

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0709TO

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

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 13, 2019
Adopted Date: December 11, 2019

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the rules governing towing carriers comprising Rules 6500 through 6514 of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 (Towing Carrier Rules). The Commission has statutory authority to adopt these rules under §§ 40-2-108, 40-10.1-106, and 40-10.1-402, C.R.S.

2. Through this NOPR, the Commission solicits comments from interested persons on the amendments proposed in this Decision and its attachments. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. The Commission also welcomes submission of alternative proposed rules, including both consensus proposals joined by multiple rulemaking participants and individual proposals. Participants are encouraged to provide redlines of any specific proposed rule changes. To ensure that public input is included in the record of this Proceeding, we request that Staff of the Public Utilities Commission (Staff) file into the Proceeding historical data of informal complaints received from the public over the past two years.

3. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a hearing on the proposed rules at **9:00 a.m. on February 24, 2020**. Written comments may be filed at any time in this Proceeding. Initial written comments are requested by **January 21, 2020**, so that they may be considered at the hearing.

4. The proposed rules are available for review as Attachment A (redline) and Attachment B (clean) to this Decision through the Commission's Electronic Filings website (Proceeding No. 19R-0709TO) at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

B. Background

5. We open this rulemaking following consideration of a petition for rulemaking filed by members of the towing industry and a stakeholder outreach proceeding led by Staff. These initial proceedings are discussed below.

6. On January 16, 2019, the Towing and Recovery Professionals of Colorado (TRPC) filed a Petition for Rulemaking requesting we open a rulemaking to amend the Towing Carrier Rules (Petition). TRPC stated a rulemaking was needed to make the rules more comprehensible, reduce differences in understanding between towing carriers and Staff, and reduce transaction costs. TRPC contended the existing towing and storage rates were based on outdated 2014 data; TRPC therefore requested we consider a rate increase. TRPC contended many of the civil penalties assessed by Staff result from differences in interpreting the rules; TRPC therefore proposed revisions for clarity and regulatory certainty. TRPC also suggested that we consider implementing Commission-sponsored training and examination for new towing carriers and increased use of Commission-prescribed forms, to help prevent violations from occurring in the first place.

7. Through Decision No. C19-0110-I, issued January 29, 2019, in Proceeding No. 19M-0049TR, we accepted the Petition and invited comment from interested persons on whether to open a rulemaking. After considering the comments received, we denied the Petition through Decision No. C19-0267, issued March 25, 2019, in Proceeding No. 19M-0049TR. We concluded further stakeholder engagement was a necessary precursor to our decision whether to open a rulemaking and to help us identify which rules to consider amending.

8. By Decision No. C19-0268, issued March 28, 2019, in Proceeding No. 19M-0140TO, we opened a miscellaneous repository proceeding to solicit stakeholder input on potential rule changes (Stakeholder Outreach Proceeding). We directed Staff to lead this proceeding and solicit input in the following areas: (1) whether to re-open the rules so soon after the last rulemaking; (2) whether and how to address the concerns underlying the recommendation in our sunset review that the legislature prohibit the Commission from promulgating rules allowing property owners to grant agency to towing carriers; and (3) which rules require clarification in their application versus an actual language change. We directed Staff to present a summary of the comments received and a recommendation whether to initiate a rulemaking.

9. At our August 14, 2019, Commissioners' Weekly Meeting, Staff provided a summary of the Stakeholder Outreach Proceeding. Staff reported it received comments from several stakeholders and held a workshop on May 23, 2019, attended by approximately 20 members of the towing industry. Staff reported consensus was reached regarding: notification to law enforcement of a tow, owner refusal to sign for receipt of a vehicle, and types of payment. Staff reported partial consensus had been reached regarding: inventory of vehicle contents, templates, and rate changes. Staff reported no consensus was reached regarding: training, tow agreements, tow authorization, signage, release of personal effects, and civil penalty assessments.

10. Through Decision No. C19-0695, issued August 20, 2019, in Proceeding No. 19M-0140TO, we closed the Stakeholder Outreach Proceeding and directed Staff to prepare a Notice of Proposed Rulemaking. We asked Staff to include a rule-by-rule analysis of the proposed changes and to identify questions for further input from rulemaking participants. At our December 11, 2019, Commissioners' Weekly Meeting, we considered Staff's proposed NOPR and redline of rule changes, resulting in this Decision.

C. Discussion of Proposed Amendments

11. In the discussion below we identify and explain the proposed rule changes, provide analysis of these changes, and as applicable, pose questions to rulemaking participants. The proposed changes are shown in Attachment A (redline) and Attachment B (clean) to this Decision.

1. Rule 6500. Applicability of Towing Carrier Rules

12. In Rule 6500(a), we propose to add further description to where these Towing Carrier Rules apply. In addition, in Rule 6500(c), we propose to strike the outdated reference to rates established by written agreement prior to January 1, 2018. As of January 1, 2018, the rates established in these rules set the maximum permissible rates. A written agreement between a towing carrier and a property owner may set rates lower than, but not higher than, these rates.

2. Rule 6501. Definitions

13. We propose the following revisions and defined terms for use in these rules.

Rule 6501(a) “abandoned motor vehicle”

14. We propose additional language in this definition to clarify that different statutory provisions apply to vehicles abandoned on public versus private property.

Rule 6501(b) “address”

15. We propose this new definition to clarify that a full “address” includes and requires the physical location including the street name, number, city, state, and zip code.

Rule 6501(d) “authorized agent of the owner of the motor vehicle”

16. We propose to clarify in this definition that this defined term refers to the authorized agent of the owner of the motor vehicle. We update references throughout the rules to conform to this change.

Rule 6501(f) “business hours”

17. This definition establishes business hours as 8:00 a.m. to 5:00 p.m., Monday to Friday, excluding legal holidays, and any additional hours and days the towing carrier may designate as business hours. We propose language to make clear these are the minimum business hours a towing carrier must offer. Where a towing carrier advertises hours exceeding this minimum, the towing carrier’s business hours will include those additional advertised hours.

Rule 6501(g) “completion of the tow”

18. We propose this new definition in order to use a consistent defined term throughout the rules to refer to when a tow is completed. Throughout the rules, we replace existing descriptions with this new defined term.

Rule 6501(j) “law enforcement-ordered tow”

19. We propose this new definition in order to use a consistent defined term throughout the rules to refer to a tow that is ordered by a law enforcement officer. This definition also clarifies that a tow is not considered a law enforcement-ordered tow if the vehicle owner has the ability or opportunity to terminate the tow and contact a towing carrier of his or her choice. Throughout the rules, we replace existing descriptions with this new defined term.

Rule 6501(l) “name”

20. We propose this new definition to clarify that a “name” includes a person’s first and last name and must be printed in legible words. This definition applies whenever “name” is used in the rules.

Rule 6501(m) “nonconsensual tow”

21. We propose to modify this definition to clarify that a nonconsensual tow includes the transportation of a trailer as well as of the towed vehicle.

Rule 6501(s) “signature”

22. We propose this new definition to clarify that a “signature” means the name of the person written in his or her own handwriting or entered by that person electronically. We recognize that use of electronic records is increasing thus we propose to update this rule accordingly.

Rule 6501(t) “tow agreement”

23. We propose this new definition in order to use a consistent defined term throughout the rules to refer to the agreement entered into between a towing carrier and a property owner to perform nonconsensual tows on that private property. Throughout the rules, we replace existing descriptions with this new defined term.

Rule 6501(aa) “VIN”

24. We add this definition to simplify references to a vehicle’s identification number.

3. Rule 6503. Towing Carrier Permit Application

25. This rule establishes basic requirements for obtaining a towing carrier permit.

26. In its Petition, TRPC suggested the Commission consider providing Commission-sponsored training and examination for new applicants seeking a towing carrier permit. TRPC suggested applicants would benefit from receiving training directly from the same Commission staff tasked with enforcing the Towing Carrier Rules. Mr. Joel Perri, owner of Towing Done Right, supported this proposal in his comments supporting the Petition.

27. This proposal was also discussed at the workshop in the Stakeholder Outreach Proceeding. Participants supported the concept of Commission training and examination. They suggested the Commission could contract with a third-party, such as “WreckMasters,” if Staff lacked the personnel to provide the training directly. Participants also requested the Commission

offer guidance, like a “Frequently Asked Questions,” on its website outlining the issues covered in the training.

28. In comments filed after the workshop, TRPC reiterated that it believed Staff has the resources to develop this training, but would need to prioritize it. TRPC urged that investing this time would reduce the number of violations and thus protect consumers and save enforcement time. TRPC also commented in support of increased use of templates and suggested use of a completed template should constitute a safe harbor.

29. In comments filed after the workshop, Staff responded that current personnel and budgetary restrictions prevent a Commission-sponsored training and prevent the Commission from being able to hire third-party to provide the training. Staff agreed, however, that third-party training would be a viable option should funding become available. Staff noted some participants at the workshop proposed raising funds by increasing the initial permit fee to \$1,500. As to templates, Staff supported developing a standardized model for tow agreements and tow record/invoices as a tool for towing carriers to ensure they are complying with the requirements in the rules.

30. We do not propose any rules in this NOPR establishing Commission-sponsored training and examination for new applicants. We agree there would be value to up-front training for new applicants; however, we are cognizant of the limited personnel and financial resources of Staff. We encourage participants to continue to engage on this issue with the ALJ and to propose ideas and solutions they may have regarding how to provide more training and resources.

4. Rule 6504. Criminal History Checks

31. We propose to remove existing Rule 6504(b)(II)(B), which established a four year time frame for class 4, 5, and 6 felonies. We consolidate this with subparagraph (A) and apply a

uniform five year time frame. This change is intended to conform to the statutory requirement in § 40-10.1-401(2), C.R.S., which establishes a five year time frame for all felonies.

5. Rule 6505. Driver Licensing Requirement

32. We propose adding this new Rule 6505 to prohibit a towing carrier from permitting a tow truck driver or operator to tow vehicles or operate a tow truck without a valid driver's license. This is a safety concern that we propose to codify in rule to ensure towing carriers provide for safe operation by their employees.

6. Rule 6506. Equipment and Accessories

33. This rule establishes minimum equipment and access requirements for tow trucks. We propose only minor edits to this rule to properly refer to the defined term "tow truck" instead of the term "towing vehicle" and to make other edits for readability and consistency.

7. Rule 6507. Storage Facilities

34. This rule outlines the requirements for storage facilities including required notice to law enforcement, disclosure for abandoned motor vehicles, signage, lighting, and safety and security. We propose the following revisions.

Rule 6507(a). Disclosure of facility location

35. First, we propose to change the triggering event that starts the 30-minute period within which to notify law enforcement of the location of the storage facility to which a vehicle is being towed. We replace the existing event, when the towing carrier "has possession" of the vehicle, with when the towing carrier "moves" the vehicle. We propose that "moving" the vehicle is a clearer and more descriptive triggering event than "having possession" of the vehicle.

36. Second, we propose to add a safe harbor specifying that notice to law enforcement will not be considered late for purposes of this rule if the towing carrier makes two or more

documented attempts to notify the law enforcement agency but is unsuccessful for reasons beyond the towing carrier's control. This is responsive to the concern raised in TRPC's Petition that towing carriers are often placed on lengthy holds by law enforcement after placing their required call. TRPC explained this often results in the call not being completed until after the 30-minute period. Participants at the workshop in the Stakeholder Outreach Proceeding again raised this concern. Participants indicated they would agree to provide phone records during investigations to verify the call had been timely initiated. In comments filed after the workshop, Staff emphasized the 30-minute time period is required by statute, § 42-4-2103(2), C.R.S., not rule. Staff did allow the rule could be revised for clarity and to establish evidence of a timely call.

37. In this NOPR, we propose a safe harbor to ensure towing carriers are not fined under our rules for circumstances beyond their control. We propose language in this rule stating no violation of the rule occurs so long as at least two attempts to contact law enforcement are made within the 30-minute period. To be clear, the towing carrier must continue to attempt to register the tow until successful in order to satisfy its obligations under our rules and applicable law.

Rule 6507(f). Carrier responsibility

38. We propose in this rule to add a requirement that, upon request, the towing carrier must provide to the person to whom the vehicle is being released evidence of the towing carriers' commercial liability insurance coverage including cargo liability coverage, garage keeper's liability coverage (if applicable), and motor vehicle liability coverage.

8. Rule 6508. Authorization for Towing of Motor Vehicles

39. This rule sets forth the requirements for proper authorization of a tow. In addition to minor non-substantive changes, we propose the following revisions.

Rule 6508(a). Towing carrier acting as authorized agent for the property owner

40. This Rule establishes the minimum requirements for a tow agreement between a towing carrier and a property owner to perform nonconsensual tows on the private property.

41. In its Petition, TRPC asked that the Commission consider through rulemaking the concerns raised in our sunset review regarding this type of agency agreement.¹ Both the Colorado Apartment Association and the Boulder Area Rental House Associating filed comments explaining the ability for property owners to contract with towing carriers as agents is a longstanding necessity and urging that we consider rules to ensure this practice can continue. In the Stakeholder Outreach Proceeding, the Colorado Apartment Association again filed its comments supporting this request. We also received comments in the Stakeholder Outreach Proceeding from Mr. Christopher Cunningham, Esq., on behalf of his client multi-family property owners. Mr. Cunningham's comments, originally testimony to the legislature regarding our sunset review, contend these agreements benefit tenants by ensuring parking lots are reserved for tenants, including disabled tenants, and avoiding higher rent and parking costs.

42. We propose to continue to allow this type of agency. We consider both the benefits claimed by stakeholders and the potential that, were we to prohibit this delegation to towing carriers, property owners would resort to use of unregulated third-parties to authorize tows, which could have unforeseen negative consequences. To address the concerns in our sunset review, we propose revisions and additions to ensure this agency is properly delegated and exercised.

¹ See Recommendation 9 by the Colorado Office of Policy, Research, and Regulatory Reform to the Office of Legislative Legal Services in the Commission's 2018 sunset review (recommending the legislature prohibit the Commission from promulgating rules allowing property owners to grant agency to towing companies).

43. In Rule 6508(a)(I), we propose language specifying only the towing carrier named in the tow agreement may perform tows under that tow agreement. We also propose new language expressly prohibiting assignment of a tow agreement to another towing carrier.

44. In Rule 6508(a)(I)(F), we propose language prohibiting automatic renewal of a tow agreement. Our intent is to clarify that, upon expiration of the end date of the tow agreement, the towing carrier must re-execute the tow agreement with the property owner with a new term length. We recognize this is contrary to the request in TRPC's Petition to eliminate the requirement for an end date. Participants in the workshop in the Stakeholder Outreach Proceeding also requested eliminating the end date. They explained that requiring an end date requires larger towing carriers to need to hire staff solely to handle the constant review and renewal of tow agreements. Participants suggested that allowing automatic renewal of tow agreements would save time and money for all parties involved. On this point, we must balance the burden we place on towing carriers of having to re-execute agreements and the interests of property and vehicle owners. Our concern is that open-ended tow agreements could lead to confusion, including the potential for property owners to enter into multiple, conflicting tow agreements with different carriers. This rule does not limit the term of the tow agreement; thus a towing carrier is free to negotiate as long of a term as the property owner is willing to accept, *e.g.*, three years. We encourage participants to continue to engage on this issue if they have concerns and file comments with any further proposals.

45. In Rule 6508(a)(I)(J), we propose to add the requirement that the tow agreement include the name of each specific tow truck driver who is authorized to perform tows under the tow agreement.

46. In Rule 6508(a)(I)(K), we propose to add, per the request in TRPC's Petition, the requirement that the tow agreement list the reasons for which vehicles can be towed from the property. TRPC reasoned that requiring this specificity would provide greater certainty for towing carriers in the event a vehicle owner complains a vehicle was towed improperly. This specificity would also help ensure the tow agreement is adequately prescriptive in its delegation of agency to towing carriers.

47. In Rule 6508(a)(IV), we propose a new provision that expressly allows terms of a tow agreement to be amended through addendum, rather than re-negotiation and re-execution of the entire tow agreement. Our intent is that allowing amendment through addendum will alleviate some of the burden resulting from our requirement that tow agreements have a fixed end date.

48. Finally, throughout this rule, we propose to strike usage of "contract" and replace it with the new defined term "tow agreement."

Rule 6508(b). Authorization to provide nonconsensual tow

49. In its Petition, TRPC requested that we modify Rule 6508(b)(III) (subparagraph VI in the existing rules) to allow the real-time signature of the property owner at the site of a tow to render the tow authorized, regardless of any missing information on the tow record/invoice or any signage concerns. Participants at the workshop in the Stakeholder Outreach Proceeding agreed with this proposal. They contended Staff could be overly-exacting when reviewing authorization documents. Participants suggested it was unreasonable for a clerical mistake to result in refund of all charges and to potentially lead to a civil penalty assessed for an unauthorized tow, even though the tow may have been legitimate.

50. We do not propose any rule changes implementing this proposal. Although we agree a property owner signing for a tow evidences the property owner intended to authorize that

tow, we must also consider the importance of logging the basic information required in a tow record/invoice and the absolute requirement that a vehicle owner is notified of the enforced parking regulations at the time the vehicle is parked.

51. In Rule 6508(b)(III) (subparagraph VI in the existing rules), we propose to add the requirement that authorization from the property owner must include the vehicle's license plate number *and* VIN, if available. The existing rule allowed provision of either the license plate number or VIN. We propose that this additional information is appropriate for tracking the vehicle.

52. In Rule 6508(b)(III) (subparagraph VI in the existing rules), we propose to add new paragraphs (E) and (F). Paragraph (E) allows a towing carrier to relocate a vehicle to another location at the order of law enforcement after the location has been provided in writing by a law enforcement officer and has been documented on the tow record/invoice by the towing carrier. Paragraph (F) codifies the requirement that a tow truck driver shall not commence a tow until the vehicle has been secured in accordance with applicable law.

Rule 6508(c). Expired vehicle registration

53. We propose to add this new paragraph (d) to specify a towing carrier may not perform a nonconsensual tow for reason of expired vehicle registration unless the registration has expired pursuant to § 42-3-114, C.R.S.

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

54. This rule outlines the requirements for the tow record/invoice, charge notification, and warning signage. In addition to non-substantive changes, we propose the following revisions.

55. In Rule 6509(a)(IV), we propose to require that the tow record/invoice also contain the date and time of commencement of the tow, the date and time of completion of the tow, and

the date and time notice was provided to law enforcement. We propose this basic information will be helpful in tracking the tow and determining whether rules and procedures were followed.

56. In Rule 6509(a)(VIII), we propose to require that the tow record/invoice indicate whether the vehicle was locked or unlocked when the tow truck hooked up to it. We propose this change to support the existing requirement in Rule 6509(a)(IX) (paragraph VIII in the existing rules) to inventory the contents of an unlocked towed vehicle.

57. In its Petition, TRPC requested that we eliminate Rule 6508(a)(IX) (paragraph VIII in the existing rules) requiring inventory of the contents an unlocked towed vehicle. TRPC contended this was too onerous, particularly since searching often occurs in the dark, interior lights do not always function, and items may be unseen under seats. TRPC noted it was also difficult for Staff to verify whether a vehicle was unlocked. Participants at the workshop in the Stakeholder Outreach Proceeding supported eliminating this requirement. Despite these practical considerations raised by TRPC and other participants, we propose that this requirement is a necessary consumer protection. We therefore propose in this NOPR to retain this requirement.

58. In Rule 6509(a)(XIII) (paragraph XII in the existing rules), we propose to allow a towing carrier to write “refused to sign” on the tow record/invoice if vehicle owner refuses to sign for the vehicle. This is responsive to the concern raised in TRPC’s Petition, and reiterated by participants at the workshop in the Stakeholder Outreach Proceeding, that owners often are upset and refuse to sign any paperwork. We propose this change to ensure that towing carriers are not assessed a penalty when an owner refuses to cooperate.

59. In Rule 6509(a)(XV), we propose a new requirement that the tow record/invoice include the case report number or other identifiable entry provided by the law enforcement agency to which the tow was reported.

60. In Rule 6509(c), we propose a new requirement that certain portions of the tow record/invoice must be filled out before the tow truck leaves the location of the tow origination. Our intent is to ensure this basic identifying information is captured prior to the towed vehicle moving from its original location.

10. Rule 6510. Disclosure of Rates and Charges

61. This Rule sets forth requirements for disclosure to the vehicle owner or operator of all rates and charges. We propose to add language specifying that rates for law enforcement-ordered tows must be disclosed to the operator prior to commencement of the tow, except where not feasible for reasons including, but not limited to, arrest, incapacitation, or order of a law enforcement officer.

11. Rule 6511. Rates and Charges

62. This Rule establishes the maximum rates and charges that may be assessed by a towing carrier.

63. In Rule 6511(a), we propose to change the point at which a towing carrier may assess a drop charge. We propose that a drop charge may be assessed only after the vehicle has been hooked up to the tow truck. The existing rule allows a drop charge to be assessed if the tow truck is either backed up in alignment with the vehicle or tow equipment has come into contact with the vehicle. We propose this change as an effort to strike a balance between our interest in ensuring that towing carriers can recover the cost of their time spent preparing for a tow and our interest in protecting consumers from excessive charges.

64. In Rule 6511(a)(I)(E), we propose language clarifying the maximum drop charge amounts set by the Commission or municipal code are enforced by the Commission.

65. In Rule 6511(a)(IV), we retain the requirement that no charges may be assessed if the towing carrier fails to advise the vehicle owner or operator of the acceptable forms of payment. This is contrary to the request in TRPC's Petition to eliminate this requirement. TRPC reasoned that requiring a full refund in this circumstance was too susceptible to dispute. TRPC reasoned that Rule 6512(a) already requires towing carriers to accept specific forms of payment. We propose that retaining this rule helps ensure that vehicle owners and operators are timely informed of the available payment options.

66. In Rule 6511(e)(I)(D), we propose a new provision clarifying the 24-hour period for calculating storage charges commences when the vehicle enters the storage facility. We specify the second day of storage thus begins 24 hours after the vehicle enters the storage facility.

67. In Rule 6511(e)(III), we removed the law enforcement hold exception to cap the storage fees at 120 days.

68. In Rule 6511(h)(I), we propose language clarifying that, for notification purposes, any vehicle in possession of the towing carrier, including vehicles incidental to the tow (for example, loaded on a trailer) must comply with the notification requirements in statute.

69. In Rule 6511(h)(II), we propose language clarifying that the failure to provide notice as required by statute results in full refund of storage fees along with any other fees associated with the tow or storage of the vehicle.

70. In Rule 6511(i), we propose language clarifying that a vehicle located in or on a trailer is considered in combination as a single unit with the towed vehicle.

Request to Consider Rate Increase

71. In its Petition, TRPC requested that the Commission increase rates for towing and storage. TRPC proposed that we allow rates to "float" with the Consumer Price Index. TRPC

suggested rates could be posted on the Commission's website, as most recently adjusted per this selected index. TRPC reasoned there was too much regulatory lag between rulemakings to maintain rates at appropriate levels for towing carriers. In his comments supporting the Petition, Mr. Joel Perri, owner of Towing Done Right, supported this proposal. He commented that a towing rate increase was needed to account for the realities in the market, and a storage rate increase was needed due to rising property values resulting from dispensaries, apartments, and other large users utilizing the available industrial properties. Mr. Troy Porras, owner of Wyatts Towing, Lone Star Towing, Klaus Towing, and Aaliyah's Towing and Recovery, also agreed a rate increase was needed to account for the changing economy in Colorado.

72. In responses filed to the Petition, some commenters objected to re-opening rates so soon after the last rulemaking. Most significantly, the Colorado Motor Carriers Association commented that TRPC's proposal would change rates substantially from the rates and process agreed to by the Towing Task Force in the previous rulemaking and could have substantial impacts on the association's member companies and other consumers.

73. Participants at the workshop in the Stakeholder Outreach Proceeding supported the proposal to increase rates and to tie them to an index, such as the Consumer Price Index. Participants pointed to the current fuel surcharge provided for in the Towing Carrier Rules as an example of how rates could be adjusted between rulemakings to account for market changes.

74. In comments filed after the workshop, Staff responded that any change to the existing rates would first require a rule change. Staff stated that if the Commission were to consider this proposal, the Commission would have to carefully review additional economic factors before any final determination could be made whether to allow this type of automatic adjustment.

75. The existing rates in the Towing Carrier Rules were established by Decision No. R17-0273, issued April 11, 2017, in Proceeding No. 16R-0095TO. By Decision No. R17-0273, the Commission adopted statewide maximum rates for nonconsensual recovery, towing, and storage. These rates comprised a fixed fee for tows from private property (*i.e.*, private property impounds) and an hourly rate for law enforcement-ordered tows and recovery. In each case, rates are set at increasing levels corresponding with the weight of the towed vehicle. The rulemaking followed a legislative change in 2014. House Bill 14-1031, codified at §§ 42-4-1809(2)(a) and 40-10.1-403 C.R.S., that expanded the Commission's rate regulation to all towed vehicles, regardless of weight, and established a statutory towing Task Force to make recommendations to the Commission about maximum rates for nonconsensual recovery, towing, and storage.

76. In Proceeding No. 16R-0095TO, the Task Force made rate recommendations based on a study performed of the towing industry in Utah, as adapted by the Task Force to identify reasonable costs for an average-sized Colorado towing carrier. For private property impounds, the Task Force recommended four vehicle-weight rate tiers with maximum hourly rates for each tier. For law enforcement-ordered tows, the Task Force recommended five vehicle-weight rate tiers, again with maximum hourly rates for each tier based on the Task Force's cost model. In Decision No. R17-0273, the ALJ identified a number of problems with the recovery and hours assumptions in the Task Force's cost model. These problems included that the components of the model's towing rates did not actually recover many of the costs the Task Force identified, the model assumed an average tow lasts one hour, the model was based on one scenario and thus made several overarching assumptions (*e.g.*, all classes operate full-time and no overhead costs are allocated to other lines of business such as automotive repair or consensual towing), and the model did not include all sources of revenues and costs. In Decision No. R17-0273, after remand and further and

analysis of the Task Force's cost model, the ALJ ultimately concluded that, despite his many concerns with the model, adoption of the recommended rates strikes a reasonable balance in the towing carrier's appropriate recovery of costs versus the potential for abuse due to the inability to objectively determine or verify billing elements. The ALJ noted the recommended rates were supported by both Task Force members and Staff and there was a need to adopt rates sooner rather than later due to the lack of any governing regulation for the larger vehicle tows.

77. Through this NOPR, we direct the ALJ to engage with participants on the issue of whether and how to adjust rates at this time, mindful of, and learning from, the many challenges and difficulties that arose in the last rulemaking. To this end, we direct the ALJ to request the Task Force reconvene and provide recommendations in this rulemaking regarding maximum rates for recovery, towing, and storage consistent with § 40-10.1-403, C.R.S.² As in the last rulemaking, the Task Force's recommendations will be accepted as comments in this non-adjudicatory proceeding and Task Force members will not be subject to cross-examination or discovery.

78. We identify several issues from the last rulemaking to be considered anew by the ALJ, Task Force, and rulemaking participants. These include economies of scale of a larger towing carrier versus to a smaller carrier, allocation of costs among regulated and non-regulated activities, and cost differentials between living and operating a business in rural versus urban areas and in the more expensive mountain areas of this state. We expect that calculating an appropriate differential for these factors would require direct and meaningful data from the towing carriers. We note the ALJ in the last rulemaking concluded that no clear path had emerged to efficiently

² Through this statute, the Colorado Legislature created the towing Task Force as an advisory body with the duty and power to make recommendations to the Commission about maximum rates for nonconsensual recovery, towing, and storage. The Task Force consists of nine members appointed by the Governor representing Staff; the Colorado State Patrol; a statewide towing association; towing carriers who are not members of an association; an association of automobile owners; insurance companies; an association of motor carriers; law enforcement; and a property owner.

obtain verifiably consistent information from towing carriers for analysis. He indicated that the procedures considered to require filing of financial information were met with broad opposition. As part of his decision to adopt the recommended maximum rates, the ALJ concluded there was no standard or process to consider a more direct cost analysis or a verifiable approach to setting maximum nonconsensual tow rates. He cautioned that more direct modeling would require significant data reporting and verification processes that could ultimately prove to be impossible. Considering these issues from the last rulemaking, we ask the ALJ, Task Force, and rulemaking participants to consider how the Commission may best approach such data needs. Without significant data and verification, it may be that analysis the market's performance, *i.e.*, whether towing carriers are staying in business and whether property owners are reporting a shortage in supply, provides a more attainable measure of rate adjustment.

79. We note that, at this early stage, the Commission has significant initial policy and legal concerns with TRPC's proposal to adopt a recurring percentage rate adjustment each year based on an index. Typically, rates are set after considering all the costs and revenues applicable to those rates. Allowing for an automatic rate adjustment without that comprehensive review could result in piecemeal ratemaking and provide for a rate increase when, in fact, increased costs were offset by revenues or savings elsewhere. An alternative may be to provide a one-time percentage adjustment in this rulemaking, after considering evidence of the relevant indexes and current costs and revenues.

80. With these considerations, we request that the ALJ develop a record on the issue of adjustments to the existing recovery, towing, and storage rates and make a recommendation to the Commission whether, as a threshold matter, it is appropriate and necessary at this time to adjust these existing rates. If the ALJ determines that adjustments are warranted, we ask the ALJ to

further recommend what metric or model to use to calculate the appropriate rates and what level of adjustment is appropriate at this time.

12. Rule 6512. Release of Motor Vehicle and Personal Property

81. Rule 6512 governs the release of a vehicle and the private property within it. We propose language specifying that a towing carrier may charge for removal of personal property not attached to the towed vehicle. We also propose revisions to the existing provisions to clarify that certain critical personal items must be released without payment or charge upon demand during business hours and, during the first 24 hours after commencement of the tow, within one hour's notice outside of business hours.

82. In its Petition, TRPC objected to the existing requirement that towing carriers release certain items outside of business hours, particularly during nighttime hours. Participants at the workshop in the Stakeholder Outreach Proceeding agreed this obligation was burdensome. Participants requested we consider allowing towing carriers to at least assess a fee for release of property after business hours. In comments filed after the workshop, TRPC responded that it agrees towing carriers should be required to release crucial items, such as phones and medication, at the site of the tow and at the storage facility, without charge during daytime hours, for example 7 a.m. to 8 p.m., but not during nighttime hours. TRPC commented that towing carriers have families and other obligations and should be compensated for off-hours work. In its comments filed after the workshop, Staff responded that the critical need persons may have for these items should outweigh the burden on towing carriers of having to retrieve them during nighttime hours.

83. At this point, we agree with Staff that the potential critical need persons may have for these items outweighs the practical considerations raised by commenters. Our concern is that allowing a fee for retrieval of these items may prohibit a person who lacks the resources to pay

that fee from retrieving a much needed item. The requirement to release items outside of business hours is only for the first 24 hours after commencement of the tow. We propose that this appropriately balances the potential urgent need a person may have for one of these items with the financial and practical considerations raised by TRPC and other participants requiring a towing carrier to release these items after hours.

13. Rule 6513. Notice

84. Proposed Rule 6513 is a new rule containing the notice requirements previously contained within Rule 6508. In addition to moving these provisions to this standalone rule, we propose clarifications and new provisions to more clearly identify the notice requirements.

85. In its Petition, TRPC objected to the requirements in existing Rule 6508(b)(III)-(V) being contained within the same rule as authorization requirements. TRPC contended a tow could be properly authorized despite inadequate notice. Responding to this concern, we propose to strike the provisions in Rule 6508(b)(III)-(V) and move them to new Rule 6513. To be clear, however, the provision in Rule 6511(g) requiring refund of all charges for noncompliance still requires refund for noncompliance with the notice requirements.

86. In its Petition, TRPC objected that Staff has in past practice asserted that a posted sign is not “conspicuous” unless it is facing outward at the entrance to the private property. Per TRPC’s suggestion, we propose to codify this expectation in Rule 6513(d)(VIII). We propose an outward facing sign is appropriate as a driver is most likely to be attentive to signage when entering the private property.

87. In its Petition, TRPC raised concern that posted signs are often removed, defaced, or destroyed by upset vehicle owners. TRPC proposed allowing a safe harbor where, if a towing carrier can demonstrate signs were posted within the last six months, there is a presumption the

signs remained there at the time of the tow, unless proven otherwise. Participants at the workshop in the Stakeholder Outreach Proceeding supported this concept and suggested pictures of signage prior to the tow should be accepted as rebuttable proof. In comments filed after the workshop, Staff opposed this proposed safe harbor. Staff reasoned notification to the vehicle owner must be given notice prior to a nonconsensual tow, whether by ticket placed on the car or through signage.

88. In this NOPR, we do not propose any rules providing for this requested safe harbor. We must balance the concerns of sign tampering raised by TRPC and other participants with the need for vehicle owners and operators to be adequately notified of the enforced parking restrictions. At this point, we conclude that the need for notice to vehicle owners through properly posted signs is too important to allow for any sort of safe harbor. We encourage participants to continue to engage on this issue and to submit any further comments or proposed rule changes to help resolve these competing concerns.

14. Rule 6514. Towing Violations and Civil Penalty Assessments

89. In its Petition, TRPC proposed that we limit the time period for which a civil penalty may be assessed for a particular violation. TRPC suggested a one-month limit, for certain violations, as a compromise to allow Staff to impose penalties but without subjecting towing carriers to numerous, financially stressing, penalties for long-past violations. In comments filed after the workshop in the Stakeholder Outreach Proceeding, TRPC again suggested that Staff has in practice reached too far back when issuing civil penalties, including for tows where no complaints were filed. TRPC stated those cases usually involved an alleged violation for omitting information or a clerical mistake on the tow record/invoice. TRPC contended these far-reaching violations can nearly put small towing carriers out of business. In its comments filed after the

workshop, Staff opposed placing any kind of restrictions, in rule or practice, that would limit its ability investigate a potential rule violation.

90. We do not propose in this NOPR any time restrictions responsive to these concerns. The requirements set forth in our rules are designed to protect consumers, even where no complaint is filed. Our concern is that limiting the reach of Staff to enforce past violations could allow a pattern of harmful violation to avoid enforcement and remedy. We also note that the Commission has only a limited number of enforcement staff thus a backlog is inevitable.

D. Findings and Conclusions

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

92. Throughout this Decision, we have endeavored to explain which suggestions from stakeholders we have accepted for a proposed rule change in this NOPR, and to provide our reasoning for not accepting other suggestions at this time. The Commission's intent in these rules is to strike an appropriate balance between imposing obligations on towing carriers and providing service quality and consumer protections for the public. This rulemaking is intended to lead to further engagement with stakeholders on proposed rule changes with the ALJ and, if warranted, with the Commission following the ALJ's recommended decision. The Commission therefore encourages continued robust participation from stakeholders including providing written and oral comments and with redlines of specific proposed rule changes.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the December 25, 2019 edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to the rules governing towing carriers, Rules 6500 through 6514 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, as described in this Decision and its attachments.

3. The Commission prefers and encourages interested persons to file comments in this Proceeding (19R-0709TO) through the Commission's Electronic Filing System at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0709TO.

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

5. The hearing on the proposed rules and related matters shall be held before an ALJ as follows:

DATE: February 24, 2020
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

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

7. Written comments may be filed at any time in this Proceeding. Initial written comments are requested by January 21, 2020, so that they may be considered at the hearing scheduled for February 24, 2020.

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

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 11, 2019**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners

ATTEST: A TRUE COPY

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

Doug Dean,
Director