

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF COMMERCIAL LICENSING AND RACING & ATHLETICS
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CONCISE EXPLANATORY STATEMENT

**COMMERCIAL LICENSING REGULATION 3-
AUTOMOBILE BODY SHOP STORAGE RATES**

The Department of Business Regulation (“Department”) hereby adopts Commercial Licensing Regulation 3, entitled *Automobile Body Shop Storage Rates* (“Regulation” or “Post-hearing Amended Regulation”) effective September 24, 2009 and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The purpose of this Regulation is to: (i) provide definitions for terms related to the imposition of storage fees; (ii) establish reasonable maximum rates that may be charged by automobile body repair shops licensed pursuant to R.I. Gen. Laws § 5-38-27 for storage of automobiles; (iii) clarify different categories of storage fees and charges; and (iv) provide standard procedures for the notice and imposition of storage fees. The actions and information required by this Regulation are hereby declared to be necessary and appropriate to the public interest.

The current Commercial Licensing Regulation 3 effective on October 27, 1994 and re-filed on December 19, 2001 is referred to as “Current Regulation” and the Current Regulation as amended herein is referred to as the “Post-hearing Amended Regulation” or “Regulation”. The amended regulation as posted and proposed in June 2007, March 2008, and August 2009 is referred to as the “Proposed Regulation” and clarified by date of Proposed Regulation where necessary for clarification.

There are numerous differences between the text of the Proposed Regulation as published in accordance with R.I. Gen. Laws § 42-35-3, and the Post-hearing Amended Regulation as adopted. The changes to the Post-hearing Amended Regulation are delineated in the attached redlined document that delineates all changes between the Proposed Regulation and the Post-hearing Amended Regulation, as adopted. There were editing changes made to improve content for readability, capitalization of all defined terms, outlining changes, formatting changes, and other self-explanatory amendments.

The Department conducted hearings on June 19, 2007, March 26, 2008, and August 25, 2009. The Department re-noticed the Proposed Regulation, without any new or additional amendments, on March 26, 2008 in order to comply with R.I. Gen. Laws § 42-35-3(a)(5) because the Department did not provide adequate notice of its redlined changes between the Current Regulation and the Proposed Regulation.

The post-hearing (March 26, 2008 and June 19, 2007) red-lined amendments and concise explanatory statement were filed with the Secretary of State on February 6, 2009. Due to the unintended consequences of the amendments to Section 6 of the regulation filed on February 6, 2009 (as conveyed by the Auto Collision Repair Licensing Advisory Board to the Department), on February 25, 2009, the Department filed an Emergency Regulation reinstating the pre-February 6, 2009 (current) regulation and prevented the adoption of the amendments contained in the amended regulation filed on February 6, 2009. The only additional amendments to the Commercial Licensing Regulation 3 filed on February 6, 2009 in the August 2009 proposed regulation is to Section 6; however, the Department reviewed all proposed amendments and comments at all hearings in its adoption of this Regulation. There were no objections by the Board or any attendees to correcting this error.

Attached to this concise explanatory statement is a redlined document of the Post-hearing Amended Regulation that includes the Proposed Regulations, as well as post-hearing editing in form of bold additions to the body of the Post-hearing Amended Regulation and double strikethroughs for any deletions to the Proposed Regulation.

JURISDICTION AND AUTHORITY TO SET STORAGE RATES

R.I. Gen. Laws § 5-38-2(b) establishes within the Department the Auto Collision Repair Licensing Advisory Board (“Board”) consisting of nine (9) gubernatorial appointees who have authority pursuant to R.I. Gen. Laws § 5-38-2(h) to “adopt and publish with the prior approval of the [Director of the Department] rules of procedure and other regulations in accordance with the Administrative Procedure Act, chapter 35 of title 42.”

Pursuant to R.I. Gen. Laws § 5-38-27, the Director of the Department also is charged with promulgating rules and regulations to establish reasonable, maximum, storage fees that may be charged by licensees.

ADMINISTRATIVE NOTICE

In its review of all of the comments and issues presented, the Department took administrative notice of necessary public records and documents. Specifically, the minutes of the Board meetings for November, 2005 through to and including August, 2006 were reviewed (the vote to submit the Board’s recommended amendments to the Director occurred in the May 31, 2006 Board meeting). Additionally, the Department reviewed the Board’s meeting minutes related to the unintended consequences to the adoption of the proposed amendments to Section 6. Orders pertaining to storage rates and fees issued by the Division of Public Utilities and Carriers (“DPUC”), pursuant to its jurisdiction over tow away motor vehicle operations under R.I. Gen. Laws §§ 39-12-1 *et seq.* and 39-12.1.1 *et seq.* were also reviewed in the development of this Regulation.

BOARD RECOMMENDATIONS

According to the Board’s minutes for 2005 and 2006, the Board’s evaluation of the Current Regulation began in November 2005. Its November 28, 2005 meeting minutes indicated that “...we wanted the rates to mirror PUC rates for convenience.” Also, at

that November 28, 2005 meeting, the Board voted to create a subcommittee on storage rates. Storage regulation issues are mentioned at meetings that occurred on January 31, 2006, February 28, 2006, March 22, 2006, April 20, 2006, and May 31, 2006. It is clear from the minutes that the insurer representatives both on the Board and as attendees at the public meetings reviewed proposals, expressed objections, and participated in the discussions on the proposed amendments to Commercial Licensing Regulation 3. There are references to the PUC in the January 31, 2006 meeting minutes, and representatives from the DPUC attended the May 31, 2006 meeting. On August 15, 2006, the Department received a letter from the Chairman of the Board dated August 8, 2006 with an attached proposed amendment to the Current Regulation. According to that letter, “[i]nput from Insurers, the Department and the Auto Body Repair Shops, as well as concerns voiced by PUC were addressed. The input of the Legislators and other factions of the industry were all aired. The vote to submit the proposed Regulation was unanimous and is now forwarded for your approval.” After review of the minutes from the May 31, 2006 meeting, the Chairman made a motion to “pass the storage regulations with changes made today and pending an amendment to address the lienholder issue be forwarded to the Director.” The motion was seconded and approved; however, the insurer representative on the Board indicated that he “concur[s] subject to previous comments and objections made before.”

On November 14, 2006, the Department received a letter dated November 10, 2006 from the Chairman of the Board that provided additional rationale and information for the proposed amendments to the Current Regulation.

The Board’s proposed amendments to the Current Regulation were reviewed and revised further by Department staff. The Proposed Regulation was posted and noticed for hearing on June 19, 2007 and March 26, 2008.

In addition to the numerous written and verbal comments made at hearing, the Department also took into account the following facts in adopting the proposed amendments to the Current Regulation:

1. The Current Regulation was initially adopted pursuant to statute on October 27, 1994;
2. The rates set in the Current Regulation are long-standing rates that the automobile body shop industry has relied upon in order to support the costs related to storing vehicles which are ultimately not repaired (storage fees are not allowed for vehicles which are repaired);
3. The storage rates have not been increased in over thirteen (15) years;
4. The Department took administrative notice (and there was testimony and evidence presented) that there have been significant increases in costs to land since 1994, real estate taxes, insurance premiums, utilities, without a corresponding increase in storage fees over many years;

5. The Board followed a deliberative process which included representatives from the automobile body repair shop industry, the insurance industry, and the Department over a six (6) month period of time;
6. The concerns of the insurance industry were discussed and considered at the public Board meetings and in the regulatory amendment hearings conducted in this matter;
7. Representatives of the insurance industry acknowledged at hearing that an increase in the storage fees is reasonable; however, they disputed the amount of the increase, and the methodology used in arriving at the amount;
8. The Current Regulation now requires that all storage facilities have adequate and operational lighting, fencing, and security which may require automobile body repair shops that collect said storage fees to undertake additional expenditures to comply with these new requirements;
9. It is the Department's understanding that the Current Regulation has been in place since 1994 and was adopted following a process involving representatives of the auto body industry, insurance industry, and the Department. The process by which the Current Regulation was adopted and utilized has not been subject to challenge in the past fifteen (15) years;
10. The Department took the Board's recommendation into consideration in the adoption of the Storage fees;
11. Consistency with DPUC storage rates enhances administrative ease for both automobile body repair shops and insurers, and results in efficiencies for both industries. There is both an indication in the minutes and comments made at hearing that consistency with DPUC would be beneficial to both industries and the public.
12. The proposed storage for vehicles 20 to 31 feet was \$35 per day which is the current DPUC rate for vehicles more than 20 feet long.
13. The goals of: facilitating ease of administration; avoiding statutory redundancy; deleting moot provisions' providing notice to consumers, insurers, and lien-holders; and, encouraging professional conduct in the charging and payment of storage fees are enhanced by the modifications in the Post-hearing Amended Regulation.

SUMMARY OF MATERIAL, NON-TECHNICAL CHANGES

In accordance with R.I. Gen. Laws § 42-35-3, that the following is a summary of the non-technical amendments to Commercial Licensing Regulation 3 (Post-hearing Amended Regulation).

1. Proposed Section 1 (“Authority”) and proposed Section 2 (“Purpose”) have been added to provide clarification regarding the statutory authority for the Proposed Regulation, and to provide clarification to interested parties of the purpose of the Proposed Regulation. There were no substantive amendments to Sections 1 and 2 of the Proposed Regulation in the Post-hearing Amended Regulation. There are clarifications to the Purpose Section, which have been added to the adopted Regulation in response to comments from Insurers expressing concern that violations by automobile body repair shops would be subject to Insurance Division enforcement. That was not the intent of the language. The intent of this provision of the Purpose section is to defer issues related to an insurers’ alleged nonpayment of storage fees to the Insurance Division for consideration under the Insurance Division’s established statutes, regulations, policies, and protocols.
2. The definition of “Day” was amended from the prior definition in Section 1 of the Current Regulation from “any calendar day in which the vehicle is on the property for more than twelve (12) hours,” and the definition in the Proposed Regulation Section 3 was further amended in response to comments to “any calendar day in which the vehicle is on the premises of the automobile body repair shop for eight (8) hours or more.” (Emphasis added). The “eight (8) hours or more” was added in the Post-hearing Amended Regulation in response to comments requesting that the Department set a minimum time parameter for the imposition of storage rates and to provide consistency with business hours which are typically eight (8) hours.
3. The definition of “Storage” was amended in the Post-hearing Amended Regulation in response to submitted comments to clarify that the security system had to be operational. As such, the words “and operational” were added to the definition of “Storage” in the Post-hearing Amended Regulation in response to comments presented on record.
4. The prior definitions of “Inside Storage,” “Outside Secured Storage,” and “Outside Not Secured Storage” in the Current Regulation have been deleted because the Proposed Regulation no longer includes rates categorized by inside storage, outside secured storage, or outside not secured storage. “Storage” is defined in Section 3 of the Proposed Regulation as “ vehicles stored in a secured, lighted area surrounded by a six-foot or higher fence, with a reasonable and operational security system.”

5. The requirement that the automobile body shop use the least expensive suitable means of storage in the Current Regulation Section 2 has been deleted because there is no longer a distinction between the different types of storage as described in number 4 above.
6. The distinction in the prior Section 1 of the Current Regulation between storage for the first seven (7) days and rates for more than seven (7) days has been deleted based upon the Board's recommendation.
7. The Current Regulation Section 3 (Proposed Regulation Section 7) has been amended to require that an automobile body repair shop must permit an insurance representative access to inspect any vehicle for photographs and vehicle identification number checks within four (4) hours of the request. This is consistent with recently-enacted Commercial Licensing Regulation 15, Section 8(A).
8. Proposed Regulation Section 4 (A) is an amendment that sets storage fees based on the size of vehicle and consistent with the storage rate set for vehicle storage by the Division of Public Utilities and Carriers ("DPUC"), pursuant to its jurisdiction over tow away motor vehicle operations under R.I. Gen. Laws §§ 39-12-1 *et seq.* and 39-12.1.1 *et seq.*, which is currently, for: (i) vehicles 20 feet long or less, \$24 per day and (ii) for vehicles more than 20 feet long, \$35 per day: The proposed rate for vehicles less than 20 feet has been reduced from \$27 per day to \$24 per day for vehicles "20 feet long or less." This rate and related descriptive vehicle length language is consistent with DPUC fees that have been in place for many years.
9. Proposed Regulation Section 4 (B), which was initially proposed and had been proposed to be deleted in the March 26, 2008 Post-hearing Amended Regulation because it was clear that the Department has the authority to set rates at any time as set forth in statute, and a clarification of that authority is redundant and unnecessary. Additionally, any future amendment to this Regulation, as is the case with any Departmental regulation, is subject to requirements of R.I. Gen. Laws § 42-35-1 *et seq.* However, in conjunction with the amendments described in Section 4(A) which mirrors DPUC rates, it is necessary to clarify that any future increases considered by the Department (in response to similar increases by DPUC) are subject to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* and approval by the Director of the Department.
10. Proposed Regulation Section 5 sets forth processes for the prohibition of storage charges on repaired vehicles, except under certain specific circumstances and specific conditions. Proposed Regulation Section 5 (C) was deleted in the Post-hearing Amended Regulation because it duplicated the requirement in Section 5A in the Proposed Regulation. Section 5(B) was re-written in the Post-hearing Amended Regulation in order to clarify the requirements, in response to comments submitted to the Department. Subsection 5(B)(i) was re-worded to

clarify that the automobile body repair shop is responsible for providing the written notice that was implicit in the Proposed Regulation. This is not a new requirement—the storage charges in this subsection were proposed to be conditioned upon the return of the receipt of certified mail.

11. Proposed Regulation Section 6 sets forth conditions, circumstances, and processes for the imposition of storage fees for totaled or partially repaired vehicles. Section 6 was re-written in the Post-hearing Amended Regulation in response to comments requesting clarification between vehicles declared a total loss, as the result of an insurer's initial appraisal inspection, compared to a vehicle declared a total loss as a result of a supplemental appraisal inspection. Sections 6 (A), (B), (C), and (D) in the Proposed Regulation applied to vehicles that are deemed a total loss after repairs had commenced and after a supplemental appraisal by the insurer deems it a total loss. Sections 6 (E) and (F) in the Proposed Regulation were applicable to vehicles that are deemed a total loss by the insurer at the initial appraisal, as well as those vehicles deemed a total loss by the insurer upon a supplemental appraisal. Therefore, in response to comments submitted requesting clarification, and in order to clarify the applicability of Section 6 of the Proposed Regulation to either vehicles totaled at initial appraisal or after supplemental appraisal, Section 6 was re-worded, after hearing, into Sections 6 (A) and 6 (B) in the Regulation.

Section 6(A)(i) in the Regulation reflects the requirements in Sections 6(E) and (F) in the Proposed Regulation, which implicitly required the automobile body shop to provide written notice via certified mail to the vehicle owner. This is not a new or additional requirement because this requirement to provide written notice was implicit in Section 6(E) and 6(F) of the Proposed Regulation. Section 6(A)(i) addresses the written notice and Section 6(A)(ii) of the Regulation reflects that portion of the requirements in 6(E) of the Proposed Regulation that address when the storage fees may commence.

Section 6(A)(iii) of the Regulation reflects requirements in Section 6(F) of the Proposed Regulation.

Sections 6(B)(i), (ii), (iii), (iv), (v), and (vi) in the Regulation reflect requirements in Section 6(A), (B), (C), (D), (E), and (F) of the Proposed Regulation, respectively. Section 6(B)(v) was added in the Post-hearing Amended Regulation to ensure that notice was provided to vehicle owners, whose vehicles had been declared a total loss after a supplemental appraisal. Additionally, Section 6(B)(v) in the Post-hearing Amended Regulation clarifies that the seven (7) day notice requirement in Section 6(B) of the Proposed Regulation applied only to vehicles declared a total loss as a result of the initial appraisal inspection.

After the filing of the proposed amended regulation on February 6, 2009, the Department was informed that there were unintended consequences of the

amendments made to the proposed regulation in Section 6 of the filed regulation. At its Board meeting on February 13, 2009, the Board confirmed that the unintended consequence of requiring that the seven (7) day notice period prior to charging storage fees for repaired but unclaimed vehicles in the proposed amended regulation was only intended to apply to charges covered under Section 5 (B)(iii). The seven (7) day waiting period was never intended to apply to all vehicles declared a total loss. Therefore, the Board informed the Department on February 25, 2009 that this was not intended to be proposed by the Board and there would be detrimental impact upon the auto body industry if this amendment were to be adopted. The Board confirmed at its February 13, 2009 meeting and February 25, 2009 meeting that the inclusion of the language which is in Section 5 B (iii) was a clerical error and not intended to apply to vehicles declared a total loss. The Board submitted new proposed language to the Department that corrected this error on February 25, 2009. The adopted Section 6 reflects the Board's recommendation as recommended.

12. Current Regulation Section 5 entitled "Application" has been deleted and substituted with Proposed Regulation Sections 5 and 6.
13. Proposed Regulation Section 8, which set forth a process for automobile body repair shops to submit variances from the rates set forth in Proposed Regulation Section 4 was deleted. This proposed section was deleted in the Post-hearing Amended Regulation because no such petition had ever been utilized by the industry, and unnecessarily subjects the established rates to administrative review.
14. Section 4 of the Current Regulation entitled "Stolen Vehicles" has been deleted and substituted with the relevant processes described in the Proposed Regulation Sections 5 and 6. Additionally, Section 8 was added to the Post-hearing Amended Regulation in response to comments from several insurers requesting that an owner or insurer get notice that an automobile body shop is in possession of a stolen vehicle, and as an added consumer protection measure.
15. Proposed Regulation Section 8 (renumbered to Section 9 in Regulation), entitled "Enforcement" has been added to the Regulation to allow for enforcement of violations of the Proposed Regulation.
16. Proposed Regulation Section 9 (renumbered Section 10 in Regulation) , entitled, "Severability" has been added to the Regulation to protect the validity of the Regulation in the event that one of its provisions is deemed invalid.
17. Proposed Regulation Section 10 (renumbered Section 11 in Regulation), entitled, "Effective Date" has been added to clarify the effective date of the Regulation.