



Final Regulation Agency Background Document

Agency name	BOARD OF TOWING AND RECOVERY OPERATORS
Virginia Administrative Code (VAC) citation	24 VAC 27-30
Regulation title	Practice of Towing and Recovery Operators
Action title	Towing and Recovery Operators
Date this document prepared	May 22, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

These regulations govern the licensure, practice, and discipline of towing and recovery operators. The Virginia Board (the Board) for Towing and Recovery Operators (BTRO) was established by the enactment of Chapters 874 and 891 of the 2006 General Assembly. The operation of the Board became effective July 1, 2006. Licensure, regulation, and enforcement of standards of practice are intended to become effective January 1, 2009.

The fees for Class B operators have been reduced in response to public comment. The continuing education requirements, intended to be a place holder in the proposed regulations, have been removed from the final adopted regulations as the Board will be giving further study to this important area. BTRO has made numerous changes, specifically in response to public comments, in these final adopted regulations over those which were proposed for the public comment period. The most significant changes are: (i) the reduction of the licensing fees for Class B towers; (ii) the removal of the one-year time limit on the grandfather clause relative to taking an initial qualifying examination; (iii) removal of TRAA examination requirements; (iv)

the requirement that fees be posted has been changed to reflect the intent that such postings applies to facilities and not tow trucks; (v) the specified amounts of required insurance coverage has been modified to show that the amounts are the required minimums; (vi) the requirement that operators be required to be able to make change for a customer up to \$100 has been clarified to apply to operators at their business offices and not to drivers in their trucks; (vii) operators are being required to notify BTRO about changes in drivers that they employ rather than the drivers notifying BTRO of employer changes, and; (viii) after the initial licensing step, criminal background checks with fingerprinting will only be required every three years at license renewal. Several other changes that were requested by regulants could not be made by BTRO as those regulatory requirements conform to statutory (*Code of Virginia*) requirements.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended regulations entitled Practice of Towing Recovery Operators (24VAC27-30-10 through 30-180) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the *Code of Virginia* § 2.2-4012, of the Administrative Process Act.

Date

Ray Hodge, Chairman
Board of Towing and Recovery Operators

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 46.2-2805 *et seq.*, grants to the Board of Towing and Recovery Operators the authority to establish qualifications for licensure, to regulate, to collect licensure fees, and to discipline non-compliant persons and enterprises engaging in the towing of vehicles. Specifically, § 46.2-2809 provides: “The Board may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of provisions of this chapter, and any other regulations, not inconsistent with the provisions of this chapter, as it shall consider necessary for the effective administration and enforcement of this chapter.”

Furthermore, on July 1, 2008, § 46.2-2812 will provide that “[o]n and after January 1, 2009, it shall be unlawful for any person to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license as a Class A or Class B operator as provided in this chapter. Violation of any provision of this section shall constitute a Class 1 misdemeanor.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to establish new regulations for the new Board of Towing and Recovery Operators. These regulations are required for the safety and welfare of the citizens of the Commonwealth as a way to address the apparently inconsistent or outdated state statutes and a patchwork of local ordinances which have been ineffective in ensuring fairness to either those in the towing and recovery business or those owners of vehicles whose vehicles are towed. These regulations are also necessary for the general safety of travelers on the highways of the Commonwealth. The goals of these regulations are to create statewide standards for licensure and to collect licensing fees to be paid into the state treasury for credit to the Board of Towing and Recovery Operators Fund.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The regulation sections that are affected by this action are 24 VAC 27-30-10 *et seq.*

These regulations establish new requirements for the BTRO that was created by actions of the 2006 General Assembly. These actions became Chapters 874 and 891 once signed into law by the Governor. Section 46.2-2805 of the *Code of Virginia* creates the authority of the Board for Towing and Recovery Operators: (i) to establish requirements and oversight of towing and recovery operators and the towing and recovery industry; (ii) to ensure their possessing and maintaining minimal levels of competency for the public safety and welfare; (iii) to establish the necessary qualifications for licensure and regulation of towing and recovery operators; (iv) to ensure the competency and integrity of the regulated industry, (v) to examine applicants; (vi) to establish renewal schedules; (vii) to administer fees to cover the administrative expenses of the regulatory program; (viii) to take disciplinary action for violation of laws and regulations, and; (ix) to provide oversight for and enforcement of authorized documentation of drivers of towing and recovery vehicles.

The issues of concern to the citizens of the Commonwealth and this industry that these regulations are intended to address are as follows:

- Rogue towing operators engaging in false advertising, predatory towing, impersonating other towing operators, charging for services not rendered, operating without locally required business licenses, charging of variable fees depending on how expensive the towed vehicle appeared to be or what it appeared the customer could afford to pay;
- Towing operators who refused to accept nationally known credit cards as payment for towing services and demanded cash payments instead or refusing to give customers change up to \$100;
- Towing operators who failed to inform local law enforcement entities that vehicles had been towed from private property thereby causing the vehicles' owners to have to search, sometimes over several days, for their vehicles while incurring additive storage fees;
- Towing operators who failed to carry business insurance and who conducted towing activities with equipment not intended to be used for towing activities. Towed vehicles have been damaged, consequently, and the vehicle owners have no insurance recourse by which to secure repairs for their damaged vehicles; and
- Towing operators who have failed to conduct towing activities in a safe and effective manner.

Due to the nature of this public service, this industry is also concerned about individuals who are required to register anywhere (all other states as in other nations) as sex offenders being able to replicate their previous crimes on new victims. Also, the Board's basic enabling statute requires that sex offenders be excluded from receiving operator licenses or driver authorizations in these regulations.

Various sections regarding weight limit standards (for example 24VAC27-30-110 (15) and (16)) are commonly accepted industry standards and, as such, have been reflected in these regulations.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.
If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary disadvantage of these uniform standards for this industry is that individuals and businesses offering towing and recovery services have never before been licensed and regulated. Some individuals and businesses can be expected to object to these regulations with the argument that 'we have never before had to get a license' and 'it has always been done this way.'

However, the 2006 General Assembly made the decision to license and regulate this industry and these regulations merely implement and conform to that legislative decision.

The amount of licensing fees can also be seen as an issue for this industry that is comprised of some very small (one- and two-truck) operations as well as slightly larger operations. However, if the proposed fee amount is considered over the course of the entire year of the license, the cost is only \$1.36 per day (or \$9.61 per week). A disadvantage to the towing businesses that are now to be regulated is that they will also have criminal background check fees and fingerprinting fees to pay whereas in the past there have been none. Towing businesses will also be required to maintain certain paperwork for specified periods of time that will create record keeping issues in addition to being required to post their fees for customers and provide BTRO contact phone numbers for dis-satisfied customers wishing to file complaints.

One possible disadvantage to the public might be that a one-truck operation may elect to cease operating in a locality rather than seek licensure. At this point, it is not known how many businesses may elect this option. It is this Board’s ongoing plan and also in the best interests of citizens of the Commonwealth as well as this industry that this possible outcome be closely monitored in order for the Board to take all possible corrective actions should this occur.

A considerable advantage to the citizens of the Commonwealth of these regulations is that they will bring greater consistency of service to the public by standardizing towing operators’ operations and conduct. Public safety will be enhanced because persons who have been convicted of certain barrier crimes will no longer be permitted to provide this service, thereby reducing opportunities for public contact. Citizens’ private property will be protected better by standardizing the equipment approved for use by this industry. The Commonwealth’s highways will be protected better when towing and recovery activities can be conducted in a licensed, safe manner.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Language changes at the suggestion of the Office of the Attorney General have been made in several sections.

Section number	Requirement at proposed stage	What has changed	Rationale for change
30-10	Definitions.	Non-substantive language clarifications have been made.	To clarify language to improve understanding by regulants.
30-20	Fees.	Fees for Class B operators has been reduced to \$250 for up to two	Numerous objections were received during the

<p>30-30</p>	<p>General requirements for operator's licensure.</p>	<p>trucks plus \$50 for each additional truck up to a cap of \$500.</p> <p>Clarifying language has been added concerning whether an applicant's prior criminal conviction should affect his ability to be licensed as an operator or to be authorized as a tow truck driver. The language has been changed for operators, at the time of initial licensure, to provide BTRO with the names of their employee drivers and the employees' driver's license numbers and at each renewal, the employees' driver authorization document numbers. Operators will now be required to inform BTRO of changes in their employees within 30 days.</p>	<p>public comment period that the proposed fees were too high for small (one- and two-truck) operations. BTRO reevaluated its budget and determined that a significant fee reduction could be accommodated. Reference to exam fees has been removed.</p> <p>Public comment pointed out that at the time of initial licensure, operators were being required to report information (their employees driver authorization numbers) that may not be available to them. BTRO is now requiring that driver authorization numbers be reported at future license renewals. Language on criminal convictions has been conformed to new statute.</p>
<p>30-40</p>	<p>Operator's licensure without examination.</p>	<p>BTRO removed the word 'initial' in front of licensure with reference to the grandfather status. Persons who meet the statutory date standard of being a towing operator (on January 1, 2006) will not be required to complete an examination of his level of expertise about the towing industry.</p>	<p>Numerous public comments were received about how BTRO had placed a one-year time limit on the term 'grandfather status'. The comment was that such a 'grandfather status' should not be time limited. The issue of the comment was that persons who have successfully functioned in this industry for years should not be required to pass an examination of their competence. Persons newly engaging in the practice of towing and recovering vehicles should be required to demonstrate their level of knowledge and basic competence. BTRO agreed with this point and</p>

30-50	Operator's licensure by examination.	Language requiring the successful passage of TRAA certification examinations by both Class A and Class B operators has been removed. BTRO is giving further study to the issue of competency examinations and evaluating if it can prepare its own examination or should use nationally created exams.	changed the regulations accordingly. Public comment objected to the use of this particular national examination as there are other equally effective exams available in the marketplace.
30-60	Operator's licensure by endorsement.	This section provides for a towing operator who has been licensed in another state to be licensed in the Commonwealth simply by application, payment of fees, and completion of future jurisprudence exam specific to the Commonwealth.	No changes are being made in this section.
30-70	Exemptions.	The provision concerning governmental-entity tow trucks has been modified because BTRO has no statutory authority to regulate tow trucks that are owned and operated by governmental entities, such as cities and counties.	This was a comment received from the Office of the Secretary of Transportation as the proposed language appeared to exceed BTRO's statutory authority.
30-80	Transfer of operator's license.	This section provides that in emergency situations and to be agreed to by the board's executive director, on a case-by-case basis, an operator's license may be transferred to another operator for up to 90 days.	No changes are made in this section.
30-90	Temporary trip permits, regulations, fees.	This section permits BTRO to issue temporary trip permits to owners of tow trucks who would otherwise be subject to licensure by the board but is not currently registered.	No changes are made in this section.
30-100	Unprofessional conduct.	This section sets out numerous items that, should they be found to be occurring, can be deemed unprofessional conduct and could be subject to disciplinary action or sanctions to be imposed by the board. The provision permitting operators to insist on accepting credit card payments only from the	Public comment was received that this provision precluded, for example, a parent from paying for his child's towed vehicle with the parent's credit card. This provision also precluded other persons from

<p>30-110</p>	<p>Standards of practice.</p>	<p>vehicle’s owner has been removed. The requirement that operators must post their fees for services has not been changed. Operators may provide to consumers a written copy of their fees. Operators are not required to list their fees directly on the outside surfaces of their tow trucks. Operators are also required to prominently post their license in their facilities (places of business) and not in their tow trucks.</p> <p>Violations of any standard of practice may be subject to the board’s disciplinary actions or sanctions. Operators wishing to cease operation are now being provided 30 days to return their license to the board instead of the proposed 15 days. The dollar figure amounts for various types of insurance coverage are now shown as minimal amounts. Operators will be held responsible for their employees’ supervision, training, and all other actions pertaining to towing and recovery activities. Several typographical errors in COV citations have been corrected.</p> <p>Operators are now being required to notify the board within 30 days of changes in their employee drivers.</p>	<p>paying, with a credit card, for a friend or acquaintance’s car that had been towed. Public comment objected to the proposed regulation requirement that operators be required to post their licenses in their tow trucks. This was not the board’s intent so the language has been changed to refer to the operator’s facility (fixed place of business).</p> <p>A public comment was received that an effect of the proposed text for an operator who carried higher insurance amounts was that such an operator could technically be found in violation of this section. This was not the board’s intent so the words ‘a minimum of’ have been added in front of each insurance dollar amount. In addition, the hook coverage requirements was eliminated because it was found to be redundant. Language was clarified about the extent of operators’ responsibilities concerning their employees’ job knowledge and performance of job duties while functioning in a towing and recovery capacity.</p> <p>BTRO is placing this notification requirement on operators for the purpose of responding to consumer complaints. In order for BTRO to respond to such complaints, it must have a record of a driver’s employer in order to</p>
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<p>30-120</p>	<p>Operating without a license; penalties.</p>	<p>Public comments were received on the requirement for an operator to be able to make change up to \$100 in their place of business.</p>	<p>contact, as required by these regulations, that employer for corrective action.</p> <p>The comments objected to drivers being required to carry so much cash in their trucks as a matter of safety. This was not the board's intention so the regulatory language has been modified to show this requirement as applying to the business office and not the tow truck.</p>
<p>30-130</p>	<p>Expedited process to consider consumer complaints.</p>	<p>This section establishes the board's authority, based upon the Code of Virginia, to impose penalties on operators and drivers who are providing towing and recovery services without appropriate licenses and authorization documents.</p>	<p>There are no changes in this section over those which were proposed.</p>
<p>30-140</p>	<p>Prerequisites for application for tow truck driver's authorization document.</p>	<p>This section establishes the board's executive director's authority to mediate and resolve complaints that are filed against persons licensed by the board.</p> <p>This section requires drivers to submit the appropriate fees with their applications. Language providing for the 24-hour processing of fingerprint cards has been removed. Applicants who are denied driver authorization documents will have the right of appeal as provided by the COV §2.2-4019 <i>et seq.</i> This section also sets out the facts of applicants' backgrounds that the board is to consider when determining whether or not to deny an application. This section sets out how long a drivers' authorization document is to be effective.</p> <p>This section also establishes that criminal background checks, with fingerprinting, will only have to be repeated every three years with renewals.</p>	<p>This section was amended to provide more detailed clarification of how complaints will be handled by the board.</p> <p>References to the handling of fingerprint cards and processing times are more appropriate for the agency's website and will be moved there. The referenced dates have been modified to reflect COV changes due to take effect July 1, 2008.</p> <p>This change is in response to public comment that annual criminal background</p>

30-150	Exemptions from tow truck driver authorizations.		checks with fingerprinting was onerous for regulants.
30-160	Requirements for drivers.	This section creates the limited application of tow truck driver authorization requirements of being for operation for hire and involving the pickup of a towed vehicle in the Commonwealth.	There are no changes in this section.
30-170	Renewal of licensure; reinstatement; renewal of fees.	This section establishes the requirements that drivers must meet in order to legally provide towing and recovery services. The proposed requirement for drivers to notify the board whenever they change employers has been removed.	Typographical corrections have been made. The proposed requirement for the driver to report his employer's board-issued license number and changes in employers' names have been removed in response to public comment as being onerous for drivers.
30-180	Requirements for continuing education.	This section establishes the requirement that licensees submit applications in a timely fashion. The date deadlines have been modified to conform to the COV.	The date deadlines were changed to conform to COV changes made by SB 707.
		This section contained the board's proposed requirements for continuing education.	In response to public comment, this section is being completely removed in the final adopted regulations and reserved for a latter modification in a separate regulatory action. The board is giving further study to this issue before proposing other policies.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

BTRO's proposed regulations were published in the January 21, 2008, Virginia Register (VR 24:10 pp1300 et seq.) for their comment period from January 21, 2008, through March 21, 2008. A public hearing was also held on February 11, 2008, at DMV, 2300 West Broad Street, Classroom 131, Richmond, VA, with the Chairman of BTRO and one other board member

receiving comments from the public. Comments were received from the Secretary’s Office, the Registrar’s Office and dozens of towing businesses, who identified themselves as being small operators, and drivers.

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See attached **Appendix A** for the summary of public comments and additional agency responses.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

There are no regulations currently in the Virginia Administrative Code for this subject.

Proposed new section number, if applicable	Proposed change and rationale
24VAC27-30-10	Definitions. This section provides definitions of the terms required for these regulations.
24VAC30-70-20	Fees. This section establishes the fees for various aspects of these regulations, such as application, license renewal, reinstatement, decal, duplicate copy of license, and returned check fees.
24VAC30-70-30	General requirements for operator’s licensure. This section provides that persons who apply for licenses issued by this Board must be legally authorized to conduct a towing business in the Commonwealth. Applicants for these licenses must provide the standard types of information (individual or business name, address, responsible individual, principal owner’s name or owners’ names, and certify that such persons have not been convicted of any (either felony or misdemeanor) criminal offense. These regulations permit the Board to deny applicants’ license request if it determines that such applicants’ criminal history makes them unfit or unsuited to engage in providing towing and recovery services. These regulations also set out circumstances around felony and misdemeanor convictions, which will not bar the applicant from being granted a license. Applicants must also provide to the Board information about the type of equipment to be used in towing and recovery activities. License applicants must also provide information about the individuals who will be engaged in the actual towing and recovery activities. These regulations also provide that licensees will be required to prominently post and provide copies of their fees for reference by their customers. These regulations will prohibit licensees from charging fee amounts that are not included in such lists.
24VAC30-70-	Operator’s licensure without examination. This section provides applicants

40	for such towing and recovery operator’s licenses submit Board approved applications, certify that the applicant has read and understands the rules governing this practice. In order to qualify for ‘grandfather status’, which exempts applicants from otherwise required written examinations, applicants must provide proof of their being engaged in towing and recovery business on January 1, 2006. The availability of ‘grandfather status’ is set, in these proposed regulations, to expire on July 1, 2008, if the application has not been received.
24VAC30-70-50	Operator’s licensure by examination. This section provides that applicants who do not qualify for grandfather status or who were not engaged in the business of towing and recovery operations on January 1, 2006, shall be required to submit applications, on the Board’s form, and remit payment of fees. Applicants for Class A and Class B licenses shall be required to submit evidence of passage of certification examinations. Additionally, the principal owners or responsible individuals will also be required to pass open book examinations jurisprudence examinations, concerning the rules governing towing and recovery operators, to be provided by the Board.
24VAC30-70-60	Operator’s licensure by endorsement. This section provides that persons who have engaged in towing and recovery operations in other states may obtain a license from this Board by the endorsement method if certain requirements and standards set out in the regulations are met.
24VAC30-70-70	Exemptions. This section provides that certain types of towing equipment will be exempt from regulation by this Board: rollbacks, automobile or watercraft transporters defined in the Code § 46.2-100 <i>et seq.</i> Household goods carriers and tow trucks owned and operated by government entities are also to be exempted from this Board’s licensing requirements. Tow trucks that are properly domiciled and registered in other states are to be exempted except if they are picking up a vehicle in the Commonwealth. In such instances, these tow trucks will be required to obtain temporary trip permits from this Board. Privately owned tow trucks, which are used exclusively to haul vehicles owned by the tow truck owner, are also to be exempted from this Board’s requirements. Tow trucks, carrying dealer tags, owned and operated by two truck dealers and manufacturers that are moving through the Commonwealth for the sole purchase of demonstration or sale will also be exempted from these regulations.
24VAC30-70-80	Transfer of operator’s license. This section provides that, in general, issued licenses will not be transferable between individuals. These regulations do provide for a limited transferring of licenses in emergency situations to be approved by the Executive Director of this Board.
24VAC30-70-90	Temporary trip permits, regulations, fees. This section provides that the Board may issue temporary trip permits to tow truck owners who would

	otherwise be subject to this licensure. Such temporary trip permits will be time limited and the truck owner must provide certain specified information to the Board in order to obtain one.

<p>24VAC30-70-100</p>	<p>Unprofessional conduct. This section provides for the Board’s response to licensees’ conduct that it deems to be unprofessional. It shall be deemed unprofessional conduct to violate the Board’s regulations, to employ drivers who are not licensed to drive tow trucks, to fail to notify the Board of changes in important business information, to fail to have the business’ name prominently displayed on all tow trucks, to fail to retain for one year records of services provided and fees charged, to fail to allow an authorized staff member or agent who is not a member of the Board to inspect, during normal business hours, equipment and records, to fail to accept payment via nationally recognized credit cards, to fail to provide price lists of fees and charges to customers upon their requests, to fail to appropriately display the Board’s issued decals on all affected tow trucks.</p>
<p>24VAC30-70-110</p>	<p>Standards of practice. This section provides that violations of requirements contained in this section will be subject to disciplinary actions and sanctions. Business operators will be required to have their physical plants comply with all applicable state and local building and zoning laws or codes. Business operators will be required to secure from the locality in which they operate all locally required business licenses. Business operators will be required to notify the Board if they cease to operate if they elect to close their businesses. Licensed operators will be required to show proof of their having certain specific amounts of business and liability insurance as well as workers’ compensation coverage. Business operators will be required to certify that only the proper type and size of equipment will be used for towing activities. Tow trucks will be required to meet federal size and weight requirements for the vehicle to be towed. Equipment will be factory manufactured units and safety straps and chains will be used for towing activities. All advertisements for towing services must contain certain specified information. Business operators will be responsible for their employees during their hours of operation. Business operators will not be permitted to provide public safety towing (in response to police officers calls for towing) if they do not meet Board specified criteria and have been placed on a list specified in the <i>Code of Virginia</i> §46.2-2826. Tow truck drivers will be required to notify the State Police whenever they remove vehicles from improper locations without the vehicle owners’ consent. If the truck drivers fail to make such a notification to the State Police, then the business operator will be restricted in how much can be charged to the owner for towing and storage services. Business operators will be required to comply with all local ordinances and contracts with regard to private property towing. Towing of vehicles from private property without the owners’ consents shall have fees limited by the Code § 46.2-1233.1. Operators shall not engage in impersonating other operators or make false or misleading advertising. No operator will tow a vehicle having a gross vehicle weight exceeding 26,000 pounds without being appropriately licensed. Business operators will not be allowed to operate his towing business in a deceptive, fraudulent manner nor in a way that endangers the</p>

	health, safety and welfare of the public. Operators will not be allowed to use, or permit his employees to use, drugs and alcohol during normal business hours to the extent that such use renders them unsafe to provide towing and recovery services. Operators will be required to maintain lists of all employed drivers and to provide lists of fees to customers. Operators must provide a contact phone number for the Board to customers who wish to file complaints. Operators must not knowingly over-charge its customers or charge for services not rendered.
24VAC30-70-120	Operating without a license, penalties. This section provides that BTRO may investigate is operators are engaged in or offering towing and recovery services without an appropriate license. If such situations are found to exist, then BTRO is authorized to bring legal action in the name of the Commonwealth.
24VAC30-70-130	Expedited process to consider consumer complaints. This section provides that the Board’s Executive Director will have the authority to mediate and resolve complaints filed by citizens against those operators and drivers who have been licensed by the BTRO. The process for handling complaints is outlined in detail.
24VAC30-70-140	Prerequisites for Application for Tow truck Driver’s Authorization Document. This section provides that BTRO will accept applications for drivers’ authorization documents at its office in Richmond and on its web site. Appropriate fees for criminal record background checks and fingerprinting must accompany such applications. The BTRO will provide to the applicant a unique Originating Number that will travel with fingerprinting and criminal background checks processes. Results from such background checks shall be returned to BTRO for review and consideration against the regulatory requirements. This section provides specific situations in which BTRO may not deny such applications and the circumstances and situations to be considered in making these determinations.
24VAC30-70-150	Exemptions from tow truck driver authorizations. This section provides that driving a tow truck through the Commonwealth when the vehicle was picked up outside the state shall not be subject to driver authorization.
24VAC30-70-160	Requirements for drivers. This section provides for requirements applicable to tow truck drivers such as, valid and appropriate drivers’ license and BTRO driver authorization when the towed vehicle is picked up in the Commonwealth and the towing is for hire. Drivers must provide proof to BTRO that they are employed or about to be employed at the time of requesting the authorization. Drivers must keep readily available, when engaged in a towing action, their driver authorization document. The driver must notify the BTRO within 5 business days if convicted of any criminal offense especially any offense that requires the driver to register as a sex

	offender in any state in the United States or any foreign country. Drivers must provide towing actions in a safe manner and be knowledgeable about the BTRO’s requirements. Whenever a driver ceases employment with one operator and changes to another operator, BTRO must be notified within 15 days. Drivers must surrender their authorization document if the BTRO rescinds or cancels its effectiveness for cause.
24VAC30-70-170	Renewal of licensure, reinstatement; renewal of fees. This section provides requirements in situations where operators and drivers permit their licenses or authorizations to lapse and wish to renew them.
24VAC30-70-180	Requirements for continuing education. This section provides for its effective date to be deferred to July 1, 2011, by which time the BTRO expects to have identified and approved of appropriate educational offerings, which will satisfy its standards.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

One of the primary purposes of these regulations is to protect the safety and welfare of citizens of the Commonwealth. The members of the BTRO are all small business operators themselves consistent with the *Code of Virginia* definition at § 2.2-4007.1. These proposed regulations do not require small businesses to engage in any reporting requirements but only to retain towing records for one year from dates of services. The only performance standards contained in these regulations are tied directly to the provision of safe and effective towing and recovery services with the use of equipment designed and constructed specifically for these activities. All of the equipment standards and licensing fees, criminal record background checks, and fingerprinting requirements contained herein are intended to be applied uniformly across the entire industry. No small businesses, or those that are smaller than the businesses operated by BTRO members, are singled out with unique requirements.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

APPENDIX A

SUMMARY OF PUBLIC COMMENTS

General Regulations of Towing and Recovery Operators

24 VAC 27-30-10 through 24 VAC 27-30-180

BTRO's proposed regulations were published in the January 21, 2008, Virginia Register (VR 24:10 pp1300 et seq.) for their comment period from January 21, 2008, through March 21, 2008. A public hearing was also held on February 11, 2008, at DMV, 2300 West Broad Street, Classroom 131, Richmond, VA, with the Chairman of BTRO receiving comments from the public. Comments have been received from 48 companies/individuals: during the February 11th public hearing, written comments submitted during the comment period, and comments recorded during the comment period on the public forum site of the Regulatory Town Hall. Comments not specific to these regulations are not reflected herein. A summary of the received comments (specific to these regulations) follows:

Secretary's Office comment about 24VAC 27-30-10. Definitions: The Purpose/Requirement for regulation does not belong in the Definitions section but should be moved to its own regulation section. Also, several important provisions, dealing with sanctions and an appeal process, need to be incorporated into these General regulations. In the definition of 'Towing and Recovery Services', the statement beginning 'Any person who in any way advertises.....' should not be in the definitions but should be moved to an appropriate provision further down in the regulations. In the definition of 'Tow' the words 'towing vehicle' should be changed to 'tow truck'. In the definition of 'Towing and recovery operator sub-item (ii)' the words 'the highway or other' should be removed.

Agency response: The Purpose/Requirement section was removed in response to this comment. The board determined that referencing the Administrative Process Act for purposes of sanctions and appeals is adequate for these regulations. The board will set out further details on the handling of appeals in guidance documents. The board's counsel advised that the additional sentence in the definition of 'Towing and Recovery Services' remain in the proposed regulation location as it strengthened and clarified the definition. In the definition of 'Tow' the word vehicle was changed to truck.

Secretary's Office comment about 24VAC 27-30-30. General requirements for operator's licensure Item 5: There should be a time frame associated with this notification as there is with other requirements. Item 6(b): Reference to 'a criminal conviction directly relates to the provision of towing and recovery services' should be changed to 'whether an applicant is unfit or unsuited to engage in providing towing and recovery services'.

Agency response: Comments accepted and regulation modified accordingly.

Secretary's Office comment about 24VAC 27-30-50. Operator's licensure by examination: With regard to the first paragraph's provision for grandfather status, it appears that anyone engaged in the towing and recovery business prior to January 1, 2006, would be grand-fathered and not required to submit applications for licensure nor be required to successfully pass jurisprudence exams. Explain when this situation would be applicable.

Agency response: Comment accepted and regulation modified accordingly.

Secretary's Office comment about 24VAC 27-30-70. Exemptions: With regard to Item 4, this Board will not be in the business of licensing governments to tow vehicles therefore the language 'providing such do not impose a fee for services rendered' should be removed. With regard to Item 6, there needs to be language added to allow someone to tow his mother's, husband's, son's cars as well.

Agency response: Comment not accepted.

Secretary's Office comment about 24VAC 27-30-100. Unprofessional conduct. In Item 6, please explain why a boyfriend should be prohibited by an operator from paying for towing of his girlfriend's car. The text 'Operators may also insist on accepting a credit card.....' should be stricken from these regulations. Item 7, the limit in this section of referenced Code of Virginia (§ 46.2-1233.1) is the same as the limit for a regular tow. Also the entire statement beginning 'This requirement to display a list of fees.....' should be stricken from these regulations. Item 8, the last sentence concerning the operator providing a list of his storage fees should be modified to change the permissive language of 'may be additional' to 'are additional'.

Agency response: The first comment accepted and regulation modified accordingly. The other comments were not accepted as the referenced language conformed to the Code of Virginia. The last comment was accepted and the regulation changed accordingly.

Secretary's Office comment about 24VAC 27-30-110. Standards of practice: Item 3, the number of days in which an operator who permanently ceases to operate has in order to return his operator's license to BTRO should be changed from 15 days to 30 days.

Agency response: Comment accepted and regulation modified accordingly.

Secretary's Office comment about 24VAC 27-30-130. Expedited process to consider consumer complaints: With regard to this entire section, the regulations need to be fleshed out better and the issue of the BTRO's policies being established was raised.

Agency response: Comment not accepted at this time. The board will be preparing guidance documents in the very near future that sets out the recommended details of the handling of consumer complaints.

Secretary's Office comment about 24VAC 27-30-140. Prerequisites for application for Tow Truck Driver's Authorization Document: Item A, the referenced 'board application fee' was not included in the list of fees (refer to section 24VAC 27-30-20). Item B, in the last sentence it is recommended that text referring to almost immediate processing (of fingerprints) and 'noting that ink cards have processing times....' should be deleted as this is language appropriate for a website but not for a regulation.

Agency response: Comments accepted and regulations modified accordingly.

Secretary's Office comment about 24VAC 27-30-160. Requirements for drivers: Item C, in the second sentence, 'appropriate driver's' text should be deleted.

Agency response: Comment accepted and regulation modified accordingly.

Secretary's Office comment about 24VAC 27-30-170. Renewal of licensure; reinstatement; renewal of fees: Item C, reference to 62 days should be changed to two months and August 31st should be September 1st. Item D language appears to create a situation that is not addressed by the regulation in which a license has lapsed by more than two months but it has been less than one year.

Agency response: Comment not accepted at this time but dates were modified to conform to COV changes

Registrar's Office comment about 24VAC 27-30-180. Requirements for continuing education shall become effective July 1, 2011: There needs to be language added in the body of this section that provides for the delayed effective date of the continuing education requirement. Just having the delay date shown in the catch line of the section does not make it legally enforceable.

Agency response: Comment accepted but entire regulation has been removed for the board's further consideration of the subject of continuing education.

Skimino Towing: The fee schedule in the regulations is not fair to the small operator in that the large operator should bear the same ratio to profit as the one truck operator under the proposed regulations. A hundred-trucks operator pays the same as the one-truck operator who pays a greater percentage of his profits for the license. The requirement in 24VAC27-30-30 to list the names of driver employees cannot be complied with because the operator may not have the required information (such as the drivers' license numbers and authorization document numbers) at the time of the initial licensing. This commenter asked that this requirement be removed from the general regulations because the operators would not have this information to provide. Commenter took issue with the requirement to display the license (24VAC27-30-100) at all locations where payment is accepted. This implies that a copy of the license would have to be displayed in the cab of the tow truck since we accept payment there. This commenter suggested that the regulations should say licenses should be displayed at all offices and storage lots where payment is accepted as the decal for the truck should suffice. Commenter expressed concern about the continuing education requirements (24VAC27-30-180) which would require an

owner/operator or operator/driver to have 12 hours of continuing education per year. This requirement for continuing education is greater than for an EMT. Four hours for a driver is ok but if the operator is a driver also, he should be required to have eight hours of education and not 12.

Agency responses: The comment about the fees was accepted and they have been reduced for Class B operators. Regarding 24VAC27-30-30 Item 8, the Board accepted this comment and modified the regulation to remove the requirement that operators must report driver authorization document numbers at the point of initial licensure. However, this information must be reported at licensure renewal. Regarding 24VAC27-30-100 Item 10, the Board accepted this comment and modified the regulation to require the display of licenses at facilities where payment for services is accepted as it was never intended to apply to tow trucks. Regarding 24VAC27-30-180, the Board has removed this section entirely for further consideration of the subject.

Mark's Auto and Welding Services, Inc.: Commenter has been in towing business for 18 years providing light and heaving towing and there are no problems in his area of the state. A few bad eggs should not spoil it for everybody. These regulations are discriminating against small towing companies in Virginia and favoritism to the large guys. These regulations far exceed what is necessary for providing a safe, effective and efficient way of towing in many areas of Virginia. This commenter reported that he had spoken to a large number of towing operators in his area (Gloucester, Matthews and Middlesex Counties) and all feel their current equipment is adequate for the market needs. None of these operators has equipment that could meet the proposed requirements nor could they afford to do so. If we did purchase the required equipment, we would have to charge our customers more and we don't think our customers could or should have to pay such higher rates. We feel if these proposed regulations are passed, the Virginia State Police and local sheriff's office will have great difficulty finding a towing company to accommodate a traffic accident. This would cause longer waits, causing more traffic hazards and tying up fire and rescue for longer periods of time.

Agency responses: On the belief that this commenter was referring to 24VAC 27-30-110 Item 5, this requirement parallels the Code of Virginia and therefore could not be changed. If this commenter's statements referred to issues under consideration in the 'public safety working documents', then the Board makes no response to such comments as the 'public safety working documents' were not proposed for public comment.

Philbates Towing and Wrecking: Commenter has been in business for 54 years. The fees as proposed by these regulations are too high for one- or two-truck operators. If an operator has 25 or 30 trucks, he will pay the same fee. This commenter stated that he thought it should be \$100, \$150 or \$200 per truck. Why have the requirement for license renewal requiring eight hours of training when this commenter has been in business for 54 years? To this commenter this seemed backwards but should be that the training is required before a license is first obtained not for the renewal. If an operator has been in business for 12, 15 years, why do you need training? After

driving for 54 years on a rollback, I don't think you can teach me more in eight hours of training than what I already know. The regulations concerning a temporary trip permit were not clear: how am I going to get such a permit in the middle of Sunday evening? Either clarify this requirement or strike it out. The 'grandfather clause' as provided in these regulations is not a true grandfather clause since it only permits an extension of time. A grandfather clause is supposed to be permanent not just a time extension.

Agency responses: The board accepted the comment and has reduced the fees for Class B operators. The continuing education section has been removed.

This commenter submitted written comments to the Executive Director dated March 21, 2008, as follows: the proposed fee amount for operators (\$500) is too high for the small operator. This commenter calculated the cost of all of the board's proposed requirements at \$2,320 for 48 tows per year or roughly \$48.33 per vehicle. This commenter will have to raise his rates to meet the fee, criminal background check cost, fingerprinting cost, and education requirements. This commenter stated that a fee of either \$100 or \$200 would be enough or preferably \$100 per truck. The fee of \$50 would be fair for the main driver but substitute drivers (working when the main driver is not able to work) should be less.

Agency responses: The board accepted the comment and has reduced the fees for Class B operators.

This commenter stated that the grandfather clause provided for in the proposed regulations is not a proper grandfather clause. It should exempt the individual from now on and not just stop after a year. This commenter suggested that persons with 15 years of experience be grandfathered from the every-three-years training requirement and save the \$375 expense.

Agency responses: The Board accepted this comment and modified the regulation accordingly.

This commenter stated that any business that had been in operation for 15 years or more and could provide a letter of recommendation from the local sheriff's department should not have to have driver training classes every three years. After driving a tow truck for 53 years, I don't think 8 hours of training will teach me how to safely operate one.

Agency response: This section has been removed from the regulations for further consideration by the board.

This commenter stated, with regard to the \$500 criminal background check, that it should not be required for an operator who has 15 years of experience. Instead, the board could require

operators to obtain a concealed weapon permit. This involves fingerprinting and background checks by the state and FBI, then going before a judge. This permit only costs \$50 and has to be renewed and rechecked every 5 years.

Agency response: The anticipated cost for a criminal background check is \$50 and not the \$500 referenced by the commenter. However, the Board accepted this comment and modified the regulations at 24VAC27-30-140(E)(5) to require drivers to obtain criminal background checks and fingerprinting only every three years after the initial authorization.

This commenter stated that he could not see how this would help the public. This will not stop illegal, fly-by-night operators or gougers but will create a shortage of small operators. It will also limit the number of young and minority persons who are able to enter the business as they will not be able to afford the costs.

This commenter was permitted, during the February 11, 2008, public hearing to make comments about private contract towing and public safety towing that are not summarized as part of these public comments because they did not relate to the General Regulations under comment period.

What about the matter of private towing? Towing arrangements with AAA should be considered private towing and should not be regulated by the public safety regulations that BTRO is considering. However, the state should regulate abandoned vehicle towing.

Blair's Towing: These regulations won't help the towing industry or benefit the public but will do a disservice to the residents of Virginia. Commenter agrees with the employee background checks, TRAA training, possibly licensing fees. Its industry must be very careful about the regulations because once it starts, there is no stopping it and some are suggesting that the guidelines do not represent the small towers in this state. Commenter stated that the July 1 deadline is not realistic and should be implemented in stages to give us time to understand and abide by the changes. This will cost all towing businesses some additional expense and it will affect the citizens of Virginia by raising rates and fees, especially if some businesses are forced out of business. This commenter stated that he was not against all of the regulations but we must consider the effect it will have on all the towing companies in the Commonwealth.

This commenter made statements about the public safety towing regulations that were stricken from this record as this public hearing concerned the BTRO General Regulations.

Agency responses: The board accepted the comment and has reduced the fees for Class B operators. The continuing education section has been removed. The Code of Virginia changes the effective date of these regulations.

Adams Wrecker Service: This commenter had a lot of issues with these regulations. The proposed fees were not fair for a single truck operator to pay the same as large operations so alternative fees were suggested (\$250 for 1-3 trucks; \$450 for 3-10 trucks, more than 10 trucks would be an additional \$50 per truck). The driver document fee should be \$50 for two years and not one year. The regulations appeared that a new driver would have to be pre-trained before he could be hired. This would be hard to do. An operator should be allowed some time to train new drivers so they can meet the proposed regulations. The regs appeared to require Class B operators to post their towing rates but not Class A operators. This commenter stated that everyone should have to post their rates. The continuing education requirements every year are ridiculous as training should be good for three years. Commenter is also a licensed gun dealer. Commenter asked why the same system for background checks to buy a gun can't be also used for background checks to drive a tow truck? Commenter asked why the full BTRO was not in attendance at this public hearing. This commenter, in a comment recorded on the Regulatory Town Hall on March 19, 2008, stated that the proposed regulations were mostly unneeded. This commenter stated that the fees need to be reasonable and reflect the size of the operation. The drivers license should be done away with. Operators should be licensed and let them use his judgment about hiring drivers. The education requirements should be the same for all towers and should be good for at least 3 years.*Agency responses: The board accepted the comment and has reduced the fees for Class B operators. The continuing education section has been removed. With regard to 24VAC27-30-110 Item 16(j), the regulation parallels the COV § 46.2-2825 but it applies to both Class A and Class B towers when engaged in towing vehicles weighing under 26,000 pounds Gross Vehicle Weight. The Board has modified the background check requirement in response to public comment to be required only every three years once the initial licensure is completed.*

Layman's Automotive and Towing: This commenter has a Class A and Class B towing and recovery business and performs repairs. This commenter asked why this is set up when all the state needs to do is enforce current laws. This commenter asked why he needed additional licenses for his company, his employees and himself. This commenter asked why he needed a tow operator's license for his support drivers who already have background checks in place as required by his insurance company, a business already regulated by the state of Virginia. These rules are not in the best interest of towing businesses. He requested that more time be allowed for public input to be invested to help improve the recommendations.

This commenter stated that it looked like big business was trying to push small business out of business. This commenter felt that the board has been influenced by a group that is trying to monopolize the towing profession. This commenter stated that there are codes about towing that nobody enforces and he could not see paying another \$500 for this. His drivers have to drive to suit him before he allows them to go out of here. This commenter stated that background checks for drivers could be done but who was going to check on the customer? This commenter also stated that the state already has towing laws and regs and if he does not tell that someone is operating legally, who is going to enforce these things? At the end of the other commenters' presentations during the February 11, 2008, public hearing, and this commenter made a further comment: The state already has towing regulations and laws that we need to go by. If I don't

tell one of the police officers or somebody else that this man is not operating legal and we run into this once in a while that we know a many doesn't have insurance or we know a driver doesn't have a driver's license, who's going to enforce these things?

Rick's Towing: This commenter has been in business for 20 years. This commenter stated that the proposed fees would increase her overhead by 40% leaving no choice but to increase the cost to her customers. Tow operators should not be required to notify owners of stolen autos that their vehicles had been towed as this should be the responsibility of the recovering police department. Police should have to notify the owner of his rights to make a claim to the state to recover his costs. 'If I don't, then I'm subject to fine by the board.' In the last 20 years, we have tried to comply with the state and local laws while being the best professionals that we can be. This board is not helping my cause. This commenter submitted written comments to the board dated March 19, 2008, concerning his appeal rights should there be an issue of concern. This commenter stated that he felt it would be unfair for the board to find him guilty of violations and assess a fine, and then hear his appeal.

Agency responses: The board accepted the comment and has reduced the fees for Class B operators. The requirement that operators be required to notify owners of stolen autos their vehicles have been towed is contained in the COV and these regulations merely conform.

Bowman's Towing: This commenter has been in business for 20 years and has performed all duties. This commenter questioned why tow operators must be required to post their rates for services, as not all the costs are the same. This commenter pointed out that there are so many different circumstances that rates may need to vary. This commenter stated that BTRO should not require tow operators to accept credit cards, as there are additional charges associated with credit cards, which add to overhead. Also, it is easy for the customer to stop the payment for the completed job just by saying they're dissatisfied with the service. 'For the same reason, we do not take personal checks unless we know the customer.' This commenter stated that the computer requirement was burdensome.

A second commenter from this operator stated that the BTRO was supposed to be made of nine Class A and Class B operators. The BTRO was in violation of its own advertising rule. This second commenter also stated that 'operators could be criminals because of actions by their employees. This is not right.' This second commenter also felt the proposed fees were not appropriate. This commenter stated that he was not opposed to everything that BTRO is doing but that these proposed regs are not going to address people who are operating illegally.

At the end of the other commenters' presentations at the February 11, 2008, public hearing, this commenter had an additional comment: he did not see where there is a policy or anything that does away with these guys out here running up and the road every day towing cars illegally. They don't have insurance or proper tags. The only thing this commenter saw in the regs was addressed to me, the guy that's trying to be legal not the guy over there.

Agency responses: The board accepted the comment and has reduced the fees for Class B operators. The continuing education section has been removed. The other comments concerning the posting of fees and the acceptance of credit cards in payment for towing services have not been accepted as the regulation conforms to the Code of Virginia §46.2-2825.

Virginia Beach Towing Association: This commenter stated that BTRO had gone too far and was moving too fast in an effort to accomplish goals that are not quite clear. Moving too far too fast has brought suspicion upon the board. This commenter stated that the Senate Transportation Committee was suspicious of BTRO's motives. This commenter felt it was unbecoming for a board in the Commonwealth of Virginia to bring this much suspicion upon itself within a 12-month period. Many small towers are disadvantaged by the general regulations, both financially and the way they operate their businesses. DPB's notes affect one-truck operators. This commenter questioned why BTRO was moving forward in such a rapid manner. This commenter stated that BTRO did not define inappropriate equipment and doesn't know what effect there will be on the towing industry.

This commenter stated about the continuing education requirements that insufficient information existed to accurately assess the benefits and to compare the costs to the benefits. This commenter questioned whether it would be possible to process so many applicants (2,200 tow operators and nine to 10,000 drivers) in the expected time period. This commenter also asked the BTRO to consider how public safety could be damaged and that the board could actually be counter productive to its charge from the General Assembly.

Agency responses: The board accepted the comment and has removed the continuing education section.

Blue Streak Towing: This commenter agreed with the previous statements. This commenter believes that BTRO will be hard pressed to inform the industry about the regulations. This commenter stated that she was not completely against the regulations. This commenter stated that the proposed fees need to be more creative and should be commensurate with the size of the operation. Renewal fees may be less than initial fees. The driver authorization should be valid for more than one year. This commenter did not understand why requirements to drive a tow truck should be more restricted than a CDL. This commenter stated that the late renewal fee (24VAC27-30-20) is excessive and that there should be a 15-days grace period for late renewal beyond the June 30th deadline. This commenter stated that the fees, with the profits of a small operator, the income of a tow truck driver, are realistic to cover it. This commenter stated that she thought there would be a lot of people not being authorized.

This commenter stated that there should be no late fees applied at all for at least the first six months of these regulations because of the time constraint that the board is trying to make

happen. This commenter stated that the 'regs left no room for subjective judgment when you are making a decision on whether or not you're going to give authorization.' This commenter stated that there should be at least full or partial refund on applications for operators or drivers that are denied.

This commenter stated that the last sentence of 24VAC27-30-40, referring to the grandfathering of an operator's license, was wrong and unjust in light of the time constraints right now. If somebody is in the business and they qualify for grandfathering, it should not be eliminated on July 2nd at least not for the first year of the regulations regardless of when and how they get applications.

This commenter stated that there was no provision for a driver to be employed prior to licensing. This process can potentially take several weeks. A driver should be allowed to be employed provided he has submitted an application within 30 days of the first day of employment. There should be a provision to bring on a driver, especially during the first couple of years so that this process can continue to take place. This commenter stated about 24VAC27-30-60 that a driver authorization should not have to be directly linked to an operator. A driver should be able to hold an authorization whether he's employed or if he's not employed just like you do with a CDL. Tow drivers are frequently moving in and out of employment and this type of tracking is excessive. The operators already have to inform you of their drivers anyway.

Agency responses: The board accepted the comment and has reduced the fees for Class B operators. The continuing education section has been removed. The board will give future consideration to driver authorizations been effective for more than one year. The late renewal fee conforms to the COV §46.2-2817. The limit on the grandfather clause has been removed. The COV does not permit a driver to be employed prior to licensing. It is necessary for a driver authorization to be linked to an operator for the purpose of the board handling consumer complaints. As operators are responsible, per these regulations, for their employees, the board must be able to determine who the operator is by the driver's authorization record.

David Adams: This commenter stated that state-issued gun licenses travel with the individual regardless of who the individual works for. The criminal background check travels with the individual also. This commenter stated that the BTRO license should work the same way.

Agency response: The board accepted the comment and has modified the regulations accordingly to permit the driver authorization to travel with the driver irrespective of the operator.

Representatives of Newport News City Attorney's Office/Police Department Towing Enforcement: In public comments made at the BTRO public hearing held on February 11, 2008, this commenter stated that the tow operators preferred the requirement that localities be required to institute local towing advisory boards and local ordinances and that BTRO should set

advisory standards for localities. The localities would then use BTRO's advisory standards to create their ordinances and localities would be advised that it would be in their best interest to follow. This commenter was not opposed to all of the proposed regulations.

Agency response: As this is a COV requirement, the regulations conform.

This commenter stated that the continuing education would be good to maintain standards. This commenter stated that 24VAC27-30-40 regarding the grandfather status was not clear whether it would be for the first year of licensure or if it would carry on. This commenter stated that the grandfather status should be of indefinite length rather than just for the initial year.

Agency response: The board has removed the continuing education section while it gives further consideration to the policies. The grandfather status provision has been modified accordingly.

This commenter stated that the consequences of applications not being received by July 1, 2008, were harsh in light of the fact that the regulations will just be taking effect July 1st. This commenter stated that the criminal conviction standards were subjective and time consuming to consider, as there are nine different considerations listed, and that considering so many would hold up application processing. The commenter asked where the manpower would come from to evaluate which criminal convictions would pass and which would fail.

Agency responses: The board did not accept these comments as the regulations conform to the COV. The board did reduce the fees for Class B operators in response to public comment.

The second commenter from the Newport News Police Department Towing Enforcement asked why BTRO was not using a licensing process as through the Department of Motor Vehicles and then the board could set up guidelines for towers to know in order to tow in Virginia. This would decrease the amount of time and effort needed to implement the A and B licenses. This commenter suggested giving a yearlong extension to the enactment date for these regulations for tow operators to come into compliance with the requirements. This commenter also stated that the standards should cover all towers equally. This second commenter also questioned the BTRO member selection.

The Newport News City Attorney's Office commenter also provided the following written comments: In referring to the stated purpose for this regulatory action ('to address the apparently inconsistent or outdated state statutes and a patchwork of local ordinances that have been ineffective in ensuring fairness to either those in the towing and recovery business or those owners of vehicles whose vehicles are towed'), this commenter asked BTRO to advise as to which local ordinances and state statutes are outdated and inconsistent. This commenter has been unable to locate large numbers of statutes that are proposed for updating. The astronomical

proposed fees will ensure that small towing firms will be unable to conduct business. The commenter listed the various fees contained in the proposed regulations.

This commenter stated that rogue towing firms would continue to operate illegally. A tow truck is a commercial vehicle designed to tow. If some one needs to haul a personal vehicle, they build trailers. The credit card requirement is only required for police requested towing in Newport News. This commenter asked who would be implementing enforcement and what requirements are being imposed on local and state to provide enforcement of the regulations.

This commenter expressed concern that the fees and regulations will affect the small business that is contracted with local police to assist with towing. BTRO proposes to regulate how towing firms will conduct business, which they can hire, and micromanaging. Having a misdemeanor is a disqualifier. This commenter asked what other industry regulates mandatory training to operate as a business. With regard to the expiration grandfather clause, this commenter asked why BTRO would cut a company off from applying on the same day the law becomes effective. Making the regulation become effective July 1, 2008, and having towing firms be in compliance on the same day is extreme and places a large amount of stress and financial burdens on the towing business in the Commonwealth.

This commenter noted the regulation for professional conduct and standards of practice but did not say what the concern or issue was.

This commenter addressed the amount time it will take for a tow truck driver to receive authorization to drive and, since this is a source of income, this would need to be completed as quickly as possible. This commenter stated that BTRO had created regulations in the best interest of members of the board in lieu of what is in the best interest of the towing industry, the Commonwealth and citizens.

This commenter suggested that cities should establish towing advisory boards that would regulate the city and state laws. These suggested local advisory boards would come under the direction of BTRO. With regard to the towing operators' license, the suggestion was made to have a test at DMV. "In order to assure that all towing operators in Virginia are consistent, this task could be handled by developing at (*sic*) test would require anyone wanting to be a tow truck driver to pass the test and other requirements necessary to assure the driver was proficient." BTRO should look at the laws already in place and revise them to fit the needs of the towing industry, the Commonwealth and the citizens instead of creating unnecessary hardships.

Agency response: Such a change requires statutory changes and is therefore beyond the purview of this board.

This commenter suggested education local and state law enforcement officers about the problems associated with towing and soliciting assistance with enforcement. BTRO could make some of the laws effective on July 1, 2008, but not make compliance effective until a year of the passing of the regulation. BTRO should reduce the number of changes, as the requirements are very stringent, especially for small business.

Willow Lawn Service Center: Towers who are working for the local police are already regulated in their rates. The additional costs by these regulations cannot be passed on. The police say how much you can tow, the maximum you can charge for certain types of tows. ‘Some of us who tow for the county think that the rates are a little bit low for certain things, certain rates are okay, other ones we don’t get reimbursed for what we do.’ This commenter stated that private towing rates are unregulated and that localities regulate rates. If the board is going to regulate towing, then it should say to municipalities that they cannot regulate.

This commenter had questions about the continuing education requirements: where would it be? by whom? This commenter asked if the state is going to provide it at every place that there is a state facility, such as a DMV or ABC store, or do we have to send our drivers away? The last towing education that this commenter saw anything about was in Maryland. This commenter stated that many of his drivers are part time and he wondered if he would have to pay his drivers to go out of town to obtain continuing education?

Agency response: The continuing education has been removed for the board’s further consideration.

This commenter asked what was meant by the regulatory requirement about office space being for the exclusive use of the tower. This commenter stated that he has more than enough office space to operate his service station business and the towing service. This commenter asked if the board meant that he had to cut off a section of his business and only tow operations could be in there? This commenter stated that this was restrictive and interferes with other businesses.

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

This commenter also asked what BTRO meant by two-way communication being required on the truck. ‘Did BTRO mean a cellular telephone or two-way radios? Does each person other there have to have a radio on his hip if you’ve got more than one truck out there?’ This commenter asked if BTRO was requiring him to provide a landline telephone for the use of his customers and permit them to call anywhere they wished at his expense?

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

This commenter stated that tow businesses are now paying a minimum of \$100 more for DMV licenses and asked if that fee would be reduced with the advent of the regulations the board is proposing. This commenter stated that he supported 98% of the previous remarks.

Agency response: DMV, a separate state agency will not be changing any of its fees in connection with actions by the Board for Towing and Recovery Operators. DMV fees are tied to road use.

This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, that he agreed that more time is needed for comments to be made and considered on these proposed regulations. This commenter stated that some response from the board to the comments already submitted would be helpful. This commenter thought that more comments on those responses should be allowed.

Agency response: The board declined to extend the comment period on these proposed regulations.

CRS and Taylor's Towing: This commenter questioned who would enforce these proposed requirements and how? 'How is it going to help the guy like me that's gonna comply and who's gonna regulate the guy that doesn't?' 'Having gone through the process before with the car business, I know in Northern Virginia, the laws up there get enforced. In Tidewater, where we have a bigger concentration of car dealers than Northern Virginia, the laws are not enforced; I just don't want to see us run into the same thing.'

Agency response: The board will be hiring investigators who will be enforcing these regulatory requirements.

Hampton Roads Towing: This commenter observed that the annual background check requirement was excessive as doctors and pharmacists are not required to meet this frequency. Tow truck drivers work 16 hours a day and don't have a whole lot of time to break the law. This commenter asked what was going to happen to towers who did not know this action was going on? This commenter stated that he had been passing the word along because he hauls for insurance companies. There are people in the back areas who tow and they are not going to know. What happens July 1 to them when they get pulled over and what's gonna affect them because this should have been put out on the new publicly a long time ago. 'I found out six months ago and started organizing meeting and getting people together.'

Agency response: The board accepted the comment about extending the effective period for a background check and changed the regulation accordingly.

This commenter stated that he opposed the group called MIRA and asked if it is a public company, a private company or open to the public? This commenter asked who is MIRA and where we could get a copy of who's on MIRA? This commenter asked if MIRA proceedings are taped or video recorded and where he could get a copy of the recording.

This commenter stated that he had been in business for 24 years. If all this goes into effect, the fees, the taxes, the rates, I won't be working for me but for the board. Fuel prices have doubled and insurance has gone up. With a city license, we are already regulated on what we can and can't do. Hampton just got a rate increase from \$85 to \$125 for a police tow. That was after five and one half years of being down.

'The labor taxes are about to hit in April. We've got fees here for trucks that are coming in and everything else. Now we're getting five percent taxed on all tows we do now. Y'all are in June or July. It adds up quick. If the costs have got to go up the public needs to know about it.'

This commenter asked about body shops that have wreckers. 'Has the board told them about these new requirements?' He has tried to tell the ones he goes to but there are a lot of body shops that own tow trucks. They're not on a probation list. What about if they go out and pick up their own cars? Are they required under these same regulations? Has anyone told them?

This commenter further stated that he had come to meetings two, three months ago and asked to speak and was told he was not allowed to ask questions or talk. 'That's why I quit coming because if I can't speak and voice my opinion, then all I'm doing is coming to listen. I had no clue that there was a public comment period at board meetings and that I was limited to that time period. It was my first meeting.'

This commenter added these comments to his previous comments immediately prior to the end of the public hearing on February 11, 2008: 'We don't get to hire drivers. Our insurance companies do by telling us who we can and can't hire. They (insurance companies) are harder on us than anybody else. Drivers work until the insurance says they can't.'

Eagle Towing: This commenter, in written comments submitted 2/12/2008, asked if the general regs applied to 'for hire' towers only? If yes, there is nothing to prevent junk haulers from continuing their practices of towing with outdated, unsafe, and sometimes illegal equipment since they are compensated for the junk and not the actual tow. This commenter questioned why there is a need to keep \$100 in change. In his years of experience, he has found that \$35 is

sufficient for giving change. Additionally, since all towers accept credit cards now it is unsafe for drivers to carry this amount of cash.

Agency response: This comment is declined as the regulation conforms to the Code.

This commenter questioned why the background check had to be performed every year and stated that this was excessive as the background check for concealed weapon permits are valid for 5 years. Coaching children's sporting events requires criminal background checks every 3 years. This commenter questioned why it would be necessary to get a criminal background check, be fingerprinted, and pay a driver authorization fee for every person who drives a tow truck. If an authorized driver was on the scene, for every person (such as wives, relatives, or neighbors) who may have the occasional opportunity to drive a tow truck to have a driver authorization. Tow trucks have the same design as U-Haul trucks, which anybody can rent with no truck driving experience at all.

Agency response: It is beyond the purview, at this time, for the board to regulate junk haulers as such authority would require a change to the statutory Code. The \$100 requirement to make change conforms to the Code. The board accepts the comment about the annual background check being excessive and has changed the regulation accordingly. An occasional driver of a tow truck is permitted by COV §46.2-2814.

Bailey and Sons Towing: This commenter questioned the urgency to get these regulations done by July 1, 2008. If it is because BTRO is running out of appropriated funds, BTRO should request more money from the appropriations committee. Let's do this thing right.

Agency response: This issue has been resolved by Code changes.

Martin's Towing: This commenter stated it would be hardship on him to pay the proposed fees and maintain the office space requirements. His wrecker sometimes sits a week or two without moving. 'My office is in my house trailer because my house burned down years ago. I've only got an acre and seven tenths and it makes it hard for a small man to have to be come by the regulations and be able to stay in business.' This commenter stated that he would have to go out of business and that is unfair. He has been in business for 16 years.

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

Representatives of AAA, MidAtlantic: This commenter stated he had presented AAA's position to the General Assembly. This commenter stated that he endorsed Mr. Fly's comments

and many of the other comments that had already been made. This commenter stated that the proposed fee structure should be changed to a tiered structure, as determined by company size, to be fairer to small businesses.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

This commenter stated that Senate Bill 707 is being considered. This commenter read excerpts from a letter that has been provided to state senators relative to SB 707. This commenter stated that AAA has a proud history and relies on small towers, along with state police and local police, and these proposed requirements would be unable to continue as viable businesses due to the expense of complying with the proposed requirements. This clearly would not protect Virginia motorists but would harm them by depriving many the readily available towing services in the rural areas of the state while also increasing costs and delays.

This commenter stated that BTRO was formed in 2006 to address concerns regarding predatory practices involving non-consent towing. These proposed regulations go much further than the intent of the original legislation and propose to regulate consensual towing. “Furthermore, they appear far more focused on protecting and enhancing the business of a few big tow operators, while jeopardizing and likely putting many smaller companies out of business through numerous onerous requirements of regulations.” This commenter stated that BTRO could not meet the statutory requirements for implementing these regulations.

This commenter expressed concerns about the different record retention requirements in the proposed regulations: one year for service charges but three years for education and training records. This commenter stated that BTRO should have at least as great an interest in auditing charges for non-consent towing as for auditing for continuing education.

Agency response: The board accepts this comment and has modified the regulations accordingly.

This commenter also stated concerns with the DPB study and disagreed with the minimal impact that would be offset by improvements in quality of service. This commenter stated that there would be a significant impact on small towers and urged BTRO to investigate this matter further with the small towers.

This commenter believed that these concerns justified the delay of the implementation of the regulations until the committee could know and fully understand their impact on the towing industry, and most importantly, upon the small towers who will be mostly severely impacted across the Commonwealth. There are enormous divisions among towers that need to be

addressed and a few months is simply not enough time to find the solutions that are reasonable for all parties.

Agency response: The board declines this comment as such flexibility is not permitted by the statute.

AAA Mid-Atlantic submitted written comments dated February 12, 2008, as follows: With regard to the DPB economic impact analysis, this commenter agreed with the statement that that one possible disadvantage to the public might be that a one-truck operation may elect to cease operating in a locality rather than seek licensure. This highly relevant statement was believed to conflict with the further statement about there not being any localities that should be disproportionately impacted from these regulations. This commenter believed that rural counties and municipalities risked suffering a disproportionate impact from the proposed regulations and licensing fees simply by the lack of revenue to offset the expense of complying with the regulations. This will most certainly result in fewer contractors to service the public in certain areas.

This commenter stated that BTRO cites ‘Wreckmaster’ as an example of courses that would meet the continuing education requirement. Such courses may not be permitted under the exclusions indicated in 24VAC27-30-180, which prohibits courses, like ‘Wreckmaster’, which actively promote products sold by Wreckmaster or their instructors.

Agency response: The board accepts this comment and has modified the regulations accordingly.

This commenter agreed with the DPB analysis concerning small business costs will increase due to the licensure, decal, driver authorization document, examination, continuing education fees and time spent on exam preparation and continuing education. This commenter disagreed that the processes and fees would lead to increased business and greater profits due to the reduction of unscrupulous and poorly run businesses. Its conclusion is not substantiated by any research, study, or survey of the current state of these businesses or effect on this industry.

24VAC27-30-10 Definitions: This commenter recommended that BTRO add a third class of towing to be identified as ‘Medium Duty Towing’. Currently, many Class B towers within the Commonwealth provide valuable towing and recovery service to trucks weighing up to 48,000 lbs. gross vehicle weight but do not provide full services to heavier vehicles of the Class A. The current regulation will require them to make a choice (1) meet the more stringent and expensive requirements of the Class A to continue servicing these types of vehicles or (2) register as a Class B and no longer provide this level of service. If the choice is to register as a Class B, this would eliminate many operators currently in this business statewide. This could possible create

a situation that limits services in rural areas thereby increasing incident response times, creating longer traffic delays caused by accidents or breakdowns involving these vehicles.

Agency response: The board declines this comment as it is inconsistent with the current Code and would require statutory change to make.

24VAC27-30-20 Fees: The current proposed fees do not take into account the size of a company. We recommend that BTRO consider a tiered fee structure, correlated to the size of a company, with the bigger the company, the larger the fee for licensing. This commenter recommended a reduced or pro-rated fee structure for licenses that will last less than one full year. This commenter objected to the proposed fee to be charged for verification of licensure to another jurisdiction or government agency. ‘Why should operators be levied a fee for this if it was not at their request that this information be provided?’ Such proposed fees should only apply if requested by the operator to an out of state government or private/commercial business. Other agencies within the Commonwealth asking for verification of licensing should be the duty of BTRO to provide.

Agency response: The board accepted this comment and has modified the fees for Class B operators accordingly.

An operator applying for a lapsed license should simply be charged the renewal fee and not a late fee. BTRO should either consider refunding application fees to applicants who are denied a license or should establish a lesser processing fee that would be more appropriate. This commenter also objected to the examination fees not being defined in the regulations.

Agency response: The board declines this comment.

24VAC27-30-30 General requirements for operator’s licensure: This commenter recommended that BTRO take a more pro-active step clearly identifying criminal conduct that would definitely exclude an operator or driver from being granted or possessing a tow license, including felonies involving violence, sexual crimes and vehicular crimes including theft and fraud.

Agency response: This issue has been resolved by Code changes.

24VAC27-30-50 Operator’s licensure by examination: This commenter reiterated his company’s concerns about and strong objections to the specific naming of The Towing and Recovery Association of America (TRAA) national certification as having already been approved by the board. According to this commenter, TRAA has extended exclusive distribution rights through state towing associations, which in Virginia is VATRO. This commenter stated that AAA Mid-

Atlantic has repeatedly requested that BTRO consider the IIRT as not just equivalent but a superior product to the TRAA national certification since it is a comprehensive hands-on training program followed by an examination, and may only be taught by instructors approved by the Board of Directors of the IITR. This commenter stated that BTRO needs to demonstrate that it is a fair and objective regulatory seeking the very best training at the lowest possible prices for those it regulates. ‘Anything less (such as the current language) is simply unacceptable, and probably cause for legal action.’

Agency response: The board accepts this comment and has modified the regulations to remove these requirements.

24VAC27-30-100 Unprofessional conduct: This commenter stated the following concerns about the content of this section. BTRO should require licensed operators to furnish the board with a price list indicating the maximum fees normally charged for all services they provide. This would be used in situations of investigating complaints of overcharging for services by the operator that BTRO may need to investigate.

Agency response: A complaint mechanism already exists in the regulations and fees must be posted and provided to consumers.

This commenter stated that BTRO should amend the proposed regulation concerning the acceptance of credit cards for payment by only the owner of the vehicle. This provision should be changed to permit the operator of the vehicle to pay with a credit card. This commenter stated that such a change would support the intent of the legislation forming BTRO and would be better for citizens and the motoring public.

Agency response: The board accepts this comment and has modified the regulations accordingly.

24VAC27-30-110 Standards of practice: This commenter disagreed with the position of BTRO to require special licensing for public safety towing. It is this commenter’s position that public safety services be at the sole discretion of the governing local public agency, and that further regulation in this area may serve no purpose other than to jeopardize the safety of the motoring public and public agency responders waiting for assistance at the roadside.

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

24VAC27-30-140 Prerequisites for application for tow truck driver's application document: This commenter recommended that BTRO consider applicants that currently possess other licenses issued by the state that require fingerprinting and background checks equal to or exceeding the requirements of the tow truck driver's authorization document to be exempt from this requirement.

Agency response: The board declines this comment as it is inconsistent with the current Code and would require statutory change to make.

Hark's Towing and Recovery: This commenter stated his support of licensing of tow trucks and towing companies in Virginia. This commenter expressed shock that only one BTRO member attended the February 11, 2008, meeting. "The other members' absenteeism appears to show a lack of respect for the very people and industry they were appointed to regulate." This commenter stated his belief that the State had put the fate of the many in the hands of the few and that he believed that the majority rules.

The remainder of this individual's written comments have been reported in the companion comments summary document as they are general in nature.

Hanover Towing: In comments posted on the Regulatory Town Hall on February 27, 2008, this commenter questioned how BTRO would determine who qualifies to give the required training. This commenter stated that the training requirements should be every three to five years rather than every year. This commenter suggested if a tower could not pass a standardized test, then require the completion of training. In light of the large amount of insurance towers are required to have, if a tower can pass a standardized test why should they be required to have additional training. This commenter objected to the face-to-face training requirement, how that training has to be conducted, what training is no good and the licensee's presence and participation for at least 50 minutes.

Agency response: The continuing education requirement has been removed for the board's further consideration.

This commenter asked if there is any way to make endorsement to the towing license like what the state currently does for the CDL license. Depending on the endorsements (private property towing, public safety towing, repossessions), it could increase the amount of the license as compared to the flat \$500 rate for a general license. For towers that do not tow for the police (public safety towing) or on private property, such towers should not have to comply with all of the additional minimum requirements that may be needed to provide different services.

Agency response: This comment is declined as the regulation conforms to the Code.

This commenter's fifth question concerned the fee amounts and the projected numbers of towers and drivers discussed in the Agency Background document that accompanied the proposed regulations. The commenter calculated that BTRO would take in over \$1M in fees and charges and this commenter did not feel this was appropriate.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

This commenter's sixth question concerned 24VAC27-30-100 items #4 and #5. This requirement states that, upon request, a tower would have to open his books and records to the board. This commenter objected to this stating: 'I should not have to show my records for my business that I conduct outside of public safety, private property, or repo.' This commenter objected to being required to tell the board where his records are maintained.

Agency response: The board declines this comment as the regulatory requirement is consistent with the current Code.

This commenter's seventh question concerned a statement in the Agency Background document about the board not being able to identify how many small towing businesses may elect to cease operating rather than seek licensure. This commenter questioned what efforts the board made to identify such businesses. The commenter added up the several costs (license, driver authorization, certification, fingerprinting, annual training) contained in the regulations and commented that these amounts collectively pose a large impact on companies that follow the rules.

This commenter's eighth question was about enforcement. Where or how do the regulations state how enforcement will be made to those who don't comply. It appeared to this commenter that the companies that follow the rules would be the ones that the most impacted.

Agency response: The board understands the concerns about enforcement and is currently pursuing plans to hire investigators who will follow up on complaints and make field visits to ensure compliance with these regulations.

This commenter's ninth question concerned the board's refusal to issue a license or driver's authorization to someone the board determined to be unfit. This commenter stated that this gave Big Brother too much room to govern who can do business. This commenter asked if free trade allowed an individual to decide if they should do business with this commenter. This commenter stated that he understood and agreed with a lot of the regulations with regard to public safety tows, private property tows or even repossessions, but normal free trade work?

Agency response: The enabling statute gives the board the authority to license tow operators and drivers.

This commenter referred to page 4 (Agency Background document) that discusses rogue companies and commented that such companies currently operate without insurance and asked why they would even bother to obtain licenses?

This commenter's eleventh question concerned the annual (*emphasis added*) license and driver authorization requirements. This commenter stated that the annual requirement seemed excessive especially in light of the fact that mechanics' State Inspection License does not have to be updated every year.

Agency response: The board understands the concern of this comment but declined to modify this regulation at this time. The board may revisit this issue in the future.

This commenter's twelfth question concerned the statement in the Agency Background document that there are no localities that should expect a disproportionate impact from these regulations. This commenter wanted to know how this was determined.

Agency response: The reference to no localities being affected disproportionately in the agency discussion document was meant to convey that the regulations would be applied uniformly statewide.

This commenter's thirteenth question concerned the 'Alternative Method that Minimizes Adverse Impact'. This commenter observed that the statement 'There are no clear alternative methods that both meet statutory requirements and reduce adverse impact' could not be true. This commenter stated that he had suggested several himself. This commenter also asked where the item is explained or discussed that concerns the projected reporting, record keeping, and other administrative costs required for small businesses to comply.

This commenter's fourteenth question referred to 24VAC27-30-70, item 7. This item addresses trucks being operated by an employee of the dealer or manufacturer for the sole purpose of transporting to and from the location of sale or demonstration. This commenter asked about the circumstance when a company needs to rent a truck because the company-owned truck is in a repair shop or the repair shop wanted to lend the company a loner truck if the situation was called for.

Agency response: The board declined to make any regulatory change in response to this comment but may address this issue in future policy.

This commenter's fifteenth question concerned 24VAC27-30-80 and asked what qualifies as an emergency to transfer an operator's license.

Agency response: The board declined to make any regulatory change in response to this comment but may address this issue in future policy.

This commenter's sixteenth question concerned 24 VAC27-30-100 which stated that if all a company does is repossessions, then the truck does not have to show the company name. This commenter asked how the board would know in fact that repossession is all that the company is doing?

Agency response: The board expects to receive complaints and make investigations of such complaints to resolve such matters.

This commenter's seventeenth question referred to 24 VAC27-30-110 item 4 concerning minimum insurance requirements. Why are the requirements the same for class A and Class B? Class A is hauling items worth much more than any class B would be able to. This commenter asked if the \$50,000 limit had to be for each truck and if so, this seems high for Class B.

Agency response: The board obtained insurance industry recommendations for these dollar amounts and reflected those amounts appropriately in the regulations.

This commenter's eighteenth question referred to 24VAC27-30-110 item 9 that stated that operators shall not provide public safety towing and recovery services unless they have met the criteria established by the board. This commenter asked how any company could comply with this standard by July 2008 or even 2009 if the standards have not been completed? Are these companies going to have to operate illegally based on these regulations going into effect without having the supporting items being completed?

Agency response: The board accepted this comment and changed the regulation accordingly.

This commenter's nineteenth comment referred to 24VAC27-30-110 item 16 concerning the posting of fees. What about the operator that does not handle public safety, repossession or private property towing?

Agency response: This comment is declined as the regulation conforms to the Code.

This commenter's twentieth question referred to 24 VAC27-30-130 concerning anonymous complaints received by the board being handled in accordance with the board's policy and guidance documents. What are those documents. Do we have the right to face our accuser? What is going to be required to substantiate a complaint? What is to prevent false complaints?

Agency response: This comment is declined as the board will be developing its policies on handling complaints and will make those policies available through its website.

This commenter's twenty-first questions referred to 24VAC27-30-160 items 2 and 3 referring to a driver at the point of applying to the board for an authorization being required to supply his employer's name as part of his application process. This commenter stated that drivers sometimes have stays between jobs. Why does a driver have to be employed by a company to maintain a towing license? If he does not, then why does the license have to have a board-issued license number of the driver's employer?

Agency response: The board accepts this comment and has reduced modified the regulations accordingly.

This commenter's twenty-second questions concerned 24VAC27-30-160 items 6 and 7 about drivers being required to sign statements that they have complied with the requirements if the operators also have to verify they are licensed. This commenter wanted to know why the board needed to know what driver is working for which operator. Referring again to automotive State Inspectors, this commenter stated that these licenses are in effect regardless of who these persons work for.

Agency response: The board's need to know which operator a particular driver is working for is tied to the board's ability to investigate consumer complaints about drivers. This is necessary because the regulations hold the operator accountable for his employee-drivers actions while they are engaged in the practice of towing and recovering vehicles.

This commenter finalized his comments with the observation that the board is trying to over-control the industry and interfere with free trade. This commenter observed that his company already complied with all the requirements other than having a license, which is not yet available.

This commenter, on February 28, 2008, posted an additional comment on the Regulatory Town Hall: "I have not found anything in the General Regs showing one of the impacts to the public

being higher cost to receive services. If we are being charged all of these high fees and now have to comply with so many regulations, if we are going to be able to stay in business, those fees are going to have to be passed on to the consumer. One of the reasons for the start of this board was because someone felt that they had been charged too much. How are they going to feel now when those prices have to go up 50% to cover the additional cost in training, insurance, background checks on ourselves, fingerprinting, license fee, etc. Should the board not be required to point that out when they present their recommendations to Senate Transportation Committee? Who truly will end up feeling the impact of all these fees? The consumer!”

This commenter, on March 1, 2008, posted additional comments on the Regulatory Town Hall: Based on the proposed regs, this commenter would be considered an operator. In the ten years of being an operator, this commenter has never towed a vehicle. The only time he has driven his trucks is to take them for repairs or if they were needed in another location. He charges correctly, carries insurance, has the required equipment as specified in the regs, and provides outstanding customer service. This commenter does not personally have the knowledge to efficiently clear an accident scene. This commenter reads and understands the laws and enforces them with his drivers. This commenter stated that he probably could not pass the TRAA level 1 test because he does not drive tow trucks but runs his business. According to the regs, he could not qualify for a license after year one or he would have to designate someone who could pass the test. Operators should not have to qualify at any point for minimum standards of testing, knowledge, future training. These things should be required to obtain a driver authorization document. “It appears based on the fee structure that a separate designation between the two is fully made, but the two (operator and driver) are often blended together in regards to requirements. To qualify as an operator, the operator should have minimum insurance, trucks labeled, safe equipment, For Hire tags, but not the other items that are more important for drivers.”

Agency response: The board accepts this comment about fees and has modified the regulations accordingly.

This commenter referred to 24VAC27-30-140, item 6 in that applicants should have to certify that he has been convicted of any criminal offense rather than has not.

Agency response: The board declines this comment.

This commenter referred to 24VAC27-30-30, item 5, this commenter asked what happens when you are working with a corporation that has multiple stockholders who are the owners of the company?

Agency response: The board’s regulations already permit the function of a Responsible Individual in such situations.

This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, asked when the review of all the submitted comments would take place. This commenter observed that such review should have to take place in a public meeting.

Agency response: The board has reviewed the public comments relevant to the proposed regulations during three different board meetings on (dates).

Sunbright Towing Service: *This commenter registered these comments on 3/10/2008 on the Regulatory Town Hall. Only two of these comments seemed to be immediately relevant to the proposed regulations undergoing comment period. Those two comments are summarized here. The remaining comments recorded 3/10/2008 have been summarized in the companion summary document.*

This commenter observed that there are regulations for insurance requirements and haul permits that are already in place for commercial carriers. This commenter asks if these existing requirements apply to tow trucks as commercial vehicles. Its commenter stated that with changing times and changing needs due to the size and type of vehicles on the road that demand larger tow trucks. This commenter stated that he had had to upgrade his equipment to medium duty to have equipment available to answer police regardless of whether winching or flat bed towing was needed.

Agency response: The board declined to make any regulatory change in response to this comment.

Commenter: Jenny Herrit: This commenter posted these comments on the Regulatory Town Hall on 2/22/08. This commenter expressed concern about the lack of information that is being given to towers and the public. "To have a fair and equal board, all towers must be given a voice." This commenter noted that another problem not being discussed is the different equipment needs for towers operating in the mountain areas of the state as contrasted to the coastal areas of the state. Towers operating in the different areas need different equipment.

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

Coliseum Towing Service: This commenter posted these comments on the Regulatory Town Hall on 2/27/08. This commenter stated that the regulations are still alive. This commenter stated that the debate was still going on in the House Transportation Committee regarding whether to make the effective date January 1, 2009, or keep it as July 1, 2008. Debate is also taking place about whether to keep a Class A tow operator as the chairman of the board or to

allow a Class B operator to rotate as chairman with a Class A operator. This commenter stated that the General Regulations that are undergoing comment period will go into effect July 1, 2008, unless the date is changes. This commenter emphasized that the purpose of the Regulatory Town Hall is to accept comments about the proposed General Regulations. This commenter noted that the site is not for comments about the public safety regulations that are to be posted at a later time for comment. This commenter noted that “posters on this comment site should address their concerns regarding the General regulations that have been presented for comment.” This commenter further stated that in his opinion the regulations are excessive, abusive of decent businessmen, their enactment will smash small companies to death with ridiculously high fees and requirements that will drive costs of operation through the roof.

This commenter has made several general comments that were less specific to these proposed regulations but to the board and several towing associations. These general comments have been summarized in the companion summary document.

This commenter also submitted comments, dated January 31, 2008, to the Governor. Even though the commenter labeled the comments as pertaining to the public safety regulations, which are not undergoing this comment period, several of the included comments seemed, by their content, to pertain to these general regulations. Therefore, those comments have been summarized here:

Item 4: This commenter stated that BTRO has not indicated any concern for the continued existence of small tow companies which make up most of industry and has not conducted any studies to determine the impact on these companies or what steps could be taken to preserve small and minority owned businesses.

Agency response: The board is indeed concerned about the impact of these regulations on small businesses and has modified the fees applicable to Class B operators (which tend to be the smaller businesses) accordingly. It falls under the purview of the Department of Planning and Budget to conduct studies as mentioned by this comment.

Item 5: This commenter referred to several points contained in the agency discussion document concerning rogue operators, tow operators not notifying law enforcement agencies when vehicles have been towed from private property, tow operators who refuse to carry business insurance, tow operators who fail to operate in a safe manner. This commenter stated that the board had not conducted any studies to ascertain if the existing laws that govern these activities have been enforced by police. This commenter stated that other industries are not required to accept credit cards and the board has not provided a reason why tow companies should come under a legal mandate to do so.

Agency response: The basic enabling statute for this board as well as its regulations address these concerns. The statute specifically requires tow operators to accept credit cards in payment for services.

Item 6: This commenter pointed out that no other profession in the state is required to have annual fingerprinting and criminal records checks as BTRO is proposing for tow operators and drivers. "...there is no indication that the need for a tow operator to prove his innocence every year is a reasonable action of government." This commenter stated that finger prints never change and annual fingerprinting is not necessary in order to perform a legitimate criminal records check. Even released felons on parole are not required to submit to annual criminal record checks.

Agency response: The board accepted the comment about extending the effective period for a background check and changed the regulation accordingly.

Item 7: This commenter stated that BTRO noted that 'one-truck' operations may go out of business rather than meet the requirements. This commenter stated that BTRO did not conduct any studies to determine how many companies would be forced to close or why this would be desirable.

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

Item 8: BTRO states that the minimum license fee of \$500 is not a problem but has failed to justify why it is a legitimate amount to be charged to every tow company in the state.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

Item 11: Concerning the issue of the board's position about the public being safer by preventing tow operators who have committed certain crimes from operating tow vehicles, this commenter states that BTRO has not conducted any studies to determine how many citizens have been victimized by criminals in tow trucks, which type of criminal generally commits offenses against driver, or how many arrests or prosecutions for such crimes have taken place.

Agency response: This comment is declined as the regulation conforms to the Code §2814.

Item 13: This commenter states, in response to the BTRO statement that standardizing the equipment used by tow services is essential, that 'no study has been made to determine if the

towing equipment currently used is inadequate or what equipment is needed.’ This commenter states that BTRO has chosen to dictate that tow companies use standard equipment without consideration of the differences in needs from one area of the state to another. Mountainous areas of the state require different equipment from the Tidewater area.

Agency response: The minimum Gross Vehicle Weight standards are set by the equipment manufacturers and are contained in the enabling statute.

Item 15: This commenter states that BTRO is requiring towing equipment that is not standard to the industry and would create great expense to companies that would have to order the special equipment to comply with the regulations. BTRO’s standards have not been endorsed by any recognized organization such as Towing and Recovery Association of America, Wreckmaster, or the Society of Automobile Engineers. “There is no indication that BTRO ever conducted studies to ascertain if the equipment specifications it is requiring are necessary, would improve safety, or produce better quality work. The minutes of meetings for BTRO do not show whether it consulted with any of the manufacturers of truck chassis (such as General Motors, Chevrolet, or Ford) or any manufacturers of wrecker bodies (such as Miller Industries or Jerrdan). BTRO did not contact any mechanical engineers to obtain any opinions of the standards that should be imposed nor did it consult with tow equipment sales agents to see if the required equipment would be an improvement over existing equipment.”

Agency response: The minimum Gross Vehicle Weight standards are set by the equipment manufacturers, are currently in the Code of Virginia, and are industry standards. The standards are also consistent with the board members’ experience in this area. The several comments that pertain to draft requirements in the public safety working documents are not herein responded to.

Item 19. This commenter stated that BTRO has a legal mandate to complete all regulations by July 1, 2008. In spite of this, BTRO has not considered the need nor made provision for temporary permits in the event it is unable to process in a timely fashion all the applications from over a thousand tow companies statewide. It has not developed a plan for how to handle applications, has not purchased equipment to allow for rapid processing, designed a training plan for employees, made any effort to determine job qualifications or began to accept applications for employment.

Agency response: Due to statutory code changes, the effective date of these regulations has been moved up to January 1, 2009. The board will be using other state agencies’ staff who are experienced in such data input in order to rapidly process all applications.

Item 20: This commenter stated that the Executive Director had stated that the agency does not know how many tow companies there are in Virginia or how they will be notified that they are covered by the new regulations. The board has not conducted any survey to determine the number of companies nor has it hired anyone to conduct the study. Therefore, BTRO cannot determine the effect its regulations will have on the industry.

Agency response: The board has sought information from numerous places on the number of tow operators in the Commonwealth: State Police records, phone directory yellow pages, as well as towing publications.

The remainder of this individual's comments, dated January 31, 2008, were either general in nature or more specific to the agency's public safety working document. The public safety working document is not yet proposed regulations undergoing public comment so those public safety comments have not been included here. The other comments of a more general nature have been included in the companion document.

Big Bertha's Towing & Equipment: This commenter, in a comment recorded on the Regulatory Town Hall on March 12, 2008, requested the extension of the comment period on the proposed regulations. The request was that the close of the comment period be moved back until June 27, 2008, in order to allow more time to consider the volume of proposals, changes, suggestions, and ideas.

This commenter, in a comment recorded on the Regulatory Town Hall on March 20, 2008, repeated his request that the comment period on the proposed regulations be extended to June 27, 2008.

Agency response: The board declined to accept these comments.

Calvin's Low Price Towing: This commenter, in a comment recorded on the Regulatory Town Hall on March 14, 2008, stated that BTRO should be required to mail to all towing companies that have a business license and pay taxes a copy of all new laws being considered with a comment space for every towing company to respond. This commenter stated that many companies had no idea what was going on. This commenter stated that he disagreed with the proposed fees and said if they are to be imposed then they should be reasonable. Towing is a very costly business. We do not want to drive small towing companies out of business. If the laws do what many have said they will do, Virginia will suffer. There are a huge number of motorists on the road and the small towing businesses are needed. If the new laws are too harsh, it may drive many towing businesses out of business.

Agency response: The list of companies having a business license would not be complete because, as a function of the locality, all localities do not require business licenses. Such a mailing would not reach all of the intended audience. The board accepted the comment about the proposed fees and changed the regulations accordingly.

This commenter also stated as contractors for AAA, we have been doing criminal background checks for years but he questioned the requirement for fingerprinting. If fingerprinting must be done, it should be a 'uncostly' (*sic*) way for towing companies.

Agency response: The requirement for fingerprinting is contained in the Code.

This commenter was opposed to high fees that are proposed. He was opposed to drivers being required to carry \$100 in cash to make change (because of safety concerns for drivers), opposed to being required to accept personal checks, opposed to being required to accept credit cards (because of the cost to do so).

Agency response: The requirement for accepting credit cards is contained in the Code and drivers are not required to carry \$100 in cash. This cash requirement applies to operators at their places of businesses, such as offices.

E&M Towing: This commenter, in a comment recorded on the Regulatory Town Hall on March 17, 2008, stated his agreement with most of the other views posted on the Town Hall. This commenter asked if there are petitions that could be signed.

Anonymous: *There were several comments made by Anonymous person(s). There is no way to know if the various comments attributed to Anonymous are the same or different persons.*

One commenter, in a comment recorded on the Regulatory Town Hall on March 17, 2008, stated, in referring to **26VAC27-30-65** Section O, that it was not fair that an operator who wanted to provide towing and recovery services for vehicles of gross weight over 26,000 lbs must be licensed as a Class A operator. This commenter stated that the requirements for Class A operators put an unfair burden on small operations that provide this service. This commenter stated that this was restraint of trade.

Agency response: The VAC section cited in this comment derived from an earlier iteration of these regulations before they were proposed for public comment. The standards for Class A and Class B operators are set in the COV.

Another commenter asked if drivers who have been denied can collect unemployment.

Another commenter asked how he could afford to wait, from earning a paycheck, to take a class or wait for the (authorization) card. This individual asked if it is thought that he could afford to pay for background checks and fingerprinting as well as the money to obtain an authorization card. This individual also stated he would have to take time off from work do all this.

Rob M: This commenter, in a comment recorded on the Regulatory Town Hall on March 18, 2008, asked by what right does this non-elected body have to impose fees and fines on us, the towing community. This commenter stated that everyone who has a tow truck should park his truck for one day to make the point to so that politicians will take notice of these concerns.

Agency response: The board's authority derives from the COV.

North Star Towing: This commenter, in a comment recorded on the Regulatory Town Hall on March 20, 2008, stated that he felt that the regulations were being made to make it harder for the small guy to stay in business. The large towing companies are just trying to put the smaller ones out of business so they can have their monopoly. We feel that these rules should be fair to everybody.

Agency response: The board modified the regulations to reduce the potential impact on small businesses.

Metro Towing Company: This commenter, in a comment recorded on the Regulatory Town Hall on March 20, 2008, stated his concern that the members of the industry as being portrayed as a band of outlaws taking advantage of everyone in our path. 'This could not be further from the truth as we are productive members of society providing a valuable service to the police and the public.'

This commenter further disagreed with the agency background document statement that said that individuals and businesses are not licensed and regulated. This commenter pointed out that all drivers are licensed by the Virginia Department of Motor Vehicles, the businesses are licensed by the localities where we preside, and the industry is closely watched by local towing advisory boards. The local police department does a fine job keeping a towing company in check when there is a complaint. Virginia Beach uses a towing comment survey form that is given to each non-consensual and police tow. Complainants mails in the form with their contact and tow information. This permits the towing company to present its side of the story when being accused of wrongful conduct.

Agency response: The board understands this commenter's point and replies that not all localities have towing advisory boards or perform local licensing actions.

With regards to the issue of finger printing in the regulations, the president of his company must be finger printed in order to maintain this company's position on the police list. "Each employee must be submitted to our insurance company before hiring to ensure that each driver has an acceptable driving record." This commenter wanted to know how many citizens have been the victims of crime committed by a tow truck driver.

Agency response: The board has modified the regulation to extend the effective period for fingerprinting from the originally proposed one year to every three years.

A major disadvantage to the public, employees, and the towing company is this will raise the cost for everyone involved. The prices will have to be increased for the consumer. The increased cost will affect the amount of employees that a company can hire and it will affect the type of equipment a company can afford. This will affect the small towing company by creating a hardship that may lead to their demise.

This commenter also stated his concern about the education requirements. What constitutes a reputable educator. This industry is not taught by a book but years of hard work. What cost will be imposed for this education?

Agency response: The board has removed, until such time as a consensus can be reached, the continuing education requirements from the final regulations.

This commenter expressed concern about the enforcement of the temporary trip permit requirement. Are police departments supposed to check every tow truck for the decal? If a tower is caught, what is the punishment?

Agency response: The board is in the process of hiring investigators who will investigate the appropriate licensing of towing operators and drivers and pursue enforcement of penalties that are set out in the regulations.

Century Towing Service, Inc.: This commenter, in a comment recorded on the Regulatory Town Hall on March 20, 2008, stated that he has legal 'WT' tags on all his tow trucks and he pays additional fee to DMV for 'intrastate operating authority'. It is this commenter's understanding that this fee goes towards the regulation of the towing industry. This commenter questioned why we needed to be regulated twice? Will DMV refund those paid fees as well as remove future fees associated with intrastate operating authority?

Agency response: The fees collected by the Department of Motor Vehicles (DMV) referenced by this commenter are road use fees and are, therefore, not related to this board's fees nor collected for the same purposes. DMV will continue to collect its existing fees where appropriate.

The remainder of this commenter's comments pertained to concerns not specific to the proposed regulations and have been included in the companion document.

Rusty's Towing Inc.: This commenter, in a comment recorded on the Regulatory Town Hall on March 20, 2008, stated that Newport News already has a towing board and this plan will hurt us even more. This commenter referred to 24VAC70-30-15 and stated that the fees are too high.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

This commenter stated that the junk man makes more in one week that we do for hire but they will not have to follow the rules as for hire. This commenter asked what board is going to follow up on them?

Agency response: The board recognizes that individuals who haul junk vehicles are problematical but cannot address this concern at this time as it is not permitted by the enabling statute. BTRO will be studying this problem for future changes to the Code of Virginia.

This commenter asked why Northern Virginia does not have regulations by now? He stated that he had been to some tow lots and they are charging \$300-\$600 for state and \$200 for city police as well as charging for labor. This is too high and they need a towing board. This commenter asked where in the city or state code it permits him to charge for labor?

Agency response: The board declines to address this comment as it is outside the purview permitted to BTRO by its enabling statutes.

Petes Custom Auto Service: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, stated that he has been in business for 50 years and has been building his own tow trucks. He stated that his trucks have proven their performance, safety, and capability to do the job. This commenter stated that he needed a company that could certify these trucks.

Agency response: A winch, boom, or crane will not be prohibited by this board if the tow truck owner submits to the board a certification from a reputable testing laboratory, regularly engaged in the testing of such equipment, indicating that the capacity of the winch, boom, or crane as mounted on the tow truck is not less than the weight for which the application has been made and the certification is carried in the truck at all times.

In a second comment, this individual also stated that towers should be able to use the background checks by the local police departments. In a third comment, this individual stated that the fees are not reasonable. Tow companies have to pay DMV fees, city license fees. A lower fee should be charged to the tow company and not the individual employee.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators. The board intends to make use of the background checks processes of police departments.

Parkview Towing: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, asked what impact would the new regulations have on the general public. “Rates will increase due to overhead and wait time will increase due to a decrease in companies and drivers.” In a second comment, this individual addressed the issue: “if a driver is denied authorization for whatever reason and the driver appeals it, do they appeal to the same board that denied them to begin with—how is that fair?”

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators. Persons remaining aggrieved by the board’s informal and formal appeals processes, to be conducted pursuant to the Code of Virginia §2.2-4019 (APA), will have available to them the use of the circuit courts.

This individual asked about the impact on insurance companies from loss of income from towing companies that down size or cease operation. Raising costs due to tow companies raising fees for towing to and from auctions, roadside assistance. This individual stated that localities should enforce the regulations. If the localities deny/approve drivers then the drivers who are denied can appeal to the board. This individual stated that the localities should perform the background checks and the fingerprinting. Fingerprinting should only be done once since fingerprints do not change. Background checks should be done every 2-5 years.

Agency response: The impact of these regulations upon insurance companies is beyond the purview of the statutory authority of this board. The board has modified the proposed regulations to require background checks and fingerprinting only every three years at license renewal.

This individual asked how many drivers will wait to go to a class before being able to work. How many are willing to wait on this card? How many could afford to (wait)? This individual observed that people are not lined up to be tow truck drivers. This individual asked if high schools had been surveyed to determine how many students are anxious to be tow truck drivers.

This individual stated that the operator's fee should be refundable if the company is not approved.

Agency response: The board declines to address this comment as processing costs will still be incurred even if an operator is disapproved.

This individual asked what happens when there are only one or two towing companies in a locality and one or both take vacations or have family emergencies. Who is going to tow for the locality? "How will this effect that company with their locality and the consumer?"

Melinda: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, if a driver has to leave a company for any reason relating to the board denial or company closing down, will there be a driver relief fund to help support the driver's family while the driver looks for other work or awaits the authorization card?

In a second comment, this individual asked if anyone had talked to the local high schools, trade schools, and colleges to determine if they would offer towing courses.

Agency response: This comment is declined as these issues are beyond the purview of the board to address.

Cousins Towing & Recovery: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, stated that the new regs would go into effect January 1, 2009. This commenter observed that it was funny that there are no requirements for training in the operation of equipment that is deemed necessary to comply.

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

Buddy's Towing Service: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, stated that the fees are excessive for small tow companies (one or two truck operations, usually family owned and operated). "Most of these small companies provide

services in their home communities and most try to offer services at a reasonable cost, usually at or just above the motor club service fees.”

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

This commenter stated that everyone in this business discovers that no one can exist very long at the motor club rates and as more extensive regulations and fees are applied, will be forced to raise their rates or end up going under financially.

This commenter suggested that the fees be reduced to \$100 or 1/5 or 20% of what is proposed and the license fee should include the owner and one truck. All other trucks should be no more than \$10.00 each per year and all tow trucks should be WT licensed.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

Goldwrench Automotive: This commenter submitted written comments to the Executive Director dated March 21, 2008. This commenter expressed his serious concerns about the short amount of time to implement the regulations and the potential negative impact on his ability to legally operate his business. Even if the Senate Bill 707 is passed, the implementation timetable is very short considering the broad regulatory powers given to BTRO and the significant lack of details regarding the specific requirements the board is imposing on operators.

This commenter asked how long the board feels it needs to properly consider the concerns expressed from operators during the past three months. This commenter also asked what changes the board felt it needed to make based on the comments.

24VAC27-30-20 Application fees: This commenter stated that the board had established an application fee structure that is repressive to small business. (\$510 for a one truck operation versus \$600 for a ten truck operation) This commenter suggested the alternative of a \$50 application fee and \$100 per truck as this would reduce the barrier to entry for the small business owner and would therefore allow for more competition. “Our government should allow the free market to dictate competition rather than have large regulatory costs for small businesses, which limits competition and therefore raises the cost to the public.”

This commenter asked why the application fee is not structured to be progressive so that as a business becomes larger, the costs are more linear with the size of its revenue. The current cost structure appears to be too expensive.

The commenter stated that the board's basis of the number of operators that would be affected appeared to be too low. He calculated approximately 6,400 businesses, based on the number of businesses serving the Waynesboro area, that operate tow trucks statewide that would be affected by the proposed regulations. This number of operators would provide over \$3.2 million dollars in collected revenue for the board and an additional \$1.6 million for an estimated 5 drivers per business (at \$50 each). This commenter asked if the board would consider a lower registration fee structure until it has at least one year's worth of actual revenue data. This commenter pointed out that the industry would be better served if the imposed costs were significantly less and were based on a progressive method so as not to punish the small businesses. In addition to the referenced registration fee, this commenter also referred to costs associated with fingerprinting, background checks, training and certification examinations.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

This commenter noted that the driver license renewal each year (to cost \$50) and annual re-training seemed to be a micromanaged process, therefore requiring excessive cost to implement. The commenter referred to the different certification/re-certification standards and costs for public school teachers. This commenter asked about the board's basis for requiring an annual renewal of drivers' certification. It seemed reasonable to him that a driver's certification should be longer than one year. The more frequent re-certification process is unnecessarily costly and adds overhead to everyone's operating costs.

Agency response: The board recognizes the importance of this comment and, after a few years of operating experience, will review and reconsider this issue.

24VAC27-30-180 Training requirements: This commenter stated his support for safety training and thought it should be part of the re-certification process. However, compressing this to an annual basis makes the process unnecessarily intensive. Currently, the list of approved training suppliers is very limited and therefore costly. "Before requiring training, I feel the board should develop a detailed list of training specifications so that other training opportunities can be developed. "...local towing operator clubs could establish qualified trainers from within their own ranks for a fraction of the cost for the current training course options." Instead of the proposed deadline of 2011, "does the board feel that it has the responsibility to have that date imposed only after it has established specific training guidelines that allows operators to have adequate training options in order to make it more affordable?"

Agency response: The continuing education requirement has been removed for the board's further consideration.

This commenter expressed his concern that the timeline would place businesses in jeopardy of being out of compliance with the new requirements and subject to misdemeanor charges. The proposed costs imposed on businesses are expensive. This commenter requested that the board consider ways to reduce regulation, delay implementation until adequate time is allowed to fully consider the input of affected owners and evaluate ways to reduce costs to small business owners.

Agency response: As a result of the General Assembly's changes to the Code of Virginia, the effective date of implementation has been delayed until January 1, 2009.

Bowman's Towing: This commenter submitted written comments to the Executive Director dated March 21, 2008. *Most of this commenter's points in these written comments did not appear to be specific to the content of the proposed regulations. Such comments have been summarized in the companion document. The comments that were specific to the proposed regulations are discussed here:*

This commenter stated that the proposed rate structure is not favorable to the small man who knows what he can and cannot do with the equipment that he has. The more equipment he has determines his overhead and operating cost but if you force him to buy equipment he can't use, it forces him out of business. This commenter stated that he was not opposed to all of the proposed rules. This commenter asked that the board consider using the extension provided by SB 707. The commenter asked why the budget impact did not consider the cost of all the fees and costs involved in these regulations. This commenter asked why a State Police background check was not good enough.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

Roger Kite: This commenter submitted written comments, dated March 21, 2008, via Delegate Landes' who forwarded them to the Executive Director.

This commenter stated that the \$500 fee is expensive for small businesses and should be considered for operators who tow for hire and for the police. The fee should be less for people who only tow for hire as they are getting less business if they do not do public safety towing.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

This commenter questioned why someone who has been in business for 30 years should have to meet the educational requirement. The additional education is not justified at this point and this commenter suggested that it be available for persons wishing to start a towing business but no longer require it after five years (or some other number) in the business. Operators should not be required to purchase expensive new equipment (the towing/recovery truck plus one rollback requirement).

Agency response: The continuing education requirement has been removed for the board's further consideration. The board believes that the comment about being required to purchase expensive new equipment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

This commenter stated that operators should not be required to accept one of two major credit cards. There is an expense to the operator for providing this service, which as with other businesses, they are required to pass on to the customer in the form of increased charges. It should be a tow operators' choice to provide this service option to customers.

Agency response: This comment is declined as the regulation conforms to the Code.

The remainder of this individual's comments did not speak directly to the content of the proposed regulations and therefore have been summarized in the companion summary document.

Kathy Kite: This commenter submitted written comments to the Executive Director dated March 17, 2008, and expressed concern about the proposed fee amounts.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

Of greater concern to this commenter was the reference to unscrupulous and poorly-run operators leaving the industry. This commenter made the point that just because a business was small did not mean it was necessarily unscrupulous or poorly-run. A small business with just one employee can only be open a limited number of hours per day and only handle a limited amount of business. This does not mean that the operator is not honest and hard-working. The cost of staying in business can also force a small business out even when they are not unscrupulous or poorly run. This commenter suggested that the board go after the rogue towing operators rather than make it hard for honest, hard working individuals to stay in business. This commenter asked what in the proposed regulations is going to prevent rogue operators from being in business. The regulations appear to only make it hard for the small business owner to maintain his business.

Agency response: This commenter's point is well taken about a business being small does not necessarily mean it is unscrupulous or poorly-run. The board will be hiring investigators in the near future to investigate complaints and problems with the expectation that rogue operators that create problems in this industry will no longer elect to operate in the Commonwealth.

This commenter asked, with regard to the continuing education requirements, if being in business for 10 or 20 years merited an educational experience. This commenter could understand such an educational requirement for a new operator or one having 5 years of experience or less.

Agency response: The continuing education requirement has been removed for the board's further consideration.

This commenter asked how requiring operators to accept credit cards is an issue of public safety. This commenter could see no reason to make the acceptance of major credit cards a mandatory requirement and certainly not make it an issue of unprofessional conduct.

Agency response: This comment is declined as the regulation conforms to the Code.

The commenter urged the board to retain the no cost requirements contained in the regulations (set out below) but delete the costly requirements. The no-cost requirements cited by this commenter are as follows:

- 1) provide the name of the individual or business entity under which the applicant intends to be licensed plus any and all trade or fictitious names under which the operator conducts or offers towing and recovery services
- 2) advise the board of the physical addresses of the principal office and all additional satellite facilities
- 3) designate a Responsible Individual who shall be responsible for assuring that the operator conforms to applicable laws, etc.
- 4) list the principal owners' names and all other individuals involved in management/operation of the business

- 5) provide the board with information indicating all trucks owned, leased, or used by the operator

The comments submitted by this commenter concerning the BTRO Public Safety regulations have not been summarized here as these comments refer only to the BTRO General Regulations.

Sonny's Service Center: This commenter submitted written comments to the board dated March 19, 2008, concerning the proposed fees. These additional fees will mean that I will have to increase my rates.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

Virginia Association of Towing and Recovery Operators (VATRO): This commenter submitted written comments to BTRO dated March 19, 2008, as the largest trade association representing towing and recovery operators consisting of approximately 70% of Class B operators. VATRO supported the regulations as proposed.

VATRO stated that it found it regrettable that certain operators did not understand that the general regulations do not address the public safety regulations that have yet to be proposed. VATRO recognized that most of the proposed regulations mirrored the statute reflecting the minimum standards by which all reputable operators already and currently adhere to.

VATRO supports the license fee structure with the understanding that once the board is able to ascertain the specific number of licensees, the fee schedule will be adjusted. VATRO supports having one license fee rate per operator, regardless of Class A or B, recognizing that it is the business entity that is being licensed and not the number of vehicles owned/used by the operator. The processing of operators' licenses should be the same regardless of whether the operators are Class A or B. The additional decal fees being tied to the number of wreckers is appropriate. Similarly, larger operators will have additional costs of documenting larger numbers of drivers.

VATRO supports the continuing education requirements for re-licensure and renewal of driver documentation. It is VATRO's position that the proposed regulations provide for a wide variety of what will be readily accessible educational opportunities at little cost as the requirements may be met by online or correspondence courses. VATRO pointed out that more individuals in the towing and recovery business are injured and killed than law enforcement, fire and rescue personnel combined.

Agency response: The continuing education requirement has been removed for the board's further consideration. The board notes that considerable effort was made by staff to confirm the statistic quoted above ('more individuals in the towing and recovery business are injured and killed than law enforcement, fire and rescue personnel combined) and the efforts were unsuccessful. It is not known if this statistic can be supported by a legitimate study or is merely anecdotal.

Sandy's Service Center Towing: This commenter submitted written comments to the Executive Director dated March 5, 2008, concerning several topics. Most of the comments were not specific to the proposed regulations and have therefore been summarized in the companion document. The comments specific to these proposed regulations are as follows:

This commenter questioned if he would be grandfathered on the tow trucks he already owns and are paid for. This commenter stated he could not afford to buy new trucks. This commenter also asked that he be mailed the new can's and do's.

Agency response: The board replies that the operator will be grandfathered if he meets the date standard contained in the regulations. The board believes that the comment about buying new trucks pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

All State Towing and Repossession Service: This commenter submitted written comments to the Executive Director dated February 8, 2008, stating his disagreement with several of the regulations. This commenter stated that the regulations would have a profound impact on small businesses. This commenter stated that these regulations are in conflict with the Governor's initiatives aimed at helping small business owners.

Agency response: As part of the Executive Branch review of regulations before they can be filed with the Registrar of Regulations for publication and comment period, the Department of Planning and Budget, the Office of the Secretary of Transportation, and the Governor's Office reviewed these regulations and considered small business impact. Therefore, the board declines to make any regulatory changes in response to this comment.

This commenter stated that the board has no way to know who illegal towing operators are nor to contact them since most of their vehicles are registered with incorrect information and are driving with personal license plates. This commenter stated that the board has no resources to enforce these regulations. "These proposed regulations will have no effect on the unlicensed operators without appropriate enforcement. If the current licensing and registration laws are not being effectively enforced, how can we expect any new regulations to be effectively enforced?"

Agency response: The board is proceeding to hire, in the near future, investigators who will pursue complaints and initiate disciplinary proceedings against individuals who violate these regulations. Such persons may be charged with penalties as contained in the regulations.

Fees (24VAC27-30-20): What rationale was used in setting these proposed rates?

Agency response: As this board is required by statute to be self-supporting, it considered the number of expected tow operators and potential drivers in setting the proposed rates. However, in response to public comment, the board has reduced the rates to be applied to Class B operators.

Accepting credit cards (24VAC 27-30-100): This has an adverse affect on smaller businesses because of the monthly cost of the machines and the per transaction percentage fees.

Agency response: This comment is declined as the regulation conforms to the Code.

Drivers submitting to criminal background/fingerprinting (24VAC27-30-140): Where are the tests going to be administered? What is the estimated turnaround time for having the board review and approve? In the meantime, does the company come to a complete halt until a decision can be made?

Agency response: The board anticipates that there will be multiple locations, such as local law enforcement offices and State Police offices, where criminal background/fingerprinting activities will occur. Towing companies are permitted to pursue these process steps voluntarily pending the effective date of these regulations. The board anticipates that it may take up to two weeks to complete the application and processing.

TRAA Certification (24VAC27-30-180): These certification programs are not readily available in all areas of Virginia and substantial costs and time are involved.

Agency response: The board accepts this comment and has removed this requirement from the final regulations.

This commenter stated his belief that these regulations would force legitimate businesses to comply or cease to operate. This would create dangerous situations without tow operators being available particularly in rural areas of the state. This commenter stated his opposition to the regulations and to the board if the board could not ensure equal enforcement for everyone.

Agency response: The board intends to pursue equal treatment of all operators and drivers.

Berryville Auto Parts: This commenter submitted written comments to Senator Vogel and Delegate May dated February 20, 2008, and expressed his concerns about the proposed regulations.

This commenter stated that more meetings are needed in areas that are more readily accessible. It is not practical for small business people to have to travel to Richmond for just a few minutes to speak in a public hearing.

Agency response: The board agrees with this comment and is currently addressing the arrangements necessary to have multiple meetings in locations around the Commonwealth to make it easier for operators and drivers, who cannot readily travel to Richmond, to enable and encourage their participation.

Being one of four towing companies in Clarke County, the regulations would eliminate all four companies without the expenditure of large amounts of money. AAA contacted us and based on the size of our company and current equipment, we would have to pay over \$900 to the board.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators.

These additional costs would have to be passed on to our customers as rate increases.

Even with our current equipment, we would be required, by these proposed regulations, to purchase a new wrecker (at a cost of \$65,000) because we don't have the required hydraulic type equipment. We have successfully performed State Police towing with a rollback. In 2006, we responded to 1,019 tow calls and used a wrecker 7 times. It would not be a prudent business decision to purchase a \$65,000 wrecker to use seven times a year.

Agency response: The board believes that this comment pertains to draft requirements in the public safety working documents and therefore makes no response to this comment.

There has not been ample notification or communication with all towers to provide input on all the issues that these regulations bring up.

Agency response: The board has communicated via publications, public notices and meetings, through professional associations, and during legislative meetings with the industry to be regulated.

Annual training is unrealistic. Due to the few available training companies, we would be required to send all employees at a per person per year cost of \$300. Training cannot substitute for years of towing experience.

Agency response: The board accepts this comment and has modified the regulations accordingly.

If the board must be continued, then the state should be divided into districts so that each district would have representatives rather than having board members be chosen from the towing associations in Virginia. Such associations have high dues and not all small businesses belong to them.

Agency response: The board accepts this comment as this issue has been resolved by Code changes.

ADDENDUM

This document is intended to function as an addendum to the larger Summary of Public Comments document.

Buddy's Towing Service: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, referred to regulations numbered 24VAC27-30-75. Referring to consumer complaints, this commenter stated that this paragraph was not realistic or legal in his opinion. Everyone should retain the right to confront his or her accuser. *This commenter's other statements were more general in nature and have therefore been incorporated in the companion summary document.*

This is not a regulation section that was proposed for comment period. However, this individual's comments are relevant to 24VAC27-30-130 and therefore have been included in this summary of public comments received.

Agency response: The board is currently in the process of drafting its policies and procedures for handling consumer complaints. Once such policies and procedures are approved, they will be posted on the agency's website for the use of all regulants.

Mike Reynolds: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, specifically referenced several of the proposed regulation sections. The sections and the comments are as follows:

24VAC27-30-20: The commenter stated that an annual renewal is unnecessary and onerous and an overreaction. While BTRO seeks to improve the industry, it is important to not destroy the small businesses that comprise the industry. This commenter stated that five-year renewals are sufficient.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators. Unfortunately, the board cannot at this time accept the suggestion for renewals every five years as it lacks the operating experience to determine if this would be feasible. A further consideration is that such widely spaced renewals would simply cost the affected operators and drivers more in one payment (5 x fee amount) rather than spreading this amount out over five years.

This commenter did add that a pending federal appeals court case may affect the authority of the states and localities to regulate certain aspects of towing unless such regulations have a direct correlation to regulating safety aspects of transport of private property. This commenter stated that a decision is due in the summer or fall of 2008 and consequently, it may be prudent for BTRO to extend the effective date for compliance with the general regulations.

24VAC27-30-140: This commenter stated that the requirement for fingerprinting and background checks is unnecessary. This commenter stated that there is no crime or incident data collected on the towing industry to indicate that such a burdensome, invasive requirement is necessary, and especially not annually. This commenter stated that the regulations suggest that anyone involved in the towing industry should have their character questioned simply for being in the industry.

Agency response: The board declines this comment as such a change is not permitted by the enabling statute.

24VAC27-30-160: This commenter stated that the driver authorization document should not have to state what company a driver is employed by or associated with. This commenter stated that the industry is already plagued nationwide with the inability of tow company owners to find drivers. "If a driver's ability to work is hampered because of his driver authorization document does not contain the correct name of a possible employer it unnecessarily hampers his ability to earn a living and the employer's ability to maintain employees." This commenter stated that there is no data to support such a restrictive requirement. Some drivers make living working for more than one employer.

Agency response: The board's regulations hold the business operators responsible for the actions of their drivers when such drivers are on the job. The purpose of this is to permit the board to contact the responsible entities in cases of complaints. A driver's ability to work should not be in any way affected by his records with the board. Drivers are permitted to work for

multiple employers at the same time and a driver's authorization will travel with him from employer to employer.

Blair's Towing and Recovery: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, stated that there are some regulations that he agreed with, such as employee background checks, TRAA training, and possibly licensing fees. This commenter also stated that he did not feel that the July deadline was realistic for most of the industry to meet.

The remainder of this individual's comments were not specific to the regulations undergoing comment period and therefore have been summarized in the companion document.

Mark's Auto & Welding Services, Inc: This commenter, in a comment recorded on the Regulatory Town Hall on March 21, 2008, stated that it was his understanding that the purpose of BTRO was to ensure fairness and safety throughout the towing industry and general public. "The board is proposing unnecessary (*sic*) fees and equipment requirements for the towers which will ultimately dwindle down to the customers. The towers will be forced to charge customers much higher rates in order to compensate for the BTRO's requirements."

This commenter made a second comment, dated March 21, 2008, below the comment summarized above, which was entitled 'Who's in charge?' This comment did not speak directly to the content of the proposed regulations and has therefore not been summarized here but in the companion document.

Organization Name: M&M Motors, Valley Towing & Keller Towing: These comments were made on the Regulatory Town Hall on 3/21/08. This commenter stated that the board members have not received the training necessary to faithfully discharge their obligations to the industry and the citizens of the Commonwealth. This commenter recommended that the board members examine the DPOR manual entitled 'New Board Members Manual' and adapt it for the towing and recovery industry and distribute it.

This commenter spoke to specific regulatory sections as follows:

24VAC27-30-20 Fees: Permits should not have to be renewed annually, whether this is an operator's or driver's permit. Other regulated professions do not have annual renewals. This regulation has the potential to be exceptionally onerous to small businesses involved in this industry and this commenter recommended a 2-year licensing period.

Agency response: The board accepts this comment and has reduced the fees accordingly for Class B operators. At this time, the board does not have the operating experience to determine if a 2-year licensing period would be a better alternative but is willing to consider this at a future date.

24VAC27-30-70 Exemptions: This commenter stated that the board could not interfere with interstate commerce. This commenter stated that federal case law is clear that what the board proposes will not pass muster. The board can regulate towing that takes place intrastate but may not regulate interstate commerce, no matter which end of the trip is within Virginia. This commenter recommended that this section be stricken.

Agency response: The board declines this comment as the referenced requirements were written to address interstate commerce.

24VAC27-30-110 Standards of practice: This commenter stated that the term ‘minimum’ be added since many operators carry higher limits of insurance. As currently written, an operator can be in technical violation of this section if he carries a higher limit of insurance. This commenter asks what is meant by ‘impersonating’ because there are companies in different areas of the state that have the same name but are not related. This section requires more information so an operator is not in technical violation.

Agency response: The board accepts this comment and has changed the regulations accordingly.

24VAC27-30-130 Expedited process to consider consumer complaints. The board cannot reference ‘policy and guidance documents’ without having those documents prepared. This commenter stated that it violated the Code of Virginia to not have the documents available for public reference. This commenter recommended that this section be amended or the documents be immediately provided.

Agency response: The board understands the point of this comment and is moving to draft and approve such policy and procedure documents in the near future. Once approved, these documents will be posted on the agency’s website for the use of regulators. Guidance documents are not subject to public comment requirements that apply to regulations.

24VAC27-30-140 Prerequisites for application for tow truck driver’s authorization document. The first issue is the annual nature of the driver’s authorization document. DMV allows a Class A CDL holder to go 5 years before renewal. This is excessively onerous to small businesses. This commenter recommended that the board go to a multi-year licensing scheme for drivers. The second issue is the annual requirement for fingerprinting and background checks. This commenter stated that the VA State Police is on record that fingerprinting are not required for a background check for a citizen to receive a concealed handgun permit. We brought this to the attention of the board in October 2007 and it was not stricken. This commenter recommended that the board strike the fingerprinting requirement as it is not required for a full and accurate background check and effectively doubles the cost to an operator for his drivers. This commenter also recommended that the board state whether the background check for drivers is a recurring requirement or a one-time requirement for initial licensure.

Agency response: The board will be studying the issue of extending the effective date of licenses over the next several years. Criminal background checks with fingerprinting for purposes of

obtaining BTRO licenses is required by the enabling statute. The board has modified the required frequency of background checks in the final regulations in response to public comment.

24VAC27-30-160 Requirements for drivers. This commenter asked why the driver authorization document must be tied to the company the driver is employed by. If a driver works for multiple different operators, must the authorization document reflect all of them. If a driver temporarily assists another company by driving, is the driver in violation of this requirement if the authorization document does not show the temporary company name? This commenter stated that the board should not be concerned about what company a particular driver works for.

Agency response: The board accepts this comment and has modified the regulations accordingly.

This commenter also thanked the board for its efforts on behalf of the towing and recovery industry within the Commonwealth and for its attention to these concerns.