

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0431TR

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S
RULES REGULATING VEHICLE BOOTING COMPANIES, 4 CODE OF COLORADO
REGULATIONS 723-6.

NOTICE OF PROPOSED RULEMAKING

Issued Date: October 8, 2024
Adopted Date: October 2, 2024

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (“Commission”) hereby issues this Notice of Proposed Rulemaking (“NOPR”) to consider amendments to the Commission’s Rules Regulating Vehicle Booting Companies, 4 *Code of Colorado Regulations* 723-6. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-10.1-106, and 40-10.1-801,

C.R.S. This NOPR intends to address issues that have been identified by Transportation Staff (“Staff”) since the Commission began regulating vehicle booting companies in May 2019, pursuant to Senate Bill (“SB”) 19-236.

2. The Commission issues this NOPR to review, examine, and consider revisions to its rules regarding vehicle booting companies. The proposed amendments reflect the Commission’s intent to amend and update its vehicle booting company rules to minimize the gaps that have been identified since the legislative mandate to regulate this industry, including the expansion of certain operational standards, permit requirements, language consistency, and other regulations, where appropriate.

3. The proposed amendments to the vehicle booting company rules are available for review as Attachment A (redline/strikeout) and Attachment B (legislative) to this Decision, through the Commission’s Electronic Filings website (Proceeding No. 24R-0431TR) at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0431TR.

4. The Commission welcomes comments from interested rulemaking participants, regarding the amendments proposed in this NOPR. To the extent a participant disagrees with the proposed amendments, they are encouraged to submit comments that include any suggested revisions to the rule language in legislative (*i.e.*, strikeout) format.¹

B. Background

5. On May 30, 2019, Governor Jared Polis signed SB 19-236, Sunset Public Utilities Commission. This bill, in majority part, implemented the recommendations contained in the 2018

¹ Similarly, commenters are also encouraged to raise whether a statutory change is most appropriate to further or support any of the rule changes proposed.

sunset report. The bill also created Part 8, § 40-10.1, C.R.S., which added vehicle booting companies as a regulated industry under the Commission.

6. On December 30, 2019, the Commission issued Decision No. C19-1044 adopting temporary rules for vehicle booting companies. The effective date of the temporary rules was January 1, 2020.²

7. On July 10, 2020, an Administrative Law Judge (“ALJ”) issued Recommended Decision No. R20-0499 adopting permanent rules for vehicle booting companies. The effective date of the permanent rules was October 15, 2020.³

C. Discussion of Proposed Amendments to Vehicle Booting Company Rules

8. The proposed amendments to the vehicle booting company rules are shown in Attachment A (redline/strikeout) and Attachment B (legislative) to this Decision. These changes are described in this section, along with discussion of the policy reasons associated with the proposed amendments. However, simple grammatical or accuracy fixes, rule title amendments, language consistency, and code changes will not be specifically referenced.

9. It should also be noted that the shift in terminology throughout the proposed amendments, specifically changing the term “vehicle” to “motor vehicle”, is not intended to in any way restrict the current scope of the Commission’s regulatory authority over the booting of vehicles that may be in a position to be booted by a vehicle booting company. Rather, this is an attempt to bring the rule language into congruence with § 40-10.1-101(22), C.R.S., which states that a “Vehicle booting company” means a private corporation, partnership, or sole proprietorship in the business of immobilizing a *motor vehicle* [emphasis added] through use of a boot.”

² See 19R-0743TR.

³ See 19R-0485TR.

The Commission still intends to regulate the vehicle booting industry in the same manner as its already been established, dating back to the original statutory authority, pursuant to Part 8, § 40-10.1, C.R.S.

(i) Rule 6811 – Definitions

10. The proposed amendments to Rule 6811(a) for the definition of “Boot or booting” include language that will clarify that a “boot” includes any immobilization device that creates a circumstance where a motor vehicle’s wheel or wheels are not able to move. This will help to close any current or potential uncertainty regarding vehicle booting companies that are immobilizing motor vehicles through the use of devices that may not specifically be affixed to the wheel(s), but still create the same immobilization condition. It should be noted that, as proposed, this change to the definition of a “boot” would not apply to any immobilization devices that may hinder the operation of a motor vehicle, but that do not specifically prohibit the wheel(s) from moving, such as a “barnacle” device that is affixed to the windshield and obstructs the driver’s field of view.

(ii) Rule 6812 – Permit Application

11. The proposed amendments to Rule 6812(a)(I) expands the requirement for vehicle booting companies to pay an annual application fee to specify that this fee is administratively set by the Commission, pursuant to § 40-10.1-111(1)(c), C.R.S.

12. The proposed new Rule 6812(a)(II) requires each principal associated with a vehicle booting company to have a valid Colorado-issued driver’s license or a Colorado-issued identification card, in order to be issued a vehicle booting company permit. The purpose of this requirement is to allow for more accurate background checks to be conducted on the principals of a vehicle booting company, pursuant to Rule 6813, when determining qualification for a vehicle

booting company permit. Staff has, at times, found it difficult to regulate a principal who is located out of state, both from the standpoint of background check efficiency and effectiveness, as well as general responsiveness to regulatory issues.

13. The proposed new Rule 6812(b) adds a section of rules that addresses how the Commission will react to situations that involve a vehicle booting company allowing their required insurance policies, pursuant to § 40-10.1-801(3)(a), C.R.S., to expire or be cancelled. Currently, there is no explicit direction within the state statutes or Commission rules that address the process and procedures for vehicle booting companies in such circumstances. As an initial proposal, we raise this change given that, while insurance is required to receive a vehicle booting company permit, allowing for continued operation with lapsed insurance policies could cause significant harm the public. The proposed rules in this section mirror the process and procedures for other types of motor carriers, often referred to as “show cause”, such as the provisions described in Rule 6009. This will allow the Commission to approach insurance policy issues related to vehicle booting companies in a uniform manner, comparative to other Commission regulated industries, such as towing carriers, taxicab carriers, and household goods movers.

(iii) Rule 6813 – Criminal History Checks

14. The proposed amendments to Rule 6813(a) explain that the rule applies to all principals, as defined by Rule 6001(iii). This clarifies what types of individuals, who are associated with a vehicle booting company, may qualify as a principal for the purposes of the criminal history check.

(iv) Rule 6814 – Equipment and Accessories

15. The proposed amendments to Rule 6814(a) update the language to address situations when a vehicle booting company may not have a motor vehicle they are using for their operation. This clarifies that a vehicle booting company is not necessarily required to have a motor vehicle to facilitate their business. This change is based on feedback received from the industry.

(v) Rule 6815 – Authorization for Booting

16. The proposed amendments to Rule 6815(a)(I)(D) update the language to allow a consolidated authorization arrangement between a vehicle booting company and a private property owner. This expanded authority would allow a private property owner to designate the vehicle booting company as their agent, for the purposes of signing authorizations to boot motor vehicles, which would then extend to the employees of the vehicle booting company. A similar standard can be found for towing carriers, under Rule 6508(a)(I)(D).

17. The proposed amendments to Rule 6815(a)(I)(E) update the language to allow for automatic renewal of contracts between a vehicle booting company and a private property owner. A similar standard can be found for towing carriers, under Rule 6508(a)(I)(F).

18. The proposed amendments to Rule 6815(a)(I)(F) remove the quotations from applicable language regarding the Commission's maximum rates, which is a required criteria in contracts between a vehicle booting company and a private property owner. This change will allow for more flexibility in how this rule is enforced. A similar standard can be found for towing carriers, under Rule 6508(a)(I)(G).

(vi) Rule 6816 – Booting Notice/Signage/Invoice

19. The proposed amendments to Rule 6816(a)(I) update the language to clarify that the serial number of each boot record/invoice must be unique. A similar standard can be found for towing carriers, under Rule 6509(a)(I).

20. The proposed amendments to Rule 6816(a)(II) update the language to add new criteria to the boot record/invoice, including the address of the vehicle booting company. The change also clarifies that the information required to be on the boot record/invoice must match what is on file with the Commission. A similar standard can be found for towing carriers, under Rule 6509(a)(II).

21. The proposed amendments to Rule 6816(g) update the language to simplify the signage standard at private properties. Specifically, it requires signage to be posted at each point of entrance to the private property. A similar standard can be found for towing carriers, under Rule 6513(c).

(vii) Rule 6817 – Rates and Charges

22. The proposed elimination of Rule 6817(a)(III) is due to the language being moved to new Rule 6817(c).

23. The proposed new Rule 6817(b)(IV) adds a reference to an allowable credit card surcharge standard, in accordance with § 5-2-212, C.R.S.

24. The proposed new Rule 6817(c) is mostly the same language moved from Rule 6817(a)(III), which is proposed to be eliminated. However, the language has been expanded to apply to all circumstances when booting is performed in violation of any state statute or Commission rule. A similar standard can be found for towing carriers, under Rule 6511(f).

D. Questions for Stakeholders

25. Given the nature of some of the proposed amendments to current rules, as well as the proposed new rules, the Commission solicits additional information and comments from stakeholders. Interested persons are encouraged to submit written comments and participate in the rulemaking hearing convened in this matter.

26. As applicable to the proposed amendments to Rule 6811(a) (Definition of “Boot or booting”), the Commission requests that stakeholders provide information and comments related to the expanded definition and the associated implications.

27. Similarly, the Commission requests stakeholders provide information and comments related to the new show cause standard for vehicle booting companies, as outlined in proposed Rule 6812(b).

E. Conclusion

28. Through this NOPR, the Commission solicits comments from interested persons and stakeholders on whether to adopt, revise, or not adopt, some or all of the proposed amendments to the vehicle booting company rules, as set forth in the attachments to this Decision and discussed above. The Commission encourages members of the transportation industry and other interested persons to participate in this Proceeding and to contribute to the rulemaking record, on which the Commission will base its decision on whether to adopt rule amendments.

29. The Commission refers this matter to an Administrative Law Judge (“ALJ”) for the issuance of a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations

unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

II. **ORDER**

A. **The Commission Orders That:**

1. This Notice of Proposed Rulemaking, including attachments, shall be filed with the Colorado Secretary of State for publication in the October 25, 2024 edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to the Commission's Rules Regulating Vehicle Booting Companies, 4 *Code of Colorado Regulations* 723-6, as described in this Decision and its attachments. The Commission prefers and encourages interested persons to file comments through the Commission's Electronic Filings website (Proceeding No. 24R- 0431TR) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0431TR

3. This matter is referred to an Administrative Law Judge ("ALJ") for the issuance of a recommended decision.

4. The rulemaking hearing on the proposed rules and related matters shall be held before an ALJ, as follows:

DATE: November 18, 2024

TIME: 11:00 a.m. until concluded but not later than 5:00 p.m.

PLACE By video conference using Zoom at a link in the calendar of events on the Commission's website, available at:
<https://puc.colorado.gov/>

5. The ALJ will set procedures for a remote hearing, if necessary, by a separate decision issued in this Proceeding.

6. The ALJ may set additional hearings, if necessary.

7. Written comments may be filed at any time in this Proceeding. Initial written comments are requested to be filed no later than November 5, 2024, and any comments responsive to the initial comments are requested to be filed no later than November 12, 2024, so that the initial comments and responsive comments may be considered at the hearing.

8. At the time set for hearing, interested persons may submit written comments and may present these orally, unless the ALJ deems oral comments unnecessary. The Commission will consider all comments, whether written or oral.

9. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 2, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners