

## **Department of Transportation**

### **Colorado High Performance Transportation Enterprise (“HPTE”) Board**

#### **Rules Governing the Administrative Toll Enforcement Process**

##### **2 CCR 606-1**

#### **Statement of Basis and Purpose and Statutory Authority**

The High Performance Transportation Enterprise (“HPTE”) is a type 1 board created pursuant to § 43-4-806(2)(a)(I), C.R.S., whose purpose is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects. Section 43-4-808(2)(b), C.R.S., grants the HPTE the authority to adopt rules pertaining to the enforcement of toll collection and provide a civil penalty for Toll Evasion for roads within the HPTE’s jurisdiction. Section 43-4-808(2)(d)(II), C.R.S., provides authority to the HPTE to establish an administrative toll enforcement process and adopt rules creating such a process. The HPTE foresees an expansion of its managed lane network and recognizes the need for a formal administrative enforcement process for civil penalty collection. It is the intent of the HPTE to develop, based on the statutory requirements, an easily accessible, understandable toll enforcement hearing process.

#### **1.00 Definitions**

1.01 “Adjudication Fee” shall mean the fee assessed by the Administrative Hearing Officer and shall include costs arising from the cost of adjudication.

1.02 “Administrative Hearing Officer” shall mean an impartial person appointed by the HPTE or a Contractor on its behalf, to adjudicate Toll Evasion cases. The Administrative Hearing Officer may be an administrative law judge employed by the state or an independent contractor of the HPTE. The Administrative Hearing Officer shall have the same degree of independence granted to an administrative law judge employed by the state. § 43-4-808(2)(d)(IV), C.R.S.

1.03 “Automatic Vehicle Identification Photography” (“AVIP System”) shall mean any photographic system which aids in the collection of Tolls and enforcement of toll violations. See § 43-4-408(2)(b), C.R.S.

1.04 “Certified Report” shall mean a report provided to the Department of Revenue, Division of Motor Vehicles either through certified letter, or through electronic file transfer pursuant to a protocol established by HPTE and Department of Revenue.

1.05 “Civil Penalty” shall mean the amounts assessed for Toll Evasion, including amounts assessed for late payment, established by the HPTE subject to any limits imposed by § 43-4-808(2)(b) and (c)(I), C.R.S. The Civil Penalty established by the HPTE Board for any Toll Evasion, shall be no less than \$10 nor more than \$250 per toll statement or per Civil Penalty Assessment if assessed by a Peace Officer. The Civil Penalty excludes the Adjudication Fee assessed by an Administrative Hearing Officer.

1.06 “Contractor” shall mean any public or private entity with which HPTE contracts to manage user accounts, billing functions and processing Toll Evasions through a Toll Account or other means.

1.07 “HPTE” for purposes of these Rules shall mean the Colorado High Performance Transportation Enterprise Board created by § 43-4-806(2)(a)(I), C.R.S.

1.08 “Toll Statement” shall mean an invoice for a Responsible Party reflecting Toll usage for such Responsible Party over a specific period of time generated by the AVIP System or other electronic device that will constitute the amount of the Tolls due and payable by such Responsible Party, plus any additional Civil Penalties. See § 43-4-808(2)(b), C.R.S.

1.09 “Notice of Civil Penalty Assessment” or “Notice” shall mean an assessment for Toll Evasion against the Person operating the vehicle if issued by a Peace Officer or against a Responsible Party if resulting from an AVIP System or other electronic means.

1.10 “Peace Officer” shall mean a person as described in § 16-2.5-101, C.R.S., including Colorado state troopers, officers of the ports, peace officers assigned to specific jurisdictions, and local law enforcement officers authorized to issue Notice of Civil Penalty Assessments for Toll Evasion.

1.11 “Person” shall mean the Person operating the vehicle at the time a Toll is incurred and to whom a Peace Officer may issue a Notice of Civil Penalty Assessment.

1.12 “Responsible Party” shall mean the registered owner of the vehicle who, based on their status as the registered owner of such vehicle, will be presumed to have given authority, express or implied, to the operator of the vehicle at the time a Toll is incurred and who will be presumed responsible for the payment of the Toll and any related Civil Penalty. If a Notice of Civil Penalty Assessment results from an AVIP System or other electronic means, the Responsible Party shall be liable for payment.

1.13 “Toll” shall mean the user fee established by the HPTE from time to time and paid to the HPTE or its Contractor on its behalf for the privilege of using surface transportation infrastructure, including managed lanes. The Toll may include a different rate which shall be established by the HPTE depending upon the method of collection. The Toll shall not include any Civil Penalty or Adjudication Fee.

1.14 “Toll Account” shall mean a user agreement with a Contractor establishing an account for payment of Tolls through the use of a Transponder, or other HPTE-approved device or method.

1.15 “Toll Evasion” shall have the meaning set forth in Rule 3.01.

1.16 “Transponder” means the electronic toll recording device linked to a Toll Account or another payment system approved by the HPTE by which payments of tolls may be imposed.

## **2.00 Administrative Toll Enforcement Process**

2.01 Pursuant to § 43-4-808(2)(d)(II), C.R.S., at the request of the judicial department, the transportation enterprise may establish an administrative toll enforcement process.

2.02 Pursuant to § 43-4-808 (2)(d)(IV), C.R.S., the HPTE may enter into contracts for adjudication of the toll enforcement process.

2.03 The Administrative Hearing Officer shall have exclusive jurisdiction over the administrative toll enforcement process. See § 43-4-808(2)(d)(II), C.R.S.

2.04 The HPTE or a Contractor on its behalf shall retain one or more Administrative Hearing Officer(s). See § 43-4-808(2)(b), C.R.S.

### **3.00 Toll Evasion**

3.01 Toll Evasion may result from actions of the Responsible Party or Person, including but not limited to:

3.01.1 Failing to pay a Toll or Avoiding a Toll:

- A. For which a statement has been sent, within the time set forth in the statement; or
- B. For which a Civil Penalty has been assessed, within the time required; or
- C. By entering or exiting the Toll Lane other than at a designated access/egress point.

3.01.2 Using a Toll Lane:

- A. Without having complied with such other requirements established by HPTE to record or exempt a vehicle from Tolls; or
- B. Having obfuscated, altered or obliterated a license plate or maintained a license plate in violation of § 42-3-202(2)(b), C.R.S., or while travelling without a license plate; or
- C. Tampering with or failing to properly set a Transponder or other electronic device required by HPTE to record or exempt a vehicle from Tolls, so as to cause it to not operate as intended;

3.02 The HPTE shall establish the Civil Penalty for Toll Evasion within the limits set forth in statute. The HPTE shall adopt by resolution a Civil Penalty structure for Toll Evasion.

### **4.00 Notice of Civil Penalty Assessment and Request for Hearing**

4.01 A Notice of Civil Penalty Assessment may be issued to the Person operating the motor vehicle involved in a Toll Evasion by a Peace Officer, or may it may result from an unpaid Toll or Toll Statement issued as a result of an AVIP System or other electronic means and sent to the Responsible Party by mail. See § 43-4-808(2)(c)(II) and 43-4-808(2)(f)(I) C.R.S.

4.02 Determination of the time frames for the Notice of Civil Penalty Assessment shall be based on calendar days.

4.03 Notice of Civil Penalty Assessment Sent by Mail Pursuant to §43-4-808(2)(f)(I), C.R.S.

4.03.1 A Notice of Civil Penalty Assessment issued in the instance of Toll Evasion resulting from an AVIP System or other electronic means may be sent to the Responsible Party by first-class mail, or by any mail delivery service offered by an entity other than the United States Postal Service that is equivalent to or superior to first-class mail, or by other means as provided by § 24-4-105(2)(a).

4.03.2 The Notice of Civil Penalty Assessment shall contain:

- A. The name of the Responsible Party;
- B. The address of the Responsible Party;
- C. The license plate number of the vehicle involved;
- D. The date of the Notice;
- E. The date and time of the event(s) that gave rise to the Toll Evasion;
- F. The location of the event(s) that gave rise to the Toll Evasion;
- G. The amount of the Civil Penalty;
- H. A place for the Responsible Party to execute a signed acknowledgment of liability for the cited Toll Evasion; and
- I. Such other information as may be required by law to constitute the Notice of Civil Penalty Assessment as a complaint to appear for adjudication of a Civil Penalty for Toll Evasion if the Toll and Civil Penalty is not paid within thirty (30) days of the date of the Notice of Civil Penalty Assessment. See § 43-4-808(2)(f)(I), C.R.S.
- J. The method and procedure by which a Responsible Party may file an answer.
- K. The method by which a Responsible Party may pay the Notice of Civil Penalty Assessment. If a Notice of Civil Penalty Assessment results from an AVIP System or other electronic means, the Responsible Party shall pay the Civil Penalty either:
  - (1) In person at the location designated by the HPTE or Contractor on its behalf; or
  - (2) By postmarking the payment within twenty days of the Notice; or
  - (3) By other electronic means approved by the HPTE or a Contractor on its behalf.

4.04 Notice of Civil Penalty Assessment Issued by a Peace Officer pursuant to § 43-4-808(2)(c)(I), C.R.S.

4.04.1 Any Peace Officer is authorized to issue a Notice of Civil Penalty Assessment for Toll Evasions. See § 43-4-808(2)(c)(I), C.R.S.

4.04.2 A Notice of Civil Penalty Assessment issued by a Peace Officer shall contain:

- A. The name of the Person operating the motor vehicle;
- B. The address of the Person operating the motor vehicle;

- C. The license plate number of the motor vehicle involved;
- D. The driver's license number of the Person operating the motor vehicle involved in the Toll Evasion;
- E. The nature of the Toll Evasion;
- F. The amount of Civil Penalty prescribed for the Toll Evasion;
- G. The date of the Notice;
- H. A place for the Person to execute a signed acknowledgement of person's receipt of the Notice of Civil Penalty Assessment; and
- I. A place for the Person to execute a signed acknowledgement of liability for the cited Toll Evasion, to be executed at the time the Person cited pays the Civil Penalty.
- J. Such other information as may be required by law to constitute the Notice and complaint to appear for adjudication if the Civil Penalty is not paid within twenty days of the date of the Notice. See § 43-4-808(2)(c)(II), C.R.S.
- K. The method and procedure by which the Person may file an answer.
- L. A statement that if the Person cited does not pay the prescribed Civil Penalty within twenty (20) days of the Notice, the Notice shall constitute a complaint to appear for adjudication of a Toll Evasion, and the Person cited shall, within the time specified in the Notice, file an answer to the complaint in the manner specified.
- M. A statement that failure to contest the alleged violations in the manner and time provided shall be deemed an admission of liability and that a final order of liability may be entered against the Person. See § 43-4-808(2)(f)(I), C.R.S.
- N. A statement that the Person cited shall pay the Civil Penalty either:
  - (1) In person at the location designated by the HPTE or a Contractor on its behalf; or
  - (2) By postmarking the payment within twenty (20) days of the Notice, or
  - (3) By other electronic means approved by the HPTE or a Contractor on its behalf. See § 43-4-808(2)(c)(IV), C.R.S.

**5.00 Answer and Request for Hearing or Failure to Request a Hearing**

5.01 Upon receipt of a timely request for a hearing from the Responsible Party, the HPTE or a Contractor on its behalf, shall set the matter for a hearing before an Administrative Hearing Officer and provide sufficient notice to the Responsible Party or Person of the date, time and place of the hearing as stated in § 24-4-105(2)(a), C.R.S., at least thirty (30) days prior to the hearing.

5.02 Time Frame for Filing Answer and Request for Hearing where Notice of Civil Penalty Assessment is provided by an AVIP System or other electronic means pursuant to § 43-4-808(2)(f)(I), C.R.S.

5.02.1 If the Responsible Party does not pay the prescribed Toll and/or Civil Penalty within thirty (30) days of the date of the Notice of Civil Penalty Assessment, the Notice shall constitute a complaint to appear for adjudication of a Toll Evasion in an administrative Toll enforcement proceeding.

5.02.2 The Responsible Party shall, within the time specified in the Notice of Civil Penalty Assessment, file an answer to the complaint in the manner specified in such Notice.

5.02.3 If the Responsible Party fails to pay in full the outstanding Toll and/or Civil Penalty as set forth in the notice or to appeal and answer the complaint and request a hearing as specified in the notice, a final order of liability shall be entered against the Responsible Party for purpose of enabling the Responsible Party to appeal the final order of the Administrative Hearing Officer pursuant to Rule 7.07 hereof and allow the HPTE or a Contractor on its behalf, to proceed to judgment.

5.03 Time Frame for Filing Answer and Request for Hearing where the Notice of Civil Penalty Assessment is provided by a Peace Officer pursuant to § 43-4-808(2)(c)(III) and (IV), C.R.S.

5.03.1 If the Person cited does not pay the prescribed Civil Penalty within twenty (20) days of the Notice, the Notice of Civil Penalty Assessment shall constitute a complaint to appear for adjudication of a Toll Evasion and the Person cited shall, within the time specified in the Notice of Civil Penalty Assessment, file an answer to the complaint in the manner specified in such notice.

5.03.2 The acknowledgement of liability shall be executed at the time the Person cited pays the prescribed Civil Penalty.

## **6.00 Presumptions of Liability for Toll Evasion**

6.01 Presumption Regarding the Registered Owner of a Vehicle. The Responsible Party shall be presumed liable for the Toll and Civil Penalty imposed by the HPTE or a Contractor on its behalf. See § 43-4-808(2)(f)(I), C.R.S.

6.02 The Responsible Party involved in a Toll Evasion violation may rebut the presumption of liability for the violation by proving by a preponderance of the evidence that:

6.02.1 The owner sold or otherwise transferred ownership of the vehicle to another person before the date of the violation as evidenced by a bill of sale or similar document;

6.02.2 The owner did not have custody and control of the vehicle at the time of the violation due to theft as evidenced by a report to a law enforcement agency; or

6.02.3 Other rights or defenses available under applicable law.

### 6.03 Liability Regarding the Owner of a Motor Vehicle Engaged in the Business of Leasing or Renting Motor Vehicles.

6.03.1 The owner of a motor vehicle who is engaged in the business of leasing or renting motor vehicles is liable for payment of a Toll Evasion violation Civil Penalty; except that, at the discretion of such owner:

A. The owner may obtain payment for a Toll Evasion violation Civil Penalty from the person or company who leased or rented the vehicle at the time of the Toll Evasion through a credit or debit card payment and forward the payment to the HPTE or a Contractor on its behalf; or

B. The owner may seek to avoid liability for a Toll Evasion violation Civil Penalty if the owner of the leased or rented motor vehicle can furnish sufficient evidence that, at the time of the Toll Evasion violation, the vehicle was leased or rented to another person.

6.03.2 To avoid liability for payment, the owner of the motor vehicle shall, within thirty (30) days after receipt of the Notice of Civil Penalty Assessment, furnish to the HPTE or a Contractor on its behalf an affidavit containing the name, address, and state driver's license number of the person or company who leased or rented the vehicle.

## 7.00 Administrative Adjudication Proceeding

### 7.01 General Provisions

7.01.1 Upon receipt of a request, the HPTE or a Contractor on its behalf shall set the matter for a hearing before an Administrative Hearing Officer.

7.01.2 The HPTE or a Contractor on its behalf shall establish and maintain hearing facilities for the conduct of Toll enforcement hearings, which shall be in the form of an administrative adjudication proceeding.

7.01.3 The Responsible Party or Person shall be the respondent to the complaint.

### 7.02 Conduct of Hearing

7.02.1 The Administrative Hearing Officer shall preside over the hearing and shall have all powers under the State Administrative Procedure Act set forth in § 24-4-105, C.R.S., except that for purposes of these Rules, the decision of the Administrative Hearing Officer shall be a Final Order and may not be appealed to the HPTE.

7.02.2 The State Administrative Procedure Act, § 24-4-105, C.R.S., shall apply to the administrative adjudication proceeding. In the case of a conflict between the requirements of § 43-4-808, C.R.S., and § 24-4-105, C.R.S., § 43-4-808, C.R.S., shall apply.

7.02.3 The standard of review shall be by a preponderance of the evidence.

7.02.4 With regard to § 24-4-105(8), C.R.S., the Administrative Hearing Officer may take notice of the scientific principles underlying technology utilized by the HPTE or the Contractor on its

behalf, to produce automatic vehicle identification imagery, the foundation of which may be presumed, subject to rebuttal by a preponderance of the evidence.

7.02.5 The Responsible Party may view automatic vehicle identification imagery evidence by appointment with the HPTE or a Contractor on its behalf, on a date prior to that of the hearing at a time and location designated by the Administrative Hearing Officer.

### 7.03 Continuances

7.03.1 The Responsible Party or Person, or their legal representative shall have right to one (1) continuance to seek representation by legal counsel.

7.03.2 Either party shall have the right to a continuance due to disruption of an automated or electronic adjudicatory file or processing system.

### 7.04 Failure to Appear

7.04.1 If a Responsible Party or Person who has answered and requested a hearing fails to appear at the hearing as originally set or as continued by the Administrative Hearing Officer, upon satisfaction that notice of the hearing was given by the HPTE or a Contractor on its behalf, to the Responsible Party or Person, the Responsible Party or Person will be deemed to have admitted liability and have waived the right to a hearing.

7.04.2 In this case, a final order of liability in default for Civil Penalty and Adjudication Fee, if any, may be entered against the Responsible Party or Person.

### 7.05 Decision of the Administrative Hearing Officer a Final Order

7.05.1 The Administrative Hearing Officer shall make a finding as to whether the Responsible Party or Person is liable for a Civil Penalty and, if applicable, an Adjudication Fee, and render a decision in the form of an Administrative Hearing Officer's final order.

7.05.2 The Administrative Hearing Officer may enter default against the Responsible Party or Person in a final order.

7.05.3 The Administrative Hearing Officer, upon the entry of default, shall find:

A. That the Notice of Civil Penalty Assessment was provided to the Responsible Party or Person; and

B. The Responsible Party or Person was provided with notice of the opportunity to appear at a hearing; and

C. The Notice was sent to the Responsible Party's or Person's last known address based on the vehicle records of the Department of Revenue, Division of Motor Vehicles, or the last known address for the Responsible Party or Person which the HPTE or Contractor on its behalf, has obtained during the course of the toll enforcement process.

7.05.4 A decision by the Administrative Hearing Officer of liability or no liability for the Toll and Civil Penalty shall be final for purposes of the administrative adjudication process.

7.05.5 The decision of the Administrative Hearing Officer shall be final and binding upon the parties. The Final Order may not be appealed to the HPTE pursuant to § 24-4-105(14)(a), C.R.S.

#### 7.06 Payment of Decision of Administrative Hearing Officer

7.06.1 A Responsible Party or Person shall pay the amount set forth in a final order within thirty (30) days of the effective date.

#### 7.07 Appeal of Administrative Hearing Officer's Final Order

7.07.1 The administrative adjudication of a Toll Evasion is subject to judicial review and may be appealed as to matters of law and fact to the county court for the county in which the violation occurred. See § 43-4-808 (2)(d)(VI), C.R.S.

7.07.2 The Administrative Hearing Officer's final order may be appealed within thirty (30) days of the effective date.

7.07.3 The county court shall conduct a de novo review upon appeal. See § 43-4-808 (2)(d)(VI), C.R.S.

7.07.4 The HPTE or a Contractor on its behalf may certify the record on appeal by filing a certified copy of the order imposing a Toll and Civil Penalty that is entered by the Administrative Hearing Officer with the clerk of the county court in the county in which the violation occurred at any time after the order is entered. See § 43-4-808 (2)(d)(V), C.R.S.

7.07.5 The clerk shall record the order in the judgment book of the court and enter it in the judgment docket. See § 43-4-808 (2)(d)(V), C.R.S.

7.07.6 The order shall thenceforth have the effect of a judgment of the county court and execution may issue on the order of the court as in other cases. See § 43-4-808 (2)(d)(V), C.R.S.

#### 7.08 Remedies

7.08.1 Notwithstanding the specific remedies provided by § 43-4-808, C.R.S., the HPTE shall have every legal remedy available to enforce unpaid Tolls and Civil Penalties as debts owed to the HPTE. See § 43-4-808(2)(d)(VII), C.R.S.

7.08.2 The HPTE or a Contractor on its behalf may report to the Department of Revenue any outstanding judgment or warrant or any failure to pay the Toll or Civil Penalty for any Toll Evasion, including any Adjudication Fee imposed by an Administrative Hearing Officer. See § 43-4-808(2)(g), C.R.S.

7.08.3 Neither the existence nor utilization of an administrative toll enforcement procedure nor these rules shall be construed to limit the HPTE's or a Contractor's rights or remedies available under the law.

## **8.00 Department of Revenue Action**

8.01 The HPTE or a Contractor on its behalf as stated in § 43-4-808(2)(g), C.R.S., may report to the Department of Revenue any outstanding judgment or warrant or any failure to pay the Toll or Civil Penalty for any Toll Evasion.

8.02 Upon receipt of a certified report from the HPTE or its Contractor on its behalf, stating that the owner of a registered vehicle has failed to pay a Toll or Civil Penalty including any Adjudication Fees imposed by an Administrative Hearing Officer, resulting from a final order, the Department of Revenue shall not renew the registration of the vehicle until the Toll and Civil Penalty are paid in full. See § 43-4-808(2)(g), C.R.S.

8.03 A Certified Report from the HPTE shall be provided to the Department of Revenue upon the owner successfully paying in full a Toll or Civil Penalty releasing the non-renewal of the owner's vehicle.

8.04 The Department of Revenue has no authority to assess any points against a driver's license under § 42-2-127, C.R.S., upon entry of a conviction or judgment for any Toll Evasion.