraser, Commissioner

Staci Rubin, Commissioner

**APPENDIX A, FINAL REGULATIONS CLEAN WITH NO CHANGES TO THE EMERGENCY REGULATIONS: 220 CMR 272.00: RATES FOR THE TOWING OF MOTOR VEHICLES**

Section

272.01: Definitions
272.02: Scope
272.03: Maximum Charges for Passenger Automobiles, Motorcycles, Motor Bikes or Motor Scooters
272.04: Maximum Charges for Commercial Motor Vehicles
272.05: Fuel Price Surcharge

272.01: Definitions

Commercial Motor Vehicle. A motor vehicle or combination of motor vehicles used to transport passengers or property. This shall include:

(a) a bus or van used in commerce, having the manufacturer's rated seating capacity of at least nine passengers and a driver;
(b) a truck used to transport property; or
(c) any other vehicle which may display a plate other than a passenger or motorcycle plate.

Fuel-burning Operations. The services included in the basic tow rate, rate for tows in excess of five miles or the charges otherwise established in sections 220 CMR 272.03(1) through (4).

Passenger Automobile. A motor vehicle capable of transporting not more than eight passengers and a driver displaying a passenger or motorcycle plate.

Recovery. Wrecker working, winching, Waiting Time, clean up time and the provisions of special equipment needed to place a disabled motor vehicle in position to be towed.

Service Vehicle. The vehicle used to tow or transport the disabled vehicle.

Service or Waiting Time. Elapsed time the Service Vehicle is waiting to provide service at the scene, winching or utilizing Service Vehicle equipped industry standard tools or equipment.

272.02: Scope

The maximum charges established in 220 CMR 272.00 shall only apply to the towing and transportation of motor vehicles when said transportation is ordered by the police or other public authority pursuant to M.G.L. c. 159B, § 6B or for trespass pursuant to M.G.L. c. 266, § 120D. Rates stated in 220 CMR 272.00 shall not apply to towing which results from a call made by a police officer or other public employee at the request of the owner/operator to transport the vehicle to a location other than the carrier's garage.

If, at the scene, the owner/operator requests that the vehicle be transported to a location other than the carrier's garage, the maximum tow rate may not apply.

272.03: Maximum Charges For Passenger Automobiles, Motorcycles, Motor Bikes Or Motor Scooters

(1) For all Passenger Automobiles, motorcycles, motor bikes, motor scooters and all vehicles capable of being transported by crane and dolly or on a ramp truck, the maximum charge for towing up to five miles shall not exceed $132.00 per vehicle towed regardless of day of week or time of day; provided however that, the maximum charge shall include one hour of Service or Waiting Time. The Service or Waiting Time shall be computed from the time of arrival at the scene.

(2) If Service or Waiting Time exceeds one hour, a $51.00 per ½ hour charge may be assessed for each vehicle towed when the additional time is necessary to remove the disabled vehicle or if requested by the police or other public authority; provided however that this charge shall not apply to trespass tows or snow removal tows. The starting and ending time shall be recorded on the tow slip at time of service for 220 CMR 272.03(2) to be applicable.

(3) If an additional Service Vehicle or Vehicles is required, the maximum additional Service Vehicle charge shall not exceed $132.00 per additional Service Vehicle; provided however that this charge shall not apply to trespass tows or snow removal tows. The starting and ending time shall be recorded on the tow slip at the time of service for 220 CMR 272.03(3) to be applicable. Time shall be computed from the time the Service Vehicle is dispatched until it returns to the carrier's garage or is back in service.

(4) For miles towed in excess of five miles, a surcharge of $4.40 per mile for each mile over the five miles may be assessed.

(5) When additional labor is required and supplied because it is necessary to remove the disabled vehicle from the scene or is required by the police or other public authority, a maximum rate of $46.00 per man hour, or any fraction thereof, shall

apply. The additional labor shall be computed from the time of leaving the carrier's garage until return to the garage. A minimum charge of one hour may be assessed when additional labor is supplied under 220 CMR 272.03(5).

(6) If the carrier has to employ any extraordinary or additional services outside of its capabilities, including but not limited to, renting cranes, renting bulldozers, employing specialized labor, or utilizing services to handle hazardous material or dangerous goods (HAZMAT), the maximum charge shall not exceed the amount of such extraordinary or additional services.

(7) When determining fractions of mileage under 220 CMR 272.03(1) and (4), omit fractions of less than 5/10 and increase fractions of 5/10 or more to the next whole figure.

(8) Mileage shall be based on round trip mileage from the carrier's garage to return thereto. If the Service Vehicle is dispatched from a location other than the carrier's garage, the one-way mileage may be doubled. The carrier shall establish the mileage from the Service Vehicle odometer and shall include the odometer readings on the tow slip.

(9) When more than one vehicle is transported on a Service Vehicle between municipalities and a mileage charge would result in a charge greater than five miles, the mileage charge shall be computed according to a commercial global positioning system (GPS) tracking application and then doubled to arrive at the round trip mileage.

(10) The owner/operator shall be responsible for all toll charges.

272.04: Maximum Charges For Commercial Motor Vehicles

(1) For all Commercial Motor Vehicles, the maximum charge for towing up to five miles shall not exceed $132.00 per tow regardless of day of week or time of day.

(2) For services necessary to the Recovery of a disabled Commercial Motor Vehicle, the carrier shall establish the charges.

(3) For miles towed in excess of five miles, a surcharge of $6.60 per mile for each mile over the five miles may be assessed.

(4) When determining fractions of mileage under 220 CMR 272.04(1) and (3), omit fractions of less than 5/10 and increase fractions of 5/10 or more to the next whole figure.

(5) Mileage shall be based on round trip mileage from the carrier's garage to return thereto. If the Service Vehicle is dispatched from a location other than the carrier's garage, the one-way mileage may be doubled. The carrier shall establish the mileage from the Service Vehicle odometer and shall include the odometer readings on the tow slip.

(6) The owner/operator shall be responsible for all toll charges.

272.05: Fuel Price Surcharge

(1) When the average cost of diesel fuel in New England exceeds $3.196 per gallon, the Department shall authorize a fuel surcharge under 220 CMR 272.00. The Department shall calculate the fuel surcharge as a factor that may be multiplied by the sum of those applicable rates and charges relating to Fuel-burning Operations of the Service Vehicles.

(2) The Department shall obtain the retail on-highway price per gallon of diesel fuel for New England as reported by the Energy Information Administration of the U.S. Department of Energy on its website, www.eia.doe.gov, for the first three Mondays of each month (Retail Prices).

(3) The Department shall calculate the average cost of diesel fuel by taking the average of the Retail Prices as determined in 220 CMR 272.05 (Average Cost).

(4) To determine the appropriate fuel surcharge factor, the Department shall divide the Average Cost by $3.196 to produce a multiplication factor (Fuel Multiplication Factor or FMF). The Fuel Multiplication Factor is then multiplied by $8.92, the embedded cost of fuel in the basic tow rate, to arrive at the current fuel cost per basic tow (Current Fuel Cost). The Current Fuel Cost is then divided by the fuel-adjusted basic tow revenue requirement, which is the sum of the $132.00 basic tow rate, plus the product of the Fuel Multiplication Factor multiplied by $8.92, minus the embedded fuel cost of $8.92 (Fuel-adjusted Revenue Requirement). Dividing the Current Fuel Cost by the Fuel-adjusted Revenue Requirement and subtracting the current embedded 6.8 % yields a fuel surcharge factor (Fuel Surcharge Factor) that may be applied in the next month to the sum of the applicable rates and charges relating to Fuel-burning Operations of the Service Vehicles. This formula is mathematically represented as: (($8.92 x FMF) ÷ ($132.00 + (($8.92 x FMF) - $8.92))) - .068 = Fuel Surcharge Factor.

(5) On the fourth Monday of each month (or the next business day if this falls on a holiday) preceding a month in which the Department will authorize a surcharge, the Transportation Oversight Division will issue an Administrative Order setting

forth the amount of the Fuel Surcharge Factor effective for the following calendar month by:

(a) posting on the Department's website the Fuel Surcharge Factor and the month and year for which it applies, where it will remain at least until the expiration of the month to which it relates; and

(b) recording a message accessible by telephone stating the Fuel Surcharge Factor and the month and year for which it applies, where it will remain at least until the expiration of the month to which it relates.

(6) To apply a fuel surcharge, the towing slip shall record the following:

(a) each applicable rate and charge relating to Fuel-burning Operations of the Service Vehicles and a sum total;

(b) the amount of the authorized Fuel Surcharge Factor; and

(c) the amount of the applicable surcharge (the product of multiplying the sum total from 220 CMR 272.05(6)(a) by 220 CMR 272.05(6)(b)).

(7) The authorization of the Fuel Surcharge Factor shall expire on the last day of the calendar month for which it is authorized.

(8) The application of the surcharge is voluntary.

REGULATORY AUTHORITY

220 CMR 272.00: M.G.L. c. 159B, § 6B; c. 266, § 120D.