



A REPORT
TO THE
MONTANA
LEGISLATURE

PERFORMANCE AUDIT

Montana Professional Tow Truck Act

Department of Justice

SEPTEMBER 2010

LEGISLATIVE AUDIT
DIVISION

09P-15

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Tori Hunthausen, Legislative Auditor
Monica Huyg, Legal Counsel



Deputy Legislative Auditors
James Gillett
Angie Grove

September 2010

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of the Montana Professional Tow Truck Act managed by the Montana Highway Patrol of the Department of Justice.

This report provides the Legislature information about administration of and compliance with the act. This report includes recommendations for improving compliance and enforcement at the Montana Highway Patrol.

We wish to express our appreciation to Montana Highway Patrol and other Department of Justice personnel for their cooperation and assistance during the audit.

Respectfully submitted,

/s/ Tori Hunthausen

Tori Hunthausen, CPA
Legislative Auditor

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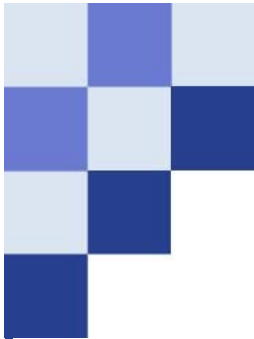
ELECTED AND ADMINISTRATIVE OFFICIALS

Department of Justice

Steve Bullock, Attorney General

Tim Burton, Chief of Staff, Attorney General's Office

Colonel Michael Tooley, Chief Administrator, Highway Patrol
Division



MONTANA LEGISLATIVE AUDIT DIVISION

PERFORMANCE AUDIT

Montana Professional Tow Truck Act

Department of Justice

SEPTEMBER 2010

09P-15

REPORT SUMMARY

Because the Montana Highway Patrol dispatched private tow truck companies nearly 6,300 times last year to remove abandoned or damaged cars, SUVs, trucks, semitrailers and other obstructions from state roadways, the agency should ensure participation rules for these companies are followed and consumer assurances are strengthened.

Context

The Montana Highway Patrol is responsible for administering provisions of the Montana Professional Tow Truck Act, or what is commonly known as the rotational system. The highway patrol often requires companies to respond and work quickly, so the act establishes standards for those participating.

The rotational system includes a series of requirements for approximately 274 participating tow truck companies, including equipment classification, liability insurance, truck inspections and business office and storage yard standards. This audit reviewed how the agency manages the rotational system, how it enforces provisions of the act, and identified potential improvements for consumers.

Audit work included review of highway patrol dispatch records and highway patrol district office records; interviews with highway patrol staff, tow truck drivers and others; observations of tow truck operations; research of applicable laws and regulations; and comparisons with similar systems in other states.

Results

The Audit work found the Montana Highway Patrol is fairly administering the tow truck rotation system. However, the highway patrol could create further efficiencies and should better enforce rules for participating companies.

Some of this audit's recommendations have been or are being implemented, such as written policies and

procedures for centralized dispatch staff and enhancements to the dispatch staff's incident database. Other recommendations – such as expanded oversight of private answering services (who relay calls from the centralized dispatchers to tow truck drivers in Billings, Butte and Great Falls) or how tow trucks are assigned by area to incidents – may require expanded oversight or development of criteria. Expanded use of dispatch's incident database will create efficiencies.

The highway patrol must also improve its enforcement of rules for participating companies. Compliance falls short of rules for company satellite operations, storage yards or drivers' licensing and experience. The patrol should develop an enforcement strategy to increase compliance.

In addition, the department can improve consumer assurances, specifically regarding rates, by requiring tow truck companies to submit a rate schedule. This may diminish consumer complaints handled by the Office of Consumer Protection. The tow truck complaint process has evolved under an expanded role for the Tow Truck Complaint Resolution Committee.

Recommendation Concurrence	
Concur	8
Partially Concur	1
Do Not Concur	0
Source: Agency audit response included in final report.	

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Chapter I – Introduction

Introduction

Every year, thousands of incidents on Montana's roadways require dispatch of a tow truck to assist in clearing wrecked or disabled vehicles. The Montana Professional Tow Truck Act establishes requirements for tow truck operators and also provides for a rotational system used when tow trucks are dispatched. For many incidents, the Montana Highway Patrol (MHP) is the first agency responding to a scene and the agency administers a rotational system for tow trucks that it dispatches. Working with MHP troopers and dispatchers, tow truck companies responded to nearly 6,300 similar incidents in 2009. Most of these involve passenger cars and trucks.

To be eligible to participate in what is referred to as the tow truck rotational system, 274 participating tow truck companies must meet equipment, inspections, insurance and business standards. These standards are contained in the Montana Professional Tow Truck Act (Title 61, Section 8, Part 9). The act also guides how tow trucks are to be used and how incidents are to be handled. The Tow Truck Act establishes a semi-regulatory system for the state's tow truck industry through these minimum operational standards, but participation in the rotational system is voluntary. The MHP relies on the cooperation of tow truck operators in clearing hazards from the roads, rather than contracting for this service. After receiving two legislative requests on related tow truck issues, the Legislative Auditor prioritized a subsequent audit of the Montana Professional Tow Truck Act in 2009.

Audit Objectives

To complete this audit, the following objectives were formed:

1. Does the Montana Highway Patrol administer the tow truck rotational system in accordance with its statutory purpose?
2. Are tow truck operators complying with the requirements of the Montana Professional Tow Truck Act?
3. Can the Montana Professional Tow Truck Act be strengthened to protect public health and safety?

Audit Scope

This audit focused on compliance with the Professional Tow Truck Act, including how the MHP administers and constructs the rotation, how calls are dispatched, and how the MHP assures compliance with aspects of the act. In addition, we examined some public health and safety issues that result from tow truck activities.

This audit does not examine the administration of all tow truck activity in Montana. The scope of this audit narrowed from activities of all tow trucks to those working with the MHP. The MHP may work with most of the state's tow truck companies, but this excludes many calls for service, including calls within city limits, those called by a city police department or a county sheriff's department, and those that haul only junked vehicles. Local government often provides another level of regulation for tow trucks, such as not allowing tow trucks to be parked on residential streets or allowing tow operators to haul away cars illegally parked on private property ("nonconsent tows"). Such issues are outside the scope of this audit.

Audit Methodologies

To address our audit objectives, we executed the following methodologies:

- ♦ Reviewed applicable statute, administrative rules, policies and procedures and contracts.
- ♦ Interviewed Montana Highway Patrol, Motor Carrier Services and Office of Consumer Protection staff.
- ♦ Interviewed tow truck operators.
- ♦ Reviewed applicable federal rules, national certification requirements.
- ♦ Analyzed dispatch data and data-handling techniques.
- ♦ Assessed training for dispatch staff and Montana Highway Patrol troopers related to tow truck issues.
- ♦ Mapped rotational system calls for service using GIS mapping software and analyzed response distances.
- ♦ Reviewed tow truck regulations and rules and interviewed law enforcement staff in five regional states.
- ♦ Reviewed MHP district office records and record-keeping processes.
- ♦ Observed wrecker operator yards to measure compliance.
- ♦ Analyzed tow truck ownership records.
- ♦ Analyzed agency staffing levels to determine availability of resources.
- ♦ Reviewed and assessed Office of Consumer Protection's complaint resolution process.
- ♦ Reviewed Tow Truck Complaint Resolution Committee membership, minutes and process.

Report Organization

The rest of this report is organized into four additional chapters:

- ♦ Chapter II – Background: This chapter describes the rotational system.

- ♦ Chapter III – Integrity of Tow Truck Rotational System: This chapter analyzes the MHP administration of the rotation and how rotational areas are constructed.
- ♦ Chapter IV – Enforcement of the Tow Truck Act: This chapter analyzes compliance to various aspects of the act.
- ♦ Chapter V – Consumer Protection: This chapter examines the handling of tow truck complaints and proposes additional consumer assurances under the act.

Chapter II – Background

Introduction

The Professional Tow Truck Act was passed in 1995 to standardize use of private tow truck companies to clear hazards off state roadways. The purpose of the act states “officers investigating accidents on the public roadways need immediately available towing and recovery vehicles” (§61-8-902, MCA). The act requires the agency to maintain equitable competition between these companies, recognizing that “encouragement of a competitive and qualified professional towing industry requires...a system for the fair consideration of all qualified tow truck companies” (§61-8-902(4), MCA). The legislature assigned this task specifically to the Montana Highway Patrol (MHP).

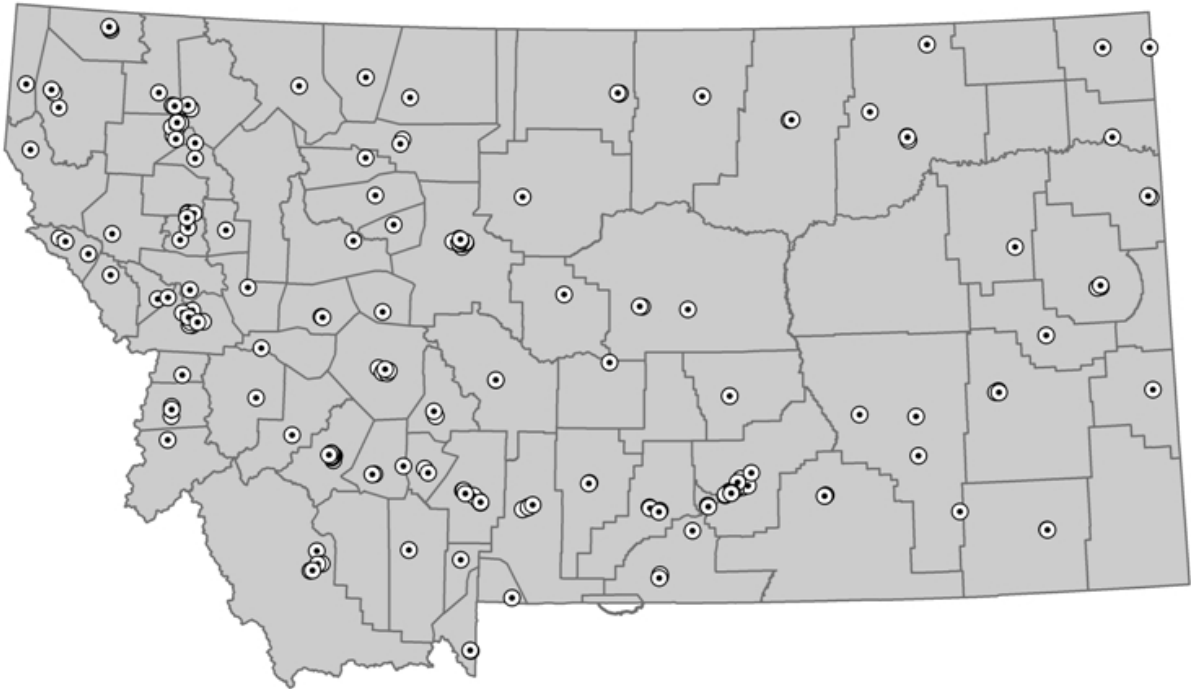
To administer this system, commonly called the “rotational system,” the act creates various standards for participating companies. The act also provides for the Tow Truck Complaint Resolution Committee “to review and resolve complaints about tow truck issues, including towing charges” (§61-8-912, MCA). This committee is discussed further in Chapter V.

How the Rotation System Works

The Professional Tow Truck Act directs the highway patrol to maintain the rotation system. Under the act, the highway patrol rotates through a list of qualified companies in individual geographic areas, assigning a call for service to the next company at the top of the list. These rotation lists are mostly handled by MHP dispatch in Helena.

The state is divided into 81 rotational areas, which usually contain one or more tow truck companies. These rotational areas are created by MHP staff. When dispatchers receive a call from a trooper at the scene of an accident or other incident, the call is identified by location, which prompts the computer-aided dispatch (CAD) system to assign the call to one of the 81 rotational areas and to access a corresponding list of participating tow truck companies. For most calls, dispatchers can only assign the company at the top of the list – the rotational list rotates amongst the participants in each rotational area – to respond to the roadside call where the trooper awaits. The dispatched tow truck is referred to as the rotational tow truck. The following figure shows the rotational areas and locations of commercial tow truck operators.

Figure 1
Map of 81 Rotational Areas With Tow Truck Locations



Source: Compiled by the Legislative Audit Division from statute.

Calls from MHP troopers to dispatchers are entered into the CAD system. A tow log record is created when a tow truck is assigned. This tow log record includes incident location information that produces the name of the next tow truck company on the rotational list. The dispatcher then calls the tow truck company. In some instances the rotational list is not followed, if:

- ◆ The vehicle driver or owner requests a specific tow truck company. This includes those covered by a motor club, such as AAA. This call for service is referred to as a requested tow truck.
- ◆ The incident occurs in one of eight rotational areas that is maintained either by a local sheriff's office or by a private answering service. In these instances, dispatchers inform the answering service of the call, the location of the call and any other known information. It is up to the answering service to assign a tow truck company, following their own rotation list. Use of these answering services is discussed more thoroughly in Chapter III.
- ◆ Because participation in the rotation is voluntary, tow truck companies may decline a call for service. Consequently, the company moves to the bottom of that list.

Unless inclement weather has caused multiple, simultaneous incidents, the MHP trooper will usually be at the incident scene and remain there until the vehicle is loaded up, the roadway cleaned and the vehicle hauled to the tow truck company's storage yard.

In addition, the act provides this guidance:

- ♦ The rotation must be administered in a manner that will give priority to public safety.
- ♦ The rotation may include only qualified tow truck operators. Rotational tow trucks are qualified through inspections, insurance minimums and business practice requirements.
- ♦ A company can be bypassed on the rotational list if a trooper at the scene of the wreck determines that the company is unable to handle the wrecked or disabled vehicle, or if the company cannot respond in a timely manner.

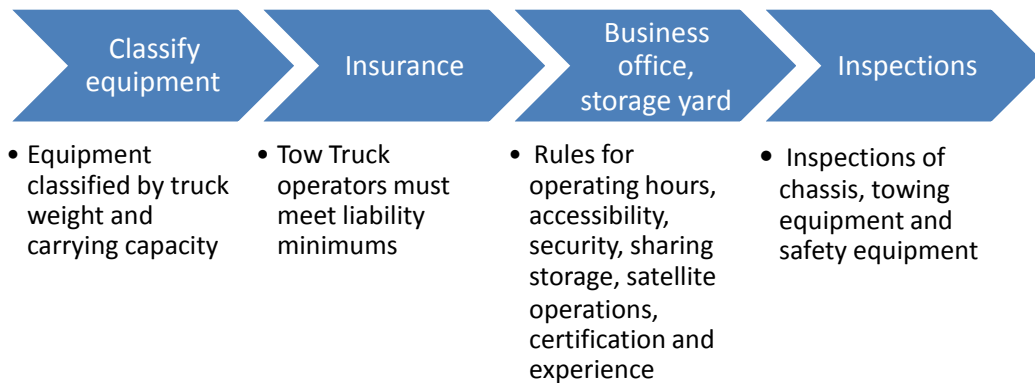
Tow Truck Compliance Standards

In addition to the rotation system, the Professional Tow Truck Act establishes standards for operating tow trucks on the state's roads. Different compliance standards are applied depending on the type of tow truck operator. There are three types of tow truck operators in the state of Montana: commercial, qualified and junk haulers:

- ♦ Commercial tow trucks are "a motor vehicle operating for compensation... designed and intended for towing or the recovery of tow truck, disabled, or abandoned vehicles or other objects" (§61-9-416(1), MCA). Commercial tow trucks must meet standards for liability insurance, roadside practices (such as setting up warning signs) and submit to equipment inspections. This designation covers most tow trucks in Montana.
- ♦ Qualified tow trucks are those seeking to participate in the MHP rotation. By definition, qualified operators are commercial tow trucks, but must meet some higher standards. In addition to the standards for commercial tow trucks, qualified tow truck operators must record and retain an additional truck inspection and meet standards for business offices and storage yards.
- ♦ Junk haulers are tow trucks hauling junked vehicles. These tow trucks avoid most requirements for commercial and qualified operators.

This audit focuses mostly on qualified tow trucks, although commercial tow trucks are discussed in regards to tow truck inspections in Chapter IV. The MHP determines who is eligible to be a qualified operator through application of statutory standards. The following chart summarizes the process for determining whether a tow truck company can become a qualified operator and shows the different standards the Tow Truck Act outlines.

Figure 2
Qualification for MHP Rotational System Participation



Source: Compiled by the Legislative Audit Division from statute.

While equipment classification is typically done only once, truck inspections and insurance filings are annual processes. It is left up to the individual tow truck companies to meet the standards for business offices and storage yards. These issues are discussed more thoroughly in Chapter IV.

Tow Trucks Classified by Weight

Commercial tow trucks are further classed based on the size and function of the truck. For purposes of this report, Class A and Class B tow trucks are referred to as “small tow trucks.” Class C tow trucks are referred to as “large tow trucks.” Class D tow trucks are rollbacks, where the vehicle is secured on the flatbed of the tow truck, as opposed to a boom. Class D tow trucks are also “small tow trucks.”

Separate rotational lists are created within each rotational area, one each for small tow trucks, which typically handle passenger cars and SUVs; and for large tow trucks, which handle buses, semitrailers and other large motor carriers. Rotational areas for large tow trucks might span more than one small tow truck rotational area. How these large tow truck areas are created is discussed further in Chapter IV.

Chapter III – Integrity of Tow Truck Rotational System

Introduction

The most-used function of the Tow Truck Act is the rotational system, which refers to the statutorily defined practice of assigning calls for service to participating tow truck companies within a geographically defined rotational area. Because the act requires “a system of fair consideration of all qualified tow truck companies” (§61-8-902(4), MCA), it is imperative that this rotational system appear free of favoritism or manipulation. The rotational system is used on a daily basis; the Montana Highway Patrol (MHP) dispatched nearly 22 calls for service per day in 2009. This audit tested the rotational system integrity by examining the database of calls maintained by the MHP dispatchers.

Analysis of Rotational System

Tow truck operators participate in one of 81 rotational areas. These areas contain anywhere from zero to 38 qualified companies. As described in chapters I and II, a trooper at an incident scene calls a centralized dispatch center housed at Fort Harrison in Helena to launch a formal call for service. In some cases, calls are then forwarded to answering services. Use of answering services is discussed in more detail later in this chapter.

For this audit, we analyzed 466 tow log records (or approximately 6 percent of those dispatched in 2009) from five rotational areas. Rotational areas were chosen from urban and rural parts of the state. The chosen areas ranged from northwest to southeast Montana in order to account for differences in terrain and climate. Finally, some of the chosen areas were identified due to a larger proportion of calls rejected by tow truck operators or reassigned by MHP staff.

This analysis focused on specific areas to determine if the rotation was being followed and properly maintained. Some rotational areas have few companies and few calls for service, while others have many companies and many calls for service. Qualified tow truck companies average 18 rotational calls per year. Our sample analyzed activities over a three-month period to allow the rotation to progress several times through and to form a good basis to draw conclusions. The months analyzed were randomly selected. Specifically, this analysis addressed:

- ♦ Calls that appear to be exceptions from the established rotation without mitigating circumstances.
- ♦ Calls for service that operators declined or refused to answer.

System Appears to Give Fair Consideration to Operators

For purposes of this analysis, an exception was defined as a change in the rotation order without mitigating circumstances. Our sampled rotations were examined to see where a company on the rotational list might have been skipped. Few calls – less than 5 percent of our sample – were found that met this threshold. These exceptions resulted in five companies receiving six extra calls. Most exceptions occurred because of a circumstance where two companies were on the rotation list twice. Other exceptions occurred because rotation lists were incorrectly adjusted following cancellation of a call for service.

In addition to few observed exceptions, our analysis of the rotational system did not find a pattern of exceptions.

Tow Truck Operators Also Impact the System

Qualified tow truck operators voluntarily participate in the rotational system. Rotational calls for service generally comprise a small portion of an operator's business, but many believe it is worthwhile to participate. Because the rotational system is voluntary, tow truck operators do not respond to every call. Audit work measured whether or not declined calls for service affect the rotational system and MHP's need for immediately available tow trucks.

Audit work found calls for service were canceled by tow truck operators and MHP staff alike. In our sample, 72 percent of cancelled calls were the result of tow truck operators declining the call for service, the remaining 28 percent were cancelled by MHP. The reasons for doing so varied: Vehicle owners canceled tow companies after the trucks were on scene; troopers decided damage was not enough to warrant a tow truck; a trooper deemed a tow truck's response time too slow; and some were canceled for no apparent reason. Tow truck operators refused calls for service if their tow trucks were broken down, if drivers were not available, if they could not be reached at their given phone number, or for other reasons. If a tow truck driver passed on a call, it was usually reassigned by dispatch within minutes, if not seconds.

Qualified operators also retrieve abandoned vehicles at the request of the MHP. Operators usually do not make any money towing abandoned vehicles, although they may acquire title to the vehicle after a legal process is initiated. Our analysis found fewer than 6 percent of all calls were for an abandoned vehicle. Of these, tow truck operators declined to respond about one-quarter of the time. This rate is certainly higher than for regular calls, which in our sample was 14 percent of all calls. But the limited number of calls for abandoned vehicles makes it difficult to conclude that operators are adversely affecting the rotational system by refusing to haul abandoned

vehicles. In most circumstances, a qualified tow truck responded to these calls for abandoned cars and trucks, removing an unwanted road hazard. Aside from declining a minority of calls, audit work found no evidence or pattern that these calls for service were manipulated. As a private business, it is the prerogative of a tow truck operator to skip a call, and any resulting revenue. The Tow Truck Act does not require a certain level of participation on the part of tow truck operators.

Tow Truck Rotation is Administered Equitably

Overall, the rotational system appears to be administered by MHP in accordance with the statutory purpose outlined in the Professional Tow Truck Act. The system gives fair consideration to all the participating tow truck operators and there is no evidence of specific operators not receiving equitable treatment. The system also meets the needs of the MHP by ensuring tow trucks are available to clear roadways of hazards. Although some calls for service are declined by tow truck operators, the majority are responded to.

CONCLUSION

We conclude that the Montana Highway Patrol is fairly administering the tow truck rotation in accordance with its statutory purpose.

While we are confident about the integrity of the rotational system, the MHP could make some changes to increase transparency and improve the rotational system.

Correcting Errors: MHP Dispatch Needs Written Policies

Although the errors were few, it became evident that most could be attributed to inconsistent application of dispatch center practices. For example, audit work found:

- ♦ Two companies appear twice on their individual rotations for months. In one instance, this situation was not corrected for eight months.
- ♦ Some companies with canceled calls resumed their spot at the top of the rotation (which is proper), while others with canceled calls were placed on the bottom of the rotation.
- ♦ One company was put at the bottom of a rotation because it did not have a certain type of truck; another company kept its spot on rotation under similar circumstances.
- ♦ The acknowledged process for resetting the rotation was not followed.
- ♦ Information entered into the dispatch database was sometimes contradictory.

The Tow Truck Act requires the MHP to create a “uniform and equitable qualification system” (§61-8-902, MCA). Mistakes in the dispatch database – known as Computer-

Aided Dispatch (CAD) – might be incorrectly viewed as evidence of favoritism or manipulation. Because the Tow Truck Act also requires the MHP to provide a record of rotational system calls (§61-8-908(11), MCA), it is in the agency’s best interests to increase transparency and minimize exceptions to the rotation.

How Dispatchers Assign Calls for Service

MHP troopers are trained to know tow truck laws, rules, inspections process and other aspects of the Tow Truck Act, but their responsibility for dispatching a tow truck typically ends when they call dispatch. As described in Chapter II, dispatchers assign a call for service to a rotational tow truck or a requested tow truck. To do so, they use the CAD system. This system dovetails off other incident information to create a separate tow log record. Dispatchers create a tow log record, depending on whether or not the call is a rotational or a requested one. A tow log record includes 49 data fields about each call for service. Some of the observed exceptions to the rotation were due to how some of this CAD data was entered; some tow log records appeared to have contradictory information about how a tow truck was dispatched.

Dispatchers receive mostly on-the-job training on how to dispatch a tow truck and how to create a tow log record. New dispatch staffers are paired with senior staff for 12 weeks training. However, dispatchers do not have formal, written policies and procedures on administration of the tow truck rotational system. Dispatch management wants to reduce their error rate, and they have already taken steps to develop new policies and procedures, clarifying and improving their process. In addition, dispatch management has already changed its CAD data entry process, which should be incorporated into these new, formalized policies. These policies will likely reduce errors and decrease any perception of manipulation of the tow truck rotational system.

RECOMMENDATION #1

We recommend the department develop written policies, procedures and data entry controls for dispatch staff to further improve transparency and accountability in the rotational system.

Effectiveness of Answering Services Cannot Be Measured

MHP dispatch assigned qualified tow trucks to nearly 80 percent of all calls for service. The remainder are handled either by local sheriff’s offices or by private answering services.

State law allows for the creation of a rotation administered by local law enforcement, like sheriff's departments. MHP dispatch refers the call to the local law enforcement agency, who then assigns a tow company. Calls for service in five areas – Big Timber (Sweetgrass County), Butte-Silver Bow, Columbus (Stillwater County), Red Lodge (Carbon County), Lewistown (Fergus and Petroleum counties) – are handled by local sheriff's departments. Three urban areas – Billings, Great Falls and Helena – employ a private answering service to maintain their rotation. Together, these public and private answering services handled 21 percent of MHP calls for service.

Fifty-nine tow truck companies in the Billings, Great Falls and Helena areas pay a monthly fee to private answering services. Those interviewed said use of these answering services reflects a history of poor relations between tow operators and the highway patrol. In Billings, a combined MHP-city rotation actually streamlined the former redundant process. Answering service employees take incident information from the MHP dispatch, calling the tow truck company next on the rotation. Tow truck companies and answering service employees routinely call back dispatch for more information.

Increase MHP Oversight of Answering Services

Some answering service records were available for Billings and Great Falls rotations. In both cases, no conclusions could be made about the effectiveness of answering services' work, as records were inconsistent, incomplete or not available. Very little detail was given about how assignments were made or any other information, such as the vehicle towed, location of the vehicle and other incident information.

Our analysis identified several potential problems in private answering service records. It is unclear:

- ◆ If the rotation was appropriately followed.
- ◆ How canceled calls for service were handled.
- ◆ If all calls went to qualified tow truck companies.
- ◆ How the rotation was adjusted after an incorrect cancellation of a call for service.
- ◆ Whether sanctions against a tow truck operator were enforced.

Like in the previous discussion of dispatch staff, increased transparency is essential to maintaining “a system for the fair consideration of all qualified tow truck companies” (§61-8-902, MCA). If information from private answering services is not explicit, it may be hard for the highway patrol to meet this standard.

Neither the Tow Truck Act nor any other chapter allows or prohibits the use of these services. State law says the highway patrol “shall administer the state law enforcement

system” (§61-8-908(8), MCA). The only exception is for a local law enforcement-run rotation, which “may adopt and administer” that rotation (§61-8-908(10), MCA). If private answering services are allowed to continue to work within the rotational system, information about the administration of the three affected rotational areas needs to be provided. This information should roughly parallel what is already gathered in a CAD system tow log record. For the MHP to administer the rotational system, information from all rotational areas should be compatible.

RECOMMENDATION #2

We recommend the department expand oversight of the rotation system by ensuring adequate information is available for all calls for service, including from private answering services.

