

Decision No. C16-0129

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0095TO

IN THE MATTER OF THE PROPOSED RULES REGULATING TOWING COMPANIES,
4 CODE OF COLORADO REGULATIONS 723-6.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: February 19, 2016
Adopted Date: February 3, 2016

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking regarding proposed changes to the Towing Rules 6500-6514, within the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

2. The proposed changes incorporate many of the recommendations made by the Towing Task Force created by the General Assembly in HB14-1031 for the express purpose of making recommendations to the Commission regarding proposed rule changes. Generally, the proposed changes refine current definitions and add new ones; establish fencing, signage, and lighting requirements for storage facilities; and implement maximum rates for the nonconsensual towing and recovery of motor vehicles of all weights; and deletes duplicative language in the civil penalty rules.

3. We have the authority to adopt these rules under Sections 40-2-108, 40-10.1-106, and 40-10.1-402, C.R.S.

4. The proposed rules are available as Attachment A through the Commission's E-Filings system in this proceeding (16R-0095TO) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=16R-0095TO.

B. Background

5. By passage of HB14-1031, the Colorado Legislature removed a statutory barrier which restricted this Commission from governing the rates for the nonconsensual towing of vehicles that exceed a gross vehicle weight rating of 10,000 pounds. The same legislation also created a Towing Task Force with the express mission of making comprehensive recommendations to the Commission about maximum rates that may be charged for the recovery, towing and storage of vehicles that have been towed without the owner's consent.

6. At the weekly meeting on December 9, 2015, the Chairman of the Towing Task Force reported to this Commission that the task force had completed its work on nonconsensual towing rates and requested that their recommendations on nonconsensual towing rates be included when the Commission issued a Notice of Proposed Rule Making for its towing rules. The Commission agreed with this request.

7. Proposed rule 6511 contains the recommendations of the Towing Task Force. In addition to the proposed changes to rule 6511, the task force recommends refining the definition of "nonconsensual tow" to include all law enforcement-ordered tows; defining the term "recovery"; and adding the statutory definition of "motor vehicle" for clarity for those governed by the towing rules.

8. Staff proposes definitions for "private property impound," "Recovery," "Towing," "towing facility," and "Trailer."

9. Rule 6506(e) defines rescue and recovery operations and requires a minimum set of equipment necessary to conduct such operations. The task force is proposing to refine Rule 6506(e) by moving the definition of recovery to the definition section, and eliminating the equipment requirements because they are incomplete and add little value in the way of enforceability.

10. Rule 6507 currently establishes the criteria that towing carriers must follow regarding the disclosure of their storage facilities. Staff is proposing fencing, lighting, and signage requirements for storage facilities.

11. Rule 6508(a)(I) establishes the authorization requirements for towing carriers acting as an agent for a property owner. Staff is proposing that the date required signage was placed on the property be included as part of the authorization agreement.

12. Rule 6508(b)(V) establishes requirements for No Parking signs. Staff is proposing that these signs be required to be printed in English.

13. Rule 6508(b)(VI)(A) requires that towing authorizations be filled out in full and be signed by the property owner before a motor vehicle is removed from the property. It also authorizes a property owner to use an ID number or code to sign the authorization. Staff is proposing language to clarify that if the authorization is signed by the towing company as agent for the property owner, an ID number or code shall not be used.

14. Rule 6508(b)(VI)(B) requires that a towing carrier shall not accept or use blank authorizations pre-signed by the property owner. Staff is proposing to include a requirement that towing carriers may not have such authorizations in their possession.

15. Rule 6508(b)(VI)(C) allows the required written authorization to be incorporated with the tow record/invoice. Staff is proposing to expand this and allow the authorization to be incorporated into any document so long as it complies with all requirements and clearly identifies the property owner according to rule 6508(b)(VI)(A).

16. Rule 6509(b) governs the maintenance and distribution requirements of the tow record/invoice. Staff is proposing language to allow the tow record/invoice to be either electronic or a multi-copy form. And, if electronic forms are utilized they must be able to be reproduced in their original format.

17. Rule 6511 governs the rates a towing carrier may charge for nonconsensual tows. The task force is recommending the implementation of both a tiered rate structure for private property impounds, and an hourly rate structure for law enforcement tows and recovery operations.

