

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0485TR

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ADOPTING RULES**

Mailed Date: December 3, 2019

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 A. The Commission Orders That:29

I. STATEMENT

1. On September 12, 2019, the Public Utilities Commission (Commission) issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding.¹ In the NOPR, the Commission proposed to adopt rules that permanently implement the requirement in Senate Bill (SB) 19-236 for the Commission to regulate Vehicle Booting Companies. The purpose of Rules 6806 through 6819 of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, is to preserve the health, safety, welfare, and property of the public. As stated in the NOPR, the Commission made the proposed rules, provided with the NOPR in legislative (*i.e.*, ~~strikeout/~~ underline) format and in final format,

¹ See Decision No. C19-0748.

available to the public through the Commission's Electronic Filings (E-Filings) system. Finally, the Commission established October 11, 2019 as the deadline for written comments filed by members of the public, scheduled a hearing for October 28, 2019, and referred this proceeding to an administrative law judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. Before it issued the NOPR, the Commission established a representative group of participants with an interest in the subject of this rulemaking to participate in the public rulemaking proceedings on the proposed rules, as required by § 24-4-103(2), C.R.S. The members of the representative group received notice of the NOPR, as evidenced by the certificate of service for the NOPR.

3. The following members of the public filed comments before the October 11, 2019 deadline established in the NOPR: Owner-Operator Independent Drivers Association, Inc. (OOIDA), Wyatt's Towing, Towing Done Right, LLC (Towing Done Right), Colorado Booting, Colorado Security Services, doing business as Colorado Parking Services (CSS), and Dark Sky LLC (Dark Sky).

4. The ALJ held the hearing on October 28, 2018 starting at 9:00 a.m. On that day, state government offices in the Denver Metro Area, including the Commission, delayed their opening until 10:00 a.m. due to inclement weather. As a result, the ALJ convened the hearing at 9:00 a.m., but then took a recess until 10:00 a.m. At that time, representatives of Towing Done Right, Colorado Booting, Dark Sky, and Wyatt's Towing attended the hearing. No other person or entity presented written or oral comments at the hearing.

5. Being fully advised in this matter, the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision in accordance with § 40-6-109, C.R.S.

II. DISCUSSION

A. Introduction

6. In rendering this Decision, the ALJ has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment hearing, even if this Decision does not specifically address every comment made, or every nuance of each comment. In addition, until SB 19-236, the Commission had never regulated the booting industry and, consequently, the current proposed rules are the Commission's first rules that apply to booting. As a result, additional refining of these rules will almost certainly become necessary in the future as the booting industry and the Commission gain experience in the regulation of, and the application of the rules to, the booting industry.

B. Proposed Rule 6810 – Applicability

7. Proposed Rule 6810 addresses the applicability of the Vehicle Booting Rules. It specifies that: (a) "Rules 6800-6810 apply to all vehicle booting companies" (6810(a)); (b) municipalities, counties, or state or federal agencies may adopt and enforce additional or more stringent requirements in their agreements with vehicle booting companies than those requirements imposed by the Commissions' rules (6810(b)); (c) vehicle booting companies must obtain a permit from the Commission before engaging in booting operations (6810(c)); and (d) vehicle booting companies may only engage in booting operations on public property pursuant to a written agreement with a municipality, county, or state or federal agency providing the company with permission to do so (6810(d)).

1. Comments

8. Towing Done Right states that a towing permit issued pursuant to Rule 6503 should authorize the holder to both tow and boot vehicles. No separate permit should be required to boot vehicles.² Otherwise, no commenter took issue with, or proposed revisions to, the proposed language in Proposed Rule 6810(a)-(d).

9. OOIDA proposes to add a subsection to Rule 6810 stating, “[n]o vehicle booting company may boot or immobilize a motor vehicle or commercial motor vehicle that is occupied, unless authorized by a law enforcement officer.”³ As justification, OOIDA refers to Rule 6508(b)(II), which states that “a towing carrier may not come into contact with, hook-up to, or tow a motor vehicle that is occupied, unless the towing carrier is performing rescue or recovery operations for said occupant(s).”⁴ OOIDA states that the prohibition in the Towing Rules serves an important public interest in preventing injuries and damage to vehicles and should be incorporated into the Booting Rules.

10. Colorado Booting also requested that the rules specify whether an individual can place a boot on a vehicle. Specifically, Colorado Booting asks whether the rules would apply to an individual who purchases a boot and then places it on a vehicle blocking the individual’s driveway.⁵ Colorado Booting notes that boots are available for purchase by individuals.⁶

² Towing Done Right Comments at 9.

³ OOIDA Comments at 2.

⁴ *Id.*

⁵ Colorado Booting Comments at 1; Transcript 15-17.

⁶

2. Analysis

11. As to Towing Done Right's request to delete the requirement of a specific permit for booting operations, the towing rules do not state that a towing permit authorizes both the towing and booting of vehicles. As a result, the Towing Rules would have to be amended to state as much if Towing Done Right's proposal were adopted. In addition, § 40-10.1-801, C.R.S., is a statute that is separate from the statutes governing towing companies. This supports the conclusion that booting is a separate and distinct service from towing and that vehicle booting companies thus must possess a booting permit to engage in booting operations. Accordingly, the ALJ shall not adopt Towing Done Right's request to delete the separate permit requirement in Proposed Rule 6810.

12. OOIDA's argument concerning the booting of occupied vehicles is valid. As with towing operators that attempt to tow an occupied vehicle, booting vehicle companies that attempt to boot an occupied vehicle could lead to damage to the vehicle and injury to both the occupant of the vehicle and the individual applying the boot. A prohibition against placing a boot on an occupied vehicle unless authorized to do so by a law enforcement official is the most reasonable means of mitigating the risk and is in the public interest. Accordingly, OOIDA's proposal shall be adopted with the modification that "or immobilize" and "or commercial motor vehicle" shall be deleted from OOIDA's proposed language for the reasons stated below.

13. Colorado Booting's request to specify in the rules whether an individual can place a boot on a vehicle shall be denied. As an initial matter, Colorado Booting has not requested any specific revisions to the Proposed Rule based on its request. Further, § 40-10.1-801(1)(a), C.R.S., states in relevant part that "a person shall not operate or offer to operate as a vehicle booting company in intrastate commerce without first having obtained

a permit from the commission.” Similarly, “vehicle booting company” is defined in § 40-10.1-101(22), C.R.S., as “a private corporation, partnership, or sole proprietor in the business of immobilizing a motor vehicle through use of a boot.” The Proposed Rules accurately reflect the requirements for, and limitations on, every “person” who “operate[s] or offer[s] to operate as a vehicle booting company in intrastate commerce” contained in §§ 40-10.1-101(22) and 40-10.1-801, C.R.S. Accordingly, no revisions to the proposed Rules based on Colorado Booting’s comment shall be made.

C. Proposed Rule 6811 – Definitions

14. Proposed Rule 6811(b) mirrors the definition of “vehicle booting company” provided by § 40-10.1-101(22), C.R.S. Proposed Rule 6811(a) provides a definition of “boot or booting” that follows from the definition of “vehicle booting company” insofar as it means “to place a wheel immobilization device.”

1. Comments

15. OOIDA, Wyatt’s Towing, Colorado Booting, and Dark Sky request that the definition of “vehicle booting company” be expanded to include all companies that use any type of device to immobilize a vehicle. They also propose to amend the definition of “boot or booting” to include any vehicle immobilization device, not just a device that attaches to a vehicle’s wheel in order to immobilize the vehicle.⁷ Finally, OOIDA also proposes to add a definition of “commercial motor vehicle” for the purpose of “clarify[ing] that these proposed rules would in fact apply to commercial motor vehicles.”⁸ Each proposed amendment is addressed in turn.

⁷ OOIDA Comments at 2; Wyatt’s Towing Comments at 1-2; Colorado Booting Comment at 1; Dark Sky at 1.

⁸ OOIDA Comments at 1.

2. Analysis

a. Vehicle Immobilization Companies/Devices

16. As noted, OOIDA, Wyatt's Towing, Colorado Booting, and Dark Sky propose to expand the definitions of "vehicle booting companies" and "boot or booting" to encompass all vehicle immobilization devices and companies that place such devices. In particular, the intent of OOIDA, Wyatt's Towing, Colorado Booting, and Dark Sky in proposing these changes is so that the Commission's "booting rules" will apply to "barnacles," which are devices that immobilize a vehicle by attaching to the windshield of the vehicle and thereby blocking the driver's view of the road. According to OOIDA,

If the CO PUC is unable to address this issue as a result of an overly narrow legislative definition, it would create a tremendous loophole and undermine the effectiveness of the entire proposed rule. In short, business engaged in immobilizing motor vehicles could simply change the method in which they immobilize a vehicle and subvert the proposed rule.⁹

17. The proposals by OOIDA, Wyatt's Towing, Colorado Booting, and Dark Sky requires interpretation of §§ 40-10.1-101(22) and 40-10.1-801, C.R.S. The goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.¹⁰ Words and phrases must be given their plain and ordinary meaning.¹¹ Where statutory language is unambiguous, resort to other rules of statutory interpretation is unnecessary and the language is applied as written.¹²

⁹ *Id.* at 2.

¹⁰ *Safehouse Prog. Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).

¹¹ *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).

¹² *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

18. If the statutory language is ambiguous, however, additional tools of statutory construction are employed.¹³ These tools include the consequences of a given construction, the end to be achieved by the statute, and the circumstances surrounding the statute's adoption.¹⁴ One of the best guides is the context in which the statutory provisions appear.¹⁵

19. A statute is ambiguous if it is reasonably susceptible to multiple interpretations that lead to different results.¹⁶ "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."¹⁷

20. Here, §§ 40-10.1-101(22) and 40-10.1-801, C.R.S., clearly and unambiguously apply to "vehicle **booting** companies" that are "in the business of immobilizing a motor vehicle **through the use of a boot.**"¹⁸ They do not apply to vehicle **immobilization** companies that are in the business of immobilizing a motor vehicle through the use of any device that accomplishes that outcome. Moreover, a "boot," as that term is used in § 40-10.1-101(22), C.R.S., is a device that is applied to the wheel of a vehicle to immobilize the vehicle. A "boot" is not a general term that denotes **all** devices used to immobilize a vehicle irrespective of whether they are applied to a wheel. The amendment proposed by OOIDA, Wyatt's Towing, Colorado Booting, and Dark Sky is, therefore, denied.

¹³ *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).

¹⁴ *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007); *Williams v. Kunau*, 147 P.3d 33, 36 (Colo. 2006).

¹⁵ *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 325 P.3d 1014, 1019 (Colo. 2014).

¹⁶ *See A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013).

¹⁷ *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015).

¹⁸ § 40-10.1-101(22) (emphases added).

b. Commercial Motor Vehicles

21. As noted, OOIDA requests the addition of a definition of “commercial motor vehicle” to Proposed Rule 6811. OOIDA also asks that Proposed Rule 6817 be amended “by adding the words ‘or commercial motor vehicle’ after ‘motor vehicle’ in 6817(a), 6817(a)(II), and 6817(a)(III).”¹⁹ The purpose of these proposed amendments is to clarify that the rules apply to the booting of commercial motor vehicles.

22. Rule 6001(ddd) defines “Motor Vehicle” as “any automobile, truck, tractor, motor bus, or other self-propelled vehicle or any trailer drawn thereby.” This definition, which is the same as the definition provided in § 40-10.1-101(11), C.R.S., “applies throughout this Part 6, except where a specific rule or statute provides otherwise.” “Part 6” is the part of the Commission’s Rules that apply to “regulated entities providing transportation by Motor Vehicle.” Rule 6000.

23. Rule 6001 does not contain a definition of “Commercial Motor Vehicles.” Instead, it directs the reader to Rule 6101 for a definition of that term. Rule 6101(b) states that a “Commercial Motor Vehicle” is:

a self-propelled or towed vehicle used in commerce on the public highways and is operated by a Fully Regulated Intrastate Carrier or a Limited Regulation Carrier that: has a Manufacturer’s Gross Vehicle Weight Rating or Gross Combination Weight Rating of at least 10,001 pounds or is designed or used to transport more than 15 Passengers including one Driver.

This definition, and the others in Rule 6101, “apply to all Motor Carriers subject to these safety rules,” which are Rules 6100-6117.

24. Elsewhere, Rules 6008(a)(I) and 6008(a)(II) refer to “commercial Motor Vehicle liability insurance coverage” and “commercial Motor Vehicle liability coverage” to identify the

¹⁹ OOIDA’s Comments at 1.

type of insurance coverage (commercial) that all “Motor Carriers” must keep in force while they operate pursuant to authority granted by the Commission. Rule 6015(b) specifies that “Commercial Motor Vehicles” that are subject to federal regulation concerning the “identification of vehicles” pursuant to 49 U.S.C. § 14506 are not subject to the vehicle marking/identification requirements in Rule 6015(a). Notably, while the Commission’s Towing Rules contain numerous references to “motor vehicle,” it does not contain any reference to “commercial motor vehicle.” In fact, the Towing Rules define “Towing” as “the act of transporting a motor vehicle or trailer on or behind a tow truck,”²⁰ and “Nonconsensual tow” as “the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.”²¹ No distinction is drawn in the Towing Rules between the towing of commercial motor vehicles and motor vehicles.

25. Based on the foregoing, it is apparent that the Commission intended the more general definition of “Motor Vehicle” in Rule 6001(nnn) to apply to all of the Transportation Rules, and the application of the more specific “Commercial Motor Vehicle” definition to be limited to the Safety Rules. This conclusion is based on the structure and content of the rules, and the fact that, with one irrelevant exception noted above, the remainder of the Rules – including the Towing Rules – do not employ or refer to “Commercial Motor Vehicles.” The ALJ thus concludes that it is appropriate to maintain the structure of the Transportation Rules and not introduce the same or a similar definition of “Commercial Motor Vehicle” from the Safety Rules into the Booting Rules. This conclusion is reinforced by the fact that introducing such a

²⁰ Rule 6501(p).

²¹ Rule 6501(i).

definition of “Commercial Motor Vehicle” into the Booting Rules could introduce ambiguity into the meaning of the Transportation Rules as a whole, and/or the Towing Rules in particular. Accordingly, the ALJ shall not adopt OOIDA’s requests to add a definition of “Commercial Motor Vehicle” to Proposed Rule 6811, or “or commercial motor vehicle” after “motor vehicle” in Proposed Rules 6817(a), 6817(a)(II), and 6817(a)(III).

D. Proposed Rule 6812 – Permit Applications

26. Proposed Rule 6812 establishes the application process for obtaining a permit to provide vehicle booting service pursuant to § 40-10.1-801, C.R.S. Among other things, it states that an applicant must file an application fee that will be “determined by the Director and approved by the Department of Regulatory Agencies Executive Director’s Office.”²²

1. Comment

27. Dark Sky and Colorado Booting request that the application fee be specified in the Proposed Rule 6812.²³ Colorado Booting also asks that a time limit for the Commission’s consideration of a pending application be specified in the rule.²⁴ As noted above, Towing Done Right argues that a towing permit issued pursuant to Rule 6503 should authorize the holder to both tow and boot vehicles. According to Towing Done Right, no separate booting permit should be required.²⁵

2. Analysis

28. The application fee of \$150 is specified in § 40-10.1-111(c)(I), C.R.S. As a result, it is necessary to remove the language from the proposed rule that an applicant must pay an

²² Proposed Rule 6812(a)(1).

²³ Dark Sky Comments at 1; Colorado Booting Comments at 2.

²⁴ Colorado Booting Comments at 2.

²⁵ Towing Done Right Comments at 9.

annual application fee “as determined by the Director and approved by the Department of Regulatory Agencies Executive Director's Office.”

29. In addition, Proposed Rule 6812(a)(II)-(IV) shall be amended to specify the requirements for: (a) “the filing of proof of compliance with worker’s compensation insurance coverage in accordance with the ‘Worker’s Compensation Act of Colorado’, articles 40 to 47 of title 8.” of the Colorado Revised Statutes; and (b) compliance with “the financial responsibility requirements of [] Title 40.”²⁶ The requirements for filing proof of compliance with the worker’s compensation insurance coverage requirement are the same as those required of towing carriers.²⁷ The amendment addressing financial responsibility provides clarity to booting vehicle companies by specifying that general liability coverage of \$100,000 or a surety bond providing the same level of coverage satisfies their financial responsibility requirements. Finally, the amendment specifies the requirements for filing proof of financial responsibility, which are the same as those required of movers.²⁸

30. The requests by Dark Sky and Colorado Booting shall be denied. Including the application fee in the rules when it is specified in § 40-10.1-111(c)(I), C.R.S. would require a rule change in the event that that statute is amended to change the application fee, or § 40-10.1-111(c)(I), C.R.S. is moved elsewhere in the Colorado Revised Statutes. Similarly, Colorado Booting has not suggested or otherwise established that the Commission permit application process for limited regulation carriers, towing carriers, household goods movers, transportation network carriers, or large market taxicab service carriers takes an unreasonable amount of time.

²⁶ § 40-10.1-801(3)(a), C.R.S.

²⁷ See Rule 6008(a)(V).

²⁸ See Rule 6008(a)(VI).

Finally, Towing Done Right's request to eliminate the requirement for a separate booting permit is denied for the reasons stated above.

31. Accordingly, based on the foregoing, no changes shall be made to Proposed Rule 6812.

E. Proposed Rule 6813 – Criminal History Checks

32. Proposed Rule 6813 establishes qualification requirements for persons applying for a vehicle booting company permit via criminal history background checks. Towing Done Right reiterates its argument that a company that has received a towing permit should not be required to obtain a separate booting permit.²⁹ Otherwise, no commenter has requested any changes to Proposed Rule 6813. Accordingly, and because Towing Done Right's argument has been rejected for the reasons stated above, no changes shall be made to Proposed Rule 6813.

F. Proposed Rule 6814 – Equipment and Accessories

33. Proposed Rule 6814 regards the manner in which a vehicle booting company must identify their equipment and employees while in the performance of their duties. Proposed Rule 6814 is designed to allow the identification of the vehicle booting company responsible for installing the boot on a vehicle. It requires the display of the name, address, permit number, and phone number of the vehicle booting company on each side of the vehicle booting company's vehicle.

1. Comments

34. CSS, Colorado Booting, and Dark Sky request the deletion of the requirement that the vehicle display the address of the vehicle booting company.³⁰ All characterize this as a safety

²⁹ *Id.*

³⁰ Colorado Booting Comments at 4; CSS Comments at 2; Dark Sky Comments at 1.

issue because, unlike towing companies, vehicle booting companies are not required to have storage lots for towed vehicles and thus can be, and often are, operated from the residences of the owners of the vehicle booting companies. Providing the home address of the owner of the vehicle booting company could lead to retaliation by individuals whose vehicles have been booted. CSS and Dark Sky further comment that the Commission's permit application will require them to provide the physical address of the vehicle booting company.³¹ As a result, individuals whose vehicles have been booted can obtain the address of the vehicle booting company from the Commission.

35. Towing Done Right requests the addition of a provision to Proposed Rule 6814 requiring booting company employees to "wear uniforms with contrasting lettering listing the company name clearly visible from a distance of 25 feet."³²

2. Analysis

36. The proposals of CSS, Colorado Booting, and Dark Sky shall be adopted. Situations in which a vehicle has been booted can lead to anger and the desire to retaliate against the vehicle booting company. Including the address of the vehicle booting company, which can

³¹ CSS Comments at 2; Dark Sky Comments at 1.

³² Towing Done Right Comments at 9.

be the home address of the vehicle booting company's owner, on the company's vehicles can provide the information necessary to carry-out the retaliation. The benefit of requiring the address to be included on the vehicle booting companies' vehicles is outweighed by the risks, particularly given the operator of a booted vehicle can obtain the address of the vehicle booting company from the Commission, typically significantly after the booting has occurred and anger has subsided. Accordingly, the address requirement in Proposed Rule 6814 shall be deleted.

37. Towing Done Right's request to require all vehicle booting company employees wear uniforms shall be denied. The requirement that a vehicle booting company's vehicle have the name and telephone number of the company is sufficient means for identifying the vehicle booting company.

G. Proposed Rule 6815 – Authorization for Booting

38. Proposed Rule 6815 authorizes a vehicle booting company to act as an authorized agent for a property owner and sets the minimum requirements for the vehicle booting company to operate under a written agreement with the property owner.

1. Comments

39. Wyatt's Towing requests three changes to Proposed Rule 6815. First, Wyatt's Towing requests to delete the requirement that a written agency agreement have an ending date of the agreement, stating that this proposed requirement serves no purpose.³³ Second, Wyatt's Towing requests to delete Proposed Rule 6815(a)(1)(G) that requires the written agreement to contain a provision acknowledging the property owner's "responsibility for the actions of the vehicle booting company as its agent." As justification, Wyatt's Towing states that "[t]he

³³ Wyatt's Towing Comments at 2.

Commission does not have regulatory authority over private property owners and therefore cannot require them to take responsibility for the actions of the booting company.”³⁴ Third, Wyatt’s Towing proposes to add a provision to Proposed Rule 6815 requiring a written agreement to have a list of reasons the vehicle booting company may apply a boot to a vehicle on the property, which Wyatt’s Towing states would provide protection to the owners of vehicles by removing discretion from the vehicle booting company to apply boots.³⁵

40. Towing Done Right states that the requirements of this rule should mirror the requirements for towing companies, but does not identify any differences or propose alternative language.³⁶

2. Analysis

41. The ALJ shall deny Wyatt’s Towing’s request to delete the requirement that the written agreement have a specific ending date, and to add a requirement that the written agreement must specify the authorized reasons to place a boot. The ending date requirement aids in determining whether the property owner authorized the placement of a boot. As to the specification of the authorized reasons to place a boot, the Commission’s Towing Rules do not contain such a requirement. The ALJ notes that Proposed Rule 6815 contains the minimum requirements for written agency agreements. Property owners and vehicle booting companies may include a provision listing the authorized reasons to place a boot provided it does not conflict with the Commission’s Booting Rules or §§ 40-10.1-101, 801, C.R.S.

³⁴ *Id.* at 2.

³⁵ *Id.* at 2-3.

³⁶ Towing Done Right Comments at 9.

42. The ALJ shall adopt the request by Wyatt's Towing to delete the requirement that the written agreement contain a provision acknowledging the property owner's "responsibility for the actions of the vehicle booting company" as its agent.³⁷ In so doing, the ALJ expresses no opinion concerning whether the Commission has regulatory authority over the contracts between vehicle booting companies and property owners concerning the booting of vehicles on the owner's property. Instead, as Proposed Rule 6815(a)(III) acknowledges, there is a well-developed body of law governing the principal-agent relationship and the duties of each to third parties. Accordingly, the ALJ concludes that it is in the public interest to delete Proposed Rule 6815(a)(I)(G) to avoid any ambiguity or confusion concerning the duties imposed by the existing law governing the principal-agent relationship. In addition, the ALJ shall make changes to Proposed Rule 6815(a)(III) to make it clearer and more consistent with Rule 6508(a)(III) of the Towing Rules.

H. Proposed Rule 6816 – Booting Notice and Invoices

43. Proposed Rule 6816 requires a vehicle booting company to use an invoice when booting a vehicle and establishes the minimum required information that must be included on the invoice. Additionally, Rule 6809 requires a vehicle booting company to place notice of a boot on a booted vehicle.

1. Comments

44. CSS and Dark Sky request the deletion of the requirement in Proposed Rule 6816(a)(IV) that the vehicle booting company record on the invoice the vehicle identification number (VIN) of a booted vehicle because sometimes it is difficult to read the

³⁷ Wyatt's Towing Comments at 2.

VIN.³⁸ CSS also requests the deletion of the requirement in Proposed Rule 6816(a)(VI) that the printed name and signature of the individual who places the boot be on the invoice to protect the individual from retribution. CSS suggests that initials or a code be used that identifies the individual, but does not allow the owner or operator of the booted vehicle immediately to determine his/her identity.³⁹

45. As to Proposed Rule 6816(a)(VII), Dark Sky requests the deletion or modification of the requirement that the vehicle booting company obtain the signature of the “owner, authorized operator, or other authorized person to whom the motor vehicle is released [] when the boot is removed.” Such a change will accommodate paperless operation, and the remote release of the boot without the presence of an individual from the vehicle booting company.⁴⁰ Towing Done Right states that it has invented a boot that employs “remote release technology” that remotely releases a boot after electronic payment of the release fee.⁴¹

46. Alternatively, Wyatt’s Towing and Colorado Booting request that Proposed Rule 6816(a)(VII) be modified to allow the vehicle towing company to indicate that the owner, authorized operator, or other authorized person to whom the motor vehicle is released refuses to sign the invoice.⁴²

47. Colorado Booting, CSS, and Towing Done Right take issue with the requirement in Proposed Rule 6816(d) that the warning sign placed on the driver’s side of the vehicle be a square with a length and width of at least eight inches.⁴³ According to Colorado Booting, such

³⁸ CSS Comments at 2; Dark Sky Comments at 2.

³⁹ CSS Comments at 2.

⁴⁰ See Dark Sky Comments at 2.

⁴¹ Towing Done Right Comments at 3.

⁴² Wyatt’s Towing Comments at 3; Colorado Booting Comments at 5.

⁴³ Transcript at 11; CSS Comments at 2; Towing Done Right Comments at 8.

signs are currently not available on the market, and the closest size that is commercially available is six inches by eight inches. Colorado Booting also states that certain adhesives combined with plastic or vinyl signs will not stick to a window when the temperature is less than or equal to “0 degrees” and/or there is frost on the window. Finally, Colorado Booting states that making the vehicle towing company responsible for removing the warning sign and/or adhesive from the window is problematic because Colorado Booting has been accused of damaging windows when it has attempted to remove adhesive in the past.⁴⁴

48. Similarly, CSS and Towing Done Right state that the minimum size of the warning notice should be 4 inches by 5.5 inches.⁴⁵ CSS states that using a sticker larger than 4 inches by 5.5 inches “adds to frustration by the employee having to remove the sticker.”⁴⁶ Towing Done Right states that using larger warning notices makes vehicle owners irate and “create[s] liability issues by limiting visibility.”⁴⁷

49. CSS and Colorado Booting request the deletion of the limitation in Proposed Rule 6816(f) that a vehicle booting company “may apply no more than one boot . . . to a vehicle at any given time.” CSS and Colorado Booting employ boots that do not cover the lug nuts of the wheel of a vehicle. Both have experienced the situation in which a single booted wheel has been removed, and a spare tire installed in its place, to defeat the immobilization of the vehicle without paying a release fee. As a result, both companies apply two boots on each vehicle to ensure against such tactics and the loss of their boots.⁴⁸

⁴⁴ Transcript at 7-12.

⁴⁵ Towing Done Right Comments at 8.

⁴⁶ CSS Comments at 2.

⁴⁷ Towing Done Right Comments at 8.

⁴⁸ CSS Comments at 2;

50. Finally, Wyatt's Towing requests that a modified version of Rules 6508(III), (IV), and (V) be incorporated into the Booting Rules.⁴⁹ Rules 6508(III), (IV), and (V) state that a nonconsensual tow may not be performed unless notice is provided of parking restrictions and that a vehicle violating the restrictions will be booted, and goes on to provide the minimum requirements for providing notice through the use of signs.

2. Analysis

51. Proposed Rule 6816(a)(VI) shall be modified to require the initials of the individual authorizing the application of the boot, but not the name of the individual. CSS raises a valid point that inclusion of the individual's name could lead to retaliation against that individual. The risk of that happening outweighs the need for the name of the individual on the invoice, particularly when the initials of the individual are included.

52. Similarly, Proposed Rule 6816(a)(VII) shall be modified to require only the name (and not the signature) of the "owner, authorized operator, or other authorized person to whom the motor vehicle is released [] when the boot is removed," and Proposed Rule 6816(e) shall be deleted. Forcing a company that employs remote release technology to obtain the signature of the vehicle operator and to remove the warning sign on the vehicle could reduce or eliminate the savings in operating costs realized by vehicle booting companies through the use of such technology. As a result, the ALJ concludes that it is in the public interest to modify Proposed Rule 6816(a)(VII) and delete Proposed Rule 6816(e) as described above. The modification of Proposed Rule 6816(a)(VII) renders moot the request to modify the rule to address situations in which the vehicle operator refuses to sign the invoice.

⁴⁹ Wyatt's Towing at 3.

53. The requirement in Proposed Rule 6816(d) that the warning sign placed on a vehicle be a square with a side length of at least eight inches shall be modified so that the length and width shall be at least six inches and eight inches. The loss of two inches in one of the dimensions of the rectangular will not materially impact the visibility of the warning sign. However, the ALJ concludes that lowering the dimensions of the rectangular sign to 4 inches by 5.5 inches does lower the likelihood that the driver of the booted vehicle will not see the sign before attempting to drive the vehicle.

54. Proposed Rule 6816(f) shall be modified to allow a vehicle booting company to place more than one boot on a vehicle, but will allow the company to charge only one release fee for the removal of all of the boots. The rule shall also be modified to specify that only one vehicle booting company may place one or more boots on a vehicle at a time. Such changes protect both the vehicle booting companies in not losing boots and/or not receiving payment for the booting of a vehicle, and the operator's interest in preventing a vehicle booting company from taking advantage of a situation in which his/her vehicle has already been booted.

55. The request by Wyatt's Towing to incorporate into the Booting Rules a modified version of Rules 6508(III), (IV), and (V) shall be granted. Ensuring that vehicle operators are provided notice of parking restrictions and that a vehicle violating the restrictions will be booted, and the phone number and identity of the vehicle booting company that has booted the operator's vehicle, is in the public interest.

56. Finally, the request to delete the requirement in Proposed Rule 6816(a)(IV) for the vehicle's VIN to be included on the boot record/invoice is denied. The inclusion of the VIN on the invoice is useful in both identifying the vehicle and matching the invoice to the vehicle. CSS and Dark Sky have not established that such a requirement is onerous.

I. Proposed Rule 6817 – Rates and Charges

57. Proposed Rule 6817 establishes the rates that a vehicle booting company can charge and requires a release fee for a reduced rate before completion of a full installation of a boot. The proposed maximum rate of \$120 is suggested based upon a mean average of current rates allowed by municipal ordinance in the City and County of Denver (Denver) (\$100) and the Town of Avon (Avon) (75 percent of base tow rates, currently \$135).

1. Comments

58. CSS asserts that the vehicle booting charge “should be in line with the current rates for a tow not including mileage and fees, since our operating costs are nearly identical.”⁵⁰ Under the Commission’s Towing Rule 6511, the current maximum base rates for a tow can range from \$180 to \$325, depending on the gross vehicle weight rating of the towed vehicle.⁵¹

59. Towing Done Right proposes different rates for commercial and residential booting. For commercial booting, the rate should be “at least” \$150, which Towing Done Right contends is approximately the rates set by Denver in 2001 (\$100) and Avon’s rate of \$120 established in 2008 adjusted for inflation.⁵² For residential towing, Towing Done Right recommends adopting the towing base rates and drop rates in Rule 6511.⁵³ Currently, Towing Done Right charges \$175 for the remote release of a boot and \$225 if the vehicle operator requests Towing Done Right to release the boot in-person.

60. Wyatt’s Towing states that the capital and labor costs for operating a vehicle booting company are much lower than for a towing company and that the maximum boot release

⁵⁰ CSS’s Comments at 2.

⁵¹ Rule 6511(b)(I).

⁵² Towing Done Right Comments at 9-10.

⁵³ *Id.* at 10.

rate(s) should reflect as much.⁵⁴ Wyatt's Towing also criticizes the means by which the Commission established the rate for booting, arguing that the rate(s) should be set "that are reflective of the costs of doing business plus an appropriate profit margin."⁵⁵ Wyatt's Towing states that, in setting rates, the Commission should collect information regarding a typical booting company's cost of doing business.⁵⁶ Wyatt's Towing recommends that the Commission set separate prices for "traditional immobilization, which typically requires two visits to the property (one to place the boot and another to release it)," and immobilization using a remote release boot, which does not require a visit to release the vehicle.⁵⁷ Finally, Wyatt's Towing asserts that the booting rates "should be adjusted annually by the Consumer Price Index [CPI] or [some] other index reflective of changes in operating costs."⁵⁸ Wyatt's Towing states that it has not used boots to immobilize vehicles for two to three years, but when it did, it charged \$50. However, booting was not Wyatt's Towing's primary business. Instead, Wyatt's Towing used boots to immobilize vehicles in situations in which more vehicles in a lot had parked without authorization than Wyatt's Towing could tow at one time. Wyatt's Towing would boot the remaining vehicles until its tow trucks could return to the lot after towing other vehicles.⁵⁹

61. Dark Sky agrees with Wyatt's Towing that the rate(s) should be adjusted on an annual basis through application of the CPI. Dark Sky also asserts that an extra "fee" should be imposed for "possible equipment damage" because "attempting to collect damages from

⁵⁴ Transcript at 29-30.

⁵⁵ Wyatt's Towing at 3-4.

⁵⁶ *Id.* at 4.

⁵⁷ *Id.*

⁵⁸ *Id.* at 5.

⁵⁹ Transcript at 21-22.

someone who illegally removed [a] boot” and thereby damaged it is “almost impossible after the fact.”⁶⁰

62. Finally, Colorado Booting is charging \$140 for a boot release in Eagle County, \$120 in Avon, \$250 at two private properties in Vail, and \$100 at a federal subsidized housing property.⁶¹

2. Analysis

63. After careful consideration of the comments submitted in this proceeding, the ALJ concludes that Proposed Rule 6817 sets the booting rate at the appropriate level. The vehicle booting companies that submitted comments have not disclosed their operating costs. However, while some vehicle booting companies have charged above the \$120 rate stated in Proposed Rule 6517, one is charging \$120 for some of its tows, and two have charged below that level, albeit in one case booting was employed to serve its primary towing business (Wyatt’s Towing). In addition, it is indisputable that vehicle booting companies have lower capital costs than towing companies. Particularly with the introduction of remote release technology, vehicle booting companies should have lower operating costs as well. As a result, setting the booting rate at or near the towing rates in Rule 6511 would be inappropriate.

64. In addition, the ALJ declines to set separate rates for remote release and in-person release. Such a rate structure could lead to disputes over whether the remote release mechanism had malfunctioned, thus requiring an in-person release. In addition, remote release allows the vehicle operator to regain possession of the booted vehicle much sooner than if he/she waits for an in-person release. As a result, the vehicle operator of a booted vehicle already has a

⁶⁰ Dark Sky Comments at 2.

⁶¹ Transcript at 27-28.

significant incentive to use the remote release option. Adding a cost incentive for consumers thus appears to be unnecessary for the vehicle booting company to realize the benefit of lower operating costs resulting from the investment in remote release technology.

J. Proposed Rule 6818 – Release of Motor Vehicle/Removal of Booting Device

65. Proposed Rule 6818 establishes the requirements of a vehicle booting company to accept payment if offered by cash or valid major credit card and establishes to whom the vehicle booting company shall release the vehicle. This rule also provides that a vehicle booting company must remove a boot upon demand after receiving payment, but no more than 60 minutes during the vehicle towing company's normal business hours, and no more than 90 minutes at all other times.

1. Comments

66. Dark Sky states that the time limits specified in Proposed Rule 6818(b) within which a booted vehicle must be released are reasonable under normal, but not all, circumstances.⁶² Dark Sky performs its booting operations in the Denver metro area. Dark Sky proposes to modify the rules to provide vehicle booting companies up to 90 minutes to release a vehicle during operating hours, and 120 minutes during non-operating hours.

67. Colorado Booting operates in Eagle and Summit Counties and the proposed time limits can be unreasonable even under normal circumstances. For example, Colorado Booting states that it takes 70 minutes to drive from Glenwood Springs to Vail in good driving conditions. Colorado Booting also states that there is not sufficient business in Eagle and Summit Counties to justify hiring more than one person to be on call during the night. As a result, it is possible

⁶² Transcript at 18-19.

that an on-call employee of Colorado Booting would not be able to release a booted vehicle within the 60 or 90-minute requirements in Proposed Rule 6818(b).⁶³

68. Colorado Booting also takes issue with the language in Proposed Rule 6818(a) that “[t]he vehicle booting company shall release the motor vehicle to: (I) the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle.” Colorado Booting states that it can be difficult, if not impossible, to verify that an individual is the “owner, authorized operator, or authorized agent of the owner of the motor vehicle.”⁶⁴ However, Colorado Booting does not propose alternative language.

2. Analysis

69. The ALJ shall not make any changes to the time limits within which vehicle booting companies must release booted vehicles. The time limits on the release of vehicles in Proposed Rule 6818(b) serve the important public interest of returning the use of a vehicle to its operator as quickly as reasonably possible. In addition, it is notable that only one of the Denver metro area-based vehicle booting companies that submitted comments proposed changes to the time limits. While the ALJ understands and appreciates the circumstances in which Colorado Booting operates in Eagle and Summit Counties, the Commission cannot establish a rule of general applicability that accommodates the business environment of a single vehicle booting company. In addition, it would be contrary to the public interest to establish a rule that provides additional time to release vehicles to accommodate the circumstances of a subset of a single vehicle booting company’s vehicle releases. The ALJ notes that Proposed Rules 6818(b) and

⁶³ *Id.* at 14.

⁶⁴ Colorado Booting Comments at 7.

6819(c) indicate that the Commission will consider all circumstances surrounding the release of a vehicle before determining whether a violation of Proposed Rule 6818(b) has taken place.

70. The ALJ also shall not make any changes to Proposed Rule 6818(a)(I). Requiring a vehicle booting company to attempt to determine whether an individual seeking the release of a boot is the booted vehicle's "motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle" serves a valid public interest. In addition, as above, Proposed Rules 6818(a)(I) and 6819(c) indicate that the Commission will consider all circumstances surrounding the release of a vehicle before determining whether a violation of Proposed Rule 6818(a)(I) has taken place. Finally, Colorado Booting has not proposed alternative language. Under these circumstances, while the ALJ understands that it can be difficult for a vehicle booting company to determine with certainty whether an individual is a motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle, no changes to Proposed Rule 6818(a)(I) shall be made.

K. Proposed Rule 6819 – Vehicle Booting Company Violations and Civil Penalty Assessments

71. Proposed Rule 6819 establishes the fines for violation of any of these Rules or the Colorado Revised Statutes.

72. No comments or proposed changes were submitted concerning Proposed Rule 6819. Accordingly, no changes shall be made to the proposed rule.

73. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

III. ORDER**A. The Commission Orders That:**

1. The Rules Regulating Vehicle Booting Companies contained in 4 *Code of Colorado Regulations* 723-6-6806 through 6819 attached to this Recommended Decision are adopted.

2. The rules in in redline legislative format (showing changes to the originally proposed rules issued with the Notice of Proposed Rulemaking) and in final format are attached to this Recommended Decision as Attachments A and B, respectively. They are also available in the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0485TR.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set

out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director