

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0180TO

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULE 6511 OF THE RULES
REGULATING TOWING CARRIERS, 4 CODE OF COLORADO REGULATIONS 723-6.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: May 14, 2021

Adopted Date: May 12, 2021

TABLE OF CONTENTS

I.	BY THE COMMISSION	1
A.	Statement	1
B.	Background.....	3
C.	Discussion of Proposed Amendments to Rule 6511	4
1.	Rule 6511(a). Drop Charge.	5
2.	Rule 6511(c). Rates for Law Enforcement Ordered Tows.....	5
3.	Rule 6511(e). Storage Charges.....	5
4.	Rule 6511(f). Release Charge.	6
D.	Findings and Conclusions.....	6
II.	ORDER.....	7
A.	The Commission Orders That:	7
B.	ADOPTED IN COMMISSIONERS' WEEKLY MEETING May 12, 2021.....	8

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to Rule 6511 of the Commission's Rules

Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6. The Commission has statutory authority to adopt these rules under §§ 40-2-108 and 40-10.1-106, C.R.S.

2. The Commission issues this NOPR following a petition for rulemaking filed by Towing and Recovery Professionals of Colorado (TRPC). Through Decision No. C21-0259, issued April 29, 2021, in Proceeding No. 21M-0102TO, the Commission granted TRPC's petition and indicated that it would open a formal rulemaking to consider the amendments to Rule 6511 requested in the petition. The proposed amendments to Rule 6511 for consideration in this rulemaking are available for review as Attachment A (redline) and Attachment B (clean) to this Decision through the Commission's Electronic Filings website (Proceeding No. 21R-0180TO) at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

3. The proposed amendments reflect the changes requested in TRPC's petition. Through this NOPR, the Commission solicits comments from interested persons on whether to adopt, revise, or not adopt the proposed amendments to Rule 6511. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. Participants are encouraged to provide redlines of any specific proposed rule changes. We encourage members of the tow industry, Colorado State Patrol, and other interested persons to participate in the rulemaking and provide comments in the rulemaking record.

4. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a hearing on the proposed rules at **9:00 a.m. on July 12, 2021**. Written comments may be filed at any time in this Proceeding. Participants are encouraged, however, to file their initial written comments by June 11, 2021, and any reply

comments by June 25, 2021, so that the comments and replies can be considered at the rulemaking hearing.

B. Background

5. The Commission opens this rulemaking after consideration of TRPC's petition for rulemaking, which was supported by comments submitted by Connolly's Towing; jointly by Wyatts Towing, Klaus Towing, Lone Star Towing, and Aaliyah's Towing and Recovery (collectively Wyatts); and by the Colorado State Patrol.

6. In its petition, TRPC requested the Commission modify Rule 6511. This rule establishes the rates and charges that towing carriers may assess for their services including, among others, rates for "private property impound" tows authorized by the property owner, referred to as "PPI tows;" rates for tows and recovery operations requested by law enforcement, referred to as "law enforcement ordered tows;" and rates for storage of towed motor vehicles. TRPC requested the Commission amend Rule 6511 to use the Consumer Price Index (CPI) to adjust the rates for all categories of tow rates, not just the rates for PPI tows, as was adopted in the recently concluded rulemaking Proceeding No. 19R-0709TO. TRPC requested the Commission expedite this new rulemaking and find any informal pre-rulemaking stakeholder engagement unnecessary since the Commission already engaged with stakeholders both before and during the previous rulemaking.

7. In supporting comments, Connolly's Towing cautioned that adjusting rates for PPI tows, but not other tow rates, will negatively affect the tow industry and the State of Colorado. Connolly's Towing cautioned, if law enforcement tow providers cannot cover their costs, the state will suffer in public safety. They added that towing costs have increased over 100 percent since 2015, justifying an across-the-board adjustment. Similarly, the carriers

commenting jointly as Wyatts cautioned that increasing rates for law enforcement ordered tows are essential to public safety. They also agreed the rates for storage and after-hours service need to be adjusted to be compensatory for current costs. Finally, the Colorado State Patrol stated, although it supports protecting consumers who do not have the option to shop around for their tow provider, it cannot continue to meet its mission of public safety without partnership with towing carriers. Colorado State Patrol cautioned, if the rates for law enforcement ordered tows put carriers in a position to lose money when compared to their operating costs, the situation will not sustain itself.

8. Through Decision No. C21-0259, issued April 29, 2021, in Proceeding No. 21M-0102TO, the Commission granted TRPC's request to open a rulemaking to consider whether the CPI adjustment should be applied to other categories of tow rates in addition to the rates for PPI tows. The Commission found significant the consensus concern expressed in TRPC's petition and the supporting comments that the current rates for the remaining categories of tow rates, particularly law enforcement ordered tows, may not reflect current operating costs for towing carriers and could eventually deter tow carriers from providing law enforcement ordered tows.

9. At the May 12, 2021, Commissioners' Weekly Meeting, the Commission considered Transportation Staff's proposed NOPR and redline of proposed rule changes, resulting in this Decision.

C. Discussion of Proposed Amendments to Rule 6511

10. The proposed amendments to Rule 6511 are shown in Attachment A (redline) and Attachment B (clean) to this Decision. These changes reflect the rule changes as requested in TRPC's petition. The Commission proposes these revisions for discussion and comment in the

rulemaking and reserves for its final decision whether to adopt, revise, or not adopt the proposed amendments.

1. Rule 6511(a). Drop Charge.

11. This rule establishes the drop charge that a towing carrier may assess if the vehicle owner, authorized operator, or authorized agent of the vehicle owner appears in person to retrieve the vehicle after it has been hooked up to the tow truck but before it is removed from the property. The proposed amendments to this rule conform to the amendments adopted in prior rulemaking Proceeding No. 19R-0709TO for the towing rates for PPI tows, set forth in Rule 6511(b). The base rates for drop charges for each vehicle classification would be published on the Commission's website and adjusted annually based upon the CPI—Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs.

2. Rule 6511(c). Rates for Law Enforcement Ordered Tows.

12. This rule establishes the rates for law enforcement tows and recovery operations. These rates are calculated on an hourly basis, per required tow truck. The proposed amendments to this rule conform to the amendments adopted in prior rulemaking Proceeding No. 19R-0709TO for PPI tows. The hourly rate for each vehicle classification would be published on the Commission's website and adjusted annually based upon the CPI—Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs.

3. Rule 6511(e). Storage Charges.

13. This rule establishes the storage charges that a tow carrier may assess for storing a towed vehicle. The proposed amendments to this rule conform to the amendments adopted in prior rulemaking Proceeding No. 19R-0709TO for PPI tows. The storage charges for each

vehicle classification would be published on the Commission's website and adjusted annually based upon the CPI—Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs.

4. Rule 6511(f). Release Charge.

14. This rule establishes the charge that a tow carrier may assess for releasing a vehicle from storage outside of the towing carrier's business hours. The release charge would be published on the Commission's website and adjusted annually based upon the CPI—Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs.

D. Findings and Conclusions

15. Through this NOPR, the Commission solicits comments from interested persons on whether to adopt, revise, or not adopt, some or all the proposed amendments to Rule 6511 set forth in the attachments to this Decision and discussed above. The Commission encourages members of the tow industry, Colorado State Patrol, and other interested persons to participate in the rulemaking proceeding and to contribute to the rulemaking record on which the Commission will base its decision on whether to adopt rule amendments. The Commission will not incorporate the record from prior rulemaking Proceeding No. 19R-0709TO; provided, however, participants can re-submit comments from that rulemaking by filing them into this Proceeding.

16. The Commission refers this matter to an ALJ for a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

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 May 25, 2021 edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to Rule 6511 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, as described in this Decision and its attachments. The Commission prefers and encourages interested persons to file comments in this Proceeding (21R-0180TO) through the Commission's Electronic Filing System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0180TO

3. This matter is referred to an Administrative Law Judge (ALJ) for a recommended decision.

4. The rulemaking hearing on the proposed revisions to Rule 6511 shall be held before an ALJ as follows:

DATE: July 12, 2021

TIME: 9:00 a.m.

PLACE: By video conference using Zoom at a link to be provided to parties by e-mail prior to the scheduled hearing date.

5. The ALJ will set procedures for a remote hearing, if necessary, by a separate decision issued in this Proceeding.

6. The ALJ may set additional hearings, if necessary.

7. Written comments may be filed at any time in this Proceeding. Initial written comments are requested by June 11, 2021, and any reply comments are requested by June 25, 2021, so that the comments and replies may be considered at the hearing.

8. At the time set for hearing, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary. The Commission will consider all comments, whether written or oral.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners