

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0359TR

IN THE MATTER OF IMPLEMENTING SENATE BILL 22-144 BY ADOPTING TEMPORARY RULES AMENDING THE COMMISSION’S TRANSPORTATION NETWORK COMPANY RULES, 4 CODE OF COLORADO REGULATIONS 723-6, TO ESTABLISH ADDITIONAL OPERATIONAL AND REPORTING REQUIREMENTS FOR TRANSPORTATION NETWORK COMPANIES PROVIDING STUDENT TRANSPORTATION FOR REMUNERATION UNDER CONTRACT WITH A SCHOOL OR SCHOOL DISTRICT.

COMMISSION ORDER ADOPTING TEMPORARY RULES

Mailed Date: August 17, 2022

Adopted Date: August 17, 2022

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission adopts temporary rules to amend certain of the Commission's Transportation Network Company Rules (TNC Rules), comprising rules 6700 through 6724 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6. The temporary rules revise the definitions in TNC Rule 6701, add new TNC Rule 6724, titled "Transportation for Remuneration from a School or School District," and re-number existing TNC Rule 6724 to TNC Rule 6725. The temporary rules implement the amendments to or addition of §§ 40-10.1-105, 40-10.1-602, 40-10.1-605, 40-10.1-608, and 40-10.1-609, C.R.S., enacted in Senate Bill (SB) 22-144, effective May 27, 2022.

2. The temporary rules satisfy the immediate Commission rulemaking obligations enacted in SB 22-144, codified at §§ 40-10.1-605(1)(r), C.R.S. (requiring driver training rules); 40-10.1-608(3)(a), C.R.S. (requiring minimum safety standards rules); and 40-10.1-609(2)(a), C.R.S. (requiring reporting rules). In order to comply with these statutory requirements beginning on September 1, 2022, thereby protecting the public health, welfare, and safety by promulgating

minimum safety standards and reporting requirements for subject student transportation, we find it imperatively necessary to adopt temporary rules. These temporary rules are effective for 210 days from the effective date of September 1, 2022, or until the Commission's permanent rules implementing SB 22-144 are effective. See § 40-2-108(2), C.R.S. The Commission will, by separate order, open a rulemaking to adopt permanent rules, which it expects to issue no later than October 1, 2022, after it conducts pre-rulemaking engagement with interested stakeholders.

3. The temporary rules in legislative (strikeout and underline) format, Attachment A, and the temporary rules in final version format, Attachment B are available through the Commission's E-Filing system¹ at: at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0359TR

B. Background

4. SB 22-144 modifies the statutory definition of “transportation network company services” to include services provided under a contract between a transportation network company (TNC) and a political subdivision or other entity exempt from federal income tax under section 115 of the federal “Internal Revenue Code of 1986”, as amended. See amended § 40-10.1-602(6)(c), C.R.S. In addition, the bill modifies the identified areas of transportation not subject to Commission regulation in §§ 40-10.1-105(1)(b) and (j), C.R.S., to expressly exclude TNC services provided under a contract between a TNC and a school or school district and TNC services

¹ From the Electronic Filings (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can also be accessed by selecting “Search” and entering this proceeding number, 22R-0359TR, in the “Proceeding Number” box and then selecting “Search.”

provided under a contract between a TNC and the federal government, a state, or any agency or political subdivision thereof.

5. The bill adds several new operational requirements in §§ 40-10.1-605(1)(p), (q), and (r), C.R.S., that require a TNC providing subject student transportation to: (1) enter into a contract with the school or school district; (2) use a technology-enabled integrated solution that provides end-to-end visibility into the ride for the TNC, the transported student's legal guardian, and the person that scheduled the ride; and (3) ensure each TNC driver receives training in several specialized areas. The bill also adds a new operational requirement in § 40-10.1-605(10), C.R.S., that prohibits a TNC from using for these services a driver convicted of, or who pled guilty or *nolo contendere* to an offense listed in § 22-32-109.8(6.5), C.R.S.

6. In addition, the bill adds new reporting requirements for TNCs. The newly created § 40-10.1-609(1), C.R.S., requires TNCs to notify the Commission of any safety or security incidents that involve providing subject student transportation services. TNCs must also send the same notice to each school or school district with which it has contracted to provide subject services.

7. Finally, SB 22-144 enacts the following rulemaking requirements for the Commission: (1) § 40-10.1-605(1)(r), C.R.S., requires the Commission to coordinate with the Colorado Department of Education (CDE) to promulgate, by September 1, 2022, Commission rules providing for approval of the TNC driver training required by SB 22-144; (2) § 40-10.1-608(3)(a), C.R.S., requires the Commission to coordinate with CDE to promulgate, by September 1, 2022, Commission rules implementing minimum safety standards for TNCs, personal vehicles, and TNC drivers when engaging in services provided under a contract with a school or school district; and (3) § 40-10.1-609(2)(a), C.R.S., requires the Commission to coordinate with CDE to

promulgate, by September 1, 2022, Commission rules requiring a TNC to report information related to driver background checks, insurance coverage, and data reporting, consistent with the type of service provide, as it relates to service for students.

C. Discussion, Findings, and Conclusions

8. Consistent with the requirements enacted in SB 22-144, the temporary rules adopted through this Decision implement minimum safety standards, requirements for driver training, and reporting requirements. The adoption of these temporary rules allows the Commission to meet the September 1, 2022 deadline imposed by SB 22-144 to promulgate rules implementing the statutory changes enacted by the legislature. We find waiting until rules can be adopted through the requirements for permanent rules set forth in § 24-4-103, C.R.S., would be contrary to the public interest as such delay would prevent timely implementation of the operational and reporting requirements the legislature has expressly directed the Commission to promulgate by September 1, 2022. Adopting these temporary rules allow for implementing rules to be in place at the start of the 2022 school year to immediately ensure the safe transport of Colorado students, consistent with the legislative directives in SB 22-144. For these reasons, and as authorized by § 24-4-103(6)(a), C.R.S., the Commission finds immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

9. The statutory authority for adoption of these rules is set forth in §§ 40-2-108 and 40-10.1-601 through 609, C.R.S., and SB 22-144.

10. The adopted temporary rules are described below along with discussion of the statutory and policy reasons for adopting each rule.

(i) TNC Rule 6701

11. The temporary rules add a new definition in TNC Rule 6701(i) to define “school” as a public school that enrolls students in grades kindergarten through twelfth. The temporary rules add a new definition in TNC Rule 6701(j), defining “student” as an individual enrolled in a school. These new definitions match the statutory definitions for these terms enacted in SB 22-144, codified at §§ 40-10.1-602(2.5) and (2.6), C.R.S. The temporary rules re-number the remaining definitions in TNC Rule 6701 to accommodate these new definitions.

12. The temporary rules modify the definition in existing TNC Rule 6701(l), re-numbered as TNC Rule 6701(n), for “transportation network company services” or “services” (TNC services). The modified definitions implement the statutory changes enacted in SB 22-144 to the definition of TNC services in §§ 40-10.1-602(6)(b) and (c), C.R.S., and the areas of transportation not subject to Commission regulation identified in §§ 40-10.1-105(1)(b) and (j), C.R.S. The amended rule explicitly includes, in the definition of TNC services, any services provided under a contract between a TNC and a political subdivision or other entity exempt from federal income tax under § 115 of the federal “Internal Revenue Code of 1986”, as amended.

(ii) TNC Rule 6724

13. The temporary rules adopt newly created Rule 6724, titled “Transportation for Remuneration from a School or School District.” Temporary Rule 6724 implements the operational and reporting requirements enacted in SB 22-144. The temporary rules re-number existing Rule 6724 to 6725 to accommodate this new rule. Each paragraph of this rule is discussed below. These requirements apply to a TNC, personal vehicle, and TNC driver, when engaging in services provided under a contract with a school or school district, and are in addition to all other applicable TNC rules, unless otherwise stated.

(a) Contracts

14. Paragraph (a) requires a subject TNC to enter into a contract with the appropriate school or school district, which may include specific provisions for the safety of student passengers, as determined by the school or school district. This rule implements § 40-10.1-605(1)(p), C.R.S.

(b) End-to-End Visibility

15. Paragraph (b) requires a subject TNC to use a technology-enabled integrated solution that provides end-to-end visibility into the ride for the TNC, the student's legal guardian, and the person that scheduled the ride. The technology-enabled integrated solution must allow for Global Positioning System (GPS) monitoring of the ride in real time for safety-related anomalies. In addition, the technology-enabled integrated solution must be maintained and in good working order and any disruptions must be immediately reported to the school or school district and to the parent or legal guardian of the involved student. This rule implements § 40-10.1-605(1)(q), C.R.S.

(c) Training Requirements

16. Paragraph (c) requires a subject TNC to ensure each driver providing subject TNC services receives training in mandatory reporting requirements, safe driving practices, first aid and Cardiopulmonary Resuscitation (CPR), education on special considerations for transporting students with disabilities, emergency preparedness, and safe pick-up and drop-off procedures. Any training covering these topics must be approved by the Commission. The rule allows that training covering these topics, as offered by schools or school districts, may meet this requirement. The rule also requires a TNC to maintain training records during the driver's period of service and six months thereafter, pay for the applicable training requirements, and the training must be completed

before the driver starts performing subject services. This rule implements § 40-10.1-605(1)(r), C.R.S.

(d) Criminal History Record Checks

17. Paragraph (d) specifies, if a driver fingerprint background check is required by contract with a school or school district, the criminal history record check must be completed pursuant to the existing procedures set forth in § 40-10.1-110, C.R.S., as supplemented by the Commission's rules, in accordance with § 40-10.1-605(3)(a)(I), C.R.S. The rule specifies a TNC shall not use a driver for subject services if the driver has been convicted of or pled *nolo contendere* to an offense described in § 22-32-109.8(6.5), C.R.S. This rule implements § 40-10.1-605(10), C.R.S.

(e) Medical Fitness

18. Paragraph (e) prohibits a TNC from permitting a person to act as a driver for subject services unless the driver has been medically examined and certified under the provisions of 49 C.F.R. 391.41. The rule requires a driver and the TNC to maintain records of the medical certification and produce them to an enforcement official, upon request. The rule may also substitute the specific provisions of any other TNC rules that reference a TNC driver's physical and mental fitness. This rule implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard determined necessary by the Commission, and was developed in coordination with CDE.

(f) Vehicle Inspections

19. Paragraph (f) prohibits a TNC from permitting the use of a personal vehicle used to perform subject services unless the individual performing the inspection is an Automotive Service Excellence (ASE) certified mechanic, employed by a company authorized to do business in Colorado. The rule requires that any applicable devices used to facilitate the loading, unloading,

or transportation of individuals with disabilities must be in good working order. This rule implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard determined necessary by the Commission, and was developed in coordination with CDE.

(g) Daily Vehicle Inspection Report

20. Paragraph (g) requires a TNC to require a driver, when performing subject services, to prepare a Daily Vehicle Inspection Report (DVIR), in writing, prior to each day's work. The rule requires the DVIR to capture numerous safety-related items, including vehicle brakes, lights, and tires. The rule requires repair of any defects or deficiencies noted in the DVIR before the vehicle may be used to provide subject services. The rule requires the TNC to maintain a DVIR record for three months after the date the DVIR was prepared. This rule implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard determined necessary by the Commission, and was developed in coordination with CDE.

(h) Emergency Procedures

21. Paragraph (h) requires a TNC to have and enforce emergency procedures, to be followed in the event of a safety or security incident that involves subject services. This rule implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard determined necessary by the Commission, and was developed in coordination with CDE.

(i) Safety Restraints

22. Paragraph (i) requires a TNC to have and enforce a policy that requires a driver to follow all Colorado laws regarding the proper use of safety belt systems and child restraint systems, when performing subject services. This rule implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard determined necessary by the Commission, and was developed in coordination with CDE.

(j) Unauthorized Passengers

23. Paragraph (j) requires a TNC to have and enforce a policy that prohibits drivers from transporting unauthorized passengers, when performing subject services. This rule implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard determined necessary by the Commission, and was developed in coordination with CDE.

(k) Reporting Requirements

24. Paragraph (k) establishes reporting requirements for TNCs relating to subject services. The rule requires a TNC to provide notice of any safety or security incidents to the Commission, each contracted school or school district, and the parent or legal guardian of the involved student. The rule requires a TNC to report to the Commission, by February 1 each year, any safety or security incidents that occurred during the previous calendar year and information related to any driver background checks that occurred during the previous calendar year. This rule implements §§ 40-10.1-609(1) and (2), C.R.S.

(l) Authority to Inspect Records

25. Paragraph (l) specifies that an enforcement official has the authority to interview personnel of a TNC, inspect TNC facilities, and inspect records, as it pertains to subject services, and specifies applicable timelines for producing requested records. This rule implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard determined necessary by the Commission, and was developed in coordination with CDE.

(m) Higher Standards

26. Paragraph (m) provides that nothing in the Commission's rules prohibits a school or school district from setting higher standards for TNCs performing subject services. This rule implements § 40-10.1-605(1)(p), C.R.S.

(iii) TNC Rule 6725

27. Existing TNC Rule 6724 is re-numbered to TNC Rule 6725 to accommodate for the newly created TNC Rule 6724.

D. Compliance Deadline

28. Given the nature of some of the new minimum safety standards, as outlined above, TNCs engaging in subject services are expected to comply with these new standards as soon as possible, but not later than 45 days after the temporary rules become effective. . TNCs are encouraged to work with Commission Staff, in order to mitigate any potential issues associated with the transition to these new minimum safety standards and other requirements.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this proceeding, through the Commission's E-Filings system, are hereby adopted as temporary rules, consistent with the discussion above.

2. The temporary rules shall be effective on September 1, 2022. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

3. TNCs engaging in subject services are expected to comply with these new standards as soon as possible, but not later than 45 days after the temporary rules become effective.

4. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 17, 2022**

(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

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Commissioners