

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0581TO

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

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 1, 2021

Adopted Date: December 1, 2021

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I. BY THE COMMISSION**A. Statement**

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider narrow and clarifying amendments to Rule 6511 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The Commission has statutory authority to adopt these rules under §§ 40-2-108 and 40-10.1-106, C.R.S.

2. The proposed revisions to the language in Rule 6511 retain the same substantive rule amendments adopted in prior rulemaking Proceeding Nos. 19R-0709TO and 21R-0180TO. The limited purpose of this rulemaking is to revise the language of Rule 6511 to more clearly identify, in rule, the maximum rates that towing carriers may assess for their services, as subject to an annual inflation adjustment. These technical edits to the rule language are made solely for increased transparency, so that towing carriers and the general public can more readily identify the adopted rates.

3. We also propose that the effective date of the annual inflation adjustment be moved from January 31 of each year to a later date, for example, *March 15* of each year, to accommodate the fact that the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index (CPI) for Denver-Aurora-Lakewood is released annually near the end of February. The current rules use a January 31 effective date for annual inflation adjustments, which could potentially require the use of a projected or unofficial Denver-Aurora-Lakewood CPI instead of the final figure. Using a later effective date will allow for more certainty regarding rates for consumers and a simpler regulatory regime for towing carriers.

4. The proposed amendments to Rule 6511 are available for review as Attachment A (legislative or redline) and Attachment B (clean) to this Decision, accessible through the Commission's Electronic Filings website (by searching Proceeding No. 21R-0581TO) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0581TO.

5. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a remote hearing on the proposed rules at **9:00 a.m. on January 14, 2022**. The Commission requests that interested persons file any written comments by January 7, 2022, so that the comments can be considered at the rulemaking hearing.

B. Background

1. Rulemaking Proceeding No. 16R-0095TO

6. The existing base rates adopted in the Commission's Towing Carrier Rules, 4 CCR 723-6, were established by Decision No. R17-0273, issued April 11, 2017, in rulemaking Proceeding No. 16R-0095TO.¹ In that Proceeding, 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" or "PPI" tows) and an hourly rate for law enforcement ordered tows and recovery operations. In each case, the rates are set at increasing levels corresponding with the weight of the towed vehicle. The Commission undertook the rulemaking in Proceeding No. 16R-0095TO after a legislative change in 2014. House Bill 14-1031, codified at §§ 42-4-1809(2)(a) and 40-10.1-403, C.R.S., expanded the

¹ Proceeding No. 16R-0095TO did not alter the rates for storage for nonconsensual tows and for release of a towed vehicle outside of the towing carrier's business hours. Those rates were last updated in Proceeding No. 08R-478TR, effective July 30, 2009.

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.

7. In Proceeding No. 16R-0095TO, the Towing Task Force made rate recommendations based on a study performed of the towing industry in Utah, as adapted by the Towing Task Force to identify reasonable costs for an average-sized Colorado towing carrier. The ALJ conducting the rulemaking ultimately adopted the recommended rates. *See* Proceeding No. 16R-0095TO, Decision No. R17-0273, issued April 11, 2017 (concluding that 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 element).

2. Adoption of Compound Annual Inflation Adjustment for All Categories of Tow Rates

8. Through prior rulemaking Proceeding Nos. 19R-0709TO and 21R-0180TO, the Commission considered, and subsequently adopted, proposed rule amendments that would apply an annual inflation adjustment to the existing tow rates in the Commission's rules.

a. Rulemaking Proceeding No. 19R-0709TO

9. The Commission opened Proceeding No. 19R-0709TO following consideration of a petition for rulemaking filed by members of the towing industry and a stakeholder outreach proceeding led by Commission Transportation Staff. As relevant here, the Commission indicated that it would consider in the rulemaking, the proposal from the industry to amend Rule 6511 to allow for an annual inflation adjustment for tow rates. *See* Decision No. C19-0994, issued December 13, 2019 (issuing Notice of Proposed Rulemaking); *see id.* ¶¶ 71 through

80 (discussing potential amendment to Rule 6511). The industry raised the concern that there was too much regulatory lag between rulemaking proceedings to maintain rates commensurate with their steadily rising costs.

10. Through Proceeding No. 19R-0709TO, the Commission developed a full record concerning this request by the industry. The ALJ conducting the rulemaking ultimately concluded that a “a rate that is fair to the tow operators but also uniform to prevent gouging of a captive customer is vital.” Decision No. R20-0688 issued October 1, 2020, ¶ 136. The ALJ found that the industry’s proposal to tie rates to the CPI “achieves these goals” and therefore should be adopted. *Id.* The rules adopted in Proceeding No. 19R-0709TO became effective February 14, 2021.

b. Rulemaking Proceeding No. 21R-0180TO

11. Soon after concluding Proceeding No. 19R-0709TO, the Commission opened Proceeding No. 21R-0180TO to consider a renewed request from the stakeholder group Towing and Recovery Professionals of Colorado that the Commission further amend Rule 6511 to apply an annual inflation adjustment to all categories of tow rates, not just the rates for PPI tows, as was adopted in Proceeding No. 19R-0709TO. *See* Decision No. C21-0286, issued May 14, 2021 (issuing Notice of Proposed Rulemaking).

12. Through Proceeding No. 21R-0180TO, the Commission developed a full record concerning this further request by the industry. The ALJ conducting the rulemaking ultimately concluded that revising Rule 6511 to provide for annual inflation adjustment of all categories of tow rates will provide uniformity in the rules between all types of tows and annual cost increases. Decision No. R21-0450, issued July 26, 2021. The ALJ found the industry’s proposal

should be adopted. *Id.* The rules adopted in Proceeding No. 21R-0180TO became effective on October 30, 2021.

C. Discussion of Proposed Amendments

13. The Commission opens this additional rulemaking for the limited purpose of revising the language in Rule 6511 to identify more clearly, in rule, the maximum rates and charges that towing carriers may assess for their services and to set a more appropriate effective date of inflation adjustment. Upon review of the language adopted in prior rulemaking Proceeding Nos. 19R-0709TO and 21R-0180TO, the Commission finds it warranted to amend Rule 6511 to set forth specific rates which serve as the base maximum rates. These changes are made for increased transparency, so that towing carriers and the general public can more readily identify the applicable rates to be assessed for towing services provided in this state.

14. The proposed amendments to Rule 6511 do not change the cost-based rates adopted in prior rulemaking or alter the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO. Instead, the proposed amendments simply provide, in rule, the original cost-based rates adopted in prior rulemaking, as adjusted for annual inflation through the issuance date of this NOPR.

15. Relatedly, the Commission proposes to adjust the effective date of the annual inflation adjustment to better correspond with the date on which the annual percentage change in the Denver-Aurora-Lakewood CPI is released by the United States Bureau of Labor Statistics. Since this figure is typically released at the end of February of each year, it makes more sense for the annual inflation adjustment to be effective *after* that figure is released. The current January 31 date in rates could potentially require the interim use of a projected

Denver-Aurora-Lakewood CPI instead of the final figure. The proposed rules use a March 15 adjustment date.

16. To illustrate the annual inflation adjustments as set forth in the subparts of Rule 6511, consider a hypothetical calculation. Rule 6511(a)(I)(A) establishes a maximum drop charge of \$79.40 for motor vehicles with a GVWR less than or equal to 10,000 pounds. This maximum charge is effective until March 15, 2022, then the charge is adjusted to reflect the 2021 percentage change in the Denver-Aurora-Lakewood CPI. The adjusted charge would then be subject to a subsequent inflation adjustment, following the same standard, effective March 15, 2023. The annual inflation adjustments are compounded annually.

17. The Commission finds the approach set forth in this NOPR the most appropriate and transparent means to provide notice to towing carriers and the general public of the adopted rates for towing services. Going forward, interested persons can calculate the currently effective rates by applying the percentage change in the Denver-Aurora-Lakewood CPI for the immediately preceding year to the rates set forth in these rules (compounded annually). The Denver-Aurora-Lakewood CPI is published each year by the Colorado Department of Local Affairs, currently available at: <https://cdola.colorado.gov/inflation-denver-aurora-lakewood-consumer-price-index>. For further reference by towing carriers and the general public, the Commission will post a notice on its website each year reporting the annual inflation adjustments applicable pursuant to Rule 6511 and the resulting rates by category of tow.

18. Through this NOPR, the Commission proposes the following revisions to the current rule language of Rule 6511:

1. Rule 6511(a). Drop Charge.

19. The Commission proposes to provide, in rule, the currently effective maximum rates for drop charges. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

20. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

2. Rule 6511(b). PPI Tows.

21. The Commission proposes to provide, in rule, the currently effective maximum rates for "private-property impound" or "PPI" tows. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

22. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI,

as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

3. Rule 6511(c). Law Enforcement Ordered Tows and Recovery.

23. The Commission proposes to provide, in rule, the currently effective maximum rates for law enforcement tows and recovery operations. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

24. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

4. Rule 6511(e). Storage.

25. The Commission proposes to provide, in rule, the currently effective maximum rates for storage of towed vehicles. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

26. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting

March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

5. Rule 6511(f). Release Charge.

27. The Commission proposes to provide, in rule, the currently effective maximum rates that a tow carrier may assess for releasing a vehicle from storage outside of the towing carrier's business hours. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

28. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

D. Findings and Conclusions

29. 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.

Considering the limited scope of the proceeding as set forth in the NOPR and the Commission's desire to refine the product of the preceding rulemakings, the Commission requests that interested persons limit their comments to the proposed amendments only. The instant rulemaking is not intended to be construed as an opportunity to reopen contentious issues that have already been resolved in preceding rulemakings.

30. 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.

II. **ORDER**

A. **The Commission Orders That:**

1. This Notice of Proposed Rulemaking, including attachments, shall be filed with the Colorado Secretary of State for publication in the December 25, 2021 edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A remote public hearing on the proposed rules shall be held as follows:

DATE: January 14, 2022

TIME: 9:00 a.m. until not later than 5:00 p.m.

PLACE: By video conference using Zoom at a link provided in the calendar of events posted on the Commission's website: <https://puc.colorado.gov/>.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission’s Electronic Filings System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>.

The Commission requests that interested persons file any written comments by January 7, 2022, so that the comments can be considered at the rulemaking hearing.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
December 1, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners