

Decision No. C02-0878

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-416TO

IN THE MATTER OF EMERGENCY AMENDMENTS TO THE RULES, REGULATIONS,
AND CIVIL PENALTIES GOVERNING TOWING CARRIERS BY MOTOR VEHICLE,
4 CCR 723-9.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: August 15, 2002
Adopted Date: August 14, 2002

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules amending the Commission's Rules, Regulations, and Civil Penalties Governing Towing Carriers By Motor Vehicle, 4 Code of Colorado Regulations (CCR) 723-9 (Towing Rules). The emergency rules amend Rules 1.4, 2.1, 13.2, 15.3, 17.4, 17.7.4, and 17.7.5, of the Towing Rules to replace statutory references to now-nonexistent statute numbers, and to add new statutory references as explained below. For the reasons set forth in this decision, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth § 24-4-103, C.R.S.) the rules appended to this order as Attachment A. We take this action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. Generally, the purpose of the rules adopted by this order is to bring the Towing Rules up to date and in compliance with recently amended Colorado Revised Statutes. Specifically, Senate Bill (SB) 02-132, entitled Concerning the Reformation of the Regulation of Persons Who Tow Abandoned Motor Vehicles, and, in Connection Therewith, Recodifying the Laws Regulating Towing Abandoned Vehicles, had the effect of separating two previously joined Parts of Title 42, Section 4.

3. Previously, Part 18 of Title 42, Section 4 dealt with Towing and Storage. SB 02-132 amended that Part to address only Vehicles Abandoned on Public Property, and created the new Part 21 to address those Vehicles Abandoned on Private Property. Prior to the enactment of SB 02-132, pertinent notice, reporting, and storage charge provisions for both private property tows and public property tows were located in section § 42-4-1805, C.R.S. Post-SB 02-132, they are split between §§ 42-4-1803 (storage charges) and 42-4-1804 (notice and reporting) for public property tows, and 42-4-2103 (all) for private property tows. These provisions addressing requirements operators of towing vehicles are substantively identical, but, again, have merely been split in two.

4. Therefore, besides merely changing a few statutory references in the Towing Rules, with this emergency rule change we add necessary references to the previously

joined, but now discrete, notice, reporting, and storage charge sections. As stated above, the old notice, reporting, and storage charge provisions has merely been copied and placed, in the same substantive form, in two separate sections, instead of the previous one section. So, for example, Rule 17.7.4 now refers to § 42-4-2103 (notice requirements, report, and storage charges for abandonment of motor vehicles on private property) instead of the former § 42-4-1805, and adds references to §§ 42-4-1803 (notice requirements and report for abandonment of motor vehicles on public property) and 42-4-1804(6)(a) (storage charges for abandonment of motor vehicles on public property).

5. Similarly, Rule 2.1 adds a reference to the new definitions section in Part 21, § 42-4-2102, C.R.S. Rule 13.2 adds a reference to Part 21 to the reference to Part 18 of Title 42, Section 4. Rule 15.3 is amended to refer to § 42-4-2103, instead of the former § 42-4-1805.¹ The amendment to Rule 17.4 deletes a reference to the former § 42-4-1805, and replaces it with references to §§ 42-4-1804 and 42-4-2103. Rules 17.7.4 and 17.7.5 are amended as explained, *supra*, to cover all statutory changes to the notice, reporting, and storage charges portions of Parts 18 and 21.

¹ This particular statutory requirement only applies to private property tows. Therefore there is no mirror requirement in Part 18.

6. Along with the rule updates necessitated by SB 02-132, the Commission changes the reference to § 4-9-503.5, C.R.S., to § 4-9-629, C.R.S., found in Rule 1.4. This statutory section was moved as part of a complete repeal and reenactment of Article 9 of Colorado's Uniform Commercial Code pursuant to SB 01-240. The referred-to section remains entirely unchanged.

7. We adopt the attached rules as emergency rules in accordance with the provisions of § 24-4-103(6), C.R.S. We find that immediate adoption of the rules is imperatively necessary to comply with a state law, *to wit*, SB 02-132, and compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest.

8. As grounds for these findings, we state: It is necessary to adopt these emergency rules due to the recent adoption of SB 02-132, which separated the laws for the towing of abandoned vehicles into discrete Parts for vehicles abandoned on private property (Part 21) and for vehicles abandoned on public property (Part 18). The Commission finds it necessary to immediately clarify in the Towing Rules, that, while the references themselves have changed, the underlying basis for the rules, and the substance of the rules have not changed.

9. Failure to adopt these rules on an emergency basis would delay action on this matter for several months. These rules would remain unclear as to which tows -- public, private, or both -- are regulated by the Commission.

10. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-4-101, and 40-13-107, C.R.S. The rules attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. This Order is effective immediately upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 14, 2002.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

JIM DYER

Commissioners

COMMISSIONER POLLY PAGE
ABSENT.

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES, REGULATIONS, AND CIVIL PENALTIES
GOVERNING TOWING CARRIERS BY MOTOR VEHICLE

4 CODE OF COLORADO REGULATIONS (CCR) 723-9

- - - - -

RULE (4 CCR) 723-9-1. APPLICATION OF RULES AND REGULATIONS.

- - - - -

723-9-1.4 Repossession Not Included. Nothing in these rules shall be construed to apply to a secured creditor or assignee (principal), or reposessor (agent), or to the repossession of a motor vehicle by a secured creditor or assignee (principal), or reposessor (agent), when repossessing pursuant to § ~~4-9-503~~54-9-629, C.R.S.

RULE (4 CCR) 723-9-2. DEFINITIONS.

When used in these rules the following shall have meanings as stated:

723-9-2.1 Abandoned motor vehicle means a motor vehicle as defined by § 42-4-1802 and 42-4-2102, C.R.S.

- - - - -

RULE (4 CCR) 723-9-13. STORAGE FACILITIES.

- - - - -

723-9-13.2 The towing carrier, on placing an abandoned motor vehicle in a storage facility, shall disclose the location

of the storage facility where the abandoned motor vehicle is in storage by complying with the procedure for abandoned motor vehicles in Title 42, Article 4, Part s 18 and 21, C.R.S.

- - - - -

RULE (4 CCR) 723-9-15. AUTHORIZATION FOR TOWING OF MOTOR VEHICLES.

- - - - -

723-9-15.3 Noncompliance with Authorization Conditions.

If a tow is not performed consistent with any of the conditions as stated in Rule 723-9-15.2.1 or 723-9-15.2.3 above, or ~~§ 42-4-1805~~ 42-4-2103, C.R.S., the towing carrier shall not charge, collect, or retain any fees or charges for the unauthorized services it performs. Any motor vehicle held in storage which was towed without such authorization must be released immediately to the registered owner, lien holder, or their agent.

- - - - -

RULE (4 CCR) 723-9-17. RATES AND CHARGES.

- - - - -

723-9-17.4 Notifications. The charges for notification(s) to the owner and the lienholder(s) of the motor vehicle held in storage shall be in accordance with ~~§§ 42-4-1805(3)(e)-(f)~~ 42-4-1804(6)(a) and 42-4-2103(3)(c)(I), C.R.S.

- - - - -

723-9-17.7 Storage Charges for Non-Consensual Tows.

- - - - -

723-9-17.7.4 Maximum Accumulated Storage Charges for Abandoned Motor Vehicles. Unless a hold order has been placed on the motor vehicle by a court, district attorney, or law enforcement agency; or extenuating circumstances have prevented a towing carrier from complying with the notice requirements of §§ ~~42-4-1805~~42-4-1804(6)(a) or 42-4-2103, C.R.S., the storage charges against the motor vehicle operator or owner after the tow and storage of an abandoned motor vehicle subject to §§ ~~42-4-1805~~42-4-1803 or 42-4-2103, C.R.S., shall not be accumulated beyond the sixty (60) days after the report required by §§ ~~42-4-1805(5)~~42-4-1804(6)(a) or 42-4-2103(4), C.R.S., was mailed. Sale of such vehicle to cover the outstanding towing and storage charges will be in accordance with those notice and procedure requirements of §§ 38-20-116, 42-4-1801, et seq., 42-4-2101, et seq., and 42-5-109, C.R.S.

723-9-17.7.5 Storage Charges Not Chargeable or Collectible. Any towing carrier holding a vehicle in storage who cannot demonstrate that they have made a good faith effort to comply with the notification requirements of either §§ 38-20-116, or 42-4-1801, et seq., or 42-4-2101, et seq., and/or 42-5-109, C.R.S., must release the vehicle immediately to the registered owner, lien holder, or their agents without retaining the storage fees.

- - - - -