

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0095TO

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
AMENDING RULES**

Mailed Date: April 11, 2017

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A. The Commission Orders That:65

I. STATEMENT

1. On February 19, 2016, the Public Utilities Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding. See Decision No. C16-0129. The Commission referred this matter to an administrative law judge (ALJ) and scheduled the commencement of hearing for April 27, 2016. The purpose of the proposed rules is to describe the manner of regulation over those providing transportation service by motor vehicle in the State of Colorado; refine current definitions and add new ones; establish fencing, signage, and lighting requirements for storage facilities; implement maximum rates for the nonconsensual towing and recovery of motor vehicles of all weights; and deletes duplicative language in the civil penalty rules.

2. Public written comments were filed with the Commission as well as written comments by Colorado Auto Recovery Inc., the Colorado Motor Carriers Association, Connolly's Towing, Inc., D&J Towing & Recovery of Colorado Inc., the Owner-Operator Independent Drivers Association (OOIDA), Parking Authority, LLC, Towing Operations, LLC (dba) Wyatt's Towing (et al.), and the Towing Task Force (Task Force). Oral comments were also provided during the course of the hearing.

3. By Decision No. R16-0712 issued August 2, 2016, a comprehensive Recommended Decision was issued recommending the adoption of rules in this proceeding. Exceptions to the Recommended Decision were filed by the Towing Task Force, Colorado State Patrol, Owner-Operator Independent Drivers Association, Colorado Apartment Association, Colorado Motor Carrier Association, Towing Operations, LLC, Connolly's Towing, Inc., Towing & Recovery Professionals of Colorado, and Parking Authority, LLC. Responses to exceptions were filed by OOIDA, Towing & Recovery Professionals of Colorado, Colorado Motor Carrier Association and D&J Towing & Recovery of Colorado Inc.

4. By Decision No. C16-0947-I issued October 13, 2016, the Commission concluded:

Based on the foregoing, we agree with the ALJ's determination that further analysis and study of the Task Force's cost model needs to be performed regarding maximum rates for nonconsensual tows, particularly in the light category. Such further study and analysis should be performed consistent with the language of § 40-10.1-106(b), C.R.S., regarding financial statements and financial information. We find that this requires that this Proceeding be remanded to the ALJ for further analysis, public comments and findings, with instructions to request financial statements and financial information consistent with § 40-10.1-106(b), C.R.S.

Implicit in the ALJ's determination that the Task Force's cost model requires further analysis is the question of the Commission's authority to issue rules regulating maximum rates for nonconsensual tows. This issue was explicitly raised on Exceptions and is directly relevant to the rulemaking proceeding established in the February 19, 2016, NOPR.

Given the paramount importance of the Commission's authority to issue rules regarding rates for nonconsensual tows, the ALJ should also consider at a public hearing any legal arguments that the parties have concerning the Commission's authority to issue rules regulating maximum rates for nonconsensual tows.

Thus, this entire Rulemaking Proceeding will be remanded to the ALJ for further determinations on the limited issues delineated in this Decision. While we remand the entire rulemaking to the ALJ, we direct that the further proceedings be limited to comment, discussion and analysis regarding proposed Rules 6500 and 6511.

Decision No. C16-0947-I at ¶¶ 25-28.

Finally, the Commission set a hearing to further consider the proposed rules to be held on October 21, 2016.

5. By Decision Nos. R16-0986-I issued October 25, 2016, R16-1101-I issued December 1, 2016, R16-1136, issued December 9, 2016, R17-0008-I issued January 5, 2017, and Decision R17-0079-I issued January 26, 2017, continued hearing dates orally announced during hearing were memorialized and issues were identified requesting further comment to better understand the towing industry in Colorado . Hearing Exhibits 1 through 17 are included in the record, in addition to oral and written comment.

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

7. Because the entire Rulemaking Proceeding was remanded for further determinations on the limited issues, this Recommended Decision will encompass the entirety of the proceeding. However, modifications from the prior recommended decision will be focused upon matters addressed in Decision No. C16-0947-I.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

A. Discussion

1. Comments of General Applicability

8. OOIDA comments that it is the largest trade association representing the views of small-business trucking professionals and professional truck drivers. OOIDA has more than 155,000 members nationwide, including nearly 2,600 who reside in Colorado and thousands more who operate on Colorado highways every day. During hearing, it was clarified that

OOIDA's interests focus on towing of commercial trucks as opposed to smaller personal vehicles.

9. The Colorado Motor Carriers Association (CMCA) for the past 76 years has represented companies involved and affiliated with trucking in Colorado. There are more than 650 companies within the organization representing an estimated 80,000 employees within those businesses in Colorado.

10. Comments were filed by Towing Operations, LLC (dba Wyatts Towing) (T-4269) stating the position for itself, Aaliyah's Towing and Recovery, LLC (T-4151), Klaus' Towing Inc. (T-2042) and Lone Star Towing, LLC (dba Lone Star Towing and Boulder Valley Towing)(T-4066), all of which share some common ownership. During hearing, it was commented that these business focus on PPI towing along the Front Range. Their equipment is not capable of towing something heavier than a large pickup.

11. The proposed rules, provided with Decision No. C16-0129 in legislative (i.e., ~~strikeout~~/underline) format and in final format, were made available to the public through the Commission's Electronic Filings (E-Filings) system.

12. The undersigned ALJ has reviewed the record in this proceeding to date, including written and oral comments. This Recommended Decision will generally focus upon comments and contested issues addressed during the course of the proceeding. Not all modifications proposed to the rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are found to be reasonable and recommended for adoption. Any specific recommendations made by interested persons that are not discussed below or otherwise incorporated into the attached redlined rules, are not adopted.

2. Towing Task Force Consultation

13. The Colorado Legislature created the Task Force to make comprehensive recommendations to the Commission about the maximum rates that may be charged for the recovery, towing, and storage of a vehicle that has been towed without the owner's consent. The Task Force has no express statutory purpose or authority other than to consult with, and make recommendations to the Commission. § 40-10.1-403 C.R.S. The statute addresses the relationship between the Task Force and the Commission as advisory in nature. No Commission authority is delegated to the Task Force. Rather, it serves to make recommendations to the Commission.

14. The Task Force consists of a group of nine members appointed by the Governor representing the Staff of the Public Utilities Commission; the Colorado State Patrol; a statewide towing association, towing carriers who are not members of an association; an association of automobile owners; insurance companies operating within the State; an association of motor carriers operating within the state; local law enforcement; and a private property owner that contracts for towing services, to represent consumers of towing services.

15. In response to the Commission's NOPR, the Task Force filed comments including recommendations regarding proposed modifications to the Commission's Towing Carrier Rules. The recommendations of the Task Force are included in the record as comments in accordance with Rule 1504 of the Rules of Practice and Procedure. The Task Force first recognized its statutory purpose, and then recommended adoption of rates. The initial Task Force comments state that the recommendation was based upon adaption of a model used in Utah to identify reasonable costs for an average size Colorado towing company.

16. Although some have referenced evidence in this proceeding, this is not an adjudicatory proceeding.¹ The Commission accepts comment in many proceedings and has distinguished public comment from formal evidence:

Rule 1504, 4 CCR 723-1, grants discretion to the presiding officer as to the nature and treatment of public comments in the record. Public comments in this proceeding, while part of the administrative record, were not ordered to be part of the evidentiary record.

Public comments in this proceeding are submitted for the Commission's general information and to encourage the Commission to exercise discretion in the matter. A record of the comments has been made so that the Commission may also review them in deliberation of the decision in this matter. For this purpose, parties may address comments within the scope of the proceeding as part of their case. There is no need or requirement to restrict the scope of public comments, including supporting documentation.

To limit submission of written documents to the scope argued by Public Service would unreasonably restrict commenters' ability to present documentary material in support of comments or from incorporating them by reference. However, accepting written documentation does not change the nature of the submission. Thus, the subject documentary materials are received as public comments.

As Ms. Glustrom argues, members of the public should not require legal representation to present comments to the Commission. However, the argument that comments are evidence in the proceeding cannot prevail.

The public comment sessions in this proceeding have not been conducted as an evidentiary proceeding and the nature would drastically differ if they had. Public commenters are not parties to the proceeding. The time for intervention has long past. Parties to the proceeding have had neither the benefit of disclosures, nor opportunity for discovery or cross-examination. Such considerations dictate that public comments be distinguished from evidence in the proceeding.

Ms. Glustrom argues that comments should be admissible testimony with weight being determined by the Commission. Lowering the evidentiary bar so low in this proceeding is inappropriate and improperly eliminates any barrier to admission.

R09-0536-I, issued May 18, 2009, at 6-11.

17. As a case of first impression, the undersigned's consideration of the Task Force comments are also guided by statutory language and prior consideration of issues affecting

¹ This evidentiary reference is distinguished from evidence of Commission action in this proceeding that may be presented in appellate review or another proceeding.

another task force, the Colorado PUC 911 Task Force. The Commission has acted to protect those advising the Commission to encourage participation and avoid a chilling effect. See e.g. Decision No. R09-1389-I issued December 14, 2009.

18. It is also notable if the Task Force were to appear in an adjudicatory proceeding, it would likely require representation by counsel. This could result in compounding cost and complexity of proceedings, while perhaps at least complicating communication of recommendations.

19. In light of the nature of a rulemaking proceeding, the Task Force's statutory purpose, and prior authority, it is best that comments remain as comments that are not subjected to evidentiary standards or procedures. Comparable to the 911 Task Force, the Commission seeks and will most benefit from candid Task Force comments. This is not an adjudicated proceeding. There are no disputed issues of fact that would be determinative of the rules to be adopted. Task Force members are not subjected to cross examination or discovery, as would be the case in an adjudicatory proceeding. The Task Force is intended to be comprised of members integrally involved in day-to-day affairs affecting the towing industry. The Commission seeks benefit of expertise without imposing fear of reprisal or being enthralled in perpetual litigation.

3. Rule 6500

20. The NOPR proposes to eliminate current Rule 6500(c). Rule 6500, in combination with Rule 6511 addressed below, proposes statewide caps on amounts for towing and storage of a motor vehicle performed without consent of the owner or operator of the motor vehicle. Previously, the Commission's statewide authority was limited as to towed vehicles weighing in excess of 10,000 pounds. See e.g. §42-4-1809 C.R.S.

21. The Commission is authorized to adopt rules covering the operations of motor carriers as may be necessary for the effective administration of Article 10.1 of Title 40, including:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public; [and]

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle. In setting the rates and charges pursuant to this section, the commission may require towing carriers performing nonconsensual tows to submit financial statements or other financial information to determine the costs associated with the performance of nonconsensual towing and any motor vehicle storage incident thereto.

§ 40-10.1-106 C.R.S.

22. Currently, Rule 6500 expressly allows for written contracts with governmental entities to adopt and enforce additional or more stringent requirements for aspects of tows performed under a written agreement with a towing carrier. Current rule also permits those agreements to establish higher or lower rates for nonconsensual tows. The effect of the proposed rule would limit the permissible scope of written agreements with governmental entities.

23. The scope of preemption, if any, and the Commission's authority to adopt the proposed rules, was first raised in exceptions to Recommended Decision No. R16-0712 issued August 2, 2016. The plain language of the statute does not address preemption. The Commission considers competing interests in adopting rules even though preemption is ultimately a determination of law. See *City of Longmont Colo. v. Colo. Oil & Gas Ass'n*, 2016 CO 29, 10 (Colo. 2016). Notably, the rule has no effect on the ability to negotiate consensual arrangements or to agree upon other matters not in conflict with Commission rules. Negotiated rates for nonconsensual tows must be within parameters provided in Rule 6511.

24. The legislative history of House Bill 14-1031 is helpful in understanding the statutory intent. There was little controversy or dispute through the legislative process and the bill appears to have enjoyed broad support. Concerns giving rise to the bill were provided during legislative hearings. CMCA members commonly require towing services and found dramatic inexplicable differences in prices for similar tows. Ron Jack, testifying on behalf of the Commission in legislative hearings, described instances of a Hummer and F350 weighing over 10,000 pounds being charged more than \$3,000 each for being towed.

25. The Updated Summary for HB14-1031 applies to the reengrossed version of the bill as introduced in the second house and states: “Currently, the public utilities commission regulates rates for a nonconsensual tow of a motor vehicle if the vehicle is 10,000 pounds or less. The bill repeals the 10,000 pound limitation to apply the regulation to all vehicles.”

26. The final Colorado Legislative Council Staff Fiscal Note also states: “Under current law, the PUC regulates the rates that may be charged for a nonconsensual tow of a motor vehicle if the motor vehicle weighs less than 10,000 pounds. Nonconsensual towing rates for motor vehicles weighing greater than 10,000 pounds are determined by a negotiated agreement between the towing operator and the responsible law enforcement agency. This bill repeals the 10,000 pound weight restriction to apply the commission's towing rate regulation to all motor vehicles.” Amendment of § 42-4-1809 C.R.S. allowed uniform regulation of rates for all vehicles.

27. The Colorado Legislative Council Staff Fiscal Note of State and Local Revised Fiscal Impact expresses Counsel’s opinion of Local Government Impact:

Local governments that enforce towing fee provisions may see changes in revenue or expenditures based on the task force's recommendations about the maximum towing rate that may be charged. At this time, it is impossible to know

how those recommendations may impact the revenue or expenditures of local governments.

Local law enforcement representation on the task force may increase the workload of local law enforcement agencies, but this is expected to be minimal and can be accomplished without new funding. Additionally, the workload of law enforcement agencies is expected to be reduced slightly, as law enforcement will no longer be required to negotiate with towing operators regarding the fee being imposed by the operator.

28. The bill was intended to protect consumers across the state from abusive practices of a few bad-actor tow companies.

29. The Colorado State Patrol supported passage of the bill as a way to assist in managing relations with both the towing industry and the motor carrier industry across the state.

30. The Colorado Motor Carriers Association supported passage of the bill and explained that the Task Force will be made up of stakeholders with a vested interest in the process. They will be doing for the Task Force something they are doing every day.

31. During hearings in this proceeding, Dan Coleman, owner of D.G. Coleman, Inc. and CMCA board member, addressed disparities between nonconsensual tow versus consensual tow costs. He described two rollover accidents occurring within a few miles of each other on U.S. Highway 285, which he considered to be similar for all practical purposes. Without any apparent contention they were identical, the longer consensual tow cost \$2,400 while the shorter nonconsensual tow was over \$35,000.

32. Michael Adinolfe, owner of Direct Transport Services as well as Chairman and current CMCA board member, opines that his industry has been the victim of abuse by the towing industry. He had an empty truck jackknife and go off the road near the location Mr. Coleman described. The tow bill was \$2,500.

33. David Hoefler commented that his van was towed from a Bronco parking spot. He thought the resulting \$200 charge for an approximate three-mile tow, plus \$35 per day for storage, was excessive.

34. Greg Fulton, President of the Colorado Motor Carriers Association described an instance where a federal government vehicle weighing a little more than a larger pickup (greater than 10,000 pounds) was towed in Denver. The tow bill was several hundreds of dollars. He also mentioned that the Mayor of Denver supported passage of the bill. Mr. Fulton also addressed recovery associated with a separate nonconsensual tow where temporary labor was billed at rates believed to be several times higher than normal. He also noted unique billing of items used in connection with a tow, including the cable itself being charged at \$2 per foot. *See* Hearing Exhibit 1.

35. The Colorado Motor Carrier Association supports adoption of the proposed rules and characterizes “[u]niformity and consistency in billing processes and procedures within our state for services such as nonconsensual towing” as “critical.” Colorado Motor Carrier Association Exceptions to Recommended Decision No. R16-0712 at 2.

36. Mr. Connolly commented that several factors not imposed by the Commission also increase the cost of performing nonconsensual tows, such as mandated response times and specialized training.² Clearing roadways to mitigate safety risks can necessitate different costs

² Although no comments include any specific agreements or rate information, local jurisdictions impose conditions or requirements affecting nonconsensual tows in addition to those imposed by the Commission. This provides another source of rate variation and potential for cross subsidization, complicating rate design in this proceeding. Where one jurisdiction requires specialized training or shorter response time from a towing carrier, the carrier may be required to allocate additional resources to meet those requirements. Such factors could potentially affect public safety outside of the contracting jurisdiction.

and differing public safety impact than a car being parked in a parking spot without authorization.

37. Based upon comments received, the initial Recommended Decision retained aspects of Rule 6500(c) to clarify that Commission rates would operate as a cap on rates established in a written agreement. Without referring to any specific authority, Connolly argues that the Commission historically left regulation of towing to cities, counties, state and federal agencies because the Commission lacked interest, did not have and could not, through experience, develop expertise or familiarity with towing costs, revenues, operations, risks, liabilities and profits; and that cities, counties, state and federal agencies had more practical experience. These comments conflict with Mr. Jack's statements during legislative hearings and, in any event, do not reflect the Commission's implementation of recent statutory amendments.

38. Mr. Ron Jack, Chief of the Transportation Section for the Public Utilities Commission, explained the current rule structure largely resulted from the Commission regulating only a specific segment of the towing industry. Enacting House Bill 14-1031, the Legislature extended the Commission's authority to all nonconsensual tows in Colorado. Adopting a comprehensive ceiling on state-wide rates in Rule 6511 will allow removal of the unnecessary provision in Rule 6500 and extend consumer protections. Mr. Jack contemplated a transition as existing agreements expire or otherwise terminate. It was anticipated that rules implemented would narrow the scope of matters addressed in any future written agreements.³

39. Comment raises reasonable concern about transitioning to new rules in light of existing arrangements affecting nonconsensual towing. In order to provide an opportunity for

³ Hearing Transcript, April 27, 2016 at pp 28- 31.

orderly transition, a date-certain window of time will be provided for existing contracts to be terminated or modified consistent with these rules.

40. Aside from the concern for a reasonable and appropriate transition for prospective operation, the Supreme Court has found that the contractual provisions cannot be utilized to evade Commission authority:

Regardless of the exact nature of USWC's contract with Direct, a regulated monopoly may not evade regulatory requirements simply by contracting a service with a non-regulated third-party and then claiming that future rules concerning the service are invalid if they interfere with the contract. See *Ohio & Colo. Smelting & Ref. Co. v. Public Utils. Comm'n*, 68 Colo. 137, 143, 187 P. 1082, 1085 (1920) (quoting *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 357, 52 L. Ed. 828, 28 S. Ct. 529 (1908), for the proposition that "one whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them"). In fact, the state's authority to promulgate laws and regulations that impact contracts extends even to contracts made by non-regulated entities: "Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority." *Ohio & Colo. Smelting & Ref. Co.*, 68 Colo. at 144, 187 P. at 1085 (quoting *Louisville & N. R.R. Co. v. Mottley*, 219 U.S. 467, 482, 55 L. Ed. 297, 31 S. Ct. 265 (1911)); see also *Zelinger v. Public Serv. Co.*, 164 Colo. 424, 432, 435 P.2d 412, 416 (1967) (holding that the PUC may regulate or modify power rates fixed by contracts, even if the contracts were executed prior to the passage of the statute conferring PUC ratemaking authority).

US West Communs., Inc. v. Colorado PUC, 978 P.2d 671, 677 (Colo. 1999)(note omitted).

41. Also in exceptions, Connolly argues that "under federal statute, Congress' grant of 're-regulation' of nonconsensual towing has been to both State and local entities, equally." Based thereupon, it is argued that the "Commission lacks exclusive authority to set rates for towing carrier services as towing carriers are not now nor have they ever been classified 'public utilities'.(sic) C.R.S. §40-10.1-103(2); 40-13-102(2) (Repealed); Article XXV, Colorado constitution. C.R.S. 40-10.1-106(1), like its predecessor §40-13-102(2), does not contain language giving exclusive authority to this Commission to set towing rates."

42. It is argued that “49 U.S.C. 14501(c)(1)(C) is the dominant and controlling statute as to nonconsensual rates. This federal statute prevails over PUC rules or statutes. *Cipollone v. Liggett Group, Inc.* 505 U.S. 504, 516 (1992) (holding that any state statute conflicting with a federal statute is without effect).” Clarification of Position on the Elimination of the Municipal Contract Exemption by Connolly's Towing, Inc. with Amended Certificate of Service at 4.

43. Following enactment of the Transportation Equity Act for the 21st Century (Public Law 105-78), the Commission entered a declaratory order describing the Commission's jurisdiction over towing carriers. Decision No. C96-538. The Commission reaffirmed its authority “to regulate the pricing of tows performed without the prior consent or authorization of the owner or operator of the motor vehicle.” Decision No. C96-538 at 11. Aside from any impact of Public Law 105-78 in any event, and as specifically noted in the Owner-Operator Independent Drivers Association Reply Comments to Exceptions to Recommended Decision No. R16-0712, federal law no longer preempts “the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the regulation of tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle.” 49 U.S.C.S. § 14501(c)(1)(C).

44. Connolly's most recent statement is that it does not contest the Commission's authority to set maximum rates for towing and storage services. However, Connolly argues setting maximum rates for nonconsensual tows is a matter of mixed state and local concern and “a state statute cannot diminish or invalidate the city's ordinance.” Clarification of Position at 3, citing *City & County of Denver v. State of Colorado* 788 P.2d. 764, 767 (Colo. 1990).

45. The Supreme Court recently analyzed prior preemption cases and addressed the power of home-rule cities. Before considering any conflict, the Supreme Court instructed that a

determination whether matters are statewide concerns, mixed state and local concerns, or local concerns. *City of Longmont Colo. v. Colo. Oil & Gas Ass'n*, 2016 CO 29, 10 (Colo. 2016). In this instance, the Commission's longstanding authority as to tows of less than 10,000 pounds, is indicative of a statewide concern regarding the expanded scope of nonconsensual tows. Colorado's comprehensive regulation of traffic safety in the state has also been recognized as a matter of mixed state and local concern. *Webb, et. al v. City of Black Hawk*, 2013 CO 9; 295 P.3d 480; 2013 Colo. LEXIS 99 (2013).

46. In exceptions, Major Jon Barba, Motor Carrier Services Branch - Colorado State Patrol representative on the Towing Task Force cautioned the Commission to be careful of unintended consequences. The Towing Task Force accepted Major Barba's comments, which stated in part:

Public safety necessitates the quick clearance of traffic accidents from the roadway to reduce secondary crashes and prevent congestion. We agree with AU Adams that the quick clearance of the roadway enhances public safety. The Patrol has implemented the Traffic Incident Management System (TIMs), which includes the quick clearance philosophy throughout the state. Strong partnerships with the towing and recovery industry are a cornerstone of the TIMs philosophy. The social and economic impact a crash has on the public cannot be understated. Having a strong partnership with the towing and recovery industry enables law enforcement to have properly equipped towing professionals immediately available at the scene of the crash for recovery efforts. This is essential to preserve public safety and re-establish normal traffic flow. Often times, this necessitates the towing professional to be on scene at the ready to recover vehicles as soon as practical at the conclusion of the law enforcement investigation.

47. The Commission previously reconciled its jurisdiction over nonconsensual tows with other governmental entities. For vehicles abandoned on public property, it was specifically recognized that municipalities may adopt more stringent rules with respect to towing carriers. Decision No. C05-1037, issued August 30, 2005; RRR denied by C05-1191, issued October 5, 2005 citing § 42-4-1801 et. sq. C.R.S. Arguments that the Commission seeks to interfere with

benefits of local contracting are misplaced as the intent of the rule would not affect the ability to pursue those benefits. Rather, the Commission has limited the permissible scope of terms of written agreements for years. The only addition in the recommended rule is to narrow the permissible range of pricing, effectively limiting the ability to cross subsidize services.

48. Although not totally quantified, the record establishes that abuses concerning prices charged for nonconsensual tows and practices of towing companies have resulted in increased costs and inconvenience to the public at large. The Task Force was created to comprehensively advise the Commission, not to address only rates outside of local jurisdictions. Recent statutory amendments will eliminate or narrow variation in a patchwork of pricing after consultation with the Task Force representing state and local interests. Further, it would mean little for the Task Force to advise the Commission on matters over which it is powerless to act. It is particularly notable that each Task Force member represents specified interests. Many member interests are ubiquitous across the state. However, interests include uniquely local representation (e.g. local law enforcement agencies). There can be little doubt that the Legislature intended to create state-wide consumer protections by creating the Task Force and removing limits on the Commission's jurisdiction. Excluding local jurisdictions from these rules, as argued by Connolly, would frustrate the very purpose for which the Task Force was created. State-wide pricing parameters will serve the public interest, protect customers from potential confusion or abuse, and promote public safety.

49. Competitive forces have affected towing rates, terms, and conditions in the past. Historically, it has not uncommon for law enforcement ordered tows to be subject to further conditions agreed to by towing carriers in order to participate in a rotation of service providers for those agencies. Comparably, property owners of parking areas in high-demand areas may

desire to negotiate terms and conditions for the right to provide towing services on their property. Rule 6500 will extend the opportunity for competitive responses as to all nonconsensual tows by expressly recognizing that towing companies are permitted to contractually agree to more restrictive terms and conditions within parameters established by the Commission.

4. Rule 6501

50. Proposed Rule 6501(h) exactly duplicates the definition of motor vehicle in Rule 6001(v), which already applies to towing carriers. See Rule 6005, 4 CCR 723-6. Duplication is unnecessary and raises a potential for future conflict or unintended consequences. Thus, it will not be adopted here.

51. The NOPR includes the recommendation of the Task Force to refine the definition of “nonconsensual tow” to include all law enforcement-ordered tows; define the term “recovery”; and add the statutory definition of “motor vehicle” for clarity for those governed by the towing rules.

52. Staff proposes definitions for “private property impound,” “Recovery,” “Towing,” “towing facility,” and “Trailer.”

53. D&J comments that the inclusion of law enforcement ordered tows unnecessary. OOIDA supports the definition of nonconsensual tow as it correctly acknowledges that law enforcement ordered tows are nonconsensual. Parking Authority LLC also supports the proposed definitions and further proposes inclusion of the acronym “PPI” to the definition of a Private Property Impound.

54. The proposed rule will be adopted to clarify that a law enforcement tow is a nonconsensual tow. Without regard to the owner’s potential presence when a law enforcement official orders a tow, the circumstances reflect a lack of opportunity for the operator to research,

negotiate terms with, and make an informed selection among towing carriers. Further, the officer's primary goal cannot be to research and negotiate the best alternative for the consumer or allow the consumer to do so after regaining their composure following such an emotional experience. Public safety dictates expeditious clearing of roadways. As found in the Utah study and consistent with other comment, "[o]fficers responding to crashes and disabled vehicles have set a goal to reduce secondary crashes and congestion by decreasing the response time and clear time as much as possible. Studies have shown that for every minute that passes after a crash, the chances for a secondary crash are increased by 2.8% (3). This indicates that for a 20 minute response time the chances for a secondary incident increases by 56%." Non-Consent Towing Study in Utah at 52.

55. Staff proposed inclusion of the definition of a towing facility to make clear that Staff could access records without regard to their storage location. Comment also raised concern as to the consistency of reference to storage facilities in the language as compared to Rule 6507. Article 10.1 also includes references to towing facilities, which are not defined in statute. *See* §§ 40-10.1-106 and 40-10.1-401 C.R.S.

56. Comment points out that the Commission imposes obligations upon towing carriers with regard to storage facilities (e.g. Rule 6507); however, the term is not defined in the rules. Comment suggests adoption of a definition. Illustratively, applicability is questioned as to a large parcel of property where only a small portion is used to provide storage of vehicles towed as a nonconsensual tow.

57. Comment demonstrated need for definition of the term for application of the statute.⁴ In order to effectively administer Article 10.1, it is also important that Staff be able to inspect all aspects of a towing carrier's business regarding the responsibilities within the scope of the Article. The definition will be modified to clarify this scope.

5. Rule 6506

58. Rule 6506(e) defined rescue and recovery operations and requires a minimum set of equipment necessary to conduct such operations. The Task Force is proposing to refine Rule 6506(e) by moving the definition of recovery to the definition section, and eliminating the equipment requirements because they are incomplete and add little value in the way of enforceability. The proposals are reasonable and will be adopted.

6. Rule 6507

59. Rule 6507 currently establishes disclosure requirements regarding towing carriers' storage facilities. Proposed Rule 6507(d) regarding security and safety of vehicles requires: (1) security barriers or safety apparatus suitable to insure the security of the property contained therein and (2) enclosure by solid walls at least six feet high or fencing of chain link or other material of equal or similar strength sufficient to reasonably protect against loss, trespass or vandalism.

60. Staff is proposing fencing, lighting, and signage requirements for storage facilities. Several commenters oppose the requirements and the potential burden resulting.

⁴ The undersigned also notes that no basis whatsoever have been shown in comment to deny Staff access to records based upon their storage location – whether a towing facility or not. Rule 6005 authorizes Staff to interview personnel and inspect records, vehicles, and facilities. As to records, there is appropriately no reference to location (i.e. including the proposed definition of towing facility) because it matters not where they are stored. Carriers are obligated to make records available to Staff as proscribed.

Comment is based upon differing foundational assumptions for the security and safety of vehicles stored by a towing carrier.

61. D&J Storage generally comments that regulation of storage facilities is best left to local governments and facilities should only be required to comply with governing zoning requirements and local ordinances. Further, it is unnecessary for the Commission to regulate these matters and inappropriate for carriers complying with local requirements to be subject to penalty by the Commission.

62. Parking Authority LLC generally supports secure facilities to mitigate risks. However, it contends no facility can be 100% secure and is unrealistic to require property owners “to ‘insure’ the security of property within a facility.” An alternative is proposed to impose a standard upon reasonableness.

63. Some contend that the towing carrier is not responsible for all damage occurring while stored property is in its care, custody, and control.

64. Section 40-10.1-106 provides that the Commission:

has the authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of this article, including rules on the following subjects:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public;

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle. In setting the rates and charges pursuant to this section, the commission may require towing carriers performing nonconsensual tows to submit financial statements or other financial information to determine the costs associated with the performance of nonconsensual towing and any motor vehicle storage incident thereto.

§40-10.1-106(1) C.R.S.

65. The Commission has adopted rules pursuant to its jurisdiction and regulates storage as an inherent part of a nonconsensual tow. Decision No. C05-1037, issued August 30, 2005. It is notable that no comment addresses specific losses during storage and the undersigned is not aware of any complaints filed with the Commission regarding the same. The undersigned finds no Commission decision directly addressing anyone claiming damages to property in storage.

66. The Commission imposes many obligations upon towing carriers choosing the benefits of performing nonconsensual tows, specifically including demonstrating financial responsibility at all times relevant to a nonconsensual tow.⁵ Those burdens provide important service quality and consumer protections for the public. The lack of any comment addressing availability of providers of nonconsensual tows suggests the Commission has struck an appropriate balance historically. When a towing carrier performs a nonconsensual tow, the carrier undertaking the regulated tow must take special care of the property of another entrusted to them, including while stored, until it is released in accordance with Commission rules.

67. Towing carriers providing storage must maintain garage keeper's liability coverage on file with the Commission. This coverage insures a motor vehicle that is the subject of a nonconsensual tow against loss while in the care, custody, or control of the towing carrier. See Rule 6007. Being responsible for the property, towing carriers providing storage have an incentive to secure storage facilities based upon the applicable facts and circumstances (e.g. surrounding populations, geography, and topography).

⁵ Illustratively, it is upon this basis that the reasonable cost of insurance is appropriately considered in establishing maximum rates.

68. Some comment contends that the towing company is not responsible for the actions of others while in the storage lot. The example provided is where one customer causes damage to the property of another customer perhaps while driving their car out of the storage lot. This comment incorrectly attempts to allocate responsibility of one party to the exclusion of the other (i.e. to the driver causing damage). Analogy is attempted to any other location where an accident might occur (i.e. a publicly available parking lot or roadway). However, such an analogy fails. The obligations necessarily undertaken in connection with a nonconsensual tow of another's property distinguishes a nonconsensual tow from two hypothetical customers operating their own car in a parking lot, as offered in comment.

69. A towing carrier is responsible for storing a motor vehicle as an inherent part of the nonconsensual tow. If damage occurs to the motor vehicle in the towing carriers' care, others may very well be responsible; however, the towing carrier's responsibility remains. As commented, the towing carrier is in the best position to protect property within its care, custody, and control.

70. The proposed rules will be considered in light of these considerations. Approximately 20 years ago, Commission rules included specific fencing requirements for outdoor storage facilities: "723-9-12.2. Outside Storage Facilities. An outside storage facility shall be secured by enclosing it in any combination of wood, metal, masonry, or other fencing material that is at least six feet high with a locked gate." That requirement has not continued to current rule.

71. The undersigned is concerned as to the scope of burden and application of the proposed rule. Carriers have a proper incentive to protect property stored. It is less than clear that resulting benefit from the proposed rule would exceed the cost. Illustratively, as to the

application of specific proposals, a theoretical towing carrier might secure property using several surveillance cameras, personnel, and a five foot fence. In such circumstance, would the facility not be more secure than if protected with a six foot fence alone without supplemental measures? In light of the lack of any demonstrated problem in comment to be solved and the towing carrier's underlying obligation to care for stored motor vehicles, the undersigned will not recommend imposing the proposed state-wide burdens upon towing carriers at this time.

72. In light of the recommended inclusion of proposed rule 6507(e) from the NOPR and the context of this discussion, it will briefly be addressed specifically. Proposed rules serve an important role in protecting consumers. When someone is seeking to retrieve their vehicle that has been towed, they may have no other information than the company name and street address of a storage facility. That information may lead only to a tall unmarked perimeter fence. There is currently no assurance that the entrance is easily identifiable or that a stored vehicle will be visible to passersby. Also, the area of the community may be unfamiliar, remote, poorly lit, and sparsely populated. Requiring minimum signage provides an important consumer protection to ensure timely and efficient return of vehicles.

73. Finally, the proposed rule requires adequate illumination levels for nighttime release of vehicles. The proposed language attempts to define what is adequate as "sufficient to allow inspection of a vehicle for damage at the time of release." Additionally, a minimum requirement would be included.

74. Comment opposes application of the specific proposed language. As expressed during hearing, the undersigned understands the proposed rule was intended to ensure adequate illumination to permit inspection of vehicles when possession is transferred, rather than a requirement that would necessarily apply to the entirety of storage facilities. The rule will be

modified to ensure applicability to an area sufficient for this purpose. Based thereupon, concerns addressing the potential burden of illuminating an entire storage facility will be alleviated.

7. Rule 6508

75. Rule 6508(a)(I) establishes the authorization requirements for towing carriers acting as an agent of a property owner. Staff is proposing that the date required signage was placed on the property be included as part of the authorization agreement.

76. Several commenters respond that the proposal is not feasible to implement as signage is not posted until after contracts are executed. Further, clarification would also be needed to address replacement of signs over time.

77. Logistical and chronological concerns in comment overcome the potential benefit of the attempt to improve compliance with Commission rules. The undersigned is particularly concerned whether the desired benefit would even be achieved. While it may initially inform property owners of notice requirements, the Commission imposes obligations upon the towing carrier as to the circumstances of the nonconsensual tow, not property owners. Additionally, the fact that signage was posted to provide notice at one point in time alone does not necessarily demonstrate notice at another point in time. Due to any number of circumstances, signs may be removed or damaged to the point that they are not readable. The proposed addition will not be adopted at this time.

78. Rule 6508(b)(VI)(A) requires that towing authorizations be filled out in full and be signed by the property owner before a motor vehicle is removed from the property. It also authorizes a property owner to use an ID number or code to sign the authorization. Staff is proposing language to clarify that if the authorization is signed by the towing company as agent for the property owner, an ID number or code shall not be used.

79. Rule 6508(b)(VI)(B) requires that a towing carrier shall not accept or use blank authorizations pre-signed by the property owner. Staff is proposing to include a requirement that towing carriers may not have such authorizations in their possession.

80. Rule 6508(b)(VI)(C) allows the required written authorization to be incorporated with the tow record/invoice. Staff is proposing to expand this to any other type of document.

81. Except as to the proposed additions regarding security and fencing, addressed above, the proposed modifications are reasonable and will be adopted.

82. OOIDA proposes including a clarifying provision that reads as follows: “Except as authorized by law enforcement officers, no towing service shall engage in the removal of a commercial motor vehicle that requires a commercial driver’s license to operate the vehicle under its own power on a highway.” In short, this would prevent “drive-away” tows.

83. While the circumstances described clearly could be problematic, the situation is not limited to towing carriers and cannot be comprehensively addressed within the scope of the Commission’s jurisdiction. Generally speaking, the Commission has jurisdiction over nonconsensual towing. OOIDA attempts to equate driving a motor vehicle away as a tow. However, in such event, the conduct can be done by anyone and no tow truck is used. The provision will not be added at this time.

8. Rule 6509

84. Rule 6509(b) governs the maintenance and distribution requirements of the tow record/invoice. Staff is proposing language to allow the tow record/invoice to be either electronic or a multi-copy form. If electronic forms are utilized, they must be able to be reproduced in their original format.

85. Comment applauds this expanded flexibility for business process and supports more global adaptation. Some comment requested recognition of the use of electronic records.

86. The General Provisions of the Rules 6000 – 6099 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, apply to towing carriers. Rule 6000, 4 CCR 723-6. Accordingly, towing carriers are permitted discretion to choose the format of tow record/invoice when not specifically limited in rule:

(a) Unless a format or period of record retention is specified in a rule:

(I) motor carriers shall maintain all records required by these rules for three years. For the first year, the records must be maintained in their original format. The format may be changed after one year (i.e., converting original paper to electronic format for storage);

87. Some clarification will be adopted in rule, but the entire proposal will not be adopted.

9. Rule 6511

88. Rule 6511 governs the rates a towing carrier may charge for nonconsensual tows. Proposed Rule 6511 contains the recommendations of the Task Force that the Commission adopt a tiered rate structure for private property impounds and an hourly rate structure for law enforcement tows and recovery operations.

89. Several comments promote consistency and transparency in the adoption of reasonable minimum and maximum state-wide rates providing for recovery of reasonable costs and profits associated with performing nonconsensual tows. Such rates further the public interest by striking a balance of concerned interests including those providing towing services as well as those directly and indirectly affected.

90. The Commission has long had authority over aspects of the towing industry, applying different statutory provisions and public policy. In the general provisions of

Article 10.1 (i.e. Part 1), the Commission has broad authority to make rules and prescribe rates regarding nonconsensual towing. §40-10.1-106 C.R.S. Part 4 also applies to all operating carriers, or offering to operate as a towing carrier, in intrastate commerce in Colorado. §40-10.1-401 et. seq. C.R.S.

91. Current Rule 6511(a)(I) expressly excludes from the requirements of the rule the towing of a motor vehicle abandoned on public property weighing in excess of 10,000 pounds GVWR for which the charges are determined by negotiated agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(2)(a) C.R.S. Current Rule 6511(a)(II) excludes from the requirements of the rule the towing of a motor vehicle abandoned on public property under a written agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(3), C.R.S. By passage of HB14-1031, the legislature removed the provision within § 42-4-1809(2)(a), C.R.S. restricting the Commission's authority for governing the rates of such tows. The referenced provisions within § 42-4-1809(3), C.R.S. apply to the sale of vehicles abandoned on and subsequently towed from public property. The law applies to the associated cost recovery by a law enforcement agency operating under a towing contract. The Task Force recommends current rule 6511(a) be stricken in its entirety.

92. Rule 6511(b) defines a drop charge and restricts its applicability to motor vehicles with a GVWR of less than 10,000 pounds. The current rule sets this drop charge at \$70 for vehicles with a GVWR of under 10,000 pounds. This is 43% of the current base maximum towing charge of \$160 for vehicles in the same weight class. The Task Force recommends that the language of the current rule be stricken and that the Commission determine the allowable

drop charges by applying the same percentage (43%) to the base rates for each of the proposed weight classes.

93. Current rule 6511(c) governs the methodology towing carriers must use for charges applied during recovery operations, but not the rates. The Task Force recommends replacing Rule 6511(c) and that statewide rate caps be established.

94. Current rule 6511(d) sets the base towing rate for the nonconsensual towing of a motor vehicle with a GVWR of less than 10,000 pounds to \$160. It also lists allowable exceptions which effectively authorize the charging of additional fees. The Task Force recommends striking this rule in its entirety and replacing it with a new rule that establishes five rate tiers based on a cost model implemented by the Task Force. They also recommend clearly identifying all authorized fees and charges in the same rule.

95. The Task Force recommends changing the unit of measure for its proposed weight tiers from the current gross vehicle weight rating of the towed vehicle to the gross vehicle weight of a towed vehicle.

96. Staff is recommending the addition of language setting the minimum drop charge to \$0.00 and adding a requirement that the required notification to the owner or operator of the vehicle be completed by means of a charge notification card.

97. Staff proposes adding rule 6511(i)(I) to clarify that no additional fees may be charged by a towing carrier for the towing of a power unit and trailer in combination as a single motor vehicle.

98. Staff proposes adding rule 6511(i)(II) to clarify that a vehicle in or on a trailer is considered cargo, and no additional fees may be charged by a towing carrier for the transportation of cargo.

99. This proceeding came about as a result of the passage of H.B. 14-1031. Prior to passage, the Commission only regulated towing rates for nonconsensual tows of vehicles with a gross weight of less than 10,000 pounds. Implementing § 40-10.1-403 C.R.S., rates will be regulated for nonconsensual tows of all vehicles.

10. Prior Procedures

100. As referenced by Connolly's Exceptions, the Commission addressed towing jurisdiction in 1995 in light of case law and then-recent federal legislation, namely the Federal Aviation Administration Authorization Act of 1994, effective January 1, 1995 (the "1995 Act"), and the Interstate Commerce Commission Termination Act of 1995. See Proceeding No. 96M-031.

101. Prior to that time, "the Towing Rules, while focusing on permit issuance, insurance and safety, set forth both a maximum rate which can be charged for and the procedure for carrying out the tow of a vehicle from private property. See Rules 14 and 16.9 of the Towing Rules." Decision No. C96-538 at ¶ 1. By Decision No. C96-0538, issued May 28, 1996, the Commission declared jurisdiction to regulate towing carriers at that time. See also, Decision No. C96-0665, issued June 28, 1996, denying applications for rehearing reargument, or reconsideration.

102. Following enactment of Senate Bill 03-225, the Commission initiated an informal rulemaking to adopt rules establishing rates and charges for the nonconsensual towing of motor vehicles. See R03-1016 in Proceeding No. 03R-139TO, issued September 8, 2003 (exceptions denied in Decision No. C03-1293, issued November 18, 2003).

103. As part of a larger recodification of Commission rules, the Commission initiated another informal rulemaking in Proceeding No. 03R-554TR. In addition to any new modifications, there was an attempt to “capture the substantive rule changes implemented in these dockets to the extent possible.” Decision No. R05-0450 at 3, Proceeding No. 03R-554TR, issued April 20, 2005. Judge Isley summarized the standard in approving rates and charges finding that they were “just and reasonable and provide adequate compensation to towing carriers for the services.” Decision No. R05-0450 at 51, issued April 20, 2005.

104. Prior Commission decisions interpreted the Commission’s authority in the context of the comprehensive statutory scheme affecting nonconsensual tows. Denying exceptions to Decision No. R05-0450, the Commission upheld the ALJ’s reconciliation of Commission authority with that of other governmental entities:

The ALJ notes that municipalities may adopt more stringent rules with respect to towing carriers, as permitted by law, and has modified the proposed rule to emphasize this. Section 42-4-1813, C.R.S., specifically allows municipalities or other governmental entities of the State to execute contracts for the removal, storage, or disposal of abandoned motor vehicles, and allows local entities to pass ordinances governing procedures for the towing of abandoned or illegally parked motor vehicles.

Decision No. C05-1037, issued Mailed Date: August 30, 2005; RRR denied by C05-1191, issued October 5, 2005.

105. The Commission also rejected application of existing bodies of law to storage of vehicles following a nonconsensual tow:

We also disagree with Mr. Mabis’ proposed use of bailment law. Section 40-13-107, C.R.S., creates a Commission obligation to enact rules governing the storage of motor vehicles, thereby rendering any conflicting questions regarding bailment law moot.

C05-1191 at 6, October 5, 2005.

106. Consistent with prior implementation of Colorado law by the Commission, this rulemaking followed the same procedure as prior rulemakings adopting towing rates.

Interested persons have been provided opportunities to submit views or otherwise participate in hearings on the proposals under consideration. § 24-4-103(4), C.R.S. The Supreme Court summarized the purpose of this type of proceeding:

In acknowledging that the purpose of a rulemaking proceeding is to afford interested persons an opportunity to submit written data, views, or arguments on a proposed rule, we have held that it is not incumbent on the rulemaking agency to present evidence in support of the proposed rule. *Colorado Auto & Truck Wreckers Association v. Department of Revenue*, 618 P.2d 646, 652 (Colo. 1980). This is especially so in those proceedings in which the proposed rule involves a policy judgment relating to the effective implementation of a statutory purpose, as distinguished from the resolution of controverted questions of fact. *Citizens For Free Enterprise v. Department of Revenue*, 649 P.2d 1054, 1063 (Colo. 1982). As long as a proposed rule involving a policy judgment is made part of the record and there is a rational basis for the agency's action, the agency can choose to reject any adverse submissions and adopt the proposed rule. *Id.*

In Regular Route Common Carrier Conference of Colorado Motor Carriers Asso. v. Public Utilities Com., 761 P.2d 737, 740 (Colo. 1988).

11. Proposed Rates

107. This rulemaking implements § 40-10.1-403 C.R.S., adding consultation with the Task Force. The Task Force recommendations largely provide the foundation of the NOPR. Extensive efforts were undertaken to provide a path toward a consistent and transparent process for establishing rates over time based upon a study performed of the towing industry in Utah, adapted to Colorado.

108. While the scope of the Task Force's statutory authority encompasses rates for towing vehicles in excess of 10,000 pounds GVWR for the first time, the Commission has long regulated the towing industry for vehicles with a GVWR of less than 10,000 pounds. *See* § 40-10.1-401 et. seq. and predecessor prior to recodification at § 40-13-101 et. seq. The Commission's rules have included a maximum rate that may be charged for a private property tow of a vehicle with a GVWR of less than 10,000 pounds for more than 20 years.

109. Remanding the proceeding, the Commission sought further study and analysis of the model consistent with the language of § 40-10.1-106(b), C.R.S., regarding financial statements and financial information. By Decision No. R16-0712, several topics were identified in advance of hearing to gain a better understanding of the Task Force's recommendations and the model upon which those recommendations are based.⁶

110. The Commission should consider a future proceeding to establish a means to obtain comparable and verifiable data based upon towing carriers' financial data, business structures, and experiences. Procedures were considered to require the filing of financial information by towing carriers in this proceeding; however, there is broad opposition to this pursuit. Comment and argument contends that data sought would not exist, would not be adequate, and would not be verifiable, or that it is not permissible to obtain in the context of this proceeding. Several interested persons have encouraged adoption of rates sooner rather than later to curb broadly recognized abuses, or even potential abuses, due to the lack of any governing regulation. As the undersigned considered the possibilities, no clear path emerged to efficiently obtain verifiably consistent information from towing carriers for analysis.

111. Overall, a non-exhaustive list of industry issues affects source data for consideration. The Commission has not specifically weighed in on determining the scope or scale of efficient operations sought to be supported or promoted through rate design. The Commission sets minimum and maximum rates for nonconsensual towing, but not for consensual towing. The Commission has no standards or requirements for the allocation of common costs between consensual towing, nonconsensual towing, and other lines of business.

⁶ See Decision No. R16-1136-I.

There is no prohibition of cross subsidization. A towing carrier may charge higher prices for nonconsensual tows in order to better compete for consensual tows, or vice versa. Based upon their collective experience, the Task Force adapted the Utah study to what they believed to be an average-sized towing business in Colorado. However, there is no information about the size of any companies providing consensual versus nonconsensual towing. Thus, there is potential for the average-sized company not to be the best predictor of costs to provide nonconsensual tows. Finally, there is a potential for inefficient utilization of assets (e.g. only providing nonconsensual tows and allowing equipment to lay idle otherwise) to shift costs toward regulated activity. Resolution of these and perhaps other policy considerations must precede identification, measurement, and analysis of data.

112. Turning to the Task Force model recommendations more specifically, it recommends that one hourly rate per category be adopted for all hours billed within that category. Comment also addresses practical concerns around attempts to strike a fair balance in the carrier's appropriate recovery of costs versus the potential for abuse due to the inability to objectively determine or verify all billing elements. Is cleaning one's truck ordinary maintenance or part of a recovery? Does it matter? How long should it reasonably take to complete a given recovery? While the undersigned agrees with the difficulties described by the comment, one proffered solution of leaving matters to law enforcement agencies, does not in fact solve the difficulties raised. Rather, it disregards the Commission's jurisdiction and furthers the status quo without providing an efficient forum to resolve differences.

113. Conflicting comment addresses maximum hourly rates. On the one hand, limits are viewed as a means to avoid abuses. On the other hand, limits are overly burdensome in considering the extraordinary circumstances that may arise during recovery efforts.

Clarification is requested that hourly rates should include the services of one person (*i.e.* the driver or the operator).

114. Significant comment generally supports adoption of reasonable comprehensive hourly rates in lieu of ancillary itemization of billing elements. It is commented that the proposed hourly rates are reasonable and preferable to past billing abuses by some towing carriers, including extensive itemization of general overhead expenses and unreasonable expenses.

115. OOIDA proposes adding language to section 6511(c)(I) to read, in part: “The time of dispatch; the time the tow truck leaves the yard or other staging location; and the time the tow truck arrives on scene; and the time the tow truck leaves the scene and returns to the yard.” This will ensure that consumers have a better idea of exactly how long the towing carrier was working to determine if the towing carrier’s charges are in compliance with the approved rates.

116. Comment suggests clarification of the referenced elements in Rule 6511(b) as compared to charges relating to vehicle storage (e.g. after hours release).

117. Generally, there are fixed and variable components of costs that must be recovered, in addition to a rate of return, for a firm to be profitable. On the issue of cost recovery and cost modeling, the model incorporates fixed cost assumptions – including items such as management, administrative, advertising, insurance, and other business costs – that generally do not vary based on the number of tows performed or the time it takes to complete a tow. The Task Force recommends maximum hourly rates based, in many cases, on recovering assumed fixed costs over the number of business hours per year without incorporating the model’s assumptions regarding the number of tows to be billed per year. Rather than allocating fixed costs across the total number of hours that will be billed, many are recovered “per tow” and

included in the hourly billing.⁷ There are a number of problems with these recovery and hour assumptions in addition to other issues with the model, as brought forth in R16-1136-I and discussed during a hearing.

118. **Recovery of costs in the model:** The subcomponents of the model's towing rates do not actually recover many of the costs that the Task Force independently developed, pulled or adapted from the Utah study, and/or assumed across all weight classifications. The inability of the model to move from assumed costs to resulting rates in a straightforward and logical way presents a major obstacle for the adoption of the model. For instance:

- **Question GG from R16-1136-I:** The model calculates "per tow costs" based on annual costs divided by annual business hours or business minutes per month.⁸ For instance, the model assumes \$7,200 in annual general liability insurance costs and then calculates a "per tow cost" of \$3.46 for the light duty category, which is equal to annual insurance costs divided by the number of business hours in a year (2,080). However, as discussed at the hearing held on January 23, 2017, if the model were to calculate "per tow costs" to actually recover \$7,200 in insurance costs a year, the per tow cost would be \$1.90 assuming one hour tows, which is equal to the insurance costs divided by the number of expected tows a year (90 Light tows/month x 3.5 trucks x 12 months) for the Light duty category. This problem applies to the recovery of all fixed costs in the model and across all weight classifications.⁹
- **Question I from R16-1136-I:** The model states, via a comment in cell Light!C37, that it calculates truck costs, or truck depreciation and financing, per tow using a 37.5% utilization assumption of all trucks. However, the model actually calculates per tow truck costs using a truck utilization rate of 75%, which doubles the resulting depreciation rate from \$2.08 to \$4.17 per tow.¹⁰ Discussions in hearing regarding this revealed that the Task Force did not believe that "the person being towed should... be held accountable to help the tower recover that cost, if it's only being utilized [75% of the time]...it's up to the tower to utilize it 100% of the time."¹¹ Thus, the per tow truck depreciation costs are lower than they otherwise would be with a 100% utilization assumption. Yet, examination of

⁷ Illustratively, see treatment of rent as a fixed cost component of storage costs.

⁸ Comment raised in R16-1136I, question GG, and discussed in hearing on January 4, 2017.

⁹ See Exhibit 14, Example 1, pg 4.

¹⁰ Hearing Transcript, January 4, 2017, pg 21:15 – 34:5.

¹¹ Hearing Transcript, January 4, 2017, pg 23:19-22.

the model reveals that the truck financing costs of \$1.92 per tow are calculated using a 100% utilization factor rather than the lower 75% utilization factor, which would result in truck financing costs per tow of \$1.44.

119. True hourly rates vs. a rate developed from an average tow and applied

hourly: The model calculates what the Task Force believes to be reasonable rates based on the assumption of an average tow that lasts one hour. However, the model then assumes that whatever the costs for that first hour become hourly costs for additional hours.

- a) Question K from R16-1136-I: In response to how modeled office expenses are collected, members of the Task Force confirmed that office expenses are modeled without regard to the time needed to complete a tow.¹² Thus, actual charges to towed vehicles will continue to collect on these office expenses if tows last more than one hour.
- b) Question P from R16-1136-I: In response to how modeled storage yard expenses are collected, members of the Task Force confirmed that these expenses are modeled without regard to the length of time any vehicle is stored.¹³ Thus, actual charges to towed vehicles will continue to collect revenues for storage yard expenses if tows last more than one hour, but there is no basis to assume particular towed vehicles will require additional storage.
- c) Questions EE and FF from R16-1136-I: When asked if the *total* modeled cost in each weight category was then able to form a reasonable *hourly* cost, in particular for a second hour, members of the Task Force noted that this was “a huge assumption” of the model.¹⁴ The problem with assuming an hourly rate from total modeled costs is that many of the fixed costs for a tow, including management and office costs, do not vary with the time required to complete the tow. Thus, tows lasting more than one hour would double count (or more) many of the costs imputed for an average tow. The end result is that applying the final modeled rate as an hourly rate is not a result of modeled costs. Task Force members explained that “normally, in any business...there’s an hourly rate... So, the Task Force was designing an hourly rate.”¹⁵ Comments were also offered about how costs overcharged in the second hour compensate for costs not fully recovered or not recovered at all in the first hour, in addition to how the model does not have

¹² Hearing Transcript, January 4, 2017, pg 34:15-23.

¹³ Hearing Transcript, January 4, 2017, pg 40:13-18.

¹⁴ Hearing Transcript, January 4, 2017, pg 60:8 – 61:9.

¹⁵ Hearing Transcript, January 4, 2017, pg 59: 7-13.

the variables to come up with a more precise hourly rate and must therefore assume a one-hour rate.¹⁶

120. **The model is based on one scenario:** The model makes several overarching assumptions based on the experience of members on the Task Force and the assumptions incorporated in the Utah study. These assumptions include the following, though this is not an exhaustive list: all classes operate on a full-time basis; the average tow company used as the basis for the model has no other lines of business that contribute to the recovery of fixed costs (e.g. automotive repair); no tow companies operate trucks in more than one weight classification (e.g. light duty); all the fixed costs are fully allocated to each weight classification; no overhead costs are allocated to consensual towing services; and business management, office, and employee expenses do not vary across tow companies operating in different weight classifications. The following list provides a more complete discussion of how the model is based on a particular scenario:

- Question A from R16-1136-I: The Task Force confirmed that the model assumes that a towing company operates on a full-time basis within each weight classification.¹⁷
- Question B from R16-1136-I: The Task Force confirmed that the model assumes that the average tow company has no other lines of business contributing to the recovery of overhead, or fixed, costs.¹⁸
- Questions C, H, and Z from R16-1136-I: The Task Force confirmed that the model assumes that 100% of tows are completed in one hour at nonconsensual tow rates, excluding the possibility of some consensual towing. However, it was noted that the assumption that all tows are nonconsensual tows is a variable in the model that could be altered.¹⁹ Thus, with trucks across multiple weight classifications, multiple lines of business, and/or performing some amount of

¹⁶ Hearing Transcript, January 4, 2017, pg 59-60.

¹⁷ Hearing Transcript, January 4, 2017, pg 3:20 – 4:1 and 5:25 – 6:21.

¹⁸ Hearing Transcript, January 4, 2017, pg 4:2-11 and 6:24-25.

¹⁹ Hearing Transcript, January 4, 2017, pg 6:9-21, 7:3-9. 21:10-14. Notably, assuming 100% maximizes resulting rates.

consensual towing services, a tow company would collect more than the modeled administration costs.²⁰

- Question D from R16-1136-I: The Task Force confirmed that the model assumes that tow companies do not operate in more than one weight classification.²¹ No basis for the assumption was shown. Therefore, if a tow company operating in the Light category also had a tow truck that towed vehicles in one of the heavier weight categories, the company would over-recover modeled fixed costs.
- Questions F and G from R16-1136-I: In response to the question regarding whether the modeled assumed that all tow trucks were purchased new and have a useful life of five years, members of the Task Force explained that the model assumes that purchased vehicles are three years old but confirmed the five-year useful life assumption.²² When asked about the source for the five-year useful life assumption, the Task Force stated that it relied on the Utah study.²³
- Question J from R16-1136-I: The Task Force confirmed that the model assumes that the administration expenses – including management, administrative, advertising, office, storage yard expenses, and other costs – for all towing carriers across all the weight classifications are the same.²⁴
- Question S from R16-1136-I: The Task Force confirmed that the model assumes costs associated with one day's worth of storage.²⁵
- Questions T, U, and V from R16-1136-I: The Task Force confirmed that the model assumes no storage yard revenues other than the first hour after two cars are placed in storage, for the Light and Medium categories. Thus, half of the daily estimate storage yard expenses are applied to each nonconsensual tow in the Light and Medium weight categories. For weight categories above Medium, or above 19,000 lbs., the model applies the full cost estimated for daily storage yard expenses to the rate for each nonconsensual tow.²⁶
- Question AA from R16-1136-I: With regard to credit card fees, the Task Force confirmed that a 2% cost was added to all nonconsensual tow rates. In response to questions regarding how credit card fees can vary from 1-3% and all people may not pay the towing company with a credit card, the Task Force could not deny that these alternate scenarios occur.²⁷
- Question DD from R16-1136-I: In response to a question concerning the basis for the Task Force's assumptions that Light and Medium duty tow trucks operate at a 75% utilization rate, Medium-Heavy tows operate at a 45% utilization rate, and

²⁰ Hearing Transcript, January 4, 2017, pg 43:25 – 52:6.

²¹ Hearing Transcript, January 4, 2017, pg 13:25 – 14:13.

²² Hearing Transcript, January 4, 2017, pg 19:24 – 20:21.

²³ Hearing Transcript, January 4, 2017, pg 20:22 – 21:9.

²⁴ Hearing Transcript, January 4, 2017, pg 34:7-14.

²⁵ Hearing Transcript, January 4, 2017, pg 41:9-14.

²⁶ Hearing Transcript, January 4, 2017, pg 41:15 – 42:12.

²⁷ Hearing Transcript, January 4, 2017, pg 52:7 – 53:4.

Heavy tows operate at a 37.5% utilization rate – the Task Force responded that they were based on the members’ collective expertise.²⁸

- Question HH from R16-1136-I: With regards to the model’s assumption that labor costs are based on commissions rather than hourly wages and the basis for the specific 35% commission level, the Task Force stated they based it on the Utah study, which actually presented an hourly approach and a commission approach. The Task Force opted for the commission-based approach and could not recall if the particular assumption changed the resulting tow rates in the Utah study.²⁹

121. The scarcity of publicly available information on the Colorado nonconsensual towing market and the underlying businesses makes it very difficult to assess how well these assumptions, which collectively create a single scenario that the model uses to estimate a weight-specific nonconsensual towing rate, comport with reality. Given the wide array of towing companies in Colorado, as referenced in comments regarding the challenges of adopting a single statewide rate, it is likely that some or all of these assumptions will not always apply. For instance, tow companies frequently offer consensual and nonconsensual towing services. Thus, if nonconsensual towing rates were set to recover all overhead costs of a typical towing company, the model does not account for that towing company also performing consensual tows to increase the utilization rates of its vehicles.³⁰ Exhibit 8 shows that there are over 560 towing carriers in Colorado, with the average number of stamps per carrier per county ranging from one to ten. This is indicative of notable variation in Colorado’s motor vehicle towing industry.

122. Where publicly available information from federal and state sources is available, it was not utilized in all instances to model costs or to compare the Colorado and Utah towing industries. Reported aggregate revenues and payroll, the number of towing businesses, the

²⁸ Hearing Transcript, January 4, 2017, , pg 58:7-16.

²⁹ Hearing Transcript, January 4, 2017, pg 88:2 – 89:12.

³⁰ Comment raised in R16-1136I, question Z.ii, and discussed in hearing on January 4, 2017.

number of employees, and vehicle operator and supervisor wages are published and available to assess the suitability of adapting the Utah cost study to the Colorado context.

123. As shown in Exhibit 13, data from the Census Bureau shows that the Colorado towing industry has almost twice the number of towing business (possibly referring to companies that exclusively provide towing services given discrepancies with the number of carriers shown in Exhibit 8). Colorado's towing industry also appears to have more than three times the number of employees, aggregate revenues, and payroll as found in Utah.³¹ Differences in total employment of light and heavy truck drivers, along with supervisors, and differences in wages of light and heavy truck drivers also differ significantly between the two states.

124. One of the few assumptions in the model able to be scrutinized is labor expenses for both managers and tow truck operators due to the availability of some federal and state data on hourly and annual wages for transportation and material moving industries. Exhibit 13 summarizes the data available for light truck drivers (which encompasses tow trucks drivers operating in the Light and Medium duty categories as well as a portion of Medium-Heavy duty tows) and heavy truck drivers (which encompasses tow truck drivers operating in the Medium-Heavy, Heavy, and Rotator categories). According to data published by the U.S. Bureau of Labor Statistics (BLS) for the year 2015, light truck drivers and heavy truck drivers in Colorado earn mean annual salaries of roughly \$35,000 and \$45,500, respectively. First-line supervisors of vehicle operators earn a mean annual salary of more than \$61,000.³²

³¹ Exhibit 13, pg 3.

³² Exhibit 13, pg 3. An important caveat to this data, however, is that these occupation categories include truck drivers in industries other than towing. So while the data is likely to be representative of the towing industry, it could also diverge noticeably.

125. The model, however, assumes the labor costs for the tow truck driver are commission-driven and equal to 35% of the cost of a nonconsensual tow, which was taken from the Utah cost study, or \$56 per tow for the light duty category. This compensation equates to an annual salary of nearly \$60,500 ($\$56/\text{tow} \times 90 \text{ Light tows/month} \times 12 \text{ months}$ – assuming all tows last one hour). A salary of this magnitude is above the 90th percentile of wages for light truck drivers, as shown in Exhibit 13. For illustrative purposes, assuming a \$50,000 annual salary for a light truck driver would correspond to a driver cost of \$46.30 in the model’s hourly labor rate, as Example 2 in Exhibit 14 shows, or nearly \$10 less than the model currently assumes.³³

126. In the heavy duty category, the assumed driver cost of \$70 per tow, again based on the Utah cost study’s assumptions of a 35% commission, equates to an annual salary of \$31,500 ($\$70/\text{tow} \times 37.5 \text{ Heavy tows/month} \times 12 \text{ months}$). A salary of this magnitude is notably below the mean annual salary of about \$45,500 for heavy truck drivers.

127. Regarding management costs of \$10,625 assumed in the model, regardless of weight classification, if the data provided in Exhibit 13 on the wages for supervisors of vehicle operators offers a useful proxy for tow company managers, then these management cost assumptions appear high. Even the 90th percentile of wages for vehicle operator supervisors, which is nearly \$92,000, is noticeably below the annual management costs of \$127,500 ($\$10,625/\text{month} \times 12 \text{ months}$) assumed in the model.

128. The Colorado towing industry appears to be notably larger and offers higher wages than the industry in Utah. It appears that the Task Force did not consider or address these

³³ Exhibit 14, pg 7.

differences in establishing nonconsensual tow rates in the Colorado context, even after adapting some specific assumptions from the Utah study as the Task Force does.

129. Aside from specific quantification, comments indicate that towing industry costs have increased to some extent since 2012. No verifiable company data is available in this proceeding. Individual towing carriers have generally commented regarding cost increases. The most specific and detailed comment orally and in writing is that insurance costs have increased, to a significant degree between 2015 and 2017 in the case of Connolly's Towing, and fewer insurers are in the market place. It was commented that costs increased more than 50%; however, there is no way to quantify the amount of increase particularly in terms of the number of tows performed across categories. Insurance costs are estimated by the Task Force to be \$7,200+\$4,200+\$1,200 for the Light category. Solely for illustrative purposes, although estimated in connection with the model as opposed to 2012, 50% of that total insurance amount would be \$6,300. When recovered over the modeled 3,780 tows (3.5*90 Light tows per month*12 months) insurance costs would only equate to an estimated \$1.67 per tow.³⁴

130. **The model does not include all sources of revenues or costs:** The model does not reflect all costs nor all sources for recovery of expenses associated with nonconsensual tows. Members of the Task Force explained that this was due to too many variables involved and the need to make simplifying assumptions. It is difficult to assess the extent to which other sources of costs and revenues for many towing companies would increase or decrease the model's calculated nonconsensual tow rates. The following list identifies items that were discussed in

³⁴ There is also a much greater volume of tows in the light duty category than other categories, and thus it is more likely that there is greater variation in the structure, costs, and characteristics of towing carriers performing light duty tows. Given that there has been broad opposition in comment to pursuing financial data directly from towing carriers, along with a dearth of publicly available information on Colorado's towing industry, making informed assumptions in the model as proxies for actual data becomes all the more difficult.

hearing and confirmed by some members of the Task Force regarding revenues and costs that the model does not incorporate:

- Question E from R16-1136-I: In response to a question concerning whether the model analyzes the costs incurred leading to a drop fee and/or the revenues from drop fees, the Task Force confirmed that the model does not take those into account. Additional comments were provided, however, indicating that drop fees constitute a small portion of overall revenues and there are larger costs incurred than the revenues received.³⁵ Yet, it should be noted that the model does have a cost item per tow to account for 1% of the cost of a dropped tow.
- Question L from R16-1136-I: In response to a question concerning whether the model includes any vehicles expenses other than those directly associated with a tow, such as stationing tow trucks or showing up and not being able to tow, the Task Force confirmed that the model does not.³⁶
- Question O from R16-1136-I: With regard to revenues related to storage after the first hour, the Task Force confirmed that the model does not incorporate those.³⁷
- Question Y from R16-1136-I: In response to a general question whether the model reflects all sources for recovery of expenses associated with nonconsensual tows, the Task Force stated that it does not and that “there are just too many variables.”³⁸
- Question BB from R16-1136-I: In response to a question concerning whether tow companies are able to recover revenues to offset the \$2.20 per tow charge to search Colorado databases, the Task Force stated that it “did not consider revenues that are available after 48 hours.”³⁹

131. Beyond the workings of the model itself, the Task Force’s assumed costs cannot be reconciled with the comprehensive recommended rates. Most importantly, the model does not support an assumption that additional-hour costs are the same as costs incurred in the first hour. Next, after comprehensively modeling costs, it is recommended to retain existing additional surcharges for PPI tows even though there is no identification of corresponding costs. When specific comment was invited as to what costs were being recovered by these additional revenue

³⁵ Hearing Transcript, January 4, 2017, pg 14:14 – 19:21.

³⁶ Hearing Transcript, January 4, 2017, pg 34:24 – 35:9.

³⁷ Hearing Transcript, January 4, 2017, pg 40:7-12.

³⁸ Hearing Transcript, January 4, 2017, pg 43:19-24.

³⁹ Hearing Transcript, January 4, 2017, pg 53:5-12.

streams, no clear explanation was forthcoming. While this may initially appear as a windfall to towers, it is also possible that the modeled comparison is not capturing all costs.

132. The undersigned continues to express appreciation for the Task Force's attempt for a transparent and consistent approach to rate design. The record of this proceeding will provide some basis for future comparison as it includes more cost information than any other proceeding of which the undersigned is aware in the past 20 years. However, the model cannot be adopted at this time to develop rates. There are a number of discrepancies between modeled hourly costs compared to modeled cost recovery. Some of these concerns with the model could be resolved with new formulas, as the examples in Exhibit 14 demonstrated with regard to recovery of assumed costs, assuming other lines of business, and/or representative labor costs. However, other concerns cannot be readily addressed – including how the model is based on a particular scenario for each weight classification, what the marginal costs for additional minutes or hours beyond the first hour might be, and how the model does not incorporate all of the relevant costs and sources of revenues for a typical towing company. Finally, differences between the towing industry in Colorado and Utah have not been reconciled. While individual model adjustments could correct for specifically identified concerns, it is not clear if such partial adjustments would yield results that were more or less representative of actual costs and revenue streams in the towing industry.

133. It is also noted broadly in comment that averaged hourly rates are preferred – supported by towers and vehicle owners. It is recognized to be the customary practice in the towing industry as well as related industries.⁴⁰

⁴⁰ No comment opposed averaged hourly rates; rather, it arose in the initial Recommended Decision following applying the Task Force model.

134. Many comments focus on the towing of large vehicles, not inconsistent with weight of the Task Force membership and the expanded regulatory authority. The statutorily defined interests represented in the Task Force encompass those directly affected by the past and potential abuses described in the legislative process as well as this proceeding. Members are integrally involved in day-to-day affairs affecting the towing industry. They bring their own experiences and have access and familiarity that the Commission and the general public do not have.

135. Advocating respective interests, Task Force members participated in developing a joint recommendation to adopt hourly rates. In addition to independent research, members debated the scope and extent of costs considered in developing their recommendation. Particularly as to the larger classes of vehicles, the Commission does not have a body of historical experience to fully evaluate the recommendation. Thus, the comprehensive efforts of the Task Force combined with their daily occupation are significant. Comments explained their thorough and methodical scope of considerations and the collective outcome individually measured in the context of their personal experience gained through daily involvement with the industry. The Task Force's efforts, supported by comments in this proceeding, indicate the recommendation is largely a compromise of interests by advocates. To the extent industry experience alone matters, consultation based upon the Task Force process and the support of compromising adversarial interests lend credence to the adoption of proposed hourly rates in the higher weight categories as being just and reasonable and providing adequate compensation to towing carriers for the services.

136. Turning consideration to the light category, the undersigned does not disregard the Task Force's intent in making a comprehensive recommendation, the Commission's extensive

experience, or the existing rate in the Commission's rules. It must be demonstrated that the current rule should be changed.

137. Primarily, those paying for services believe there are excessive and abusive billings in some circumstances by bad actors and they desire a cost-efficient forum to resolve differences. Secondly, there is a chicken-and-egg dilemma between expediting retrieval of a towed motor vehicle by the owner and the interests of towing operators in recovering appropriate costs incurred. Finally, there are a large number of variables that can be incurred, particularly as to recovery.

138. Many comments in this proceeding focus upon towing of large vehicles, not inconsistent with weight of the Task Force representation and the expanded regulatory authority. Other than Staff, there is an absence of comment and statutorily defined representation or advocacy on the Task Force addressing motor vehicles with a GVWR of less than 10,000 pounds not having any potential conflict of interest (e.g. an association's representation of its membership as opposed to others or representing another statutorily defined interest).

139. Initially, the lack of a statutorily defined interest uniquely advocating for those paying towing costs in the light category was a significant factor in declining to adopt rates recommended by the Task Force for the light duty category. Based upon further comment following remand, the undersigned ultimately reaches the conclusion that recommended rates for the light category should be adopted. The undersigned wants to highlight, however, that this conclusion is reached independently of any particular component of the modeled cost. No attempt is made to reach the several policy determinations addressed above as to the minimum efficient scope or scale of a towing company or the allocation of costs among regulated and non-regulated activities.

140. There is broad support of Task Force members. Compromises reached yielding nonconsensual towing rates for heavier weight categories benefits to some degree the recommended rates for lighter tows. The largest cost drivers in the towing industry are labor, tow trucks, and administration. There is no historical information or basis to compare costs at that level, much less the level of detail included in the model. The undersigned finds it notable that the Task Force also estimates one of the biggest cost drivers, administration, is the same without regard to the weight class of a towing operation. Relying upon that assumption, the benefit of compromising advocates from debate in heavier categories extends to a material portion of the costs of a tow company performing light duty tows.

141. Four additional factors ultimately tip the scale for the undersigned's recommendation. First, the Task Force clearly undertook a significant attempt to identify reasonable rates for all weight and nonconsensual tow categories. Industry representatives support the Task Force proposal. While the role of Staff on the Task Force is to strike a balance in the affected interests, consumer interests are nonetheless represented and considered when Staff is involved even if not necessarily independently advocated. Ultimately, Staff's support for the proposed rates is notable and reflects that consideration.

142. Second, the undersigned is particularly sensitive to unintended consequences because the scope of the applicability of Commission rules on maximum nonconsensual towing rates will be expanding to narrow or eliminate the prior patchwork of rates. It is difficult (if not impossible) to understand and compare existing rates for rotation tows across the state due to significant variations, particularly in terms of rate structure. There is also no information as to any existing rates under the exception for prior governmental agreements. The Task Force initially attempted to analyze existing rates across the state. Ultimately, the attempt was

abandoned due to the lack of definition or comparability. Hearing Exhibit 17 shows the wide variation in towing rates, rate bases, and additional charges, which makes it very difficult to compare across companies and jurisdictions. Adopting a more consistent rate structure will assist in future efforts to assess cost and revenue trends in the industry, but the rules create a source of uncertainty as to how new state-wide rates will affect towing companies and law enforcement.

143. The State Patrol has a strong interest in the protection of public safety and a history of balancing the interests of the towing community and the carrier community. Major Barba explained the importance of his communications with troop captains across the state through the process of developing and supporting the Task Force recommendation. Based upon collective familiarity and experience, troop captains who have operated under a myriad of rate terms and conditions across the state are satisfied that adopting the hourly rate recommendations of the Task Force will appropriately balance those interests and allow the patrol to meet its needs. The undersigned agrees that the risk of unintended consequences is lessened by not changing the overall manner of establishing rates until more broad and consistent information is available.

144. Third, it has been approximately five years since the Commission reviewed costs of towing operations and set a new maximum rate for nonconsensual tows. Over the 2012-2017 timeframe, there have likely been changes in cost, as well as at least some degree of productivity improvements resulting from efficiency improvements. As discussed previously, general comments, including a trade publication article discussed large increases in insurance costs for

tow companies in recent years.⁴¹ On April 6, 2017, Mr. Connolly supplemented and quantified the impact of increased insurance costs on his business. From 2015 to 2017, auto liability costs increased from \$143,000.00 \$593,739.00. Comments at hearing also alluded to general cost increases overtime, likened to inflation for the broader economy, though no specifics were provided. The undersigned is concerned about the potential for single issue ratemaking based on unspecified and undetermined cost increases as a sole basis for an increase in maximum towing rates. However, towing rates have not increased since 2012 and it is reasonable to consider the importance of avoiding significant disruptions in critical nonconsensual tows when establishing rates for each weight category. There is insufficient information in the most recent proceeding establishing rates to allow comparison of any detail beyond the total cost for the light category. Acknowledging previously analysis and that costs have likely changed since 2012 should not be misconstrued as a de facto acceptance of costs in a future proceeding.

145. Fourth, there is currently no standard or process to consider a more direct cost analysis or a verifiable approach to setting maximum nonconsensual tow rates. Aside from issues identified, more direct modeling would require significant data reporting and verification processes that could ultimately prove to be impossible no matter how much time were devoted. The question of data reporting was raised frequently in hearing, and yet no serious comments were provided or submitted on how the Commission could best approach such data needs.

146. As discussed previously, several interested persons, including members of the Task Force, have encouraged adoption of rates sooner rather than later to curb broadly recognized abuses or even potential abuses due to the lack of any governing regulation.

⁴¹ See, *Tow Truck Market in Need of Repair*, Insurance Journal, February 6, 2017, filed herein on March 13, 2017.

Because no clear path emerged to efficiently obtain verifiably consistent information from towing carriers for analysis, the status quo will remain so that abuses shown can be alleviated or avoided. After considering the entirety of the comments of record, the undersigned also concludes that adoption of the recommended maximum rates strikes a reasonable balance for the light duty towing category. Resulting rates are just and reasonable and will provide adequate compensation to towing carriers for their services.

147. Late in the proceeding comment raised concern that the cost of living and operating a business in some portions of the state are relatively higher than others. It was commented that until 2012, there was a “premium” allowed in mountain areas to account for this cost differential. It was noted that the Colorado State Patrol also recognizes this disparity and has identified the counties of Summit, Eagle, Grand, Routt, Garfield Pitkin and La Plata to be High Cost. In those counties, troopers are eligible to receive a flat \$400 housing premium stipend. The only quantification commented is that provided by the Colorado State Patrol. While sympathetic to the issue, the undersigned sees no clear path to quantify a reasonable accommodation per tow. However, adoption of the recommended maximum rates will help ensure adequate compensation to towing carriers for the services.

a. GVW vs GVWR

148. The Task Force proposes adoption of categories based upon gross vehicle weight rather than gross vehicle weight rating. In fact, tow equipment must be capable of towing amounts towed rather than rated amounts. However, the Commission has used GVWR in towing regulation for at least twenty years. Comment supports continued use. GVWR is easily ascertainable, objectively determined, and easily verified after the fact.

149. The undersigned agrees with concerns expressed in comment as an objective means for definition and delineation based upon GVWR as has previously been applied by the Commission. To the extent it is even possible that someone could be trained or experienced to estimate gross vehicle weight for all circumstances with any specified degree of accuracy, it is far from clear the standard could be generally imposed across the state and has not been shown of sufficient benefit to change the current rules. Further, practical logistical concerns would prohibit administrative enforcement due to a lack of any means to verify opinions reached after the fact due to changes in circumstance and time. The undersigned agrees that the rules should continue to rely upon GVWR as a tried and true process to accurately, efficiently, fairly and consistently without introduction of unnecessarily additional complexity. While it is also true that the tow truck must be adequate to tow the actual weight of a vehicle, no amount of experience or training would allow a tow truck driver to determine the actual vehicle weight before arriving at the site in any event.

b. Drop fee

150. After proposing rates based upon costs to provide a tow, maximum drop fees are proposed based upon a portion of the fee for a nonconsensual tow. Comment establishes drop fees as a percentage of rates, but does not explain a basis for continuing that percentage. Historically, maximum permissible drop fees as a percentage of the rate for nonconsensual tow has varied from 30% to 46% and no indication is apparent from Commission decisions that such proportion has ever been used to establish rates. See Decision Nos. C07-0421 and C00-1334.

151. Of greater concern, the Task Force model estimates recovery of towing carrier costs based upon the total costs and profit margin of an average towing carrier. To adopt hourly rates based upon the Utah study that are designed to recover all costs, while ignoring

Colorado revenues from drop fees, results in higher hourly rates and creates the potential for excessive profits.

152. Therefore, existing drop fees will not be modified in the light category, particularly in the higher volume category of vehicles having a GVWR less than 10,000 pounds. For heavier categories where no rate currently exists, the Task Force recommendations will be adopted.

153. Staff also proposes an express minimum drop fee of \$0.00. Comment opposes adoption. Pursuant § 40-10.1-106(b) C.R.S., the Commission regulates minimum and maximum rates for nonconsensual towing and storage of motor vehicles. In many aspects the Commission has regulated the towing industry by establishing parameters within which towing carriers operate. Notably again, a towing carrier is not a public utility and is not required to provide nonconsensual tows. Additionally, no unique cost basis has been shown to support any minimum rate. By adopting Staff's proposal, the Commission exercises its jurisdiction without affecting the regulatory approach of establishing industry parameters. The proposal is reasonable and will be adopted.

c. Mileage

154. The Task Force recommends that existing mileage charges remain in effect for PPI tows and to derive hourly rates for tows ordered by law enforcement including associated costs.

155. The Task Force concluded that the fuel and maintenance costs associated with a light duty 45 mile police-ordered tow were \$26.99 for a one-hour tow, yet recommends continuing the mileage surcharge of \$3.80 per mile up to \$45.60, plus an additional variable fuel surcharge based on the United States Department of Energy "weekly retail on-highway diesel

prices” for the Rocky Mountain region using the price per gallon of \$2.60 as the base rate, without identifying any additional costs or reconciling other costs commonly included in a mileage rate (e.g. potentially depreciation).

156. To ensure fairness and avoid double recovery, the rules generally should strive to match expenses incurred with the method of recovery. However, the rationale upon which rate recommendations were adopted foundationally assumed continuation of this revenue stream. Because modeling issues are not being resolved elsewhere, surcharges will not be modified at this time, in accordance with the recommendation.

d. Efficient Forum

157. Comment expresses realities also reflected in the efforts of the Task Force. There are numerous scenarios that cannot be fully anticipated as to the complexity of any individual recovery effort integral to a tow. Efficiency in administration and enforcement of statutory obligations must be considered and balanced in developing a process to resolve differences that may arise. Comment suggests that towing carriers be obliged to support amounts invoiced for payment. Logically, the carrier is in the best position to demonstrate the basis upon which billing is incurred; however, disputes typically come before the Commission by the one receiving the bill filing a formal complaint. In such a proceeding, a complainant bears the burden of proof. Comment addressed this predicament where extensive discovery is necessary to obtain evidence from carriers to support claims.

158. Towing carriers provide an important function to protect the rights of property owners and the convenience and safety of the traveling public. Significant comment addresses recovery billings believed to be excessive by those having to pay the costs. Comment also generally supports a comprehensive hourly rate for a tow truck and driver to streamline and

simplify billings, whether being utilized for tow, recovery, or both. Adopting billing parameters and processes will also improve efficiency in resolving disputes for all concerned.

159. Particularly as to tows of vehicles having a GVWR less than 10,000 pounds, substantially less than \$500 is often at issue in disputes resolved by Commission decisions. The cost to resolve these disputes (e.g. time for both complainants and respondents to prosecute and defend cases, not to mention attorney fees) weighs heavily against marginally increased precision of recovery through more detailed billing determinants. Comment suggested that litigation costs currently can double the amount of disputed towing costs. Imposing regulation, the Commission must be mindful of the ready availability of verifiable records and information to support charges (e.g. supporting information and fixed versus hourly billing).

160. The rules recommended for adoption reconcile that towing a vehicle is the same without regard to who initiates a nonconsensual tow. On the other hand, comment makes very clear the unpredictability of a recovery, including clean up, inherent in some tows. Comment confirmed that a PPI tow does not involve recovery. However, a tow ordered by a law enforcement official is probable to include an unpredictable amount of recovery.

161. The rules will be modified to increase transparency in billing practices by delineating variability of costs and circumstances of recovery from the similarity of the underlying tow in different situations. More routine nonconsensual tows should continue to have lesser amounts at stake for disputes and simpler means to resolve differences as they arise. On the other hand, nonconsensual tows in more difficult or extraordinary circumstances will allow increased complexity of disputes and processes to address those complexities. This approach, properly struck, will permit carriers the opportunity to recover ordinary and

necessary costs incurred for recovery efforts and owners or operators will have an efficient means to understand those costs.

162. The costs of a tow necessarily include both a truck and a driver necessary to perform the tow. Comment makes clear that tow truck drivers are typically compensated by a percentage of the tow price. However, it would not be appropriate for a driver to be at a scene for one hour, but bill one hour for towing and one hour for recovery. Comparably, an item paid for by the hour or day should not be billed for hours within a day in addition to billing for the day.

163. Similar to the potential double recovery addressed above as to mileage charges, it is also important to avoid excess recovery through double counting units or measures in billing practices. Where costs have been analyzed in terms of hours, a reasonable billing increment is necessary to avoid excess recovery (e.g. billing two 15-minute segments as two hours rather than ½ hour). Transparency is also important for customers to understand the costs they are paying.

164. In future proceedings, the Commission may more comprehensively consider the analyses based upon a study of available verifiable statements of financial results in Colorado.

e. Combination

165. “[I]n combination” was clarified at hearing to mean when one tow truck is capable of simultaneously towing a motor vehicle as well as a trailer connected to the towed motor vehicle. Such a tow is one tow and no additional fees may be charged for towing the trailer. This concept is consistent with the discussion above regarding double recovery. Where one tow truck is used to simultaneously tow a truck and connected trailer, it would not be appropriate to charge for two uses of the tow truck for the same time. However, comment also suggests that reasonable circumstances may require the separate tow of a motor vehicle and

trailer (e.g. weight restrictions of available equipment). Some comment suggests that a given carrier decline a rotation call if they would not have equipment with the capacity to perform the tow; however, there is no basis shown to demonstrate reasonable availability of larger equipment at all times or the impact of further delay in clearing the affected roadway. Law enforcement officials are primarily concerned with clearing the roadway and mitigating risks of secondary collisions. While they may maintain different rotation lists (e.g. by equipment capacity), the rule will not interfere with the official's determination to most expeditiously restore the roadway. Thus, if circumstances reasonably require separation and both are each actually towed by a tow truck, then charging for two tows would be appropriate.

166. Comment during hearing was generated in the context of a law enforcement tow. However, it was recognized that similar questions arise with PPI tows. While the Commission does not address regulations of the Department of Revenue, the adopted rule clarifies applicability of Commission requirements as one tow when towing a motor vehicle with another motor vehicle as cargo (i.e. without regard to whether the cargo is on an open or box trailer).

167. Other comment addressed complications from circumstances for cleanup and disposal of a travel trailer as cargo involved in a tow. The commentor states that if a trailer is damaged in an accident, then it is appropriate that charges be imposed for services and storage provided. The proposed rule is also criticized for towing carriers potentially not being able to recover all recovery costs incurred in connection with a given tow.

168. As to recovery costs for a trailer involved in an accident (including clean up and disposal), the comment misstates the rule. Rule 6511(i) addresses the towing of a trailer, not recovery costs of a trailer involved in an accident. The rule will be clarified, as addressed

above, to permit charging for towing a trailer involved in an accident where necessarily towed separate from the power unit.

12. Rule 6514

169. Current Rules 6514(a)(IV) and 6514(c)(IV) are duplicative of the language of rule 6514(b) and result in inconsistent fine schedules. Staff proposes deleting the duplicative language in 6514(a)(IV) and 6514(c)(IV).

170. The proposed modifications are reasonable and will be adopted.

13. Booting

171. In addition to proposed rule language changes, the Commission specifically invited comment on issues expressed in Decision No. C16-0129.

172. Comment claims that companies utilizing boots now are not affiliated with any towing carrier. “Current regulations protect the public by requiring towing carriers to maintain minimum levels of insurance and to prevent felons from ownership in the industry. Common sense dictates such minimum protections for the public in the case of booting companies as well.” Towing Operators at para 6.

173. The commented practices of booting go far beyond the scope of any use in connection with performing a nonconsensual tow. As to such use, the undersigned considers the issue comparable to the discussion of “drive-away” tows above because no use of a tow truck is involved. Comprehensively regulating booting services goes beyond current statutory authorization. The undersigned also agrees with comment that to condition performance of nonconsensual towing upon a company not providing booting services would do little to avoid abuses occurring and likely only encourage gamesmanship to create independent entities for this purpose. The rules will not be further modified at this time.

14. Argument that evidentiary hearing is required

174. Argument has been presented that the Commission should “schedule a hearing for the receipt of evidence, as well as any additional comments, bearing on whether any change is warranted in the maximum rates that the Task Force recommended for PPI and law enforcement tows involving motor vehicles having a GVWR of 10,000 lbs. or less.” The recommendation has been addressed throughout this Recommended Decision and was not adopted.

175. TRPC distinguishes a “notice and comment rulemaking” from an evidentiary proceeding. Referring to exceptions filed, TRPC contends that any rule setting rates must be supported by competent evidence in the record, must be cost-based and compensatory, and cannot operate retrospectively by basing a rate on past rather than current costs of service. As to process, TRPC first contends that § 40-10.1-106(b) C.R.S. includes “two types” of rulemaking and requires an evidentiary proceeding for the establishment of rates.

176. The NOPR cites Sections 40-2-108, 40-10.1-106, and 40-10.1-402, C.R.S. as authority to adopt the proposed rules. *See* Decision No. C16-0129 at 1. “Except as provided, the commission shall be governed by the provisions of article 4 of title 24, C.R.S., for the promulgation and adoption of rules” §40-2-108 C.R.S. The excepted provision has not been shown applicable here.

177. In the absence of a statutory provision to the contrary, Commission rulemakings are governed by the Administrative Procedure Act. *Home Builders Association v. Public Utilities Commission*, 720 P.2d 552, 559 (Colo. 1986). The Supreme Court recognized: “Rule-making conducted in accordance with section 24-4-103 is quasi-legislative, not quasi-judicial, in character.” *Collopy v. Wildlife Com., Dep't of Natural Resources*, 625 P.2d 994, 1003 (Colo. 1981).

178. The Supreme Court explicitly recognized and distinguished the nature of rulemaking under the Colorado APA from formal rulemaking procedures of the Federal APA that are comparable to that sought by TRPC: “Under the Federal APA, rulemaking may be either informal or formal. Formal rulemaking pursuant to 5 U.S.C. §§ 556, 557 (1976) requires essentially trial-type procedures, while informal rulemaking requires only informal notice and comment procedures preceding promulgation of administrative rules. See generally 1 K. Davis, *Administrative Law Treatise* § 6:2 (2d ed. 1978). The State APA prescribes informal notice and comment rulemaking, section 24-4-103, C.R.S. 1973 and 1981 Supp., unless an agency's organic statute requires different procedures, see section 24-4-107, C.R.S. 1973. Consequently, for purposes of the State APA, the appropriate references for comparison with federal law are those cases interpreting and applying the Federal APA requirements contained in 5 U.S.C. § 553.” *Citizens for Free Enterprise v. Department of Revenue*, 649 P.2d 1054, 1063, note 7 (Colo. 1982).

179. While § 40-10.1-106 C.R.S. addresses rates in the context of rulemaking, the unambiguous language does not specify or require any departure from an informal rulemaking pursuant to the APA. TRPC has shown no specific statutory procedures requiring departure from general rulemaking provisions of the Administrative Procedure Act.

180. Section 40-10.1-106 C.R.S. grants the Commission broad discretion to make rules and prescribe rates affecting towing carriers and includes specific provisions applicable to nonconsensual towing and storage of motor vehicles. While the statutory language was amended during the 2011 reorganization of the motor carrier statutes, this authority has been long been expressed in statute. See e.g. § 40-13-107 C.R.S. (2010).

181. TRPC's argument looks beyond previous rulemakings adopting towing rate limitations, including those currently in effect, through informal rulemaking. The Commission has adopted rates through this process for at least twenty years. Of particular concern to the undersigned, other aspects of the statutory advisory committee could limit or complicate the availability of the Task Force recommendations for Commission consideration if TRPC were to prevail.

182. To support TRPC's argument, counsel attempted to analogize this proceeding to the establishment of freight transportation rates prior to deregulation in 1995. However, the analogy is inapposite.

183. TRPC also points to *Colorado Ground Water Comm'n v. Eagle Peak Farms*, 919 P.2d 212, 214 (Colo. 1996). The Supreme Court summarized judicial review of agency rulemaking under the APA:

When courts review rules, the administrative record provides the basis for relating the rule to the applicable law, in the process of ascertaining whether the agency has complied with the required legal standards. In *Citizens for Free Enterprise*, 649 P.2d at 1062, we articulated that "based on the record" review, pursuant to section 24-4-106, provides a "concrete body of material for assessing the basis of the administrative agency's conclusions." We stated that "rather than engaging in a de novo inquiry into whether the basis and purpose of the rule have some foundation in fact, the court is directed to the administratively compiled record." *Id.* We concluded that the standard of review in the consideration of agency rulemaking is "reasonableness." [**12] *Id.* at 1061-65.

Colorado Ground Water Comm'n v. Eagle Peak Farms, 919 P.2d 212, 217 (Colo. 1996).

184. One analogous proceeding in 1984 regards contract carriers. Reviewing governing statutes at that time, the Commission regulated contract carriage, in part, in order to properly regulate motor vehicle common carriers. § 40-11-103(1) C.R.S. (1984). The statute provided "[n]o permit nor any extension or enlargement of an existing permit shall be granted by the commission if in its judgment the proposed operation of any such contract carrier will impair

the efficient public service of any authorized motor vehicle common carrier then adequately serving the same territory over the same general highway route.” § 40-11-103(2) C.R.S. (1984). “Every contract carrier, subject to the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, and shall keep on file with the commission, at all times, schedule showing rates, charges, and collections, collected or enforced were to be collected or enforced, which in any manner affect or relate to the operations of any such contract carrier; and the commission has full power to change, amend, or alter any such tariff or, after hearing, fix the rates of any contract carrier, subject to the provisions of this article, competing with a motor vehicle common carrier.” § 40-11-105(3) C.R.S. (1984).

185. During 1984, towing carriers were required to obtain a permit, but regulation of towing carriers differed from contract carriers. §40-13-102(2) C.R.S. (1984). At that time, the Commission was authorized to attach restrictions, terms, and conditions to a towing permit, including but not confined to altering the rates and charges of such applicant, as a reasonably deem necessary for the protection of the property of the public. §40-13-106 C.R.S. (1984). The Commission was permitted to prescribe minimum and maximum rates and charges to be collected by towing carriers for the towing of motor vehicles for compensation in the storage of such vehicles, with exceptions. §40-13-107(2) C.R.S. (1984).

186. Although TRPC’s precise argument has not been addressed in a towing proceeding, establishing rates for property transportation predates many intervening Commission rulemaking proceedings affecting towing rates conducted in accordance with the APA. Regulation of towing carriers today dramatically differs from transportation of property many years ago. There are numerous distinctions of scope and manner among those subject to

Commission regulation. No requirement has been show for the Commission to adopt minimum and maximum towing rates in the same manner as regulated rates for property transportation.

187. Notably, towing carriers are not public utilities subject to rate of return regulation. However, they are affected with a public interest. § 40-10.1-103(2) C.R.S. They are neither subject to all regulatory burdens nor entitled to all regulatory benefits of a fully regulated public utility. Towing carriers are not entitled to exclusive authorities. All towing carriers must obtain a permit from the Commission. Such permit allows, but does not require, any towing carrier to provide consensual or nonconsensual tows for anyone. Prices for consensual towing are established in the marketplace (i.e. including any imperfections).

188. As to nonconsensual towing, a towing carrier chooses to subject itself to regulation. If a particular carrier finds the circumstances under which nonconsensual tows must be performed to be unacceptable for any reason, no regulatory obligation requires them to perform such services.

189. The plain language of § 40-10.1-106 C.R.S. expressly includes “the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle” within the Commission’s authority and duty. § 40-10.1-106(1)(b) C.R.S. To enable and facilitate the same, “the commission may require towing carriers performing nonconsensual tows to submit financial statements or other financial information to determine the costs associated with the performance of nonconsensual towing and any motor vehicle storage incident thereto.” Id.

190. The Legislature clearly contemplated that the Commission may consider financial information in establishing rates, including financial statements to determine costs associated with the performance of nonconsensual towing. § 40-10.1-106(b) C.R.S. However, in doing so,

the Commission must also be careful as to availability of comparable, consistent, financial information reported as well as uniform methods of accounting, (e.g. utilizing reporting for income tax reporting or other purposes). Even with such information, allocations or separations for regulated and unregulated activities and cross subsidies might be considered.

191. It has been argued that “no testimony was taken nor was any documentary evidence received, other than the report of the Towing Task Force” Exceptions to Recommended Decision No. R16-0712 of Administrative Law Judge G. Harris Adams Amending Rules at 2. This argument rests upon a false foundation. No formal evidentiary record has been created in this proceeding. Were there to be such a record, it would be separate from comments in the proceeding.

192. The factual basis in Commission rulemaking proceedings are generally based upon the record of the proceeding, including comment. This is not equivalent to a finding of fact based upon the presentation of evidence because facts are neither presented nor admitted subject to evidentiary standards and because such findings are not determinative of any outcome in a quasi-legislative rulemaking.

193. Setting rates is legislative in nature. The Commission has proposed adopting rates incorporating the Task Force recommendation utilizing the same procedures it has in the past. Although the recommendation is based upon a model, there is no disputed issue of fact that would be determinative of rates to be adopted in the exercise of Commission discretion.

15. Bifurcation

194. On March 1, 2017, the Motion of Transportation & Recovery Professionals of Colorado, Inc. to Bifurcate the Proceeding for Purposes of Entering Separate Recommended

Decisions was filed. The Recommended Decision now being complete, the requested relief is moot.

B. Conclusion

195. Attachment A to this Recommended Decision represents the rule amendments adopted by this decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision). Attachment A and B are available through the Commission's E-Filings system in this proceeding (16R-0095TO) at:

https://www.dora.state.co.us/pls/efi/EFL.Show_Docket?p_session_id=&p_docket_id=16R-0095TO.

196. Attachment B to this Recommended Decision represents the rule amendments adopted by this decision in final form.

197. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

198. 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 Transportation by Motor Vehicle, 4 Code of Colorado Regulations 723-6, contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final format attached as Attachment B, are adopted.

2. 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.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, 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.

4. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

* * *

[indicates unaffected, omitted material]

TOWING CARRIER RULES

6500. Applicability of Towing Carrier Rules.

- (a) Rules 6500 through 6599 apply to all towing carriers, and to all Commission proceedings and operations concerning towing carriers, applicants, employees, and drivers.
- (b) For a tow and storage of a motor vehicle performed under a written agreement with a municipal, county, state, or federal agency, nothing in these towing carrier rules shall be construed to prohibit such agency, to the extent permitted by law, from adopting and enforcing additional or more stringent requirements relating to towing carrier operations with regard to rules 6506; 6507(a), (c), (d), and (e); 6508; 6509; 6510; and 6512(a), (b), (d), (e), and (f).
- (c) Until January 1, 2018, wWith regard to rules 6511(a), (b), (c), (d), (f), (g)(I)(A), (g)(II), (h), e) and (i), the f), any written agreement regarding a nonconsensual tow may set higher or lower maximum rates than are provided in such rules. On or after January 1, 2018, with regard to rules 6511(a), (b), (c), (d), (e) and (f), any written agreement regarding a nonconsensual tow may set lower maximum rates than are provided in such rules. In the event thea written agreement does not set such rates, the Commission's rules will prevail. A written agreement does not include a tow authorization by a law enforcement official given to a towing carrier with which the law enforcement official's agency does not have a written agreement.

6501. Definitions.

In addition to the definitions in rule 6001, the following definitions apply to towing carriers:

- (a) "Abandoned motor vehicle" means an "abandoned motor vehicle" as defined by §§ 42-4-1802(1) and 42-4-2102(1), C.R.S.
- (b) "Authorized agent for the property owner" means a person acting as agent of a property owner.
- (c) "Authorized agent of motor vehicle" means a person, including a towing carrier, who has been given written or oral permission by the owner, lessee, lienholder, or insurance company of a motor vehicle to act as agent for the disposition of said motor vehicle.
- (d) "Authorized operator of a motor vehicle" 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.

- (e) "Business hours" means 8:00 AM to 5:00 PM, Monday through Friday, excluding legal holidays, and any additional hours and days the towing carrier may designate.
- (f) "Gross vehicle weight rating" or "GVWR" is the maximum operating weight of a vehicle as specified by the manufacturer.
- (fg) "Law enforcement officer" means any sheriff, police officer, Colorado state patrol officer, municipal code enforcement officer, or other such person acting in his or her official capacity for enforcement of motor vehicle laws.
- (gh) "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.
- (hi) "Nonconsensual tow" means 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. Law enforcement-ordered tows are nonconsensual and subject to these rules, even when the owner or operator of the vehicle consents to a law enforcement official ordering a tow.
- (ij) "Parking lot" means any place, lot, parcel, yard, structure, building or enclosure used in whole or in part for storing or parking five or more motor vehicles.
- (jk) "Private property" means any real property that is not public property.
- (l) "Private Property Impound" (or "PPI") means a nonconsensual tow from private property upon authorization of the property owner.
- (km) "Property owner" means:
 - (I) the owner or lessee of the private property or public property;
 - (II) a person who has been authorized in writing to act as an authorized agent for the property owner or lessee of the private property or public property; or
 - (III) a federal, state, county, municipal, or other government entity that is the owner or lessee of the private property or public property, or such entity's employees responsible for such property.
- (ln) "Public property" means any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality, or other governmental entity of this state.
- (o) "Recovery" means winching, hoisting, up-righting, removing, or otherwise relocating a vehicle when the vehicle is found in such a location, state or position in which it could not be removed from the location, state or position using only the vehicle's own power, even if it were in complete operating condition. Waiting and site clean-up time are included in recovery services.
- (p) "Towing" is the act of transporting a motor vehicle or trailer on or behind a tow truck.
- (mg) "Tow truck" means a motor vehicle specially designed or equipped for transporting another motor vehicle by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting such other motor vehicle from one place to another.

- (~~af~~) "Towing carrier" means a motor carrier that provides, as one of its primary functions, the towing of motor vehicles by use of a tow truck and may also provide storage of towed vehicles.
- (~~es~~) "Towing carrier permit" means the permit issued by the Commission to a towing carrier pursuant to § 40-10.1-401, C.R.S.
- (t) "Towing facility" means any place used for the storage of motor vehicles or records in conjunction with the operations of a towing carrier.
- (u) "Trailer" means any wheeled vehicle, without motive power, which is designed to be drawn by a motor vehicle and to carry its cargo load wholly, or in part, upon its own structure and that is generally and commonly used to carry and transport property over the public highways.

6502. [Reserved].

6503. Permit Application.

- (a) In addition to the Commission-prescribed application form, a person must:
 - (I) pay an application fee of \$150.00;
 - (II) cause to be filed the required proof of financial responsibility; and
 - (III) pay the required annual fees or, if applicable, shall be in compliance with the UCR Agreement.

6504. Criminal History Checks.

- (a) This rule applies to principals, including without limitation, directors and officers.
- (b) Qualification determination.
 - (I) Upon the Commission's receipt of results obtained from a criminal history record check, Commission staff shall make a qualification determination regarding the applicant's qualification status. In making this determination, Commission staff is authorized to request from the applicant, and the applicant shall provide, additional information that will assist Commission staff in making the determination. If an applicant either does not provide such additional information requested by Commission staff, ~~or~~ explain why it is unavailable, within 15 days of the request, Commission staff may deny the application.
 - (II) An application shall be denied, if the applicant has:
 - (A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any class 1, 2, or 3 felony under any Title of C.R.S.;
 - (B) a conviction in the state of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4, 5, or 6 felony under any Title of C.R.S.; or
 - (C) an offense in any other state or in the United States that is comparable to any offense listed in subparagraphs (A) through (B) within the same time periods as listed in subparagraphs (A) through (B).

- (III) For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.
- (IV) The Commission and Commission staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks.
- (c) Commission staff shall not issue a permit to the applicant if a disqualifying criminal history record is found for a person subject to this rule.
- (d) If a disqualifying criminal history record is found for a person subject to this rule, the associated applicant may file a petition to qualify the applicant within 60 days of Commission staff's notification.
 - (I) Upon the filing of a petition for qualification, Commission staff shall be an indispensable party.
 - (II) The applicant shall bear the burden of proving that disqualification is not supported by fact or law.
- (e) If the Commission qualifies an applicant upon petition, ~~subparagraph~~ paragraph (b) shall be waived as to qualification determinations for future applications regarding the events upon which Commission staff's disqualification was based.

6505. [Reserved].

6506. 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;
 - (D) one steering wheel tying device free from cracks, fraying, or deterioration; and
 - (E) the following accessories for any towing carrier that performs tows from accident scenes:
 - (i) one shovel; and
 - (ii) one broom.
- (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) A towing carrier shall not tow a motor vehicle without attaching required operational electric lights on the rear of the towed motor vehicle. This requirement does not apply to vehicles placed on a flatbed or trailer as long as the vehicle being towed does not extend four feet beyond the rear of the towing vehicle.
- ~~(e) Rescue and recovery equipment.~~
 - ~~(I) For purposes of this paragraph (e), rescue and recovery operation means that a motor vehicle must first be moved by means of the mechanical devices described in subparagraph (e)(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.~~

6507. Storage Facilities.

- (a) Disclosure of facility location. For nonconsensual tows of a motor vehicle, within 30 minutes of having possession, or such lesser time as may be required by law, a towing carrier shall disclose the location of the storage facility by notifying the responsible law enforcement agency having jurisdiction over the place from which the motor vehicle was towed. Compliance with this paragraph will be considered accomplished if the location of the storage facility was provided to the law enforcement agency in conjunction with obtaining authorization for the tow.
- (b) Disclosure for abandoned motor vehicles. A towing carrier which places an abandoned motor vehicle in a storage facility shall also 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) Disclosure for all towed motor vehicles. Upon request of the owner, authorized agent, or authorized operator of motor vehicle, a towing carrier which places a motor vehicle in a storage facility shall also disclose the location of the storage facility, the total amount of the charges, and accepted forms of payment, as provided in rule 6512.

(d) Signage.

- (I) A towing carrier shall maintain a clearly visible sign at the entrance to any storage facility where a motor vehicle has been towed without the prior consent or authorization of the owner or operator of the motor vehicle. Such sign shall state the name of the business, telephone number, and hours of operation.
- (II) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than two square foot in size;
 - (B) have lettering not less than two inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed; and
 - (D) be printed in English.

(e) Lighting for release. A towing carrier shall maintain an area at each storage facility location on file with the Commission with illumination levels during all hours adequate to inspect a vehicle for damage prior to its release from storage.

(f) Carrier responsibility. A towing carrier is responsible for the security and safety of a motor vehicle towed without the prior consent or authorization of the owner or operator of the motor vehicle until it is released in accordance with these rules.

6508. Authorization for Towing of Motor Vehicles.

(a) Towing carrier acting as authorized agent for the property owner.

(I) A towing carrier may act as the authorized agent for the property owner under a written agreement to that effect, provided the agreement is compliant with this paragraph (a). The contract shall contain at least the following information:

- (A) the name, physical address, telephone number, email address (if applicable), and PUC Towing Permit number of the towing carrier;
- (B) the name, address, email address (if applicable), and telephone number of the property owner;
- (C) the address of the property from which the tows will originate;
- (D) the name of each individual person who is authorized to sign the tow authorization;
- (E) the address and phone number of the storage facility where the vehicle owner may retrieve the vehicle;
- (F) the beginning date and ending date of the contract;
- (G) a statement that "the maximum rates for a nonconsensual tow from private property, and the maximum drop charge if the vehicle is retrieved before removal from the private property, are set by rule of the Public Utilities Commission;"
- (H) the name, title, phone number, and signature of the person making the contract on behalf of the property owner and on behalf of the towing carrier; and
- (I) the date the contract is signed.

(II) Nothing in this paragraph (a) shall preclude a towing carrier, which towing carrier has been paid for the tow by the property owner at proper rates ~~in accordance with rule 6511(d),~~ from collecting the towing charges from the motor vehicle owner and reimbursing said charges to the property owner.

(III) No agency provided for in paragraph 6508(a) shall affect any obligation, liability, or responsibility of the property owner to any third party. Any provision attempting to affect such obligation, liability, or responsibility shall be void.

(b) Authorization to ~~P~~perform ~~N~~nonconsensual ~~T~~tow.

- (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 upon the authorization of the property owner.

- (II) A towing carrier may not come in 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).

- (III) A towing carrier may not perform a nonconsensual tow of a motor vehicle, other than an abandoned motor vehicle, from a parking lot unless:
 - (A) notice of parking limitations, regulations, restrictions or prohibitions was provided at the time the vehicle was parked; and
 - (B) notice is provided that anyone parking in violation of limitations, regulations, restrictions or prohibitions is subject to being towed at the vehicle owner's expense.

- (IV) Notice required by this rule is presumed to be met if:
 - (A) a permanent sign is conspicuously posted near each entrance to the parking lot; and
 - (B) if the parking lot is not provided for residential parking and has more than ten free-standing lampposts on the property, a number of signs equal to the number of lampposts must be posted. Such signs must be posted on each lamppost or posted upright in conspicuous locations which are evenly distributed across the parking lot.

- (V) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than one square foot in size;
 - (B) have lettering not less than one inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed;
 - (D) state the restrictions enforced; ~~and~~
 - (E) include the name and telephone number of towing carrier; and
 - (F) be printed in English.

- (VI) Property owner authorization. The authorization from the property owner, or authorized agent of 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 before the motor vehicle is removed from the property. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name. If the authorization is signed by the towing carrier as agent for the property owner, then documentationa verifiable employee identification number or code name shall not be used. Documentation of such authority must be carried in the towing truck. At a minimum, such documentation shall contain:
- (i) the name, address, email address (if applicable), and telephone number of the property owner;
 - (ii) the address of the property from which the tows will originate; and
 - (iii) the name of each individual person who is authorized to sign the tow authorization
- (B) A towing carrier shall not have in his or her possession, accept, or use blank authorizations pre-signed by the property owner.
- (C) The written authorization may be incorporated withinto the tow record/invoice required by rule 6509 or on any other document.
- (D) With the exception of police law enforcement-ordered tows, a towing carrier that is requested to perform a tow upon the authorization of a property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to a storage facility location on file with the Commission without delay. No vehicle may be relocated off of the private property from which it is towed to a location other than to such a storage facility.

6509. Tow Record/Invoice, Charge Notification, and Warning Signage.

- (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows whether the vehicle is removed from private property or retrieved before removal (commonly known as a drop). 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 towing 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 of the drop, if applicable, the date and time the towed motor vehicle is placed in storage, and all other times necessary for the purpose of calculation of hourly charges~~ the date and time the towed motor vehicle is released from storage, as applicable;
- (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) unless incorporated into the authorization in subparagraph 6508(b)(~~IV~~VI),
 - (A) the name, address, and telephone number of the person authorizing the tow; and
 - (B) the signature of the property owner authorizing a tow;
- (VIII) if the towed motor vehicle is unlocked, a list of its contents;
- (IX) the unit number or license number of the towing vehicle;
- (X) the signature of the towing vehicle operator;
- (XI) an itemized invoice of all towing charges assessed;
- (XII) the signature of the owner, authorized operator, or other authorized person to whom the motor vehicle is released; and
- (XIII) on at least the customer's copy, the following notice in a font size of at least ~~10~~ten:
"Report problems to the Public Utilities Commission at (303) 894-2070."

~~(b) The tow record/invoice shall be a multiple copy form. The copies shall be distributed as follows:~~

- ~~(b)~~ (b) The towing carrier shall retain the copy of the tow record/invoice bearing all required original signatures for authorization and release, without regard to whether it is maintained in electronic or multi-copy paper form.
- ~~(c)~~ (c) The towing carrier shall deliver a copy of the tow record/invoice to the owner, authorized operator, or authorized agent of the owner of the motor vehicle at the time of the release of the towed motor vehicle from a storage facility or where dropped for a drop fee, whether payment of towing charge, payment for release, payment for drop charge, or no charge occurred.
- ~~(d)~~ (d) Towing carriers shall provide a charge notification card to the owner, authorized operator, or authorized agent of the owner of the motor vehicle to be towed if such person is on the property prior to or after commencement of the tow of the vehicle but before the vehicle has been towed off the property. The charge notification card shall contain the Commission-prescribed form and content as available on the Commission's website.
- ~~(e)~~ (e) A towing carrier may place a warning sign on the driver-side window of a vehicle to be towed or, if window placement is impracticable, in another location on the driver-side of the vehicle prior to the commencement of the tow. The tow-truck warning sign shall be at least eight inches by eight inches, is yellow or orange in color and states the following: "WARNING: This vehicle is in tow."

Attempting to operate or operating this vehicle may result in criminal prosecution and may lead to injury or death to you or another person.”

6510. Disclosure of Rates and Charges.

- (a) 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. This rule does not apply to a nonconsensual tow authorized by the property owner, authorized agent for the property owner, or a tow ordered by a law enforcement officer.
- (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.

6511. Rates and Charges.

- ~~(a) The rates and charges in this rule 6511 shall not apply to:
 - ~~(I) a tow of a motor vehicle abandoned on public property weighing in excess of 10,000 pounds GVWR for which the charges are determined by negotiated agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(2)(a), C.R.S.; or~~
 - ~~(II) a tow of a motor vehicle abandoned on public property performed under a written agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(3), C.R.S.~~~~
- ~~(ba) Drop Charge. If retrieved before removal (commonly known as "drop charge").~~
- ~~(I) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle ~~with a GVWR of less than 10,000 pounds~~ that is parked without the authorization of the property owner appears in person to retrieve the motor vehicle after a tow truck ~~is present and either backed up in alignment~~ with such motor vehicle or tow equipment has come into contact with such motor vehicle, but before its removal from the property, ~~the maximum drop charge (whether motor vehicle is hooked up or not) is \$70.00 and the minimum drop charge is \$0.00 and may be less per municipality ordinances.;~~
 - ~~(I) the maximum drop charge (whether motor vehicle is hooked up or not) is:
 - ~~(A) \$70 for a motor vehicle with a GVWR less than or equal to 10,000 pounds;~~
 - ~~(B) \$90 for a motor vehicle with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;~~~~~~

- (C) \$120 for a motor vehicle with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds; and
 - (D) \$140 for a motor vehicle with a GVWR greater than 33,000 pounds.
 - (E) Maximum drop charges may be less per municipal ordinance or agreement with the property owner.
 - (II) The minimum drop charge is \$0.00.
 - (III) The towing carrier shall halt any tow in progress, including preparation therefor, prior to removal from the private property, 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 drop charge. The towing carrier shall concurrently advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle of acceptable forms of payment under rule 6512. Such advisements shall be provided via delivery of a charge notification card, in addition to any other means desired by the towing carrier.
 - (III) If the towing carrier does not advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle of acceptable forms of payment under rule 6512 or accept such forms of payment, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.
- (b) Maximum towing rates for PPI tows consists of up to four elements: a base rate for the tow; a mileage charge, including any applicable fuel surcharge; a charge for vehicle storage; and a charge for release from storage pursuant to paragraph 6511(f) if applicable.
- ~~(c) Rates for recovery, which includes waiting time, associated with a nonconsensual tow.~~
 - (I) The maximum base rates are as follows: Except as provided in § 42-4-1809(2)(a) regarding abandoned motor vehicles, this paragraph shall apply to the recovery of any size vehicle.
 - (A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$180.00;
 - (B) motor vehicles with a GVWR greater than 10,001 pounds and less than or equal to 19,000 pounds is \$210.00;
 - (C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$275.00; and
 - (D) motor vehicles with a GVWR greater than 33,000 pounds is \$325.00.
 - (II) The maximum mileage charge a towing carrier may assess for a PPI tow of a motor vehicle is \$3.80 per mile for each mile that the motor vehicle is towed, subject to the following limits: The maximum mileage that may be charged for a PPI tow is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities that lie farther than ten miles from U.S. Interstate Highway 25.

- ~~(III) An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of \$2.60. The Public Utilities Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The surcharge shall be based on the United States Department of Energy “weekly retail on-highway diesel prices” for the Rocky Mountain region (DOE’s Weekly Diesel Price). The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in the DOE’s Weekly Diesel Price, or a one-percent decrease in the mileage rate for every ten-cent decrease in the DOE’s Weekly Diesel Price, but in no event decreasing below the base rate.~~
- ~~(IV) A towing carrier shall not charge or retain any additional fees for the nonconsensual tow of a motor vehicle from private property.~~
- ~~(c) Maximum towing rates for law enforcement ordered tows and recovery operations are to be calculated on an hourly basis, per required towing or recovery vehicle, as follows, with no additional fees, charges, or surcharges permitted, except as identified below:~~

 - ~~(II) When accompanied by documentation showing starting and ending times of the recovery, which documentation may include law enforcement incident reports and verification, a towing carrier may charge for recovery at its hourly rates, a record of which is maintained in compliance with rule 6005. Maximum hourly rates for tow truck and driver, billable in ¼ hour increments after the first hour, for the towing or recovery of:~~

 - ~~(A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$205.00 per tow truck;~~
 - ~~(B) motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds is \$245.00 per tow truck;~~
 - ~~(C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$320.00 per tow truck; and~~
 - ~~(D) motor vehicles with a GVWR greater than 33,000 pounds is \$370.00 per tow truck.~~
 - ~~(E) The recovery of a motor vehicle requiring the use of a Heavy Rotator (60+ tons) shall not exceed \$585 per hour.~~
 - ~~(II) Mileage and fuel surcharges authorized elsewhere in rule 6511 do not apply to law enforcement ordered tows or recovery operations.~~
 - ~~(III) Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall:~~
 - ~~(III) Hourly rates for recovery may include time to load and to secure recovery equipment and the cleanup of the scene and post-towing maintenance of recovery equipment directly attributable to the recovery. If the recovery vehicle is also the towing vehicle, then the rates and charges provided in paragraph (d) shall not be charged in addition to the hourly rate.~~

- (A) include, in addition to requirements of rule 6509, the following information on the tow record/invoice form, recorded at the time of occurrence: the time of dispatch; the time the truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the truck leaves the scene, and the time the vehicle towed is unhooked;
 - (B) include an advisement on the invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available upon request from the towing carrier;
 - (C) only begin billing from a time not earlier than the towing carrier leaves their yard or staging area en route to the scene of the requested tow until the vehicle towed is unhooked;
 - (D) not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier's actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs;
 - (E) provide an owner, authorized operator, or authorized agent of the owner of a motor vehicle documentation of actual and reasonable costs billed in excess of one hour for any tow truck and driver for such tow upon request; and
 - (F) not, under any circumstances, bill rates and charges provided in paragraph (b) for a PPI tow.
- ~~(IV) — The cost of additional equipment used may be recovered from the motor vehicle owner at the towing carrier's actual costs incurred plus a reasonable administrative fee of not more than twenty-five percent of those actual costs, provided that the actual costs are reasonable by industry standards.~~
- ~~(d) — Rates and charges for nonconsensual tows. Except as provided in paragraphs (b), (c), (e), (f), (g), and (h) of this rule, the maximum rate that a towing carrier may charge for a nonconsensual tow of a motor vehicle with a GVWR of less than 10,000 pounds performed upon the authorization of the property owner is \$160.00. This maximum rate includes, but is not be limited to, charges for the following:~~
- ~~(I) — all towing services rendered;~~
 - ~~(II) — hookup;~~
 - ~~(III) — use of dollies or go-jacks;~~
 - ~~(IV) — access to or release of the motor vehicle from storage;~~
 - ~~(V) — except for an abandoned motor vehicle, removal of personal property that is not attached to or a part of the equipment of the motor vehicle;~~
 - ~~(VI) — all commissions paid; and~~
 - ~~(VII) — all other services rendered in performing such nonconsensual tow.~~

(~~ed~~) The maximum rates for a ~~nonconsensual~~ tow from a storage facility, when directed by a law enforcement officer who is performing an accident reconstruction or stolen vehicle investigation, are as follows:

- (I) \$91.00 for one additional hookup;
- (II) \$91.00 per hour waiting time; and
- (III) mileage charges as provided in paragraph (~~fb~~).

~~(f) Mileage.~~

~~(I) The maximum mileage charge that may be assessed for a non-consensual tow of a motor vehicle with a GVWR of less than 10,000 pounds is \$3.80 per mile that the motor vehicle is towed.~~

~~(II) Fuel surcharge. The maximum mileage charge shall be adjusted monthly by the Public Utilities Commission by setting a fuel surcharge. The surcharge shall be based on the United States Department of Energy "weekly retail on-highway diesel prices" for the Rocky Mountain region using the price per gallon of \$2.60 as the base rate. The adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in fuel cost, or a one-percent decrease in the mileage rate for every ten-cent decrease in fuel cost, but in no event decreasing below the base rate.~~

~~(III) The maximum mileage that may be charged for a nonconsensual tow for a motor vehicle with a GVWR of less than 10,000 pounds is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities which lie farther than ten miles from U.S. Interstate Highway 25.~~

(~~ge~~) Storage for nonconsensual tows.

(I) Storage charges ~~shall~~ may accrue from the time a vehicle is placed in storage and shall not exceed the following rates based on a 24-hour period or any portion of a 24-hour period, ~~or for any portion of a calendar day after the first 48 hours:~~

- (A) \$30.00 for motor vehicles having a GVWR of less than 10,000 pounds;
- (B) \$37.00 for motor vehicles having a GVWR of 10,000 pounds or more; or
- (C) in lieu of subparagraphs (A) and (B), and at the option of the towing carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at \$1.50 per foot or portion thereof.

(II) Storage charges shall not be charged, collected, or retained for any day-time during in which garage keeper's liability insurance coverage is not kept in force.

~~(III) Storage charges for a nonconsensual tow may commence upon placing the motor vehicle in storage.~~

(III~~V~~) Maximum storage charges for abandoned motor vehicles. 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 subject to part 21 of title 42, C.R.S. shall not be accumulated beyond 120 days after the mailing date of the report required by § 42-4-2103(4), C.R.S.

(hf) For a nonconsensual tow, the maximum additional charge for release of a motor vehicle from storage or access to a motor vehicle in storage at any time other than the carrier's business hours is \$66.00.

(ig) Noncompliance. If a tow is performed, or storage is provided, in violation of state statute or Commission rules, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released to the owner, lienholder, or agent of the owner or lienholder without charge. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.

(jh) Abandoned motor vehicles.

(I) 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 and 42-4-2103, C.R.S., and the rules of the Colorado Department of Revenue.

(II) 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 and 42-4-2103, 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 not charge, collect, or retain storage fees.

(III) 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.

(IV) Additional costs that may be charged when a stored motor vehicle is sold.

(A) 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.

(B) 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.

(C) "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.

(D) Certified VIN verification procedure. 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:

- (i) ~~R~~ates as provided in paragraph (ed); and
- (ii) ~~In~~ addition, the towing carrier may charge for all other documented expenses of obtaining the VIN verification.

(i) Trailers.

- (I) No additional fees may be charged for the towing of a power unit and trailer in combination as a single motor vehicle.
- (II) A vehicle in or on a trailer is cargo.
- (III) No additional fees may be charged for the towing of cargo in combination; however, additional fees may be charged for towing a trailer when reasonably and actually conducted a separate tow from a power unit.

6512. Release of Motor Vehicle and Personal Property.

- (a) The towing carrier shall immediately accept payment of the drop charge, towing, storage, and release charges if payment is offered in cash or valid major credit card. The towing carrier may accept other forms of payment, but must accept payment by both MasterCard and Visa. The towing carrier shall release the motor vehicle to:
 - (I) the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle;
 - (II) the lienholder or agent of the lienholder of the motor vehicle; or
 - (III) the insurance company or agent of the insurance company providing coverage on the motor vehicle, if released to the insurance company by the owner.
- (b) ~~Unless the release of the motor vehicle does not comply with the release procedures agreed to between the towing carrier and the applicable law enforcement agency, a~~ towing carrier that accepts for storage a motor vehicle that has been towed as a nonconsensual tow ~~upon the authorization of the property owner~~ shall be available to provide access to or release of the motor vehicle as provided in paragraph (a) 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 the carrier's business hours that occur within the first 24 hours of storage; or
 - (II) upon demand during the carrier's business hours.
- (c) 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 and 42-4-2103, 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 to the owner, lien holder, or their agents.
- (d) The towing carrier, at its discretion, need not comply with paragraph (a), (b) or (c) if:
 - (I) the towing carrier is reasonably certain that, at the time the motor vehicle is to be released from storage, the driver of the motor vehicle is not capable of safely driving the motor vehicle due to the influence of drugs or alcohol;

- (II) the towing carrier that is to remove the motor vehicle from storage does not have a valid towing carrier permit ~~or proof of motor vehicle liability coverage~~;
 - (III) a hold order is in place on the motor vehicle by a court, district attorney, law enforcement agency, or law enforcement officer;
 - (IV) the release of the motor vehicle does not comply with the release procedures agreed to in writing, between the towing carrier and the applicable law enforcement agency; or
 - (V) the towing carrier, upon notification for the release of or access to a motor vehicle at other than the carrier's business hours, has immediately contacted an appropriate law enforcement agency and, in the interest of public order, has requested a law enforcement officer's presence during the release of the motor vehicle. This exception is applicable when the towing carrier has reason to believe that the motor vehicle's owner, authorized operator, or authorized agent of the owner of the motor vehicle may disrupt the public order.
- (e) A towing carrier shall release a motor vehicle held in storage to a person presenting a current driver's license who attests to being the authorized operator of the vehicle and produces two of the following: keys to the vehicle; proof of insurance; vehicle registration, VIN number; or knowledge of the location from where the vehicle was towed. Such attestation must be in the form available from the Commission or its website.
- (f) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish, prescription medicines, medical equipment, medical devices, or any child restraint system. The towing carrier shall immediately relinquish such items upon demand, without requiring payment and without additional charge.
- (g) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish credit cards and cash for immediate payment of the amount due to the towing carrier. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times and without additional charge.
- (h) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish state or federal issued identification to the owner of the identification or to persons to whom the motor vehicle is released. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times. Access shall be without additional charge during business hours.
- (i) On the private property where the tow originates, a towing carrier shall not refuse to relinquish a cellular telephone to persons to whom the motor vehicle can be released. The towing carrier shall immediately relinquish such item upon demand and without additional charge.

6513. [Reserved].

6514. Towing Violations and Civil Penalty Assessments.

- (a) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$1,100.00 for each violation:
- (I) § 40-10.1-401(1)(a), C.R.S.;

- (II) subparagraph (b)(I), (b)(II), (b)(IV)(B), or (b)(VI)(D) of rule 6508; or
 - (III) paragraph ~~(ig)~~ of rule 6511; ~~or.~~
 - ~~(IV) paragraphs (d), (e), (g), or subparagraphs (b)(I) or (g)(I)(A) of rule 6511 for an overcharge greater than \$74.99.~~
- (b) A violation of paragraph ~~(a), (b), (c), (d), (e), (gf), (h)~~, or ~~subparagraphs (b)(I) or (g)(I)(A)(i)~~ of rule 6511 may result in the assessment of a civil penalty as follows for each violation:
- (I) up to \$275.00 for an overcharge \$25.00 or less;
 - (II) up to \$550.00 for an overcharge greater than \$25.00 but less than or equal to \$50.00; and
 - (III) up to \$1,100.00 for an overcharge greater than \$50.00.
- (c) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$550.00 for each violation:
- (I) ~~paragraph (a), (b), or (c) of~~ rule 6507;
 - (II) paragraph (a) of rule 6510; or
 - (III) paragraph (e) of rule 6512; ~~or~~
 - ~~(IV) paragraph (d), (e), (g), or subparagraphs (b)(I) or (g)(I)(A) of rule 6511 for an overcharge less than \$75.00.~~
- (d) A violation of rule 6506 may result in the assessment of a civil penalty of up to \$100.00 for each violation.
- (e) Except as provided in paragraph (a) through (d) of this rule, a violation of any provision of Title 40, § 42-3-235.5, C.R.S., pertaining to towing carriers, or any provision of rules 6500 through 6513, may result in the assessment of a civil penalty of up to \$275.00 for each violation.
- (f) Civil penalty assessments are in addition to any other penalties provided by law.

6515. - 6599. [Reserved].

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[indicates unaffected, omitted material]

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

* * *

[indicates unaffected, omitted material]

TOWING CARRIER RULES

6500. Applicability of Towing Carrier Rules.

- (a) Rules 6500 through 6599 apply to all towing carriers, and to all Commission proceedings and operations concerning towing carriers, applicants, employees, and drivers.
- (b) For a tow and storage of a motor vehicle performed under a written agreement with a municipal, county, state, or federal agency, nothing in these towing carrier rules shall be construed to prohibit such agency, to the extent permitted by law, from adopting and enforcing additional or more stringent requirements relating to towing carrier operations with regard to rules 6506; 6507(a), (c), (d), and (e); 6508; 6509; 6510; and 6512(a), (b), (d), (e), and (f).
- (c) Until January 1, 2018, with regard to rules 6511(a), (b), (c), (d), (e) and (f), any written agreement regarding a nonconsensual tow may set higher or lower maximum rates than are provided in such rules. On or after January 1, 2018, with regard to rules 6511(a), (b), (c), (d), (e) and (f), any written agreement regarding a nonconsensual tow may set lower maximum rates than are provided in such rules. In the event a written agreement does not set such rates, the Commission's rules will prevail. A written agreement does not include a tow authorization by a law enforcement official given to a towing carrier with which the law enforcement official's agency does not have a written agreement.

6501. Definitions.

In addition to the definitions in rule 6001, the following definitions apply to towing carriers:

- (a) "Abandoned motor vehicle" means an "abandoned motor vehicle" as defined by §§ 42-4-1802(1) and 42-4-2102(1), C.R.S.
- (b) "Authorized agent for the property owner" means a person acting as agent of a property owner.
- (c) "Authorized agent of motor vehicle" means a person, including a towing carrier, who has been given written or oral permission by the owner, lessee, lienholder, or insurance company of a motor vehicle to act as agent for the disposition of said motor vehicle.
- (d) "Authorized operator of a motor vehicle" 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.