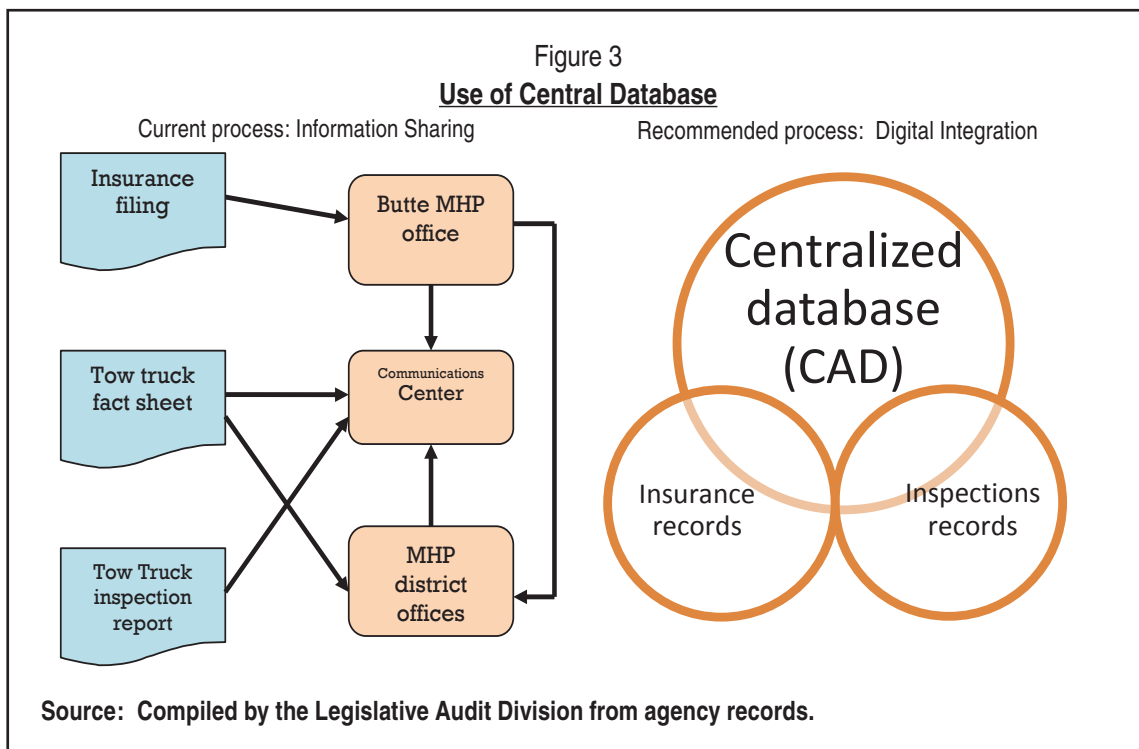
Use of Centralized Database to Identify Qualified Operators

The effectiveness of the custom-built Computer-Aided Dispatch (CAD) software system depends on correct, up-to-date information. This system was launched in May 2008, greatly enhancing the MHP dispatch process. The system features pinpoint incident and trooper locations, extensive data-collection capabilities and an ability to run comprehensive reports or studies. It is also used to maintain the tow truck rotational system, except for those served by answering services. A tow log record is created for all calls subsequently routed through answering services, but the tow log record includes no information on the assigned tow truck or response efforts.

The Professional Tow Truck Act requires liability insurance and annual inspections to participate in the rotational system. Insurance information is maintained by a MHP district office on a separate database, but not the CAD system. This information is shared – generally by e-mail, phone call or mailed reports – between the MHP district office assigned to compile the information, other MHP district captains and dispatch (see Figure 3). Inspection information, which is discussed further in Chapter IV, is also shared between district offices and dispatch by e-mails, phone calls and paperwork.

Audit work found 274 tow truck companies provided proof of minimum liability insurance. This information is maintained by a district captain at an MHP district office by transferring paper filings to a database. Having a separate database for insurance filings, however, causes problems. During this audit, we noted the CAD system had seven active companies without adequate insurance – and thus available for dispatch. These companies were removed from active status after this issue was

brought to management's attention. The addition of a few fields to the CAD database would allow the MHP to more efficiently manage its insurance and inspections processes. This would also diminish the need for the additional insurance database maintained by staff at one district office. Limited access to CAD by those handling the insurance filings and inspections would be cost effective and provide for better digital integration.



RECOMMENDATION #3

We recommend the department consolidate information systems and processes used for tracking insurance filings and recording inspections for the tow truck rotational system.

Need Criteria to Design Rotational Areas

In the Tow Truck Act, the legislature recognizes that “encouragement of a competitive and qualified professional towing industry requires...a system for the fair consideration of all qualified tow truck companies” (§61-8-902(4), MCA). To address this, the MHP created 81 geographic areas, from which 274 companies may respond to calls for service. While these areas can be adjusted (and have been due to improving

technology), historic boundaries are generally honored.

To examine potential inequities within the MHP-administered rotational system, locations of companies and of service calls were mapped, using 2009 incident data. Location data from about 2,700 calls for service were plotted, and the response distance was calculated for the company assigned the call and for the company closest to the incident. This analysis shows the average response distance is more than 30 percent farther than the closest tow operator, or 4.1 miles (see Table 1). This figure may serve as a guideline for response distances, which could be used to determine adequate response times or rotation area size. It also demonstrates that the rotational areas for small tow trucks are constructed reasonably, given the geographic distribution of tow truck operators.

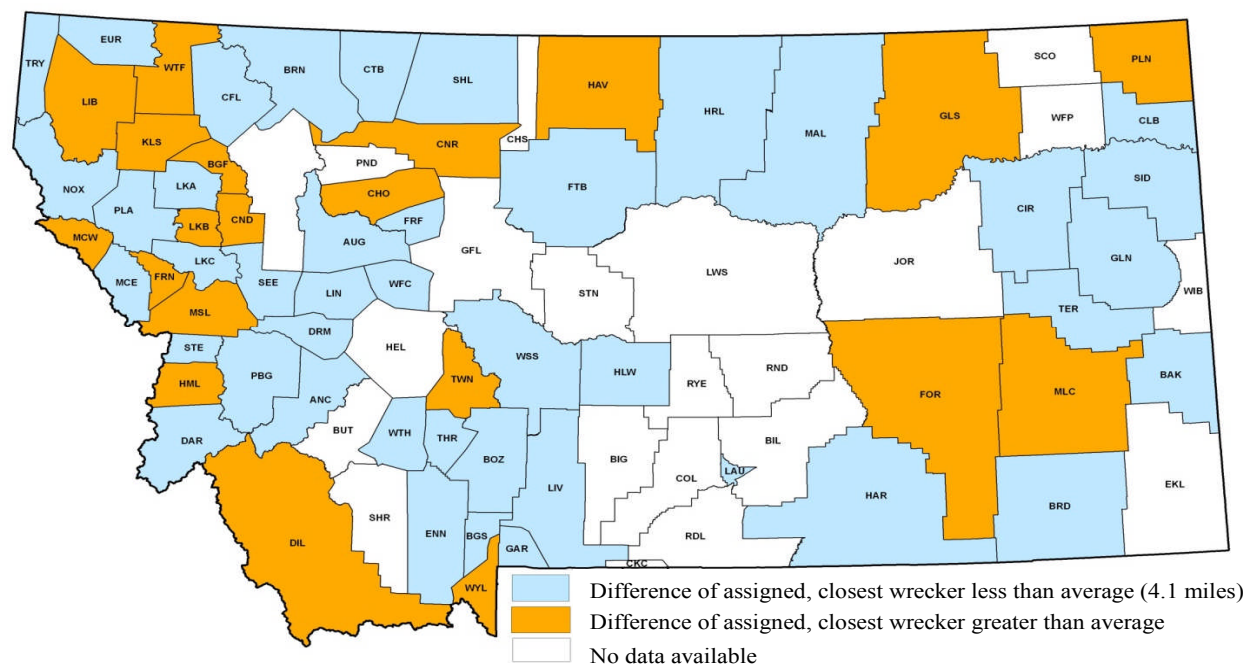
Table 1
Average Calls for Service Response Distances

Size of Tow Truck	Distance to Incident from Assigned Tow Truck	Distance to Incident from Closest Tow Truck	Difference
Small (Classes A,B,C,D)	13.1 miles	9.0 miles	4.1 miles
Large (Class C)	22.8	15.7	7.1

Source: Compiled by the Legislative Audit Division Analysis from agency records.

In general, the small difference between the distance from the assigned tow truck and the closest available tow truck suggests the rotational areas have been constructed appropriately. A statewide average difference of four miles for small tow trucks and 13 miles for large tow trucks could be considered minimal for a large state, such as Montana. However, for some individual incidents and some individual rotation areas, there were greater differences. For example, in four different rotation areas, the average difference between the distance to incident for the assigned tow truck versus the closest truck was in excess of 10 miles (more than twice the statewide average). In some cases this could be the result of inappropriate or outdated rotation area boundaries. Currently, the MHP has no defined criteria for establishing the rotation areas, so it is difficult to determine whether or how certain boundaries should be adjusted. Decisions on boundary adjustments are currently made by district captains and are likely to vary across the state. The following figure shows average response distances by rotation area in relation to the statewide average for small tow trucks.

Figure 4
Average Response Distance by Rotation Area



Source: Compiled by the Legislative Audit Division.

The MHP has generally constructed rotational areas absent a formal process. Minor adjustments may decrease response distances in some areas. Areas without tow trucks (or incidents) perhaps should be consolidated. (These empty areas are perhaps a reflection of turnover within the tow trucking industry.) Without defined criteria, such as a standard average response distance or how to handle empty rotational areas, these rotational areas will be determined without guidelines. Rotation areas should also be routinely monitored to ensure they continue to meet established criteria and can be periodically adjusted to account for changes in the locations of tow truck operators or other circumstances.

RECOMMENDATION #4

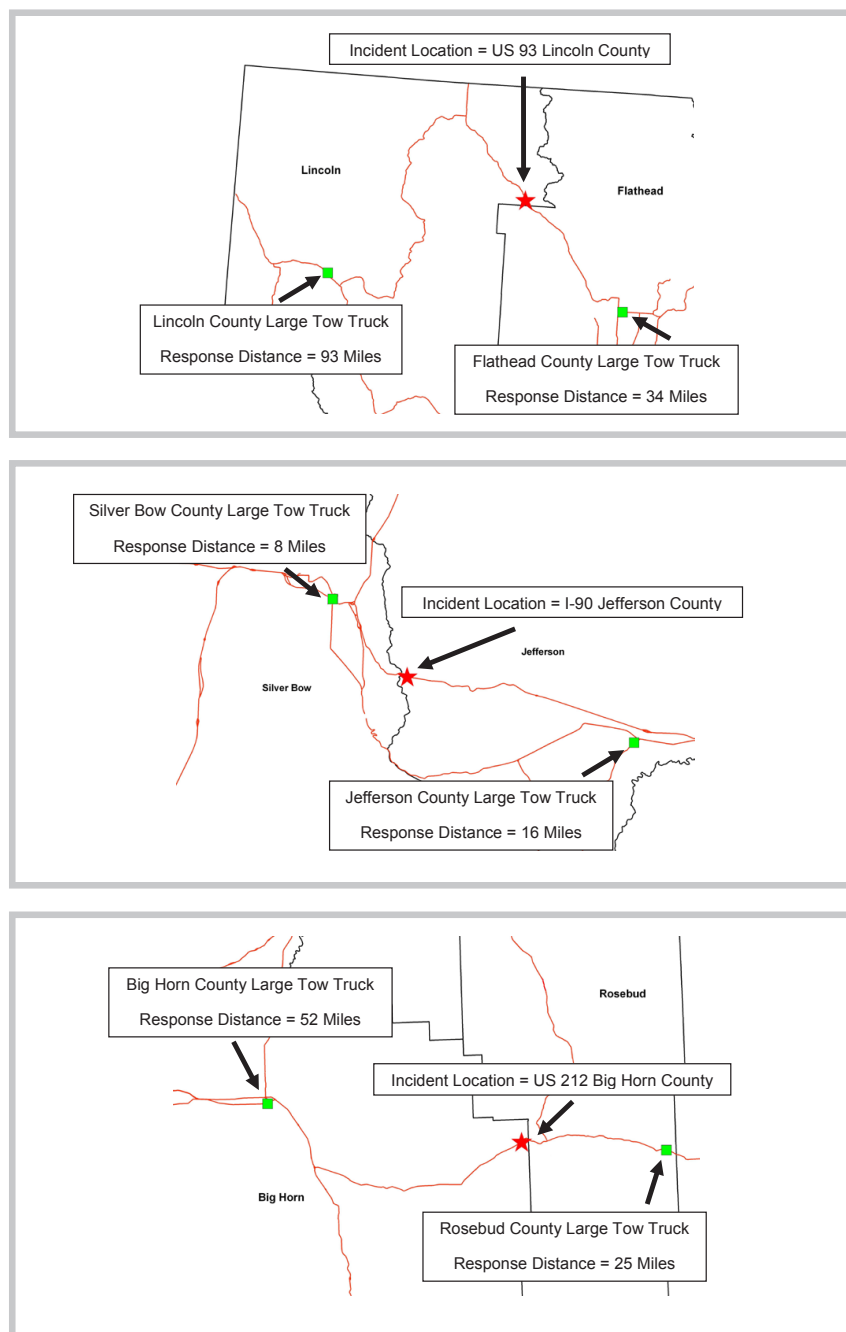
We recommend the department formalize criteria for the construction of rotational areas, including a provision for periodic review.

Response Times for Large Tow Trucks

The Professional Tow Truck Act contains a specific requirement for use of large tow trucks. These trucks are used to right semitrailers and other large vehicles. This is also a very competitive and potentially lucrative market; incidents such as these might involve cleanup of hazardous materials, spilled produce or scattered livestock, for example. Charges for these types of recovery operations may exceed \$10,000.

Section 61-8-903(6), MCA, assigns at least the entire county as a rotation area for a large tow truck, if that operator is the only one of its kind in the county (a large tow truck rotation can also be expanded to additional counties). This also constrains the highway patrol's ability to create tow areas smaller than a county. These have created situations where the assigned tow truck is many miles farther than another, closer large tow truck. For example, an incident on one side of a county line could create situations where tow truck response might be twice as far away (see Figure 5). Counties with only one large tow truck operator were identified in Big Horn, Lincoln and Powder River counties. For example, a Lincoln County call on U.S. Highway 93 that is in Flathead County must be answered by a tow truck located nearly three times farther than the closest truck. Figure 5 shows similar situations in Jefferson (with two large tow truck companies) and Big Horn (with one large tow truck company) counties.

Figure 5
Large Tow Truck Response Scenarios



Source: Compiled by the Legislative Audit Division.

The highway patrol has already recognized the difficulty of the situation in one instance, brokering a solution between 13 large tow truck operators, who share one county between three rotational areas. This solution illustrates the conflict between construction of rotations areas for large tow trucks and the need for fast response times. Addressing this situation by allowing for dispatch of large tow trucks based on proximity, rather than county boundaries, should improve the highway patrol's ability to effectively respond to such large-scale incidents.

RECOMMENDATION #5

We recommend the department address the criteria for construction of large tow truck rotation areas to emphasize improved response times.

Chapter IV – Enforcement of the Tow Truck Act

Introduction

Commercial tow truck operators must meet liability insurance, equipment and safety standards to work for hire on Montana’s roadways. Qualified operators – those that are available for dispatch to accident scenes by the Montana Highway Patrol (MHP) – must meet additional truck inspections and business and storage yard requirements. Qualified operators must also follow other statutory requirements for participation in the rotational system, such as standards for satellite offices and how often a company can appear on an area rotational list.

These standards are meant to address a variety of concerns. Trucks without adequate liability insurance could pose a risk during towing or recovery operations. Tow trucks and tow equipment must be adequate, reliable and available at an incident scene. Tow truck companies must allow owners access to business offices and storage yards to pay for service and to retrieve a vehicle or property. That vehicle or property must be secure. MHP troopers need a secure storage yard, too, as a vehicle may be subject to an accident investigation. And because the Tow Truck Act encourages “a system for the fair consideration of all qualified tow companies (§61-8-902(4), MCA),” it allows each tow truck company to appear once on a rotational list.

Compliance With Tow Truck Act Provisions Varies

To measure compliance to Tow Truck Act standards, our analysis relied on site visits to some tow truck yards and examination of applicable records. Our analysis found that a majority of operators comply with many of the Tow Truck Act standards. However, compliance in other areas lags. In addition, the MHP does not appear to have an enforcement strategy nor to use its enforcement powers, both of which will likely increase compliance.

CONCLUSION

Compliance with certain provisions of the Tow Truck Act is varied, and the Montana Highway Patrol should take steps to improve compliance monitoring and enforcement efforts.

Develop Procedures, Use Enforcement Powers to Increase Compliance

Audit work found a minority of tow truck operators do not meet some of the described standards within the Tow Truck Act. Standards for business offices and storage yards are sometimes not followed. Some tow truck company satellite operations do not have required business offices. Some tow truck companies appear more than once on area rotational lists. While most tow truck companies comply, we found tow truck operators have little incentive to comply, as existing enforcement powers are not used.

Storage and Business Requirements

To determine approximate levels of operator compliance to business and storage rules, visual observations were conducted on 35 qualified tow truck operations throughout Montana. For places of business, qualified tow trucks must provide:

- ◆ Secure storage, including a six-foot tall fence or indoor storage.
- ◆ Accessibility, located in a place that is reasonably convenient. This allows a member of the public to find their vehicle or to pay a bill. Tow truck operators are also required to provide a valid street address.
- ◆ Open during the business hours of 8 a.m. to 5 p.m., Mondays through Fridays.

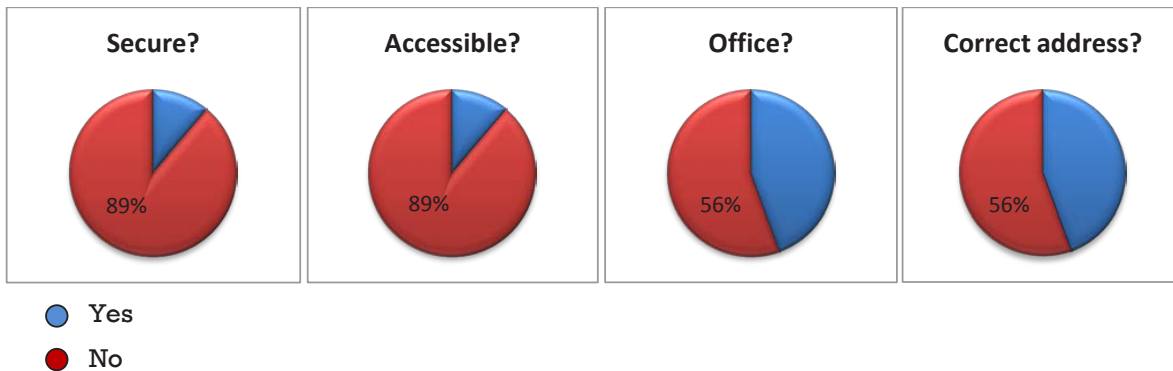
We measured compliance to four standards: Yard security, accessibility to the yard or business office, evidence that the business office was open, and if the tow truck company's address on file was accurate. The Tow Truck Act states that qualified operators "shall comply" with these standards in order to participate in the rotational system. We found compliance rates ranging from 60 to 80 percent.

