

# VEHICLE TOWING

*Administrative Rules of the Texas Department of Licensing and Regulation  
16 Texas Administrative Code, Chapter 86*

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**86.1. Authority and Purpose.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

These rules are adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2308. These rules increase the safety of vehicle towing operators by insuring that only qualified professionals tow vehicles.

**86.10. Definitions.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

The following words and terms, when used in this chapter will have the following meanings, unless the context clearly shows otherwise:

- (1) **Advisory board**--The Towing and Storage Advisory Board.
- (2) **Applicant**--The person or entity submitting an application for a permit or license issued by the department.
- (3) **Certificate of insurance**--A certificate prescribed by and filed with the department in which an insurance carrier or surety company, approved in this state, warrants that a towing company for whom the certificate is filed has the minimum coverage as required by §86.400.
- (4) **Commission**--The Texas Commission of Licensing and Regulation.
- (5) **Consent tow**--Any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.
- (6) **Conspicuous**--Written in a size, color, and contrast so as to be readily noticed and understood.
- (7) **Contested case**--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.
- (8) **Department**--The Texas Department of Licensing and Regulation.
- (9) **Driver's License**--Has the meaning assigned by §521.001, Transportation Code.
- (10) **License holder** or **Licensee**--The person to which the department issued a license.
- (11) **Nonconsent tow**--Any tow of a motor vehicle that is not a consent tow.
- (12) **Parking facility**--Public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:
  - (A) a restricted space on a portion of an otherwise unrestricted parking facility; and
  - (B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:
    - (i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and
    - (ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.
- (13) **Parking facility owner**--

- (A) an owner or operator of a parking facility, including a lessee, employee, or agent of an owner or operator;
  - (B) a property owners' association having control under a dedicatory instrument, as that term is defined in §202.001, Property Code, over assigned or unassigned parking areas; or
  - (C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in §202.001, Property Code, to use a parking space.
- (14) **Permit holder**--The person to which the department issued a permit.
- (15) **Property owners' association**--Has the meaning assigned by §202.001, Property Code.
- (16) **Public roadway**--A public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.
- (17) **Tow truck**--A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The following motor vehicles are not considered tow trucks:
- (A) a motor vehicle owned and used exclusively by a governmental entity, including a public school district;
  - (B) a motor vehicle towing:
    - (i) a race car;
    - (ii) a motor vehicle for exhibition; or
    - (iii) an antique motor vehicle;
  - (C) a recreational vehicle towing another vehicle;
  - (D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise; or
  - (E) a motor vehicle that is controlled or operated by a farmer or rancher and that is used for towing a farm vehicle.
- (18) **Towing company**--An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.
- (19) **Towing operator**--The person to which the department issued a towing operator license.
- (20) **Unauthorized vehicle**--A vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.
- (21) **Vehicle**--A device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.
- (22) **Vehicle owner**--A person:
- (A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

- (B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;
  - (C) who holds the vehicle through a lease agreement;
  - (D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or
  - (E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.
- (23) **Vehicle storage facility**--A vehicle storage facility, as defined by Texas Occupations Code, §2303.002 that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

**86.200. Tow Truck Permit--Required.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A tow truck may not be used for towing on the public streets or roads of this state unless an appropriate tow truck permit has been issued by the department.
- (b) A separate permit is required for each tow truck.
- (c) A tow truck permit is valid for not more than one year from the date of issuance. A tow truck permit shall expire on the same date as the license issued by the department to the tow truck company.

**86.201. Tow Truck- Permit--Incident Management Towing.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) An incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow allowed under §545.3051, Transportation Code.
- (b) To be eligible for an incident management towing permit, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the fee required under §86.800;
  - (3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.
  - (4) provide proof of insurance required under §86.400; and
  - (5) successfully pass a criminal background check.
- (c) An incident management towing permit may also be used for private property towing and consent towing.

**86.202. Tow Truck Permit--Private Property Towing.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner.
- (b) To be eligible for a private property towing permit, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the fee required under §86.800;
  - (3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the

manufacturer's guidelines.

- (4) provide proof of insurance required under §86.400; and
  - (5) successfully pass a criminal background check.
- (c) A private property towing permit may also be used for consent towing but not for incident management towing.

**86.203. Tow Truck Permit--Consent Towing.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner, as defined in §86.10(22).
- (b) To be eligible for a consent towing permit, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the fee required under §86.800;
  - (3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.
  - (4) provide proof of insurance required under §86.400; and
  - (5) successfully pass a criminal background check.
- (c) A consent towing permit may not be used for nonconsent towing, including incident management towing and private property towing.

**86.204. Tow Truck Permit--Approval and Issuance.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) The department will issue a permit under these rules to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under these rules.
- (b) The department will issue a certificate containing a single unique permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

**86.205. Tow Truck Permit--Renewal.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) The department will send written notice to permit holders at least 30 days before the permit expires. The notice will be sent to the permit holder's last known address according to the records of the department.
- (b) To renew a permit, a permit holder must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the fee required under §86.800;
  - (3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.
  - (4) provide proof of insurance required under §86.400; and
  - (5) successfully pass a criminal background check.
- (c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the permit. A late renewal means the permit holder will have an un-permitted period

from the expiration date of the expired permit to the issuance date of the renewed permit. During the unpermitted period, a tow truck may not be used for towing on the public roadways of this state.

- (d) Non-receipt of a permit renewal notice from the department does not exempt a person from any requirements of these rules.

**86.206. Tow Truck Cab Cards.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) The department will issue a cab card for each tow truck issued a permit. The cab card will:
  - (1) show the permit number of the certificate issued under these rules;
  - (2) show the type of permit issued;
  - (3) show the vehicle unit number;
  - (4) show the vehicle identification number; and
  - (5) contain a statement that the vehicle has a permit issued under these rules.
- (b) The department will issue a cab card when the department issues or renews a permit.
- (c) A permit holder must keep a copy of the cab card in the cab of each permitted tow truck.
- (d) If an original cab card is lost, stolen, destroyed, or mutilated, if it becomes illegible, or if it otherwise requires replacement, the permit holder, can request that the department issue a new cab card.
- (e) The department may require a permit holder to surrender the original cab card if the permit is suspended or revoked.

**86.207. Licensing Requirements--Towing Operator License.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A person shall not perform towing operations without a towing operator license issued by the department.
- (b) Each type of towing operator license is:
  - (1) valid for one year from the date of issuance;
  - (2) valid throughout this state; and
  - (3) nontransferable.

**86.208. Licensing Requirements--Incident Management Towing Operator License.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) An incident management towing operator's license is required to operate a tow truck permitted or required to be permitted under these rules.
- (b) An applicant for an incident management towing operator's license must:
  - (1) submit a completed application on a department-approved form;
  - (2) be a licensed Texas driver;
  - (3) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department;

- (4) successfully pass a criminal background check; and
- (5) pay the fee required under §86.800.

**86.209. Licensing Requirements--Private Property Towing Operator License.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A private property towing operator's license is required to operate a tow truck permitted or required to be permitted under these rules.
- (b) An applicant for a private property towing operator's license must:
  - (1) submit a completed application on a department-approved form;
  - (2) be a licensed Texas driver;
  - (3) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department;
  - (4) successfully pass a criminal background check; and
  - (5) pay the fee required under §86.800.

**86.210. Licensing Requirements--Consent Towing Operator License.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A consent towing operator's license is needed to operate a tow truck permitted or required to be permitted under these rules.
- (b) An applicant for a consent towing operator's license must:
  - (1) submit a completed application on a department-approved form;
  - (2) be a licensed Texas driver; and
  - (3) successfully pass a criminal background check; and
  - (4) pay the fee required under §86.800.

**86.211. Licensing Renewal--Towing Operators.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) The department will send written notice to licensees at least 30 days before the license expires. The notice will be sent to the licensee's last known address according to the records of the department.
- (b) A licensee may renew a license under this chapter by:
  - (1) submitting a completed application on a department-approved form;
  - (2) pay the fee required under §86.800;
  - (3) meet the applicable continuing education requirements; and
  - (4) successfully pass a criminal background check.
- (c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a tow truck operator may not operate a tow truck on the public roadways of this state.



- (d) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of these rules.

**86.212. Licensing Requirements--Towing Company License Required.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A person shall not operate a towing company without a towing company license issued by the department.
- (b) To be eligible for a towing company license, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the fee required under §86.800;
  - (3) successfully pass a criminal background check;
  - (4) provide the name, and address of each partner if the applicant is a partnership;
  - (5) provide the name, and address of each corporate officer, including the president, secretary, and treasurer, if the applicant is a corporation;
  - (6) provide the name, and address of each owner of the towing company and the percentage of ownership interest each holds in the company;
  - (7) provide the name, and address of the operator or manager of the towing company if it is not operated or managed by one of the owners;
  - (8) provide the towing company's physical address, mailing address, and telephone number; and
  - (9) adopt the drug testing policy provided in these rules or file a drug testing policy for approval under these rules.

**86.213. Towing Company License--Approval and Issuance.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Upon receipt of an application for a towing company license, the department will review the application to verify the qualifications of the applicant.
- (b) If an applicant is qualified under these rules, the department will issue a towing company license to the applicant.
- (c) If an applicant is determined to be not qualified under these rules, the department will advise the applicant in writing of the reasons the applicant is not qualified or the deficiencies in the application.
- (d) The department may deny a towing company license application if the applicant:
  - (1) has had a license revoked under these rules;
  - (2) failed to file a completed application; or
  - (3) provides false, misleading, or deceptive information in the application.
- (e) The department will issue a certificate containing a single unique license number for each towing company.

**86.214. Towing Company License Renewal.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) The department will notify the license holder at least 30 days before the date a license expires. The notice will

be in writing and sent to the license holder's last known address according to the records of the department.

- (b) To renew a towing company license, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the applicable fee required under §86.800;
  - (3) successfully pass a criminal background check.

**86.215. Department Notifications to Licensee or Permit Holder.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

Unless otherwise provided for by statute or these rules, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or permit holder.

**86.250. License Requirements--Towing Operator Continuing Education.** *(New section adopted effective January 12, 2009, 34 TexReg 200)*

- (a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.
- (b) To renew a towing operator license, a licensee must complete a total of 4 hours of continuing education through Department-approved courses. The continuing education hours must include the following:
  - (1) 1 hour in roadway safety;
  - (2) 1 hour in Texas law and rules that regulate the conduct of towing operators; and
  - (3) 2 hours in any topic listed in subsection (g), including subsection (g)(1) and (g)(2).
- (c) For a timely renewal, the continuing education hours must have been completed within the term of the current license. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.
- (d) A licensee will not receive continuing education hours for attending the same course more than once.
- (e) A licensee will receive continuing education hours for only those courses that are approved by the Department, under procedures prescribed by the Department.
- (f) A licensee must retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the Department may examine the licensee's records to determine compliance with this subsection.
- (g) To be approved by the Department under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:
  - (1) Texas law and rules that regulate the conduct of towing operators;
  - (2) roadway safety;
  - (3) driver safety;
  - (4) towing techniques;
  - (5) equipment operation and safety; and
  - (6) customer service and documentation.

- (h) A Department-approved course may be offered until the expiration of the course approval or until the provider ceases to hold an active provider registration, whichever occurs first.
- (i) A provider shall pay to the Department a continuing education record fee of \$5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for courses completed may result in disciplinary action against the provider, up to and including revocation of the provider's registration under §59.90 of this title.
- (j) To renew an incident management towing operator's license the first time, a licensee must complete, in lieu of the requirements stated in subsections (b), (c), and (g), a professional development course relating to towing that:
  - (1) consists of at least 8 hours of training, of which:
    - (A) at least 2 hours are live demonstration and hands-on training;
    - (B) at least 2 hours are classroom training; and
    - (C) any remaining hours are classroom training or live demonstration and hands-on training;
  - (2) is dedicated to instruction in the following topics:
    - (A) how light-duty tow trucks work;
    - (B) towing with a wheel lift;
    - (C) towing with a tow sling;
    - (D) using tow dollies;
    - (E) car carrier operation;
    - (F) vehicle recovery;
    - (G) light-duty tow trucks;
    - (H) field procedures;
    - (I) vehicle maintenance; and
    - (J) safety; and
  - (3) is offered by or through a Department-approved provider, including a community college, college, or university.
- (k) This section shall apply to licensees, providers, and courses upon the effective date of this section.
- (l) Notwithstanding any other provision of this section or Chapter 59 of this title, a licensee may receive credit under subsection (j) for a course that the licensee completed before the effective date of this section if:
  - (1) the course satisfies the requirements of subsection (j)(1) and (j)(2); and
  - (2) the licensee furnishes to the Department a certificate of completion or other evidence satisfactory to the Department of completion of the course.

**86.400. Insurance Requirements--Tow Truck Permits.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) An applicant for a tow truck permit is responsible for ensuring the electronic submission of a certificate of insurance when applying for an initial license or permit, submitting a license or permit renewal, changing a business name or affiliation, and upon request of the department.
- (b) The certificate of insurance must be obtained from and submitted by an insurance company licensed and authorized to do business in Texas pursuant to the Texas Insurance Code.
- (c) The name and address of the applicant, licensee, or permit holder shown on the certificate of insurance form must be the same as the name and address on the application or permit. The applicant or permit holder is responsible for ensuring that the insurance information on file with the department reflects the correct name and address of the insured.
- (d) Coverage.
  - (1) Tow truck permit applicants and permit holders must obtain insurance for each permitted tow truck that meets the following requirements:
    - (A) Incident Management Towing
      - (i) a minimum of \$500,000 liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo) per occurrence, or both; and
      - (ii) a minimum of \$50,000 of cargo or cargo on hook insurance per tow truck per incident.
    - (B) Private Property Towing
      - (i) a minimum of \$300,000 of liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo) per occurrence, or both; and
      - (ii) a minimum of \$50,000 of cargo or cargo on hook insurance per tow truck per incident.
    - (C) Consent Towing. A minimum of \$300,000 of liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo or cargo on hook) per occurrence, or both.
  - (2) Insurance covering permitted tow trucks must be kept in full force and effect at all times.
  - (3) The certificate of insurance must contain a provision obligating the insurer give the department thirty days notice before the effective date of a policy cancellation date.
- (e) Replacement insurance filing.
  - (1) The department will consider a new insurance filing as the current record of financial responsibility required by this section if:
    - (A) the new insurance filing is received by the department; and
    - (B) a cancellation notice has not been received for previous insurance filings.
  - (2) The department may revoke a license if the insurance has been canceled and a replacement policy has not been filed prior to the cancellation date.
- (f) Insolvency of insurance carrier. If an insurer for a tow truck permit holder becomes insolvent, is placed in receivership, or has its certificate of authority suspended or revoked and if the tow truck permit holder no longer

has insurance coverage as required by these rules, the tow truck permit holder shall file with the department, not later than the 10th day after the date the coverage lapses:

- (1) evidence of insurance as required by these rules; and
- (2) an affidavit that:
  - (A) indicates that an accident from which the tow truck permit holder may incur liability did not occur while the coverage was not in effect; or
  - (B) contains a plan acceptable to the department indicating how the tow truck permit holder will satisfy claims of liability against the tow truck permit holder for an accident that occurred while the coverage was not in effect.
- (g) Notices. The department will notify the Texas Department of Public Safety and other law enforcement agencies of each tow truck permit that has been revoked for failure to maintain the required insurance coverage.

**86.450. Inspections--General.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A towing company shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections are performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to licensees and managers on best practices for risk-reduction techniques.
- (b) Inspections shall be performed during the normal operating hours of the towing company. The department may conduct inspections under the Act and these rules with or without advance notice.
- (c) The department inspector will contact the towing company owner, manager, or their representative upon arrival at the towing company, and before proceeding with the inspection.
- (d) The towing company owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.

**86.451. Periodic Inspections.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Each towing company shall be inspected at least once every two years.
- (b) The towing company owner, manager, or their representative must, upon request, make available to the inspector all records, notices and other documents required by these rules.
- (c) Upon completion of the inspection, the owner manager, or representative shall be advised in writing of the results of the inspection. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.
- (d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective actions required to address the violations, in accordance with §86.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.
- (e) Based on the results of the periodic inspection, a towing company may be moved to a risk-based schedule of inspections. The department will notify the owner of the towing company, in writing, if the company becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

**86.452. Risk-based Inspections.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Risk-based inspections are those required in addition to periodic inspections required under §86.451, for towing companies determined by the department to be a greater risk to the public.

- (b) To determine which towing company will be subject to risk-based inspections, the department has established criteria and frequencies for inspections.
- (c) The owner of the towing company shall pay the fee required under §86.800 for each risk-based inspection, in a manner established by the department.
- (d) Each towing company subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:

Tier	Criteria	Total Inspection Frequency (includes both periodic and risk-based inspections)
Tier 1	Violation of the rules determined by the department to pose a potential economic harm to property. Repeated violations relating to unlicensed activity.	Once each year
Tier 2	A serious or repeated violation relating to documentation and records requirements. Failure to maintain required records. Serious or repeated violations relating to unlicensed activity.	Twice each year
Tier 3	Repeated, serious violations related to towing company technical requirements. A significant violation of notifications rules, particularly those that threaten economic harm. Significant or repeated violations relating to unlicensed activity.	Four times each year

- (e) At the time of inspection of a towing company, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by these rules.
- (f) Upon completion of the inspection, the owner of the towing company shall be advised in writing of the results of the inspection.
- (g) The inspection report will identify violations that must be corrected by the towing company. The report will also indicate the corrective actions required to address the violations, in accordance with §86.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.
- (h) A towing company on a risk-based inspection schedule that has no significant violations in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the towing company if there is a change in the towing company's risk-based schedule or if the towing company is returned to a periodic inspection schedule.

**86.453. Corrective Actions Following Inspection** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) When corrective actions to achieve compliance are required:
  - (1) the department shall provide the towing company a list of required corrective modification(s);
  - (2) within 10 days after receiving the list of required corrective actions, the owner shall complete all corrective actions and provide written verification of the corrective actions to the department; and
  - (3) the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

- (b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to complete corrective actions timely or provide written verification to the department timely, in accordance with §86.900.

**86.500. Reporting Requirements--Towing Company.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Before January 31 of each year, a towing company must submit to the department a schedule showing each towing fee the towing company charges or collects for nonconsent towing.
  - (1) Format. The fee schedule must be:
    - (A) on plain white paper measuring 8-1/2 inches by 11 inches; and
    - (B) clearly legible, using black ink, and typed in 12-point font.
  - (2) Information. The nonconsent towing fees schedule must include:
    - (A) the name and license number of the towing company as on file with the department;
    - (B) the effective date(s) of the fees; and
    - (C) if different fees are assessed for different geographic areas, a clear delineation between fees assessed for one area and fees assessed for another.
- (b) If a political subdivision begins regulating nonconsent tow fees, the towing company must report the fees to the department before the 30th day after the municipal ordinance goes into effect.
- (c) Any changes in nonconsent tow fees regulated by a political subdivision must be reported to the department by the towing company before the 30th day after the effective date of the change.
- (d) Complete lists required. Each time a towing company files a nonconsent towing fees schedule, the towing company must include a complete list of all nonconsent towing fees charged by the towing company. Partial towing fee schedules are not acceptable. Each filing is a complete schedule of all nonconsent towing fees of the company.

**86.600. Responsibilities of the Department--Nonconsent Fee Schedules.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

The department will:

- (1) make filings of acceptable nonconsent towing fees schedules available on its internet website;
- (2) reject any filing of nonconsent towing fees schedules that are not filed in accordance with this section; and
- (3) make no determination as to the reasonableness of towing fees.

**86.650. Towing and Storage Advisory Board.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) The advisory board consists of the eight members appointed by the chairman of the commission with the approval of the commission. The eight members include:
  - (1) one representative of a towing company operating in a county with a population of less than one-million;
  - (2) one representative of a towing company operating in a county with a population of one-million or more;

- (3) one owner of a vehicle storage facility located in a county with a population of less than one-million;
  - (4) one owner of a vehicle storage facility located in a county with a population of one-million or more;
  - (5) one law enforcement officer from a county with a population of less than one-million;
  - (6) one law enforcement officer from a county with a population of one-million or more;
  - (7) one parking facility owner; and
  - (8) one representative of property and casualty insurers who write automobile insurance in this state.
- (b) The advisory board shall include representation for each classification of towing.
  - (c) Advisory board members serve terms of six years, with the terms of two or three members, expiring on February 1 of each odd-numbered year.
    - (1) A member may not serve more than two full consecutive terms.
    - (2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.
  - (d) The chairman of the commission appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.
  - (e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.
  - (f) The advisory board meets twice yearly and may meet at other times at the call of the chairman of the commission or the executive director.
  - (g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of these rules, including examination content, licensing standards, and continuing education requirements.

**86.700. Responsibilities of Tow Truck Permit Holder--Storage of Towed Vehicles.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Unless the towing company agrees to take the vehicle to a location designated by the vehicle's owner, a towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility operated by a person who holds a vehicle storage facility license issued by the department.
- (b) A towing company or towing operator may not request a vehicle owner or operator sign a tow ticket or authorization form for a tow if the tow is initiated by law enforcement.
- (c) The towing company and towing operator must take the towed vehicle to the designated location using the most direct route reasonably available at the time of the tow.

**86.701. Responsibilities of Tow Truck Permit Holder--Tow Truck Signage.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A tow truck permit holder must display on each permitted tow truck:
  - (1) the permit holder's name;



- (2) the permit holder's publicly listed telephone number;
  - (3) the city and state where the permit holder is located; and
  - (4) the permit number for the tow truck.
- (b) The information required to be displayed must be:
- (1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and
  - (2) permanently affixed in conspicuous places on both sides of the tow truck.

**86.702. Responsibilities of Licensee and Permit Holder--Change Name, Address, or Drug Testing Policy.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A licensee or permit holder shall notify the department of changes to any of following information:
- (1) change in the licensee's or permit holder's name no later than the effective date of the change;
  - (2) change of the licensee's or permit holder's mailing or physical address no later than the effective date of the change; or
  - (3) change in the licensee's drug testing policy no later than 30 days before the effective date of the change.
- (b) The requirements of subsection (a)(3) apply only to a towing company regulated by these rules.

**86.703. Responsibilities of Towing Company License Holder--Change of Ownership.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

A towing company license holder must file an original application for licensure when there is a change in the ownership of the company, including but not limited to, a corporate merger or a change in the sole proprietorship or partnership.

**86.704. Responsibilities of Towing Company License Holder--Unauthorized Fees.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

An authorization for repairs may not be executed at the scene of an accident or included on a tow ticket authorized by law enforcement.

**86.705. Responsibilities of Towing Company License Holder--Standards of Conduct.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A towing company may not directly or indirectly give anything of value to a parking facility owner in connection with the removal of a vehicle from a parking facility.
- (b) A towing company may not have a direct or indirect monetary interest in a parking facility from which the towing company for compensation removes unauthorized vehicles.
- (c) In an area in which no political subdivision regulates the fees that may be charged or collected for a nonconsent tow from private property, a towing company must comply with Texas Occupations Code, §2308.204.
- (d) A towing company may not tow a vehicle to a vehicle storage facility unless the vehicle storage facility is in compliance with the required postings in Texas Occupations Code, §2308.207.
- (e) A towing company may not remove and store an unauthorized vehicle unless authorized by Texas Occupations Code, §2308.255.
- (f) A towing company may not perform a nonconsent tow unless the property from which the vehicle is towed is in

compliance with Texas Occupations Code, §§2308.301-2308.305.

- (g) Except as authorized by Texas Occupations Code, §§2308.351-2308.354, a towing company may not perform a nonconsent tow from:
  - (1) a leased right-of-way;
  - (2) an area between a parking facility and a public right-of-way;
  - (3) a public right-of-way; or
  - (4) a public roadway.
- (h) A towing company may not contract for the removal from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia or a valid inspection certificate, unless before the tow, the towing company notes on the tow ticket the:
  - (1) name of the person or company that authorized the tow,
  - (2) telephone number of the company or person that authorized the tow, and
  - (3) date of compliance with the notice provisions in Texas Occupations Code, §2308.253(e).
- (i) A licensee or permit holder may not charge a fee for a nonconsent tow that is greater than the fee listed in the schedule most recently filed with the department.
- (j) A licensee must keep record of every nonconsent tow including, but not limited to, the following information:
  - (1) vehicle description, including license or vehicle identification number, if available;
  - (2) the specific rule or statutory provision sanctioning the tow;
  - (3) each fact justifying the nonconsent tow;
  - (4) location vehicle towed from; and
  - (5) vehicle storage location.
- (k) A towing operator must allow department personnel and law enforcement to inspect a tow truck permitted under these rules.

**86.706. Responsibilities of Towing Company License Holder--Required Postings at Vehicle Storage Facility (VSF).** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A towing company must provide its nonconsent towing fees schedule to all VSF's to which the towing company delivers vehicles for storage.
- (b) The nonconsent towing fees schedule provided to the VSF and made available to the public at the VSF must match the nonconsent towing fees schedule on file with the department.
- (c) A towing company may not collect nonconsent towing fees unless the VSF accepting nonconsent towed vehicles post a sign in one inch letters stating "Nonconsent tow fees schedules available on request."
- (d) The nonconsent towing fees schedule must be made available to any requestor during normal business hours of the VSF.

**86.707. Responsibilities of Towing Company License Holder--Review of Nonconsenting Fees Schedule.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

A towing company that performs nonconsent tows shall review its current nonconsent towing fees schedule posted on the department website each year before January 31 to determine if it is current. The towing company must file a new nonconsent towing fees schedule when the current filing is outdated.

**86.708. Responsibilities of Towing Company License Holder--Tow Truck License Plates.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

A towing company or tow truck operator must not operate or cause a tow truck to be operated on the public roadways of this State unless the tow truck displays current license plates that includes the words "Tow Truck."

**86.709. Responsibilities of Towing Company License Holder--Tow Ticket.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A towing company must prepare and issue a tow ticket for each nonconsent tow.
- (b) A copy of the tow ticket must be given to the vehicle owner, if the owner or operator is present and available at the time of the tow, and a copy delivered to the vehicle storage facility, or place agreed upon by the towing operator and vehicle owner.
- (c) The tow ticket shall only authorize charges directly related to towing the vehicle to a designated location authorized by subsection (b).
- (d) The tow ticket shall itemize each charge and must characterize the fees using the identical fee structure stated in the towing company's nonconsent towing fee schedule on file with the department.
- (e) The tow ticket must contain the registered name of the towing company, publicly listed telephone number, towing company certificate of registration number, and the full printed name and TDLR license number of the towing operator on file with the department.

**86.710. Responsibilities of Towing Company Licensee--Drug Testing Policy.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) A towing company adopting paragraphs (1) - (12) of this subsection will comply with Texas Occupations Code, §2308.158.
  - (1) Purpose and Scope. This drug testing policy provides guidance to supervisors and towing operators about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all towing operators and all towing operator job applicants.
  - (2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2308 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.
  - (3) Consent Form.
    - (A) Before a drug test is administered, towing operators and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.
    - (B) The consent form shall set forth the following information:
      - (i) the procedure for confirming and verifying an initial positive test result;
      - (ii) the consequences of a verified positive test result; and

- (iii) the consequences of refusing to undergo a drug test.
  - (C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's or applicant's system.
- (4) **Compliance With Drug Testing Policy.** The failure or refusal by a towing operator or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.
- (5) **General Rules.** This drug testing policy is governed by these general rules:
- (A) towing operators shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.
  - (B) towing operators are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.
  - (C) all towing company property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. Towing company property includes, but is not limited to, vehicles, desks, containers, files, and lockers.
  - (D) any towing operator convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The towing company will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).
- (6) **Types of Tests**
- (A) **Pre-employment.** All applicants for positions requiring a towing operator's license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.
  - (B) **Annual.** All towing operators employed by a towing company must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.
  - (C) **Random Testing.** In addition to annual testing, towing operators are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of towing operators is required.
    - (i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a towing operator for random urine drug testing and the actual presentation for specimen collection.
    - (ii) Random donor selection dates will be unannounced with unpredictable frequency.
  - (D) **Return-to-Duty and Follow-Up.**
    - (i) Any towing operator who has violated this drug testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a towing operator returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up

must be negative.

- (ii) The towing operator will be required to pay for his or her return-to-duty and follow-up tests accordingly.
- (7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.
- (8) Specimen Collection Procedures.
- (A) All urine specimens will be collected by a laboratory that is certified and monitored by the Federal Department of Health and Human Services.
  - (B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.
  - (C) If the analysis of the primary specimen confirms the presence of drugs, the towing operator has 72 hours to request sending the split specimen to another Federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The towing operator will be required to pay for his or her split specimen test(s).
  - (D) For the towing operator's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the towing operator will be notified, and the MRO will notify the company.
  - (E) The towing company will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:
    - (i) tow operator's name;
    - (ii) tow operator's license number;
    - (iii) date of the positive test;
    - (iv) substance detected by the drug test; and
    - (v) disciplinary action imposed violation of the drug testing policy.
- (9) Reporting and Reviewing of Drug Testing Results.
- (A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.
  - (B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the Federal Department of Transportation.
  - (C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the towing operator by telephone upon exchange of acceptable identification.
  - (D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the towing operator, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined

by state and federal law.

- (10) Distribution of Information to Towing Operators. The minimal distribution of information for all towing operators will include the display and distribution of:
    - (A) informational material on the physical and mental effects of drugs;
    - (B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;
    - (C) the company's policy regarding the use of prohibited drugs and/or alcohol; and
    - (D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug policy.
  - (11) Consequences of a Confirmed Positive Drug Test.
    - (A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.
    - (B) If a towing operator's positive drug test result has been confirmed, the towing operator will stand down from towing operation duties and may be subject to disciplinary action up to and including termination.
    - (C) The company may consider the following factors in determining the appropriate disciplinary action: the towing operator's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.
    - (D) No disciplinary action may be taken pursuant to this drug policy against towing operators who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.
  - (12) Exceptions.
    - (A) Towing operators subject to random drug testing under Title 49, Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the annual test requirement, provided that the towing operator's tested negative and the negative test results are submitted to and verified by the MRO.
    - (B) Towing operators holding a valid Towing Operator License issued by the department who are tested for drugs in accordance with 16 Texas Administrative Code Chapter 85 are exempt from this section.
- (b) Independent drug testing policy.
- (1) A towing company may file an independent drug testing policy.
  - (2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).

**86.800. Fees.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Application Fees
  - (1) Permit Tow Truck
    - (A) Original Application--\$75

- (B) Renewal--\$75
  - (C) Duplicate Permit--No charge
  - (D) Permit Amendment--\$25
- (2) Tow Company License
- (A) Original Application--\$350
  - (B) Renewal--\$350
  - (C) Duplicate License--\$25
  - (D) Permit Amendment--\$25
- (3) Operator License
- (A) Original Application--\$100
  - (B) Renewal--\$100
  - (C) Duplicate License--\$25
  - (D) Operator License Amendment--\$25
- (b) Risk-based inspections--\$150
- (c) Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees)
- (d) All fees are nonrefundable except as provided for by commission rules or statute.

**86.900. Sanctions and Administrative Penalties.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

A person that violates Texas Occupations Code, Chapter 2308, a rule, or an order of the Executive Director or Commission relating to Texas Occupations Code, Chapter 2308, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2308 and applicable agency rules.

**86.901. Cease and Desist Order.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines the action is necessary to prevent a violation of this chapter and to protect public health and safety.

**86.1000. Technical Requirements--Tow Truck Safety Equipment and Truck Operations.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Except as provided in subsection (b), each tow truck must carry proper safety equipment. Proper equipment includes, but is not limited to, the following:
- (1) At least one 10 pound or two 5 pound multiple purpose fire extinguisher, in good working condition;
  - (2) Magnetic tow lights, unless wireless, with appropriate cable and cushions to protect a vehicle's finish;
  - (3) Tow dollies as appropriate;
  - (4) Straps and tie downs as specified by the tow truck manufacturer;

- (5) Gloves;
  - (6) Wheel chocks;
  - (7) Five gallon trash receptacle;
  - (8) Broom and shovel;
  - (9) Thirty-six inch crow bar; and
  - (10) Triangle reflectors, flares, cones, safety lights or other appropriate safety signals.
- (b) Tow trucks permitted under §86.203 are exempt from the requirements of subsections (a)(3), (a)(7), and (a)(9).
  - (c) Each tow truck shall:
    - (1) have a legible manufacturer's data plate indicating the capacity of the boom, the winch or the carry mechanism; or
    - (2) have a document in the truck from the manufacturer stating the capacity of the boom, the winch or the carry mechanism.
  - (d) Every hydraulic line on each tow truck must be free of leaks and be in good working condition free of defects.
  - (e) The winch must not exceed the capacity of the boom or leak oil.
  - (f) The cables must be as specified by the manufacturer and be in good condition, within manufacturer guidelines.
  - (g) Each tow truck must have a copy of the annual state inspection.
  - (h) Tow trucks placed in service after May 1, 2008, must contain the original manufacturer's warning labels on the truck, truck bed, winches, and all other accessories.

**86.1001. Technical Requirements--Towing Operator Safety Clothing and Identification.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*

- (a) Towing operators, as a condition of their license must comply with the protective clothing policy.
- (b) Towing operators must wear at all times when using or assisting in the use or operation of a licensed tow truck on a road or road related area:
  - (1) a uniform, clearly marked with the tow company's name as it appears on department records.
  - (2) a reflective vest or reflective jacket at all times while working outside the tow truck; the reflective vest or reflective jacket must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel.
- (c) During daylight hours, a fluorescent shirt may be worn instead of the reflective vest or jacket; the fluorescent shirt must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel.
- (d) When performing towing operations, all tow truck operators must carry and openly display the appropriate TDLR issued original towing operator license.
- (e) Tow operators permitted under §86.210 are exempt from the requirements of subsection (b)(1).

**86.1002. Technical Requirements--Towing Company Records.** *(New section adopted effective April 15, 2008, 33 TexReg 2940)*



- (a) General records to be maintained. Except as provided in paragraphs (1) and (2), every towing company shall maintain at a principal office in Texas all records and information required by the department.
  - (1) Texas firms. If a towing company wishes to maintain records at a location other than its principal office in Texas, the towing company shall make a written request to the department. A tow company may not begin maintaining records at an alternate location until the request is approved by the department.
  - (2) Out-of-state firms. A towing company whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal office in Texas. Alternatively, a towing company may maintain such records at an out-of-state facility if the towing company reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted under these rules.
- (b) Preservation and destruction of records. All books and records generated by a tow company must be maintained for not less than two years at the towing company's principal business address.