18. Current rule 6511(a)(I) expressly excludes from the requirements of this rule, the towing of a motor vehicle abandoned on public property weighing in excess of 10,000 pounds GVWR for which the charges are determined by negotiated agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(2)(a), C.R.S. Current rule 6511(a)(II) excludes from the requirements of this rule, the towing of a motor vehicle abandoned on public property under a written agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(3), C.R.S. By passage of HB14-1031 the legislature removed the provision within § 42-4-1809(2)(a) restricting the Commission's authority for governing the rates of such tows. The referenced provisions within § 42-4-1809(3) apply to the sale of vehicles abandoned on and subsequently towed from public property. The law applies to the associated cost recovery by a law enforcement agency

operating under a towing contract. The task force recommends current rule 6511(a) be stricken in its entirety.

19. Current rule 6511(b) defines a drop charge and restricts its applicability to motor vehicles with a GVWR of less than 10,000 pounds. The current rule sets this drop charge at \$70 for vehicles with a GVWR of under 10,000 pounds. This is 43% of the current base maximum towing charge of \$160 for vehicles in the same weight class. The task force recommends that the language of the current rule be stricken and that the Commission determine the allowable drop charges by applying the same percentage (43%) to the base rates for each of the proposed weight classes. The proposed maximum drop charges are rounded to:

- \$80 for vehicles with a gross vehicle weight less than or equal to 10,000 pounds;
- \$90 for a motor vehicle that's gross vehicle weight is between 10,001 pounds and 19,000 pounds;
- \$120 for a motor vehicle that's gross vehicle weight is between 19,001 pounds and 33,000 pounds; and
- \$140 for a motor vehicle that's gross vehicle weight is greater than 33,000 pounds.

20. Staff is recommending the addition of language setting the minimum drop charge to \$0.00 and adding a requirement that the required notification to the owner or operator of the vehicle be completed by means of a charge notification card.

21. Current rule 6511(c) governs the methodology towing carriers must use for charges applied during recovery operations but not the rates. The task force is recommending that current rule 6511(c) be stricken in its entirety and replaced with the following:

- (c) Maximum towing rates for law enforcement ordered tows and recovery operations are to be calculated on an hourly basis, per required towing or recovery vehicle, as follows, with no additional fees or charges permitted, except as identified below:
 - (I) Maximum hourly rates for:
 - (A). The towing or recovery of a motor vehicle of a gross vehicle weight less than 10,001 pounds shall not exceed \$205 per hour.

- (B). The towing or recovery of a motor vehicle of a gross vehicle weight between 10,001 pounds and 19,000 pounds shall not exceed \$245.00 per hour
 - (C). The towing or recovery of a motor vehicle of a gross vehicle weight between 19,001 pounds and 33,000 pounds shall not exceed \$320.00 per hour; and
 - (D). The towing or recovery of a motor vehicle of a gross vehicle weight more than 33,001 pounds shall not exceed \$370.00 per hour
 - (E). The recovery of a motor vehicle requiring the use of a Heavy Rotator (65+ tons) shall not exceed \$585 per hour.
- (II) Hourly billing may begin only after the time the towing carrier leaves their yard or staging area en route to the scene of the requested tow. The time of dispatch; the time the truck leaves the yard or other staging location; and the time the tow truck arrives on scene must be recorded by the towing carrier at the time of occurrence. This information must be readily available and provided to the consumer upon request. Failure to comply with this requirement negates the towing carrier's authorization to bill for time before documented arrival at the scene of the requested tow.
 - (III) Mileage and fuel surcharges authorized elsewhere in rule 6511 do not apply to law enforcement ordered tows or recovery operations.
 - (IV) Hourly rates for recovery may include time to load and to secure recovery equipment and the cleanup of the scene and post-towing maintenance of recovery equipment directly attributable to the recovery. Under no circumstances shall the rates and charges provided in paragraph (b) of rule 6511 for PPI tows, be charged in addition to these hourly rate.
 - (V) A charge for use of additional equipment or labor used may be recovered from the motor vehicle owner at the towing carrier's actual costs incurred for the equipment and labor, plus a fee of not more than twenty-five percent of those actual costs.

22. Current rule 6511(d) sets the base towing rate for the nonconsensual towing of a motor vehicle with a GVWR of less than 10,000 pounds to \$160. It also lists allowable exceptions which effectively authorize the charging of additional fees. The task force recommends striking this rule in its entirety and replacing it with a new rule that establishes five rate tiers based on a cost model implemented by the task force. They also recommend clearly identifying all authorized fees and charges in the same rule as follows:

(b) Private Property Impound (PPI). The rate a towing carrier may charge for this type of tow consists of up to three elements: A base rate for the tow, a mileage charge including a potential fuel surcharge, and a charge for vehicle storage.

(I) The maximum base rates are as follows:

A. Motor vehicles of a gross vehicle weight less than or equal to 10,000 pounds is \$180.00

B. Motor vehicles of a gross vehicle weight between 10,001 pounds and 19,000 pounds is \$210.00

C. Motor vehicles of a gross vehicle weight between 19,001 pounds and 33,000 pounds is \$275.00; and

D. Motor vehicles of a gross vehicle weight more than 33,000 pounds is \$325.00

(II) The maximum mileage charge a towing carrier may assess for a PPI tow of a motor vehicle is \$3.80 per mile for each mile that the motor vehicle is towed, subject to the following limits: The maximum mileage that may be charged for a PPI tow is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities which lie farther than ten miles from U.S. Interstate Highway 25.

(III) An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of \$2.60. The Public Utilities Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The surcharge shall be based on the United States Department of Energy “weekly retail on-highway diesel prices” for the Rocky Mountain region. The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in fuel cost, or a one-percent decrease in the mileage rate for every ten-cent decrease in fuel cost, but in no event decreasing below the base rate.

(IV) A towing carrier shall not charge or retain any additional fees for the nonconsensual tow of a motor vehicle from private property. Any money collected beyond what is authorized by this rule must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.

23. The above rule shifts the unit of measure for its proposed weight tiers from the current gross vehicle weight rating of the towed vehicle to the gross vehicle weight of a towed vehicle. The Commission is very interested in receiving comments on the positive and negative effects this proposed change may have.

24. Current Rule 6511(f) authorizes mileage and fuel surcharges which may be charged by the towing carrier. The task force is recommending that these rules be stricken as they are incorporated into the proposed rule governing private property impounds 6511(b).

25. Current Rule 6511(g) authorizes specific charges for the storage of vehicles non-consensually towed. The task force recommends the charges remain the same but that the unit of measure be the gross vehicle weight rather than the gross vehicle weight rating. Again, the Commission is very interested in receiving comments on the positive and negative effects this proposed change may have.

26. Staff proposes adding rule 6511(i)(I) to clarify that no additional fees may be charged by a towing carrier for the towing of a power unit and trailer in combination as a single motor vehicle.

27. Staff proposes adding rule 6511(i)(II) to clarify that a vehicle in or on a trailer is considered cargo, and no additional fees may be charged by a towing carrier for the transportation of cargo.

28. Rule 6512 governs the release of a motor vehicle and the private property within it. Staff proposes to clarify the requirements of 6512(b) by striking the opening phrase “Unless the release of the motor vehicle does not comply with the release procedures agreed to between the towing carrier and the applicable law enforcement agency, a”. Instead, staff proposes to add the requirements in paragraph (b) to the list of requirements in paragraph (d) with which a towing carrier need not comply under the circumstances identified in paragraph (d). The same exception for law enforcement directed release procedures exists in paragraph (d).

29. Current Rules 6514(a)(IV) and 6514(c)(IV) are duplicative of the language of rule 6514(b) and result in inconsistent fine schedules. Staff proposes deleting the duplicative language in 6514(a)(IV) and 6514(c)(IV).

C. Findings and Conclusions

30. The recommendation of the Towing Task Force and Commission Staff are meritorious and worthy of consideration for the promulgation of rules governing the operations of towing carriers operating within the State of Colorado. We issue this Notice of Proposed Rulemaking to address the public safety, health, and welfare of Coloradoans and visitors to our state.

31. This matter shall be referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

32. The ALJ will conduct a hearing on the proposed rules and related issues on April 27, 2016.

33. Interested parties may file written comment, including data, views, or arguments, no later than March 30, 2016. Reply comments are due April 13, 2016. We request commenters include proposed or alternate rule language, as necessary, with their comments, and to address the question of whether the Commission can prohibit towing carriers from booting vehicles, or to make such a restriction a condition of receiving and maintaining a towing permit under § 40-10.1-401(3)(a). The Commission prefers and encourages interested persons to submit comments through its Electronic Filing System in this proceeding (16R-0095TO). The Commission will consider all submissions, whether oral or written.

34. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the March 10, 2016 edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: April 27, 2016

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

4. At the time this matter is set for hearing, interested persons may submit written comments and present them orally unless the ALJ deems oral presentation unnecessary. The Commission prefers and encourages interested persons to pre-file comments through its Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding (16R-0095TO).

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 3, 2016.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

FRANCES A. KONCILJA

Commissioners

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean, Director