- (e) "Business hours" means 8:00 AM to 5:00 PM, Monday through Friday, excluding legal holidays, and any additional hours and days the towing carrier may designate.
- (f) "Gross vehicle weight rating" or "GVWR" is the maximum operating weight of a vehicle as specified by the manufacturer.
- (g) "Law enforcement officer" means any sheriff, police officer, Colorado state patrol officer, municipal code enforcement officer, or other such person acting in his or her official capacity for enforcement of motor vehicle laws.
- (h) "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.
- (i) "Nonconsensual tow" means 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. Law enforcement-ordered tows are nonconsensual and subject to these rules, even when the owner or operator of the vehicle consents to a law enforcement official ordering a tow.
- (j) "Parking lot" means any place, lot, parcel, yard, structure, building or enclosure used in whole or in part for storing or parking five or more motor vehicles.
- (k) "Private property" means any real property that is not public property.
- (l) "Private Property Impound" (or "PPI") means a nonconsensual tow from private property upon authorization of the property owner.
- (m) "Property owner" means:
 - (I) the owner or lessee of the private property or public property;
 - (II) a person who has been authorized in writing to act as an authorized agent for the property owner or lessee of the private property or public property; or
 - (III) a federal, state, county, municipal, or other government entity that is the owner or lessee of the private property or public property, or such entity's employees responsible for such property.
- (n) "Public property" means any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality, or other governmental entity of this state.
- (o) "Recovery" means winching, hoisting, up-righting, removing, or otherwise relocating a vehicle when the vehicle is found in such a location, state or position in which it could not be removed from the location, state or position using only the vehicle's own power, even if it were in complete operating condition. Waiting and site clean-up time are included in recovery services.
- (p) "Towing" is the act of transporting a motor vehicle or trailer on or behind a tow truck.
- (q) "Tow truck" means a motor vehicle specially designed or equipped for transporting another motor vehicle by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting such other motor vehicle from one place to another.

- (r) "Towing carrier" means a motor carrier that provides, as one of its primary functions, the towing of motor vehicles by use of a tow truck and may also provide storage of towed vehicles.
- (s) "Towing carrier permit" means the permit issued by the Commission to a towing carrier pursuant to § 40-10.1-401, C.R.S.
- (t) "Towing facility" means any place used for the storage of motor vehicles or records in conjunction with the operations of a towing carrier.
- (u) "Trailer" means any wheeled vehicle, without motive power, which is designed to be drawn by a motor vehicle and to carry its cargo load wholly, or in part, upon its own structure and that is generally and commonly used to carry and transport property over the public highways.

6502. [Reserved].

6503. Permit Application.

- (a) In addition to the Commission-prescribed application form, a person must:
 - (I) pay an application fee of \$150.00;
 - (II) cause to be filed the required proof of financial responsibility; and
 - (III) pay the required annual fees or, if applicable, shall be in compliance with the UCR Agreement.

6504. Criminal History Checks.

- (a) This rule applies to principals, including without limitation, directors and officers.
- (b) Qualification determination.
 - (I) Upon the Commission's receipt of results obtained from a criminal history record check, Commission staff shall make a qualification determination regarding the applicant's qualification status. In making this determination, Commission staff is authorized to request from the applicant, and the applicant shall provide, additional information that will assist Commission staff in making the determination. If an applicant either does not provide such additional information requested by Commission staff, or explain why it is unavailable, within 15 days of the request, Commission staff may deny the application.
 - (II) An application shall be denied, if the applicant has:
 - (A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any class 1, 2, or 3 felony under any Title of C.R.S.;
 - (B) a conviction in the state of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4, 5, or 6 felony under any Title of C.R.S.; or
 - (C) an offense in any other state or in the United States that is comparable to any offense listed in subparagraphs (A) through (B) within the same time periods as listed in subparagraphs (A) through (B).

- (III) For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.
- (IV) The Commission and Commission staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks.
- (c) Commission staff shall not issue a permit to the applicant if a disqualifying criminal history record is found for a person subject to this rule.
- (d) If a disqualifying criminal history record is found for a person subject to this rule, the associated applicant may file a petition to qualify the applicant within 60 days of Commission staff's notification.
 - (I) Upon the filing of a petition for qualification, Commission staff shall be an indispensable party.
 - (II) The applicant shall bear the burden of proving that disqualification is not supported by fact or law.
- (e) If the Commission qualifies an applicant upon petition, paragraph (b) shall be waived as to qualification determinations for future applications regarding the events upon which Commission staff's disqualification was based.

6505. [Reserved].

6506. 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;
 - (D) one steering wheel tying device free from cracks, fraying, or deterioration; and
 - (E) the following accessories for any towing carrier that performs tows from accident scenes:
 - (i) one shovel; and
 - (ii) one broom.
- (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) A towing carrier shall not tow a motor vehicle without attaching required operational electric lights on the rear of the towed motor vehicle. This requirement does not apply to vehicles placed on a flatbed or trailer as long as the vehicle being towed does not extend four feet beyond the rear of the towing vehicle.

6507. Storage Facilities.

- (a) Disclosure of facility location. For nonconsensual tows of a motor vehicle, within 30 minutes of having possession, or such lesser time as may be required by law, a towing carrier shall disclose the location of the storage facility by notifying the responsible law enforcement agency having jurisdiction over the place from which the motor vehicle was towed. Compliance with this paragraph will be considered accomplished if the location of the storage facility was provided to the law enforcement agency in conjunction with obtaining authorization for the tow.

- (b) Disclosure for abandoned motor vehicles. A towing carrier which places an abandoned motor vehicle in a storage facility shall also 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) Disclosure for all towed motor vehicles. Upon request of the owner, authorized agent, or authorized operator of motor vehicle, a towing carrier which places a motor vehicle in a storage facility shall also disclose the location of the storage facility, the total amount of the charges, and accepted forms of payment, as provided in rule 6512.
- (d) Signage.
 - (I) A towing carrier shall maintain a clearly visible sign at the entrance to any storage facility where a motor vehicle has been towed without the prior consent or authorization of the owner or operator of the motor vehicle. Such sign shall state the name of the business, telephone number, and hours of operation.
 - (II) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than two square foot in size;
 - (B) have lettering not less than two inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed; and
 - (D) be printed in English.
- (e) Lighting for release. A towing carrier shall maintain an area at each storage facility location on file with the Commission with illumination levels during all hours adequate to inspect a vehicle for damage prior to its release from storage.
- (f) Carrier responsibility. A towing carrier is responsible for the security and safety of a motor vehicle towed without the prior consent or authorization of the owner or operator of the motor vehicle until it is released in accordance with these rules.

6508. Authorization for Towing of Motor Vehicles.

- (a) Towing carrier acting as authorized agent for the property owner.
 - (I) A towing carrier may act as the authorized agent for the property owner under a written agreement to that effect, provided the agreement is compliant with this paragraph (a). The contract shall contain at least the following information:
 - (A) the name, physical address, telephone number, email address (if applicable), and PUC Towing Permit number of the towing carrier;
 - (B) the name, address, email address (if applicable), and telephone number of the property owner;
 - (C) the address of the property from which the tows will originate;

- (D) the name of each individual person who is authorized to sign the tow authorization;
 - (E) the address and phone number of the storage facility where the vehicle owner may retrieve the vehicle;
 - (F) the beginning date and ending date of the contract;
 - (G) a statement that "the maximum rates for a nonconsensual tow from private property, and the maximum drop charge if the vehicle is retrieved before removal from the private property, are set by rule of the Public Utilities Commission;"
 - (H) the name, title, phone number, and signature of the person making the contract on behalf of the property owner and on behalf of the towing carrier; and
 - (I) the date the contract is signed.
- (II) Nothing in this paragraph (a) shall preclude a towing carrier, which towing carrier has been paid for the tow by the property owner at proper rates, from collecting the towing charges from the motor vehicle owner and reimbursing said charges to the property owner.
- (III) No agency provided for in paragraph 6508(a) shall affect any obligation, liability, or responsibility of the property owner to any third party. Any provision attempting to affect such obligation, liability, or responsibility shall be void.
- (b) Authorization to perform nonconsensual tow.
- (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 upon the authorization of the property owner.
 - (II) A towing carrier may not come in 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).
 - (III) A towing carrier may not perform a nonconsensual tow of a motor vehicle, other than an abandoned motor vehicle, from a parking lot unless:
 - (A) notice of parking limitations, regulations, restrictions or prohibitions was provided at the time the vehicle was parked; and
 - (B) notice is provided that anyone parking in violation of limitations, regulations, restrictions or prohibitions is subject to being towed at the vehicle owner's expense.

- (IV) Notice required by this rule is presumed to be met if:
 - (A) a permanent sign is conspicuously posted near each entrance to the parking lot; and
 - (B) if the parking lot is not provided for residential parking and has more than ten free-standing lampposts on the property, a number of signs equal to the number of lampposts must be posted. Such signs must be posted on each lamppost or posted upright in conspicuous locations which are evenly distributed across the parking lot.
- (V) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than one square foot in size;
 - (B) have lettering not less than one inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed;
 - (D) state the restrictions enforced;
 - (E) include the name and telephone number of towing carrier; and
 - (F) be printed in English.
- (VI) Property owner authorization. The authorization from the property owner, or authorized agent of 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 before the motor vehicle is removed from the property. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name. If the authorization is signed by the towing carrier as agent for the property owner, then a verifiable employee identification number or code name shall not be used. Documentation of such authority must be carried in the towing truck. At a minimum, such documentation shall contain:
 - (i) the name, address, email address (if applicable), and telephone number of the property owner;
 - (ii) the address of the property from which the tows will originate; and
 - (iii) the name of each individual person who is authorized to sign the tow authorization
 - (B) A towing carrier shall not have in his or her possession, accept, or use blank authorizations pre-signed by the property owner.

- (C) The written authorization may be incorporated into the tow record/invoice required by rule 6509 or on any other document.
- (D) With the exception of law enforcement-ordered tows, a towing carrier that is requested to perform a tow upon the authorization of a property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to a storage facility location on file with the Commission without delay. No vehicle may be relocated off of the private property from which it is towed to a location other than to such a storage facility.

6509. Tow Record/Invoice, Charge Notification, and Warning Signage.

- (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows whether the vehicle is removed from private property or retrieved before removal (commonly known as a drop). 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 towing carrier;
 - (IV) the date and time of the drop, the date and time the towed motor vehicle is placed in storage, and the date and time the towed motor vehicle is released from storage, as applicable;
 - (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) unless incorporated into the authorization in subparagraph 6508(b)(VI),
 - (A) the name, address, and telephone number of the person authorizing the tow; and
 - (B) the signature of the property owner authorizing a tow;
 - (VIII) if the towed motor vehicle is unlocked, a list of its contents;
 - (IX) the unit number or license number of the towing vehicle;
 - (X) the signature of the towing vehicle operator;
 - (XI) an itemized invoice of all towing charges assessed;
 - (XII) the signature of the owner, authorized operator, or other authorized person to whom the motor vehicle is released; and

- (XIII) on at least the customer's copy, the following notice in a font size of at least ten:
"Report problems to the Public Utilities Commission at (303) 894-2070."
- (b) The towing carrier shall retain the copy of the tow record/invoice bearing all required original signatures for authorization and release, without regard to whether it is maintained in electronic or multi-copy paper form.
- (c) The towing carrier shall deliver a copy of the tow record/invoice to the owner, authorized operator, or authorized agent of the owner of the motor vehicle at the time of the release of the towed motor vehicle from a storage facility or where dropped for a drop fee, whether payment of towing charge, payment for release, payment for drop charge, or no charge occurred.
- (d) Towing carriers shall provide a charge notification card to the owner, authorized operator, or authorized agent of the owner of the motor vehicle to be towed if such person is on the property prior to or after commencement of the tow of the vehicle but before the vehicle has been towed off the property. The charge notification card shall contain the Commission-prescribed form and content as available on the Commission's website.
- (e) A towing carrier may place a warning sign on the driver-side window of a vehicle to be towed or, if window placement is impracticable, in another location on the driver-side of the vehicle prior to the commencement of the tow. The tow-truck warning sign shall be at least eight inches by eight inches, is yellow or orange in color and states the following: "WARNING: This vehicle is in tow. Attempting to operate or operating this vehicle may result in criminal prosecution and may lead to injury or death to you or another person."

6510. Disclosure of Rates and Charges.

- (a) 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. This rule does not apply to a nonconsensual tow authorized by the property owner, authorized agent for the property owner, or a tow ordered by a law enforcement officer.
- (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.

6511. Rates and Charges.

- (a) Drop Charge. If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner appears in person to retrieve the motor vehicle after a tow truck is present and either backed up in alignment with such motor vehicle or tow equipment has come into contact with such motor vehicle, but before its removal from the property:

- (I) the maximum drop charge (whether motor vehicle is hooked up or not) is:
 - (A) \$70 for a motor vehicle with a GVWR less than or equal to 10,000 pounds;
 - (B) \$90 for a motor vehicle with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;
 - (C) \$120 for a motor vehicle with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds; and
 - (D) \$140 for a motor vehicle with a GVWR greater than 33,000 pounds.
 - (E) Maximum drop charges may be less per municipal ordinance or agreement with the property owner.
 - (II) The minimum drop charge is \$0.00.
 - (III) The towing carrier shall halt any tow in progress, including preparation therefor, prior to removal from the private property, 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 drop charge. The towing carrier shall concurrently advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle of acceptable forms of payment under rule 6512. Such advisements shall be provided via delivery of a charge notification card, in addition to any other means desired by the towing carrier.
 - (IV) If the towing carrier does not advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle of acceptable forms of payment under rule 6512 or accept such forms of payment, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.
- (b) Maximum towing rates for PPI tows consists of up to four elements: a base rate for the tow; a mileage charge, including any applicable fuel surcharge; a charge for vehicle storage; and a charge for release from storage pursuant to paragraph 6511(f) if applicable.
- (I) The maximum base rates are as follows:
 - (A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$180.00;
 - (B) motor vehicles with a GVWR greater than 10,001 pounds and less than or equal to 19,000 pounds is \$210.00;
 - (C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$275.00; and
 - (D) motor vehicles with a GVWR greater than 33,000 pounds is \$325.00.
 - (II) The maximum mileage charge a towing carrier may assess for a PPI tow of a motor vehicle is \$3.80 per mile for each mile that the motor vehicle is towed, subject to the following limits: The maximum mileage that may be charged for a PPI tow is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities that lie farther than ten miles from U.S. Interstate Highway 25.

- (III) An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of \$2.60. The Public Utilities Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The surcharge shall be based on the United States Department of Energy “weekly retail on-highway diesel prices” for the Rocky Mountain region (DOE’s Weekly Diesel Price). The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in the DOE’s Weekly Diesel Price, or a one-percent decrease in the mileage rate for every ten-cent decrease in the DOE’s Weekly Diesel Price, but in no event decreasing below the base rate.
 - (IV) A towing carrier shall not charge or retain any additional fees for the nonconsensual tow of a motor vehicle from private property.
- (c) Maximum towing rates for law enforcement ordered tows and recovery operations are to be calculated on an hourly basis, per required towing or recovery vehicle, as follows, with no additional fees, charges, or surcharges permitted, except as identified below:
- (I) Maximum hourly rates for tow truck and driver, billable in ¼ hour increments after the first hour, for the towing or recovery of:
 - (A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$205.00 per tow truck;
 - (B) motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds is \$245.00 per tow truck;
 - (C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$320.00 per tow truck; and
 - (D) motor vehicles with a GVWR greater than 33,000 pounds is \$370.00 per tow truck.
 - (E) The recovery of a motor vehicle requiring the use of a Heavy Rotator (60+ tons) shall not exceed \$585 per hour.
 - (II) Mileage and fuel surcharges authorized elsewhere in rule 6511 do not apply to law enforcement ordered tows or recovery operations.
 - (III) Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall:
 - (A) include, in addition to requirements of rule 6509, the following information on the tow record/invoice form, recorded at the time of occurrence: the time of dispatch; the time the truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the truck leaves the scene, and the time the vehicle towed is unhooked;
 - (B) include an advisement on the invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available upon request from the towing carrier;

- (C) only begin billing from a time not earlier than the towing carrier leaves their yard or staging area en route to the scene of the requested tow until the vehicle towed is unhooked;
 - (D) not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier's actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs;
 - (E) provide an owner, authorized operator, or authorized agent of the owner of a motor vehicle documentation of actual and reasonable costs billed in excess of one hour for any tow truck and driver for such tow upon request; and
 - (F) not, under any circumstances, bill rates and charges provided in paragraph (b) for a PPI tow.
- (d) The maximum rates for a tow from a storage facility, when directed by a law enforcement officer who is performing an accident reconstruction or stolen vehicle investigation, are as follows:
- (I) \$91.00 for one additional hookup;
 - (II) \$91.00 per hour waiting time; and
 - (III) mileage charges as provided in paragraph (b).
- (e) Storage for nonconsensual tows.
- (I) Storage charges may accrue from the time a vehicle is placed in storage and shall not exceed the following rates based on a 24-hour period or any portion of a 24-hour period:
 - (A) \$30.00 for motor vehicles having a GVWR of less than 10,000 pounds;
 - (B) \$37.00 for motor vehicles having a GVWR of 10,000 pounds or more; or
 - (C) in lieu of subparagraphs (A) and (B), and at the option of the towing carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at \$1.50 per foot or portion thereof.
 - (II) Storage charges shall not be charged, collected, or retained for any time during which garage keeper's liability insurance coverage is not kept in force.
 - (III) Maximum storage charges for abandoned motor vehicles. 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 subject to part 21 of title 42, C.R.S. shall not be accumulated beyond 120 days after the mailing date of the report required by § 42-4-2103(4), C.R.S.
- (f) For a nonconsensual tow, the maximum additional charge for release of a motor vehicle from storage or access to a motor vehicle in storage at any time other than the carrier's business hours is \$66.00.

- (g) Noncompliance. If a tow is performed, or storage is provided, in violation of state statute or Commission rules, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released to the owner, lienholder, or agent of the owner or lienholder without charge. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.
- (h) Abandoned motor vehicles.
 - (I) 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 and 42-4-2103, C.R.S., and the rules of the Colorado Department of Revenue.
 - (II) 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 and 42-4-2103, 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 not charge, collect, or retain storage fees.
 - (III) 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.
 - (IV) Additional costs that may be charged when a stored motor vehicle is sold.
 - (A) 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.
 - (B) 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.
 - (C) "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.
 - (D) Certified VIN verification procedure. 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:
 - (i) rates as provided in paragraph (d); and
 - (ii) in addition, the towing carrier may charge for all other documented expenses of obtaining the VIN verification.
- (i) Trailers.
 - (I) No additional fees may be charged for the towing of a power unit and trailer in combination as a single motor vehicle.
 - (II) A vehicle in or on a trailer is cargo.

- (III) No additional fees may be charged for the towing of cargo in combination; however, additional fees may be charged for towing a trailer when reasonably and actually conducted a separate tow from a power unit.

6512. Release of Motor Vehicle and Personal Property.

- (a) The towing carrier shall immediately accept payment of the drop charge, towing, storage, and release charges if payment is offered in cash or valid major credit card. The towing carrier may accept other forms of payment, but must accept payment by both MasterCard and Visa. The towing carrier shall release the motor vehicle to:
 - (I) the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle;
 - (II) the lienholder or agent of the lienholder of the motor vehicle; or
 - (III) the insurance company or agent of the insurance company providing coverage on the motor vehicle, if released to the insurance company by the owner.
- (b) A towing carrier that accepts for storage a motor vehicle that has been towed as a nonconsensual tow shall be available to provide access to or release of the motor vehicle as provided in paragraph (a) 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 the carrier's business hours that occur within the first 24 hours of storage; or
 - (II) upon demand during the carrier's business hours.
- (c) 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 and 42-4-2103, 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 to the owner, lien holder, or their agents.
- (d) The towing carrier, at its discretion, need not comply with paragraph (a), (b) or (c) if:
 - (I) the towing carrier is reasonably certain that, at the time the motor vehicle is to be released from storage, the driver of the motor vehicle is not capable of safely driving the motor vehicle due to the influence of drugs or alcohol;
 - (II) the towing carrier that is to remove the motor vehicle from storage does not have a valid towing carrier permit;
 - (III) a hold order is in place on the motor vehicle by a court, district attorney, law enforcement agency, or law enforcement officer;
 - (IV) the release of the motor vehicle does not comply with the release procedures agreed to, in writing, between the towing carrier and the applicable law enforcement agency; or

- (V) the towing carrier, upon notification for the release of or access to a motor vehicle at other than the carrier's business hours, has immediately contacted an appropriate law enforcement agency and, in the interest of public order, has requested a law enforcement officer's presence during the release of the motor vehicle. This exception is applicable when the towing carrier has reason to believe that the motor vehicle's owner, authorized operator, or authorized agent of the owner of the motor vehicle may disrupt the public order.
- (e) A towing carrier shall release a motor vehicle held in storage to a person presenting a current driver's license who attests to being the authorized operator of the vehicle and produces two of the following: keys to the vehicle; proof of insurance; vehicle registration, VIN number; or knowledge of the location from where the vehicle was towed. Such attestation must be in the form available from the Commission or its website.
- (f) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish, prescription medicines, medical equipment, medical devices, or any child restraint system. The towing carrier shall immediately relinquish such items upon demand, without requiring payment and without additional charge.
- (g) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish credit cards and cash for immediate payment of the amount due to the towing carrier. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times and without additional charge.
- (h) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish state or federal issued identification to the owner of the identification or to persons to whom the motor vehicle is released. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times. Access shall be without additional charge during business hours.
- (i) On the private property where the tow originates, a towing carrier shall not refuse to relinquish a cellular telephone to persons to whom the motor vehicle can be released. The towing carrier shall immediately relinquish such item upon demand and without additional charge.

6513. [Reserved].

6514. Towing Violations and Civil Penalty Assessments.

- (a) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$1,100.00 for each violation:
 - (I) § 40-10.1-401(1)(a), C.R.S.;
 - (II) subparagraph (b)(I), (b)(II), (b)(IV)(B), or (b)(VI)(D) of rule 6508; or
 - (III) paragraph (g) of rule 6511.
- (b) A violation of paragraph (a), (b), (c), (d), (e), (f), (h), or (i) of rule 6511 may result in the assessment of a civil penalty as follows for each violation:
 - (I) up to \$275.00 for an overcharge \$25.00 or less;

- (II) up to \$550.00 for an overcharge greater than \$25.00 but less than or equal to \$50.00;
and
 - (III) up to \$1,100.00 for an overcharge greater than \$50.00.
- (c) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$550.00 for each violation:
- (I) rule 6507;
 - (II) paragraph (a) of rule 6510; or
 - (III) paragraph (e) of rule 6512.
- (d) A violation of rule 6506 may result in the assessment of a civil penalty of up to \$100.00 for each violation.
- (e) Except as provided in paragraph (a) through (d) of this rule, a violation of any provision of Title 40, § 42-3-235.5, C.R.S., pertaining to towing carriers, or any provision of rules 6500 through 6513, may result in the assessment of a civil penalty of up to \$275.00 for each violation.
- (f) Civil penalty assessments are in addition to any other penalties provided by law.

6515. - 6599. [Reserved].

* * *

[indicates unaffected, omitted material]

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0095TO

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

**INTERIM DECISION REMANDING RULEMAKING
PROCEEDING TO THE ADMINISTRATIVE LAW JUDGE**

Mailed Date: October 13, 2016
Adopted Date: October 12, 2016

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Colorado Public Utilities Commission (Commission) remands this Proceeding to the Administrative Law Judge (ALJ) for additional hearings and public comment consistent with the discussion below.

B. Background and Procedural History

2. In 2014, the Colorado Legislature passed House Bill 14-1031, which created a Towing Task Force (Task Force) consisting of nine members appointed by the Governor. The Task Force was given the statutory directive “[t]o make comprehensive recommendations to the commission about the maximum rates that may be charged for the recovery, towing, and storage of a vehicle that has been towed without the owner’s consent.” § 40-10.1-403(5)(a), C.R.S.

3. On December 9, 2015, the chairman of the Task Force reported to the Commission that the Task Force had completed its work on nonconsensual tows and requested that the Task Force’s recommended maximum nonconsensual towing rates be included in the Notice of Proposed Rulemaking (NOPR) for the towing rules.

4. The Task Force developed its recommendations for setting nonconsensual tow rates in Colorado by utilizing a nonconsensual tow study conducted on behalf of the State of Utah. Using the Utah data as a baseline, the Task Force developed a cost model that accounted for 46 variables, and when data was available from the towing representatives on the Task Force, the insurance industry, Colorado State Patrol, or Commission Staff, it was used in lieu of Utah-specific data.

5. Based upon this methodology, the Task Force unanimously recommended the following maximum base rates for Private Property Impound tows:

- (A) Motor vehicles of a gross vehicle weight less than or equal to 10,000 pounds is \$180.00;
- (B) Motor vehicles of a gross vehicle weight between 10,001 pounds and 19,000 pounds is \$210.00;
- (C) Motor vehicles of a gross vehicle weight between 19,001 pounds and 33,000 pounds is \$275.00; and

- (D) Motor vehicles of a gross vehicle weight more than 33,000 pounds is \$325.00.

The Task Force also unanimously recommended the following maximum base rates for law-enforcement ordered tows and recovery operations:

- (A) The towing or recovery of motor vehicles of a gross vehicle weight less than or equal to 10,000 pounds shall not exceed \$205 per hour;
- (B) The towing or recovery of motor vehicles of a gross vehicle weight between 10,001 pounds and 19,000 pounds shall not exceed \$245.00 per hour;
- (C) The towing or recovery of motor vehicles of a gross vehicle weight between 19,001 pounds and 33,000 pounds shall not exceed \$320.00 per hour;
- (D) The towing or recovery of motor vehicles of a gross vehicle weight more than 33,001 pounds shall not exceed \$370.00 per hour; and
- (E) The recovery of a motor vehicle requiring the use of Charges for the use of a Heavy Rotator (65+ tons) shall not exceed \$585 per hour.

6. These proposed rates were included in the February 19, 2016, NOPR issued by the Commission for Rules 6500 through 6514 of the Commission's Towing Carrier Rules of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6.

7. By Decision No. C16-0129, the Commission referred this Proceeding to an ALJ and scheduled a public comment hearing for April 27, 2016. Prior to the hearing, written comments were filed with the Commission by Colorado Auto Recovery Inc., the Colorado Motor Carriers Association, Connolly's Towing, Inc., D&J Towing & Recovery of Colorado Inc., Owner-Operator Independent Drivers Association, Parking Authority, LLC, Towing Operations, LLC, doing business as Wyatt's Towing, Towing & Recovery Professionals of Colorado, and the Task Force. Additional oral comments were received during the hearing.

8. On August 2, 2016, the ALJ issued Recommended Decision No. R16-0712. Thereafter, Exceptions to the Recommended Decision were filed by the Task Force, Colorado State Patrol, Owner-Operator Independent Drivers Association, Colorado Apartment Association,

Colorado Motor Carrier Association, Towing Operations, LLC, Connolly's Towing, Inc., Towing & Recovery Professionals of Colorado, and Parking Authority, LLC.

C. Recommended Decision

9. The Commission is delegated the duty under § 40-10.1-106(b), C.R.S., to prescribe rules regulating the “circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle.”

10. Consistent with this mandate, the Colorado Legislature, pursuant to § 40-10.1-403, C.R.S., created the Task Force charged explicitly with making recommendations to the Commission on maximum rates for nonconsensual tows.

11. In response to the Commission's NOPR, the Task Force, along with numerous other parties, filed comments concerning the proposed modifications to the Commission's Towing Carrier Rules. After hearing, the ALJ issued a comprehensive Recommended Decision covering those proposed modifications.

12. The ALJ specifically referenced the Task Force's cost model—which was adapted from the Utah model—throughout the Recommended Decision. He noted that while the cost model predominantly supports the Task Force's position, there “are also aspects of the study warranting further analysis and consideration.”¹

13. Indeed, the ALJ opined that “[u]ntil the Task Force study can be further considered to address circumstances found in Colorado ... the adopted rules continue the

¹ Recommended Decision No. R16-0712, ¶ 68.

previous rates comprehensively adopted by the Commission for the light category.”² Moreover, he states, “[w]ithout a more thorough understanding of revenues and costs recovery, the undersigned recommends continuation of current mileage charges along with the rates adopted based upon the 2012 study of Colorado carriers.”³

14. The ALJ therefore determined that the Task Force’s study required additional analysis and consideration, particularly concerning Colorado-specific circumstances, prior to recommending a change for maximum nonconsensual tow rates in the light (under 10,000 pounds) category. The maximum nonconsensual tow rate recommended by the Task Force for the light category would thus not be implemented. Instead, the rate would remain at the rate approved by the Commission in 2012 of \$160.00.

D. Exceptions.

15. While several parties took exception to the ALJ’s determination to maintain the \$160.00 rate, no parties directly addressed the ALJ’s concern that further information regarding the cost model was necessary.

16. Parties complained that proposed Rule 6500, which prohibits maximum rates higher than the rates contained in the Towing Rules, abrogated their current contracts with local governments and law enforcement, which contain rates higher than those proposed in the rules.

17. The parties also argue that the Commission’s authority over towing rates is co-extensive with local municipalities. As a result, it is argued that the Commission’s ratemaking authority does not supersede a city’s authority to contract with towing carriers.

² *Id.* at ¶ 107.

³ *Id.* at ¶96; *Id.* at ¶ 85 (stating that “[t]he Commission most recently adopted \$160.00 as the rate for nonconsensual tows of a motor vehicle with a GVWR of less than 10,000 pounds based upon an economic analysis of 73 Colorado tow companies performed by the Commission’s Economics Unit in 2012 that concluded this to be an approximate average total cost per tow. See Decision No. R12-0350 at 225 and Attachment B to Decision No. R12-0080-I.”).

18. As set forth in the Recommended Decision, the proposed nonconsensual and law enforcement towing rates are confiscatory since they do not cover the costs of such tows, according to several of the parties. As part of this argument, the parties take the position that the record lacked sufficient factual support to implement the indicated rates.

19. Initially, we do not find merit with the constitutional arguments put forth by the parties. However, we will reserve judgment pending further review of the rates by the ALJ. Consistent with our discussion below, we agree with the ALJ's determination that "further study and analysis" is required, and we will therefore remand this Proceeding to the ALJ for further determinations consistent with this Decision.

E. Findings and Conclusions

20. As indicated above, in analyzing the proposed modifications to the Towing Rules, the ALJ reviewed the Task Force's cost model for maximum nonconsensual tow rates, as contemplated by § 40-10.1-106, C.R.S., and § 40-10.1-403, C.R.S. The ALJ determined that while the Task Force's cost model was predominantly sufficient, additional analysis of the cost model was necessary before incorporating it entirely into the Towing Rules. More specifically, the ALJ determined that additional information specific to Colorado was necessary to fully and properly evaluate the Task Force's cost model.

21. Support for the ALJ's assertion that additional information might be necessary when considering the Task Force's cost model is found under § 40-10.1-106(b), C.R.S., as follows:

In setting the rates and charges pursuant to this section, the commission may require towing carriers performing nonconsensual tows to submit financial statements or other financial information to determine the costs associated with the performance of nonconsensual towing and any motor vehicle storage incident thereto.

22. While the financial “statements” and “information” referenced in § 40-10.1-106(b), C.R.S., are not mandatory, they indicate that certain additional documentation might be available to accompany the Task Force’s cost model. The inclusion of such documentation in the record, if practicable, would be consistent with the plain language of the statute and the ALJ’s determination that the Task Force’s cost model requires additional analysis.

23. The ALJ does reference the Task Force’s use of some Colorado data in its cost model, but the Recommended Decision raises questions about the scope of this data, particularly in light of the comprehensive study performed by Commission Staff in 2012 regarding nonconsensual light tow rates.

24. The ALJ’s consistent determination that further study of this cost model is necessary in his Recommended Decision, necessarily invokes the language in § 40-10.1-106(b), C.R.S., concerning financial statements and information that might not be present in the record here.

25. Based on the foregoing, we agree with the ALJ’s determination that further analysis and study of the Task Force’s cost model needs to be performed regarding maximum rates for nonconsensual tows, particularly in the light category. Such further study and analysis should be performed consistent with the language of § 40-10.1-106(b), C.R.S., regarding financial statements and financial information. We find that this requires that this Proceeding be remanded to the ALJ for further analysis, public comments and findings, with instructions to request financial statements and financial information consistent with § 40-10.1-106(b), C.R.S.

26. Implicit in the ALJ’s determination that the Task Force’s cost model requires further analysis is the question of the Commission’s authority to issue rules regulating maximum

rates for nonconsensual tows. This issue was explicitly raised on Exceptions and is directly relevant to the rulemaking proceeding established in the February 19, 2016, NOPR.

27. Given the paramount importance of the Commission's authority to issue rules regarding rates for nonconsensual tows, the ALJ should also consider at a public hearing any legal arguments that the parties have concerning the Commission's authority to issue rules regulating maximum rates for nonconsensual tows.

28. Thus, this entire Rulemaking Proceeding will be remanded to the ALJ for further determinations on the limited issues delineated in this Decision. While we remand the entire rulemaking to the ALJ, we direct that the further proceedings be limited to comment, discussion and analysis regarding proposed Rules 6500 and 6511.

29. Notably, the ALJ conducted his last hearing concerning the Towing Rules on April 27, 2016. As such, pursuant to § 24-4-103(4)(d), C.R.S., the 180-day deadline after the last public hearing for rules to be adopted is October 24, 2016. We therefore set a hearing for October 21, 2016, at which time the ALJ may take further comment from the parties or establish a later hearing date in order to allow additional time in which to receive financial information from towing carriers and additional comment.

II. ORDER

A. It Is Ordered That:

1. This Proceeding is remanded to the Administrative Law Judge for further determinations on the limited issues delineated in this Decision.

2. A hearing on the proposed Towing Rules will be scheduled as follows:

DATE: October 21, 2016

TIME: 9:00 a.m.

PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202

3. This Decision is effective on its mailed date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 12, 2016.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GLENN A. VAAD

FRANCES A. KONCILJA

_____ Commissioners

CHAIRMAN JOSHUA B. EPEL ABSENT.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0095TO

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

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
AMENDING RULES**

Mailed Date: August 2, 2016

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A. The Commission Orders That:33

I. STATEMENT

1. On February 19, 2016, the Public Utilities Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding. See Decision No. C16-0129. The Commission referred this matter to an administrative law judge (ALJ) and scheduled the first hearing for April 27, 2016. The purpose of the proposed rules is to describe the manner of regulation over those providing transportation service by motor vehicle in the State of Colorado; refine current definitions and add new ones; establish fencing, signage, and lighting requirements for storage facilities; implement maximum rates for the nonconsensual towing and recovery of motor vehicles of all weights; and deletes duplicative language in the civil penalty rules.

2. In addition to oral comments presented during the hearing, written comments were filed with the Commission by Colorado Auto Recovery Inc. (T-04561), the Colorado Motor Carriers Association, Connolly's Towing, Inc., D&J Towing & Recovery of Colorado Inc., the Owner-Operator Independent Drivers Association (OOIDA), Parking Authority, LLC (T-04164), Towing Operations, LLC doing business as Wyatt’s Towing, Towing & Recovery Professionals of Colorado and the Towing Task Force (Task Force). Additional oral comments were provided during the course of the hearing.

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

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

4. OOIDA comments that it is the largest trade association representing the views of small-business trucking professionals and professional truck drivers. OOIDA has more than 155,000 members nationwide, including nearly 2,600 who reside in Colorado and thousands more who operate on Colorado highways every day. During hearing, it was clarified that OOIDA's interests focus on towing of commercial trucks as opposed to smaller personal vehicles.

5. The Colorado Motor Carriers Association (CMCA) for the past 76 years has represented companies involved and affiliated with trucking in Colorado. There are more than 650 companies within the organization representing an estimated 80,000 employees within those businesses in Colorado.

6. Comments filed by Wyatt's Towing (T-4269) state the position for itself, Aaliyah's Towing and Recovery, LLC (T-4151), Klaus' Towing Inc. (T-2042) and Lone Star Towing, LLC (doing business as Lone Star Towing and Boulder Valley Towing) (T-4066), all of which share some common ownership. During hearing, it was commented that these businesses focus on PPI towing along the Front Range. Their equipment is not capable of towing something heavier than a large pickup.

7. The proposed rules, provided with Decision No. C16-0129 in legislative (i.e., strikeout/underline) format and in final format, were made available to the public through the Commission's Electronic Filings (E-Filings) system.

8. The undersigned ALJ has reviewed the record in this proceeding to date, including written and oral comments. This Recommended Decision will generally focus upon comments regarding contested issues addressed during the course of the proceeding.

Not all modifications proposed to the rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are recommended for adoption. Any specific recommendations made by interested parties that are not discussed below or otherwise incorporated into the redlined rules attached are not adopted.

A. Discussion

1. Task Force Consultation

9. Enacting § 40-10.1-403 C.R.S., the Colorado Legislature created a Task Force to make comprehensive recommendations to the Commission about the maximum rates that may be charged for the recovery, towing, and storage of a vehicle that has been towed without the owner's consent.

10. The Task Force representing consumers of towing services consists of nine members appointed by the Governor representing the Staff of the Public Utilities Commission; the Colorado State Patrol; a statewide towing association, towing carriers who are not members of an association; an association of automobile owners; insurance companies operating within the State; an association of motor carriers operating within the state; local law enforcement; and a private property owner that contracts for towing services.

11. In response to the Commission's NOPR, the Task Force filed comments including recommendations regarding proposed modifications to the Commission's Towing Carrier Rules. After consultation, the Commission need not accept recommendations of the Task Force. Section 40-10.1-403(4)(c) C.R.S.

2. Rule 6500

12. The Legislature authorized the Commission to make rules and prescribe rates regulating the "circumstances under which a towing carrier may perform a nonconsensual tow of

a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle.” Section 40-10.1-106(b) C.R.S. In administering the statute, the Commission must be mindful of the express legislative purposes of ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public. Section 40-10.1-106(a) C.R.S.

13. The Legislature clearly intended regulatory protection in the case of a tow where the owner or authorized operator is not in a position to research, negotiate with, and select a towing carrier to tow their motor vehicle. Rule 6511 represents statewide caps on amounts for towing and storage of a motor vehicle performed under a written agreement with someone other than the owner or operator of the motor vehicle. Additionally, comment points out that the scope of agreements with law enforcement have and may include more stringent obligations than those stated in Rule 6512.

14. Staff commented that Rule 6500(c) is now unnecessary because the rules will apply to tows greater than 10,000 pounds, in addition to those less. However, Rule 6500(c), in part, also addresses applicability of the Commission’s rules to resolve conflicts between rates in Commission rules and written agreements.

15. Competitive forces have affected towing rates, terms, and conditions. Historically, it has not uncommon for law enforcement ordered tows to be subject to further conditions agreed to by towing carriers in order to participate in a rotation of service providers for those agencies. Comparably, property owners of parking areas in high-demand areas may desire to negotiate terms and conditions for the right to provide towing services on their property.

Rule 6500 will be retained to reconcile negotiated agreements with Commission rules. The opportunity for competitive responses will also be extended to all nonconsensual tows by expressly recognizing that towing companies are permitted to contractually agree to more restrictive terms and conditions within parameters established by the Commission.

3. Rule 6501

16. Proposed Rule 6501(h) exactly duplicates the definition of motor vehicle in Rule 6001(v), which already applies to towing carriers. See Rule 6005, 4 CCR 723-6. Duplication is unnecessary and raises a potential for future conflict or unintended consequences. Thus, it will not be adopted here.

17. The NOPR includes the recommendation of the Task Force to refine the definition of “nonconsensual tow” to include all law enforcement-ordered tows; define the term “recovery”; and add the statutory definition of “motor vehicle” for clarity for those governed by the towing rules. Staff also proposes definitions for “private property impound,” “Recovery,” “Towing,” “towing facility,” and “Trailer.”

18. D&J comments that the inclusion of law enforcement ordered tows unnecessary. OOIDA supports the definition of nonconsensual tow as it correctly acknowledges that law enforcement ordered tows are nonconsensual. Parking Authority LLC also supports the proposed definitions and further proposes inclusion of the acronym “PPI” to the definition of a Private Property Impound.

19. The proposed rule will be adopted to clarify that a law enforcement tow is a nonconsensual tow. Without regard to the owner’s potential presence when a law enforcement official orders a tow, the circumstances reflect a lack of opportunity for the operator to research, negotiate terms with, and make an informed selection among towing carriers. Further, the officer’s primary goal

cannot be to research and negotiate the best alternative for the consumer or allow the consumer to do so after regaining their composure following such an emotional experience. Public safety dictates expeditious clearing of roadways. As found in the Utah study and consistent with other comment, “[o]fficers responding to crashes and disabled vehicles have set a goal to reduce secondary crashes and congestion by decreasing the response time and clear time as much as possible. Studies have shown that for every minute that passes after a crash, the chances for a secondary crash are increased by 2.8% (3). This indicates that for a 20 minute response time the chances for a secondary incident increases by 56%.” Non-Consent Towing Study in Utah at 52, *citing* Karlaftis, Latoski, Richards, Sinha: “ITS Impacts on Safety and Traffic Management: An Investigation of Secondary Crash Causes,” ITS Journal, 1999, Vol. 5, pp.39-52.

20. Staff proposed inclusion of the definition of a towing facility to make clear that Staff could access records without regard to their storage location. Comment also raised concern as to the consistency of reference to storage facilities in the language as compared to Rule 6507. Article 10.1 also includes references to towing facilities, which are not defined in statute. See §§ 40-10.1-106 and 40-10.1-401 C.R.S.

21. Comment points out that the Commission imposes obligations upon towing carriers with regard to storage facilities (e.g. Rule 6507); however, the term is not defined in rule. Comment suggests adoption of a definition. Illustratively, applicability is questioned as to a large parcel of property where only a small portion is used to provide storage of vehicles towed as a nonconsensual tow. Comment demonstrated need for definition of the term.¹

¹ The undersigned also notes that no basis whatsoever have been shown in comment to deny Staff access to records based upon their storage location – whether a towing facility or not. Rule 6005 authorizes Staff to interview personnel and inspect records, vehicles, and facilities. As to records, there is appropriately no reference to location (i.e. including the proposed definition of towing facility) because it matters not where they are stored.

4. Rule 6506

22. Rule 6506(e) defined rescue and recovery operations and requires a minimum set of equipment necessary to conduct such operations. The Task Force is proposing to refine Rule 6506(e) by moving the definition of recovery to the definition section, and eliminating the equipment requirements because they are incomplete and add little value in the way of enforceability. The proposals are reasonable and will be adopted.

5. Rule 6507

23. Rule 6507 currently establishes disclosure requirements regarding towing carriers' storage facilities. Proposed Rule 6507(d) regarding security and safety of vehicles requires: (1) security barriers or safety apparatus suitable to insure the security of the property contained therein. (2) enclosure by solid walls at least six feet high or fencing of chain link or other material of equal or similar strength sufficient to reasonably protect against loss, trespass or vandalism.

24. Staff is proposing fencing, lighting, and signage requirements for storage facilities. Several commenters oppose the requirements and the potential burden resulting. Comment is based upon differing foundational assumptions for the security and safety of vehicles stored by a towing carrier.

25. D&J Storage generally comments that regulation of storage facilities is best left to local governments and facilities should only be required to comply with governing zoning requirements and local ordinances. Further, it is unnecessary for the Commission to regulate these matters and inappropriate for carriers complying with local requirements to be subject penalty by the Commission.

26. Parking Authority LLC generally supports secure facilities to mitigate risks. However, it contends no facility can be 100% secure and is unrealistic to require property owners “to ‘insure’ the security of property within a facility.” An alternative is proposed to impose a standard upon reasonableness.

27. Some contend that the towing carrier is not responsible for all damage occurring while stored property is in its care, custody, and control.

28. Section 40-10.1-106 provides that the Commission:

has the authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of this article, including rules on the following subjects:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public;

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle. In setting the rates and charges pursuant to this section, the commission may require towing carriers performing nonconsensual tows to submit financial statements or other financial information to determine the costs associated with the performance of nonconsensual towing and any motor vehicle storage incident thereto.

Section 40-10.1-106(1) C.R.S.

29. The Commission has adopted rules pursuant to its jurisdiction and regulates storage as an inherent part of a nonconsensual tow. Decision No. C05-1037, issued August 30, 2005. It is notable that no comment addresses specific losses during storage and the undersigned is not aware of any complaints filed with the Commission regarding the same. The undersigned finds no Commission decision directly addressing anyone claiming damages to property in storage.

30. The Commission imposes many obligations upon towing carriers choosing the benefits of performing nonconsensual tows, specifically including demonstrating financial responsibility at all times relevant to a nonconsensual tow.² Those burdens provide important service quality and consumer protections for the public. The lack of any comment addressing availability of providers of nonconsensual tows suggests the Commission has struck an appropriate balance historically. When a towing carrier performs a nonconsensual tow, the carrier undertaking the regulated tow, must take special care of the property of another entrusted to them, including while stored, until it is released in accordance with Commission rules.

31. Towing carriers providing storage must maintain garage keeper's liability coverage on file with the Commission. This coverage insures a motor vehicle that is the subject of a nonconsensual tow against loss while in the care, custody, or control of the towing carrier. See Rule 6007. Being responsible for the property, towing carriers providing storage have an incentive to secure storage facilities based upon the applicable facts and circumstances (e.g. surrounding populations, geography, and topography).

32. Some comment contends that the towing company is not responsible for the actions of others while in the storage lot. The hypothetical provided is where one customer causes damage to the property of another customer perhaps while driving their car out of the storage lot. This comment incorrectly attempts to allocate responsibility of one party to the exclusion of the other (i.e. to the driver causing damage). Analogy is attempted to any other location where an accident might occur (i.e. a publicly available parking lot or roadway). However, such an analogy fails. The obligations necessarily undertaken in connection with a

² Illustratively, it is upon this basis that the reasonable cost of insurance is appropriately considered in establishing maximum rates.

nonconsensual tow of another's property distinguishes a nonconsensual tow from two hypothetical customers operating their own car in a parking lot, as offered in comment.

33. A towing carrier is responsible for storing a motor vehicle as an inherent part of the nonconsensual tow. If damage occurs to the motor vehicle in the towing carriers' care, others may very well be responsible; however, the towing carrier's responsibility remains. As commented, the towing carrier is in the best position to protect property within its care, custody, and control.

34. The proposed rules will be considered in light of these considerations. Approximately 20 years ago, Commission rules included specific fencing requirements for outdoor storage facilities: "723-9-12.2. Outside Storage Facilities. An outside storage facility shall be secured by enclosing it in any combination of wood, metal, masonry, or other fencing material that is at least six feet high with a locked gate." That requirement has not continued to current rule.

35. The undersigned is concerned as to the scope of burden and application of the proposed rule. Carriers have a proper incentive to protect property stored. It is less than clear that resulting benefit from the proposed rule would exceed the cost. Illustratively as to application of specific proposals, a theoretical towing carrier might secure property using several surveillance cameras, personnel, and a five foot fence. In such circumstance, would the facility not be more secure than if protected with a six foot fence alone without supplemental measures? In light of the lack of any demonstrated problem in comment to be solved and the towing carrier's underlying obligation to care for stored motor vehicles, the undersigned will not recommend imposing all proposed state-wide burdens upon towing carriers at this time.

36. In light of the adoption of proposed rule 6507(e) and the context of this discussion, it will briefly be addressed specifically. Proposed rules serve an important role in protecting consumers. When someone is seeking to retrieve their vehicle that has been towed, they may have no other information than the company name and street address of a storage facility. That information may lead only to a tall unmarked perimeter fence. There is currently no assurance that the entrance is easily identifiable or that a stored vehicle will be visible to passersby. Also, the area of the community may be unfamiliar, remote, poorly lit, and sparsely populated. Requiring minimum signage provides an important consumer protection to ensure timely and efficient return of vehicles.

37. Finally, the proposed rule requires adequate illumination levels for nighttime release of vehicles. The proposed language attempts to define what is adequate as “sufficient to allow inspection of a vehicle for damage at the time of release.” Additionally, a minimum requirement would be included.

38. Comment opposes application of the specific proposed language. As expressed during hearing, the undersigned understands the proposed rule was intended to ensure adequate illumination to permit inspection of vehicles when possession is transferred, rather than a requirement that would necessarily apply to the entirety of storage facilities. The rule will be modified to ensure applicability to an area sufficient for this purpose. Based thereupon concerns addressing the potential burden of illuminating an entire storage facility will be alleviated.

6. Rule 6508

39. Rule 6508(a)(I) establishes the authorization requirements for towing carriers acting as an agent of a property owner. Staff is proposing that the date required signage was placed on the property be included as part of the authorization agreement.

40. Several commenters respond that the proposal is not feasible to implement as signage is not posted until after contracts are executed. Further, clarification would also be needed to address replacement of signs over time.

41. Logistical and chronological concerns in comment overcome the potential benefit of the attempt to improve compliance with Commission rules. The undersigned is particularly concerned whether the desired benefit would even be achieved. While it may initially inform property owners of notice requirements, the Commission imposes obligations upon the towing carrier as to the circumstances of the nonconsensual tow, not property owners. Additionally, the fact that signage was posted to provide notice at one point in time alone does not necessarily demonstrate notice at another point in time. Due to any number of circumstances, signs may be removed or damaged to the point that they are not readable. The proposed addition will not be adopted at this time.

42. Rule 6508(b)(VI)(A) requires that towing authorizations be filled out in full and be signed by the property owner before a motor vehicle is removed from the property. It also authorizes a property owner to use an ID number or code to sign the authorization. Staff is proposing language to clarify that if the authorization is signed by the towing company as agent for the property owner, an ID number or code shall not be used.

43. Rule 6508(b)(VI)(B) requires that a towing carrier shall not accept or use blank authorizations pre-signed by the property owner. Staff is proposing to include a requirement that towing carriers may not have such authorizations in their possession.

44. Rule 6508(b)(VI)(C) allows the required written authorization to be incorporated with the tow record/invoice. Staff is proposing to expand this to any other type of document.

45. Except as to the proposed additions regarding security and fencing, addressed above, the proposed modifications are reasonable and will be adopted.

46. OOIDA propose including a clarifying provision that reads as follows: “Except as authorized by law enforcement officers, no towing service shall engage in the removal of a commercial motor vehicle that requires a commercial driver’s license to operate the vehicle under its own power on a highway.” In short, this would prevent “drive-away” tows.

47. While the circumstances described clearly could be problematic, the situation is not limited to towing carriers and cannot be comprehensively addressed within the scope of the Commission’s jurisdiction. Generally speaking, the Commission has jurisdiction over nonconsensual towing. OOIDA attempts to equate driving a motor vehicle away as a tow. However, in such event, the conduct can be done by anyone and no tow truck is used. The provision will not be added at this time.

7. Rule 6509

48. Rule 6509(b) governs the maintenance and distribution requirements of the tow record/invoice. Staff is proposing language to allow the tow record/invoice to be either electronic or a multi-copy form. And, if electronic forms are utilized they must be able to be reproduced in their original format. Comment applauds this expanded flexibility for business process and supports more global adaptation. Some comment requested recognition of the use of electronic records.

49. The General Provisions of the Rules 6000 – 6099 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, apply to towing carriers. Rule 6000, 4 CCR 723-6. Accordingly, towing carriers are permitted discretion to choose the format of tow record/invoice when not specifically limited in rule:

(a) Unless a format or period of record retention is specified in a rule:

(I) motor carriers shall maintain all records required by these rules for three years. For the first year, the records must be maintained in their original format. The format may be changed after one year (i.e., converting original paper to electronic format for storage);

50. Some clarification will be adopted in rule, but the entire proposal will not be adopted.

8. Rule 6511

51. Rule 6511 governs the rates a towing carrier may charge for nonconsensual tows. Proposed Rule 6511 contains the recommendations of the Task Force. This proceeding came about as a result of the passage of H.B. 14-1031. Prior to passage, the Commission only regulated towing rates for nonconsensual tows of vehicles with a gross weight of less than 10,000 pounds. Implementing § 40-10.1-403 C.R.S., rates will be regulated for nonconsensual tows of all vehicles.

52. The Task Force recommends a tiered rate structure for private property impounds and an hourly rate structure for law enforcement tows and recovery operations.

53. Current Rule 6511(a)(I) expressly excludes from the requirements of this rule, the towing of a motor vehicle abandoned on public property weighing in excess of 10,000 pounds GVWR for which the charges are determined by negotiated agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(2)(a), C.R.S. Current Rule 6511(a)(II) excludes from the requirements of this rule, the towing of a motor vehicle abandoned on public property under a written agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(3), C.R.S. By passage of HB14-1031 the legislature removed the provision within § 42-4-1809(2)(a) restricting the Commission's authority for governing the rates of such tows. The referenced provisions within

§ 42-4-1809(3) apply to the sale of vehicles abandoned on and subsequently towed from public property. The law applies to the associated cost recovery by a law enforcement agency operating under a towing contract. The Task Force recommends current rule 6511(a) be stricken in its entirety.

54. Rule 6511(b) defines a drop charge and restricts its applicability to motor vehicles with a GVWR of less than 10,000 pounds. The current rule sets this drop charge at \$70 for vehicles with a GVWR of under 10,000 pounds. This is 43% of the current base maximum towing charge of \$160 for vehicles in the same weight class. The Task Force recommends that the language of the current rule be stricken and that the Commission determine the allowable drop charges by applying the same percentage (43%) to the base rates for each of the proposed weight classes.

55. Current rule 6511(c) governs the methodology towing carriers must use for charges applied during recovery operations, but not the rates. The Task Force recommends replacing Rule 6511(c) and that statewide rate caps be established.

56. Current rule 6511(d) sets the base towing rate for the nonconsensual towing of a motor vehicle with a GVWR of less than 10,000 pounds to \$160. It also lists allowable exceptions which effectively authorize the charging of additional fees. The Task Force recommends striking this rule in its entirety and replacing it with a new rule that establishes five rate tiers based on a cost model implemented by the Task Force. They also recommend clearly identifying all authorized fees and charges in the same rule.

57. The Task Force recommends changing the unit of measure for its proposed weight tiers from the current gross vehicle weight rating of the towed vehicle to the gross vehicle weight of a towed vehicle.

58. Staff is recommending the addition of language setting the minimum drop charge to \$0.00 and adding a requirement that the required notification to the owner or operator of the vehicle be completed by means of a charge notification card.

59. Staff proposes adding rule 6511(i)(I) to clarify that no additional fees may be charged by a towing carrier for the towing of a power unit and trailer in combination as a single motor vehicle.

60. Staff proposes adding rule 6511(i)(II) to clarify that a vehicle in or on a trailer is considered cargo, and no additional fees may be charged by a towing carrier for the transportation of cargo.

61. Significant comment generally supports adoption of reasonable comprehensive hourly rates in lieu of ancillary itemization of billing elements. It is commented that the proposed hourly rates are reasonable and preferable to past billing abuses by some towing carriers, including extensive itemization of general overhead expenses and unreasonable expenses.

62. Comment also addresses practical concerns around attempts to strike a fair balance in the carrier's appropriate recovery of costs versus the potential for abuse due to the inability to objectively determine or verify billing elements. Is cleaning one's truck ordinary maintenance or part of a recovery? Does it matter? How long should it reasonably take to complete a given recovery? While the undersigned agrees with the difficulties described by the comment, one proffered solution, leaving matters to law enforcement agencies, does not in fact solve the difficulties raised. Rather, it disregards the Commission's jurisdiction and furthers the status quo without providing an efficient forum to resolve differences.

63. Conflicting comment addresses maximum hourly rates. On the one hand, limits are viewed as a means to avoid abuses. On the other hand, limits are overly burdensome in considering the extraordinary circumstances that may arise during recovery efforts. Clarification is requested that hourly rates should include the services of one person (i.e. the driver or the operator).

64. OOIDA would propose adding language to section 6511(c)(I) to read, in part: “The time of dispatch; the time the tow truck leaves the yard or other staging location; and the time the tow truck arrives on scene; and the time the tow truck leaves the scene and returns to the yard.” This will ensure that consumers have a better idea of exactly how long the towing carrier was working to determine if the towing carrier’s charges are in compliance with the approved rates.

65. Comment suggests clarification of the referenced elements in Rule 6511(b) as compared to charges relating to vehicle storage (e.g. after hours release)

66. This rulemaking implements § 40-10.1-403 C.R.S., adding consultation with the Task Force. While the scope of the task force’s statutory authority encompasses rates for towing vehicles in excess of 10,000 pounds GVWR for the first time, the Commission has substantial experience regulating the towing industry for vehicles with a GVWR of less than 10,000 pounds. The Commission’s rules have included a maximum rate that may be charged for a private property tow of a vehicle with a GVWR of less than 10,000 pounds for more than 20 years.

67. The focus of many comments addresses towing of large vehicles, not inconsistent with weight of the Task Force membership and the expanded regulatory authority. Other than Staff, there is an absence of comment and apparent direct representation or advocacy on the

Task Force by owners of motor vehicles with a GVWR of less than 10,000 pounds not having any potential conflict of interest (e.g. an association's representation of its membership as opposed to others). Thus, the Commission must remain diligent in furthering its statutory purposes as well as the Department of Regulatory Agencies' mission of consumer protection.

68. The Task Force recommendations largely provide the foundation of the NOPR to entirely replace the existing rate structure. Those recommendations are based upon a study performed of the towing industry in Utah, adapted to Colorado by the Task Force. While many similarities support the Task Force's position, there are also aspects of the study warranting further analysis and consideration.

69. Considering the body of comment as a whole, the undersigned perceives material differences in size and scope of towing operations and is concerned whether distinctions based upon the businesses operating within each class have been fully considered. Tow volumes are much greater in the light duty category than other categories. Larger categories require significantly greater capital and training (see e.g. Task Force assumptions of a rotator purchase price of \$450,000 versus a light-duty purchase of \$60,000 and estimated tows of 90 versus 10). The cumulative effect and risk of inaccuracy can vary greatly as to these different types of businesses when rates are based applied per tow.

70. As to larger vehicles being towed, the informed consensus of the Task Force recommendations in the NOPR represents much work on a clean canvas. The Task Force reviewed towing rules and rate structures in place in other states, counties, and cities across the United States. Tiered rates were adopted by nearly all regulatory bodies. However, except as to Utah, no methods or formulas for developing the resultant rates were published and available for review. Joined by a body of largely uncontested comment by other interested persons,

the Task Force comments provide a reasonable basis to begin implementation of the expanded regulation by the Commission.

71. Much of the Task Force's work, particularly as to larger vehicles, stands unopposed. No comment challenges the per-hour estimates derived by the task force as being outside of any general range of reasonableness for categories above light duty. In light of the lack of prior Commission regulatory experience and the broad scope of interest represented in the unanimous support for the Task Force proposals, the recommendations as to the larger classes of tows will largely be incorporated in the rules recommended for adoption. Three areas received substantial comment addressing recovery incidental to a tow. Primarily, those paying for services believe there are excessive and abusive billings in some circumstances by bad actors and they desire a cost-efficient forum to resolve differences. Secondly, there is a chicken-and-egg dilemma between expediting retrieval of a towed motor vehicle by the owner and the interests of towing operators in recovering appropriate costs incurred. Finally, there are a large number of variables facing a tow company, particularly as to recovery.

72. As to tows of smaller vehicles, much comment addresses the circumstances and uncertainty involved with recovery efforts, in addition to distinctions based upon carrier size and scope. Comment specifically addressing PPI towing encourages the Commission not to abandon longstanding regulation of existing business practices. The Commission should carefully consider the significant differences in the type of businesses and the historical regulatory environment.

73. The task force proposes hourly rates for all non-PPI tows and keeping PPI tows as a fixed fee. Prior Commission experience and comment supporting continuation of prior

regulatory practice must be reconciled with the expanded scope of regulatory authority and different circumstances.

74. Notably, towing carriers are not public utilities. However, they are affected with a public interest. Section 40-10.1-103(2) C.R.S. They are neither subject to all regulatory burdens nor entitled to all regulatory benefits of a fully regulated public utility. Towing carriers are not entitled to exclusive authorities. They are not subject to traditional rate regulation. Prices for consensual towing are established in the marketplace. They do not undertake common carrier obligations to serve the general public.

75. As to nonconsensual towing, a towing carrier chooses to subject itself to regulation. If a particular carrier finds the circumstances under which nonconsensual tows must be performed to be unacceptable for any reason, no regulatory obligation requires them to perform such services.

76. The Legislature clearly contemplated that the Commission may consider financial information in establishing rates, including financial statements to determine costs associated with the performance of nonconsensual towing. Section 40-10.1-106(b) C.R.S. However, in doing so, the Commission must also be careful as to availability of comparable, consistent, financial information applying uniform methods of accounting (e.g. utilizing reporting for income tax reporting or other purposes). Even with such information, allocations or separations for regulated and unregulated activities and cross subsidies might be considered.

77. In Utah, prior to the study, the rate for private-property-impound tows of a motor vehicle with a GVWR of less than 10,000 pounds was \$145. Towing companies frequently charge the maximum permitted rate. Utah Study at 61.

78. Many local government agencies impose further limits on fees “to protect their residents from excessive charges when a nonconsensual tow is necessary. Tow companies that are dispatched from a significant distance away tend to charge a higher fee to the vehicle owner than more local tow companies.” Utah Study at 53.

79. The study finds: “[s]ome local agencies have lower maximum rates for light vehicle towing than the \$145 maximum set by state rules. A few have rates of \$120 as a maximum rate. The cost analyses in this report indicate that most companies on these rotations can make a profit if the numbers of tow calls they receive are high enough.” Utah Study at 52.

80. Many agencies impose a strict one-hour charge for a tow. Utah Study at 5.

81. “The current maximum tow fee of \$145 for a Light Duty vehicle was found to be slightly higher than the estimated costs to perform the towing operations based on both analysis methods using the data gathered in this study.” Utah Study at 60. The study finds a majority of towing companies operate profitably (see Utah Study at 44) and the recommendation is that rates not be changed. Utah Study at 61.

82. Factors external to the study make it difficult to analyze the impact of any particular factor. The report does not indicate separations between nonconsensual tows, consensual tows, and other lines of business. It does not appear from the study that Utah has a required drop fee comparable to that in Colorado.³

83. It is also unknown whether recommended regulations from the Utah Study were implemented, including: “[c]hange the PPI tow fee from a flat fee to an hourly fee with a one-hour maximum, and actual time charged for tows less than an hour. This will reduce the cost of

³ The Utah Study addresses dropped rotation calls; however, they are addressed as a loss when responding to a call and services are not needed. No revenue is apparent in the study. See Utah Study at 15.

the towing if the drop location is nearby. It could also reduce the aggressive towing practice of quickly towing multiple vehicles in a short period of time for the full fee.” Utah Study at 49.

84. The Task Force adapted the Utah study to Colorado carriers based upon an average-size towing business. Dividing the number of stamps purchased in 2015 by the number of towing carriers, the Task Force found the average carrier had 3.25 vehicles in the less than 10,000 pounds GVWR category. Using Colorado data from the towing representatives on the task force, the insurance industry, Colorado State Patrol, or the Commission, the adapted study found an estimated cost of \$177 for a one-hour tow. The Task Force recommends setting an hourly rate of \$180 – representing a 12.5% increase assuming that a tow will last one hour.⁴

85. The Commission most recently adopted \$160.00 as the rate for nonconsensual tows of a motor vehicle with a GVWR of less than 10,000 pounds based upon an economic analysis of 73 Colorado tow companies performed by the Commission’s Economics Unit in 2012 that concluded this to be an approximate average total cost per tow. See Decision No. R12-0350 at 225 and Attachment B to Decision No. R12-0080-I.

a. GVW vs GVWR

86. The Task Force proposes adoption of categories based upon gross vehicle weight rather than gross vehicle weight rating. In fact, tow equipment must be capable of towing amounts towed rather than rated amounts. However, the Commission has used GVWR in towing regulation for at least twenty years. Comment supports continued use. GVWR is easily ascertainable, objectively determined, and easily verified after the fact.

⁴ It is unclear as to the comparability of the data sources used to either a towing company operating 3.25 vehicles or past analysis by the Economics Unit. Solely for illustration, analysis assumes the annual cost of a business manager with a salary of \$85,000 before benefits. Is this a reasonable assumption for an ordinary and necessary salary for a towing company in Colorado operating 3.25 tow trucks? How does that assumption compare to the costs reported by Colorado carriers in 2012?

87. The undersigned agrees with concerns expressed in comment as an objective means for definition and delineation based upon GVWR as has previously been applied by the Commission. To the extent it is even possible that someone could be trained or experienced to estimate gross vehicle weight for all circumstances with any specified degree of accuracy, it is far from clear the standard could be generally imposed across the state and has not been shown of sufficient benefit to change the current rules. Further, practical logistical concerns would prohibit administrative enforcement due to a lack of any means to verify opinions reached after the fact due to changes in circumstance and time. The undersigned agrees that the rules should continue to rely upon GVWR as a tried and true process to accurately, efficiently, fairly and consistently without introduction of unnecessarily additional complexity. While it is also true that the tow truck must be adequate to tow the actual weight of a vehicle, no amount of experience or training would allow a tow truck driver to determine the actual vehicle weight before arriving at the site in any event.

b. Drop fee

88. After proposing rates based upon costs to provide a tow, maximum drop fees are proposed based upon a portion of the fee for a nonconsensual tow. Comment establishes drop fees as a percentage of rates, but does not explain a basis for continuing that percentage. Historically, maximum permissible drop fees as a percentage of the rate for nonconsensual tow has varied from 30% to 46% and no indication is apparent from Commission decisions that such proportion has ever been used to establish rates. See Decision Nos. C07-0421 and C00-1334.

89. Of greater concern, the Task Force model estimates recovery of towing carrier costs based upon the total costs and profit margin of an average towing carrier. To adopt hourly rates based upon the Utah study that are designed to recover all costs, while ignoring

Colorado revenues from drop fees, results in higher hourly rates and creates the potential for excessive profits.

90. Based upon the foregoing, existing drop fees will not be modified and further weight goes against full adoption of the Task Force hourly rate, particularly in the higher volume category of vehicles having a GVWR less than 10,000 pounds. In any event, as the maximum rate for a PPI tow is not recommended to change in the proposed rules, the drop fee would not change even if the percentage was adopted.

91. Staff also proposes an express minimum drop fee of \$0.00. Comment opposes adoption. Pursuant § 40-10.1-106(b) C.R.S., the Commission regulates minimum and maximum rates for nonconsensual towing and storage of motor vehicles. In many aspects the Commission has regulated the towing industry by establishing parameters within which towing carriers operate. By adopting Staff's proposal, the Commission exercises its jurisdiction without affecting the regulatory approach of establishing industry parameters. The proposal is reasonable and will be adopted.

c. Mileage

92. The Task Force recommends that existing mileage charges remain in effect for PPI tows and to derive hourly rates for tows ordered by law enforcement including associated costs.

93. The study concluded that the fuel and maintenance costs associated with a 45 mile tow were \$34, or \$.76 per mile. In adapting the study to Colorado, only fuel cost and maintenance items were adjusted to distinguish differences based upon mileage. However, other costs commonly included in a mileage rate (e.g. potentially depreciation) remain included as a cost item to be recovered in hourly rates.

94. It is noteworthy that the Utah study included mileage related costs and the Task Force adapted those costs for consideration in Colorado. But, the Task Force did not analyze costs included in current mileage rates. Thus, one cannot ascertain that costs recommended for recovery in hourly rates associated with mileage for the light category are not already recovered in current mileage rates or the surcharge based on the United States Department of Energy “weekly retail on-highway diesel prices” for the Rocky Mountain region using the price per gallon of \$2.60 as the base rate.

95. To ensure fairness and avoid double recovery, the rules generally should strive to match expenses incurred with the method of recovery and not permit billing units or measures to be applied in such a way to charge more than once for the same good or service for the same time. The lack of any ability to definitively match these costs weighs against wholly adopting the hourly rate recommended in the light category at this time.

96. Without a more thorough understanding of revenues and costs recovery, the undersigned recommends continuation of current mileage charges along with the rates adopted based upon the 2012 study of Colorado carriers.

d. Efficient Forum

97. Comment expresses realities also reflected in the efforts of the Task Force. There are numerous scenarios that cannot be fully anticipated as to the complexity of any individual recovery effort integral to a tow. Efficiency in administration and enforcement of statutory obligations must be considered and balanced in developing a process to resolve differences that may arise. Comment suggests that towing carriers be obliged to support amounts invoiced for payment. Logically, the carrier is in the best position to demonstrate the basis upon which billing is incurred; however, disputes typically come before the Commission

by the one receiving the bill filing a formal complaint. In such a proceeding, a complainant bears the burden of proof. Comment addressed this predicament where extensive discovery is necessary to obtain evidence from carriers to support claims.

98. Towing carriers provide an important function to protect the rights of property owners and the convenience and safety of the traveling public. Significant comment addresses recovery billings believed to be excessive by those having to pay the costs. Comment also generally supports a comprehensive hourly rate for a tow truck and driver to streamline and simplify billings, whether being utilized for tow, recovery, or both. Adopting billing parameters and processes will also improve efficiency in resolving disputes for all concerned.

99. Particularly as to tows of vehicles having a GVWR less than 10,000 pounds, substantially less than \$500 is often at issue in disputes resolved by Commission decisions. Comment suggested that litigation costs currently can double the amount of disputed towing costs. The cost to resolve these disputes (e.g. time for both complainants and respondents to prosecute and defend cases, not to mention attorney fees) weighs heavily against marginally increased precision of recovery through more detailed billing determinates. Imposing regulation, the Commission must be mindful of the ready availability of verifiable records and information to support charges (e.g. supporting information and fixed versus hourly billing).

100. The rules recommended for adoption reconcile that towing a vehicle is the same without regard to who initiates a nonconsensual tow. On the other hand, comment makes very clear the unpredictability of a recovery, including clean up, inherent in some tows. Comment confirmed that a PPI tow does not involve recovery. However, a tow ordered by a law enforcement official is probable to include an unpredictable amount of recovery.

101. The rules will be modified to increase transparency in billing practices by delineating variability of costs and circumstances of recovery from the similarity of the underlying tow. More routine nonconsensual tows should continue to have lesser amounts at stake for disputes and simpler means to resolve differences as they arise. On the other hand, nonconsensual tows in more difficult or extraordinary circumstances will allow increased complexity of disputes and process to address those complexities. This approach, properly struck, will permit carriers the opportunity to recover ordinary and necessary costs incurred for recovery efforts and owners or operators will have an efficient means to understand those costs.

102. The costs of a tow necessarily include both a truck and a driver to perform the tow. Comment makes clear that tow truck drivers are typically compensated by a percentage of the price of the tow price. However, it would not be appropriate for a driver to be at a scene for one hour, but bill one hour for towing and one hour for recovery. Comparably, a recovery item paid for by the hour or day should not be billed for hours within a day in addition to billing for the day.

103. Similar to the potential double recovery addressed above as to mileage charges, it is also important to avoid excess recovery through double counting units or measures in billing practices. Where costs have been analyzed in terms of hours, a reasonable billing increment is necessary to avoid excess windfalls (e.g. billing two 15-minute segments as two hours rather than ½ hour). Transparency is also important for customers to understand the costs they are paying.

104. Aside from other concerns addressed, application of the Utah model to Colorado is problematic and concerning, in part, particularly as to tows taking longer than one hour. The Task Force estimates the total costs per-tow and then appears to use that total cost as the

hourly rate. For the study, all tows are assumed to be completed in one hour. However, some cost components are being allocated based upon a per-tow or per-day basis rather than a per-tow-hour or per-day-hour basis. Where fixed costs are included in the first hour of a tow based upon a per-tow or per-day allocation, an over recovery occurs for subsequent billed hours because the recovery multiplies when the number of tows does not. Thus, incremental billings in excess of the one hour assumed should recover only variable costs.

105. To illustrate, storage yard lease fees are included in the total cost of a tow at \$16.44. The annual cost (\$12,000) is broken down by day ($\$12,000/365=\32.88), then divided by two for the assumption that two cars will be placed in storage equaling \$16.44 each). The model is calculated to recover \$32.88 per day based upon the tow of those two vehicles.

106. If the towing carrier places two cars in storage on a given day and the tows each take one hour, the outcome is as intended. However, if each tow takes two hours rather than one, the recovery is double that intended. Also, comparable to double billing addressed above, applying rates designed for the storage cost of two cars to all tows results in over recovery for tows not destined to a storage facility (e.g. to a repair facility). Potential windfall profits act as a disincentive for towing carriers to minimize the time necessary to perform a tow.

107. Until the Task Force study can be further considered to address circumstances found in Colorado, including concerns raised herein, the adopted rules continue the previous rates comprehensively adopted by the Commission for the light category.

108. It is not reasonable to assume that all tows will be completed within one hour – particularly as to variable circumstances of recovery. Nor is it reasonable to ignore the fact that costs are affected by the length of time it takes to complete a tow. In order to approximate a reasonable rate for incremental billing beyond one hour, elements of the Task Force study were

reviewed. Assuming minimal mileage on average occurs as to recovery as part of a light duty nonconsensual tow (i.e. little mileage at the site of the tow), the only clearly identifiable variable cost is labor at 35% of the tow price. Assuming that 35% of the \$160 rate recommended for adoption, labor is included during the first hour at \$56. Thus, at this time, incremental billing for additional hours for the tow truck will be billable in quarterly increments of an hour at \$56 per hour, plus the 12.5% profit margin incorporated in the model. This is the best estimation of variable costs available in the record to be applied to incremental billings greater than one hour.

109. In future proceedings, the Commission may more comprehensively consider whether to continue the modeling approach or the analyses herein based upon a study of available verifiable statements of financial results in Colorado.

e. Combination

110. “[I]n combination” was clarified at hearing to mean when one tow truck is capable of simultaneously towing a motor vehicle as well as a trailer connected to the towed motor vehicle. Under the adopted rule, such a tow is one tow and no additional fees may be charged for towing the trailer. This concept is consistent with the discussion above regarding double recovery. Where one tow truck is used to simultaneously tow a truck and connected trailer, it would not be appropriate to charge for two tows at the same time. However, comment also suggests that reasonable circumstances may require the separate tow of a motor vehicle and trailer (e.g. weight restrictions of available equipment). Some comment suggests that a given carrier decline a rotation call if they would not have equipment with the capacity to perform the tow as one tow; however, there is no basis shown to demonstrate reasonable availability of larger equipment at all times or the impact of further delay in clearing the affected roadway. Law enforcement officials are primarily concerned with clearing the roadway and mitigating

risks of secondary collisions. While they may maintain different rotation lists (e.g. by equipment capacity), the rule will not interfere with the official's determination to most expeditiously restore the roadway. Thus, if circumstances reasonably require separation and both are each actually towed by a tow truck (i.e. not in combination), then charging for two tows would be appropriate.

111. Comment during hearing was generated in the context of a law enforcement tow. However, it was recognized that similar questions arise with PPI tows. While the Commission does not address regulations of the Department of Revenue, the adopted rule clarifies applicability of Commission requirements as one tow when towing a motor vehicle with another motor vehicle as cargo (i.e. without regard to whether the cargo is on an open or box trailer).

112. Other comment addressed complications from circumstances for cleanup and disposal of a travel trailer as cargo involved in a tow. The commentor states that if a trailer is damaged in an accident, then it is appropriate that charges be imposed for services and storage provided. The proposed rule is also criticized for towing carriers potentially not being able to recover all recovery costs incurred in connection with a given tow.

113. The adopted rule strikes an appropriate balance to address the latter concern. Should a trailer be damaged, but still towed in combination, it is still appropriately billed as one tow. If sufficient damage requires a second tow, then it may be billed as such. As to concern regarding storage charges, Rule 6511(e) provides for an alternative billing based upon vehicle length, including a trailer. Thus, the towing carrier performing one tow in combination may choose to bill storage charges based upon the length of vehicle. The rule will be clarified, as addressed above, to permit charging for towing a trailer involved in an accident where necessarily towed separate from the power unit.

9. Rule 6514

114. Current Rules 6514(a)(IV) and 6514(c)(IV) are duplicative of the language of rule 6514(b) and result in inconsistent fine schedules. Staff proposes deleting the duplicative language in 6514(a)(IV) and 6514(c)(IV).

115. The proposed modifications are reasonable and will be adopted.

10. Booting

116. In addition to proposed rule language changes, the Commission specifically invited comment on issues expressed in Decision No. C16-0129.

117. Comment claims that companies utilizing boots now are not affiliated with any towing carrier. “Current regulations protect the public by requiring towing carriers to maintain minimum levels of insurance and to prevent felons from ownership in the industry. Common sense dictates such minimum protections for the public in the case of booting companies as well.” Towing Operators at para 6.

118. The commented practices of booting go far beyond the scope of any use in connection with performing a nonconsensual tow. As to such use, the undersigned considers the issue comparable to the discussion of “drive-away” tows above because no use of a tow truck is involved. Comprehensively regulating booting services goes beyond current statutory authorization. The undersigned also agrees with comment that to condition performance of nonconsensual towing upon a company not providing booting services would do little to avoid abuses occurring and likely only encourage gamesmanship to create independent entities for this purpose. The rules will not be further modified at this time.

B. Conclusion

119. Attachment A to this Recommended Decision represents the rule amendments adopted by this decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

120. Attachment B to this Recommended Decision represents the rule amendments adopted by this decision in final form.

121. The adopted rules are available as Attachment A and B through the Commission's E-Filings system in this proceeding (16R-0095TO) at:

https://www.dora.state.co.us/pls/efi/EFL.Show_Docket?p_session_id=&p_docket_id=16R-0095TO.

122. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

123. 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 Transportation by Motor Vehicle, 4 Code of Colorado Regulations 723-6, contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final format attached as Attachment B, are adopted.

2. 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.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, 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.

4. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

* * *

[indicates unaffected, omitted material]

TOWING CARRIER RULES

6500. Applicability of Towing Carrier Rules.

- (a) Rules 6500 through 6599 apply to all towing carriers, and to all Commission proceedings and operations concerning towing carriers, applicants, employees, and drivers.
- (b) For a tow and storage of a motor vehicle performed under a written agreement with a municipal, county, state, or federal agency, nothing in these towing carrier rules shall be construed to prohibit such agency, to the extent permitted by law, from adopting and enforcing additional or more stringent requirements relating to towing carrier operations with regard to rules 6506; 6507(a), (c), (d), and (e); 6508; 6509; 6510; and 6512(a), (b), (d), (e), and (f).
- (c) With regard to rules 6511 (a), (b), (c), (d), (f), (g)(I)(A), (g)(II), (h), (e) and (i), the any written agreement regarding a nonconsensual tow may set higher or lower maximum rates than are provided in such rules. In the event the written agreement does not set such rates, the Commission's rules will prevail. A written agreement does not include a tow authorization by a law enforcement official given to a towing carrier with which the law enforcement official's agency does not have a written agreement.

6501. Definitions.

In addition to the definitions in rule 6001, the following definitions apply to towing carriers:

- (a) "Abandoned motor vehicle" means an "abandoned motor vehicle" as defined by §§ 42-4-1802(1) and 42-4-2102(1), C.R.S.
- (b) "Authorized agent for the property owner" means a person acting as agent of a property owner.
- (c) "Authorized agent of motor vehicle" means a person, including a towing carrier, who has been given written or oral permission by the owner, lessee, lienholder, or insurance company of a motor vehicle to act as agent for the disposition of said motor vehicle.
- (d) "Authorized operator of a motor vehicle" 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.
- (e) "Business hours" means 8:00 AM to 5:00 PM, Monday through Friday, excluding legal holidays, and any additional hours and days the towing carrier may designate.

(f) “Gross vehicle weight rating” or “GVWR” is the maximum operating weight of a vehicle as specified by the manufacturer.

~~(fg)~~ “Law enforcement officer” means any sheriff, police officer, Colorado state patrol officer, municipal code enforcement officer, or other such person acting in his or her official capacity for enforcement of motor vehicle laws.

~~(gh)~~ “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.

~~(hi)~~ “Nonconsensual tow” means 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. Law enforcement-ordered tows are nonconsensual and subject to these rules, even when the owner or operator of the vehicle consents to a law enforcement official ordering a tow.

~~(ij)~~ “Parking lot” means any place, lot, parcel, yard, structure, building or enclosure used in whole or in part for storing or parking five or more motor vehicles.

~~(jk)~~ “Private property” means any real property that is not public property.

(l) “Private Property Impound” (or “PPI”) means a nonconsensual tow from private property upon authorization of the property owner.

~~(km)~~ “Property owner” means:

(I) the owner or lessee of the private property or public property;

(II) a person who has been authorized in writing to act as an authorized agent for the property owner or lessee of the private property or public property; or

(III) a federal, state, county, municipal, or other government entity that is the owner or lessee of the private property or public property, or such entity's employees responsible for such property.

~~(ln)~~ “Public property” means any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality, or other governmental entity of this state.

(o) “Recovery” means winching, hoisting, up-righting, removing, or otherwise relocating a vehicle when the vehicle is found in such a location, state or position in which it could not be removed from the location, state or position using only the vehicle's own power, even if it were in complete operating condition. Waiting and site clean-up time are included in recovery services.

(p) “Towing” is the act of transporting a motor vehicle or trailer on or behind a tow truck.

~~(mq)~~ “Tow truck” means a motor vehicle specially designed or equipped for transporting another motor vehicle by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting such other motor vehicle from one place to another.

~~(r)~~ “Towing carrier” means a motor carrier that provides, as one of its primary functions, the towing of motor vehicles by use of a tow truck and may also provide storage of towed vehicles.

(es) "Towing carrier permit" means the permit issued by the Commission to a towing carrier pursuant to § 40-10.1-401, C.R.S.

(t) "Towing facility" means any place used for the storage of motor vehicles or records in conjunction with the operations of a towing carrier.

(u) "Trailer" means any wheeled vehicle, without motive power, which is designed to be drawn by a motor vehicle and to carry its cargo load wholly, or in part, upon its own structure and that is generally and commonly used to carry and transport property over the public highways.

6502. [Reserved].

6503. Permit Application.

(a) In addition to the Commission-prescribed application form, a person must:

- (I) pay an application fee of \$150.00;
- (II) cause to be filed the required proof of financial responsibility; and
- (III) pay the required annual fees or, if applicable, shall be in compliance with the UCR Agreement.

6504. Criminal History Checks.

(a) This rule applies to principals, including without limitation, directors and officers.

(b) Qualification determination.

(I) Upon the Commission's receipt of results obtained from a criminal history record check, Commission staff shall make a qualification determination regarding the applicant's qualification status. In making this determination, Commission staff is authorized to request from the applicant, and the applicant shall provide, additional information that will assist Commission staff in making the determination. If an applicant either does not provide such additional information requested by Commission staff, ~~or~~ explain why it is unavailable, within 15 days of the request, Commission staff may deny the application.

(II) An application shall be denied, if the applicant has:

- (A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any class 1, 2, or 3 felony under any Title of C.R.S.;
- (B) a conviction in the state of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4, 5, or 6 felony under any Title of C.R.S.; or
- (C) an offense in any other state or in the United States that is comparable to any offense listed in subparagraphs (A) through (B) within the same time periods as listed in subparagraphs (A) through (B).

- (III) For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.
- (IV) The Commission and Commission staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks.
- (c) Commission staff shall not issue a permit to the applicant if a disqualifying criminal history record is found for a person subject to this rule.
- (d) If a disqualifying criminal history record is found for a person subject to this rule, the associated applicant may file a petition to qualify the applicant within 60 days of Commission staff's notification.
 - (I) Upon the filing of a petition for qualification, Commission staff shall be an indispensable party.
 - (II) The applicant shall bear the burden of proving that disqualification is not supported by fact or law.
- (e) If the Commission qualifies an applicant upon petition, ~~subparagraph~~ ~~paragraph~~ (b) shall be waived as to qualification determinations for future applications regarding the events upon which Commission staff's disqualification was based.

6505. [Reserved].

6506. 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;
 - (D) one steering wheel tying device free from cracks, fraying, or deterioration; and
 - (E) the following accessories for any towing carrier that performs tows from accident scenes:
 - (i) one shovel; and
 - (ii) one broom.
- (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) A towing carrier shall not tow a motor vehicle without attaching required operational electric lights on the rear of the towed motor vehicle. This requirement does not apply to vehicles placed on a flatbed or trailer as long as the vehicle being towed does not extend four feet beyond the rear of the towing vehicle.
- ~~(e) Rescue and recovery equipment.~~
 - ~~(I) For purposes of this paragraph (e), rescue and recovery operation means that a motor vehicle must first be moved by means of the mechanical devices described in subparagraph (e)(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.~~

6507. Storage Facilities.

- (a) Disclosure of facility location. For nonconsensual tows of a motor vehicle, within 30 minutes of having possession, or such lesser time as may be required by law, a towing carrier shall disclose the location of the storage facility by notifying the responsible law enforcement agency having jurisdiction over the place from which the motor vehicle was towed. Compliance with this paragraph will be considered accomplished if the location of the storage facility was provided to the law enforcement agency in conjunction with obtaining authorization for the tow.
- (b) Disclosure for abandoned motor vehicles. A towing carrier which places an abandoned motor vehicle in a storage facility shall also 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) Disclosure for all towed motor vehicles. Upon request of the owner, authorized agent, or authorized operator of motor vehicle, a towing carrier which places a motor vehicle in a storage facility shall also disclose the location of the storage facility, the total amount of the charges, and accepted forms of payment, as provided in rule 6512.

(d) Signage.

- (I) A towing carrier shall maintain a clearly visible sign at the entrance to any storage facility where a motor vehicle that is towed without the prior consent or authorization of the owner or operator of the motor vehicle. Such sign shall state the name of the business, telephone number, and hours of operation.
- (II) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than two square foot in size;
 - (B) have lettering not less than two inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed; and
 - (D) be printed in English.

(e) Lighting for release. A towing carrier shall maintain an area at each storage facility location on file with the Commission with illumination levels during all hours adequate to inspect a vehicle for damage prior to its release from storage.

(f) Carrier responsibility. A towing carrier is responsible for the security and safety of a motor vehicle towed without the prior consent or authorization of the owner or operator of the motor vehicle until it is released in accordance with these rules.

6508. Authorization for Towing of Motor Vehicles.

(a) Towing carrier acting as authorized agent for the property owner.

(I) A towing carrier may act as the authorized agent for the property owner under a written agreement to that effect, provided the agreement is compliant with this paragraph (a). The contract shall contain at least the following information:

- (A) the name, physical address, telephone number, email address (if applicable), and PUC Towing Permit number of the towing carrier;
- (B) the name, address, email address (if applicable), and telephone number of the property owner;
- (C) the address of the property from which the tows will originate;
- (D) the name of each individual person who is authorized to sign the tow authorization;
- (E) the address and phone number of the storage facility where the vehicle owner may retrieve the vehicle;
- (F) the beginning date and ending date of the contract;
- (G) a statement that the maximum rates for a nonconsensual tow from private property, and the maximum drop charge if the vehicle is retrieved before removal from the private property, are set by rule of the Public Utilities Commission unless the contract provides lower rates;
- (H) the name, title, phone number, and signature of the person making the contract on behalf of the property owner and on behalf of the towing carrier; and
- (I) the date the contract is signed.

(II) Nothing in this paragraph (a) shall preclude a towing carrier, which towing carrier has been paid for the tow by the property owner at proper rates ~~in accordance with rule 6511(d),~~ from collecting the towing charges from the motor vehicle owner and reimbursing said charges to the property owner.

(III) No agency provided for in paragraph 6508(a) shall affect any obligation, liability, or responsibility of the property owner to any third party. Any provision attempting to affect such obligation, liability, or responsibility shall be void.

(b) Authorization to ~~P~~perform ~~N~~nonconsensual ~~T~~tow.

- (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 upon the authorization of the property owner.
- (II) A towing carrier may not come in 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).
- (III) A towing carrier may not perform a nonconsensual tow of a motor vehicle, other than an abandoned motor vehicle, from a parking lot unless:
 - (A) notice of parking limitations, regulations, restrictions or prohibitions was provided at the time the vehicle was parked; and
 - (B) notice is provided that anyone parking in violation of limitations, regulations, restrictions or prohibitions is subject to being towed at the vehicle owner's expense.
- (IV) Notice required by this rule is presumed to be met if:
 - (A) a permanent sign is conspicuously posted near each entrance to the parking lot; and
 - (B) if the parking lot is not provided for residential parking and has more than ten free-standing lampposts on the property, a number of signs equal to the number of lampposts must be posted. Such signs must be posted on each lamppost or posted upright in conspicuous locations which are evenly distributed across the parking lot.
- (V) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than one square foot in size;
 - (B) have lettering not less than one inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed;
 - (D) state the restrictions enforced; ~~and~~
 - (E) include the name and telephone number of towing carrier; and
 - (F) be printed in English.

- (VI) Property owner authorization. The authorization from the property owner, or authorized agent of 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 before the motor vehicle is removed from the property. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name. If the authorization is signed by the towing carrier as agent for the property owner, then documentationa verifiable employee identification number or code name shall not be used. Documentation of such authority must be carried in the towing truck. At a minimum, such documentation shall contain:
- (i) the name, address, email address (if applicable), and telephone number of the property owner;
 - (ii) the address of the property from which the tows will originate; and
 - (iii) the name of each individual person who is authorized to sign the tow authorization
- (B) A towing carrier shall not have in his or her possession, accept, or use blank authorizations pre-signed by the property owner.
- (C) The written authorization may be incorporated withinto the tow record/invoice required by rule 6509 or on any other document.
- (D) With the exception of police law enforcement-ordered tows, a towing carrier that is requested to perform a tow upon the authorization of a property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to a storage facility location on file with the Commission without delay. No vehicle may be relocated off of the private property from which it is towed to a location other than to such a storage facility.

6509. Tow Record/Invoice, Charge Notification, and Warning Signage.

- (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows whether the vehicle is removed from private property or retrieved before removal (commonly known as a drop). 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 towing 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 of the drop, if applicable, the date and time the towed motor vehicle is placed in storage, and all other times necessary for the purpose of calculation of hourly charges~~ the date and time the towed motor vehicle is released from storage, as applicable;
- (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) unless incorporated into the authorization in subparagraph 6508(b)(~~IV~~VI),
 - (A) the name, address, and telephone number of the person authorizing the tow; and
 - (B) the signature of the property owner authorizing a tow;
- (VIII) if the towed motor vehicle is unlocked, a list of its contents;
- (IX) the unit number or license number of the towing vehicle;
- (X) the signature of the towing vehicle operator;
- (XI) an itemized invoice of all towing charges assessed;
- (XII) the signature of the owner, authorized operator, or other authorized person to whom the motor vehicle is released; and
- (XIII) on at least the customer's copy, the following notice in a font size of at least ~~10~~ten:
"Report problems to the Public Utilities Commission at (303) 894-2070."

~~(b) The tow record/invoice shall be a multiple copy form. The copies shall be distributed as follows:~~

- ~~(b)~~ (b) The towing carrier shall retain the copy of the tow record/invoice bearing all required original signatures for authorization and release, without regard to whether it is maintained in electronic or multi-copy paper form.
- ~~(c)~~ (c) The towing carrier shall deliver a copy of the tow record/invoice to the owner, authorized operator, or authorized agent of the owner of the motor vehicle at the time of the release of the towed motor vehicle from a storage facility or where dropped for a drop fee, whether payment of towing charge, payment for release, payment for drop charge, or no charge occurred.
- ~~(d)~~ (d) Towing carriers shall provide a charge notification card to the owner, authorized operator, or authorized agent of the owner of the motor vehicle to be towed if such person is on the property prior to or after commencement of the tow of the vehicle but before the vehicle has been towed off the property. The charge notification card shall contain the Commission-prescribed form and content as available on the Commission's website.
- ~~(e)~~ (e) A towing carrier may place a warning sign on the driver-side window of a vehicle to be towed or, if window placement is impracticable, in another location on the driver-side of the vehicle prior to the commencement of the tow. The tow-truck warning sign shall be at least eight inches by eight inches, is yellow or orange in color and states the following: "WARNING: This vehicle is in tow."

Attempting to operate or operating this vehicle may result in criminal prosecution and may lead to injury or death to you or another person.”

6510. Disclosure of Rates and Charges.

- (a) 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. This rule does not apply to a nonconsensual tow authorized by the property owner, authorized agent for the property owner, or a tow ordered by a law enforcement officer.
- (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.

6511. Rates and Charges.

- ~~(a) The rates and charges in this rule 6511 shall not apply to:
 - ~~(I) a tow of a motor vehicle abandoned on public property weighing in excess of 10,000 pounds GVWR for which the charges are determined by negotiated agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(2)(a), C.R.S.; or~~
 - ~~(II) a tow of a motor vehicle abandoned on public property performed under a written agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(3), C.R.S.~~~~
- ~~(ba) Drop Charge. if retrieved before removal (commonly known as "drop charge").~~
- ~~(I) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle with a GVWR of less than 10,000 pounds that is parked without the authorization of the property owner appears in person to retrieve the motor vehicle after a tow truck is present and either backed up in alignment with such motor vehicle or tow equipment has come into contact with such motor vehicle, but before its removal from the property, the maximum drop charge (whether motor vehicle is hooked up or not) is \$70.00 and the minimum drop charge is \$0.00 and may be less per municipality ordinances.;
 - ~~(I) the maximum drop charge (whether motor vehicle is hooked up or not) is:~~
 - ~~(A) \$70 for a motor vehicle with a GVWR less than or equal to 10,000 pounds;~~
 - ~~(B) \$90 for a motor vehicle with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;~~~~

- ~~(III) An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of \$2.60. The Public Utilities Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The surcharge shall be based on the United States Department of Energy “weekly retail on-highway diesel prices” for the Rocky Mountain region (DOE’s Weekly Diesel Price). The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in the DOE’s Weekly Diesel Price, or a one-percent decrease in the mileage rate for every ten-cent decrease in the DOE’s Weekly Diesel Price, but in no event decreasing below the base rate.~~
- ~~(IV) A towing carrier shall not charge or retain any additional fees for the nonconsensual tow of a motor vehicle from private property.~~
- ~~(c) Maximum towing rates for law enforcement ordered tows and recovery operations are to be calculated on an hourly basis, per required towing or recovery vehicle, as follows, with no additional fees, charges, or surcharges permitted, except as identified below:~~

 - ~~(II) When accompanied by documentation showing starting and ending times of the recovery, which documentation may include law enforcement incident reports and verification, a towing carrier may charge for recovery at its hourly rates, a record of which is maintained in compliance with rule 6005. Maximum hourly rates for the towing or recovery of:~~

 - ~~(A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$160.00, and \$15.75 per ¼ hour after the first hour;~~
 - ~~(B) motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds is \$210.00 per tow truck;~~
 - ~~(C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$275.00 per tow truck; and~~
 - ~~(D) motor vehicles with a GVWR greater than 33,000 pounds is \$325.00 per tow truck.~~
 - ~~(E) The recovery of a motor vehicle requiring the use of a Heavy Rotator (60+ tons) shall not exceed \$585 per hour.~~
 - ~~(II) Mileage and fuel surcharges authorized elsewhere in rule 6511 do not apply to law enforcement ordered tows or recovery operations.~~
 - ~~(III) Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall:~~
 - ~~(III) Hourly rates for recovery may include time to load and to secure recovery equipment and the cleanup of the scene and post-towing maintenance of recovery equipment directly attributable to the recovery. If the recovery vehicle is also the towing vehicle, then the rates and charges provided in paragraph (d) shall not be charged in addition to the hourly rate.~~

- (A) include, in addition to requirements of rule 6509, the following information on the tow record/invoice form, recorded at the time of occurrence: the time of dispatch; the time the truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the truck leaves the scene, and the time the vehicle towed is unhooked;
 - (B) include an advisement on the invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available upon request from the towing carrier;
 - (C) only begin billing from a time not earlier than the towing carrier leaves their yard or staging area en route to the scene of the requested tow until the vehicle towed is unhooked;
 - (D) not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier's actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs;
 - (E) provide an owner, authorized operator, or authorized agent of the owner of a motor vehicle documentation of actual and reasonable costs billed in excess of one hour for any tow truck and driver for such tow upon request; and
 - (F) not, under any circumstances, bill rates and charges provided in paragraph (b) for a PPI tow.
- ~~(IV) — The cost of additional equipment used may be recovered from the motor vehicle owner at the towing carrier's actual costs incurred plus a reasonable administrative fee of not more than twenty-five percent of those actual costs, provided that the actual costs are reasonable by industry standards.~~
- ~~(d) — Rates and charges for nonconsensual tows. Except as provided in paragraphs (b), (c), (e), (f), (g), and (h) of this rule, the maximum rate that a towing carrier may charge for a nonconsensual tow of a motor vehicle with a GVWR of less than 10,000 pounds performed upon the authorization of the property owner is \$160.00. This maximum rate includes, but is not be limited to, charges for the following:~~
- ~~(I) — all towing services rendered;~~
 - ~~(II) — hookup;~~
 - ~~(III) — use of dollies or go-jacks;~~
 - ~~(IV) — access to or release of the motor vehicle from storage;~~
 - ~~(V) — except for an abandoned motor vehicle, removal of personal property that is not attached to or a part of the equipment of the motor vehicle;~~
 - ~~(VI) — all commissions paid; and~~
 - ~~(VII) — all other services rendered in performing such nonconsensual tow.~~

(ed) The maximum rates for a ~~nonconsensual~~ tow from a storage facility, when directed by a law enforcement officer who is performing an accident reconstruction or stolen vehicle investigation, are as follows:

- (I) \$91.00 for one additional hookup;
- (II) \$91.00 per hour waiting time; and
- (III) mileage charges as provided in paragraph (fb).

~~(f) Mileage.~~

~~(I) The maximum mileage charge that may be assessed for a non-consensual tow of a motor vehicle with a GVWR of less than 10,000 pounds is \$3.80 per mile that the motor vehicle is towed.~~

~~(II) Fuel surcharge. The maximum mileage charge shall be adjusted monthly by the Public Utilities Commission by setting a fuel surcharge. The surcharge shall be based on the United States Department of Energy "weekly retail on-highway diesel prices" for the Rocky Mountain region using the price per gallon of \$2.60 as the base rate. The adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in fuel cost, or a one-percent decrease in the mileage rate for every ten-cent decrease in fuel cost, but in no event decreasing below the base rate.~~

~~(III) The maximum mileage that may be charged for a nonconsensual tow for a motor vehicle with a GVWR of less than 10,000 pounds is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities which lie farther than ten miles from U.S. Interstate Highway 25.~~

(ge) Storage for nonconsensual tows.

(I) Storage charges shall not exceed the following rates based on a 24-hour period or any portion of a 24-hour period, ~~or for any portion of a calendar day after the first 48 hours following the 48th hour of storage:~~

- (A) \$30.00 for motor vehicles having a GVWR of less than 10,000 pounds;
- (B) \$37.00 for motor vehicles having a GVWR of 10,000 pounds or more; or
- (C) in lieu of subparagraphs (A) and (B), and at the option of the towing carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at \$1.50 per foot or portion thereof.

(II) 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.

(III) Storage charges for a nonconsensual tow may commence upon placing the motor vehicle in storage.

(IV) Maximum storage charges for abandoned motor vehicles. 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 subject to part 21 of title 42, C.R.S. shall not be accumulated beyond 120 days after the mailing date of the report required by § 42-4-2103(4), C.R.S.

(hf) For a nonconsensual tow, the maximum additional charge for release of a motor vehicle from storage or access to a motor vehicle in storage at any time other than the carrier's business hours is \$66.00.

(ig) Noncompliance. If a tow is performed, or storage is provided, in violation of state statute or Commission rules, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released to the owner, lienholder, or agent of the owner or lienholder without charge. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.

(jh) Abandoned motor vehicles.

(I) 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 and 42-4-2103, C.R.S., and the rules of the Colorado Department of Revenue.

(II) 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 and 42-4-2103, 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 not charge, collect, or retain storage fees.

(III) 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.

(IV) Additional costs that may be charged when a stored motor vehicle is sold.

(A) 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.

(B) 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.

(C) "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.

(D) Certified VIN verification procedure. 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:

(i) Rates as provided in paragraph (ed); and

- (ii) ~~In~~ addition, the towing carrier may charge for all other documented expenses of obtaining the VIN verification.

(i) Trailers.

- (I) No additional fees may be charged for the towing of a power unit and trailer in combination as a single motor vehicle.
- (II) A vehicle in or on a trailer is cargo.
- (III) No additional fees may be charged for the towing of cargo in combination; however, additional fees may be charged for towing a trailer when reasonably and actually conducted a separate tow from a power unit.

6512. Release of Motor Vehicle and Personal Property.

- (a) The towing carrier shall immediately accept payment of the drop charge, towing, storage, and release charges if payment is offered in cash or valid major credit card. The towing carrier may accept other forms of payment, but must accept payment by both MasterCard and Visa. The towing carrier shall release the motor vehicle to:
 - (I) the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle;
 - (II) the lienholder or agent of the lienholder of the motor vehicle; or
 - (III) the insurance company or agent of the insurance company providing coverage on the motor vehicle, if released to the insurance company by the owner.
- (b) ~~Unless the release of the motor vehicle does not comply with the release procedures agreed to between the towing carrier and the applicable law enforcement agency, a~~ towing carrier that accepts for storage a motor vehicle that has been towed as a nonconsensual tow ~~upon the authorization of the property owner~~ shall be available to provide access to or release of the motor vehicle as provided in paragraph (a) 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 the carrier's business hours that occur within the first 24 hours of storage; or
 - (II) upon demand during the carrier's business hours.
- (c) 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 and 42-4-2103, 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 to the owner, lien holder, or their agents.
- (d) The towing carrier, at its discretion, need not comply with paragraph (a), (b) or (c) if:
 - (I) the towing carrier is reasonably certain that, at the time the motor vehicle is to be released from storage, the driver of the motor vehicle is not capable of safely driving the motor vehicle due to the influence of drugs or alcohol;

- (II) the towing carrier that is to remove the motor vehicle from storage does not have a valid towing carrier permit ~~or proof of motor vehicle liability coverage~~;
 - (III) a hold order is in place on the motor vehicle by a court, district attorney, law enforcement agency, or law enforcement officer;
 - (IV) the release of the motor vehicle does not comply with the release procedures agreed to in writing, between the towing carrier and the applicable law enforcement agency; or
 - (V) the towing carrier, upon notification for the release of or access to a motor vehicle at other than the carrier's business hours, has immediately contacted an appropriate law enforcement agency and, in the interest of public order, has requested a law enforcement officer's presence during the release of the motor vehicle. This exception is applicable when the towing carrier has reason to believe that the motor vehicle's owner, authorized operator, or authorized agent of the owner of the motor vehicle may disrupt the public order.
- (e) A towing carrier shall release a motor vehicle held in storage to a person presenting a current driver's license who attests to being the authorized operator of the vehicle and produces two of the following: keys to the vehicle; proof of insurance; vehicle registration, VIN number; or knowledge of the location from where the vehicle was towed. Such attestation must be in the form available from the Commission or its website.
- (f) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish, prescription medicines, medical equipment, medical devices, or any child restraint system. The towing carrier shall immediately relinquish such items upon demand, without requiring payment and without additional charge.
- (g) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish credit cards and cash for immediate payment of the amount due to the towing carrier. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times and without additional charge.
- (h) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish state or federal issued identification to the owner of the identification or to persons to whom the motor vehicle is released. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times. Access shall be without additional charge during business hours.
- (i) On the private property where the tow originates, a towing carrier shall not refuse to relinquish a cellular telephone to persons to whom the motor vehicle can be released. The towing carrier shall immediately relinquish such item upon demand and without additional charge.

6513. [Reserved].

6514. Towing Violations and Civil Penalty Assessments.

- (a) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$1,100.00 for each violation:
- (I) § 40-10.1-401(1)(a), C.R.S.;

- (II) subparagraph (b)(I), (b)(II), (b)(IV)(B), or (b)(VI)(D) of rule 6508; or
 - (III) paragraph ~~(ig)~~ of rule 6511; ~~or.~~
 - ~~(IV) paragraphs (d), (e), (g), or subparagraphs (b)(I) or (g)(I)(A) of rule 6511 for an overcharge greater than \$74.99.~~
- (b) A violation of paragraph ~~(a), (b), (c), (d), (e), (gf), (h)~~, or ~~subparagraphs (b)(I) or (g)(I)(A)(i)~~ of rule 6511 may result in the assessment of a civil penalty as follows for each violation:
- (I) up to \$275.00 for an overcharge \$25.00 or less;
 - (II) up to \$550.00 for an overcharge greater than \$25.00 but less than or equal to \$50.00; and
 - (III) up to \$1,100.00 for an overcharge greater than \$50.00.
- (c) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$550.00 for each violation:
- (I) ~~paragraph (a), (b), or (c) of~~ rule 6507;
 - (II) paragraph (a) of rule 6510; or
 - (III) paragraph (e) of rule 6512; ~~or~~
 - ~~(IV) paragraph (d), (e), (g), or subparagraphs (b)(I) or (g)(I)(A) of rule 6511 for an overcharge less than \$75.00.~~
- (d) A violation of rule 6506 may result in the assessment of a civil penalty of up to \$100.00 for each violation.
- (e) Except as provided in paragraph (a) through (d) of this rule, a violation of any provision of Title 40, § 42-3-235.5, C.R.S., pertaining to towing carriers, or any provision of rules 6500 through 6513, may result in the assessment of a civil penalty of up to \$275.00 for each violation.
- (f) Civil penalty assessments are in addition to any other penalties provided by law.

6515. - 6599. [Reserved].

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[indicates unaffected, omitted material]

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

* * *

[indicates unaffected, omitted material]

TOWING CARRIER RULES

6500. Applicability of Towing Carrier Rules.

- (a) Rules 6500 through 6599 apply to all towing carriers, and to all Commission proceedings and operations concerning towing carriers, applicants, employees, and drivers.
- (b) For a tow and storage of a motor vehicle performed under a written agreement with a municipal, county, state, or federal agency, nothing in these towing carrier rules shall be construed to prohibit such agency, to the extent permitted by law, from adopting and enforcing additional or more stringent requirements relating to towing carrier operations with regard to rules 6506; 6507(a), (c), (d), and (e); 6508; 6509; 6510; and 6512(a), (b), (d), (e), and (f).
- (c) With regard to rules 6511(a), (b), (c), (d), (e) and (f), any written agreement may set lower maximum rates than are provided in such rules. In the event a written agreement regarding a nonconsensual tow does not set such rates, the Commission's rules will prevail. A written agreement does not include a tow authorization by a law enforcement official given to a towing carrier with which the law enforcement official's agency does not have a written agreement.

6501. Definitions.

In addition to the definitions in rule 6001, the following definitions apply to towing carriers:

- (a) "Abandoned motor vehicle" means an "abandoned motor vehicle" as defined by §§ 42-4-1802(1) and 42-4-2102(1), C.R.S.
- (b) "Authorized agent for the property owner" means a person acting as agent of a property owner.
- (c) "Authorized agent of motor vehicle" means a person, including a towing carrier, who has been given written or oral permission by the owner, lessee, lienholder, or insurance company of a motor vehicle to act as agent for the disposition of said motor vehicle.
- (d) "Authorized operator of a motor vehicle" 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.
- (e) "Business hours" means 8:00 AM to 5:00 PM, Monday through Friday, excluding legal holidays, and any additional hours and days the towing carrier may designate.

- (f) "Gross vehicle weight rating" or "GVWR" is the maximum operating weight of a vehicle as specified by the manufacturer.
- (g) "Law enforcement officer" means any sheriff, police officer, Colorado state patrol officer, municipal code enforcement officer, or other such person acting in his or her official capacity for enforcement of motor vehicle laws.
- (g) "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.
- (h) "Nonconsensual tow" means 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. Law enforcement-ordered tows are nonconsensual and subject to these rules, even when the owner or operator of the vehicle consents to a law enforcement official ordering a tow.
- (i) "Parking lot" means any place, lot, parcel, yard, structure, building or enclosure used in whole or in part for storing or parking five or more motor vehicles.
- (j) "Private property" means any real property that is not public property.
- (k) "Private Property Impound" (or "PPI") means a nonconsensual tow from private property upon authorization of the property owner.
- (l) "Property owner" means:
 - (I) the owner or lessee of the private property or public property;
 - (II) a person who has been authorized in writing to act as an authorized agent for the property owner or lessee of the private property or public property; or
 - (III) a federal, state, county, municipal, or other government entity that is the owner or lessee of the private property or public property, or such entity's employees responsible for such property.
- (m) "Public property" means any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality, or other governmental entity of this state.
- (n) "Recovery" means winching, hoisting, up-righting, removing, or otherwise relocating a vehicle when the vehicle is found in such a location, state or position in which it could not be removed from the location, state or position using only the vehicle's own power, even if it were in complete operating condition. Waiting and site clean-up time are included in recovery services.
- (o) "Towing" is the act of transporting a motor vehicle or trailer on or behind a tow truck.
- (p) "Tow truck" means a motor vehicle specially designed or equipped for transporting another motor vehicle by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting such other motor vehicle from one place to another.
- (q) "Towing carrier" means a motor carrier that provides, as one of its primary functions, the towing of motor vehicles by use of a tow truck and may also provide storage of towed vehicles.

- (r) "Towing carrier permit" means the permit issued by the Commission to a towing carrier pursuant to § 40-10.1-401, C.R.S.
- (s) "Towing facility" means any place used for the storage of motor vehicles or records in conjunction with the operations of a towing carrier.
- (t) "Trailer" means any wheeled vehicle, without motive power, which is designed to be drawn by a motor vehicle and to carry its cargo load wholly, or in part, upon its own structure and that is generally and commonly used to carry and transport property over the public highways.

6502. [Reserved].

6503. Permit Application.

- (a) In addition to the Commission-prescribed application form, a person must:
 - (I) pay an application fee of \$150.00;
 - (II) cause to be filed the required proof of financial responsibility; and
 - (III) pay the required annual fees or, if applicable, shall be in compliance with the UCR Agreement.

6504. Criminal History Checks.

- (a) This rule applies to principals, including without limitation, directors and officers.
- (b) Qualification determination.
 - (I) Upon the Commission's receipt of results obtained from a criminal history record check, Commission staff shall make a qualification determination regarding the applicant's qualification status. In making this determination, Commission staff is authorized to request from the applicant, and the applicant shall provide, additional information that will assist Commission staff in making the determination. If an applicant either does not provide such additional information requested by Commission staff, or explain why it is unavailable, within 15 days of the request, Commission staff may deny the application.
 - (II) An application shall be denied, if the applicant has:
 - (A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any class 1, 2, or 3 felony under any Title of C.R.S.;
 - (B) a conviction in the state of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4, 5, or 6 felony under any Title of C.R.S.; or
 - (C) an offense in any other state or in the United States that is comparable to any offense listed in subparagraphs (A) through (B) within the same time periods as listed in subparagraphs (A) through (B).

- (III) For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.
- (IV) The Commission and Commission staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks.
- (c) Commission staff shall not issue a permit to the applicant if a disqualifying criminal history record is found for a person subject to this rule.
- (d) If a disqualifying criminal history record is found for a person subject to this rule, the associated applicant may file a petition to qualify the applicant within 60 days of Commission staff's notification.
 - (I) Upon the filing of a petition for qualification, Commission staff shall be an indispensable party.
 - (II) The applicant shall bear the burden of proving that disqualification is not supported by fact or law.
- (e) If the Commission qualifies an applicant upon petition, paragraph (b) shall be waived as to qualification determinations for future applications regarding the events upon which Commission staff's disqualification was based.

6505. [Reserved].

6506. 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;
 - (D) one steering wheel tying device free from cracks, fraying, or deterioration; and
 - (E) the following accessories for any towing carrier that performs tows from accident scenes:
 - (i) one shovel; and
 - (ii) one broom.
- (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) A towing carrier shall not tow a motor vehicle without attaching required operational electric lights on the rear of the towed motor vehicle. This requirement does not apply to vehicles placed on a flatbed or trailer as long as the vehicle being towed does not extend four feet beyond the rear of the towing vehicle.

6507. Storage Facilities.

- (a) Disclosure of facility location. For nonconsensual tows of a motor vehicle, within 30 minutes of having possession, or such lesser time as may be required by law, a towing carrier shall disclose the location of the storage facility by notifying the responsible law enforcement agency having jurisdiction over the place from which the motor vehicle was towed. Compliance with this paragraph will be considered accomplished if the location of the storage facility was provided to the law enforcement agency in conjunction with obtaining authorization for the tow.

- (b) Disclosure for abandoned motor vehicles. A towing carrier which places an abandoned motor vehicle in a storage facility shall also 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) Disclosure for all towed motor vehicles. Upon request of the owner, authorized agent, or authorized operator of motor vehicle, a towing carrier which places a motor vehicle in a storage facility shall also disclose the location of the storage facility, the total amount of the charges, and accepted forms of payment, as provided in rule 6512.
- (d) Signage.
 - (I) A towing carrier shall maintain a clearly visible sign at the entrance to any storage facility where a motor vehicle that is towed without the prior consent or authorization of the owner or operator of the motor vehicle. Such sign shall state the name of the business, telephone number, and hours of operation.
 - (II) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than two square foot in size;
 - (B) have lettering not less than two inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed; and
 - (D) be printed in English.
- (e) Lighting for release. A towing carrier shall maintain an area at each storage facility location on file with the Commission with illumination levels during all hours adequate to inspect a vehicle for damage prior to its release from storage.
- (f) Carrier responsibility. A towing carrier is responsible for the security and safety of a motor vehicle towed without the prior consent or authorization of the owner or operator of the motor vehicle until it is released in accordance with these rules.

6508. Authorization for Towing of Motor Vehicles.

- (a) Towing carrier acting as authorized agent for the property owner.
 - (I) A towing carrier may act as the authorized agent for the property owner under a written agreement to that effect, provided the agreement is compliant with this paragraph (a). The contract shall contain at least the following information:
 - (A) the name, physical address, telephone number, email address (if applicable), and PUC Towing Permit number of the towing carrier;
 - (B) the name, address, email address (if applicable), and telephone number of the property owner;
 - (C) the address of the property from which the tows will originate;

- (D) the name of each individual person who is authorized to sign the tow authorization;
 - (E) the address and phone number of the storage facility where the vehicle owner may retrieve the vehicle;
 - (F) the beginning date and ending date of the contract;
 - (G) a statement that the maximum rates for a nonconsensual tow from private property, and the maximum drop charge if the vehicle is retrieved before removal from the private property, are set by rule of the Public Utilities Commission unless the contract provides lower rates;
 - (H) the name, title, phone number, and signature of the person making the contract on behalf of the property owner and on behalf of the towing carrier; and
 - (I) the date the contract is signed.
- (II) Nothing in this paragraph (a) shall preclude a towing carrier, which towing carrier has been paid for the tow by the property owner at proper rates, from collecting the towing charges from the motor vehicle owner and reimbursing said charges to the property owner.
- (III) No agency provided for in paragraph 6508(a) shall affect any obligation, liability, or responsibility of the property owner to any third party. Any provision attempting to affect such obligation, liability, or responsibility shall be void.
- (b) Authorization to perform nonconsensual tow.
- (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 upon the authorization of the property owner.
 - (II) A towing carrier may not come in 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).
 - (III) A towing carrier may not perform a nonconsensual tow of a motor vehicle, other than an abandoned motor vehicle, from a parking lot unless:
 - (A) notice of parking limitations, regulations, restrictions or prohibitions was provided at the time the vehicle was parked; and
 - (B) notice is provided that anyone parking in violation of limitations, regulations, restrictions or prohibitions is subject to being towed at the vehicle owner's expense.

- (IV) Notice required by this rule is presumed to be met if:
 - (A) a permanent sign is conspicuously posted near each entrance to the parking lot; and
 - (B) if the parking lot is not provided for residential parking and has more than ten free-standing lampposts on the property, a number of signs equal to the number of lampposts must be posted. Such signs must be posted on each lamppost or posted upright in conspicuous locations which are evenly distributed across the parking lot.
- (V) All signs posted to provide notice pursuant to this rule shall comply with any applicable ordinance. To the extent not inconsistent with applicable ordinance, signs shall also at a minimum:
 - (A) be no less than one square foot in size;
 - (B) have lettering not less than one inch in height;
 - (C) have lettering that contrasts sharply in color with the background on which the letters are placed;
 - (D) state the restrictions enforced;
 - (E) include the name and telephone number of towing carrier; and
 - (F) be printed in English.
- (VI) Property owner authorization. The authorization from the property owner, or authorized agent of 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 before the motor vehicle is removed from the property. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name. If the authorization is signed by the towing carrier as agent for the property owner, then a verifiable employee identification number or code name shall not be used. Documentation of such authority must be carried in the towing truck. At a minimum, such documentation shall contain:
 - (i) the name, address, email address (if applicable), and telephone number of the property owner;
 - (ii) the address of the property from which the tows will originate; and
 - (iii) the name of each individual person who is authorized to sign the tow authorization
 - (B) A towing carrier shall not have in his or her possession, accept, or use blank authorizations pre-signed by the property owner.

- (C) The written authorization may be incorporated into the tow record/invoice required by rule 6509 or on any other document.
- (D) With the exception of law enforcement-ordered tows, a towing carrier that is requested to perform a tow upon the authorization of a property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to a storage facility location on file with the Commission without delay. No vehicle may be relocated off of the private property from which it is towed to a location other than to such a storage facility.

6509. Tow Record/Invoice, Charge Notification, and Warning Signage.

- (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows whether the vehicle is removed from private property or retrieved before removal (commonly known as a drop). 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 towing carrier;
 - (IV) the date and time of the drop, the date and time the towed motor vehicle is placed in storage, and the date and time the towed motor vehicle is released from storage, as applicable;
 - (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) unless incorporated into the authorization in subparagraph 6508(b)(VI),
 - (A) the name, address, and telephone number of the person authorizing the tow; and
 - (B) the signature of the property owner authorizing a tow;
 - (VIII) if the towed motor vehicle is unlocked, a list of its contents;
 - (IX) the unit number or license number of the towing vehicle;
 - (X) the signature of the towing vehicle operator;
 - (XI) an itemized invoice of all towing charges assessed;
 - (XII) the signature of the owner, authorized operator, or other authorized person to whom the motor vehicle is released; and

- (XIII) on at least the customer's copy, the following notice in a font size of at least ten:
"Report problems to the Public Utilities Commission at (303) 894-2070."
- (b) The towing carrier shall retain the copy of the tow record/invoice bearing all required original signatures for authorization and release, without regard to whether it is maintained in electronic or multi-copy paper form.
- (c) The towing carrier shall deliver a copy of the tow record/invoice to the owner, authorized operator, or authorized agent of the owner of the motor vehicle at the time of the release of the towed motor vehicle from a storage facility or where dropped for a drop fee, whether payment of towing charge, payment for release, payment for drop charge, or no charge occurred.
- (d) Towing carriers shall provide a charge notification card to the owner, authorized operator, or authorized agent of the owner of the motor vehicle to be towed if such person is on the property prior to or after commencement of the tow of the vehicle but before the vehicle has been towed off the property. The charge notification card shall contain the Commission-prescribed form and content as available on the Commission's website.
- (e) A towing carrier may place a warning sign on the driver-side window of a vehicle to be towed or, if window placement is impracticable, in another location on the driver-side of the vehicle prior to the commencement of the tow. The tow-truck warning sign shall be at least eight inches by eight inches, is yellow or orange in color and states the following: "WARNING: This vehicle is in tow. Attempting to operate or operating this vehicle may result in criminal prosecution and may lead to injury or death to you or another person."

6510. Disclosure of Rates and Charges.

- (a) 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. This rule does not apply to a nonconsensual tow authorized by the property owner, authorized agent for the property owner, or a tow ordered by a law enforcement officer.
- (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.

6511. Rates and Charges.

- (a) Drop Charge. If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner appears in person to retrieve the motor vehicle after a tow truck is present and either backed up in alignment with such motor vehicle or tow equipment has come into contact with such motor vehicle, but before its removal from the property:

- (I) the maximum drop charge (whether motor vehicle is hooked up or not) is:
 - (A) \$70 for a motor vehicle with a GVWR less than or equal to 10,000 pounds;
 - (B) \$90 for a motor vehicle with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;
 - (C) \$120 for a motor vehicle with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds; and
 - (D) \$140 for a motor vehicle with a GVWR greater than 33,000 pounds.
 - (E) Maximum drop charges may be less per municipal ordinance or agreement with the property owner.
 - (II) The minimum drop charge is \$0.00.
 - (III) The towing carrier shall halt any tow in progress, including preparation therefor, prior to removal from the private property, 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 drop charge. The towing carrier shall concurrently advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle of acceptable forms of payment under rule 6512. Such advisements shall be provided via delivery of a charge notification card, in addition to any other means desired by the towing carrier.
 - (III) If the towing carrier does not advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle of acceptable forms of payment under rule 6512 or accept such forms of payment, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.
- (b) Maximum towing rates for PPI tows consists of up to four elements: a base rate for the tow; a mileage charge, including any applicable fuel surcharge; a charge for vehicle storage; and a charge for release from storage pursuant to paragraph 6511(f) if applicable.
- (I) The maximum base rates are as follows:
 - (A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$160.00;
 - (B) motor vehicles with a GVWR greater than 10,001 pounds and less than or equal to 19,000 pounds is \$210.00;
 - (C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$275.00; and
 - (D) motor vehicles with a GVWR greater than 33,000 pounds is \$325.00.
 - (II) The maximum mileage charge a towing carrier may assess for a PPI tow of a motor vehicle is \$3.80 per mile for each mile that the motor vehicle is towed, subject to the following limits: The maximum mileage that may be charged for a PPI tow is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities that lie farther than ten miles from U.S. Interstate Highway 25.

- (III) An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of \$2.60. The Public Utilities Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The surcharge shall be based on the United States Department of Energy “weekly retail on-highway diesel prices” for the Rocky Mountain region (DOE’s Weekly Diesel Price). The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in the DOE’s Weekly Diesel Price, or a one-percent decrease in the mileage rate for every ten-cent decrease in the DOE’s Weekly Diesel Price, but in no event decreasing below the base rate.
 - (IV) A towing carrier shall not charge or retain any additional fees for the nonconsensual tow of a motor vehicle from private property.
- (c) Maximum towing rates for law enforcement ordered tows and recovery operations are to be calculated on an hourly basis, per required towing or recovery vehicle, as follows, with no additional fees, charges, or surcharges permitted, except as identified below:
- (I) Maximum hourly rates for the towing or recovery of:
 - (A) motor vehicles with a GVWR less than or equal to 10,000 pounds is \$160.00, and \$15.75 per ¼ hour after the first hour;
 - (B) motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds is \$210.00 per tow truck;
 - (C) motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds is \$275.00 per tow truck; and
 - (D) motor vehicles with a GVWR greater than 33,000 pounds is \$325.00 per tow truck.
 - (E) The recovery of a motor vehicle requiring the use of a Heavy Rotator (60+ tons) shall not exceed \$585 per hour.
 - (II) Mileage and fuel surcharges authorized elsewhere in rule 6511 do not apply to law enforcement ordered tows or recovery operations.
 - (III) Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall:
 - (A) include, in addition to requirements of rule 6509, the following information on the tow record/invoice form, recorded at the time of occurrence: the time of dispatch; the time the truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the truck leaves the scene, and the time the vehicle towed is unhooked;
 - (B) include an advisement on the invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available upon request from the towing carrier;
 - (C) only begin billing from a time not earlier than the towing carrier leaves their yard or staging area en route to the scene of the requested tow until the vehicle towed is unhooked;

- (D) not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier's actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs;
 - (E) provide an owner, authorized operator, or authorized agent of the owner of a motor vehicle documentation of actual and reasonable costs billed in excess of one hour for any tow truck and driver for such tow upon request; and
 - (F) not, under any circumstances, bill rates and charges provided in paragraph (b) for a PPI tow.
- (d) The maximum rates for a tow from a storage facility, when directed by a law enforcement officer who is performing an accident reconstruction or stolen vehicle investigation, are as follows:
- (I) \$91.00 for one additional hookup;
 - (II) \$91.00 per hour waiting time; and
 - (III) mileage charges as provided in paragraph (b).
- (e) Storage for nonconsensual tows.
- (I) Storage charges shall not exceed the following rates based on a 24-hour period or any portion of a 24-hour period following the 48th hour of storage:
 - (A) \$30.00 for motor vehicles having a GVWR of less than 10,000 pounds;
 - (B) \$37.00 for motor vehicles having a GVWR of 10,000 pounds or more; or
 - (C) in lieu of subparagraphs (A) and (B), and at the option of the towing carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at \$1.50 per foot or portion thereof.
 - (II) 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.
 - (III) Storage charges for a nonconsensual tow may commence upon placing the motor vehicle in storage.
 - (IV) Maximum storage charges for abandoned motor vehicles. 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 subject to part 21 of title 42, C.R.S. shall not be accumulated beyond 120 days after the mailing date of the report required by § 42-4-2103(4), C.R.S.
- (f) For a nonconsensual tow, the maximum additional charge for release of a motor vehicle from storage or access to a motor vehicle in storage at any time other than the carrier's business hours is \$66.00.

- (g) Noncompliance. If a tow is performed, or storage is provided, in violation of state statute or Commission rules, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released to the owner, lienholder, or agent of the owner or lienholder without charge. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of a motor vehicle.
- (h) Abandoned motor vehicles.
 - (I) 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 and 42-4-2103, C.R.S., and the rules of the Colorado Department of Revenue.
 - (II) 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 and 42-4-2103, 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 not charge, collect, or retain storage fees.
 - (III) 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.
 - (IV) Additional costs that may be charged when a stored motor vehicle is sold.
 - (A) 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.
 - (B) 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.
 - (C) "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.
 - (D) Certified VIN verification procedure. 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:
 - (i) rates as provided in paragraph (d); and
 - (ii) in addition, the towing carrier may charge for all other documented expenses of obtaining the VIN verification.
- (i) Trailers.
 - (I) No additional fees may be charged for the towing of a power unit and trailer in combination as a single motor vehicle.
 - (II) A vehicle in or on a trailer is cargo.

- (III) No additional fees may be charged for the towing of cargo in combination; however, additional fees may be charged for towing a trailer when reasonably and actually conducted a separate tow from a power unit.

6512. Release of Motor Vehicle and Personal Property.

- (a) The towing carrier shall immediately accept payment of the drop charge, towing, storage, and release charges if payment is offered in cash or valid major credit card. The towing carrier may accept other forms of payment, but must accept payment by both MasterCard and Visa. The towing carrier shall release the motor vehicle to:
 - (I) the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle;
 - (II) the lienholder or agent of the lienholder of the motor vehicle; or
 - (III) the insurance company or agent of the insurance company providing coverage on the motor vehicle, if released to the insurance company by the owner.
- (b) A towing carrier that accepts for storage a motor vehicle that has been towed as a nonconsensual tow shall be available to provide access to or release of the motor vehicle as provided in paragraph (a) 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 the carrier's business hours that occur within the first 24 hours of storage; or
 - (II) upon demand during the carrier's business hours.
- (c) 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 and 42-4-2103, 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 to the owner, lien holder, or their agents.
- (d) The towing carrier, at its discretion, need not comply with paragraph (a), (b) or (c) if:
 - (I) the towing carrier is reasonably certain that, at the time the motor vehicle is to be released from storage, the driver of the motor vehicle is not capable of safely driving the motor vehicle due to the influence of drugs or alcohol;
 - (II) the towing carrier that is to remove the motor vehicle from storage does not have a valid towing carrier permit;
 - (III) a hold order is in place on the motor vehicle by a court, district attorney, law enforcement agency, or law enforcement officer;
 - (IV) the release of the motor vehicle does not comply with the release procedures agreed to, in writing, between the towing carrier and the applicable law enforcement agency; or

- (V) the towing carrier, upon notification for the release of or access to a motor vehicle at other than the carrier's business hours, has immediately contacted an appropriate law enforcement agency and, in the interest of public order, has requested a law enforcement officer's presence during the release of the motor vehicle. This exception is applicable when the towing carrier has reason to believe that the motor vehicle's owner, authorized operator, or authorized agent of the owner of the motor vehicle may disrupt the public order.
- (e) A towing carrier shall release a motor vehicle held in storage to a person presenting a current driver's license who attests to being the authorized operator of the vehicle and produces two of the following: keys to the vehicle; proof of insurance; vehicle registration, VIN number; or knowledge of the location from where the vehicle was towed. Such attestation must be in the form available from the Commission or its website.
- (f) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish, prescription medicines, medical equipment, medical devices, or any child restraint system. The towing carrier shall immediately relinquish such items upon demand, without requiring payment and without additional charge.
- (g) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish credit cards and cash for immediate payment of the amount due to the towing carrier. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times and without additional charge.
- (h) Whether on the private property where the tow originates or at the towing carrier's storage lot, a towing carrier shall not refuse to relinquish state or federal issued identification to the owner of the identification or to persons to whom the motor vehicle is released. The towing carrier shall immediately relinquish such items upon demand during business hours or within one hour's notice during all other times. Access shall be without additional charge during business hours.
- (i) On the private property where the tow originates, a towing carrier shall not refuse to relinquish a cellular telephone to persons to whom the motor vehicle can be released. The towing carrier shall immediately relinquish such item upon demand and without additional charge.

6513. [Reserved].

6514. Towing Violations and Civil Penalty Assessments.

- (a) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$1,100.00 for each violation:
 - (I) § 40-10.1-401(1)(a), C.R.S.;
 - (II) subparagraph (b)(I), (b)(II), (b)(IV)(B), or (b)(VI)(D) of rule 6508; or
 - (III) paragraph (g) of rule 6511.
- (b) A violation of paragraph (a), (b), (c), (d), (e), (f), (h), or (i) of rule 6511 may result in the assessment of a civil penalty as follows for each violation:
 - (I) up to \$275.00 for an overcharge \$25.00 or less;

- (II) up to \$550.00 for an overcharge greater than \$25.00 but less than or equal to \$50.00;
and
 - (III) up to \$1,100.00 for an overcharge greater than \$50.00.
- (c) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$550.00 for each violation:
- (I) rule 6507;
 - (II) paragraph (a) of rule 6510; or
 - (III) paragraph (e) of rule 6512.
- (d) A violation of rule 6506 may result in the assessment of a civil penalty of up to \$100.00 for each violation.
- (e) Except as provided in paragraph (a) through (d) of this rule, a violation of any provision of Title 40, § 42-3-235.5, C.R.S., pertaining to towing carriers, or any provision of rules 6500 through 6513, may result in the assessment of a civil penalty of up to \$275.00 for each violation.
- (f) Civil penalty assessments are in addition to any other penalties provided by law.

6515. - 6599. [Reserved].

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[indicates unaffected, omitted material]