

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ADOPTING RULES**

Mailed Date: February 8, 2023

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I. STATEMENT AND BACKGROUND

A. Summary

1. This Decision adopts amendments to the Colorado Public Utilities Commission's (Commission) Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, more specifically, the Commission's Transportation Network Company Rules (Rules).¹ While some Rule amendments generally apply to Transportation Network Companies (TNCs), the bulk of the Rule changes focus on TNCs providing services for remuneration from a school or school district to transport students to or from a school, school-related activities, or school-sanctioned activities (School TNCs).

2. Public comments overwhelmingly support the conclusion that the services provided by School TNCs positively contribute to ensuring that children have continuity in education and that their unique school transportation-related needs are being met. The many personal stories in public comments highlight the positive impact that this unique transportation service can have on children's lives and futures.² In considering Rule amendments, the Administrative Law Judge (ALJ) recognizes and is mindful of this. At the same time, the Commission must put heightened safeguards in place to protect the vulnerable population that School TNCs serve. In adopting Rules, the ALJ has attempted to balance these interests to reach Rules that include elevated safety standards while minimizing the potential negative impact on School TNCs' ability to continue to provide service.

¹ All references in this Decision to the Rules are to the specific cited Rule, found at 4 CCR 723-6. In reaching this Decision, the Administrative Law Judge has considered the entire record in this Proceeding, including all aspects of the proposed Rules, the relevant law, and all public comments submitted in this Proceeding, including those discussed briefly or not at all. This Decision does not discuss minor Rule changes such as renumbering paragraphs, or other minor non-substantive, as unnecessary.

² See e.g., Frankie Lopez's 10/13/22 Comments at 1; Michael Craft's 10/13/22 Comments at 1-2; Fayaz Amiri's 10/26/22 Comments; Muhammad Javed Paktinyar's 10/27/22 Comments; Advocates for Children CASA's 10/27/22 Comments at 1-2.

B. Procedural History and Background

3. On September 21, 2022, the Commission issued a Notice of Proposed Rulemaking (NOPR) (Decision No. C22-0554) to consider Rule revisions based upon statutory changes made during the 2022 Colorado legislative session.³ With the NOPR, the Commission published proposed Rule changes; identified specific issues for public comment; referred this matter to an ALJ for disposition; established deadlines for initial and responsive public comments; and scheduled a fully remote public comment hearing for November 10, 2022 at 9:00 a.m.⁴

4. Before initiating this matter, consistent with Senate Bill (SB) 22-144, the Commission adopted Temporary Rules mirroring the proposed Rules here.⁵ After deciding an Application for Rehearing, Reargument or Reconsideration, the Commission partially amended the Temporary Rules, which expire on the earlier of April 17, 2023 or when the permanent Rules issued in this Proceeding become effective.⁶ Recognizing that it will take a period of time for TNCs subject to the Temporary Rules to fully comply, the Commission allowed for a reasonable allowance in strict enforcement through December 31, 2022, for all Temporary Rules except for Rule 6724(g) for which only a 30-day allowance was given.⁷

5. Since the Commission issued the NOPR, numerous public comments have been filed, including comments from school and school district representatives, members of the Colorado General Assembly, TNC drivers, parents, a school transportation provider, other

³ Decision No. C22-0554 at 2 (mailed September 21, 2022) (Decision No. C22-0554 or NOPR), and Attachments A and B thereto (Attachments A and B to NOPR).

⁴ Attachments A and B to NOPR.

⁵ Decision No. C22-0486 (mailed August 17, 2022) in Proceeding No. 22R-0359R (Decision No. C22-0486).

⁶ See Decision No. C22-0552 at 20 (mailed September 19, 2022) in Proceeding No. 22R-0359R (Decision No. C22-0552).

⁷ *Id.*

interested organizations, and HopSkipDrive, Inc. (HopSkipDrive), who provides services as a School TNC in Colorado.⁸

6. On October 24, 2022, the ALJ issued a Decision establishing procedures to facilitate the remote public comment hearing scheduled for November 10, 2022.⁹

7. The ALJ held the public comment hearing as noticed on November 10, 2022, during which members of the public provided comment and the ALJ explained next steps.¹⁰ The ALJ found that the Commission would benefit from receiving public comment from the Colorado Department of Education (CDE) responding to positions and proposed rule changes in the Initial Comments of HopSkipDrive Inc., filed October 13, 2022 (HopSkipDrive's 10/13/22 Comments), and Response Comments of HopSkipDrive, Inc. filed October 27, 2022 (HopSkipDrive's 10/27/22 Comments).¹¹ The ALJ identified other items for CDE and HopSkipDrive to comment on; and established a December 6, 2022 deadline for CDE's comments and a December 20, 2022 deadline for responsive comments to CDE's comments or any other relevant matter.¹² Given all of this, the ALJ also continued the public comment hearing to January 4, 2023 to receive additional public comment.¹³

⁸ See e.g., Englewood Schools 10/10/22 Comments; State Senator Zenzinger's 10/11/22 Comments; Safe Kids Worldwide 10/13/22 Comments; State Representative Larson's 10/13/22 Comments; Adams 14's 10/13/22 Comments; EverDriven Technologies, LLC's 10/13/22 Comments; Frankie Lopez's 10/13/22 Comments; Foster Source's 10/27/22 Comments; Debra Hanson's 10/27/22 Comments; HopSkipDrive's 10/13/22, 10/27/22, 12/20/22, 1/3/22, and 1/10/23 Comments; and Colorado AFL-CIO, American Federation of Teachers and the Colorado Education Association joint 1/4/23 Comments (AFL-CIO, AFT, and CEA's 1/4/23 Comments). All public comments are referenced by their filing date, which may or may not be consistent with the date reflected on the comments themselves.

⁹ Decision no. R22-0640-I (mailed October 24, 2022).

¹⁰ Decision No. R22-0727-I (mailed November 15, 2022).

¹¹ *Id.* at 3-4.

¹² *Id.* at 3-4; 8.

¹³ *Id.* at 8.

8. Also on November 10, 2022, Colorado Public Utilities Commission Staff (Staff) filed the Form U referenced in proposed Rule 6706(c).¹⁴

9. On December 6, 2022, CDE filed Public Comments (CDE's 12/6/22 Comments), responding to Decision No. R22-0727-I.

10. On December 20, 2022, HopSkipDrive filed Additional Public Comments of HopSkipDrive Inc. (HopSkipDrive's 12/20/22 Comments) with confidential and public attachments, that is, its Confidential Verified Petition for Waiver from Temporary Rules 6724(e) and (f) Promulgated in Proceeding No. 22R-0359TR Pursuant to Commission Rules 1003 and 6003(a)(I) (HopSkipDrive's Waiver Petition).¹⁵ HopSkipDrive's Waiver Petition initiated Proceeding No. 22V-0538TNC (Waiver Proceeding).

11. On January 3, 2023, HopSkipDrive filed Additional Public Comments of HopSkipDrive, Inc., Regarding Commission Decision No. C22-0838 (HopSkipDrive's 1/3/23 Comments) with attachments, including Decision No. C22-0838 issued in HopSkipDrive's Waiver Proceeding. In the Waiver Proceeding, the Commission considered issues relevant here, and as discussed later, granted HopSkipDrive limited variances from Temporary Rule 6724(e) and (f) through the earlier of the effective date of Rules adopted in this Proceeding, or the April 17, 2023, expiration of the Temporary Rules.¹⁶

¹⁴ Form U filed on November 10, 2022. During the November 10, 2022 hearing, the ALJ noted that Raiser, LLC (a licensed TNC and subsidiary of Uber Technologies Inc.) (Raiser) filed a comment suggesting that it did not have a meaningful opportunity to provide feedback on proposed Rule 6706(c) because the proposed Rule would require it to submit a Form U that was not included with the NOPR. *See* Raiser's October 13, 2022 Comments and Decision No. R22-0727-I at 3-4. Staff agreed on the record to file the referenced Form U that same day, and the ALJ encouraged Raiser to review the Form U and submit additional public comment as it deems appropriate. *See* Decision No. R22-0727-I at 3-4.

¹⁵ HopSkipDrive's 12/20/22 Comments and Attachment E thereto (its Waiver Petition).

¹⁶ Decision No. C22-0838 at 9 (mailed December 28, 2022) in Proceeding No. 22V-0538TNC (Decision No. C22-0838). As noted, HopSkipDrive filed Decision No. C22-0838 in this Proceeding on January 3, 2023.

12. The ALJ held the January 4, 2023, continued public comment hearing as noticed, during which members of the public provided public comment. During the hearing, the ALJ also shared her concerns about issues relating to safety and security incident reporting (relevant to proposed Rule 6724(k)), and noted the Commission's Decision in HopSkipDrive's Waiver Proceeding, including the Commission's invitation for the public to provide additional comments in this Proceeding on issues addressed there.¹⁷ The ALJ invited additional public comment on those matters, to be filed by the close of business on January 10, 2023.

13. HopSkipDrive filed additional public comments on January 10, 2023.¹⁸

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Statutory Authority to Promulgate Rules

14. The Commission has general statutory authority to promulgate such rules as are necessary to administer and enforce title 40, Colorado Revised Statutes, per § 40-2-108(1), C.R.S., (2022).¹⁹ The Commission also has authority to promulgate rules consistent with part 6, article 10.1, title 40, Colorado Revised Statutes, under § 40-10.1-608(1), C.R.S. In addition, under § 40-10.1-608(2), C.R.S., the Commission has specific authority to promulgate rules requiring a TNC to maintain and file proof of financial responsibility and continued validity of the insurance policy, surety bond, or self-insurance.

15. The Commission also has specific statutory authority to promulgate 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, in coordination

¹⁷ See Decision No. C22-0838 at 6.

¹⁸ HopSkipDrive's 1/10/23 Comments.

¹⁹ All statutory citations in this Decision are to the Colorado Revised Statutes published in 2022.

with CDE, per § 40-10.1-608(3)(a), C.R.S.; rules requiring such TNCs to report to the Commission and to each school or school district with which it has contracted to provide such services of any safety or security incidents involving such services, per § 40-10.1-609(1), C.R.S.; and rules providing for the approval of the training used for drivers providing such services, in coordination with CDE, per § 40-10.1-605(1)(r), C.R.S. Finally, the Commission has specific statutory authority to promulgate rules requiring TNCs to report information relating to driver background checks, insurance coverage, and data reporting, consistent with the type of service provided, as it relates to service for students, in coordination with CDE, under § 40-10.1-609(2)(a), C.R.S.

16. As detailed in the NOPR, this Proceeding was prompted by the need to amend Commission Rules to align with numerous legislative changes made during the 2022 Colorado legislative session through House Bill (HB) 22-1089 and Senate Bill (SB) 22-144.²⁰ Specifically, HB 22-1089 added § 40-10.1-604(2.5), C.R.S., to require TNCs to file with the Commission, in a manner the Commission prescribes, proof that they have secured 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.

17. Among other changes, SB 22-144 modified the statutory definition in § 40-10.1-602(6)(c), C.R.S., 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 amended. The bill modified types 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

²⁰ See Decision No. C22-0554 at 3-5.

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.

18. 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 School TNC 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 School TNC, the transported student's legal guardian, and the person that scheduled the ride; and (3) ensure each School TNC driver receives training in several specialized areas. The bill added a new operational requirement in § 40-10.1-605(10), C.R.S., prohibiting School TNCs from using a driver to provide the subject services if the driver has been convicted of, or pled guilty or *nolo contendere* to, an offense listed in § 22-32-109.8(6.5), C.R.S. SB 22-144 also created new reporting requirements for School TNCs under § 40-10.1-609(1), C.R.S., to notify the Commission and each school or school district with which it has contracted to provide the subject student transportation services of any safety or security incidents that involve providing subject student transportation services.

19. The proposed Rules seek to implement or align existing rules, consistent with the above legislative changes. As such, for the reasons discussed, the ALJ finds that the Commission has statutory authority to promulgate the Rules.

B. Rule Amendments

1. Rule 6701 - Definitions

20. Rule 6701 includes definitions of terms that apply to Rules 6700 to 6724. Proposed changes include defining "school" as a public school that enrolls students in grades kindergarten through twelfth (proposed Rule 6701(i)) and "student" as an individual enrolled in a

school (proposed Rule 6701(j)). Changes also amend the definition of “transportation network company services” or “services” to exclude services provided using vehicles owned or leased by a political subdivision or other entity exempt from federal income tax under § 115 of the federal “Internal Revenue Code of 1986,” and explicitly include 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 (proposed Rule 6701(n)).

a. Discussion, Findings, and Conclusions

21. The proposed changes largely mimic new statutory language arising out of SB 22-144, to wit, changes to §§ 40-10.1-602(2.5), (2.6), (6)(b) and (c); and 40-10.1-105(1)(b) and (j), C.R.S. The changes align Rule language with already effective statutory language, thereby eliminating conflicts with prior Rule language. For these reasons, the ALJ adopts the Rule amendments as proposed in the NOPR.

22. In addition, and in light of other Rule and statutory changes, the ALJ finds that additional modifications are necessary to ensure clarity, improve understandability, and avoid cumbersome language that is repeated throughout the proposed Rules. Specifically, the ALJ finds that adding a definition of “school transportation network company” will clarify and simplify later Rule changes intended only to apply to such TNCs. The ALJ will adopt a definition that aligns with and mimics language in numerous provisions of SB 22-144 intended to apply to TNCs providing the subject services.²¹ The new definition also inherently explains or defines a School TNC’s services, which improves clarity of other adopted Rules. For all these reasons, the ALJ adopts the following language as Rule 6701(j):

²¹ See e.g., §§ 40-10.1-605(1)(p) through (r), C.R.S.

(j) “School transportation network company” (School TNC) means a TNC that provides TNC services for remuneration from a school or school district to transport students to or from a school, school-related activities, or school-sanctioned activities.

2. Rule 6706 – Financial Responsibility

23. Rule 6706 governs TNC financial responsibility requirements. Proposed changes adds language implementing HB 22-1089, codified at § 40-10.1-604(2.5), C.R.S. Specifically, proposed Rule 6706(c) requires TNCs to obtain and keep in effect insurance protection against uninsured motorists, as required by § 40-10.1-604(2.5), C.R.S., in the prescribed Commission Form U.

24. Raiser, LLC (a licensed TNC and subsidiary of Uber Technologies Inc.) (Raiser) criticizes proposed Rule 6706(c) as adding an unnecessary additional filing requirement and form exclusively for uninsured or underinsured motorist coverage.²² Raiser submits that the Commission should instead accept a Certificate of Insurance, which it contends would provide all the necessary information that the Commission needs “as proof of primary liability insurance” for purposes of complying with § 40-10.1-604, C.R.S.²³ Raiser also states that since the Form U was not made available, it could not provide meaningful feedback on the form.²⁴

a. Discussion, Findings, and Conclusions

25. As noted, Staff filed the Form U referenced in proposed Rule 6706(c) on November 10, 2022. During the November 10, 2022 public comment hearing, and in the written

²² Raiser’s 10/13/22 Comments at 1.

²³ *Id.*

²⁴ *Id.*

decision that followed, the ALJ encouraged Raiser to review the filed Form U and submit any additional comments it deemed appropriate. Raiser did not do so.

26. The ALJ finds Raiser’s criticisms of proposed Rule 6706(c) unpersuasive. The proposed Form U presents a uniform, simplistic, and consistent method by which the Commission can confirm a TNC’s compliance with the new statutory requirements under § 40-10.1-604(2.5), C.R.S. This approach is similar to numerous other effective Commission rules that successfully confirm compliance with financial responsibility requirements using Commission-prescribed forms.²⁵ The form presents no appreciable burden on TNCs, and the record does not establish one. What is more, the Commission is well within its statutory authority under § 40-10.1-604(2.5), C.R.S., to prescribe the manner and form by which TNCs must establish their compliance with the statute. For all these reasons, the ALJ adopts Rule 6706(c) as proposed in the NOPR.

3. Rule 6724 – Transportation for Remuneration from a School or School District

27. Proposed Rule 6724 represents the vast majority of the substantive changes advanced through the NOPR. Most public comments focus on these changes. This new Rule implements the operational, training, and reporting requirements enacted in SB 22-144.

a. Rule 6724 - Title and Applicability

28. Proposed amendments change the title of Rule 6724 to “Transportation for Remuneration from a School or School District” and explain that the Rule applies to TNCs, personal vehicles, and TNC drivers “when engaging in services provided under contract with a school or school district” and are minimum standards in addition to all other TNC rules.

²⁵ See e.g., Rule 6008(a)(II) to (VI), 4 CCR 723-6.

(i) Discussion, Findings, and Conclusions

29. The ALJ finds that minor modifications to Rule 6724's title and applicability language will improve clarity and understandability of the new Rule and will better align with other Rule changes. As such, the ALJ adopts the following title for Rule 6724 "School Transportation Network Companies," which recognizes the new definition of that term in Rule 6701(j) (discussed above). Other minor changes to the applicability language will better cue School TNCs to the Rule that apply to them, while also confirming that Rule 6724 only applies to TNCs when providing services as a School TNC. In addition, the ALJ adopts additional changes for clarity and simplicity, as follows:

6724. School Transportation Network Companies

In accordance with § 40-10.1-608(3)(a), C.R.S., the following minimum safety standards are implemented for School TNCs. These minimum safety standards are in addition to, and not in lieu of, all other transportation network company rules, but only apply to TNCs when providing services as a School TNC.

b. Rules 6724(a) through (d) – Contracts, End-to-End Visibility, Training Requirements, and Criminal History Record Checks.

30. Proposed Rule 6724(a) reiterates that it applies to School TNCs and requires such TNCs to enter into a contract with the school or school district, which may include other student safety provisions. This mimics language in § 40-10.1-605(1)(p), C.R.S.

31. Proposed Rule 6724(b) requires School TNCs to use an end-to-end technology-enabled integration solution required by § 40-10.1-605(1)(q), C.R.S. that must be maintained and in good working order. The proposed Rule mimics the statutory language and clarifies that School TNCs must report any disruptions that occur during a prearranged ride

immediately to the involved school or school district and the parent or legal guardian of the involved student.

32. Likewise, proposed Rule 6724(c) includes driver training requirements for School TNCs, consistent with § 40-10.1-605(1)(r), C.R.S. Subparagraph (c)(I) requires that the Commission approve driver training before it can be used to meet the requirement and creates a process for a School TNC to essentially appeal Staff's disapproval of such trainings to the Commission. Subparagraph (c)(II) allows the training requirements to be satisfied through training offered by schools or school districts (provided the Commission approves the training). Subparagraph (c)(III) requires School TNCs or a third party on its behalf to maintain training records for an identified time-period. Subparagraph (c)(IV) requires School TNCs to be responsible for the costs of the required training and subparagraph (c)(V) mandates that the required training be complete before the driver can provide services for a School TNC.

33. Proposed Rule 6724(d) provides the process that must be used for driver fingerprint background checks when required by a contract with a school or school district. Subparagraph (d)(I) confirms that School TNCs cannot use drivers disqualified under § 40-10.1-605(3)(c), C.R.S. or drivers who been convicted of or plead guilty or *nolo contendere* to an offense listed in § 22-32-109.8, (6.5), C.R.S, consistent with § 40-10.1-605(10), C.R.S.

(i) Discussion, Findings, and Conclusions

34. The ALJ find that some minor modifications to Rule 6724 will provide helpful clarity and consistency. Specifically, the ALJ will modify the Rule to use "School TNC" consistent with other Rule changes and delete language that essentially repeats the definition of that term as unnecessary. The ALJ also finds that subparagraph (c)(I) should be clarified to

ensure that School TNCs understand that the Rule establishes an appeal process for the Commission to review Staff's determination not to approve a training.

35. Turning to the criminal history check requirements under paragraph (d), the ALJ is concerned that the proposed Rule language fails to account for convictions²⁶ that occur after a driver has successfully passed a criminal history check, but before their next criminal history check must be run. Given that a driver's criminal history check is run only once every five years,²⁷ a driver could pass a criminal history check, drive for a School TNC, get convicted of a serious disqualifying offense such as sexual assault on a minor, but this conviction would not come to the School TNC's attention for another five years when the driver's next criminal history check is run. Without rule language that closes this loophole, it is possible that neither the Commission nor the School TNC would be aware of the sexual assault conviction and therefore would not know that the driver is disqualified. For all these reasons, the ALJ will adopt a new subparagraph (d)(II) that obligates School TNCs to require their drivers to immediately report to a School TNC any convictions of disqualifying offenses. The ALJ does not adopt rule language requiring the School TNC to take specific action based on such information; this is unnecessary since School TNCs are already obligated by statute and rule not to use drivers convicted of disqualifying offenses.

36. Consistent with the above discussion, the ALJ adopts the following language for Rules 6724(a) to (d):

²⁶ This Decision's references to "convictions" encompass guilty or nolo contendere pleas to disqualifying offenses.

²⁷ § 40-10.1-605(3)(b), C.R.S.; Rule 6712(d).

- (a) Contracts. A School TNC must enter into a contract with the appropriate school or school district that may include specific provisions for the safety of student passengers, as determined by the school or school district.
- (b) End-to-end visibility. A School TNC must use a technology-enabled integrated solution that provides end-to-end visibility into the ride for the transportation network company, the student's legal guardian, and the person that scheduled the ride. This solution must allow for Global Positioning System (GPS) monitoring of the ride in real time for safety-related anomalies.
 - (I) The technology-enabled integrated solution shall be maintained and in good working order, at all times, when performing services provided under contract with a school or school district. Any disruption that occurs during a prearranged ride shall be immediately reported to the school or school district and to the parent or legal guardian of the involved student, as applicable.
- (c) Training requirements. A School TNC must ensure that each driver providing the service 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.
 - (I) Commission staff, in consultation with the Colorado Department of Education (CDE) as a subject matter expert, must approve driver training before such training may be used to comply with the training requirements in paragraph (c). If Commission staff does not approve a driver training, a School TNC may file a petition with the Commission appealing staff's disapproval determination within 60 days of staff's disapproval notification.
 - (II) Driver training covering the topics outlined in this rule offered by schools or school districts, may meet this requirement if approved by the Commission.
 - (III) A School TNC, or a third party on behalf of a School TNC, shall maintain records associated with the training requirements outlined in this rule during the driver's period of service and for six months thereafter.
 - (IV) The School TNC, not the driver, shall pay the cost of providing the training outlined in this rule.

- (V) The driver training outlined in this rule shall be completed prior to the driver performing services provided under a contract with a school or school district.
- (d) Criminal history record checks. If a fingerprint background check for a driver is required, as specified in a contract with a school or school district, the criminal history record check shall be completed pursuant to the 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.
 - (I) In addition to the disqualification provisions under § 40-10.1-605(3)(c), C.R.S., a School TNC may not use a driver to provide services if the driver has been convicted of or pled guilty or nolo contendere to an offense described in § 22-32-109.8(6.5), C.R.S.
 - (II) A School TNC must require its drivers to immediately report to it any convictions and guilty or nolo contendere pleas to an offense described in §§ 40-10.1-605(3)(c) and 22-32-109.8(6.5), C.R.S. that occur after the driver's last criminal history record check.

c. Rule 6724(e) – Medical Fitness

37. Proposed Rule 6724(e) would prohibit School TNCs from using drivers unless they have been medically examined and certified under the provisions of 49 Code of Federal Regulations (C.F.R.) § 391.41, which govern physical qualifications to drive a commercial motor vehicle under relevant federal law. Under those requirements, generally, to be physically qualified, drivers have to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners (Registry).²⁸ The federal regulation includes a long list of conditions or diagnoses that a driver must not have to be qualified to drive.²⁹ Those are: no loss of foot, leg, hand or arm without a skill performance evaluation per 49 C.F.R. § 391.49; no established history of diabetes mellitus currently treated with insulin for control (with

²⁸ 49 C.F.R. § 391.41(a)(3)(i), referencing medical examination requirements in 49 CFR § 391.43, which, in turn, states that medical examinations must be performed by professionals on the referenced list.

²⁹ 49 C.F.R. § 391.41(b)(1) through (13).

exceptions); no current diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure; no established medical history of respiratory dysfunction likely to interfere with the ability to control and drive a vehicle safely; no current diagnosis of high blood pressure likely to interfere with the ability to safely operate a vehicle; no medical history of rheumatic, arthritic orthopedic, muscular, neuromuscular, or vascular disease which interferes with the ability to control and operate a vehicle safely; no established medical history or diagnosis of epilepsy or any other condition likely to cause loss of consciousness or any loss ability to control a vehicle; hearing and vision minimum standards; psychiatric disorders likely to interfere with the ability to drive a vehicle safely; no current clinical diagnosis of alcoholism; and does not use a drug or substance identified in 21 C.F.R. § 1308.11 Schedule I, an amphetamine, narcotic, other habit forming drug, or any non-Schedule I drug or substance in the other Schedules in 21 C.F.R. part 1308 except when prescribed by a licensed medical practitioner.³⁰

38. Proposed Rule 6724(e)(I) also requires drivers to keep a copy of their medical certification on their person or in their vehicle and to provide it upon request to an enforcement official. Subparagraph (e)(II) requires a School TNC or a third party on its behalf to maintain records associated with drivers' medical certifications for an identified period and to make them available to an enforcement official upon request. Finally, subparagraph (e)(III) would allow drivers to use the medical certification they obtain, consistent with the proposed Rule, to substitute other rule provisions that require a driver's self-certification to a TNC that they are physically and mentally fit to drive.

³⁰ 49 C.F.R. § 391.41(b)(1) through (13).

39. Numerous public comments object to the proposed changes, arguing that it imposes onerous, burdensome, or inappropriate requirements.³¹ Some believe that it will be difficult to find medical professionals on the Registry, as there are a limited number of such professionals in Colorado.³² HopSkipDrive adds that it has not identified providers that could perform the medical exams in all of the locations in which it provides services.³³ HopSkipDrive submits that this requirement will significantly disrupt its services.³⁴ Others believe that having to use a professional on the Registry to examine drivers consistent with the federal regulations is overly invasive, and may create health equity issues.³⁵ Commenters also posit that the requirements do not suit the nature of the TNC model because they are designed for commercial drivers operating interstate transportation in large commercial vehicles, who drive many hours per day and hundreds of thousands of miles per year, whereas TNC drivers use their personal vehicles to provide limited service.³⁶ Commenters are concerned that the proposed requirements would not improve safety, but could negatively impact a School TNCs' ability to retain drivers who find the medical certification requirements intimidating or burdensome.³⁷ This, some argue,

³¹ See e.g., State Senator Zenzinger's 10/11/12 Comments at 2; State Representative Larson's 10/13/22 Comments at 1; HopSkipDrive's 10/13/22 Comments at 12-15; RootEd Denver's 10/27/22 Comments at 1; Michael Craft's 11/3/22 Comments at 1; Project Idea's 10/27/22 Comments at 2.

³² HopSkipDrive's 10/13/22 Comments at 14; National Health IT Collaborative for the Underserved's (NHIT) 10/13/22 Comments at 2.

³³ HopSkipDrive's 10/13/22 Comments at 14.

³⁴ *Id.* at 13.

³⁵ See e.g., HopSkipDrive's 10/13/22 Comments at 14-15; State Senator Zenzinger's 10/11/12 Comments at 2; NHIT's 10/13/22 Comments at 1-2.

³⁶ See e.g., HopSkipDrive's 10/13/22 Comments at 13; State Senator Zenzinger's 10/11/12 Comments at 2; State Representative Larson's 10/13/22 Comments at 1; RootEd Denver's 10/27/22 Comments at 1; Debra Hanson's 10/27/22 Comments; Safe Kids Worldwide's 10/13/22 Comments; Englewood School's 10/10/22 Comments; Reschool Colorado's 10/13/22 Comments; Adams 14's 10/13/22 Comments; Colorado Succeeds' 10/13/22 Comments.

³⁷ HopSkipDrive's 10/13/22 Comments at 12-15; Reschool Colorado's 10/13/22 Comments; State Representative Larson's 10/13/22 Comments at 1; Adams 14's 10/13/22 Comments; NHIT's 10/13/22 Comments at 1-2; Minds Matter Colorado's 10/13/22 Comments.

would be more likely to disproportionately impact low-income and minority groups because underserved communities already struggle to form relationships with healthcare providers.³⁸

40. Many comments also describe the significant role that School TNCs have played in ensuring that students are able to get to and from school; they ask that the Commission consider this before imposing any requirements that will negatively impact School TNCs' ability to continue to provide such services.³⁹ Indeed, comments tell many personal stories explaining how this specialized service has been critical to ensuring continuity in students' education.⁴⁰

41. HopSkipDrive suggests that the Rule be changed to allow drivers to submit "evidence of screening by a medical professional against conditions that would interfere with the driver's ability to operate a motor vehicle safely including heart problems, diabetes, paralysis, epilepsy, seizures, lapses coconsciousness, or dizziness."⁴¹ CDE believes that this language would be reasonable and that certification by a medical professional ensures that drivers have the option to be reviewed by a medical professional who knows them and their history in a location that is accessible to the driver.⁴²

42. On the other hand, some commenters support imposing the medical certification requirements as proposed. For example, the American Federation of Teachers, the Colorado Education Association, and the Colorado AFL-CIO submit that individuals driving these vulnerable populations are not employees but are independent contractors who are not physically

³⁸ See NHIT's 10/13/22 Comments at 1-2.

³⁹ Frankie Lopez's 10/13/22 Comments at 1; Michael Craft's 10/13/22 Comments at 1-2; Fayaz Amiri's 10/26/22 Comments; Advocates for Children CASA's 10/27/22 Comments at 1-2; RootEd Denver's 10/27/22 Comments at 1; Foster Source's 10/27/22 Comments.

⁴⁰ Frankie Lopez's 10/13/22 Comments at 1; Michael Craft's 10/13/22 Comments at 1-2; Fayaz Amiri's 10/26/22 Comments; Muhammad Javed Paktinyar's 10/27/22 Comments; Advocates for Children CASA's 10/27/22 Comments at 1-2.

⁴¹ Attachment B to HopSkipDrive's 10/13/22 Comments at 5.

⁴² CDE's 12/06/22 Comments at 2-3.

seen by anyone overseeing the contract for transportation.⁴³ They submit that in an employer-employee relationship, health issues may be more readily identified, health exams may be required, or random drug tests may be required when the employee is deployed from a depot rather than their home.⁴⁴ All of this, they submit, makes the fitness requirements for School TNC drivers “absolutely vital to ensuring public and passenger safety.”⁴⁵

43. When evaluating whether to grant HopSkipDrive a waiver of the Commission’s Temporary Rule incorporating the medical certification requirement at issue here, the Commission found that medical screening tailored to the TNC context, in lieu of the federal standards in the proposed Rule, can appropriately serve the public interest.⁴⁶ The Commission granted HopSkipDrive a variance of the medical certification requirement in the Temporary Rules to allow HopSkipDrive to demonstrate its drivers’ medical fitness by either: providing the certification required in the Temporary Rules, or through a certification by a doctor of medicine or osteopathy, a physician assistant, nurse practitioner, or clinical nurse specialist working under the direct supervision of a physician, using the form attached to the Decision (Form).⁴⁷ The Commission explained that this Form was previously vetted and used to certify TNC drivers’ medical fitness consistent with a prior version of Rule 6713 before 2021 legislative changes codified a mandatory lesser “self-certification” fitness standard for TNC drivers.⁴⁸ The Commission found that this Form provides a reasonable alternative that can be used while a final

⁴³ AFL-CIO, AFT, and CEA’s 1/4/23 Comments.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Attachment F to HopSkipDrive’s 1/3/23 Comments at 5.

⁴⁷ *Id.*

⁴⁸ Attachment F to HopSkipDrive’s 1/3/23 Comments at 6, fn. 1, referring to SB 21-260. Rule 6713 was modified by Decision No. R21-0761 (mailed December 2, 2021) in Proceeding No. 21R-0467TR (Decision No. R21-00761) to mirror statutory language in § 40-10.1-605(1)(d), C.R.S., (amended by SB 21-260) instituting a self-certification fitness standard for TNC drivers.

form and certification process, specific to student transportation, is refined in this Proceeding.⁴⁹ Commissioner John Gavan dissented, noting that the safety and well-being of children that HopSkipDrive transports is paramount, and that transportation of such vulnerable populations demands higher standards, as SB 22-144 requires.⁵⁰

44. While HopSkipDrive continues to support its proposed changes to Rule 6724(e), it submits that the Form is a more reasonable approach and is more than sufficient to promote safety.⁵¹ HopSkipDrive also suggests that medical certifications be renewed every two years, noting that the proposed Rules are silent on this and that the Commission require drivers to immediately report to the School TNC any new condition that would impact their ability to drive and require that driver to obtain a new medical certification before continuing to provide services.⁵²

(i) Discussion, Findings, and Conclusions

45. While the federal commercial driver medical standard under 49 C.F.R. § 391.41 plainly provides a reliable and well-vetted method to ensure that School TNC drivers are fit to drive, strictly applying those standards is not the only way to ensure such drivers are medically fit or to protect the public and the vulnerable population at issue. Based on the record, the ALJ finds that a primary difficulty with the federal standard is the requirement that examinations be performed only by those listed on the Registry. The ALJ finds little support in the record for the proposition that only those medical professionals on the Registry are qualified to perform the

⁴⁹ Attachment F to HopSkipDrive's 1/3/23 Comments at 6.

⁵⁰ *Id.* at 11.

⁵¹ HopSkipDrive's 1/3/23 Comments at 5-6.

⁵² *Id.* at 6.

necessary medical examination.⁵³ Allowing other qualified medical professionals to perform examinations provides significantly more options for drivers without compromising safety. This could be particularly critical in rural areas of the state with limited available medical professionals on the Registry (if any). Widening the scope of medical professionals who can perform examinations would also allow drivers to use the medical professionals with whom they already have an established relationship, who know and understand their medical history. It is difficult to imagine that this would not improve the quality of the examination, as compared to an examination performed by a Registry-approved professional, who may not be familiar with the driver or their medical history.

46. As noted, the Commission approved a waiver so that HopSkipDrive drivers may be examined and certified as fit by a doctor of medicine or osteopathy, a physician assistant, nurse practitioner, or clinical nurse specialist working under the direct supervision of a physician. For the reasons discussed, the ALJ finds that adopting amendments to allow these same medical professionals to perform School TNC driver medical examinations safeguards the public interest and protects the vulnerable population at issue, while also reducing the potential burden on School TNCs and their drivers.

47. Turning to the specific medical screening requirements, the ALJ finds that the criteria under 49 C.F.R. § 391.41(b) set appropriate medical screening standards for the type of service at issue here, that is, service to a vulnerable population. The Form largely mirrors the medical fitness screening standards in 49 C.F.R. § 391.41(b).⁵⁴ The main appreciable difference

⁵³ Of course, this is not to say that regulations requiring medical certifications only by those on the Registry are unsupported, but only that the record in this Proceeding lacks support to conclude that the Commission should similarly limit the medical professionals who may perform the medical certifications at issue here.

⁵⁴ 49 C.F.R. § 391.41(b)(1) through (13); Attachment F to HopSkipDrive's 01/03/23 Comments at 13-17.

between the Form and the standards in 49 C.F.R. § 391.41(b) is that the Form does not list hearing disorders or impairment as a disqualifying condition, while the federal standard does.⁵⁵ Even so, the Form requires the driver to disclose, as part of their health history, whether they have any “ear disorders, loss of hearing or balance,” and for the examiner to ask follow-up questions about such conditions.⁵⁶ Given that School TNC drivers transport a vulnerable population, the ALJ finds that it is in the public interest to include the same or similar hearing impairment standards as in 49 C.F.R. § 391.41(b) in the Commission’s Rule. Indeed, screening for hearing loss will help ensure that School TNC drivers are able to hear sirens and other vehicles, as well as the students they transport, who may ask for help or otherwise make noise indicating they need assistance during transportation. For all the reasons discussed, the ALJ will adopt language that largely mirrors the referenced federal standard, the Form, and the requirements in the prior version of Rule 6713(e). Such Rule amendments safeguard the public interest, protect the vulnerable population at issue, and amount to an appropriately heightened standard that suits the type of services being provided and the School TNC model.

48. The ALJ agrees with HopSkipDrive that the Commission should establish a two-year expiration period for medical certifications, with a requirement that drivers must immediately report to the School TNC any new condition that would impact their ability to drive and require that driver to obtain a new medical certification before continuing to provide services. The two-year period is consistent with prior and existing Commission rules governing medical certifications.⁵⁷ In addition, the Form already includes language giving medical examiners discretion to establish a shorter validation period than two years; adopting Rule

⁵⁵ 49 C.F.R. 391.41(b)(1) through (13); Attachment F to HopSkipDrive’s 1/3/23 Comments at 13-17.

⁵⁶ Attachment F to HopSkipDrive’s 1/3/23 Comments at 13.

⁵⁷ See former version of Rule 6713(e), modified by Decision No. R21-00761 in Proceeding No. 21R-0467TR.

language that confirms this discretion provides helpful clarity. For all these reasons, the ALJ will adopt Rule language as discussed above.

49. Proposed Rule 6724(e)(III) is an attempt to allow School TNC drivers who have met the medical fitness requirements under Rule 6724(e) to use that certification to meet the self-certification fitness requirements applicable to TNCs that are not School TNCs. While this is laudable, doing so would directly conflict with mandatory self-certification requirements in § 40-10.1-605(1)(d), C.R.S.; as such, the proposed Rule language is not adopted.⁵⁸

50. Given that the Commission granted HopSkipDrive a waiver of the medical certification requirements in the Temporary Rule, requiring it to comply with the new medical certification requirements may result in its drivers undergoing another medical examination, despite likely having had a recent examination consistent with the waiver. While the ALJ recognizes this potential issue or concern, addressing the issue -- which is inherently temporary and involves a single stakeholder -- through permanent rule language is not appropriate.⁵⁹ As such, the ALJ does not adopt rule language to address this issue.

51. For all the reasons discussed, the ALJ adopts the following language for Rule 6724(e):

(e) Medical Fitness. A School TNC may not permit a person to act as a driver, unless the driver has been medically examined and certified by a medical professional, in accordance with this paragraph, as physically qualified to drive.

⁵⁸ See § 40-10.1-605(1)(d), C.R.S.

⁵⁹ Based on the Commission's findings in granting HopSkipDrive's waiver and the fact that the new requirements mimic those adopted through the waiver (except for hearing impairment screening), it may be appropriate to allow HopSkipDrive to meet the newly established requirements when its drivers' medical examination certificates expire. The ALJ's authority in this Proceeding is limited to rulemaking and matters directly connected to that rulemaking function. That does not include extending a waiver or granting a new one. This does not mean that HopSkipDrive is without options; it may seek a waiver from the Commission at the appropriate time, should it decide to do so.

(I) Medical examiners issuing School TNC medical examiner's certificates must be licensed medical practitioners, in accordance with their specific specialty practice act in the Colorado Revised Statutes, as a doctor of medicine or osteopathy, a physician assistant, nurse practitioner, or clinical nurse specialist working under the direct supervision of a physician.

(II) A person is physically qualified to drive if, upon physical examination, the medical examiner determines that the person does not exhibit any of the following conditions:

(A) a defect, loss of limb or impairment which interferes with the ability to perform normal tasks associated with operating a motor vehicle;

(B) established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control likely to interfere with the person's ability to safely control and drive a motor vehicle;

(C) current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure, and that is likely to interfere with the person's ability to safely control and drive a motor vehicle;

(D) established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with the person's ability to safely control and drive a motor vehicle;

(E) established medical history or clinical diagnosis of high blood pressure likely to interfere with the person's ability to safely control and drive a motor vehicle;

(F) established medical history or clinical diagnosis of rheumatic, arthritic orthopedic, muscular, neuromuscular, or vascular disease which interferes with the person's ability to safely control and drive a motor vehicle;

(G) established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to safely control and drive a motor vehicle;

(H) mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with the person's ability to safely drive a motor vehicle;

(I) visual disorder or impairment resulting in acuity of worse than 20/40 (Snellen) in each eye with or without corrective lenses; distant binocular acuity worse than 20/40 (Snellen) in both eyes with or without corrective lenses; field of vision lower than 70° in the horizontal Meridian in each eye; and colorblindness resulting in the lack of an ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

(J) is unable to perceive a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, has an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid;

(K) uses a controlled substance, which use is prohibited in Colorado unless prescribed by a licensed medical practitioner who is familiar with the driver's medical history and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a motor vehicle; or

(L) has a current clinical diagnosis of alcoholism.

(III) Medical examiners' certificates are valid for not more than two years from the date of issuance, but the medical examiner may establish a shorter period, in their discretion.

(IV) Medical examiners must use the School TNC medical examination report and certificate form available on the Commission's website. Such medical examiner's certificate must include certification that the medical examiner conducted an examination in accordance with these rules, and, with knowledge of the driving duties, finds the individual is qualified, subject to any express conditions. The medical examination report must identify the driver, describe the driver's medical history, and document the examination, including the medical examiner's independent judgment based thereupon.

(V) Drivers must immediately report to the School TNC any new condition which may impact their ability to safely control and drive a motor vehicle. Notwithstanding any provision in paragraph (e), before such drivers may continue to drive for the School TNC, the driver must be examined by a medical professional and receive a new medical certificate, consistent with paragraph (e).

(VI) A driver must keep on their person or in their personal vehicle a copy of their medical certificate, as outlined in this rule, in physical or electronic form. This documentation must be provided to an enforcement official upon request.

(VII) A School TNC, or a third party on behalf of a School TNC, must maintain records associated with the driver's medical certification(s), as outlined in this rule, during the driver's period of service and for six months thereafter. This documentation must be made available to an enforcement official upon request.

52. While it may appear at first glance that the adopted rule language includes more requirements than the original proposed language, it does not. This is because the original proposed language required drivers to meet the fitness requirements in 49 C.F.R. § 391.41, which includes all the above conditions, alongside a requirement that drivers may only use medical examiners on the Registry. What is more, except to add screening for hearing impairments, the adopted language largely mirrors the Form, which the Commission approved for use as part of HopSkipDrive's waiver, and the prior version of Rule 6713(e).⁶⁰

d. Rule 6724(f) – Vehicle Inspections

53. Proposed Rule 6724(f) would require School TNC drivers to have their personal vehicles inspected consistent with the vehicle inspection requirements in Rule 6714, by an Automotive Service Excellence (ASE) certified mechanic, employed by a company authorized to do business in Colorado. The Rule also requires that if the vehicle has devices to facilitate the loading, unloading, or transportation of individuals with disabilities, such devices must be in good working order.

⁶⁰ Attachment F to HopSkipDrive's 1/3/23 Comments at 13-17.

54. Many comments focus on the timeline within which School TNC drivers must have their vehicles inspected under the Temporary Rules, that is, by December 31, 2022.⁶¹ Commenters note that many drivers recently had their vehicles inspected and that it would be difficult, if not impossible to comply with the requirement in the Temporary Rules to have vehicles reinspected by December 31, 2022.⁶² Some comments suggest that it is unnecessary to have vehicles inspected by an ASE certified mechanic.⁶³ Although HopSkipDrive questions whether it is necessary to use an ASE certified mechanic, it states that it is willing to do so, but suggests that the Rule be amended to allow School TNCs to comply by September 1, 2023.⁶⁴ CDE supports a longer implementation period, noting that it may be impossible to find enough ASE certified mechanics to meet the requirement by the Temporary Rules' December 31, 2022 deadline.⁶⁵

55. In HopSkipDrive's Waiver Proceeding, the Commission granted a limited variance allowing HopSkipDrive drivers to meet the requirement when their next vehicle inspection becomes due.⁶⁶ The Commission did not grant a variance for any new vehicles coming onto HopSkipDrive's platform (*i.e.*, new drivers or existing ones using a different vehicle).⁶⁷

⁶¹ See *e.g.*, Colorado Succeeds' 10/12/22 Comments; Michael Craft's 10/13/22 Comments; Frankie Lopez's 10/13/22 Comments at 1; HopSkipDrive's 10/13/22 Comments at 18-19; Reschool Colorado's 10/13/22 Comments; Safe Kids Worldwide's 10/13/22 Comments; RootEd Denver's 10/27/22 Comments; Minds Matter Colorado's 10/13/22 Comments.

⁶² See *e.g.*, Michael Craft's 10/13/22 Comments; Frankie Lopez's 10/13/22 Comments at 1; HopSkipDrive's 10/13/22 Comments at 18-19.

⁶³ See *e.g.*, State Senator Zenzinger's 10/13/22 Comments; HopSkipDrive's 10/13/22 Comments at 18-19; Frankie Lopez's 10/13/22 Comments at 1; Donell-Kay Foundation's 10/13/22 Comments.

⁶⁴ HopSkipDrive's 10/13/22 Comments at 19-21; HopSkipDrive's 1/3/23 Comments at 7.

⁶⁵ CDE's 12/6/22 Comments at 3.

⁶⁶ Attachment F to HopSkipDrive's 1/3/23 Comments at 8.

⁶⁷ *Id.*

(i) Discussion, Findings, and Conclusions

56. The ALJ is unpersuaded by comments opposing requirements to use an ASE certified mechanic. Using an ASE certified mechanic ensures that vehicle inspections are performed by a mechanic who has been certified as qualified. Without this standard, vehicles used to perform School TNC services could be inspected by a person “capable” of doing so “by reason of experience, training, or both.”⁶⁸ This fairly broad standard lacks the reliability needed to ensure that those inspecting vehicles transporting a vulnerable population are qualified to do so. Requiring the inspections to follow the standards in existing Rule 6714 ensures that the qualified mechanic inspects each aspect of the vehicle relevant to its safe operation to confirm that it is in good and safe operating condition. Implementing these heightened safety standards for vehicle inspections perfectly suits the type of transportation at issue -- where a highly vulnerable population is being transported by individuals using their personal vehicles, which are not deployed from a central location where an employer could confirm the operational safety of the vehicle on a regular basis.

57. Nonetheless, the ALJ finds that language requiring that the ASE certified mechanic be “employed by a company authorized to do business in Colorado” may unnecessarily limit the ASE certified mechanics that a driver may use, by, for example, excluding self-employed ASE certified mechanics or those who work for a sole proprietorship (*i.e.*, a business that is not incorporated as a company.). The ALJ will delete this language, but this does not mean that drivers cannot or should not use an ASE certified mechanic employed by a company authorized to do business in Colorado. Instead, this change merely gives drivers the

⁶⁸ Rule 6715(a), 4 CCR 723-6.

option to use those who are not employees of an incorporated or formally organized company authorized to do business in Colorado.

58. The ALJ finds that as currently drafted, the Rule language may not clearly cue those subject to the Rule that the inspection must include reviewing the specific items in existing Rule 6714. As such, the ALJ will adopt changes to ensure this is clear. To further improve clarity, and consistent with other adopted language and Rule changes, the ALJ will also make changes to refer to “School TNC” and to delete language rendered unnecessary or redundant using the terms, School TNC.

59. Finally, the ALJ agrees with comments suggesting that the Commission allow drivers sufficient time to comply with the new requirements. To this end, the ALJ adopts changes to the Rule to require compliance for vehicles already being used by drivers for School TNCs by September 1, 2023, or when the next vehicle inspection is due, whichever is earlier. This approach ensures that no vehicle will go more than one year before being inspected again; and allows more than sufficient time for vehicles to be inspected under the new requirements. The ALJ finds that these changes protect the traveling public and the vulnerable population at issue, while also minimizing the potential disruption to those receiving services. For the reasons discussed, the ALJ adopts the following language for Rule 6724(f):

(f) Vehicle inspections. On or before the next annual vehicle inspection is due, or by September 1, 2023, whichever is earlier, a School TNC shall not permit the use of a personal vehicle to provide services unless the vehicle is inspected consistent with rule 6714 by an individual who is an Automotive Service Excellence (ASE) certified mechanic qualified to perform the inspection.

(I) If a personal vehicle is equipped with restraints, ramps, lifts, or other special devices, which are used to facilitate the loading, unloading, or transportation of individuals with disabilities, such equipment shall be in good working order.

60. The above language's reference to the "next annual vehicle inspection is due" is intended to encompass new vehicles to a School TNC's platform, which, as new vehicles, have not yet been inspected, and therefore, require their first annual inspection before the vehicle may be used, even if that is before September 1, 2023. This ensures that vehicles new to a School TNC's platform cannot be used before meeting the new Rule criteria, while also ensuring that vehicles that have been recently inspected need not be inspected until their next annual inspection is due.

e. Rules 6724(g) through (j) – Daily Vehicle Inspection Report, Emergency Procedures, Safety Restraints, and Unauthorized Passengers.

61. Proposed Rule 6724(g) obligates a School TNC to require its drivers to prepare a Daily Vehicle Inspection Report (DVIR), in writing, prior to each day's work. The paragraph requires: the DVIR to capture numerous safety-related items; defects and deficiencies noted in the DVIR be repaired before the vehicle may be used; and the School TNC to maintain DVIR records for three months after they were prepared. Proposed Rule 6724(h) requires a School TNC to have and enforce emergency procedures. Paragraph (i) requires a School TNC to have and enforce a policy that requires its drivers to follow all Colorado laws regarding the proper use of safety belt systems and child restraint systems. Paragraph (j) requires a School TNC to have and enforce a policy that prohibits drivers from transporting unauthorized passengers when performing subject services.

(i) Discussion, Findings, and Conclusions

62. As noted in the NOPR, these proposed Rules are minimum safety standards the Commission determined are necessary and were developed in coordination with CDE, consistent

with § 40-10.1-608(3), C.R.S.⁶⁹ Except for a few minor changes to insert “School” before TNC, the ALJ finds that the Rule language, as proposed in the NOPR, provides appropriate and necessary minimum safety standards that suit the TNC model and the type of services at issue (services to a vulnerable population). As such, and with the limited changes discussed, the ALJ adopts the language for Rules 6724(g) through (j) as proposed in the NOPR.

f. Rule 6724(k) – Reporting Requirements

63. Proposed Rule 6724(k) establishes reporting requirements for School TNCs based upon § 40-10.1-609(1), C.R.S. Under subparagraph (k)(I), as soon as possible, but no later than one business day after the incident, a School TNC must 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. Subparagraph (k)(II) requires a School TNC to report to the Commission, “prior to” February 1 each year, any safety or security incidents that occurred during the previous calendar year, with the information specified in the subparagraph, such as the date and nature of the incident, the relevant school or school district, the identity of the involved driver, and any disciplinary actions against the driver.

64. Subparagraph (k)(III) requires a School TNC to annually report to the Commission, “prior to” February 1 each year, information related to driver background checks during the previous calendar year, including the School TNC’s identifying information; the results of the background checks; the date and type of background check administered; the identity of the involved drivers; any disqualifications resulting from the background checks; and the drivers’ operational status.

⁶⁹ Decision No. C22-0554 at 10-12.

65. Numerous comments express concern that the proposed Rule does not protect student privacy, and suggest that the rule language be modified to protect student identities from disclosure.⁷⁰ Comments suggest that the proposed Rule may result in unintended consequences, such as type-casting students with special needs.⁷¹ Other comments question the prudence of using the terms “safety and security incident” without limitation, some urging that this may risk sharing sensitive information without justification, and creating unnecessary management and communication challenges for school district leaders who are not impacted by the incident.⁷² Comments explain that given the specialized populations served by School TNCs like HopSkipDrive, including students with disabilities and youth with prior traumatic experience or special needs, it is conceivable that a large portion of “safety and security incidents” would involve the student’s behavior.⁷³ Comments express concern that if reporting overwhelmingly pertains to student conduct, this will further perpetuate the stereotypes involving the communities being served, and inappropriately single-out students with special needs.⁷⁴

66. Comments also criticize requirements that School TNCs must report incidents to schools and school districts that are not impacted by the applicable safety or security incident for several reasons, including that: the data could be misunderstood in the field; without comparison points, the data may cause more public concern than is warranted by the incidents; such reporting is unnecessary or unhelpful; or the reporting could further perpetuate student stereotyping.⁷⁵ Comments suggest that reporting be limited to addressing the specific issue within the impacted

⁷⁰ See e.g., Greg Jackson’s 10/13/22 Comments at 1; Adams 14’s 10/13/22 Comments; Advocacy Denver’s 10/26/22 Comments at 1; The Arc of Colorado’s 10/27/22 Comments; RootEd Denver’s 10/27/22 Comments.

⁷¹ See e.g., Advocacy Denver’s 10/26/22 Comments at 1.

⁷² See e.g., Greg Jackson’s 10/13/22 Comments at 2; The Arc of Colorado’s 10/27/22 Comments.

⁷³ See e.g., Advocacy Denver’s 10/26/22 Comments at 1.

⁷⁴ See e.g., Advocacy Denver’s 10/26/22 Comments at 1-2; The Arc of Colorado’s 10/27/22 Comments.

⁷⁵ See e.g., Greg Jackson’s 10/13/22 Comments at 1; Advocacy Denver’s 10/26/22 Comments at 1-2; Adams 14’s 10/13/22 Comments.

district.⁷⁶ Adams 14 suggests that reporting to schools and school districts not involved with a specific safety or security incident be modified to be annual reporting.⁷⁷ Some suggest that the reporting requirements are inappropriate because there are no similar requirements for other types of student transportation.⁷⁸

67. HopSkipDrive criticizes paragraph (k)(I) and (II) for failing to define “safety and security incident,” and notes that defining it too broadly may lead to unnecessary notifications to schools and school districts.⁷⁹ It is also concerned that reporting every safety and security incident to every school or school district with which it contracts risks broadcasting private and sensitive information beyond those who need to know that information.⁸⁰ HopSkipDrive urges the Commission to define “any safety or security incident” as “fatal motor vehicle fatality, a fatal physical assault, and a verified sexual assault that involve providing services for students to or from a school, school-related activities, or school-sanctioned activities.”⁸¹ HopSkipDrive explains that it identified this definition in line with industry standards to categorize incidents that would be publicly reported, such as through annual reporting to the Commission and to every school and school district with which it contracts.⁸² HopSkipDrive does not propose that this definition limit the categories that would be subject to immediate reporting to the parent of the involved student or the involved school or school district.⁸³ Instead, HopSkipDrive suggests that for “all other safety and security-related incidents, a TNC shall promptly issue notice of any

⁷⁶ See e.g., Greg Jackson’s 10/13/22 Comments at 1.

⁷⁷ See e.g., Adams 14’s 10/13/22 Comments.

⁷⁸ See e.g., Greg Jackson’s 10/13/22 Comments at 2; Adams 14’s 10/13/22 Comments; Advocacy Denver’s 10/26/22 Comments at 1; The Arc of Colorado’s 10/27/22 Comments.

⁷⁹ *Id.* at 22.

⁸⁰ *Id.* at 22-23.

⁸¹ See Attachment B to HopSkipDrive’s 10/13/22 Comments at 6 (HopSkipDrive’s blue-lined suggested changes to proposed rules).

⁸² HopSkipDrive’s 1/10/23 Comments at 4.

⁸³ *Id.*

such incidents . . . to the involved school or school district and the involved parent or legal guardian . . . as soon as possible, but no later than one business day after the safety or security incident occurs.”⁸⁴ HopSkipDrive suggests that the report to the Commission and other schools and school districts with which it contracts be anonymized, and that such reporting exclude the identities of the involved driver and schools and school districts.⁸⁵

68. HopSkipDrive submits that subparagraph (k)(III) creates significant privacy risks by requiring TNCs to report the identities of drivers who received background checks, the results of the background checks, including any disqualifications, and the operational status of those drivers.⁸⁶ HopSkipDrive states that drivers who fail a background check are not permitted to provide service, and thus would not be included in this type of reporting.⁸⁷ HopSkipDrive notes that if a TNC uses the Commission’s fingerprint-based background check processes, reporting information on those processes would be redundant of information provided under Rule 6724(d).⁸⁸ HopSkipDrive suggests that the paragraph be amended to require the subject TNCs to file an annual report that: explains how background checks were conducted in the previous year; identifies whether the TNC intends to make any changes to its background check process over the next calendar year; provides the TNC’s name and permit number, the period being reported, the types of checks conducted, and offenses that would disqualify an individual from driving.⁸⁹ It also suggests rule language waiving the background check reporting requirements if the TNC

⁸⁴ *Id.* quoting Attachment B to HopSkipDrive’s 10/13/22 Comments at 7.

⁸⁵ Attachment B to HopSkipDrive’s 10/13/22 Comments at 6-7.

⁸⁶ HopSkipDrive’s 10/13/22 Comments at 26-27.

⁸⁷ *Id.* at 27.

⁸⁸ *Id.*

⁸⁹ *Id.*

uses the Commission's background check process in Rule 6724(d) and pursuant to §§ 40-10.1-110 and 605, C.R.S.⁹⁰

69. CDE does not take a position on what information should be reported to the Commission and each school or school district with which the TNC has entered into a contract, noting that it is unfamiliar with what would qualify as industry standard for TNC reporting.⁹¹ CDE states that the entities it regulates do not have an equivalent reporting requirement, and that it cannot take a position on the reasonableness of the proposed revisions without understanding the goals that the Commission seeks to accomplish.⁹²

70. CDE does not believe it is likely that a court would find that a TNC's records of safety and security incidents are education records maintained by an agent of an educational agency for purposes of the Federal Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g or 34 C.F.R. Part 99.⁹³ Nonetheless, CDE supports regulations that include confidentiality protections equal to those that FERPA provide.⁹⁴ CDE submits that HopSkipDrive's proposed reporting bifurcation will accomplish this by keeping the highly specific notification and reporting between the TNC, the involved school or school district and parent or legal guardian.⁹⁵ CDE submits that when a safety incident occurs, the TNC's primary and immediate focus should be on the student, the family, and the relevant school or school district, rather than the Commission and other school districts.⁹⁶ CDE suggests that reporting to the Commission and

⁹⁰ *Id.*

⁹¹ CDE's 12/6/22 Comments at 5.

⁹² *Id.*

⁹³ *Id.* at 4.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* 4-5.

other schools and school districts can come later, with a level of detail that does not reveal the student or their family's identity.⁹⁷

(i) Discussion, Findings, and Conclusions

71. Under § 40-10.1-609(1) C.R.S., School TNCs must notify the Commission of “any safety or security incidents” that involve providing the subject services “within a reasonable time as determined” by the Commission’s rules and must provide the same notice to “each school or school district with which the transportation network company has entered into a contract.” Since the plain statutory language requires notice to each school and school district with which the School TNC has contracted, School TNCs would still be statutorily required to provide the notice even if the Commission’s rules were amended to eliminate this requirement.⁹⁸ Rather than do this, the ALJ finds that the public interest would be better served by codifying rule language consistent with the statutory requirement, but that includes provisions addressing the many legitimate concerns that comments have raised.

72. The ALJ shares many of the concerns that public comments raise. For example, the ALJ agrees that it is important to protect students’ and their families’ privacy, and to guard against the potential for the unintended consequences that disclosure of their identifying information may create (*e.g.*, stereotyping and singling out students with disabilities, or who require the transportation for different reasons). For these reasons, the ALJ will adopt language that requires reports to the Commission and schools and school districts not involved in the safety or security incident be anonymized to avoid revealing students’ and their families’ identifying information.

⁹⁷ *Id.* at 5.

⁹⁸ § 40-10.1-609(1), C.R.S.; *Colorado Office of Consumer Counsel v. Public Utils. Comm’n*, 752 P.2d 1049, 1052 (Colo. 1988) (Courts must give effect to the statute’s plain and ordinary meaning).

73. The ALJ also agrees that when there is a safety and security incident, the School TNC's focus should be on the involved student, their parent or guardian, and the involved school or school district. To effectuate this, reporting to the involved student's parent or guardian and the involved school or school district should be immediate, but no later than 24 hours⁹⁹ after the incident, with reporting to the Commission within 14 days. Likewise, the ALJ is persuaded that reporting to uninvolved schools and school districts can be accomplished on an annual basis without compromising safety. Indeed, as comments indicate, some schools and school districts see little benefit to receiving such data.

74. As to driver identifying data in safety and security reporting, the ALJ sees value in the Commission being able to readily identify whether specific drivers have repeatedly been involved in safety and security incidents. At the same time, the ALJ recognizes the privacy concerns raised in comments. To balance these interests, the ALJ will adopt language that allows School TNCs to either include the driver's identifying information or identify the driver using a unique number or code assigned only to that driver. Using a unique identifier for such drivers will allow the Commission to quickly determine whether drivers have repeatedly been involved in safety and security incidents without disclosing their names in the report, and the Commission would be free to obtain such drivers' identifying information, should that be necessary, through its authority outlined in other rules.

75. As to comments that the Commission should define a reportable safety and security incident, the ALJ finds that it would be difficult, if not impossible, to identify each

⁹⁹ The proposed language requires reporting within one business day, but if an incident occurs on a Friday, the next business day would be on Monday (or if Monday is a holiday, on Tuesday). This is an unnecessary delay that would defeat the purpose of requiring immediate reporting so that the involved school or school district and parent or legal guardian can take whatever action is necessary to safeguard the student's health, welfare, and safety after an incident.

factual scenario that could be a reportable safety or security incident. That said, the ALJ also finds that providing direction on the required reporting will help drivers and School TNCs comply with the Rule. As such, the ALJ will adopt language that broadly defines a reportable safety or security incident as an incident that involves providing student transportation services where the student's health, safety, or welfare is negatively impacted or at risk of being negatively impacted. While many students may be capable and willing to speak up when they have been harmed or put at risk during School TNC transportation, many may not. This new definition will help protect all students receiving the subject services, including those who cannot or do not communicate experiences where they have been harmed or put at risk of harm.

76. Because this new definition includes situations where a student's health, welfare, or safety is at risk, it will encompass situations when a driver may believe that the incident did not impact the student's health, safety, or welfare, but is still aware that the student's health, safety, or welfare was put at risk for negative impacts. For example, while driving a student to school, the driver gets into a minor fender bender that causes no damage to either vehicle. The student gives no indication that he or she was impacted by the accident. Given all this, the driver believes that the minor accident does not need to be reported as a safety or security incident. Soon after the incident, the student experiences a health or welfare consequence, such as minor whiplash or increased anxiety. If the student's parent or guardian and the involved school or school district are not made aware of the incident, none of them will be in a position to know that they should monitor the student for any potential signs that they are experiencing delayed negative impacts to their health and welfare. This could delay needed medical care or other treatment, thereby putting students at further risk of harm or more serious consequences. The adopted Rule language would capture this type of situation to avoid these outcomes.

77. This definition would also encompass situations where there was a risk to the student's health, welfare, or safety that was not realized. For example, if a driver is ten minutes late picking up a student from a public location, the student's safety could be at risk, even if nothing happened to the student while he or she waited. However, reporting these types of risks to student safety could help the School TNC and the involved schools or school districts improve their processes to minimize the extent of potential future risks, or to entirely avoid similar risks in the future. This level of transparency with the involved families and schools and school districts can also help them address any issues that may come up with the student, whose health, welfare, or safety was at risk, such as new or worsening anxiety associated with such incidents.

78. As these examples show, attempting to limit reporting only to the most serious safety and security incidents will not capture what may appear to be a minor incident that results in negative health, welfare, or safety consequences for the student. Doing so would also be contrary to the plain language of § 40-10.1-609(1), C.R.S., which requires reporting on "any safety or security incidents." The General Assembly made no attempt to limit such reporting only to severe or serious incidents and the ALJ will not do so here. The reporting required by the adopted language is consistent with the type of transportation services being provided, that is, services to a highly vulnerable population.¹⁰⁰

79. In addition, the ALJ anticipates that the Commission, School TNCs, and schools and school districts with which School TNCs contract will gain valuable experience once the

¹⁰⁰ See § 40-10.1-609(2)(a), C.R.S. (requiring the Commission to promulgate rules requiring a TNC to report to the Commission "consistent with the type of service provided, as it relates to service for students.")

safety and security reporting requirements are in place. This can be used to evaluate the Rule and determine if it should be updated, as required by § 40-10.1-609(2)(b), C.R.S.¹⁰¹

80. As to criminal background check reporting, subparagraph (k)(III) implements § 40-10.1-609(2)(a), C.R.S., which requires the Commission to promulgate rules requiring a TNC to “report information related to driver background checks . . . consistent with the type of service provided, as it relates to service for students.” Thus, the key statutory direction is to ensure that criminal background check reporting is consistent with transporting the vulnerable population at issue, that is, students. This advises in favor of heightened reporting standards, particularly when considering the disqualifying offenses. For example, those offenses range from driving under the influence, to crimes of violence, to unlawful sexual behavior, to felony child abuse.¹⁰² Consistent with the statutory direction, the Rule’s reporting requirements will serve as a check on School TNCs to ensure that they are being vigilant in verifying that drivers serving a vulnerable population have not been convicted of offenses that the General Assembly has identified as disqualifying. While this may require School TNCs to report additional information, the burden on them is well-outweighed by the need to protect the vulnerable population at issue.

81. As drafted, subparagraph (k)(III) requires School TNCs to submit an annual report that includes drivers’ identifying information; the date and type of background check administered; results of the background checks; driver disqualifications and operational status, among other information. HopSkipDrive is concerned about driver privacy, and notes that any driver who fails a background check would not be hired and, therefore, would not be included in this reporting. The ALJ finds that providing driver identifying information in the annual

¹⁰¹ Under this statutory provision, the Commission, in consultation with CDE, must review and if necessary, update the rules governing School TNCs at least once every three years. § 40-10.1-609(2)(b), C.R.S.¹⁰¹

¹⁰² §§ 40-10.1-605(3) and (10), and 22-32-109.8(6.5), C.R.S.

criminal background check report helps the Commission confirm that the TNC is not using drivers who have been convicted of a disqualifying offense. Without that information or other information that can be connected to a specific person, the Commission could not confirm that the School TNC is not using a specific disqualified person to drive. The ALJ also recognizes and understands the privacy concerns that comments raise. To balance these interests, the ALJ will adopt language that allow School TNCs to either include the driver's identifying information or identify the driver using a unique number or code assigned only to that person. With a unique number or code assigned to a specific person, the Commission could still obtain drivers' identifying information, should that be necessary, through its authority outlined in other rules. These changes would allow the Commission to confirm that School TNCs are not using persons who have been convicted of a disqualifying offense while also balancing the privacy interests at stake.

82. HopSkipDrive's comment that disqualified persons would not be included in its annual report under the proposed Rule highlights the need to amend the Rule language to make it clear that the annual report must include information on all criminal history background checks that were run in the prior year, including those for individuals who were disqualified from providing service. Indeed, as discussed above, the reporting requirements act as a check on School TNCs to ensure that they *do not* use drivers who have been convicted of disqualifying offenses. This is why the Rule includes reporting on disqualification and driver operational status data. As such, the ALJ will adopt changes that make it clear that the reporting applies both to drivers and prospective drivers, which is intended to encompass criminal history checks on those who are not ultimately used to provide services.

83. The ALJ rejects HopSkipDrive’s argument that it would be redundant to require reporting under the new Rule if the School TNC uses the Commission’s criminal background check reporting process, per Rule 6724(d) and §§ 40-10.1-110 and 605, C.R.S.¹⁰³ Subparagraph (k)(III)’s reporting provides an annual snapshot of all the criminal background checks that a TNC performed in the prior year, which is different than data that a School TNC may provide to the Commission in connection with individual criminal history checks. Such data would not include the driver’s operational status, so the Commission could not confirm that the School TNC, in fact, did not use anyone convicted of a disqualifying offense to perform services.

84. HopSkipDrive’s proposal that reports include limited information misses the point of the Rule, which is to confirm that a School TNC is vigilant in ensuring that it does not use drivers who have been convicted of a disqualifying offense. For example, its suggestion that the report “include the offenses that would disqualify an individual from driving” would provide no information on any actual disqualifications that HopSkipDrive implemented, and instead, would provide a static list of prohibited offenses, unconnected to any action that it took. Such information is unnecessary given that the Commission is already aware of the type of offenses that would require disqualification given that it is codified in statute.

85. In addition to the changes discussed above, the ALJ will also modify the proposed Rule to refer to “School TNC” consistent with other Rule changes; delete language that essentially repeats the definition of that term as unnecessary; and make other minor changes to improve clarity.

86. For the reasons discussed, the ALJ adopts the following rule language:

¹⁰³ HopSkipDrive’s 10/13/22 Comments at 27.

(k) Reporting requirements. A School TNC is responsible for all of the following reporting requirements:

(I) As used in this paragraph (k), a safety or security incident is an incident that involves providing student transportation services where the student's health, safety, or welfare is negatively impacted or at risk of being negatively impacted.

(II) A School TNC must provide notice of any safety or security incidents to the parent or legal guardian of the involved student and the school or school district with whom the School TNC has contracted with to provide the services for the involved student, as soon as possible, but no later than 24 hours after the safety or security incident occurs. The School TNC must provide the Commission with the same notice within 14 calendar days of the incident, except that in the report to the Commission, the School TNC must anonymize student and their families' identifying information and must either include the involved driver's identifying information or identify the driver using a unique number or code assigned only to that driver.

(III) On or by January 31 of each calendar year, a School TNC must report to the Commission any safety or security incidents that occurred during the previous calendar year. Such reports must include, but are not limited to, the School TNC's name; the School TNC's permit number; the period being reported; the identity of the involved driver or the involved driver's unique number or code assigned only to that driver; the dates of the incidents; the names of the applicable schools or school districts; the nature of the safety or security incidents; and any resulting disciplinary actions. The report must anonymize student and their families' identifying information. The report must also contain the signature, printed name, and title of the person or persons completing and filing the report; and a certification that such person or persons are authorized to do so, and that the information in the report is accurate. The report must also include a certification that the School TNC has provided the report to each Colorado school or school district with which the TNC has entered into a contract. This report is in addition to, not in lieu of, other reporting requirements outlined in this rule.

(IV) On or by January 31 of each calendar year, a School TNC must report to the Commission information related to any background checks performed for drivers or prospective drivers in the previous calendar year. Such reports must include, but are not limited to, the School TNC's name; the School TNC's permit number; the period being reported; the identity of the driver or prospective driver or the driver's or prospective driver's unique number or code assigned only to that person; the date each background check was administered; the type of background checks administered; the results of the background checks, including any

disqualifications; and the operational status of the involved drivers. The report must also contain the signature, printed name, and title of the person or persons completing and filing the report; and a certification that such person or persons are authorized to do so, and that the information in the report is accurate.

g. Rules 6724(l) and (m) – Authority to Inspect Records and Higher Standards

87. Paragraph (l) confirms that Commission enforcement officials have authority to interview a School TNC's personnel, and inspect a School TNC's facilities and records, and provides timelines for producing requested records. 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.

(i) Discussion, Findings, and Conclusions

88. The changes to reporting requirements discussed above to anonymize certain data warrant a clarifying change to Rule 6724(l). Specifically, while the changes to paragraph (k) require or allow certain information to be anonymized, enforcement officials still must be able to access that anonymized information if they determine that is necessary. While that authority already exists, the ALJ finds that confirming this authority in rule language provides important clarity that could help avoid unnecessary disputes and delay in enforcement officials' access to sensitive information. As such, the ALJ will adopt changes that clarify and confirm that enforcement officials have authority to access such data and will make other minor changes to align with other Rule changes. For these reasons, the ALJ adopts the following language for Rule 6724(l):

(l) Authority to inspect records. An enforcement official has the authority to interview a School TNC's personnel and inspect a School TNC's facilities and records. Nothing in this Rule prohibits or bars an enforcement official from accessing information from a School TNC that must or may be anonymized,

pursuant to paragraph (k), including driver or prospective driver identifying information. A School TNC must make its records available, when requested, consistent with the below timelines:

- (I) immediately for any records related to insurance or safety;
- (II) within two days for any records related to a complaint or investigation; or
- (III) within ten days for all other records.

89. Paragraph (m) is intended to ensure that schools and school districts who contract with School TNCs face no barriers to establishing higher standards than the Commission's rules require in their contracts with School TNCs. This is consistent with § 40-10.1-605(1)(p), C.R.S. As comments suggest, schools and school districts already include their own safety standards in their contracts with School TNCs and are well-positioned to determine whether such contractual standards should be higher than the minimum safety standards in Commission rules. As such, the ALJ adopts paragraph (m) as proposed in the NOPR.

C. Conclusion

90. In adopting Rules, the ALJ has carefully considered the public comments, alongside the competing interests at stake. On balance, the ALJ finds that the Rules should err on the side of protecting the vulnerable population who School TNCs transport, that is, students, some of whom may have disabilities, special needs, or have prior traumatic experience. In promulgating these Rules, the Commission embraces its important role to regulate School TNCs in a way that is appropriately suited for their services by setting higher standards for School TNCs. For all the reasons discussed, the ALJ finds that the Rules adopted by this Decision serve the public interest, safeguard the vulnerable population at issue, are within the Commission's statutory authority, and have been promulgated in coordination with CDE.

91. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding, along with this written Recommended Decision, and recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, more specifically, the Commission's Transportation Network Company Rules (Rules), contained in final format attached to this Recommended Decision as Attachment B, are adopted.

2. The adopted Rules, in final and legislative format (Attachments A through B), are also available through the Commission's E-Filings system at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0402TR.

3. This Recommended Decision will be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.

5. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision will become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

6. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Administrative Law Judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they may not exceed 30 pages in length, unless the Commission, for good cause shown, permits this limit to be exceeded. Responses to exceptions are due within fourteen days of service of exceptions.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director