

Decision No. C03-1293

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-139TO

IN THE MATTER OF PROPOSED RULES REGULATING TOWING CARRIER
TRANSPORTATION BY MOTOR VEHICLE 4 CCR 723-9.

**DECISION DENYING EXCEPTIONS TO
RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE**

Mailed Date: November 18, 2003

Adopted Date: November 18, 2003

I. BY THE COMMISSION

A. Statement

1. This rulemaking proceeding was commenced by the issuance of Decision No. C03-0360, on April 16, 2003. That decision provided notice of proposed rulemaking to adopt new rules regulating Towing Carrier Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-9 (Towing Rules).

2. The stated purpose of the rulemaking is to describe the scope and manner of Commission regulation over persons providing towing carrier services by motor vehicle in the State of Colorado. The proposed rules are largely a reenactment of many of the previous regulations, and carry forward the themes of the old rules, including: safety; the issuance, extension, transfer, and revocation of operating authority; civil penalties; insurance and registration requirements; the identification, condition, and leasing of motor vehicles; towing and storage rates; service standards; and record keeping. There are new rates, and the rule numbering system is new.

3. Notice of the proposed rulemaking was published in the May 12, 2003, edition of the Colorado Register, and the hearing was scheduled for June 12, 2003. Written comments were filed in advance of and during the hearing, by Eddie's Leaf Spring Shop and Towing, LLC (Eddie's). Comments focused on the proposed maximum rates and charges contained in proposed Rule 6519.

4. In Decision No. R03-1016, effective September 8, 2003, the Administrative Law Judge issued a recommended decision adopting rules. The period for filing exceptions was extended until November 12, 2003, and, on that day, Eddie's filed the exceptions at issue in this order. Usually, the response time for exceptions would be twenty days. However, this rulemaking proceeding must be complete by December 9, 2003. In order to have enough time for a party to file for rehearing, reargument, or reconsideration, pursuant to section 40-6-114, Colorado Revised Statutes, we must waive the response time, and hereby do so.

5. In the Recommended Decision, the ALJ ordered that any exceptions filed be not longer than 30 pages; Eddie's exceptions are much longer. Eddie's has not submitted a transcript along with the exceptions. In addition, Eddie's filed exceptions to Decision No. C03-360, which is not the Recommended Decision. This may be the reason that some of the exceptions do not address the proposed rules they claim to address. Nonetheless, given that Eddie's is acting in a *pro se* capacity and this is a *quasi* legislative matter, the Commission construes Eddie's filing as exceptions, and addresses them here.

B. Discussion

6. Eddie's exceptions concern both rate and non-rate rules. The first exception is to proposed Rule 6500(b), which concerns the applicability of the rules. The rule allows law enforcement agencies to require stricter standards when towing is at their behest. Because of the

unique and often unforeseen demands of law enforcement, we are reluctant to remove this provision, and therefore deny the exception. Much of the material presented by Eddie's on this rule concerns Colorado State University requirements to be an eligible tow company for the University, and is not relevant to the application of the rule.

7. The next exception is to proposed Rule 6501 which sets forth definitions. The initial objections are to (b) and (c), authorized agent, and authorized operator, respectively. Eddie's objects to oral authorization to act as agent for disposition of a vehicle and to operate the vehicle. We believe it impractical and unrealistic to require written contracts. This would add confusion to situations where vehicles have been lent among friends, and in other situations where a provision of a written contract is unrealistic. These exceptions are denied.

8. Eddie's also submits exceptions to proposed Rule 6501(u)(I) and Rule 6501(w), concerning "private property tow." The language of Eddie's submission does not relate to those proposed rules, but rather to Rules 6501(v)(I), and 6501(x). We take Eddie's comments to address Rules 6501(v)(I) and 6501(x). The proposed language in Rules 6501(v)(I) is carried forward from the prior rules, and is clear. We believe "private property tow" is defined clearly in the rules. We therefore deny Eddie's exceptions.

9. Similarly we deny Eddie's exception to proposed Rule 6501(y). The stated exception is to Rule 6501(x), but the language relates to Rule 6501(y). The definition of "public ways" is carried forward from the previous rules, and the Commission believes it to be clear. The Commission believes that adding examples proposed by Eddie's will increase public confusion. Therefore, we deny the exception to proposed Rule 6501(y).

10. Eddie's states that there is no definition in Rule 6501(dd), and seeks to fill the blank space. Because Rule 6501(dd) contains a definition of "towing vehicle," we decline to insert the definition that Eddie's proposes for that space, and deny the exception.

11. Eddie's also submits an exception to proposed Rule 6501(ee). Because there is no such rule, we deny the exception.

12. Eddie's exception to proposed Rule 6502(b) is also denied. The rule indicates that towing carriers *may* seek Commission action regarding any matter described in statute, but not provided for in the rules. This rule allows towing carriers to seek Commission action should an unforeseen situation arise which is not covered by the rules passed by the Commission, but that is covered by statute.

13. Eddie's submits an exception to proposed Rule 6507(b)(I)(B) which sets the minimum amount of liability insurance required of each towing company at \$750,000. Eddie's proposes that the rate be set at \$300,000, the level required in the mid-1990's. We believe that \$750,000 is the level appropriate to ensure protection of the public while keeping the premium burden on carriers reasonable. We therefore deny this exception. We disagree with Eddie's assertion that liability insurance is not designed to protect the public. Indeed, protection of the public is a significant reason towing companies are required to have insurance.

14. Eddie's objects to proposed Rule 6507(f) which requires the filing of insurance forms which are available on the Commission's website. Eddie's asserts that in the past, copies of the insurance policies themselves were adequate. This is unfair, according to Eddie's, because interstate carriers are not similarly burdened. We are unconvinced by Eddie's reasons, and thus deny the exception. We note that Eddie's does not compete with interstate carriers.

15. Eddie's has filed an exception to proposed Rule 6508, seeking a change so that before an order of revocation of authority to operate is firm, the tow carrier may produce information demonstrating proof of coverage. We find that the proposed rule best protects the rights of towing carriers and the public, and thus deny the exception. Under the proposed rules, if a carrier receives a notice of summary suspension, and has proof of coverage, all that needs to be done is to send proof of coverage to the PUC. The suspension is then lifted without further order from the Commission.

16. Eddie's also filed an exception to proposed Rule 6509. Eddie's believes that the rule's language should provide that the insurance policy number must be given to owners of damaged vehicles only when the claim of damage is uncontested by the towing carrier, and that provision of the policy number when the damage is contested should be done through a civil process. This would prevent disgruntled persons from making insurance claims. We find that the current language best protects the public because without this rule it has often proven too difficult for an injured party to obtain the required information from the towing company. If damage is contested, resolution of the matter would be through a civil proceeding.

17. Eddie's excepts to proposed Rules 6515(d) and 6519(b). The former exception states that the provision requiring the towing carrier to be available within one hour during non-business hours places an undue burden on towing carriers. Eddie's would make retrieval of a vehicle during non-business hours an arms-length transaction between the towing carrier and the owner. We deny this exception because owners often must have their vehicles immediately in order to conduct their everyday lives. Vehicles are too important to commerce and life in general to allow towing carriers to return them in a manner that is convenient only to the carrier. Towing carriers must be available upon one hour notice during off hours, only during the first 48

hours. This strikes us as a reasonable compromise. We handle the exception to Rule 6519(b) below.

18. Eddie's exceptions to proposed Rule 6516(a) would change the terms and definitions set forth in that rule. These terms and definitions concern private property, property owner, and publicly owned property. Because we find the terms and definitions to be clear and reasonable, we deny the exception relating to Rule 6516(a).

19. We also deny Eddie's exception to proposed Rule 6516(b). This rule states that a towing carrier shall not act as an agent for a property owner, but that a carrier, already paid by the property owner, may collect towing charges from the vehicle owner and then reimburse the property owner. This rule strikes us as a reasonable description of what transpires in many cases, in what is a reasonable and convenient arrangement for both the towing carrier and the property owner.

20. Eddie's exception to proposed Rule 6516(c) suggests a new form setting forth property owner authorization for tows. We think the recommended rule is clear and deters the use of pre-signed blank authorizations. We decline to adopt Eddie's suggestion that a separate form be used, and deny the exception.

21. Eddie's has filed several exceptions to the language on rates and charges set forth in proposed Rule 6519, including Rule 6519(b). Many of Eddie's arguments were made during the hearing, and were considered by the ALJ in the Recommended Decision. We believe that the language of proposed Rule 6519(c)(III) should require a cash payment, so the rule shall read as follows:

“(III) If payment in cash of the release fee is offered before removal, the towing carrier shall immediately:”

22. We also believe that the language of proposed Rule 6519(c)(III)(C) should require the tow carrier to make available for inspection the written authorization of the property owner, rather than provide a copy. The language of Rule 6519(c)(III)(C) will be as follows:

(C) make the property owner’s written authorization available for inspection by the owner of the towed motor vehicle or his or her authorized representative.

23. We find that the ALJ’s recommended decision on the rates and requirements set forth in Rule 6519 to be reasonable, and therefore deny Eddie’s objections to that rule with one exception. We believe the increases set forth in the rules are fair. We also believe that the terms regarding charges for retrieval before a vehicle is towed to be reasonable. Towing companies need not accept a job if they believe they are going to travel a long distance only to have the vehicle owner obtain release before the vehicle has been removed. However, we grant Eddie’s exception concerning form of payment, Rule 6519(c)(III), will be changed to indicate that payment “in cash” is necessary in order to retrieve a vehicle prior to tow. Proposed Rule 6519 shall otherwise be adopted as proposed.

24. We deny the exceptions to proposed Rule 6520. The terms of this rule allows the Commission to perform inspection and investigative activities, and takes into account the safety of the public. Commission staff must have instant access to carrier records to ensure that carriers adhere to Commission rules. We are also unable to create the suggested inspection mechanism without legislation.

25. Eddie’s exception to proposed Rule 6521(c)(1) does not seem to apply to that rule, but concerns penalties for lapses of insurance, which are covered in proposed Rule 6522.

We believe the civil penalties for lapses of insurance are reasonable given the need to protect the public. Similarly, we believe the rules and terms allowing for civil penalties are reasonable. We therefore deny Eddie's exceptions. As noted above, in cases where proof of insurance is available and provided to the Commission, there will be no penalties.

26. Eddie's last exception, to proposed Rule 6521, concerns waivers and variances. This rule allows a carrier to petition the Commission to waive the requirements of any particular rule. We believe the waiver process set forth in the proposed rule is reasonable, and therefore deny this exception. Eddie's seeks to have language included that would allow all regulated entities to avoid the impact of a particular rule. We believe that the rulemaking procedure is the appropriate place to discuss the general applicability of a rule. If the Commission is persuaded that a proposed rule is unnecessary, that rule will not be adopted. Where particular circumstances warrant the waiver of a rule, a waiver may be granted. It is up to each regulated entity to apply for waivers as they believe necessary.

27. For the reasons explained above, almost all of Eddie's exceptions are denied. However, we do wish to clarify that this is not Eddie's (or any other towing carrier's) last chance to seek changes to the towing rules. During the calendar year 2004, this Commission expects to make a wholesale recodification of all of its rules. During that process, towing carriers may submit comments again to the Administrative Law Judge handling the towing rules. We note that we are unsure whether all of the arguments submitted by Eddie's to the Commission were made to the Administrative Law Judge handling this matter in the first instance. Given the voluminous nature of the filed exceptions and the short time frame in which the Commission had to consider those exceptions, Eddie's may wish to assert any arguments made in its exceptions to the Commission in the next rulemaking proceeding.

II. ORDER

A. The Commission Orders That:

1. Response time to the Exceptions filed by Eddie's Leaf Spring Shop and Towing, LLC is waived, and the exceptions are denied with the exception of Rule 6519(c)(III) described above and below.

2. The rules appended to this decision as Attachment A are adopted.

3. Rule 6519(c)(III) shall read as follows:

“(III) If payment in cash of the release fee is offered before removal, the towing carrier shall immediately:”

4. The language of 6519(c)(III)(C) will be as follows:

“(C) make the property owner's written authorization available for inspection by the owner of the towed motor vehicle or his or her authorized representative.”

5. This order adopting the attached rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

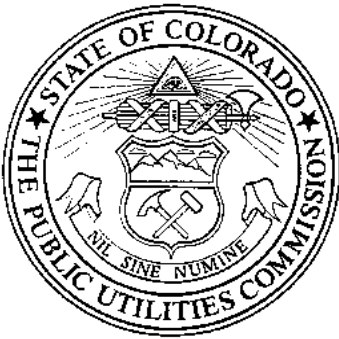
6. Within twenty days of final Commission action on the attached Rules, the adopted Rules shall be filed with the Secretary of State for publication in the next issue of the Colorado Register along with the opinion of the Attorney General regarding the legality of the Rules.

7. The twenty 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 Mailed Date of this decision.

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

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
November 18, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 Code of Colorado Regulations (CCR) 723-9

RULES REGULATING TOWING CARRIER TRANSPORTATION

BY MOTOR VEHICLE

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BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis for and purpose of these rules is to describe the manner of regulation over persons providing towing carrier services by motor vehicle in the State of Colorado. These rules address a wide variety of subject areas including, but not limited to: safety; civil penalties; the issuance, extension, transfer, and revocation of operating authority; insurance and registration requirements; towing and storage rates; the identification, condition, and leasing of motor vehicles; record keeping; and service standards.

The statutory authority for the promulgation of these rules can be found at §§ 40-2-108 and 40-13-107, C.R.S.

TOWING CARRIER RULES

6500. Applicability of Towing Carrier Rules.

- (a) Rules 6500 through 6599 apply to all towing carriers.
- (b) Nothing in these towing carrier rules shall be construed to prohibit a law enforcement agency from adopting and enforcing additional or more stringent requirements relating to safety, equipment, and accessories for any towing carrier providing towing services at the direction of the law enforcement agency.

6501. Definitions.

In addition to the definitions contained in this Rule, the statutory definitions apply. The following definitions apply only in the context of these Towing Carrier Rules:

- (a) "Abandoned motor vehicle" means an "abandoned motor vehicle" as defined by §§ 42-4-1802 and 42-4-2102, C.R.S.
- (b) "Authorized agent" means a person who has been given written or oral permission by the owner or lessee of a motor vehicle to act as agent for the disposition of said motor vehicle.
- (c) "Authorized operator" means a person who has been given written or oral permission to drive a motor vehicle by the owner or lessee of said motor vehicle.
- (d) "Commission" means the Public Utilities Commission of the State of Colorado.
- (e) "Enforcement official" means authorized personnel of the Commission, the Colorado Department of Revenue, the Colorado State Patrol, and any other law enforcement agency.
- (f) "Exempt interstate carrier" means any interstate or foreign commerce carrier by motor vehicle operating into, from, within, or through the State of Colorado pursuant to federal exemptions or partial exemptions from economic regulation, as described in § 40-10-120(3) and 40-11-115(3), C.R.S.
- (g) "Form D-1" means a NARUC Uniform Identification Cab Card for motor vehicle or driveway operations conducted by an exempt interstate carrier.

- (h) "Form E" means a NARUC Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, executed by a duly authorized agent of the insurer.
- (i) "Form G" means a NARUC Form G Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond, executed by a duly authorized agent of the surety.
- (j) "Form H" means a NARUC Form H Uniform Motor Carrier Cargo Certificate of Insurance, executed by a duly authorized agent of the insurer.
- (k) "Form J" means a NARUC Form J Uniform Motor Carrier Cargo Surety Bond, executed by a duly authorized agent of the surety.
- (l) "Form K" means a NARUC Form K Uniform Notice of Cancellation of Motor Carrier Insurance Policies.
- (m) "Form L" means a NARUC Form L Uniform Notice of Cancellation of Motor Carrier Surety Bonds.
- (n) "Form RS-3 registration receipt" means a receipt issued to a regulated interstate carrier indicating that the required financial responsibility has been filed with the Commission and fees have been paid.
- (o) "GCWR" means gross combination weight rating, the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR is determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.
- (p) "GVWR" means gross vehicle weight rating, the value specified by the manufacturer as the loaded weight of a single motor vehicle.
- (q) "Holidays" means those days designated as legal holidays by the Colorado General Assembly.
- (r) "Legal disability" means the condition of a trailer or semi-trailer that, due to its weight, height, or other size characteristics, is unable to be transported when attached to the vehicle that was pulling it.
- (s) "Motor vehicle" means any vehicle that is propelled or drawn by mechanical power on the public ways of the State of Colorado. The term also includes any trailer or semi-trailer attached to the vehicle, or any trailer or semi-trailer which, due to collision, mechanical disablement, legal disability, order of a law enforcement officer or property owner, must be towed or transported separately from the vehicle from which it was detached.
- (t) "Mountain area" means that part of the State of Colorado west of a line drawn ten air miles west of, and parallel to, Interstate Highway 25.
- (u) "NARUC" means the National Association of Regulatory Utility Commissioners.
- (v) "Non-consensual tow" means a tow authorized or directed by a person other than the owner, authorized operator, or authorized agent of the owner. A non-consensual tow includes:
 - (I) a private property tow;

- (II) any tow performed contrary to the specific direction of the owner, authorized operator, or authorized agent of the owner;
 - (III) except for a private property tow or a tow ordered by a law enforcement official, any tow performed without disclosure of the rates and charges to be assessed as set forth in rule 6518;
 - (IV) a tow directed or authorized by a law enforcement officer, either verbally or in writing, in any circumstance when the owner, authorized operator, or authorized agent of the owner is unavailable, unable, or unwilling to direct the tow; or
 - (V) any other tow performed without prior consent or authorization of the owner, authorized operator, or authorized agent of the owner of the motor vehicle.
- (w) "Normal business hours" means 8:00 AM to 5:00 PM, Monday through Friday, excluding holidays, and any additional hours and days the towing carrier may designate.
 - (x) "Private property tow" means the towing of a motor vehicle from private property at the request of the property owner, as those terms are defined in paragraph 6516(a).
 - (y) "Public ways" include, but are not limited to, every street, road, or highway in the state of Colorado over which the public generally has a right to travel.
 - (z) "Regulated interstate carrier" means any interstate or foreign commerce carrier by motor vehicle operating into, from, within, or through the State of Colorado under authority issued by the Federal Motor Carrier Safety Administration or its predecessor agency, as described in §§ 40-10-120(2) and 40-11-115(2), C.R.S.
 - (aa) "Towing carrier" or "carrier" means "towing carrier" as defined by § 40-13-101(3), C.R.S.
 - (bb) "Towing carrier permit" or "permit" means the permit issued by the Commission to a towing carrier pursuant to § 40-13-103(1), C.R.S.
 - (cc) "Towing Carrier Rules" means rules 6500 through 6599, inclusive.
 - (dd) "Towing vehicle" means "towing vehicle" as defined by § 40-13-101(4), C.R.S.

6502. Applications.

Towing carriers may seek Commission action regarding any of the following matters through the filing of an appropriate application:

- (a) For a permit to operate as a towing carrier, as provided in rule 6505.
- (b) For any other matter provided by statute or rule but not specifically described in this rule.

6503. Required Reports, Name Change, Address Change.

- (a) Within 48 hours of receipt of all supporting documentation required by this paragraph, each towing carrier shall file a signed report with the Commission detailing any name change or address change. Such a filing shall indicate all the affected towing carrier's permit numbers.

Name change filings, including trade name changes or trade name additions, shall include supporting documentation from the Colorado Secretary of State and/or the Colorado Department of Revenue.

- (b) In the event of a name change or an address change, the towing carrier shall comply with all other applicable Commission rules, including but not limited to, rules regarding financial responsibility filings.
- (c) Notice sent by any person to the towing carrier's address on file with the Commission shall constitute prima facie evidence that the notice was sent to the carrier at its correct address.
- (d) No name change shall be effective until proper proof of financial responsibility in the carrier's new name has been filed with the Commission.

6504. Permit Requirement and Limitation.

- (a) Unless exempted by § 40-13-103(2), C.R.S., no person shall operate as a towing carrier without a valid towing carrier permit issued by the Commission.
- (b) Every towing carrier shall keep a copy of its towing carrier permit issued under this rule in each towing vehicle it owns, controls, operates, or manages under said permit.
- (c) Towing carrier permits do not authorize a carrier to perform transportation services covered by Articles 10, 11, or 16 of Title 40, C.R.S.

6505. Permit Application.

- (a) Any person seeking a permit to operate as a towing carrier shall submit an application for a permit to the Commission and shall cause to be filed the information identified in paragraph (c) of this rule.
- (b) The application shall contain the following:
 - (I) The name of the applicant and the trade name under which operations will be conducted.
 - (II) The applicant's telephone number, complete physical address, and complete mailing address. A post office box is only acceptable if a physical address is also provided.
 - (III) If the applicant is a corporation:
 - (A) The name of the state in which it is incorporated. If the state of incorporation is not Colorado, the application shall also contain a certificate from the Colorado Secretary of State that qualifies the applicant to do business in Colorado.
 - (B) The location of its principal office in the State of Colorado.
 - (C) The names of its directors and officers.
 - (D) A copy of its articles of incorporation or charter.
 - (E) A copy of its certificate of assumed trade name, if any.

- (IV) If the applicant is a limited liability company:
 - (A) The state in which the company is organized. If the state of organization is not Colorado, the application shall also contain a certificate from the Colorado Secretary of State that qualifies the applicant to do business in Colorado.
 - (B) The location of the company's principal office in the State of Colorado.
 - (C) The name, title, and business address of each member.
 - (D) A copy of its certificate of assumed trade name, if any.
- (V) If the applicant is a partnership, the name, title, and business address of each partner.
- (VI) A list and complete description of the equipment to be operated under the permit, including information regarding motor vehicle year, make, model, vehicle identification number, and GVWR.
- (VII) A statement that applicant is familiar with the Towing Carrier Rules and all applicable safety rules and that applicant will comply with them.
- (VIII) A statement that applicant understands that the filing of an application does not constitute authority to operate.
- (IX) A statement whether or not the towing carrier will provide storage for towed motor vehicles. If storage is provided, the application shall contain the storage facility's address and, if one exists, telephone number.
- (X) A statement made under penalty of perjury and signed by an officer, a partner, an owner, or an employee of the applicant, as appropriate, who is authorized to act on behalf of the applicant and which states that the contents of the application are true, accurate, and correct. The application shall contain the complete address of the affiant.
- (XI) An application fee of \$150.
- (c) In addition to the application, a person seeking a permit to operate as a towing carrier shall cause to be filed both the required proof of financial responsibility and the required annual identification fees.
- (d) The Commission will not issue a permit to operate as a towing carrier until the Commission has received a complete application, the required proof of financial responsibility, and the required annual identification fees.

6506. Revocation, Suspension, Alteration, or Amendment of Permit.

- (a) After a hearing upon at least ten days' notice to the towing carrier affected, the Commission may revoke, suspend, alter, or amend a towing carrier permit for any of the following reasons:
 - (I) Violation of, or failure to comply with, any statute or regulation concerning towing carriers or the towing, storage, or disposal of towed motor vehicles. This paragraph

includes, but is not limited to, a violation of part 18 and part 21 of article 4 of title 42, C.R.S.

- (II) Violation of, or failure to comply with, the terms and conditions of the permit.
 - (III) Exceeding the authority granted in the permit.
 - (IV) Violation of, or failure to observe and comply with, any Commission order, rule, or regulation.
- (b) A towing carrier whose towing carrier permit(s) is revoked for a third time shall not be issued another towing carrier permit for one year from the date of the third permit revocation. In determining whether a carrier has had its permit(s) revoked three times, a revocation for failure to maintain the financial responsibility required by rule 6507 shall not be counted as one of the three revocations unless the towing carrier knowingly operated without the required financial responsibility.

6507. Financial Responsibility.

- (a) The following financial responsibility is required.
- (I) Motor vehicle liability. Every towing carrier shall obtain and keep in force at all times motor vehicle liability insurance coverage or a surety bond providing the same coverage. Motor vehicle liability means liability for bodily injury and property damage.
 - (II) Cargo liability. Every towing carrier shall obtain and keep in force at all times cargo liability insurance coverage or a surety bond providing the same coverage. Cargo liability coverage for a towing carrier shall include coverage of physical damage to the motor vehicle in tow (on hook) and loss of its contents.
 - (III) Garage keeper's liability. Towing carriers providing storage, directly or through an agent, shall obtain and keep in force at all times garage keeper's liability insurance coverage.
- (b) The minimum levels of financial responsibility are as follows:
- (I) Motor vehicle liability coverage.
 - (A) Motor vehicle liability coverage shall be combined single limit liability.
 - (B) Schedule of limits:

Type of Carrier	Vehicle GVWR	Minimum Level
Towing Carriers	Any GVWR	\$ 750,000

- (C) Towing carriers may obtain a certificate of self-insurance issued pursuant to §§ 10-4-716 and 42-7-501, C.R.S.
- (II) Cargo liability coverage shall provide coverage to the extent of the towing carrier's legal liability for loss or damage to the property of any person or persons, other than the insured, which is carried in, upon, or attached to the towing vehicle and/or its trailers or dollies operated by, or for, or under the control of the towing carrier.

- (III) Garage keeper's liability coverage shall provide coverage to the extent of the towing carrier's legal liability for loss or damage to the property of any person or persons, other than the insured, which is stored by the towing carrier directly or through an agent.
- (c) Except as provided in paragraph (d), the towing carrier shall ensure that insurance or surety bond coverage:
 - (I) is provided only by insurance or surety companies authorized to provide such coverage in the State of Colorado;
 - (II) is not less than the minimum limits set forth under paragraph (b) of this rule;
 - (III) covers all motor vehicles which may be operated by or for the towing carrier under its towing carrier permit, with such coverage being accomplished by a "Waiver of Description" endorsement on each policy;
 - (IV) provides for the payment of benefits by the insurance or surety bond company directly to parties damaged by the towing carrier on a "first dollar"/"dollar one" basis;
 - (V) if the coverage contains a retained risk provision, such provision shall obligate the insurance or surety company to pay the party damaged by the towing carrier regardless of the level of funds in the retained risk pool; and
 - (VI) does not permit a towing carrier to pay benefits directly to a party damaged by said carrier.
- (d) The provisions of subparagraphs (IV) and (VI) of paragraph (c) of this rule shall not apply to towing carriers who have filed proof of self-insurance pursuant to §§ 10-4-716 or 42-7-501, C.R.S.
- (e) The towing carrier shall retain each original insurance or surety policy for required coverage and shall keep a copy of its motor vehicle liability coverage in each motor vehicle that it operates.
- (f) The towing carrier shall cause to be filed with the Commission the appropriate form in lieu of the original policy as follows:
 - (I) Motor vehicle liability.
 - (A) For all towing carriers, a Form E or G; except that a Colorado Form 10-INS may be used until December 31, 2003.
 - (B) For towing carriers obtaining a certificate of self-insurance under the provisions of §§ 10-4-716 or 42-7-501, C.R.S., a copy of said certificate. Upon renewal of the certificate, the carrier shall file a copy of the most current certificate.
 - (II) Cargo liability. For all towing carriers, a Form H or J; except that a Colorado Form 12-INS may be used until December 31, 2003.
 - (III) Garage keeper's liability. For all towing carriers, a Colorado Form 14-INS.

- (IV) All forms referred to in this rule are available from the Commission or on its website.
- (g) The towing carrier shall ensure that each policy and each form required by or identified in this rule contains the towing carrier's exact name, trade name (if any), and address as shown in the records of the Commission.
- (h) The towing carrier shall ensure that any change of name, trade name (if any), address, or policy number is filed, using an appropriate endorsement or amendment, with the Commission.
- (i) The proof of minimum levels of financial responsibility required by this rule is public information. Upon written request from a member of the public, the Commission will release this information.
- (j) Each certificate of insurance required by and filed with the Commission shall be kept in full force and effect unless and until canceled by a 30-day written notice, on Form K or Form L, as applicable, from the insurer to the Commission. Time shall run from the date the notice is received by the Commission. In lieu of the prescribed form, the insurer may cancel a certificate of insurance by letter to the Commission provided the letter contains the same information as required by the prescribed form.

6508. Summary Suspensions and/or Revocations for Lack of Financial Responsibility.

- (a) Whenever Commission records indicate that a towing carrier's required insurance or surety coverage, except for garage keeper's coverage, is or will be canceled and the Commission has no proof on file indicating replacement coverage, the Commission shall summarily suspend such carrier's towing permit. The summary suspension shall be effective on the date of coverage cancellation.
- (b) The Director of the Commission shall send a notice of canceled insurance or surety coverage to such a towing carrier. The notice shall advise the carrier that its authority to operate is summarily suspended as of the coverage cancellation date and that the Commission has initiated or may initiate revocation proceedings.
- (c) A towing carrier receiving notice of summary suspension shall not conduct operations under any of its authorities, including operations under any towing permit, until proper proof of insurance or surety coverage is filed with the Commission.
- (d) If the Commission receives proper proof of coverage prior to commencement of revocation proceedings, the summary suspension will be deemed lifted without further order of the Commission.
- (e) If the Commission has initiated revocation proceedings but receives proper proof of coverage prior to a final Commission order of revocation, the Commission shall lift the summary suspension even if there is a lapse in coverage. However, operations performed during lapses in coverage are subject to civil penalty assessments.

6509. Written Request for Financial Responsibility Information.

In the event an owner of a towed motor vehicle, an authorized operator, or an authorized agent of the owner claims that damage to the towed motor vehicle occurred during a tow or storage, the towing carrier shall provide, in writing, the name of its insurance or surety company and its policy number within 48 hours

after receiving a written request for that information from the owner, authorized operator, or authorized agent of the owner of the towed motor vehicle.

6510. Annual Motor Vehicle Identification Fees.

- (a) Every towing carrier shall pay to the Commission an annual identification fee of five dollars before the first day of January of each calendar year, for each motor vehicle that such carrier owns, controls, operates, or manages within the State of Colorado as set forth in § 40-2-110.5, C.R.S.
- (b) A towing carrier that obtains a permit during the calendar year shall pay the annual identification fees at the time of registering as a towing carrier.
- (c) A towing carrier that acquires one or more additional motor vehicles during the calendar year shall pay the annual identification fees prior to putting the additional vehicle(s) in-service.
- (d) Annual identification fees shall be valid only for the calendar year for which they are purchased.
- (e) Proof of payment of each annual identification fee shall be in the form of a vehicle identification stamp issued by the Commission; except that a Form RS-3 shall be issued to a regulated interstate carrier registered under the Single State Registration System.
 - (I) Except as provided in subparagraphs (II) or (III) of this paragraph, a towing carrier shall not operate a motor vehicle unless it has affixed a valid vehicle identification stamp to the inside lower right-hand corner of the motor vehicle's windshield.
 - (II) Towing carriers that are also exempt interstate carriers shall carry a Form D-1 with the identification stamp affixed on the back of the cab card in the square bearing the name of the State of Colorado in lieu of affixing the vehicle identification stamp to the windshield.
 - (III) Towing carriers that are also regulated interstate carriers registered under the Single State Registration System shall carry a copy of the current year's Form RS-3 Registration Receipt in each motor vehicle in lieu of affixing the vehicle identification stamp to the windshield or to the Form D-1.
- (f) Towing carriers using a motor vehicle in both interstate and intrastate operations need only pay the fees associated with interstate operations for that motor vehicle.

6511. External Markings of Motor Vehicles.

- (a) Except as provided by paragraph (b) of this rule, a towing carrier shall mark each of its motor vehicles in accordance with this rule.
 - (I) The markings shall:
 - (A) be placed on both sides of the motor vehicle;
 - (B) contain only characters that contrast sharply with the background on which the characters are placed; and

- (C) contain only characters that are readily legible at a distance of 50 feet from the motor vehicle. Legibility shall be determined during daylight hours and while the motor vehicle is stationary.
- (II) The markings shall contain the following information:
 - (A) the name or trade name as set forth in the towing carrier's towing carrier permit; and
 - (B) the letter and number designation of the towing carrier's towing carrier permit, preceded by the letters "CO PUC."
- (b) A towing carrier shall remove all markings from a motor vehicle if the carrier is permanently withdrawing the motor vehicle from service or is leasing the motor vehicle to another person for purposes not related to operations under the carrier's permit.

6512. Designation of Agent.

- (a) Each towing carrier shall file in writing with the Commission, and shall maintain on file, its designation of the name and address of a person upon whom service may be made of any notice, order, process, or demand. The named person is the carrier's designated agent. A carrier shall not designate the Secretary of State of the State of Colorado. The person designated, if a natural person, shall be at least 18 years of age. The address of the person designated shall be in the State of Colorado.
- (b) If the designated agent changes, or if the designated agent's name or address changes, the towing carrier shall notify the Commission by filing a new designation within 48 hours of receiving the information required to be filed.
- (c) Service upon a towing carrier's named designated agent as filed with the Commission shall be deemed to be service upon the towing carrier.

6513. Leasing of Motor Vehicles.

- (a) For purposes of this rule, "lessee" means a towing carrier, and "lessor" means the motor vehicle owner.
- (b) Subject to the requirements of this rule, a lessee may lease one or more motor vehicles for use in the lessee's fleet.
- (c) The lessee shall ensure that leases are in writing on a form supplied by the Commission. The lease shall contain: the name and signature of the lessor; the name and signature of the lessee; the date of the agreement; for each motor vehicle subject to the lease, the motor vehicle's make, model, year, and identification number; the period covered by the lease; and the consideration to be paid by the lessee. Nothing in this rule precludes the use of a more comprehensive lease supplementing the Commission's lease form. The lessee shall ensure that any supplemental lease provisions do not conflict with the required information of the Commission's lease form.
- (d) The lessee shall ensure that a copy of the lease is carried in each leased motor vehicle during the time that the lease is effective.

- (e) The lessee shall ensure that a copy of the lease is kept in the lessee's files during the time that the lease is effective and for six months after the date on which the last motor vehicle covered by the lease leaves the lessee's control.
- (f) During the existence of the lease, the lessee shall have full discretion and complete control of the leased motor vehicle and shall be fully responsible for its operation in accordance with applicable law. This responsibility includes, but is not limited to, compliance with marking requirements; safety of the motor vehicle and its equipment and accessories; and all financial responsibility.

6514. Equipment and Accessories.

In addition to complying with all applicable safety regulations, all towing vehicles shall meet the following minimum requirements:

- (a) Basic towing vehicle requirements.
 - (I) A towing carrier shall equip its towing vehicles with engines, transmissions, differentials, driveline components, brake systems, frames, steering components, and suspensions of sufficiently heavy construction to safely winch, lift, tow, load, and transport the towed motor vehicle.
 - (II) A towing carrier shall maintain its towing vehicles in a manner ensuring the safe winching, lifting, towing, loading, and transporting of the towed motor vehicle.
 - (III) A towing carrier shall ensure that all its towing vehicles have each of the following:
 - (A) a GVWR of at least 10,000 pounds;
 - (B) fender coverings for front and rear wheels;
 - (C) the following operational electric lights:
 - (i) one spotlight, mounted behind the cab, capable of lighting the scene of disability and the motor vehicle to be moved (reverse/back-up lights of the towing vehicle shall not be used in lieu of the spotlight); and
 - (ii) one portable, combination light system capable of being securely attached on the rear of the towed motor vehicle; consisting of (with an equal number on each side) two tail lamps, two stop lamps, and two turn signals; and operated in conjunction with analogous lights on the towing vehicle; and
 - (D) the following accessories:
 - (i) one shovel;
 - (ii) one broom; and
 - (iii) one steering wheel tying device free from cracks, fraying or deterioration.

- (b) Winching, lifting, towing, and carrying equipment shall be maintained in a manner to ensure the safe winching, lifting, towing, loading, and transporting of the towed motor vehicle and shall include at least one of the following:
 - (I) Winch and crane: A power-driven winch and crane with a capacity of not less than 6,000 pounds with a winch cable capable of withstanding a test of not less than 10,000 pounds at breaking point or hydraulic system vehicle lift and a cradle, with a tow plate or sling, equipped with safety chains and chains with J-hooks of sufficiently heavy construction to ensure the safe lifting of the motor vehicle;
 - (II) Wheel-lift system: A wheel-lift system with a stinger, L-arm brackets, safety chains and tie-down straps, or a mechanical wheel retainer device forming an integral part of the L-arm bracket, of sufficiently heavy construction to secure the motor vehicle to the wheel-lift unit and to ensure the safe lifting and towing of the motor vehicle; or
 - (III) Rollback system: A rollback system with a winch and cable as described in subparagraph (I) of this paragraph, safety chains, tie-down equipment, and truck bed of sufficiently heavy construction to ensure the safe loading and transporting of the motor vehicle.
- (c) A towing carrier shall not tow a motor vehicle that is so extensively damaged as to be unmovable on its own wheels, unless the towing vehicle is equipped with dollies, a wheel-lift system, or a rollback system of sufficiently heavy construction to ensure the safe loading and towing of the damaged motor vehicle.
- (d) Rescue and recovery equipment.
 - (I) For purposes of this paragraph (d), rescue and recovery operation means that a motor vehicle must first be moved by means of the mechanical devices described in subparagraph (d)(II) before it is capable of being towed by the towing vehicle.
 - (II) The following equipment is required only if the towing carrier performs rescue and recovery operations:
 - (A) Dead-man blocks/scotch blocks and other tie-down equipment that are sufficient to hold the towing vehicle in place while performing the rescue or recovery operation;
 - (B) Web straps or slings that are free of cuts or fraying across 50 percent of the width of their surface;
 - (C) Snatch blocks that are free of any cracks and excessive wear, and are lubricated sufficiently to allow free movement of the sheave and other swivel points; and
 - (D) Chains that are capable of withstanding a test of not less than 10,000 pounds at breaking point, with links that are free of cracks and of wear that exceeds 15 percent of the original stock diameter.

6515. Storage Facilities.

- (a) Disclosure of facility location. Within one hour of placing a motor vehicle other than an abandoned motor vehicle in a storage facility, a towing carrier shall disclose the location of the storage facility as follows:
 - (I) By notifying the owner, the authorized operator, or the authorized agent of the owner of the towed motor vehicle;
 - (II) By notifying the owner of the private property from which the motor vehicle was towed; or
 - (III) By notifying the responsible law enforcement agency having jurisdiction over the place from which the motor vehicle was towed.
- (b) Disclosure for abandoned motor vehicles. A towing carrier which places an abandoned motor vehicle in a storage facility shall disclose the location of the storage facility by complying with the procedure for abandoned motor vehicles in Parts 18 and 21 of Article 4 of Title 42, C.R.S.
- (c) Noncompliance with disclosure requirements. A towing carrier that fails to comply with the disclosure requirements of this rule shall not charge, collect, or retain any fees or charges for storage of the stored motor vehicle.
- (d) Release of motor vehicles from storage. A towing carrier that accepts for storage a motor vehicle that has been towed as a private property tow shall be available to release said motor vehicle within the first 48 hours of storage to the owner, authorized operator, or authorized agent of the owner of the motor vehicle either:
 - (I) With one hour's notice during all times other than normal business hours; or
 - (II) Upon demand during normal business hours.

6516. Authorization for Towing of Motor Vehicles.

- (a) For purposes of this rule:
 - (I) "Private property" includes publicly owned property except public ways.
 - (II) "Property owner" includes:
 - (A) a private property owner or lessee;
 - (B) an agent of the private property owner, authorized in writing to act as agent; or
 - (C) a federal, state, or local government entity, or such entity's employees responsible for publicly owned property.
 - (III) "Publicly owned property" includes, but is not limited to, medians, parking lots, or areas where parking is reserved, regulated by permits or meters, or otherwise restricted or prohibited.

- (b) Towing carrier not an agent. A towing carrier, its employees, partners, officers, directors, stockholders, or independent contractors working for or with the towing carrier shall not act as an agent for the property owner. Nothing in this paragraph shall preclude a towing carrier, which towing carrier has been paid for the private property tow by the private property owner at rates in accordance with rule 6519(a), from collecting the towing charges from the motor vehicle owner and reimbursing said charges to the private property owner.
- (c) Authorization.
 - (I) A towing carrier shall not tow any motor vehicle unless one of the following conditions is met:
 - (A) The towing carrier is directed to perform a tow by a law enforcement officer;
 - (B) The towing carrier is requested to perform a tow by the owner, authorized operator, or authorized agent of the owner of a motor vehicle; or
 - (C) The towing carrier is requested to perform a tow from private property upon the authorization of the property owner.
 - (II) Property owner authorization. The authorization from the property owner shall be in writing; shall identify, by make and license plate number (or in lieu thereof, by vehicle identification number), the motor vehicle to be towed; and shall include the date, time, and place of removal.
 - (A) The authorization shall be filled out in full, signed by the property owner, and given to the towing carrier at the time the motor vehicle is to be removed from the private property.
 - (B) A towing carrier shall not accept or use blank authorizations pre-signed by the property owner.
 - (C) A towing carrier shall make the written authorization available for inspection by the owner of the towed motor vehicle or his or her authorized representative.
 - (D) The written authorization may be incorporated with the tow record/invoice required by rule 6517.
- (d) Noncompliance. If a tow is performed in violation of this rule, or in violation of § 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 that is held in storage and that was towed without proper authorization shall be released immediately to the owner, lien holder, or agent of the owner or lien holder.

6517. Tow Record/Invoice.

- (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all non-consensual tows. The tow record/invoice form shall contain the following information:
 - (I) the serial number of the tow record/invoice;

- (II) the name, address, permit number, and telephone number of towing carrier;
 - (III) the address of the storage facility used by the towing carrier, including the telephone number for that storage facility if the number is different than the telephone number of the carrier;
 - (IV) the date and time of tow commencement and completion, the time of arrival on the scene if different from the time of commencement, the time the towed motor vehicle is placed in storage, and all other times necessary for the purpose of calculation of hourly charges;
 - (V) the make, model, year, vehicle identification number, and, if available, license plate number of the motor vehicle towed;
 - (VI) the origin address of the tow, the destination address of the tow, and the one-way mileage between such addresses;
 - (VII) the name, address, and telephone number of the person authorizing the tow;
 - (VIII) the signature of the person authorizing a private property tow;
 - (IX) a list of the contents of the motor vehicle towed;
 - (X) the unit number or license number of the towing vehicle;
 - (XI) the signature of the towing vehicle operator;
 - (XII) an itemized invoice of all towing charges assessed; and
 - (XIII) the signature of the owner, authorized operator, or other authorized person to whom the motor vehicle is released.
- (b) The tow record/invoice shall be a multiple copy form. The copies shall be distributed as follows:
- (I) The towing carrier shall retain the copy bearing all required original signatures for authorization and release.
 - (II) The towing carrier shall deliver a copy to the owner, authorized operator, or authorized agent of the owner at the time of payment of towing charges and release of the towed motor vehicle.

6518. Disclosure of Rates and Charges.

- (a) Except as provided in paragraph (c) of this rule, prior to performing any tow, a towing carrier shall disclose to the owner, authorized operator, or authorized agent of the owner of the motor vehicle all rates and charges to be assessed.

- (b) This disclosure may either be written or oral and shall include, but is not limited to, the following information:
 - (I) any extra charges made necessary because, at the time of the tow, the towing carrier would be unable to deliver the motor vehicle to a repair or body shop during the normal working hours of such repair or body shop;
 - (II) any extra charges made necessary because, at the time of the tow, the towing carrier would be unable to deliver the motor vehicle to a location and at a time agreed upon by the owner, authorized operator, or authorized agent of the owner to take delivery of the vehicle and pay the tow charges; and
 - (III) estimated charges for mileage and storage.
- (c) This rule does not apply to private property tows or tows ordered by law enforcement officials.

6519. Rates and Charges.

- (a) Rates and charges for private property tows. Except as otherwise provided by this rule, the maximum rate that a towing carrier may charge for a private property tow of a motor vehicle with a GVWR of less than 10,000 pounds is \$138.00. This maximum rate shall include, but not be limited to, charges for all towing services rendered, hookup fees, and use of dollies or go-jacks; gate fees, storage for the first 24 hours commencing at the time the vehicle is placed in storage, and release of the motor vehicle from storage pursuant to rule 6515 (d); and all commissions paid and other services rendered in performing such private property tow.
- (b) Except as provided in paragraph (a) of this rule, the maximum charge for release of a motor vehicle from storage at any time other than normal business hours is \$50.00.
- (c) Charge if retrieved before removal.
 - (I) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without authorization on private property attempts to retrieve the motor vehicle before its removal from the private property, the maximum release fee (whether motor vehicle is hooked up or not) is \$53.00.
 - (II) In such circumstances, the towing carrier shall advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle that he or she may offer payment of the towing carrier's release fee.
 - (III) If payment in cash of the release fee is offered before removal, the towing carrier shall immediately:
 - (A) accept payment;
 - (B) release the motor vehicle; and
 - (C) make the property owner's written authorization available for inspection by the owner of the towed motor vehicle or his or her authorized representative. ~~deliver a copy of the property owner's written authorization to the owner, authorized operator, or authorized agent of the owner of the motor vehicle.~~

- (d) Certified VIN verification procedure.
 - (I) When an abandoned motor vehicle that is less than five model years old and that the Colorado Department of Revenue cannot find in its records must be sold, the maximum rates that may be charged for a certified vehicle identification number (VIN) verification are as follows:
 - (A) \$69.00 for one additional hookup;
 - (B) \$69.00 per hour waiting time while waiting for inspection; and
 - (C) \$2.70 per mile mileage charges.
 - (II) In addition, the towing carrier may charge for all other documented expenses of obtaining the VIN verification.
- (e) Notifications. The charges for notification(s) to the owner and the lien holder(s) of the motor vehicle held in storage shall be in accordance with §§ 42-4-1804(6)(a) and 42-4-2103(3)(c)(I), C.R.S., and the rules of the Colorado Department of Revenue.
- (f) Mileage. One-way mileage charges may be assessed for all private property tows at a rate not to exceed \$2.70 per mile.
- (g) Additional charges in mountain areas.
 - (I) When a motor vehicle is towed between points in the mountain area, the towing carrier may add an additional amount not to exceed 12 percent of the towing charges.
 - (II) When a motor vehicle is towed into or out of the mountain area, the towing carrier may add an additional amount not to exceed 12 percent of the towing charges, provided that the mileage charge is prorated for, and applied only to, mileage actually traveled within the mountain area.
- (h) Storage for non-consensual tows.
 - (I) Generally.
 - (A) Storage charges shall not exceed the following rates based on a 24-hour period or any portion of a 24-hour period:
 - (i) \$22.00 for motor vehicles having a GVWR of less than 10,000 pounds;
 - (ii) \$28.00 for motor vehicles having a GVWR of 10,000 pounds or more;
 - (iii) in lieu of subparagraphs (A)(i) and (ii), and at the option of the carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at \$1.10 per foot or portion thereof.
 - (B) For storage in the mountain area, a tow carrier may add up to 12 percent for motor vehicles of any GVWR.

- (C) Storage charges shall not be charged, collected, or retained for any day in which garage keeper's liability insurance coverage is not kept in force.
- (II) Private property tows. Storage charges for private property tows shall not commence until the expiration of the first 24-hour period of storage (see paragraph 6519(a)).
- (III) Other non-consensual tows. Storage charges for non-consensual tows other than private property tows may commence immediately after the motor vehicle is placed in storage.
- (IV) Maximum accumulated charges for abandoned motor vehicles.
 - (A) Unless a hold order has been placed on the motor vehicle by a court, district attorney, or law enforcement agency, or unless extenuating circumstances have prevented a towing carrier from complying with the notice requirements of § 42-4-2103, C.R.S., storage charges after the tow and storage of an abandoned motor vehicle (other than a collector's item) shall not be accumulated beyond 60 days after the mailing date of the report required by § 42-4-2103(4), C.R.S.
 - (B) If an abandoned motor vehicle is a collector's item as defined in § 42-12-101(2), C.R.S., storage charges shall not be accumulated beyond 120 days after the mailing date of the report required by § 42-3-2103(4), C.R.S.
 - (C) 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.
- (V) Consequences of failure to notify. A towing carrier holding a motor vehicle in storage who cannot demonstrate that it has made a good faith effort, as set forth in §§ 42-4-1804(6)(b) and 42-4-2103(3)(c)(II), C.R.S., to comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S., shall release the motor vehicle immediately to the owner, lien holder, or their agents without charging, collecting, or retaining storage fees.
 - (i) Rates for off-road retrieval. When accompanied by documentation showing starting and ending times of the retrieval, which documentation may include law enforcement incident reports and verification, a towing carrier may charge for off road retrieval at its hourly rates on file at the offices of the Public Utilities Commission. Hourly rates for off-road retrieval shall be calculated from the time the towing carrier arrives at the scene and the law enforcement officer approves the retrieval to the time the towing carrier has completed the retrieval and may include time to load and to secure retrieval equipment and the cleanup of the scene. Off-road retrieval time shall not include loading and securing the retrieved motor vehicle to, or onto, the towing vehicle. The cost of additional equipment used may be recovered from the motor vehicle owner at the carrier's actual costs incurred plus an administrative fee of not more than five percent of those actual costs, provided that the actual costs are reasonable by industry standards.
 - (j) Incidental costs which may be charged when a stored motor vehicle is sold. When a stored motor vehicle is sold, a towing carrier may charge the costs of maintaining that motor vehicle while in storage in accordance with § 38-20-109, C.R.S. When a stored motor vehicle that does not come within the provisions of § 38-20-109, C.R.S., is sold, a towing carrier may charge the costs of maintaining that motor vehicle, to a maximum of \$90.00. "Cost of maintaining a motor vehicle" means a documented cost that is incurred by the towing carrier and that keeps a motor vehicle in safe or operable condition.

- (k) Exemption for municipal and county contracts. Notwithstanding any other provision of these rules, paragraphs (a) – (j) of this rule shall not apply to any tow or any storage of a towed vehicle performed under a contract with a municipal, county, state, or federal agency.

6520. Inspection of Records, Facilities, and Towing Vehicles.

- (a) Books and records, equipment and storage facilities. Upon request of any enforcement official and during normal business hours, a towing carrier shall make available for inspection its books and records concerning its towing and storage operations, its proof of financial responsibility, and its equipment and storage facilities.
- (b) Upon demand by any enforcement official, the towing carrier shall make available for inspection its towing vehicles and any records required to be carried in the towing vehicle including, but not limited to, its towing carrier permit, Form D-1 or Form RS-3, and proof of financial responsibility.
- (c) Retention of records. The towing carrier shall retain copies of towing record/invoices, storage bills, authorizations for tows, and any other written records required by these rules for a minimum of three years.

6521. Waiver and Variance of Rules.

- (a) Variance or waiver - general.
 - (I) As used in this rule, "variance" means authorization to use a different method or means to comply with a rule.
 - (II) As used in this rule, "waiver" means authorization not to comply with a rule.
 - (III) The Commission may permit a variance of a rule, or may waive a rule, if it concludes that, under the circumstances presented, strict compliance with the rule is impossible, impracticable, or unreasonable. The Commission may grant a variance or a waiver subject to such terms and conditions as it deems appropriate. The Commission will not grant a variance or a waiver if the variance or waiver would be contrary to law.
 - (IV) A towing carrier must comply with the rules until and unless the Commission grants that carrier a variance or a waiver of one or more rules.
- (b) Procedure for seeking variance or waiver.
 - (I) A request for a variance or a waiver made in an existing docket shall be made by motion.
 - (II) A request for a variance or a waiver made outside a docketed proceeding shall be made by petition.
 - (III) A request for a variance or a waiver, whether made by motion or by petition, shall include at least the following information:
 - (A) Citation to the specific provision of the rule which is sought to be varied or waived;
 - (B) A clear and concise statement of the variance or waiver requested;

- (C) A statement of the facts and circumstances relied upon to demonstrate why the Commission should grant the variance or waiver;
 - (D) A statement regarding the duration of the requested variance or waiver, including a statement of specific date or event which will terminate the variance or waiver, if granted;
 - (E) A statement whether the variance or waiver, if granted, would be full or partial; and
 - (F) An acknowledgment that the towing carrier requesting the variance or waiver understands that the variance or waiver is not effective until approved by the Commission.
- (c) Recordkeeping requirements. A towing carrier that has obtained a variance or a waiver of any rule in this Part shall:
- (I) If the variance or waiver pertains to a motor vehicle: maintain a copy of the variance or waiver both in the affected motor vehicle and in the carrier's motor vehicle maintenance files.
 - (II) If the variance or waiver pertains to a driver: ensure that a copy of the waiver or variance is carried on the affected driver's person whenever the driver is operating a towing vehicle and also is maintained in the affected driver's qualification file.
 - (III) If the variance or waiver pertains to any matter not listed in subparagraphs (b)(I) or (II) of this rule: maintain a copy of the variance or waiver at the carrier's primary place of business.

6522. Violations, Civil Enforcement, and Enhancement of Civil Penalties.

- (a) A violation of § 40-13-103(1), C.R.S., may result in the assessment of a civil penalty of up to \$1,100 for each violation.
- (b) Except as provided in paragraph (a) of this rule, a violation of any provision of Title 40, C.R.S., pertaining to towing carriers may result in the assessment of a civil penalty of up to \$550 for each violation.
- (c) A violation of subparagraph (a)(I) or (b)(I) of rule 6507 may result in the assessment of a civil penalty of up to \$11,000 for each violation.
- (d) A violation of any of the following rule provisions may result in the assessment of a civil penalty of up to \$1,100 for each violation:
 - (I) Paragraph (c) or (d) of rule 6516.
 - (II) Paragraph (a), (b), (c), (d), (f), or (g) of rule 6519.
 - (III) Subparagraph (h)(I)(A) or (B) of rule 6519.

- (e) Except as provided in paragraphs (c) and (d) of this rule, a violation of any provision of rules 6500 through 6521 may result in the assessment of a civil penalty of up to \$550 for each violation.
- (f) Pursuant to § 40-7-114, C.R.S., any owner or other person who employs a driver who operates a motor vehicle in violation of the statute or these rules may be assessed a civil penalty for such violation.
- (g) Notwithstanding any provision in these rules to the contrary, the Commission may assess double or triple penalty assessments against any person, as provided by statute and this rule.
- (h) The Commission may assess any person a civil penalty containing doubled penalties if:
 - (I) the person engaged in prior conduct which resulted in the issuance of a prior civil penalty assessment notice;
 - (II) the conduct for which doubled penalties are sought is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notice;
 - (III) the conduct for which doubled penalties are sought occurred within one year after the conduct which resulted in the issuance of a civil penalty assessment notice; and
 - (IV) the conduct for which doubled penalties are sought occurred after the person's receipt of the prior civil penalty assessment notice.
- (i) The Commission may assess any person a civil penalty containing tripled penalties if:
 - (I) the person engaged in two or more instances of prior conduct which resulted in the issuance of two or more prior civil penalty assessment notices;
 - (II) the conduct for which tripled penalties are sought is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notices;
 - (III) the conduct for which tripled penalties are sought occurred within one year after the most recent conduct which resulted in the issuance of the prior civil penalty assessment notices; and
 - (IV) the conduct for which tripled penalties are sought occurred after the person's receipt of two or more prior civil penalty assessment notices.
- (j) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the conduct for which triple penalties are sought.
- (k) Nothing in this rule shall preclude the assessment of triple penalties when double and triple penalties are sought on the same civil penalty assessment notice.