

Summary of CTE I-25 HOT Lanes Toll Evasion & Administrative Adjudication Rules

Section 1.0 sets forth the establishment of the administrative adjudication process:

- CTE contracts with the E-470 to establish, organize and operate a system for the determination of alleged toll evasion violations on I-25.
- E-470 will retain administrative hearing officers.
- E-470 will establish and maintain hearing facilities.

Section 2.0 sets forth what constitutes toll evasions and penalty assessment:

- Failure by the operator and/or registered owner of a motor vehicle to pay the toll.
- Attempted use of a delinquent or cancelled ExpressToll account.
- Obfuscation, alteration or obliteration of license plates to prevent identification.
- Tampering with or failing to maintain a transponder.
- Operating a hybrid vehicle on I-25 without a valid permit and transponder.
- E-470 will process assessments based upon civil penalties for toll evasion and violation.

Section 3.0 sets forth the recovery of costs (and to encourage compliance), from:

- Who has failed to pay toll.
- Who has been found liable for toll/assessment or failed to appear at hearing.
- Who has failed to pay within 30 days of assessment/toll/fees.

Section 4.0 sets forth the toll enforcement procedures:

- First penalty assessment notice –
 - notify person liable for unpaid toll & assessment (include name, address, license #, date of notice, time/location of violation, amount of penalty, place for signing acknowledgement of liability)
 - pay within 20 days of issuance of notice
- Second penalty assessment notice –
 - Shall constitute a complaint to appear for adjudication of toll evasion in administrative toll enforcement proceeding
 - If owner fails to pay, appear or answer the notice, an order of liability in default is registered against them.
- Proceeding concludes when owner acknowledges liability and pays assessment.

Section 5 sets forth the administrative toll enforcement hearing process:

- A hearing officer presides, administers oaths, examines witnesses, makes findings, renders final order.
- Hearing office decides what evidence to exclude/admit.
- Either party can be represented by attorney.
- Hearing officer can accept technology to produce automatic vehicle ID imagery.
- Either party can make statement, examine witnesses/evidence.
- Settlement discussions are not admitted into evidence.
- Stipulations can be submitted at hearing.

- Objections to offers of evidence will be noted in the record.
- Hearing officer will make a verbatim record of hearing.
- Each party receives written discovery of documents and identity of witnesses before hearing. Vehicle ID imagery can be viewed by appointment.
- A continuance can be granted by hearing officer.
- Failure to appear will be deemed to have admitted liability and waived right to hearing. Final order of liability may be entered.
- Hearing officer's decision is final.
- Payment set in final order due in 30 days.

Section 6 sets forth the appeal of decision process:

- No appeal can be made to CTE or the Board.
- Appeals can be made to county court.

Section 7 sets forth the remedies and enforcement process:

- CTE's rights or remedies under Tolling Law or C.R.S. are not limited by administrative procedure.
- Can make order of hearing officer a judgment of the county court.
- E-470 can certify order for nonrenewal of vehicle registration.
- Nonpayment fee will be added to toll/assessment/fee, to defray collection costs.
- Collection company costs will be added to the toll/assessment/fee.

Section 8 sets forth the effective date of August 8, 2008.

**COLORADO TOLLING ENTERPRISE
I-25 HOT LANES TOLL EVASION AND
ADMINISTRATIVE ADJUDICATION RULES**

These rules are promulgated by the Board of Directors (“Board”) of the Colorado Tolling Enterprise (“the Enterprise”), a division of the Department of Transportation of the State of Colorado, for the establishment and operation of administrative toll enforcement proceedings to adjudicate toll evasion civil penalty assessment and fees liability pursuant to Statewide Tolling Enterprise law, Section 43-4-811, et seq., C.R.S. (“Tolling Law”) in connection with the use of I-25 HOT Lanes (“I-25”) and are subject to and to be interpreted in the context of the Tolling Law. For purposes of these rules, the term “toll evasion” includes hybrid vehicles driving in the I-25 HOT Lanes that do not have a proper permit.

Section 1.0 – Establishment of administrative adjudication process

There is hereby established, for the purposes of enforcing tolls, assessing civil penalties for toll evasion and adjudicating alleged toll evasion violations on I-25, these administrative rules.

1.1 – Delegation and instruction to E-470 Public Highway Authority (“Authority”)

The Board hereby delegates and instructs the Enterprise’s Acting Executive Director to contract with the Authority to establish, organize and operate an administrative adjudication system for the determination of alleged toll evasion violations on I-25, which system shall be consistent with constitutional protections of due process, the Tolling Law, these rules and such policies and actions as may be adopted by the Board.

1.2 – Administrative hearing officers

The Authority, on behalf of the Enterprise, shall retain one or more impartial administrative hearing officers, which officers may be state-employed administrative law judges or independent contractors of the Authority, shall be attorneys at law admitted to the practice of law in good standing in the courts of the State of Colorado and shall not be employees of the Authority. The arrangements and contracts therefore shall state that the Authority has granted to the hearing officers the same degree of independence as is granted by the State to its administrative law judges and, to the extent that grant of independence by the State is stated in writing, that same express grant shall be made part of the Authority arrangements and contracts.

1.3 – Hearing facilities

The Authority, on behalf of the Enterprise, shall establish and maintain hearing facilities, in the nature of a courtroom or courtrooms, for the conduct of toll

enforcement hearings. The facilities shall be located in the Denver Standard Metropolitan Statistical Area and may be facilities of other public entities or of the Authority.

Section 2.0 – Payment of tolls; evasion and violation; civil penalty assessment

The Board has established and, from time to time, may change tolls to be paid for use of I-25 by any motor vehicle. Any person who operates or is the registered owner of a motor vehicle for which vehicle the prescribed toll has not been paid and which vehicle is operated on I-25 commits toll evasion and violation of the Tolling Law and these regulations. Toll evasion includes, without limitation:

2.1 – Toll evasion violation; nonpayment

Failure by the operator and/or registered owner of a motor vehicle to pay an I-25 toll by ExpressToll.

2.2 – Toll evasion violation; use of delinquent ExpressToll account

Use or attempted use of a delinquent or cancelled ExpressToll account.

2.3 – Toll evasion violation; obfuscation

Obfuscation, alteration or obliteration of license plates by an operator and/or registered owner of a motor vehicle to prevent identification of a motor vehicle without effective payment pursuant to Section 2.1 hereof.

2.4 – Toll evasion violation; tampering

Tampering with or failing to maintain a transponder so as to cause it to not operate when driving on I-25.

2.5 – Toll evasion violation; operation of unpermitted hybrid vehicles

Operation of a hybrid vehicle on I-25 that does not have a valid permit and non-revenue transponder.

2.6 – Civil penalty assessment

The Board authorizes and directs its Acting Executive Director to contract with the Authority to make and process such Assessments based upon civil penalties for toll evasion and violation as are approved, from time to time, by the Board.

Section 3.0 – Cost of administrative adjudication process

The Board authorizes the Authority, on behalf of the Enterprise, to recover the costs of administering and operating its toll evasion and administrative adjudication process by assessing in the case of each person (a) who has failed to pay a toll a fee ("Administrative Fee") of \$7.00 if the violator's vehicle is registered in the State of Colorado, (b) who has been found liable for a toll and/or Assessment or who has failed to appear at a hearing on liability a fee of \$20.00 ("Adjudication Fee"), and (c) who has failed to pay, within thirty days of assessment, a toll, an Assessment, an Administrative Fee and/or an Adjudication Fee a fee of \$30.00 ("Nonpayment Fee") (collectively "Fees"). These Fees are calculated to allow the Authority, on behalf of the Enterprise, to recover its costs and to encourage compliance with the tolling provisions of the Tolling Law. Provided, however, no Fees shall be assessed against a person in the case in which the hearing officer determines there is no liability for a toll or an Assessment.

Section 4.0 – Toll Enforcement Procedure

4.1 – Notice of Assessment – First Penalty Assessment Notice

The Authority, on behalf of the Enterprise, shall notify a person liable for an unpaid toll and Assessment associated therewith either by a civil penalty assessment pursuant to Section 43-4-811(6)(a) of the Tolling Law ("Notice").

4.1.1 Each Notice pursuant to Section 43-4-811(6)(a) of the Tolling Law shall state the name and address of the registered owner of the vehicle involved, the license number of the vehicle involved, the date of the notice, the time and location of the violation, the amount of the penalty prescribed for the violation, a place for such person to execute a signed acknowledgement of liability for the cited violation, and such other information as may be required by law to constitute the notice as a complaint to appear for adjudication of a toll evasion civil penalty assessment.

4.2.2 Each Notice shall state that the registered owner of the vehicle involved must pay the prescribed penalty within twenty days of the issuance of the Notice.

4.2 – Notice of Assessment – Second Penalty Assessment Notice

4.2.1 If the prescribed penalty is not paid within twenty days of the Notice, the Authority, on behalf of the Enterprise, shall send a second penalty assessment notice by methods outlined in Section 43-4-811(6)(b) of the Tolling Law. The second penalty assessment notice shall contain the same information outlined in Section 4.1.1 of these Rules. This notice shall specify that the registered owner of the vehicle may pay the same penalty assessment at any time prior to the scheduled hearing. If the registered owner of the vehicle does not pay the prescribed penalty

within twenty days of issuance of the second penalty notice, the second penalty assessment notice shall constitute a complaint to appear for adjudication of a toll evasion in an administrative toll enforcement proceeding, and the registered owner of the vehicle shall, within the time specified in the second penalty assessment notice, file an answer to the complaint in the manner specified in the notice ("Respondent").

4.2.2 If the registered owner of the vehicle fails to pay in full the outstanding prescribed penalty set forth in the second penalty assessment notice or to appear and answer the notice as specified in the notice, the registered owner of the vehicle shall be deemed to have admitted liability and to have waived the right to a hearing, and a final order of liability in default against the registered owner of the vehicle may be entered.

4.3 – Acknowledgement of liability and payment of Assessment

Upon execution and delivery to the Authority, on behalf of the Enterprise, of an acknowledgement of liability and payment of the Assessment stated in a Notice, a proceeding shall be deemed concluded.

5.0 – Administrative Toll Enforcement Hearing

5.1 – Hearing officer

A Toll enforcement hearing shall be held before a hearing officer appointed pursuant to Section 1.2 of these Rules. A motion to disqualify a hearing officer for bias or impropriety shall be made prior to commencement of a proceeding. The hearing officer will preside over the hearing, explain to the parties the procedures to be followed in the hearing, administer oaths, rule on admissibility of and take evidence, examine witnesses and permit the parties to examine and cross-examine witnesses. The hearing officer shall make a finding as to whether the Respondent is liable for an unpaid toll, Assessment, Administrative Fee and Adjudication Fee and render a decision in the form of a final order.

5.2 – Conduct of hearing

The hearing officer shall render a decision based upon the evidence presented at the hearing. The Rules of Evidence of the Colorado judiciary and the Federal judiciary shall not apply to the evidence or to the hearing. The hearing officer may exclude evidence which is irrelevant, immaterial or repetitious and may admit evidence commonly relied upon by reasonably prudent persons in the conduct of their affairs. Evidence shall be under oath and may be oral, written or recorded by electronic means. The hearing officer's decision shall be upon a preponderance of the evidence.

- 5.2.1 Neither party must, but either party may, be represented by an Attorney. The Enterprise may be represented by an employee or the employee of a toll collection contractor. A Respondent may represent himself, herself or itself or be represented by a duly authorized agent. Either party may proceed on written or recorded evidence tendered to the hearing officer without a representative present.
- 5.2.2 The hearing officer may take notice of the scientific principles underlying technology utilized by the Authority, on behalf of the Enterprise, to produce automatic vehicle identification imagery, the foundation of which may be presumed, subject to rebuttal.
- 5.2.3 Each party may make opening and closing statements, call examine and cross-examine witnesses and evidence and otherwise offer evidence. The hearing officer may examine witnesses.
- 5.2.4 Statements, including admissions, made in settlement discussions shall not be admitted into evidence.
- 5.2.5 Written stipulations of the parties shall be submitted at the commencement of a hearing and shall become part of the record of the proceeding.
- 5.2.6 Objections to offers of evidence shall be noted in the record, as shall ruling thereon.
- 5.2.7 The hearing officer or the Enterprise shall make and preserve, until a case is finally concluded, a verbatim record of the hearing.
- 5.2.8 Each party may have written discovery of documents the other party intends to introduce and of the identity of witnesses the other intends to call at hearing. Respondent may view automatic vehicle identification imagery evidence by appointment with the Authority, on behalf of the Enterprise, on a date prior to that of the hearing at a time and location designated by the Authority.

5.3 – Continuances

The hearing officer may grant a hearing continuance upon a finding of good cause shown. Respondent shall have right to one continuance to seek representation by legal counsel. Either party shall have the right to a

continuance due to disruption of an automated or electronic adjudicatory file or processing system.

5.4 – Failure to appear

If a Respondent who has answered and requested a hearing fails to appear at the hearing as originally set or as continues by the hearing officer, upon satisfaction that notice of the hearing was given by the Authority, on behalf of the Enterprise, to the Respondent, the Respondent will be deemed to have admitted liability and have waived the right to a hearing, and a final order liability in default for the toll, Assessment, Administrative Fee and Adjudication Fee and against the Respondent may be entered.

5.5 – Decision of hearing officer a final order

A decision by the hearing officer of liability for the Assessment shall be final for purposes of the administrative adjudication process.

5.6 – Payment of Decision of Hearing Officer

A Respondent shall pay the amount set forth in a final order within thirty days of entry.

6.0 – Appeal of Decision of Hearing Officer

Subject to judicial review, the decision of the hearing officer shall be final and binding upon the parties and shall be an order of the hearing officer and of the Enterprise. There shall be no appeal to Enterprise personnel or the Board. The hearing officer's adjudication may be appealed as to matter of law and fact to the county court for the county in which the violation occurred within thirty days of the entry of an order of liability. By law, the appeal shall be a review on the record of the administrative adjudication and not a de novo hearing.

7.0 – Remedies and Enforcement

7.1 – No limitation

Neither the existence nor utilization of an administrative toll enforcement procedure nor these rules shall be construed to limit the Enterprise's rights or remedies available under the Tolling Law, the statutes of the State of Colorado or the common law.

7.2 – Final order a judgment

The Enterprise, or its contractor the Authority, may make the order of a hearing officer a judgment of the county court, as provided in Section 43-4-811(4)(e) of the Tolling Law.

7.3 – Nonrenewal of vehicle registration

The Enterprise, or its contractor the Authority, may certify a final order to the State Department of Revenue for nonrenewal of the vehicle registration of the motor vehicle giving rise to a complaint pursuant to Section 7 of the Tolling Law.

7.4 – Nonpayment Fee Assessed

In the case of a complaint for which the Respondent has not paid the toll, the Assessment and the Administrative Fee and, if applicable, the Adjudication Fee within the time allowed for payment, a Nonpayment Fee shall be added to the toll, the Assessment and the Fees to defray the Authority's costs of collection.

7.5 – Collection Fee Assessed

Should a final order be assigned by the Authority, on behalf of the Enterprise, to a collection company, the reasonable cost of collection shall be added to the toll, Assessment and Fees as an additional fee and may be collected therewith.

8.0 Effective Date

These Colorado Tolling Enterprise Toll Evasion and Administrative Adjudication Rules shall be effective as of August 8, 2008.