

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07R-327TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION BY
MOTOR VEHICLE, 4 CODE OF COLORADO REGULATIONS 723-6.

ORDER ON EXCEPTIONS

Mailed Date: April 11, 2008
Adopted Date: April 2, 2008

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of exceptions to Recommended Decision No. R08-0169 (Recommended Decision), filed by A AAA Bus, Car, Service (A AAA); Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi); Alpine Taxi, Inc., (Alpine Taxi); A Company 4 U, doing business as A Limo Company 4 U and/or A Christian Town Car (Christian Town Car); Limousine Association of Colorado (LAOC); and A Ride In Luxury, Inc., (A Ride In Luxury). This matter also comes before the Commission for consideration of a Joint Reply to exceptions of Christian Town Car, A Ride In Luxury, A AAA, and LAOC¹ and a Joint Motion to Strike Portions of Exceptions of A Ride In Luxury and LAOC (Motion) filed by Sunshine Taxi and Alpine Taxi.

2. Now, being fully advised in the matter, we grant exceptions to the Recommended Decision in part, and deny in part. We grant Sunshine Taxi and Alpine Taxi's Motion in part, and deny in part, consistent with the discussion below.

B. Background

3. The Commission issued the Notice of Proposed Rulemaking (NOPR), which commenced this docket, on August 30, 2007. *See* Decision No. C07-0742. The Commission initiated this rulemaking proceeding to implement House Bills 07-1019, 07-1065, and 07-1249, codified at §§ 40-16-101, *et seq.*, and 40-14-101, *et seq.*, C.R.S. The Commission also sought to modify financial responsibility rules, to clarify the rules for regulated intrastate carriers, and to update civil penalty rules. In response to the NOPR, written comments were filed by AEX, Inc.,

¹ We construe Sunshine Taxi and Alpine Taxi's Joint Reply to exceptions of Christian Town Car, A Ride In Luxury, A AAA, and LAOC as a response to exceptions under Rule 1505(a).

doing business as Alpine Express, Inc., Sunshine Taxi, Alpine Taxi, Pioneer Limousine, LLC, Boston Coach, A Custom Coach Boulder Transportation and Centennial Sedans, Destination Services of Colorado, Inc., RMA Worldwide Chauffeured Transportation, Denver Metro Convention & Visitors Bureau, Arrangers, Diva Limousine, Ltd., SuperShuttle International Denver, Inc., Music Express, Inc., and Christian Town Car.

4. The hearing in this docket was held on October 15, 2007, before an administrative law judge (ALJ). Staff of the Commission (Staff), the Colorado Motor Carriers Association, Presidential Limousine, American Coach Limousine, Pioneer Limousine, LAOC, Two Step Limousine, A Custom Coach, Denver Lincoln Limousine, Elite Limousine Service, Colorado Limousine Service, Christian Town Car, Sunshine Taxi, and Alpine Taxi appeared and offered oral comments during the hearing. The ALJ issued the Recommended Decision, adopting permanent rules, on February 21, 2008.

C. Motion

5. Sunshine Taxi and Alpine Taxi argue in their Motion that the Commission should strike portions of exceptions filed by A Ride In Luxury and LAOC because they introduce evidence and factual statements not contained in the record. Sunshine Taxi and Alpine Taxi point out that the letters that A Ride In Luxury attaches to its exceptions were written in March of 2008, after the record in this matter was closed. Sunshine Taxi and Alpine Taxi also point out that LAOC refers to several letters which are not attached to its exceptions and are not contained in the record.

6. A Ride In Luxury makes several factual statements in its exceptions in support of its claim that there is a need for executive vans in the Colorado Springs market. The record does not contain any references to this matter. LAOC, in paragraphs 4A and 4E of its exceptions,

refers to foreign visitors and mountain driving conditions in support of its argument that vans should be included in luxury limousine fleets. The record does not contain any references to either matter. In paragraphs 4B, 4C, and 4D, LAOC refers to the Democratic National Convention, music bands, and business executives, also in support of the same argument. The transcript does contain references with respect to these issues.

7. We must base our rulemaking decisions on the evidence introduced at evidence-gathering stage of the process. *See Home Builders Ass'n v. Pub. Utils. Comm'n*, 720 P.2d 552, 559-560 (Colo. 1986). We note that LAOC and A Ride In Luxury, although *pro se*, appear frequently before the Commission. It is also well settled that *pro se* litigants are bound by the same procedural rules as attorneys. *See Yadon v. Southward*, 64 P.3d 909 (Colo. App. 2002); *Karr v. Williams*, 50 P.3d 910 (Colo. 2002); *Negron v. Golder*, 2004 WL 2744605 (Colo. App. 2004). We agree with Sunshine Taxi and Alpine Taxi's Motion with respect to A Ride In Luxury's exceptions and strike the references to the alleged need for executive vans in the Colorado Springs market and the letters attached to the exceptions. We also agree with Sunshine Taxi and Alpine Taxi's Motion with respect to LAOC's exceptions, in part, and strike paragraphs 4A and 4E, and the references to several letters in paragraph 4C.

D. Exceptions

8. A AAA states in its pleading that it "challenges and opposes" the Recommended Decision. A Ride In Luxury refers to its pleading as an "Answer to Recommended Decision." Christian Town Car refers to its pleading as an "Answer to Recommended Decision" and requests that the Commission conduct a Rehearing, Reargument and Reconsideration (RRR) in this matter. Pursuant to § 40-6-114, C.R.S., RRR is not available as a remedy until a Commission decision is issued, which has not yet occurred, when the above parties submitted

pleadings in response to the Recommended Decision. We therefore construe the pleadings submitted by these *pro se* parties as exceptions rather than requests for RRR.

1. Notice of Rulemaking

9. Christian Town Car and A AAA claim that the Commission did not provide adequate notice of the hearing held on October 15, 2007² to the limousine industry, which will be directly affected by this rulemaking proceeding. Christian Town Car states that the mailing list maintained by the Commission is inadequate because a subscriber to that list receives a notice of every Commission decision and it is difficult to search for the one that he or she needs. Christian Town Car requests that we notify all limousine companies based in Colorado in writing of the exceptions in this docket. A AAA states that “no real substantive notice was given to the entire limo industry of Colorado for the very major, sweeping changes in existing rules” and that it does not have “time or staff to watch the PUC site day after day.”

10. Section 24-4-103, C.R.S., governs rulemaking by Colorado administrative agencies, such as this Commission. It is designed to ensure that the public will have an adequate notice of, and the chance to comment on, proposed rules before they become effective. The agencies must adhere to the following steps to notify the public before a rulemaking hearing may be held:

- a. The agency must file a Notice of Proposed Rulemaking (NOPR) with the Secretary of State. *See* §§ 24-4-103(3)(a) and 24-4-103(4)(a), C.R.S. The NOPR must include the following:
 - i. the time, place, and nature of the rulemaking hearing;
 - ii. the authority under which the rules are proposed;

² Christian Town Car refers to the hearing held on October 15, 2008 in its exceptions. However, this appears to be a typographical error and we believe Christian Town Car refers to the hearing held on October 15, 2007.

- iii. either the terms or substance of the proposed rules, or a description of the subjects and issues involved;
 - iv. if any material is to be incorporated by reference, it must be clearly identified;
 - v. a statement that the proposed rules will be available for inspection by any person at the agency's office no later than five days prior to the scheduled hearing.
 - vi. a statement that interested persons have a right to submit written data, views, or argument, and to make an oral presentation.
- b. The NOPR must be filed with the DORA Executive Director. *See* § 24-4-103(2.5)(a), C.R.S.
 - c. On the 10th day of the month after the NOPR is submitted to the Secretary of State, it shall be published in *The Colorado Register*.
 - d. The NOPR must be sent to all persons who are on the mailing list kept by the agency no later than the date it is published in *The Colorado Register*. *See* § 24-4-103(3)(b), C.R.S. The persons who request to be on the mailing list must pay a fee to the agency to cover the actual cost of copying and mailing the proposed rules to them. *Id.*
 - e. The rulemaking hearing must be held twenty days or more after the NOPR is published. *See* § 24-4-103(3)(a), C.R.S.

11. The rules promulgated by an administrative agency are presumed valid.

The burden is on the challenger to demonstrate that they are in excess of the statutory authority or otherwise invalid. *Studor, Inc. v. Examining Bd. of Plumbers*, 929 P.2d 46 (Colo. App. 1996).³

12. We deny the relief sought by Christian Town Car and A AAA on this issue. We find that all rulemaking notification requirements contained in Title 24 have been met in this docket. The NOPR was submitted to the Secretary of State on August 31, 2007, and it was published in the September 7, 2007 edition of *The Colorado Register*. The NOPR contained all of the information required in § 24-4-103(3)(a), C.R.S. It listed the time, place, and the nature of

³ An agency must only substantially comply with statutory rulemaking procedures. This means more than minimal compliance, but less than strict or absolute compliance. *Id.*, citing *Woodsmall v. Reg'l Transp. Dist.*, 800 P.2d 63 (Colo. 1990).

the rulemaking hearing; the authority under which the rules were proposed; the proposed rules themselves and a description of the subjects and issues involved; and a statement that interested persons had a right to submit written data, views, or argument, and to make an oral presentation. *See* Decision No. C07-0742. In addition, the hearing in this matter was held more than twenty days after the NOPR was published, as required by § 24-4-103(3)(a), C.R.S. Finally, we note that the proposed rules are rather broad and would affect, to some extent, all Colorado transportation carriers. It would have been prohibitively expensive to mail the NOPR to approximately 8,900 carriers who have not paid the fee pursuant to § 24-4-103(3)(b), C.R.S.

2. Fingerprint-Based Criminal History Checks

13. The ALJ addressed concerns expressed by several parties at the hearing related to subsection (3) of §§ 40-10-105.5 and 40-16-104.5, C.R.S. *See* Recommended Decision, at ¶31. These statutes require drivers of taxis and exempt vehicles to submit a set of their fingerprints to the Commission. The Commission, in turn, must forward the fingerprints to the Colorado Bureau of Investigations (CBI) to obtain a fingerprint-based criminal history record check. Subsections (3) of §§ 40-10-105.5 and 40-16-104.5, C.R.S., state that:

(3) An individual whose fingerprints are checked ... may, pending the results of the criminal history record check, drive...in connection with his or her employment ...for up to sixty days after the commission forwards the fingerprints to the Colorado bureau of investigation or until the commission receives the results of the check, whichever occurs first. Upon the commission's receipt of the results, the individual may resume driving ... so long as the driving does not violate applicable law and does not occur while the individual has a criminal conviction on his or her record that disqualifies and prohibits him or her from driving....

The parties expressed concern that the CBI may be unable, in some instances, to process these background checks within 60 days, and the individuals would be required to stop driving until

the results are received. This may cause financial concerns for the drivers and staffing concerns for the carriers, possibly penalizing them for actions of the CBI or the Commission.

14. The ALJ ruled that subsections (3) of §§ 40-10-105.5 and 40-16-104.5, C.R.S., were clear and unambiguous and required that individuals stop driving upon the expiration of the sixty day period if the results of the background check were still pending. The ALJ stated that the word “resume” in the statutes indicated that the legislature contemplated the possibility that an individual may have to stop driving if the results of his or her background check are not received within 60 days for any reason. The ALJ stated that the Commission did not have the authority to adopt a rule that would ignore a part of the statutes.

15. Sunshine Taxi and Alpine Taxi disagree and argue in their exceptions that a “safe harbor rule,” which would allow the individuals to drive pending results of the background check regardless of its length, should be adopted. They claim that the ALJ interpreted subsections (3) of §§ 40-10-105.5 and 40-16-104.5, C.R.S. too narrowly. Sunshine Taxi and Alpine Taxi argue that the legislative intent was to allow persons to continue to drive while their fingerprint results were pending; otherwise this interim driving would have been prohibited entirely. Sunshine Taxi and Alpine Taxi argue that the “up to sixty days...” language must yield to this legislative intent. They claim that the word “resume” in the statutes refers to drivers who choose not to drive at all during this interim period.

16. We agree with the ALJ’s interpretation of subsections (3) of §§ 40-10-105.5 and 40-16-104.5, C.R.S., and therefore deny the exceptions filed by Sunshine Taxi and Alpine Taxi on this issue. It is true that some individuals with no criminal history may be precluded from driving if their background checks take longer than sixty days for any reason. However, in construing a statute, we must look first at the plain language of the statute. *Vaughan v. McMinn*,

945 P.2d 404 (Colo. 1997). We may not resort to the rules of statutory construction and must apply a statute as written if its plain language is clear and unambiguous. *Id.* We are not to presume that the legislature used any language in a statute idly and without intent that the language be given meaning. *Blue River Defense Comm'n v. Town of Siverthorne*, 516 P.2d 452 (Colo. 1973). We agree with the ALJ that subsections (3) of §§ 40-10-105.5 and 40-16-104.5, C.R.S., are clear and unambiguous and therefore we do not have the authority to adopt a safe harbor rule advocated by Sunshine Taxi and Alpine Taxi. We find that any solution to the apparent inequity resulting from the above statutes must be addressed legislatively.

17. Sunshine Taxi and Alpine Taxi also argue that §§ 40-10-105.5 and 40-16-104.5, C.R.S., do not allow the Commission to impose duties and sanctions on the carriers as far as compliance with and monitoring the background checks for their drivers. The ALJ pointed out that subsections (5) of §§ 40-10-105.5 and 40-16-104.5, C.R.S., state that:

(5) The commission shall, consistent with the requirements of this section, promulgate rules concerning the employment of, contracting with, and retention of an individual whose criminal history record is checked pursuant to this section.

The ALJ found that the above language provides sufficient statutory authority for requiring the carriers to ensure that their drivers comply with the criminal background check requirements.⁴ We agree. We find that, if the Commission were to impose no duties and sanctions on transportation carriers, the enforcement of §§ 40-10-105.5 and 40-16-104.5, C.R.S., would be severely limited and the legislative intent would be frustrated.

18. Sunshine Taxi and Alpine Taxi also argue that a rule should be adopted that requires the Commission to notify the carriers of the results of the background checks if it knows the identity of the carriers. We disagree. Sections 40-10-105.5 and 40-16-104.5, C.R.S. require

⁴ See Recommended Decision, at ¶28.

prospective drivers to submit a set of their fingerprints to the Commission. This submission itself does not indicate the identity of the related transportation carrier. The Commission only knows who the carrier is, if at all, when the carrier submits a payment on behalf of the prospective driver. When prospective drivers themselves submit a payment, the Commission has no way of knowing who the related transportation carrier is.

19. Moreover, driver turnover from carrier to carrier is not infrequent and some drivers work for and contract with multiple transportation carriers at the same time. By the time the fingerprint submission is processed, the driver may no longer be working for the same carrier. The Commission has no way to track the resulting turnover and cannot, with certainty, notify the correct carrier. Finally, we see no reason why a carrier cannot require its drivers to present evidence of their qualification status, just as they are required to present their driver license.

20. Sunshine Taxi and Alpine Taxi request in their exceptions that the recommended rules on criminal history checks be clarified with respect to immigrant drivers who have not been in this country for the time periods listed in §§ 40-10-105.5 and 40-16-104.5, C.R.S., and whose foreign criminal history is not available through the CBI. We note that §§ 40-10-105.5 and 40-16-104.5, C.R.S., specifically refer to crimes committed “in this state” or “in any other state or in the United States.” This language is clear that only crimes committed in this country are available through the CBI and that drivers whose record checks do not reveal the crimes that they have committed (because the crimes have been committed in another country or while the driver was a juvenile, for example) are not precluded from driving. We believe that the recommended rules are sufficiently clear on this issue and therefore decline to amend them.

21. Sunshine Taxi and Alpine Taxi finally request that we clarify whether individuals who take a leave of absence, then return to driving, would need to resubmit to a background check. Sunshine Taxi and Alpine Taxi argue that such persons should not have to resubmit to background checks because recommended Rule 6015(c)(II) provides that the qualification notice is good for two years.

22. Recommended Rule 6015(c)(II) states that “[a] driver shall resubmit to the Commission a set of the driver’s fingerprints and payment of the actual cost to conduct a record check within two years after the Commission provides him/her with the qualification notice....” We agree that the interpretation offered by Sunshine Taxi and Alpine Taxi is correct and that individuals who take a leave of absence, then return to the driving profession within two years would not need to resubmit to a background check. We believe that recommended Rule 6015(c)(II) is sufficiently clear on this point and find that no further amendment on this point is necessary.

3. Democratic National Convention

23. A AAA argues in its exceptions that small, Colorado-based limousine companies will be negatively affected by the issuance of temporary permits to out-of-state carriers during the Democratic National Convention (DNC). A AAA claims that there is no proof that local companies are not able to handle the demand generated by the DNC. We note that we recently commenced an investigatory docket to address the demand generated by the DNC, Docket No. 08I-053C, and that A AAA and other carriers have submitted comments in that docket. We find that all concerns related to the DNC will be better addressed in Docket No. 08I-053C rather than here. The purpose of permanent rules being promulgated here is to describe the manner in which

statewide motor vehicle operations will be regulated in the long term, not to address a one-time event in the Denver area.

4. Definition of a Luxury Motor Vehicle

24. LAOC and A Ride In Luxury, among other parties argue in their exceptions that the Commission should not attempt to define a luxury motor vehicle in the recommended rules, or, in the alternative, adopt a flexible definition such as “a vehicle commonly used in luxury limousine fleets.” LAOC states that there are two periodicals commonly read by persons the limousine industry, *The Limousine Digest* and *Limousine & Chauffeured Transportation*, and suggests that the Commission refer to these periodicals in defining a luxury motor vehicle. In response to exceptions, Sunshine Taxi and Alpine Taxi argue that the ALJ was correct in rejecting suggestions that the recommended rules emphasize the luxurious nature of the services provided as opposed to luxurious nature of the vehicles used.

25. The ALJ pointed out that § 40-16-101(3), C.R.S., states that a “luxury limousine” is a “chauffeur-driven, luxury motor *vehicle* as defined by the commission.” See Recommended Decision, at ¶51, *emphasis added*. The ALJ found that the Commission could not ignore this statutory requirement and therefore recommended rules should define a luxury motor vehicle and not just a luxury service.

26. We agree with the ALJ, Sunshine Taxi, and Alpine Taxi that we may not ignore § 40-16-101(3), C.R.S., which defines a luxury limousine in terms of a luxury motor vehicle and not just in terms of a luxury service. In addition, we find that a definition such as “a vehicle commonly used in luxury limousine fleets” offered by LAOC is too vague. A statute (or a rule promulgated by an administrative agency) is void for vagueness if it does not give a fair warning of the conduct prohibited or if its standards are so ill-defined as to create a danger of arbitrary

and capricious enforcement. *See Exotic Coins, Inc. v. Beacom*, 699 P.2d 930, 943-944 (Colo. 1985). The test is whether persons of ordinary intelligence must necessarily disagree as to its meaning and differ as to its application. *Id.* In addition, the Commission may not delegate its ultimate decision making authority to a third party. *See Baca Grande Corp. v. Pub. Utils. Comm'n*, 544 P.2d 977 (Colo. 1976). We find that the approaches offered by LAOC may result in a statutory violation, a rule that is void for vagueness, or an impermissible delegation of the Commission authority to the publishers of *The Limousine Digest* or *Limousine & Chauffeured Transportation*. We therefore deny the exceptions on this issue.

a. Definition of Executive Vans

27. LAOC and other parties argue in their exceptions that the definition of “executive vans” in recommended Rule 6308(a)(III) should include fifteen passenger vans with standard bench seats. These vans were classified as luxury limousines in Senate Bill 98-200. The comments submitted by Destination Services of Colorado, Arrangers, Denver Metro Convention & Visitors Bureau, and other parties express the need for the fifteen passenger vans to remain a part of Colorado limousine fleets. These parties claim that their customers frequently request unmarked, upscale fifteen passenger vans, especially customers consisting of large groups or groups with a large amount of luggage and equipment. These parties further argue that, since the passage of Senate Bill 98-200, fifteen passenger vans with seats that can be easily removed and installed became a standard in the luxury limousine industry when transporting large groups.

28. We agree that the definition of “executive vans” in recommended Rule 6308(a)(III) should be amended to include vans that have had their interior enhanced by (1) the installation of captain’s chairs, couch seats, or similar seating; or (2) the installation of television and beverage service. This modification will also ensure that Rule 6308(a)(III) complies with

§ 40-16-101(3), C.R.S., by adequately distinguishing the executive van as a luxury motor vehicle. We therefore grant LAOC's exceptions in part and redraft the rule as follows (attached as Appendix A):

(III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a mini van as classified by the manufacturer) whose interior has been enhanced by the installation of either:

(A) captain's chairs, couch seats, or similar seating in place of standard bench seating; or

(B) both of the following:

(i) An electronic video media system such as television, DVD, or VHS that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least three inches, be viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.

(ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.

b. Definition of Executive Cars

29. LAOC and Christian Town Car argue against recommended Rule 6308(a)(II), which lists specific vehicle models that qualify as executive cars. LAOC and Christian Town Car state that car manufacturers change models over time and that the list is too restrictive as these changes occur.

30. We agree that recommended Rule 6308(a)(II) should be amended to expand the list of luxury sedans and luxury sport utility vehicles. Although there is no way to guarantee the list includes all luxury sedans and luxury sport utility vehicles, the Commission can review the list regularly and make changes through its rulemaking process. We therefore grant exceptions

filed by LAOC and Christian Town Car, in part, and redraft the rule as follows (attached as Appendix A):

(II) Executive car, which is a motor vehicle that has four doors and is:

(A) a sedan including Acura RL, Audi A8 Series, Audi A6 Series, Audi S8 Series, Bentley Continental Flying Spur, Bentley Arnage, BMW 7 Series, BMW 5 Series, BMW Alpina, BMW M5, Cadillac DTS, Chrysler 300, Ferrari 612, Infiniti M Series, Jaguar S-Type, Jaguar Vdp Lwb, Jaguar XJ Series, Jaguar X-Type Series, Jaguar Super, Lexus LS Series, Lexus G Series, Lexus E Series, Lincoln Town Car, Maserati Quattroporte, Maybach 57 Series, Maybach 62 Series, Mercedes-Benz S Class Series, Mercedes-Benz E Class Series, or Rolls Royce Phantom; or

(B) a sport utility vehicle including Audi Q7, Cadillac Escalade, Chevrolet Suburban, Ford Excursion, Ford Expedition, GMC Yukon, Hummer (all models, excluding sport utility truck version), Infiniti QX, Lexus LX, Lincoln Navigator, Mercedes-Benz M Class Series, Mercedes-Benz G Class Series, or Mercury Mariner Hybrid with livery package.

c. Ten Year Rule

31. Christian Town Car, A AAA, and LAOC argue against recommended Rule 6305(b), which provides that, in general, luxury limousine carriers shall not use vehicles older than ten years in their fleets. This rule mirrors Rule 6254(c) for taxicabs and is intended to ensure that the quality of limousine fleets is maintained at a high level. We find that recommended Rule 6305(b) should remain and deny exceptions filed by Christian Town Car, A AAA, and LAOC on this issue.

32. We further note that the waiver process remains available to a luxury limousine carrier wishing to obtain Commission approval to operate a vehicle that does not meet the restrictions in Rule 6305 or the categories in Rule 6308.

5. Previously Qualified Vehicles

33. In its exceptions, Christian Town Car requests a clarification of recommended Rule 6309 with respect to whether a vehicle would lose its luxury limousine qualification if a

carrier removes it from service for a period of time during a slow season then brings it back into service. Christian Town Car also inquires whether a vehicle would lose its qualification when a transportation carrier's exempt passenger carrier registration is cancelled and is later reactivated. Recommended Rule 6309 states that "...all vehicles registered as luxury limousines on or before the effective date of these rule shall maintain their registration status so long as the luxury limousine permit under which they were originally registered remains continuously active and is not revoked."

34. We agree with Christian Town Car that recommended Rule 6309 must be clarified. We therefore grant Christian Town Car's exceptions and redraft the rule as follows (attached as Appendix A):

Notwithstanding anything in Rules 6305(b) and 6308 to the contrary, any vehicle qualified as a luxury limousine on or before the effective date of this rule, and that is operated under the exempt passenger carrier registration under which it was so qualified, shall maintain its qualification status.

We also amend the title of recommended Rule 6309 to read "Luxury Limousines– Previously Qualified Vehicles" for purposes of consistency and to avoid confusion with Rule 6001(o).

6. Insurance

35. Christian Town Car argues in its exceptions that recommended Rule 6007(g) should not be adopted. Recommended Rule 6007(g) states that:

The transportation carrier's failure to file proof of liability coverage, as required by this rule, shall constitute a rebuttable presumption that the carrier is not properly covered under the insurance requirements of this rule.

Christian Town Car argues that recommended Rule 6007(g) would make a transportation carrier liable if its insurance company fails to send a proof of insurance to the Commission by mistake.

36. Transportation carriers, in general, are required to obtain and keep in force at all times a proper motor vehicle insurance coverage or surety bond coverage. *See* Rule 6007(a)(I).

The ALJ found that recommended Rule 6007(g) was necessary in light of the difficulty in proving lack of insurance when a respondent carrier does not appear in Commission proceedings and Staff is unable to cross-examine on that point. *See* Recommended Decision, at ¶¶14-15. The ALJ found it was possible that a transportation carrier may be cited for lack of insurance because its insurance company fails to send the necessary paperwork to the Commission. However, the presumption established in recommended Rule 6007(g) could be easily rebutted by showing that the carrier, in fact, has the necessary insurance coverage at all times. *Id.*

37. We note that the rules requiring transportation carriers to maintain an appropriate insurance or a surety bond were promulgated to protect the public. *See* Decision No. C07-1000, issued on November 27, 2007 in Docket No. 06G-0651CP. We agree with the ALJ and find that recommended Rule 6007(g) is necessary to enforce this important public protection. The presumption established in recommended Rule 6007(g) is easily rebuttable if a transportation carrier indeed has an appropriate insurance policy. We therefore deny exceptions filed by Christian Town Car on this issue and adopt recommended Rule 6007(g).

II. ORDER

A. The Commission Orders That:

1. The exceptions of A Company 4 U, doing business as A Limo Company 4 U and/or A Christian Town Car, to Recommended Decision No. R08-0169 are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions of Limousine Association of Colorado to Recommended Decision No. R08-0169 are granted, in part, and denied, in part, consistent with the discussion above.

3. The exceptions of A Ride In Luxury to Recommended Decision No. R08-0169 are granted, in part, and denied, consistent with the discussion above.

4. The exceptions of Tazco, Inc., doing business as Sunshine Taxi, to Recommended Decision No. R08-0169 are denied, consistent with the discussion above.

5. The exceptions of Alpine Taxi, Inc., to Recommended Decision No. R08-0169 are denied, consistent with the discussion above.

6. The exceptions of A AAA Bus, Car, Service to Recommended Decision No. R08-0169 are denied, consistent with the discussion above.

7. The Motion to Strike Portions of Exceptions of A Ride In Luxury and Limousine Association of Colorado, jointly filed by Tazco, Inc., doing business as Sunshine Taxi, and Alpine Taxi, Inc., is granted, in part, and denied, in part, consistent with the discussion above.

8. The 20 day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

9. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 2, 2008**

(SEAL)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis for and purpose of these rules is to describe the manner of regulation over persons providing transportation services by motor vehicle in or through the State of Colorado. These rules address a wide variety of subject areas including, but not limited to, safety; civil penalties; the issuance, extension, transfer, and revocation of authority to operate as a transportation carrier; insurance and registration requirements; tariff and time schedule requirements; the identification, condition, and leasing of motor vehicles; record keeping; and service standards. These rules cover an array of carriers, including motor vehicle carriers (common carriers), contract carriers by motor vehicle, interstate carriers, hazardous materials carriers, towing carriers, household goods movers, and motor vehicle carriers exempt from regulation as public utilities (charter or scenic buses, children's activity buses, luxury limousines, off-road scenic charters, and property carriers by motor vehicle).

The statutory authority for the promulgation of these rules can be found at §§ 40-2-108, 40-2-110.5(8), 40-2-116, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10-105(1), 40-10-105(2)(c), 40-10-105.5(5), 40-10-107, 40-10-110, 40-10-111, 40-10-120(4), 40-11-103(1), 40-11-105, 40-11-106, 40-11-109, 40-11-115(4), 40-13-104(1), 40-13-105, 40-13-107, 40-13-110(1), 40-14-103(2)(c), 40-14-104(2), 40-14-106(2)(a)(i), 40-14-108(1), 40-14-110, 40-16-103.6(1), 40-16-103.8, 40-16-104, 40-16-104.5(5), 40-16-105(1), 42-4-1809(2)(a), ~~and~~ 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

GENERAL PROVISIONS

6000. Scope and Applicability.

All rules in this Part 6, the "6000" series, shall apply to all Commission proceedings and operations concerning regulated entities providing transportation by motor vehicle, unless a specific statute or rule provides otherwise. Rules 6000 – 6099 apply to all common carriers, contract carriers, exempt intrastate carriers, towing carriers, household goods movers, and interstate carriers, as defined herein. Specific provisions regarding the applicability of this Part 6 can be found in rules 6100, 6200, 6250, 6300, 6400, 6500, and 6600.

Nothing in this Part 6, the "6000" series, shall be construed to apply to a secured creditor or assignee (principal), or reposessor (agent), or to the repossession of a motor vehicle by a secured creditor or assignee (principal), or reposessor (agent), when repossessing pursuant to § ~~4-9-503.5~~ 4-9-629, C.R.S.

* * *

[signifies omission of unaffected rules]

6001. Definitions.

The following definitions apply throughout this Part 6, except where a specific rule or statute provides otherwise:

* * *

- (ss) "Luxury limousine" means a motor vehicle, for hire on a prearranged, charter basis to transport passengers in luxury limousine service. Luxury limousine does not include a taxicab.

* * *

6002. Applications.

Transportation carriers may seek Commission action regarding any of the following matters through the filing of an appropriate application:

* * *

~~(e) To qualify a motor vehicle as a luxury limousine after an enforcement official of the Commission has determined that the motor vehicle does not meet relevant statutory or regulatory requirements, as provided in paragraph 6305(b).~~

~~(f)~~ For a permit to operate as a towing carrier, as provided in rule 6503.

~~(g)~~ For any other matter provided by statute or rule but not specifically described in this rule.

* * *

6006. Reports, Name Changes, Address Changes, and Address Additions.

* * *

(b) Within two days of receipt of all supporting documentation required by this paragraph, each transportation carrier shall file a signed report with the Commission detailing, as applicable, any change of name, ~~or mailing address~~, physical address, telephone number, agent for service of process on file with the Commission. Such a filing shall indicate all the affected transportation carrier's common carrier certificate, contract carrier permit, towing carrier permit, or registration numbers. Name change filings, including trade name changes or trade name additions, shall include supporting documentation from the Colorado Secretary of State and/or the Colorado Department of Revenue.

(I) In the event of a name change or an address change, the transportation carrier shall comply with all other applicable Commission rules, including but not limited to, rules regarding financial responsibility filings.

(II) No name change shall be effective until proper proof of financial responsibility in the transportation carrier's new name has been filed with the Commission.

* * *

6007. Financial Responsibility.

* * *

(g) The transportation carrier's failure to file proof of liability coverage, as required by this rule, shall constitute a rebuttable presumption that the carrier is not properly covered under the requirements of this rule.

(gh) All forms referred to in this rule are available from the Commission.

(hi) The transportation carrier shall ensure that the policy and the forms noted in this rule contain the transportation carrier's exact name, trade name (if any), and address as shown in the records of the Commission; and

(ij) Any subsequent changes of name, address, or policy number shall be reflected by the filing of an appropriate endorsement or amendment with the Commission.

(kj) The proof of minimum levels of financial responsibility required by this rule is public information and may be obtained from the Commission.

(lk) Except as provided in paragraph (lm) of this rule, each certificate of insurance and/or surety bond required by and filed with the Commission shall be kept in full force and effect unless and until canceled or not renewed upon 30-days advance written notice, on Form K, Form L, Form BMC 35, or Form BMC 36, as applicable, from the insurer or surety to the Commission. The 30-day cancellation or non-renewal notice period shall commence on the date the notice is received by the Commission. In lieu of the prescribed form, the insurer or surety may cancel or not renew a certificate of insurance and/or surety bond by letter to the Commission containing the same information as required by such form.

(m) Administrative cancellation of certificates of insurance and/or surety bond.

- (I) When a new certificate of insurance and/or surety bond is received by the Commission, all certificates of insurance and/or surety bond for the same type and category of coverage with an older effective date shall be administratively cancelled. For purposes of this paragraph, type of coverage means those listed in paragraph (f) of this rule, and category of coverage means primary coverage or excess coverage.
- (II) When the Commission receives notice from a transportation carrier to cancel all of its authorities and operating rights, all certificates of insurance and/or surety bond for the transportation carrier shall be administratively cancelled.

(n) Common and contract carriers operating under a waiver or variance of the insurance limits shall:

- (I) Post the following notice in each of its passenger motor vehicles affected by the waiver or variance, disclosing the appropriate amounts in the blanks of said notice:

NOTICE

The Public Utilities Commission's rules generally require \$_____ amount of insurance on a motor vehicle of this size. However, the Commission has authorized this company to operate with \$_____ of combined single limit liability insurance. This limit may not cover the total amount of a claim in the event of a serious accident.

- (II) Print such notice in letters of not less than 14-point size and posted in a manner that makes it readily visible to each passenger.

* * *

60165. Fingerprint-Based Criminal History Background Checks.

(a) For purposes of this rule only:

- (I) "Applicant" means a household goods mover seeking to establish or renew a household goods mover registration.
- (II) "CBI" means the Colorado Bureau of Investigation.
- (III) "Driver" means a person who drives or wishes to drive a taxicab for a taxicab carrier or who drives or wishes to drive for a taxicab carrier for ~~a~~ an exempt passenger carrier, regardless of whether such person drives or wishes to drive as an employee or independent contractor.
- (IV) "Passenger carrier" means an exempt passenger carrier ~~or a common carrier with authority to provide taxicab service~~ and a taxicab carrier, but only to the extent the taxicab carrier uses or wishes to use drivers to drive taxicabs.

- (V) "Principal" means a director, officer, owner, or general partner of a household goods mover.
- (VI) "Record check" means a state and national fingerprint-based criminal history record check.
- (b) This rule applies to passenger carriers, drivers, household goods movers, and principals.
- (c) Drivers and passenger carriers.
 - (I) Within ten days of contracting or being employed to drive for passenger carrier, a driver shall submit to the Commission a set of the driver's fingerprints and payment of the actual cost to conduct a record check.
 - (II) A driver shall re-submit to the Commission a set of the driver's fingerprints and payment of the actual cost to conduct a record check at least once every within two years after the Commission provides him/her with the qualification notice required by subsection (c)(VII)(C) of this rule.
 - (III) The driver may obtain information regarding the actual cost of the record check from the Commission or its website. The driver shall submit his or her fingerprints on an official form (FD-258). The Commission will only accept official forms completed in accordance with the instructions available from the Commission or its website.
 - ~~(IV) [Reserved].~~
 - (IV) A passenger carrier shall not permit a driver to drive for the passenger carrier if:
 - (A) the driver has not complied with this rule and § 40-16-104.5 or § 40-10-105.5, C.R.S., as applicable;
 - (B) the driver is disqualified and prohibited from driving under subparagraph (c)(VII), or § 40-16-104.5(4) or § 40-10-105.5(4), C.R.S., as applicable; or
 - (C) the passenger carrier becomes ~~or reasonably should have become~~ aware that the driver has been
 - (i) convicted, within the last ten years, of any offense listed in § 40-16-104.5(4)(a) or § 40-10-105.5(4)(a), C.R.S., as applicable; or
 - (ii) convicted, within the last two years, of any offense listed in § 40-16-104.5(4)(b) or § 40-10-105.5(4)(b), C.R.S., as applicable.
 - (V~~4~~) Passenger carriers are authorized to contact the Commission regarding whether a particular driver has been disqualified and prohibited from driving.
 - (VI~~4~~) A passenger carrier shall, as a condition of continued contract or employment, require a driver to submit his or her fingerprints to the Commission for a record check:

- (A) at least once every two years; and/or
 - (B) within ten days of becoming aware that the driver has been convicted of the offenses listed in subparagraphs (IV)(C)(i) and (ii) of this rule.
- (VII) Driver qualification determinations.
- (A) Upon the Commission's receipt of a completed record check, Staff of the Commission (Staff) shall make the initial determination regarding the driver's qualification status under § 40-16-104.5(4) or § 40-10-105.5(4), C.R.S., as applicable.
 - (B) In making its initial qualification determination, Staff is authorized to request from the driver, and the driver shall provide, additional information that will assist Staff in making the initial determination regarding the driver's qualification status under § 40-16-104.5(4) or § 40-10-105.5(4), C.R.S., as applicable. If, within 15 days of Staff's request, a driver does not provide such additional information or a reason explaining why it is unavailable, Staff shall disqualify the driver.
 - (C) Staff shall give to the driver written notice of its initial qualification determination. If Staff initially determines that the driver is disqualified and prohibited from driving, the driver may, within 60 days of Staff's written disqualification notice, petition the Commission for an order reversing Staff's initial determination.
 - (D) Staff's initial qualification determination may be relied upon by all persons, unless and until the Commission reverses Staff's initial qualification determination.
- (d) Principals and household goods movers.
- (I) Prior to the issuance of a household goods mover registration, an applicant and each principal thereof shall submit a set of his or her fingerprints, using an official fingerprint form (FD-258), together with the established fee, to CBI for the purpose of conducting a record check. The applicant should begin the fingerprint process at least three months prior to the date that the applicant wishes to begin operations as a household goods mover; fingerprint processing may take longer if results are returned as unreadable or unclassifiable.
 - (II) Applicants and principals shall complete the official fingerprint form (FD-258) in accordance with the instructions available from the Commission or its website.
 - (III) The Commission will use the results of the record check to determine whether to issue a household goods mover registration under rule 6603(e).
- (e) The Commission and its Staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks. The Commission may require a name-based criminal history record check of a driver, principal, or household goods mover who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unreadable or unclassifiable.

(f) Nothing in this rule shall be construed to make an independent contractor driver an employee driver of a passenger carrier.

60156. Violations, Civil Enforcement, and Enhancement of Civil Penalties.

- (a) A violation of subparagraph (a)(I) or (b)(I)(B) of rule 6007 may result in the assessment of a civil penalty of up to \$11,000.00 for each violation.
- (b) Any person subject to § 40-2-110.5, C.R.S., who operates a motor vehicle without having paid the annual identification fee, or who violates any provision of rule 6009, may be assessed a civil penalty of up to \$400.00 for each violation.
- (c) Except as provided in in paragraph (a) or (b) of this rule, a person who violates any provision of rules 6000 through ~~6014~~ 6015 may be assessed a civil penalty of up to \$275.00 for each violation.

* * *

SAFETY RULES

* * *

6105. Safety Violations, Civil Enforcement, and Civil Penalties.

* * *

(H) The provisions relating to the doubling and tripling of civil penalty assessments, found in § 40-7-113(3) and (4), and in paragraphs (f) through (k) of rule ~~6015~~ 6016, shall not apply to the assessment of civil penalties for safety rule violations.

6106. – 6199. [Reserved].

COMMON AND CONTRACT CARRIER RULES

Rules Generally Applicable to Common and Contract Carriers

* * *

6201. Definitions.

In addition to the generally applicable definitions in rule 6001, the following definitions apply only in the context of these Common and Contract Carrier Rules:

- (a) “Auto livery” or “auto livery service” means the transportation of passengers by common carrier, including the transportation of passengers in scheduled and/or call-and-demand service.
- (ba) "Capable," as used in § 40-6-120(1), C.R.S., means ready, willing, and able to provide services under the terms of the common carrier's authority. Capability may be evidenced by, among other things, ongoing transportation operations or good faith efforts to conduct such operations under such authority.
- (cb) "Call-and-demand," "on call-and-demand," or "call-and-demand service" means the transportation of passengers not on schedule. Call-and-demand service includes charter service, limousine service, sightseeing service, and taxicab service.
- (ce) "Charter party" means a person or group of persons who are traveling together pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, having acquired the exclusive use of the motor vehicle.
- (ed) "Charter service" means transportation of a charter party.
- (fe) "Dual-use vehicle" means a specific motor vehicle used to provide luxury limousine service, on the one hand, and either common carrier service, contract carrier service, or both, on the other hand.
- (gf) "Flag stop" means a point of service designated by a scheduled common carrier on its filed schedule, which point is located between two scheduled points on the scheduled route. Typically, the common carrier does not designate a specific time for service to the flag stop; if the common carrier does designate a specific time for service, the time is considered to be an approximation.
- (hg) "Limousine service" means the transportation of passengers charged at a per person rate, and the use of the motor vehicle is not exclusive to any individual or group. The term "limousine service" is distinguished from the term "luxury limousine service" as used in Article 16 of Title 40, C.R.S.
- (ih) "Outstanding authority" means an existing authority, or any portion thereof, which is not under suspension.
- (ji) "Schedule," "on schedule," or "scheduled service" means the transportation of passengers between fixed points and over designated routes at established times as specified in the common carrier's time schedule as filed with and approved by the Commission.
- (kj) "Sightseeing service" means the transportation of passengers for the sole purpose of viewing or visiting places of natural, historic, or scenic interest, such that the transportation originates and terminates at the same point.
- (l) “Special bus,” “special bus transportation,” or “special bus service” means the transportation of passengers by common carrier:
- (I) not including ordinary and continuous scheduled service;
- (II) rendered generally on weekends, holidays, or other special occasions;

(III) with a fixed termination date; and

(IV) to a number of passengers whom the carrier on its own initiative has assembled into a travel group, through its own promotion and sale of individual tickets, for a trip or tour planned by the carrier.

(mk) "Tacking" means the joinder of two or more separate authorities or two or more separate parts thereof at a common service point for the purpose of providing a through service.

(nt) "Taxicab service" means passenger transportation by taxicab.

* * *

6203. Applications to Operate as a Common or Contract Carrier.

- (a) Any person seeking permanent authority to operate as a common or contract carrier, or permanent authority to extend a common carrier certificate or contract carrier permit, shall file an application with the Commission. The application shall contain the following information:
- (I) The name, including trade name if applicable, physical address, mailing address, and telephone number of the applicant.
 - (II) The name, mailing address, and telephone number of the applicant's representative to whom the Commission may direct inquiries regarding the application.
 - (III) A statement describing the applicant's business structure (corporation, partnership, sole proprietorship, etc.).
 - (IV) If the applicant is a corporation: the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors and officers; the name and address of its Colorado agent for service of process; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (V) If the applicant is a limited liability company: ~~a statement of that fact;~~ the name of the state in which it is organized; the complete mailing address and physical address of its principal office; the name of its managers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (VI) If the applicant is a partnership: the names, titles, and addresses of all general and limited partners; and a copy of the partnership agreement establishing the partnership and all subsequent amendments.
 - (VII) A complete description of the authority sought, which shall indicate:
 - (A) whether the applicant proposes to operate as a common or contract carrier;

- (B) the proposed type of service (*i.e.*, charter, limousine, sightseeing, taxicab, or scheduled, but not auto livery or special bus), if the applicant proposes to operate as a common carrier;
 - (C) the proposed geographic area of service or the proposed points or routes of service;
 - (D) any proposed restrictions to the authority sought; and
 - (E) a description of the make, model, and year of the motor vehicles proposed to be operated, or if unknown, then a summary of the number and types of motor vehicles proposed to be operated.
- (VIII) A map or diagram showing the proposed geographic area of service, or the proposed points or routes of service, if and in the form requested by the Commission or Commission staff.
- (IX) If the applicant seeks common carrier authority, the applicant shall attach signed letters of support indicating a public need for the proposed service. A letter from the applicant shall be considered a letter of public support. A letter of support:
- (A) shall contain the author's name, address, and phone number;
 - (B) should explain the public need;
 - (C) should specifically support the applicant's particular request for authority;
 - (D) should describe whether and how existing service is inadequate; and
 - (E) shall contain a statement, signed by the author, stating that the letter contains only information that is true and correct to the best of the author's knowledge and belief.
- (X) If the applicant seeks contract carrier authority, the applicant shall attach a letter signed by each proposed customer. Such a letter:
- (A) shall contain the proposed customer's name, address, and phone number;
 - (B) should indicate the proposed customer's special or distinctive transportation needs and whether those needs can be met by existing service;
 - (C) should specifically support the applicant's particular request for authority;
 - (D) should describe whether and how existing service is inadequate; and
 - (E) shall contain a statement, signed by the proposed customer, stating that the letter contains only information that is true and correct to the best of the proposed customer's knowledge and belief.

- (XI) A statement of the facts upon which the applicant relies to establish that the application should be granted. If the application seeks common carrier authority, the statement should establish how granting the application is in the public interest. If the application seeks contract carrier authority, the statement should establish the superior, special, or distinctive nature of the transportation service, or how the transportation service will be specifically tailored to meet the customer's needs.
- (XII) A statement setting forth the qualifications of the applicant, including managerial, operational, and financial fitness, to conduct the proposed operations.
- (XIII) A statement describing the extent to which the applicant, or any person affiliated with the applicant, holds or is applying for authority duplicating or overlapping in any respect the authority at issue in the application.
- (XIV) If applicable, current copies of any authority, issued by either a state or federal agency, authorizing the applicant to provide for-hire transportation of passengers in the State of Colorado.
- (XV) If applicable, current copies of any authority, issued by either a state or federal agency, authorizing any affiliate of the applicant to provide for-hire transportation of passengers in the State of Colorado.
- (XVI) If applicable, a statement that the applicant understands the Commission will, in its discretion, cancel any duplicating or overlapping authorities created by granting the application.
- (XVII) A statement indicating the town or city where the applicant prefers any hearing to be held.
- (XVIII) A statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief.

* * *

6205. Encumbrances, Transfers, Mergers, Consolidations, and Acquisitions of Control.

- (a) For purposes of this rule:
 - (I) "Encumbrancer" means a person seeking or holding an encumbrance (e.g., lien or mortgage) against the authority of a common or contract carrier.
 - (II) "Transfer" means, without limitation, any sale, lease, assignment, license, change in ownership, foreclosure of an encumbrance, execution in satisfaction of any judgment or claim, merger, consolidation, or similar transaction in which control of any authority or portion thereof changes from one entity to another, whether voluntarily, by court order, or otherwise.

- (III) "Transferee" means any entity newly acquiring control of any authority from a transferor.
- (IV) "Transferor" means any entity transferring control of any authority to a transferee.
- (b) Except with regard to foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order, only the owners of an authority as shown in the official records of the Commission may transfer the authority.
- (c) An application to encumber any authority, transfer any authority, acquire control of any regulated intrastate carrier, or permit a merger or consolidation of a regulated intrastate carrier with any other entity, shall, if possible, take the form of a joint application submitted by all parties to the transaction. Such an application shall contain all the following information. If an applicant is unable to supply the required information, the applicant shall explain the reason for the lack of information.
 - (I) All applicants shall provide the information required by subparagraphs 6203(a)(I), (II), and (XVII).
 - (II) Transferees and encumbrancers shall provide the information required by subparagraphs 6203(a)(III) ≡ (VI); and (XIII) ≡ (XIV), and (XVI).
 - (III) If a transferee or encumbrancer is an executor, trustee, receiver, or other similar representative of the real party in interest: a copy of the court order evidencing the representative's appointment, or other evidence of authority if not under court order.
 - (IV) If the transaction covers only portions of an authority: a statement fully explaining which portions are covered by the transaction and which are not.
 - (V) A complete description of the type of transaction for which the applicants seek Commission approval, together with a statement describing each applicant's role in the transaction.
 - (VI) If the transaction involves an acquisition of stock: a statement of the transferor's total number of outstanding capital stock shares, by class; and the number of shares of each class to be acquired by transferee.
 - (VII) A copy of all agreements concerning the transaction, including a copy of all documents creating a security interest, if any, and a statement of the consideration paid in the transaction.
 - (VIII) A statement explaining how the transferee proposes to meet the financial requirements of the transaction, including, if a loan is involved, the amount, maturity, interest rate, and other terms and conditions.
 - (IX) A statement setting forth the nature, extent, and proposed disposition of any existing encumbrances against the affected authorities.
 - (X) A current copy of each of the letters of authority encompassing the authorities at issue in the application.

- (XI) If the transaction involves the lease of an authority: a copy of the proposed lease and a statement of the lease's effective date and termination date.
- (XII) If a transferor or encumbrancer seeks foreclosure of an encumbrance or execution in satisfaction of any judgment or claim: the transferee's written consent to transfer, or in lieu thereof, a judicial order authorizing unilateral action by the transferor or encumbrancer.
- (XIII) Except in the case of an application involving only the creation of an encumbrance, a statement setting forth the qualifications of the transferee, including managerial, operational, and financial fitness, to conduct the proposed operations.
- (XIV) A statement that the applicants understand the Commission will, in its discretion, cancel any duplicating or overlapping authority created by the transaction.
- (XV) A statement setting forth whether the transferor has been and is conducting active, bona fide operations under the authorities at issue in the transaction.
- (XVI) A statement of the facts upon which the applicants rely to show that the application should be granted. In this regard, the applicants should consult paragraph (e) of this rule.
- (XVII) A statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief.

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EXEMPT PASSENGER CARRIER RULES

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6301. Definitions. [Reserved].

~~"Fuel economy guide" means the fuel economy guide published by the federal Environmental Protection Agency and available on that Agency's website.~~

* * *

6304. Exterior Signs or Graphics.

- (a) Except as otherwise provided in these rules, no person shall place, or permit to be placed, any exterior signs or graphics on a luxury limousine.
- (b) Signs or graphics located inside the luxury limousine that are readily legible from the outside shall be deemed to be exterior signs and graphics.

- (c) For purposes of this rule, and except as specifically provided in paragraph (d) of this rule, "identified" is deemed to mean:
- (I) an identification of the name, address, Internet address, phone number, or any other contact information of the person offering luxury limousine service; or
 - (II) any identification of a type of passenger transportation service including, but not limited to, limousine, shuttle, or taxi.
- (d) Nothing in this rule shall prohibit the following:
- (I) markings, signs, or graphics otherwise required by law, including those required by any rule of the Commission, the Colorado Department of Public Safety, the FMCSA, or an airport authority;
 - (II) markings, signs, or graphics attached by any law enforcement agency; or
 - (III) signs or graphics attached by the motor vehicle manufacturer or dealership for the purpose of identifying the manufacturer, dealership, or the motor vehicle's make or model.

6305. Luxury Limousine Features, ~~Qualification, and Applications for Qualification.~~

- (a) Features. Each luxury limousine carrier shall ensure that its motor vehicles, when in operation as luxury limousines or waiting to pickup a chartering party, are ~~equipped with the following in good physical condition, excluding consideration of defects covered by the Commission's safety rules. The Commission shall use the following general guidelines in determining if a vehicle is in good physical condition:~~
- (I) ~~A television. The television shall be operational and securely attached to the motor vehicle in a professional manner. An electronic media system such as DVD or VHS may be used in conjunction with a television receiver. The screen shall have a diagonal measurement of at least three inches, be visible to passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88. The body of the luxury limousine has a good, unfaded paint job; is devoid of major dents and rust, broken trim, and cracked windows other than the windshield; and~~
 - (II) ~~Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature. Except for problems caused by current weather conditions, the interior of the luxury limousine is clean, free of offensive odors, and has no major tears, cracks, or stains upon the upholstery, headliner, and carpeting.~~
- (b) Age of Motor Vehicles. Except for luxury limousines covered under rule 6308(a)(IV) and/or vehicles covered by rule 6309, luxury limousine carriers shall not use vehicles older than ten

model years as of July 1st of each year. For purposes of this rule, the counting of model years shall begin with the present calendar year. By way of example, between July 1, 2004, and June 30, 2005, counting backwards, 2004 is the first model year, 2003 is the second model year, and so forth. Qualification. No person shall operate any motor vehicle as a luxury limousine unless such person has first received approval from the Commission, in accordance with one of the following processes, to operate as a luxury limousine:

- (I) ~~— A luxury limousine carrier may receive approval following an inspection of the motor vehicle by an enforcement official of the Commission.~~
- (II) ~~— In the alternative, a luxury limousine carrier may receive approval by:~~
 - (A) ~~— contacting an enforcement official of the Commission responsible for inspecting motor vehicles for qualification;~~
 - (B) ~~— adequately describing the motor vehicle to the enforcement official; and~~
 - (C) ~~— receiving written confirmation from such enforcement official that, based on the description given by the luxury limousine carrier, the subject motor vehicle meets relevant statutory and regulatory requirements for operation as a luxury limousine.~~

~~(c) - (f) [Reserved]~~

~~(g) — Applications for qualification. If the Commission's enforcement official determines that a motor vehicle does not meet relevant statutory and regulatory requirements for operation as a luxury limousine, and the luxury limousine carrier disagrees with such enforcement official's determination, such luxury limousine carrier may file an application to the Commission for a hearing on the matter. In any such hearing, the luxury limousine carrier shall bear the burden of proving that the motor vehicle in question complies with relevant statutory and regulatory requirements.~~

~~(h) — Disqualification. No person shall operate any motor vehicle as a luxury limousine if such motor vehicle has been disqualified to operate as a luxury limousine.~~

* * *

6307. Regulations Incorporated by Reference. [Reserved]

~~(a) — The Commission incorporates by reference the regulations published in 40 C.F.R. § 600.315-82, as revised on July 1, 2006. No later amendments to or editions of the C.F.R. are incorporated into these rules. Persons interested in information concerning how the material incorporated by reference may be obtained or examined should contact the Chief of Transportation at:~~

~~Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202~~

Telephone: (303) 894-2850

~~(b) — The material incorporated by reference may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except when such days are state holidays. The material incorporated by reference may also be examined at any state publications library.~~

6308. Luxury Limousine Categories.

- (a) A luxury limousine shall fit one or more of the following categories:
- (I) Stretched limousine, which is a motor vehicle whose wheelbase has been lengthened beyond the manufacturer's original specifications whether at the manufacturer's factory or otherwise.
 - (II) Executive car, which is a motor vehicle that has four doors and is:
 - (A) ~~that has four doors, that meets or exceeds the interior volume index of 120 cubic feet for "large cars" in 40 C.F.R. § 600.315-82, and that is classified as a luxury sedan or sport utility vehicle in the fuel economy guide; or a sedan including Acura RL, Audi A8 Series, Audi A6 Series, Audi S8 Series, Bentley Continental Flying Spur, Bentley Arnage, BMW 7 Series, BMW 5 Series, BMW Alpina, BMW M5, Cadillac DTS, Chrysler 300, Ferrari 612, Infiniti M Series, Jaguar S-Type, Jaguar Vdp Lwb, Jaguar XJ Series, Jaguar X-Type Series, Jaguar Super, Lexus LS Series, Lexus G Series, Lexus E Series, Lincoln Town Car, Maserati Quattroporte, Maybach 57 Series, Maybach 62 Series, Mercedes-Benz S Class Series, Mercedes-Benz E Class Series, or Rolls Royce Phantom; or~~
 - (B) ~~that is similar to a motor vehicle which falls within the parameters of subparagraph (A) but is so new that it is not yet listed in the fuel economy guide. a sport utility vehicle including Audi Q7, Cadillac Escalade, Chevrolet Suburban, Ford Excursion, Ford Expedition, GMC Yukon, Hummer (all models, excluding sport utility truck version), Infiniti QX, Lexus LX, Lincoln Navigator, Mercedes-Benz M Class Series, Mercedes-Benz G Class Series, or Mercury Mariner Hybrid with livery package.~~
 - (III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a mini van as classified by the manufacturer) whose interior has been enhanced by the installation of either:
 - (A) ~~a motor vehicle built on a cutaway chassis; Captain's chairs, couch seats, or similar seating in place of standard bench seating; or~~
 - (B) ~~a motor coach; or Both of the following:~~
 - (i) An electronic video media system such as television, DVD, or VHS that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least three inches, be

viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.

(ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.

(C) a van (but is neither classified as a mini van in the fuel economy guide, nor a similar vehicle not specifically classified as a mini van in the fuel economy guide).

(IV) Other limousine, which is a classic, antique, or specially built motor vehicle that, at the time of registration as a luxury limousine, has or had a retail value of fifty thousand dollars or more.

(b) A luxury limousine carrier operating a motor vehicle pursuant to subparagraph (a)(IV) of this rule shall, upon request by an enforcement personnel official, of the Commission supply proof of the retail value of the vehicle in the form of: reference to the most recent available edition of the National Automobile Dealers Association "blue book" or other similar and widely recognized publication which establishes the retail value of the vehicle; or a sales receipt or affidavit confirming the actual price of the vehicle. produce evidence that the motor vehicle meets the requirements of subparagraph (a)(IV) of this rule.

6309. Luxury Limousines – Previously Qualified Vehicles.

Notwithstanding anything in rules 6305(b) and 6308 to the contrary, any vehicle qualified as a luxury limousine on or before the effective date of this rule, and that is operated under the exempt passenger carrier registration under which it was so qualified, shall maintain its qualification status.

63096310. Luxury Limousines – Operational Requirements, Prearrangement Required.

(a) No person shall provide luxury limousine service except on a prearranged basis. For purposes of this rule, "prearranged basis" means that the luxury limousine service has been arranged or reserved before the luxury limousine service, or ancillary service thereto, is provided. No person shall provide luxury limousine service, or a service ancillary to luxury limousine service, if that person arranges provision of the service with the chartering party at or near the point of departure.

(b) No person shall provide luxury limousine service without having in the luxury limousine a manifest or charter order containing the name, pickup address, and telephone number of the chartering party and the time of pickup. A luxury limousine carrier shall, at all times when providing service, carry in each vehicle a charter order containing the name, telephone number, pickup time, and pickup address of the chartering party who has arranged for use of the vehicle. A luxury limousine carrier shall not station a luxury limousine in front of or across the street from a hotel or motel, or within one hundred feet of a recognized taxicab stand or a designated passenger pickup point at an airport without the completed charter order in the vehicle.

(c) A luxury limousine carrier shall provide the charter order immediately upon request by any enforcement official or airport authority.

63106311. Presumption of Providing Luxury Limousine Service – Presumptions.

- (a) A person shall be presumed to have provided luxury limousine service in violation of rule ~~6309~~ 6310(a) if, without prearrangement, such person:
- (I) accepts payment for the transportation from the chartering party at the point of departure;
 - (II) makes the luxury limousine available to the chartering party at the point of departure;
 - (III) negotiates the immediate availability of, or the price for immediate use of, the luxury limousine at or near the point of departure;
 - (IV) loads the chartering party or its baggage into the luxury limousine; or
 - (V) transports the chartering party in the luxury limousine.

(b) A luxury limousine carrier that charges or offers to charge for transportation services on a per person basis shall be presumed to be providing or offering to provide services as a common carrier.

(b)c A luxury limousine carrier may rebut the presumptions created in ~~paragraph (a) this rule~~ by competent evidence.

~~6311. Luxury Limousine Operational Requirements.~~

- ~~(a) A luxury limousine carrier shall, at all times when providing service, carry in each vehicle a charter order containing the name, telephone number, and pickup address of the chartering party who has arranged for use of the vehicle. A luxury limousine carrier shall not station a luxury limousine at an airport, in front of or across the street from a hotel or motel, or within one hundred feet of a recognized taxicab stand without the completed charter order in the vehicle.~~
- ~~(b) A luxury limousine carrier shall provide the charter order immediately upon request by any enforcement official or airport authority.~~

6312. Exempt Passenger Carrier Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates ~~any of the following provisions § 40-16-103, C.R.S., with regard to offering service without being registered, or rule 6302,~~ may be assessed a civil penalty of up to \$1,100.00 for each violation:
- ~~(I) Rule 6309.~~
 - ~~(II) § 40-16-103, C.R.S., with regard to offering service without being registered; or rule 6302.~~

(b) A person who violates rule 6310 may be assessed a civil penalty of up to \$500.00 for each violation.

(b) Except as provided in paragraphs (a) and (b) of this rule, a person who violates any provision of Article 16 of Title 40, C.R.S., or any provision of these Exempt Passenger Carrier Rules may be assessed a civil penalty of up to \$275.00 for each violation.

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HOUSEHOLD GOODS MOVER AND PROPERTY CARRIER RULES

* * *

6603. Registration.

- (a) Any person seeking to register as a household goods mover or property carrier shall provide the following information, as applicable:
- (I) The name of the registrant and the trade name under which operations will be conducted.
 - (II) A copy of the registrant's certificate of assumed trade name or trade name registration.
 - (III) The registrant's telephone number, complete physical address, and complete mailing address. A post office box is only acceptable if a physical address is also provided.
 - (IV) A statement describing the registrant's business structure (corporation, limited liability company, partnership, or sole proprietorship).
 - (V) The name and address of the registrant's Colorado agent for service of process, as required by rule 6012.
 - (VI) If a registrant is a corporation:
 - (A) The name of the state in which the registrant is incorporated.
 - (B) The location of the registrant's principal office, if any, in Colorado.
 - (C) The name and title of each director and officer.
 - (D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.
 - (VII) If the registrant is a limited liability company:
 - (A) The state in which the company is organized.
 - (B) The location of the registrant's principal office, if any, in Colorado.

- (C) The name and title of each member.
 - (D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.
- (VIII) If the registrant is a partnership:
- (A) The name and business address of all general and limited partners.
 - (B) The location of the registrant's principal office, if any, in Colorado.
- (IX) If the registrant is a sole proprietorship:
- (A) The name and business address of the sole proprietor.
 - (B) The location of the sole proprietor's principal office, if any, in Colorado.
- (X) A statement that the registrant is familiar with the Household Goods Mover and Property Carrier Rules and all applicable safety rules and that the registrant will comply with them.
- (XI) A statement that the registrant understands that the filing of a registration does not constitute authority to operate.
- (XII) A statement indicating whether any of the motor vehicles to be used have a GVWR of 10,000 or more pounds.
- (XIII) A verification made under penalty of perjury and signed by an authorized officer, partner, owner, employee, or manager of the registrant, as appropriate, verifying that the contents of the registration form and all attachments are true, accurate, and correct. The registration form shall contain the complete address of the affiant.
- (b) In addition to the information required by paragraph (a):
- (I) A person registering as a household goods mover or property carrier under this rule shall cause to be filed both the required proof of financial responsibility and the required annual identification fees.
 - (II) Household goods movers shall pay an annual filing fee of \$300.00.
 - (III) Household goods movers shall provide the following information for each director, officer, owner, or general partner of the household goods mover:
 - (A) First, middle, and last names;
 - (B) Gender;
 - (C) Social Security Number; and
 - (D) Date and place of birth.

- (IV) Property carriers shall pay a registration filing fee of \$50.00; except that a person that simultaneously registers as a property carrier and as a household goods mover shall be exempt from the \$50.00 registration filing fee and need only pay the \$300.00 annual filing fee for a household goods mover.
- (c) The Commission will not register any person as a household goods mover or property carrier until the Commission has received all information, documentation, and payments required by paragraphs (a) and (b) of this rule.
- (d) The Commission shall treat the Social Security Number and the date and place of birth, acquired under subparagraph (b)(III) of this rule, as confidential.
- (e) Household goods mover registration.
 - (I) The Commission may deny or refuse to renew the registration of a household goods mover pursuant to §§ 40-14-103(3) and 103.5(2), C.R.S.
 - (II) Commission staff shall review the results of the fingerprint-based criminal ~~background history record~~ check and, using any commercially or governmentally available information source, research relevant criminal and civil history for the household goods mover and each director, officer, owner, and general partner thereof, issue a household goods mover registration if:
 - (A) ~~the results of the fingerprint-based criminal background check are negative for each director, officer, owner, or general partner of the household goods mover; and~~
 - (B) ~~all other requirements are met.~~
 - (III) Commission staff shall issue a household goods mover registration only if:
 - (A) the results of the fingerprint-based criminal history record check are negative for each director, officer, owner, or general partner of the household goods mover;
 - (B) the results of the research conducted by Commission staff indicates that the household goods mover has no unsatisfied final judgments arising out of any civil or criminal action in a court of law, pursuant to § 40-14-103(3)(c), C.R.S.; and
 - (C) all other requirements are met.
 - (IIIIV) ~~If the results of the fingerprint-based criminal background check are not negative for each director, officer, owner, or general partner of the household goods mover. If Commission staff is unable to issue a household goods mover registration under subparagraph (e)(III) of this rule, then the Commission, after hearing upon reasonable notice, shall determine whether to issue a household goods mover registration. Notwithstanding anything in this subparagraph (IV) to the contrary, the Commission may issue an order without hearing when:~~
 - (A) the Commission has already held a hearing in prior annual registration cycles;

(B) after such hearing the Commission issued the registration; and

(C) since the prior annual registration cycle, the civil and criminal history has not changed for the household goods mover and each director, officer, owner, and general partner thereof.

- (f) The Colorado Department of Revenue, Motor Carrier Services Division, through its Port of Entry weigh stations:
- (I) may issue a non-renewable temporary household goods mover registration, valid for 15 consecutive days, to a person who:
 - (A) completes the temporary household goods mover registration form provided by the Commission;
 - (B) provides evidence of motor vehicle liability insurance as required by § 40-14-104, C.R.S.;
 - (C) signs a verification, under penalty of perjury as specified in § 24-4-104(13)(a), C.R.S., that the applicant is insured as required by § 40-14-104, C.R.S.;
 - (D) pays a fee of one hundred fifty dollars; and
 - (E) pays the ~~annual vehicle~~-identification fee required by § 40-2-110.5, C.R.S.
 - (II) may issue a temporary registration for the seasonal transportation of unprocessed agricultural produce to market or to places of storage, valid for 90 consecutive days, to a person who:
 - (A) provides evidence of motor vehicle liability insurance as required by § 40-16-104, C.R.S., or
 - (B) signs a verification, under penalty of perjury as specified in § 24-4-104(13)(a), C.R.S., that the applicant is insured as required by § 40-16-104, C.R.S.; and
 - (C) pays a fee of twenty dollars per vehicle.
 - (III) may issue the temporary registrations provided for in subparagraph (II) upon notification by the Commission identifying the specific counties, crops, and time periods for which the registrations are required, as identified by the Colorado Department of Agriculture.