

Decision No. C24-0077

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0085TO

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING TOWING CARRIERS, 4 CODE OF COLORADO REGULATIONS 723-6, TO IMPLEMENT HB 22-1314.

**COMMISSION DECISION DENYING EXCEPTIONS
TO RECOMMENDED DECISION NO. R23-0721
AND ADOPTING RULE AMENDMENTS,
WITH MODIFICATION**

Mailed Date: February 7, 2024

Adopted Date: January 31, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission denies the exceptions filed on November 13, 2023, by Wyatts Towing to Recommended Decision No. R23-0721, issued October 24, 2023, by Administrative Law Judge (ALJ) Alenka Han (Recommended Decision). The Commission adopts amendments to the Rules Regulating Towing Carriers, 4 *Code of Colorado Regulations* (CCR) 723-6 (Towing Rules), as recommended by the ALJ with one modification, which is discussed below. Among other updates and revisions, the adopted rule amendments revise the Towing Rules to reflect statutory changes enacted in recent legislation, including House Bill 22-1314. The adopted rules are attached to this Decision in legislative (*i.e.*, ~~strikeout~~ and underline) format (Attachment A) and final format (Attachment B).

B. Background

2. The Commission initiated this matter on February 22, 2023, by issuing a Notice of Proposed Rulemaking (NOPR) and referred the matter to an ALJ for disposition. The NOPR was published in the March 10, 2023, edition of the *Colorado Register* and on the Commission's website.

3. The purpose of this rulemaking is to amend the Commission's Towing Rules. The statutory authority for adoption of these rules is found at §§ 40-2-108, 40-10.1-106, and 40-10.1-410, C.R.S.

4. Multiple public comment hearings were conducted by the ALJ on the proposed rules, with a hearing convened on April 20, 2023, and continued to May 30, 2023, July 25, 2023, and August 31, 2023, for additional comment.

5. On October 24, 2023, the ALJ issued the Recommended Decision and recommended adoption of the amended Towing Rules that were provided in the attachments to the ALJ's decision.

6. By Interim Decision No. C23-0740-I, issued November 1, 2023, the Commission stayed the Recommended Decision on its own motion because of the press of business and to allow for a full review of the recommendations made by the ALJ.

7. On November 13, 2023, Wyatts Towing filed exceptions to the Recommended Decision, pursuant to § 40-6-109(2), C.R.S., requesting that the Commission consider certain revisions to the ALJ's recommended rules. No responses were filed to the exceptions.

8. The Commission deliberated at its December 13, 2023, and January 31, 2024, Commissioners' Weekly Meetings. The Commission denied the exceptions and adopted the

amended Towing Rules, as recommended by the ALJ, with the one modification discussed below.

C. Discussion

9. Under § 40-6-109(2), C.R.S., and Rule 1505(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, whenever an ALJ issues a recommended decision, the record is transmitted to the Commission and parties to the proceeding (or in the case of rulemaking, the participants) may file exceptions. When ruling on exceptions, the Commission may adopt, reject, or modify the ALJ's findings of fact and conclusions and may enter its own decision.

10. Below, we address the modifications to the recommended rules requested in the exceptions filed by Wyatts Towing. We also discuss the Commission's interest in collecting relevant data from towing carriers to develop a better understanding of this regulated industry and the resulting additional rule amendment that we adopt by this Decision. Any arguments in the exceptions that are not specifically addressed in the discussion below, have been considered and rejected.

1. Exceptions to Recommended Decision

a. Authorization Information Required on Tow Invoice

11. Wyatts Towing requests the Commission modify the language in Recommended Rule 6509(VII),¹ 4 CCR 723-6, regarding the information that a towing carrier must record on each tow invoice, specifically concerning the name and address of the property owner authorizing the tow. Wyatts Towing states the property owner is not in all cases the person

¹ We construe this exception as referring to Recommended Rule 6509(a)(VII).

authorizing the tow and it may be that the property owner has arranged for an authorized agent to perform this function on their behalf. Wyatts Towing's exceptions acknowledge that, in practice, Commission transportation staff has understood this distinction when auditing tow invoices for required information. Nonetheless, Wyatts Towing urges that the potential role of an authorized agent should be explicitly reflected in the rules. Wyatts Towing also argues that requiring the towing carrier to include in the tow invoice the specific name and address of the authorizing party can create personal risk for that individual, while at the same time providing no additional consumer protection. Wyatts Towing requests the Commission consider the following alternative rule language for the minimum information that must be recorded on a tow invoice:

- (VII) unless incorporated in the authorization in subparagraph 6508(b)(III),
 - (A) the printed name address, and telephone number of the property owner's or the property owner's authorized agent authorizing the tow; and
 - (B) the full legal signature of the property owners or the property owner's authorized agent authorizing the tow;
 - (C) tow carriers may provide the phrase "On File" on the tow invoice in place of the information in Paragraph 6509(VIII)(A) and (B) for safety reasons.² However, tow carriers must retain this information and provide to staff or law enforcement upon request.

12. The Commission denies this exception. Wyatts Towing's concerns about this rule referring to the "property owner" authorizing the tow are already addressed in the defined terms section of the rules, which expressly define "property owner" to include any *authorized agent for* the property owner. Specifically, Recommended Rule 6501(u)(II), 4 CCR 723-6, defines the term "property owner" to include "a person who has been authorized to act as an authorized agent for the property owner..." Thus, the plain meaning of "property owner" under the rules

² We construe this exception as referring to Recommended Rule 6509(a)(VII)(A) and (B).

already includes any authorized agent of the property owner and no revisions are needed to address this concern. We also decline to make any adjustments regarding disclosure of identifying information for the person authorizing the tow. The Commission has long recognized a distinction between the tow invoice document and the broader tow record that is retained by the towing carrier documenting all relevant information for the tow. This distinction remains unchanged. The towing carrier may continue to record the name of the person authorizing the tow as part of the tow record that it maintains for all aspects of the tow. However, the towing carrier must provide that information upon request. This is consistent with the newly enacted requirements in House Bill 22-1314, codified at §§ 40-10.1-407(1)(f) and (4), C.R.S., that now specifically require towing carriers to record certain information for each tow they perform, including the “name, address, telephone number, and signature of the person authorizing the tow” and provide that information to an authorized or interested person within 48 hours of a request.

b. Required Signage

13. Wyatts Towing urges the Commission to revert to broader language regarding the required signage that a towing carrier must post at a private property to alert drivers that their parked vehicles may be subject to tow. Wyatts Towing contends that an earlier version of Rule 6513(d)(IV), 4 CCR 723-6, that was considered during the rulemaking took a better approach. This prior version required that posted signage:

(IV) ... state “Authorized Parking Only”, or a similar statement of parking limitations or restrictions;

14. Wyatts Towing maintains the best approach to signage is adopting a flexible requirement in rule that would allow towing carriers more leeway to post the signage at private

properties that they believe is most descriptive for drivers, including statements such as: “*Tenant or registered guest parking only from 10 pm – 8 am.*” Wyatts Towing adds that flexibility in the rule would also afford more flexibility to Commission transportation staff when making enforcement decisions, so that they could make common sense judgements on whether the language contained on posted signage is sufficient to provide notice to vehicle owners.

15. The Commission denies this exception. The legislature enacted in House Bill 22-1314, codified at § 40-10.1-405(4)(f)(III)(D), C.R.S., a prescriptive requirement for the language that must be contained on signage; the Commission cannot waive or alter a statutory requirement by rule. Although we understand the concern raised by Wyatts Towing, in this circumstance, the statute controls, so we will adopt the rule as recommended by the ALJ. However, we clarify that nothing in the law or our implementing rule limits towing carriers to providing only the prescribed language and, thus, towing carriers can certainly include additional language, at their discretion, that advises drivers of specific parking policies or restrictions for the property, so long as the requisite language (“Authorized Parking Only”) is also present.

2. Collection of Towing Data

16. The Commission has determined that it requires additional information regarding the Colorado towing industry that it regulates, in order to carry out its regulatory function. Among other interests, we are mindful of the directive in Senate Bill 21-272 and its requirements that we more directly consider equity issues in our decision-making. We therefore have begun, and will continue, collecting and analyzing data concerning the sale of abandoned motor vehicles by towing carriers. We expect that this data, when considered as a whole, may provide us valuable insight into the various equity and disproportionate impact variables that the

Commission is considering across all its regulated industries. Consequently, we have requested that our transportation staff coordinate with the Colorado Department of Revenue to arrange for appropriate data sharing of sale details. We also adopt the following modification to the language in Rule 6511(g)(III), 4 CCR 723-6, with the new language shown in **bold text**:

Sale of an abandoned motor vehicle to cover the outstanding towing and storage charges must be done in accordance with the notice and procedural requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S. **Upon the effective date of a future Commission decision providing further guidance under this subparagraph 6511(g)(III), all towing carriers may be required to provide to the Commission a copy of the completed Private Tow Vehicle Information Request and Motor Vehicle Bill of Sale forms within 30 days of abandoned motor vehicle sales resulting from a nonconsensual tow.**

17. We request that transportation staff continue this work and report to the Commission on or around April 15, 2024, on its progress and analysis of this data and any further action required by the Commission to facilitate the continued efforts in this area.

II. ORDER

A. It Is Ordered That:

1. The Commission's Rules Regulating Towing Carriers, 4 *Code of Colorado Regulations* (CCR) 723-6, contained in Attachment A and Attachment B to this Decision, are adopted, consistent with the discussion above.

2. The adopted rules are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0085TO

3. The exceptions to Recommended Decision No. R23-0721, filed by Wyatts Towing on November 13, 2023, are denied.

4. The Commission adopts the amendments to the Rules Regulating Towing Carriers, 4 CCR 723-6, recommended by the Administrative Law Judge in Recommended

Decision No. R23-0721, in their entirety, except for the modification identified in this Decision and shown in the attachments to this Decision.

5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 13, 2023 and January 31, 2024.**

(SEAL)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners