



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

1200 New Jersey Ave, SE  
Washington, DC 20590

February 7, 2024

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Mail Stop H-144 (Annex J)  
Washington, DC 20580

RE: Unfair or Deceptive Fees NPRM, R207011

Dear Chair Lina Khan:

The Federal Trade Commission (FTC) has requested comments on its proposed Rule on Unfair or Deceptive Fees, announced at 88 FR 77420. The Federal Motor Carrier Safety Administration (FMCSA), an administration within the Department of Transportation that regulates commercial motor vehicles (CMVs), submits this comment in response. FMCSA wishes to offer information on the predatory towing fee practices that impact CMV owners and operators of large trucks and passenger buses and offer support for a final rule with strong protections against junk fees.

### **Background on Predatory Towing**

The proposed regulation may significantly benefit FMCSA's regulated community, specifically as it relates to the predatory towing practices that have a substantial financial impact on CMV owners and operators. There are two contexts in which predatory towing of CMVs may take place: consensual or nonconsensual. The consensual context usually occurs following a vehicle accident or malfunction where the CMV owner or operator has requested towing service and given permission for the towing company to tow the vehicle. The nonconsensual context most often occurs when an unlawfully parked vehicle is removed from public or private property at the request of a law enforcement officer or a property owner and the CMV owner or operator has not given permission for the towing.

Once towed, CMV owners and operators are in a very vulnerable position and highly susceptible to predation. Predatory towing companies can and do use their possession of the vehicle as leverage to price gouge and otherwise prey upon CMV owners and operators who are in no position to push back. The nature of the business means that when CMV owners' and operators' vehicles are towed, they are typically not dealing with companies with which they have established business relationships. Many CMV owners and operators drive long distances and travel interstate, and, accordingly, may find their vehicles in need of towing without a

familiar towing company nearby. State laws governing towing compound the problems because they greatly vary and cause confusion for CMV owners and operators as to what fees are permitted or even mandated. These circumstances combine to create fertile ground for predatory conduct. FMCSA submits for the record the enclosed report, *Causes and Countermeasures of Predatory Towing*, commissioned by the American Transportation Research Institute, dated November 2023, which provides in depth details about the financial effects of predatory towing on the trucking industry.

### **Predatory Towing Fee Concerns**

While there are a wide range of problematic practices associated with predatory towing, a number of them center on the mandatory or otherwise unavoidable fees that towing companies charge. As described in greater detail below, FMCSA is concerned that predatory towing companies are hiding fees until the tow is completed, charging for unnecessary or worthless services, and imposing an excessive number of fees for excessive amounts. These fee practices match many of the same unfair or deceptive fact patterns that are described in the FTC's NPRM.

In the consensual towing context, FMCSA is concerned that some towing companies charge hidden fees that can significantly increase the cost of the tow. In essence, towing companies quote one price to the CMV owner or operator at the time permission for the tow is granted, but then impose additional, mandatory fees and charges on the back end after towing is complete. Because the amount or even the existence of these back-end fees is not disclosed as part of the upfront price, these are not charges to which the CMV owners and operators have affirmatively consented. Hiding these fees makes them impossible for CMV owners and operators to consider at the time they agree to the tow. By the time the fees are disclosed, the owners or operators have already received the service for which they are being charged. At that point it is too late to select different company, negotiate to lower or eliminate the charges, or decline the service.

Towing companies may claim they are unable to calculate the fees up front when quoting the price because they are based on variable factors such as weight or distance towed. However, FMCSA is concerned that towing companies may be charging variable fees for services with low fixed costs or costs that are not affected by variable factors. Moreover, to the extent that these variable factors change the legitimate cost of the towing service, there is no clear reason why they must be assessed as separate charges rather than being included as part of the upfront pricing structure. For example, towing can include per-mile fee rates or daily storage fees.

FMCSA is also concerned that many of the fees charged in both the consensual and nonconsensual towing contexts are unnecessary. These fees are typically mandatory and/or hidden until after the tow is complete and labeled on invoices under vague, misleading, or catch-all terms such as "administrative fee." Upon further inquiry, the charges often prove to be for services that have no value, cost nothing extra to provide, or should have been included as an integral part of the tow price. For example, towing companies often charge "equipment fees" for using equipment that they already own and would be expected use routinely to provide the towing service. These are not services that CMV owners and operators would likely

procure separately or charges that they would affirmatively agree to if they had a choice. However, because use of the “extra” equipment or services are essential to the tow, the fees are impossible to avoid. To the extent that any unnecessary fees are mandatory, consumers cannot reasonably avoid them.

Finally, FMCSA is concerned that the towing fees imposed on CMV owners and operators are excessive, both in the number of fees imposed and the amount charged for each. This problem is prevalent throughout towing but especially acute in the nonconsensual towing context where CMV owners and operators are captive customers with no ability to shop for alternative towing service, negotiate prices, or decline the service. FMCSA has observed that predatory towing companies take advantage of these CMV operators’ lack of choice and agency by imposing a large number of mandatory, unduly high fees and charges. These are charges that CMV owners and operators have not affirmatively consented to and cannot avoid.

### **Protections Against Predatory Towing Fees**

FMCSA believes that these predatory towing fee practices fall within the purview of FTC’s proposed regulation on unfair or deceptive fees and offers the following support and suggestions for consideration.

First, FMCSA supports the FTC’s proposed prohibitions against hidden and misleading fees. To enhance market understanding of these provisions, FMCSA suggests clarifying in the final rule that companies are not permitted to charge or collect fees that are hidden, misleading, or otherwise not appropriately disclosed upfront and that each illegal fee will be considered a separate violation.

FMCSA also supports the FTC’s proposed definition of “total price” as “the maximum total of all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service.” FMCSA suggests that the final rule further clarify what fees must be included in the total price by adding a definition for the term “mandatory ancillary fee,” that includes any ancillary fee or charge required to purchase or receive a good or service essential to the primary good or service being purchased, which a consumer cannot reasonably avoid paying.

FMCSA further suggests that the final rule clarify that companies are prohibited from charging any mandatory ancillary fee that is not included or disclosed in the total upfront price, and from charging variable mandatory ancillary fees if the full amount of such variable fees cannot be calculated in the upfront price. FMCSA also encourages the FTC to consider adding a provision that prohibits companies from charging any fee for an ancillary good or service that has no value, costs nothing extra to provide, or that reasonably would be assumed to be included in the upfront price of the good or service.

In addition, FMCSA encourages the FTC to consider prohibiting or imposing restrictions on excessive fee practices. These practices include charging an excessive number of fees, charging excessive amounts for a fee, or charging variable fees for fixed costs. The provision on excessive fees could focus on consumers who have little to no ability to avoid, negotiate,

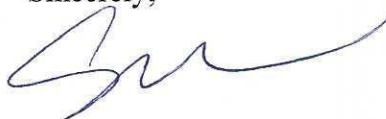
decline, anticipate, or limit the number or cost of the fees, or consumers who are vulnerable, in distress, or otherwise limited in choice by their circumstances. In determining whether the number or amounts of fees are “excessive,” the FTC may also consider disparities between fees charged to such captive or vulnerable consumers and fees charged to other consumers.

Finally, as noted above, CMV operators often drive in multiple States, and State laws governing towing practices vary greatly. FMCSA requests that the FTC provide guidance on how proposed 16 CFR 464.4(a) and (b) would affect different State and local laws governing fees in the towing industry, either in the final rule or through subsequent interpretive guidance.

If FMCSA can be of further assistance, please contact FMCSA Chief Counsel, Brian Stansbury, at [Brian.Stansbury@dot.gov](mailto:Brian.Stansbury@dot.gov).

Thank you for your consideration of FMCSA’s comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sue Lawless', written in a cursive style.

Sue Lawless  
Acting Deputy Administrator

Enclosure: Leslie, Alex and Alexa Pupillo. (November 2023). *Causes and Countermeasures of Predatory Towing*. American Transportation Research Institute.