While MHP troopers say they are familiar with many tow truck yards when they review vehicles involved in traffic accidents, the highway patrol does not consistently track compliance to these storage and business requirements. An exception was a MHP district office where troopers use a Wrecker Yard Inspection Report to report annual compliance to the standards discussed previously. Use of such a report does not appear to be the general practice statewide.

Satellite Offices

The Tow Truck Act allows a tow truck operator to open a satellite office in another rotational area. According to law, the satellite office should match standards for business offices and storage yards: accessible, reasonably located and secure. Our analysis identified 19 satellite operations, although no official count exists. A sampling of nine satellite offices determined compliance to these statutory rules was lower than compliance to the standards for typical business offices, as shown in the following figure.

Figure 6
Compliance Levels for Selected Satellite Operators



Source: Compiled by the Legislative Audit Division.

Limit Owners to a Single Rotation Spot

The Tow Truck Act allows “one qualified tow truck operation for each owner...on a rotation area list” (§61-8-908(4), MCA). However, at least nine tow truck operators in two rotational areas have deviated from this law. In one such area, six owners hold 25 rotation spots, based on our review of applicable records. As a result, a few owners are likely getting a larger share of service calls in violation of state law. Another rotational area contains five companies of three individual owners (two owners have two companies each.) It was determined that those owners with two spots on rotation received twice as many calls from MHP dispatch.

The Tow Truck Act allows operators to share a storage yard, provided they submit individual accounting, insurance, tax, vehicle and address information. No operator has filed this paperwork. This definition of shared storage may allow owners to continue to propagate multiple rotation spots within an individual rotational area.

Clarify MHP Enforcement Powers

The MHP can suspend a tow operator under limited circumstances. The following table shows which aspects of the Tow Truck Act have associated administrative rules allowing for sanctions to enforce compliance.

Table 2
MHP Enforcement Powers

Provisions of the Tow Truck Act:	Can MHP Suspend or Sanction Operator?
Business office/storage requirements	No
Collusion with another tow truck operator prohibited	Yes
Failed tow truck inspection	Yes
Lapsed liability insurance	Yes
Extra rotation spots prohibited for single owner	No
Satellite office standards	No
Shared storage requirements	No
Wrong equipment or slow response time	Yes

Source: Compiled by the Legislative Audit Division from Administrative Rules of Montana.

Administrative rules allow suspension of tow truck operators in certain circumstances and statute provides a misdemeanor penalty for violations (§61-8-910, MCA). A first-time offense would carry a penalty of \$10-\$100. MHP staff indicated the agency has not sought any misdemeanor charges. Department of Justice staff has indicated they fear that enforcement of the act would result in tow truck operators abandoning the rotational system. Fewer operators in Montana's less-populated areas could diminish service. But the agency has not developed an enforcement strategy to tackle this situation or to ensure compliance to the Tow Truck Act.

Other states provide different enforcement approaches. California, Idaho, Washington and Wyoming provide for administrative penalties – with hearings and appeals – rather than criminal ones. In these states tow truck operators can be taken off rotation if they violate aspects of each state's laws and rules.

Compliance to Tow Truck Act standards in Montana could be improved. Possible methods for ensuring compliance could include:

- ♦ Development of specific compliance tools or procedures, such as use of the Wrecker Yard Inspection Report. As discussed above, one MHP district currently uses an inspection report to monitor compliance with statutory requirements.
- ♦ Adoption of administrative rules, allowing administrative sanctions where these do not currently exist.

RECOMMENDATION #6

We recommend the department develop an enforcement strategy to ensure increased tow truck operator compliance with the Tow Truck Act.

Improve Assurances for Driver's Licensing, Certification and Experience

A variety of standards already exist for tow truck drivers – driver's licensing and thresholds for certification and experience within the Tow Truck Act – but these standards could be more-vigorously enforced.

While acknowledging many quality tow truck drivers, interviews with MHP captains tell of others creating unsafe roadside situations. Currently, troopers are unable to ascertain who is or was not licensed prior to dispatching the individual to the scene of an incident. A driver's license is a basic requirement for operating any vehicle on state roadways. All drivers of tow trucks less than 26,000 pounds (essentially those handling passenger cars and SUVs) need only a valid Montana driver's license. Those driving heavier trucks – generally large tow trucks – must have a commercial driver's license. As allowed by state law, MHP can request a driver's license status (§61-5-116, MCA).

The Tow Truck Act also requires one year's experience in Montana or certification for three-fourths of a company's drivers (§61-8-903(5), MCA). Currently these standards are only applied if another tow operator complains. We found no evidence of any penalty levied for ignoring this standard. Under current procedures, the MHP has no method for determining whether individuals driving tow trucks meet the requirements outlined in the Tow Truck Act – or are licensed to drive a motor vehicle in the state. This could lead to situations where a state law enforcement agency sends an individual with no valid license or multiple prior driving convictions to assist at a dangerous accident scene.

In California, tow truck operators are required to submit a list of drivers when renewing their annual agreement to participate in that state's rotation. Submission of a similar roster would give the MHP an ability to check driver's license status and certification or experience levels prior to dispatching these individuals to assist the public. Submission of a driver roster could also provide the owners of tow truck companies with an added incentive to ensure their employees meet the highest possible standards for professionalism, including experience and certification standards and driver's licensing status.

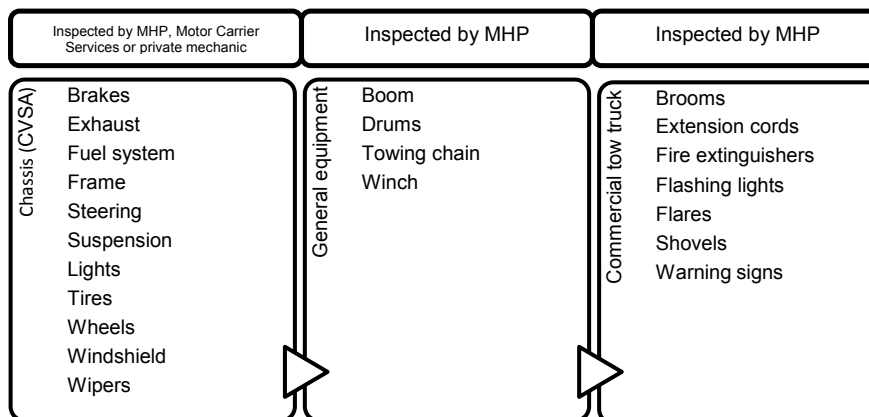
RECOMMENDATION #7

We recommend the department strengthen assurance of tow truck driver licensing and certification/experience by requiring submission of an active driver roster.

Inspection Process Could Be Improved

Under the Professional Tow Truck Act inspections are required of all commercial tow truck operators, which includes all qualified operators. The process mostly involves MHP personnel, although the Montana Department of Transportation's (MDT) Motor Carrier Services inspectors and a department-certified inspector can perform the Commercial Vehicle Safety Alliance (CVSA), or chassis inspection. MHP troopers typically perform these inspections either individually at a tow truck company yard or collectively at a central location. Tow trucks often drive to the nearest MDT weigh station for all or part of the inspection process. The different types of inspections are shown in the following figure.

Figure 7
Types of Tow Truck Inspections



Source: Compiled by the Legislative Audit Division from agency records.

Deadline Modifications Would Allow Flexibility, Create Efficiencies

Administrative rule requires inspections to be performed in October and November. MHP indicated this time period was chosen because it is after the tourist season and before the start of winter. Even so, our analysis of tow truck records at three MHP district offices found that 40 percent of inspections took place after the deadline. This lack of compliance with the rule-based inspection deadline could indicate a need for more flexibility in the timing of inspections. Revising this deadline might allow more flexibility for MDT and MHP inspectors, who would then be allowed to inspect trucks during 12 months of the year, instead of just during two.

MHP Relies on Paper Inspection Records

MHP relies primarily on paper records to manage the inspection process. Inspection forms are returned to one of the highway patrol's eight district offices, and this information is, in turn, relayed to dispatch. This process is inefficient and can result in errors. Audit work identified five companies with no inspection records at MHP district offices that were still active in the CAD system. Although further analysis indicated that none of these uninspected companies received calls for service from the MHP, these operators could have been dispatched without meeting insurance liability or other standards outlined in the Professional Tow Truck Act. Uninspected tow trucks – whether these be defined by law as commercial or qualified – could constitute a hazard on the state's roadways.

As referred to in Chapter III, MHP could use the CAD system to improve the inspection process. The system could be adjusted to track not only what companies have been inspected, but when the next annual inspection is due by allowing district office personnel to actively update a tow truck company's inspection status within that system. By administrative rule, tow truck operators must schedule their own annual inspections. Using this approach, MHP could actively manage the inspection schedule and tow truck operators with lapsed inspections would be ineligible for calls for service.

Audit work determined that some efficiencies in the inspection process are already within reach by:

- ♦ Changing the scheduling of inspections,
- ♦ Using the CAD system to schedule inspections.

RECOMMENDATION #8

We recommend the department improve the tow truck inspection process by:

- A. *Revising administrative rules to allow for greater flexibility in the timing of inspections; AND*
 - B. *Using the Computer Aided Dispatch system as a centralized source for inspection data.*
-

Chapter V – Consumer Protection

Introduction

Through establishment of the rotational system and its qualification system, the Tow Truck Act primarily serves the interests of tow truck operators and the Montana Highway Patrol (MHP). Consumer interests are first directed through the Department of Justice Office of Consumer Protection (OCP), which administers the provisions of the Consumer Protection Act. Consumers further have the right to take their case to the Tow Truck Complaints Resolution Committee, a special board provided for in the Tow Truck Act.

Office of Consumer Protection Processes **Complaints About Tow Trucks**

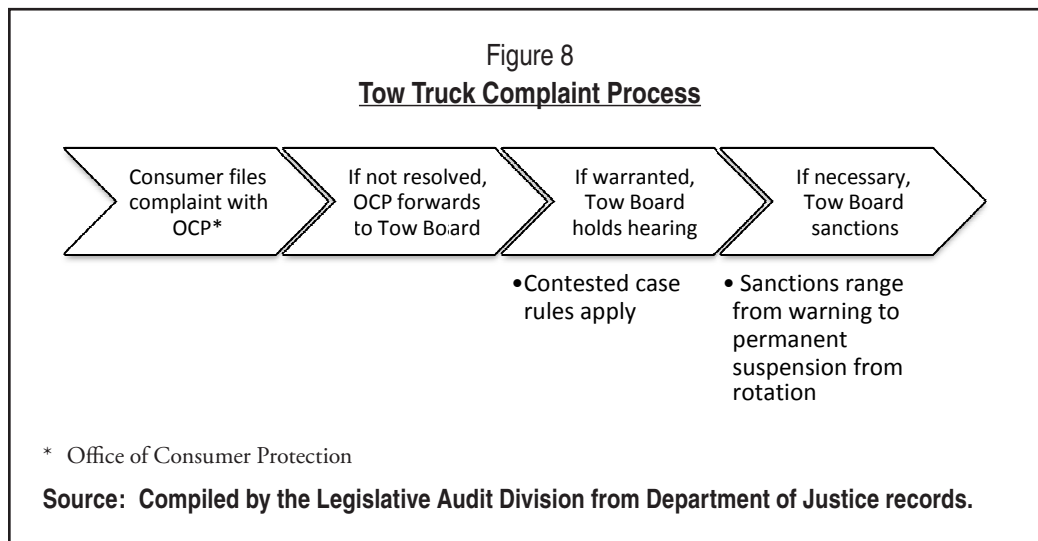
The OCP handles consumer complaints about many industries. It handles complaints about all tow trucks – not just those participating in the rotational system. Under the state’s consumer protection laws, the OCP processes consumer complaints and informally attempts to negotiate a settlement. This usually comprises of letters, e-mails and phone calls between the complainant and the company, with OCP staff acting as the go-between. A settlement may or may not involve monetary compensation. Unlike most other industries, complaints about the tow trucks may be forwarded for further review to the Tow Truck Complaint Resolution Committee. The Tow Truck Act created the committee, also known as the Tow Board, to consider complaints the OCP cannot resolve. Statute advises the committee to “review and resolve complaints about tow truck issues, including towing charges, that are submitted in writing to a committee member and to review information submitted to it” (§61-8-912(2), MCA). The members of the Tow Board are appointed by the attorney general and represent the following groups:

- ◆ Commercial motor carriers
- ◆ General public
- ◆ Insurance industry
- ◆ Montana Highway Patrol
- ◆ Tow truck operators, including one each from the eastern and western halves of Montana

Under the OCP process, complaints must be formalized in writing. Afterwards, the company is allowed to respond to the complaint. For complaints about other industries, if a settlement cannot be reached, OCP staff usually closes the case. Complaints about tow truck services are afforded another step. Per ARM 23.6.106, complaints to the OCP may be forwarded to the Tow Board in one of four instances:

- ◆ The tow truck operator fails to respond to the complaint.
- ◆ The tow truck operator lacks the proper registration, licensing, endorsements, equipment, or any other requirement provided by law.
- ◆ The OCP is unable to resolve the complaint.
- ◆ The OCP believes it to be in the best interest of the public.

The process for handling consumer complaints relating to commercial tow trucks is summarized in the following figure:



Tow Board Can Sanction Tow Truck Operators

After a complaint is forwarded, the Tow Board must act in a quasi-judicial fashion. Because of this, the board must follow rules for contested case hearings. This includes opportunities for the complaining and responding parties to present their cases. If a company does not respond to the complaint, it can be suspended from the rotational system. This would not apply to complaints about tow companies working on non-MHP calls for service. The Tow Board must follow rules of evidence, witnesses can be called and Tow Board members may be recused if an involved party objects. If a majority of the Tow Board finds that a complaint has merit, it may sanction the tow truck company. Sanctions provided in administrative rules are:

- ◆ Warning
- ◆ Suspension from rotational system for six months
- ◆ Permanent suspension from rotational system
- ◆ Some other sanction

Tow Truck Consumer Complaint Process Is Evolving

The Tow Board role has evolved over time. The board was, at first, formed to resolve complaints about the classification of tow truck equipment. In 2008, the complaint process directed through the OCP was created through an administrative rule change. In the past, the Tow Board's role and authority was unclear. With the 2008 administrative rule change, the board's role appears to have solidified – although the board has scheduled hearings on complaints over the past year, only to see each cancelled. However, this audit is unable to conclude on the effectiveness of the tow truck complaint process and the Tow Board until the system is allowed to work.

Consumer Assurances Could Be Improved

Our analysis found that most complaints about tow trucks centered on charges for services and tow truck operators' business practices. The Tow Board is in a good position to consider such issues as that body evolves into its proper role. While the tow truck complaints process has become more structured, opportunities remain to improve the process.

CONCLUSION

Complaint handling by the Tow Truck Complaint Resolution Committee is more structured, but opportunities remain to improve consumer assurances.

Tow Truck Rates Should Be Available

In Montana, the Tow Truck Act does not address rate regulation, and no legislation has been proposed in the act's 15-year existence to do so. Complaints about rates, however, are common. A review of complaints filed in 2009 found wide disparities between consumers' and tow operators' ideas of fairness. Our review also found that tow operators charged different rates – and use different basis for charging those. Consumers do not appear to be getting any satisfaction by complaining, as the concerns we examined remain unresolved. The following table illustrates the different types and basis for tow truck rates that consumers may be subject to.

Table 3
Tow Truck Charges for Services

	Service Provided	Rate	Other Charges
Company A	Passenger Car	\$150/hour	
Company B	Passenger Car	\$200/hour	\$50-\$125/hour for extra personnel
Company C	Passenger Car	\$200/hour	\$50-\$125/hour for extra personnel
Company D	Passenger Car	\$150/hour	
Company E	Motorhome	\$250/hour	Large Wrecker
Company F	Passenger Car	per task fee*	
Industry Survey	Passenger Car	\$65-\$156**	
Industry Survey	Large Recovery	\$158-\$251**	

* Per task fees include: truck fee (\$150), winch fee (\$150), cleanup fee (\$150), offroad fee (\$250), extra man fee (\$150), cutting fence fee (\$75), inspection fee (\$75), sign fee (\$100), hookup fee (\$85), fuel, mileage.

** Base rate for a five-mile tow

Source: Compiled by the Legislative Audit Division from OCP Complaints records and Industry Survey Data.

In five nearby states – California, Idaho, North Dakota, Washington and Wyoming – the handling of rates is widely different. The following table shows differences between the five states and illustrates that there are different approaches, varying from full rate regulation or posting of established rates to no forms of rate regulation.

Table 4
Tow Truck Rate Regulation in Nearby States

Idaho	North Dakota	California	Wyoming	Washington
Operators must submit rates	No regulations	Charges must be "reasonable, valid"	Operators must submit rates	Maximum rotational tow rates set annually based on consumer price index

Source: Compiled by the Legislative Audit Division.

A 2009 stipulated agreement between the Attorney General's Office and two tow truck companies included a provision that the companies "shall conspicuously" post their prices and provide drivers with rates prior to towing. The two were accused of overcharging customers and the posting provision appears to have been designed to

prevent further abuses, ensuring consumers had access to pricing information prior to accepting towing services.

The Legislature gave the Tow Board authority to “review and resolve complaints about tow truck issues, including towing charges” (§61-8-912, MCA). This is important, because while the rotational system assigns a company to an incident, consumers do not have any idea what they might be paying for a service requested by an MHP trooper. Posting rates is certainly not the answer to all disputes, but documentation of rates could provide a basis for resolution if complaints arise. Our review of complaints demonstrates a need for better complaint resolution. Asking a tow truck operator to provide these in order to participate in the rotational system could act as a deterrent against unfair practices.

RECOMMENDATION #9

We recommend the department require tow truck service rates to be submitted to the Montana Highway Patrol as part of the annual inspection process and to be made available to the Tow Truck Complaint Resolution Committee.

DEPARTMENT OF JUSTICE

DEPARTMENT RESPONSE

ATTORNEY GENERAL

STATE OF MONTANA

Steve Bullock
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

MEMORANDUM

TO: TORI HUNTHAUSEN
Legislative Auditor

JASON MOHR
Auditor

FROM: MONTANA DEPARTMENT OF JUSTICE

DATE: September 13, 2010

RE: Written Response to the Legislative Audit of the Montana
Professional Tow Truck Act

RECEIVED

SEP 14 2010

LEGISLATIVE AUDIT DIV.

Recommendation #1

The Legislative Audit Division recommends the department develop written policies, procedures and data entry controls for dispatch staff to further improve transparency and accountability in the rotational system.

The Department of Justice concurs with the audit report's Recommendation #1.

- The Communications Center of the Montana Highway Patrol (MHP) has already undertaken modification of data entry controls for dispatch staff that greatly increase the functionality and accuracy of our interface with the rotation system incorporated into the CTS America SmartCAD product. Additionally, the Communications Center Manager and Shift Supervisors are currently in the process of establishing operational procedures for this data entry, with a goal of having such procedures completed, checked and implemented no later than January 1, 2012 (this timeframe allows for any modifications of the SmartCAD product that might be requested from CTS America as a result of operational procedure and policy development).

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JASON MOHR
September 13, 2010
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Recommendation #2

The Legislative Audit Division recommends the department expand oversight of the rotation system by ensuring adequate information is available for all calls for service, including from private answering services.

The Department of Justice concurs with the audit report's Recommendation #2.

- For those calls for service which are handled directly through the Highway Patrol Communications Center, oversight of the rotation system is readily available by means of executable reports within the CTS America SmartCAD system or by external reports (Crystal Reports) that access data contained within the system.
- For those calls for service that are referred to private answering services, the Department advances two potential options for expanding oversight: Private companies must either adopt and comply with records-keeping standards as established by the MHP in accordance with Montana law, or cease contracting with the private entity and require the MHP to manage the rotation system in the coverage areas previously served by private answering services. This can be accomplished within six months.

Recommendation #3

The Legislative Audit Division recommends the department consolidate information systems and processes used for tracking insurance filings and recording inspections for the tow truck rotational system.

The Department of Justice concurs with the audit report's recommendation #3.

- The MHP intends to investigate, with the assistance of CTS America, the possibility of incorporating the functionality of tracking insurance filings and inspection information directly into the SmartCOP family of products. If successful, this functionality would allow integration, access and oversight of insurance and inspection information from a trooper's initial input through his/her direct command level for approval, and ultimately with the Highway Patrol Commander in charge of oversight of the entire rotation system. The timeframe for investigation and incorporation of this functionality is estimated at 18 months, allowing for design of the process, programming the anticipated functionality into the existing SmartCOP system and personnel training.

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JASON MOHR
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Recommendation #4

The Legislative Audit Division recommends the department formalize criteria for the construction of rotational areas, including a provision for periodic review.

The Department of Justice concurs with the audit report's recommendation #4.

- The current established rotational boundaries are the result of years of interaction and cooperation between both the Highway Patrol Division and the tow truck companies that operate in each rotational area. With that understanding, the MHP would develop and incorporate operational procedures and guidelines allowing for periodic review of rotational area boundaries at the District level, with input and participation from the local tow truck companies as well as other law enforcement and public service entities that are responsible for and operate in those areas. The ultimate goal of any boundary adjustment would focus on improving the overall service and response time to the motoring public. A timeframe for development and incorporation of this process is estimated at 18 months.

Recommendation #5

The Legislative Audit Division recommends the department address the criteria for construction of large tow truck rotation areas to emphasize improved response times.

The Department of Justice concurs with the audit report's recommendation #5.

- Currently, large tow truck rotation areas are addressed, and in part established by Mont. Code Ann. § 61-8-903. Therefore, any alteration to established methodology regarding large tow truck rotational area boundaries would have to be addressed through legislative action. The primary driving factor for dispatch of a large tow truck should be proximity to the crash location and not the establishment of a boundary based solely on county lines. A legislative change would need to occur to the current large tow truck rotation area criteria in order to facilitate for adjustment in the distance from the assigned tow truck and the closest available tow truck to more accurately reflect the statewide average response time. The Department will effect necessary changes after an amendment to the statute occurs.
- The Highway Patrol would advocate for establishment of large wrecker rotational area boundaries that are concurrent with established small wrecker rotational area boundaries, as this would (in most cases) address not only the proximity issue but also the issue of equitable coverage. This can be implemented within 12 months upon legislative approval.

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Recommendation #6

The Legislative Audit Division recommends the department develop an enforcement strategy to ensure increased tow truck operator compliance with the Tow Truck Act.

The Department of Justice concurs with the audit report's conclusion that the Montana Highway Patrol should improve compliance monitoring and enforcement efforts.

- The MHP will develop an electronic standardized Inspection/Compliance report form for Troopers to conduct uniform inspections for each towing operation within the RMS. This can be accomplished within 18 months.
- The Department of Justice will write and propose an administrative rule clarifying the definition of a business office. This can be accomplished by October 2011.
- The MHP will develop a document for use in annual inspections of tow truck operators that will incorporate the requirements under the Tow Truck Act for use by Troopers in performing inspections to ensure uniformity of inspections and assist in compliance with and enforcement of the Act.
- In addition to the specific steps outlined above, the Department of Justice will further study the recommendation in light of authority granted to both the MHP and the Tow Truck Complaint Resolution Committee (Committee) in statute and administrative rules to ensure proper compliance with the requirements of the Tow Truck Act.

Recommendation #7

The Legislative Audit Division recommends the department strengthen assurance of tow truck driver licensing and certification/experience by requiring submission of an active driver roster.

The Department of Justice concurs with the audit report's conclusion that the MHP strengthens driver licensing and certification/experience compliance.

- The Department will write and propose an administrative rule requiring tow truck companies requesting to be on the state rotation system to provide the respective MHP Captain a list of the following: an active driver roster, a copy of the drivers towing certification or towing experience and valid driver's license for the class of vehicle operated. This information would be required annually as part of tow truck inspections. This would be accomplished by October 2011.

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Recommendation #8

- A. *The Legislative Audit Division recommends the department improve the tow truck inspection process by revising administrative rules to allow for greater flexibility in the timing of inspections.***

The Department of Justice does not concur with the audit report's conclusion that the MHP could improve the inspection process by doing inspections 12 months of the year.

- The current inspection process is jointly conducted with the Montana Department of Transportation--Motor Carrier Services officers, and compliance has increased with the standardized time period for inspections to occur. The MHP would find value in revising the time period to four (4) months (September, October, November and December) to allow more flexibility for MHP and MDOT--MCS inspections.
 - The Department of Justice will write and propose an administrative rule change to Rule 23.6.109(7) beginning certification on September 1 of each year and changing the grace period to December 31 to allow increased time for inspections. This can be accomplished by October of 2011.
- B. *The Legislative Audit Division recommends the department improve the tow truck inspection process by using the Computer Aided Dispatch system as a centralized source for inspection data.***

The Department of Justice concurs with the performance audit's conclusion that the MHP could improve the inspection process by utilizing the Computer Aided Dispatch (CAD) to centralize the inspection data.

- The current method of tracking the inspection data relies on hand-written paperwork, which is forwarded from the field trooper to the MHP CAD center for hand entry of data into the CAD system. There currently is no tracking of the inspection process or if the inspection data reaches the CAD center for proper data entry. Utilizing the CAD would ensure uniformity of the inspection process once completed by the field troopers. The timeframe for investigation and incorporation of this functionality is estimate at 18 months, allowing for design of the process, programming the anticipated functionality into the existing SmartCOP system and personnel training.

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Recommendation #9

The Legislative Audit Division recommends the department require tow truck service rates to be submitted to the Montana Highway Patrol as part of the annual inspection process and to be made available to the Tow Truck Complaint Resolution Committee.

The Department of Justice concurs with the audit report's conclusion to require tow truck service rates to be submitted to the MHP as part of the annual inspection process and to be made available to the Committee. However, the Department of Justice does not believe that such action will address the identified problem of the prevalence of consumer complaints regarding towing rates.

- The audit report analysis identifies that most complaints about tow trucks center on charges for services and tow truck operators' business practices. Though the Committee is authorized to "review and resolve complaints about tow truck issues, including towing charges," no law exists to address rate regulation or price gouging of consumers. Mont. Code Ann. § 61-8-912(2). Decisions of the Committee must have sound legal underpinnings that include findings of fact and conclusions of law, separately stated. Mont. Code Ann. § 2-4-623(1)(a). "Each conclusion of law must be supported by authority or by a reasoned opinion." Mont. Code Ann. § 2-4-623(3). Therefore, even if the MHP and the Committee have access to tow truck service rates as part of the annual inspection, without a law to address rate regulation, the Committee almost always lacks the necessary legal authority to resolve complaints about price gouging. In egregious cases of overcharging the Committee may determine that the business practice is unfair or deceptive under the Montana Unfair Trade Practices and Consumer Protection Act. Mont. Code Ann. § 30-14-101, *et. seq.*
- To avoid complaints about price gouging, the *consumers*, rather than the MHP or the Committee, need the information about tow truck service rates. However, if the MHP and the Committee made the tow truck service rates available to consumers in advance of the service, the rotation system would be defeated. Consumers, armed with rate information about tow truck service rates, would affirmatively choose the tower with the least expensive rates. If a consumer chooses a particular tow truck service, the tow is "requested" and is not a rotation call. Mont. Code Ann. § 61-8-908(6).
- The Department of Justice believes that requiring tow truck service rates to be submitted as part of the annual inspection process may encourage some operators to consider their charges to consumers. Therefore, the Department will write and propose an administrative rule requiring submission of towing rates as part of the annual inspection process. This can be accomplished by October of 2011.