

FMCSA ISSUES REPORT TO CONGRESS REGARDING VEHICLE TOWING

Long awaited by the industry, the Federal Motor Carrier Safety Administration (FMCSA) has issued its report to congress "Review of Federal and State Laws Regarding Vehicle Towing". The recently released report was mandated by Congress under the last Highway Reauthorization bill (SAFETEA-LU) enacted in August 2005 which required the Secretary of Transportation to conduct a study to identify additional means to protect the rights of individuals whose motor vehicles are towed.

The emphasis of the study concerns the pricing of non-consent towing from private property and under other such circumstances where the vehicle owner or operator does not have the opportunity to negotiate a rate with the towing service provider.

The study includes a summary of Federal law related to towing including relevant Court decisions, a review of the laws and regulations of some States concerning primarily non-consensual towing, the views of a variety of stakeholders, including TRAA, on the matter, and potential remedies available to consumers through legislation and other means.

More specifically, the study sampled the laws of nine states (CA, DC, FL, GA, MD, MA, NY, OH, TX, and VA) all of which regulate non-consent towing to some degree. Major stakeholder groups representing the towing and motor carrier industries and motorist advocacy groups indicated that they support state laws that protect consumers in non-consent towing situations. However there were concerns expressed such as how police ordered tows are conducted resulting charges that are perceived as excessive and that States do not provide consumers with sufficient protections in these circumstances.

The stakeholders viewpoints that were considered in the study included TRAA, National Towing & Recovery Assn., American Towing Alliance, AAA, Owner-Operator Independent Drivers Assn., American Trucking Associations and American Highway Users Alliance. TRAA submitted a position paper (Appendix B to the report) to further explain their position on the regulation of non-consent towing.

The study is quoted (page 29) as follows regarding the TRAA members' position:

"In our discussion, TRAA members also stated their opinion that the State level is the best arena for setting legal price ceilings for nonconsensual tows. Their members say this because (1) attempting this at the national level would be impractical and would make it difficult to account for the differences in local labor and equipment costs, and (2) local governments often do not have the resources to conduct the kind of cost and market studies that would be required to set a reasonable rate. TRAA members also note that their profit margins are being squeezed by the combined market power of automobile clubs and roadside service programs, along with rising fuel prices, so State regulation of the consensual tow rates would further compromise their economic viability.

TRAA members are also very concerned that the focus on trespass towing not become a stepping-stone to the idea of States' re-regulating consensual towing services. In their view, this would be contrary to Congress' intent and to the spirit of de-regulation, since with consensual tows the consumer is a willing marketplace participant.

With regard to excessive towing charges for heavy vehicle recovery – an issue raised by the trucking industry – TRAA acknowledged that abuses can sometimes occur, but pointed out the States already have the power to regulate prices. The association expressed an interest in reaching out to the trucking industry to work together to reduce overcharges"

Potential remedies for consumer abuses were noted in two areas. The first, being new federal legislation that would delegate states authority to regulate all aspects of trespass towing and second, would be to delegate authority that would allow the regulation of all non-consent towing to include both trespass and police-ordered tows.

The second group of remedies would be implemented without changes in the Federal law in that the status quo allows States to provide an acceptable level of consumer protection via the exceptions to the Federal preemption to regulate non-consent towing. Mentioned within this group of remedies would be voluntary consumer protection measures implemented through their trade associations such as a Code of Conduct covering nonconsensual towing practices.

In total, we feel the report seemed fair and balanced with all stakeholders' views being presented.