

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20R-0146TO

IN THE MATTER OF TEMPORARY RULES CONCERNING THE LIMITATION ON
NONCONSENSUAL TOWS BY TOW COMPANIES.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: April 2, 2020

Adopted Date: April 1, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary, emergency rules limiting the rates established in 4 *Code of Colorado Regulations* (CCR) 723-6-6511 of the Rules Regulating Transportation by Motor Vehicle, for nonconsensual tows from private property. This consideration by the Commission is based upon Governor Jared Polis' Executive Order D 2020 017 directing "all businesses other than those qualified as Critical Businesses under Public Health Order [PHO] 20-24 or any [PHO] issued pursuant to this Executive Order, to close temporarily, except as necessary to engage in minimum basic operations needed to protect assets and maintain personnel functions, as of the effective date of this Executive Order."

2. PHO 20-24 lists 12 specific areas that are considered critical business. Towing falls under PHO 20-24, section 2, Critical Infrastructure, and is supported by the U.S. Department of Homeland Security's Advisory Memorandum on Identification of Essential Critical Infrastructure Workers during the COVID-19 Response as a critical business.

3. In Executive Order D 2020 012, the Governor issued a Directive aimed at providing economic relief to the public affected by COVID-19. While this Directive does not address nonconsensual tows, the Commission is taking a proactive approach to economic relief for the public through this temporary modification of Rule 6511.

4. Under the Colorado Administrative Procedures Act, the Commission may adopt temporary rules without engaging in the processes required for a permanent rule “only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with [permanent rulemaking] requirements . . . would be contrary to the public interest.” § 24-4-103(6)(a), C.R.S.

5. We find these matters require our immediate attention in order to protect the welfare of the public in conformance with the Governor’s Executive Order. Adopting these temporary rules will provide economic relief to the public affected by COVID-19. This will reduce the chance that vehicles towed as a nonconsensual tow from private property are sold at auction. These temporary rules will increase the opportunity for the vehicle owner to retrieve the vehicle prior to the statutory mandate to sell the vehicle at auction, while balancing the opportunity for tow companies to operate and earn revenue.

6. We are keenly aware of the Commission’s dual responsibility here to the towing industry as well as the health, safety and welfare of the public. We find that these temporary rules reach a compromise that protects the public welfare as well as allowing the tow industry to continue to operate.

7. We therefore adopt the following temporary rules:

- a) Temporarily striking Rule 6511(b) which identifies the four rate elements of a nonconsensual tow from private property.
- b) Temporarily striking Rule 6511(b)(II) which sets rates for mileage of a nonconsensual tow from private property.
- c) Temporarily striking Rule 6511(b)(III) which sets rates for a fuel surcharge of a nonconsensual tow from private property.
- d) Temporarily striking Rule 6511(e) which sets a daily storage fee of a nonconsensual tow from private property.

8. We take this action in accordance with § 40-2-108(2) and § 24-4-103(6), C.R.S.

9. The temporary rules shall be effective on the mailed date of this Decision and shall remain in effect until April 27, 2020.

10. The temporary rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's E-Filings System¹ at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=20R-XXXX.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format are available in this proceeding through the Commission's E-Filings system and are hereby adopted as temporary rules consistent with the above discussion.

2. The temporary rules shall be immediately effective.

¹ From the *Electronic Filings* (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can be accessed by selecting "Search" and entering this Proceeding Number (20R-0146TO) in the "Proceeding Number" box and then selecting "Search"

3. The 20-day period provided 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.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 1, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners