

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0402TR

IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION’S
TRANSPORTATION NETWORK COMPANY RULES, 4 CODE OF COLORADO
REGULATIONS 723-6, IMPLEMENTING HOUSE BILL 22-1089 AND SENATE BILL 22-
144 AND ESTABLISHING ADDITIONAL INSURANCE, TRAINING, OPERATIONAL, AND
REPORTING REQUIREMENTS FOR TRANSPORTATION NETWORK COMPANIES.

COMMISSION NOTICE OF PROPOSED RULEMAKING

Mailed Date: September 21, 2022
Adopted Date: September 21, 2022

TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement, Findings, and Conclusions.....	2
B.	Background.....	3
C.	Discussion of Proposed Amendments to TNC Rules.....	5
1.	TNC Rule 6701	5
2.	TNC Rule 6706	6
3.	TNC Rule 6724	6
4.	TNC Rule 6725	13
D.	Questions for Stakeholders.....	13
E.	Conclusion.....	14
II.	ORDER.....	14
A.	The Commission Orders That:	14
B.	ADOPTED IN COMMISSIONERS' WEEKLY MEETING September 21, 2022.....	16

I. BY THE COMMISSION**A. Statement, Findings, and Conclusions**

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to the Commission's Transportation Network Company (TNC) rules, 4 *Code of Colorado Regulations* (CCR) 723-6. 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., House Bill (HB) 22-1089, enacted May 17, 2022 and effective August 10, 2022, and Senate Bill (SB) 22-144, enacted and effective May 27, 2022.

2. The Commission issues this NOPR to review, examine, and consider revisions to its rules regarding TNCs, as it pertains to legislative and statutory changes incorporated by multiple bills passed by the Colorado Legislature during the 2022 session. The proposed amendments reflect the Commission's intent to amend and update TNC rules to make them congruent with the recent statutory changes and to expand upon certain minimum safety requirements and other criteria, pursuant to statutory directive. The rules adopted through this proceeding will supersede the temporary rules currently in effect to implement SB 22-144, adopted by the Commission through Decision No. C22-0552, issued September 19, 2022.

3. The proposed amendments to the TNC 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. 22R-0402TR) at https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0402TR

4. The Commission welcomes comments from interested rulemaking participants, regarding the amendments proposed in this NOPR. To the extent a participant disagrees with the

proposed amendments, they are encouraged to submit comments that include any suggested revisions to the rule language in legislative (*i.e.*, *strikeout*) format.

B. Background

5. On May 17, 2022, Governor Jared Polis signed House Bill 22-1089 (HB22-1089), Rideshares and Uninsured Motorist Insurance Coverage. This bill, in part, amended § 40-10.1-604, C.R.S., to require TNCs to secure insurance coverage against damage caused by uninsured motorists, in amounts of at least \$200,000 per person and \$400,000 per occurrence, to be in effect at all times the driver is engaged in a prearranged ride. The effective date of the statutory changes was August 10, 2022.

6. On May 27, 2022, Governor Jared Polis signed Senate Bill 22-144 (SB 22-144), Public and Nonprofit Entities Rideshare Contracts. SB 22-144 modified the statutory definition of “transportation network company services” to include services provided under a contract between a 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 amended¹. In addition, the bill modified 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 provided under a contract between a TNC and the federal government, a state, or any agency or political subdivision thereof.

7. SB 22-144 also added several new operational standards 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

¹ See amended § 40-10.1-602(6)(c), C.R.S.

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 added 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.

8. In addition, SB 22-144 implemented 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.

9. Finally, SB 22-144 enacted the following rulemaking requirements for the Commission: (1) § 40-10.1-605(1)(r), C.R.S., required 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., required 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., required 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. The effective date of the statutory changes was May 27, 2022.

10. On August 17, 2022, the Commission adopted temporary TNC rules incorporating the statutory provisions outlined in SB 22-144². Furthermore, the Commission coordinated with CDE to develop rules implementing driver training requirements, minimum safety standards, and reporting criteria, per statutory directive. The Commission indicated the temporary rules were to take effect on September 1, 2022. On August 26, 2022, a stakeholder TNC, HopSkipDrive, Inc. (HopSkipDrive), filed an application for rehearing, reargument, or reconsideration (RRR), requesting revision or elimination of certain provisions in the temporary rules. On September 19, 2022, the Commission issued a decision granting the RRR, in part, and denying the RRR, in part. Through Decision No. C22-0552, the Commission adopted revised temporary rules, to be effective for 210 days from the adoption date, April 17, 2023, or until superseded by the permanent rules to be adopted in this Proceeding.³

C. Discussion of Proposed Amendments to TNC Rules

11. The proposed amendments to the TNC rules are shown in Attachment A (redline) and Attachment B (clean) to this Decision. These changes are described below, along with discussion of the statutory and policy reasons associated with the proposed amendments.

1. TNC Rule 6701

12. The proposed amendments add a new definition in TNC Rule 6701(i), defining “school” as a public school that enrolls students in grades kindergarten through twelfth. The proposed amendments also 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 remaining

² See Commission Decision No. C22-0486, Proceeding No. 22R-0359TR.

³ See Commission Decision No. C22-0552, Proceeding No. 22R-0359TR.

definitions in TNC Rule 6701 have also been re-numbered, to accommodate these new definitions.

13. The proposed amendments 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 definition implements 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 proposed amendment 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.

2. TNC Rule 6706

14. The proposed amendments add a new TNC insurance form (Form U, Insurance Protection Against Uninsured Motorists) that is required to be obtained and kept in force at all times, which conforms with the requirements of § 40-10.1-604(2.5), C.R.S. The new rule implements the statutory changes enacted in HB22-1089 to required insurance coverages in § 40-10.1-604(2.5), C.R.S. The proposed amendments modify existing TNC Rule 6706(c). The remaining rules in TNC Rule 6706 have also been re-numbered, to accommodate this new rule.

3. TNC Rule 6724

15. The proposed amendments modify existing TNC Rule 6724, which has been re-titled “Transportation for Remuneration from a School or School District.” This new rule implements the operational, training, and reporting requirements enacted in SB 22-144. The proposed amendments re-number existing TNC Rule 6725 to accommodate this new rule. Each

paragraph of this proposed 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

16. 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 proposed rule implements § 40-10.1-605(1)(p), C.R.S.

b. End-to-End Visibility

17. 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, as applicable. This proposed rule implements § 40-10.1-605(1)(q), C.R.S.

c. Training Requirements

18. 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 process for approval of this training is delegated to Transportation Staff, in consultation with CDE. The approval determinations of Transportation Staff are also subject to appeal. 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 proposed rule implements § 40-10.1-605(1)(r), C.R.S., and was developed in coordination with CDE.

d. Criminal History Record Checks

19. 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., or through the background check requirements under the Education Code, in accordance with § 22-32-122, C.R.S. The rule also 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 proposed rule implements § 40-10.1-605(10), C.R.S.

e. Medical Fitness

20. 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 proposed rule, developed in coordination with CDE, implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard for TNC drivers providing student transportation under contract with a school or school district.

21. The purpose of this rule is to ensure the medical fitness of TNC drivers who will be transporting students. We have concern that, without this heightened requirement, all that would be required is a “self-certification” by a driver through the TNC’s app, meaning no formalized medical certification process is required.⁴ We note the temporary rule, to streamline this process, allows for qualification under U.S. Department of Transportation (USDOT) standards.⁵ Further, we note this is a medical certification standard that has been accepted as necessary by the Commission for many years, including in its current iteration under Rule 6109(a), 4 CCR 723-6, which applies to other types of passenger transportation providers. We conclude that the minimal burden of TNC drivers having to pass this formal health screening, in order to provide subject student transportation service, is far outweighed by the public interest benefit of ensuring that TNC drivers who will be transporting students are demonstrably capable of doing so safely. We solicit comment from rulemaking participants on this rule and how to best effect this purpose.

f. Vehicle Inspections

22. 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 also requires that any applicable devices used to facilitate the loading,

⁴ See § 40-10.1-605(1)(d), C.R.S.

⁵ See 49 C.F.R. 391.41.

unloading, or transportation of individuals with disabilities must be in good working order. This proposed rule, developed in coordination with CDE, implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard for personal vehicles used to provide student transportation under a TNC contract with a school or school district.

23. The purpose of this rule is to confirm that a meaningful inspection is performed by a qualified mechanic, verifying the subject vehicle is in good and safe working condition. Without this enhanced standard to ensure the reliability of the inspection, an inspection could be performed by either a certified mechanic or a person capable of performing the inspection by reason of experience, training, or both.⁶ We have concern that this fairly broad criteria does not adequately ensure that a meaningful inspection is performed by a mechanic capable of identifying underlying hazards. Further, we note ASE certification is already required for the inspection of other passenger transportation providers,⁷ whose primary business model does not include the transportation of minor students. We solicit comment from rulemaking participants on this rule and how to best effect this purpose.

g. Daily Vehicle Inspection Report

24. 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 proposed

⁶ See Rule 6715(a), 4 CCR 723-6.

⁷ See Rule 6103, 4 CCR 723-6.

rule, developed in coordination with CDE, implements § 40-10.1-608(3)(a), C.R.S., as a minimum safety standard for personal vehicles used to provide student transportation under a TNC contract with a school or school district.

25. The purpose of this rule to require a minimum visual inspection of a personal vehicle before it is put to use transporting students each day. We believe the burden of a TNC driver having to perform this basic walkaround inspection each day is far outweighed by the public interest benefit of ensuring that any potential hazards are identified before the vehicle is put to use transporting students. Through this basic walkaround inspection, a TNC driver who will provide subject student transportation service that day can identify previously unnoticed issues with the vehicle's tires, lights, safety belts, and other basic mechanics of the vehicle—and thereby mitigate the risk of accidents or other safety-related incidents. We find this especially warranted since the vehicles are, by definition, personal vehicles that could have been used for non-TNC service transportation during off-duty hours, subjecting the vehicle to additional wear-and-tear and unexpected damage. We solicit comment from rulemaking participants on this rule and how to best effect this purpose.

h. Emergency Procedures

26. 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 proposed 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

27. 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 proposed 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

28. Paragraph (j) requires a TNC to have and enforce a policy that prohibits drivers from transporting unauthorized passengers, when performing subject services. This proposed 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

29. Paragraph (k) establishes reporting requirements for TNCs, as it pertains 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 proposed rule implements §§ 40-10.1-609(1) and (2), C.R.S., and was developed in coordination with CDE.

l. Authority to Inspect Records

30. 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 proposed 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

31. 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 proposed rule implements § 40-10.1-605(1)(p), C.R.S.

4. TNC Rule 6725

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

D. Questions for Stakeholders

33. Given the nature of some of the proposed minimum safety standards, as well as the legislative mandate for the Commission to adopt rules regulating the expanded operations of TNCs, as it pertains to school-related transportation, the Commission solicits additional information and comments from stakeholders. Interested persons are encouraged to submit written comments and participate in the rulemaking hearing convened in this matter.

34. As applicable to proposed TNC Rule 6724(d) (Criminal History Record Checks), the Commission specifically requests that stakeholders provide information and comments on which options are most appropriate to conduct TNC driver background checks, including whether or not the Volunteer Employee Criminal History Services (VECHS) program, as offered by HopSkipDrive, would satisfy the safety concerns related to student transportation.

35. As applicable to proposed TNC Rule 6724(k) (Reporting Requirements), the Commission specifically requests that stakeholders provide information and comments on what might constitute "safety or security incidents", pursuant to § 40-10.1-609(1), C.R.S.

E. Conclusion

36. Through this NOPR, the Commission solicits comments from interested persons and stakeholders on whether to adopt, revise, or not adopt, some or all of the proposed amendments to the TNC rules, as set forth in the attachments to this Decision and discussed above. The Commission encourages members of the transportation industry and other interested persons to participate in this Proceeding and to contribute to the rulemaking record, on which the Commission will base its decision on whether to adopt rule amendments.

37. Given the requirement in SB 22-144 for the Commission to coordinate with CDE in promulgating implementing rules, the Commission requests that CDE participate in the rulemaking and continue to provide its subject matter expertise as we consider rules applicable to TNC student transportation within the scope of SB 22-144.

38. The Commission refers this matter to an Administrative Law Judge (ALJ) for the issuance of 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 an 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 October 10, 2022 edition of The Colorado Register.

2. The Commission invites comments from interested persons on the proposed amendments to the Commission's Rules Regulating Transportation Network Companies, 4 Code of Colorado Regulations (CCR) 723-6, as described in this Decision and its attachments. The Commission prefers and encourages interested persons to file comments through the Commission's Electronic Filings website (Proceeding No. 22R-0402TR) at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0402TR

3. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

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

DATE:	November 10, 2022
TIME:	9:00 a.m. until not later than 5:00 p.m.
PLACE	By video conference using Zoom at a link in the calendar of events on the Commission's website, available at: https://puc.colorado.gov/

5. The ALJ will set procedures for a remote hearing, if necessary, by a separate decision issued in this Proceeding.

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 to be filed no later than October 13, 2022, and any comments responsive to the initial comments are requested to be filed no later than October 27, 2022, so that the initial comments and responsive comments may be considered at the hearing.

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 on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 21, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners