

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-402EC

IN THE MATTER OF PROPOSED RULES GOVERNING THE OPERATIONS OF MOTOR
VEHICLE CARRIERS EXEMPT FROM REGULATION AS PUBLIC UTILITIES, 4 CODE
OF COLORADO REGULATIONS 723-33.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADOPTING RULES AND
GRANTING MOTION**

Mailed Date: February 13, 2004

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I. STATEMENT

1. The Commission commenced this proceeding by the issuance of Decision No. C03-1053 on September 18, 2003. That decision gave public notice of a proposed rulemaking to adopt new Rules Regulating Exempt Passenger Carriers, 4 *Code of Colorado Regulations* (CCR) 723-33. The stated purpose of the proposed rulemaking is to describe the scope and manner of Commission regulation over exempt carriers in the State of Colorado. The proposed rules cover a wide range of subject matter areas, including, but not limited to: registration and filing requirements; operational regulations for luxury limousines, including the

luxury features they must offer; insurance requirements; record keeping; and increases in civil penalties.

2. Notice of the proposed rulemaking was published in the October 10, 2003, edition of the *Colorado Register*. The hearing was scheduled for November 10, 2003. Written comments were received in advance of hearing from Telluride Express; from Alpine Taxi/Limo, Inc. (Alpine Taxi), and Home James Transportation Services, Ltd. (Home James), which filed joint comments; and from Levtzow, LLC, doing business as Mountain Limo (Mountain Limo).

3. On November 7, 2003, Mountain Limo filed a Motion for Waiver of Ten Day Response Provisions of PUC Rules. Mountain Limo's Response to Comment of Sid Brotman on Issues Unrelated to this Rule-making Proceeding accompanied the motion. The motion requested that the Commission consider the written comments of Mountain Limo even though those comments were filed only shortly before the rulemaking hearing. At the hearing the undersigned Administrative Law Judge (ALJ) granted the motion. This Order memorializes that ruling. To the extent relevant to this proceeding (*see* discussion of dual use of vehicles, *infra*), the ALJ considered the Mountain Limo comments filed on November 6, 2003.

4. At the assigned place and time, the ALJ called the matter for hearing. The following provided oral comments on the proposed rules: Telluride Express; Alpine Taxi; Home James; Mountain Limo; Presidential Limousine; Colorado Corporate Coach; Mr. John Hafer; and the Staff of the Public Utilities Commission (Staff). Exhibits 1 through 3 were admitted.

5. At the conclusion of the rulemaking hearing, the ALJ took the matter under advisement.

II. FINDINGS, CONCLUSIONS, AND DISCUSSION

6. The rules at issue here are designed and intended to implement the provisions found at article 16 of title 40, C.R.S., and the civil penalty provisions of §§ 40-7-112 through and including 40-7-116, C.R.S., as those civil penalty provisions apply to transportation carriers regulated by article 16.

7. The rules adopted by this Decision are rearranged, and appear in a different order, from the proposed rules published in the *Colorado Register*.¹ Except as noted in this Decision, the substance of the rules is the same.

8. Staff provided detailed comment on the proposed rules. Staff explained that, by and large, the rules are a restatement of the exempt carrier rules now in effect; incorporate existing Commission practice; and clarify rules for the benefit of the exempt carriers, the Commission, and the public.²

9. Comments, both written and oral, focused principally on two issues: Rule 6316(c) and dual use of vehicles. As these aspects of the rules received the greatest attention, the ALJ addresses them first.

10. Rule 6316(c) allows a motor vehicle to be qualified for use as a luxury limousine by one of two methods: either physical inspection by Staff or, under specified circumstances and for a limited period, a description of the vehicle provided by the carrier to Commission

¹ Except as noted in the text, all references in this Decision are to the rules as numbered in Attachment A to this Recommended Decision.

² Hearing Exhibit 1 shows the proposed rule number and the corresponding rule number in the current exempt carrier rules. See 4 CCR 723-33.

enforcement staff without a physical inspection.³ As explained by Staff at the hearing, qualifying a vehicle for use as a luxury limousine without an initial physical inspection will allow carriers to place the vehicle in service when a physical inspection is not reasonably possible. This rule benefits carriers which historically have found it time-consuming or difficult to obtain a physical inspection before placing a vehicle in service.⁴ A vehicle placed in service by qualification without initial inspection must be presented for inspection by Commission enforcement staff within six months of the qualification. This places the burden on the carrier to obtain a physical inspection of the vehicle. In addition, a qualification of this type expires six months from the date of the qualification and may not be renewed or extended. This provides the necessary assurance that, in fact, the vehicle will be inspected. The rule appropriately balances the carriers' legitimate need to qualify vehicles as soon as reasonably possible with the obligation of the Commission to assure that each vehicle used as a luxury limousine meets the statutory and rule requirements. Finally, no commenter objected to the idea of initial qualification without a physical inspection, so long as proper safeguards are in effect.⁵

11. The issue that received the greatest attention was dual use of vehicles.⁶ Dual use of vehicles refers to the practice, permitted by Rule 4 CCR 723-31-16.1 under prescribed circumstances, of a person's using a vehicle to provide common carrier transportation service

³ In response to the commenters' written and oral requests, this type of qualification requires written confirmation from Commission enforcement personnel in order to be effective. *See* Rule 6316(c)(II)(C).

⁴ For example, a carrier on the Western Slope either has driven the vehicle to Denver for inspection or has had to await the arrival of a Commission employee at the carrier's location for inspection. This has been expensive and/or time-consuming for such a carrier.

⁵ The suggestion made by one commenter that photographs of the vehicle (front, sides, and rear) be required will not be adopted because photographs are not necessary. The Commission enforcement staff who take the information about the vehicle will obtain the description necessary to avoid misunderstandings so that only vehicles which meet the statutory and rule requirements are qualified.

⁶ *See, e.g.*, comments of Mountain Limo, comments of Telluride Express, and comments of Alpine Taxi and Home James.

under the person's certificate of public convenience and necessity (CPCN) and luxury limousine service under the person's registration.⁷ Vehicles operated by a person with a CPCN are presumed to be operated under the CPCN. Rule 4 CCR 723-31-16 establishes a process by which a person who meets the stated requirements may make dual use of a vehicle in order to provide luxury limousine service.

12. The majority of the comments, both oral and written, addressed this issue. The comments ran the gamut from suggested changes to the notice provided to the Commission to a request that the Commission repeal dual use in its entirety. The testimony, dialogue, and suggestions were interesting and informative. The ALJ finds, however, that the subject of dual use vehicles is outside the scope of this proceeding. The Commission instituted dual use, and the concomitant notice requirements, in the Rules, Regulations, and Civil Penalties Governing Common Carriers of Passengers by Motor Vehicles for Hire, 4 CCR 723-31.⁸ Those rules are not at issue in this proceeding, and changes to those rules were not noticed in the notice of proposed rulemaking which commenced this proceeding. *See* Notice of Proposed Rulemaking, published in the *Colorado Register* of October 10, 2003. If persons have comments to make and suggestions to offer concerning dual use vehicles, they should make those comments and suggestions in the Commission's recently-noticed rulemaking addressing all transportation rules. *See* Docket No. 03R-554TR.

13. The ALJ now turns to detailed discussion of the rules appended as Attachment A.

⁷ The vehicle is not used simultaneously to provide common carrier service and luxury limousine service.

⁸ *See* Decision No. R99-1303 at 21-31; Decisions No. C00-0079 at 3-6, No. C00-0203 at 2-3, and No. C00-0345 at 2-4 (adopting and discussing Rule 4 CCR 723-31-16).

14. One set of commenters suggested that the Basis, Purpose, and Statutory Authority section make it clear that the rules apply only to exempt passenger carriers and not to “for hire” passenger carriers. *See* Joint Comments of Alpine Taxi and Home James (Joint Comments) at 4. That section states: “These rules cover motor vehicles carriers exempt from regulation as public utilities (*i.e.*, charter or scenic buses, children’s activity buses, luxury limousines, and off-road scenic charters).” Because the requested specificity exists already, the proposed change will not be adopted.

15. Rule 6301 contains definitions of terms used in the rules. New definitions were added, and some proposed definitions were reworded for clarity.

16. The Joint Comments at ¶ 2 suggested that the language of Rule 6301(v), which defines “luxury limousine carrier,” be modified slightly to include the concept that, at times, a luxury limousine carrier may also hold a CPCN or a contract carrier permit issued by the Commission. The proposed change will not be adopted because, irrespective of any other authority it may have, a carrier operating as a luxury limousine carrier is considered to be an exempt passenger carrier providing service by luxury limousine. That carrier cannot operate as a luxury limousine carrier unless it is registered and meets all the statutory and regulatory requirements. When the holder of a CPCN or of a contract carrier permit is operating as a luxury limousine carrier, it is held to the standards of a luxury limousine carrier.

17. For the same reason, the commenters’ proposal that the language of Rule 6301(ff), which defines “transportation carrier” or “carrier,” be changed will not be adopted.

18. These commenters suggested that the language of Rule 6301(u), which defines “luxury limousine,” be modified to state that a vehicle is only a luxury limousine vehicle at those

times when it is used as a luxury limousine vehicle. Joint Comments at ¶ 2. This change is unnecessary. First, the Rule language references the statutory definition of “luxury limousine” found at § 40-16-101(3), C.R.S. Second, Rule 4 CCR 723-31-16 makes it clear that a dual use vehicle is only a “luxury limousine” under limited and specific circumstances, including when it is being operated as a luxury limousine. Third, in any event, a dual use vehicle must meet the requirements of “luxury limousine” within the meaning of the statute and these rules in order to be operated as a luxury limousine.

19. Rule 6301(ee) defines the phrase “seating capacity.” One commenter asked that the definition be changed so that the manner of calculating seating capacity would depend on changes made by the vehicle’s manufacturer only. *See* Comments of Telluride Express at 1. Seating capacity is used to determine the minimum amount of financial responsibility needed to operate the vehicle. *See* Rule 6307(b)(I)(B). Adoption of the proposed change could result in a vehicle’s being operated with insufficient insurance in an instance in which a change to seating capacity was made by a person other than the vehicle’s manufacturer (*e.g.*, a mechanic). Such a result would be contrary to § 40-16-104(1), C.R.S., which establishes the minimum level of insurance based on a vehicle’s seating capacity, and thus would be harmful to the public health, safety, and public welfare. For these reasons, the requested change will not be made.

20. Rule 6302 states the situations in which an application is necessary. The Joint Comments requested that Rule 6302(b) be eliminated. That rule permits the filing of an application by a carrier “[t]o qualify a motor vehicle as a luxury limousine after enforcement staff has determined that the motor vehicle does not meet relevant statutory or regulation requirements, as provided in paragraph 6316(h).” The argument is that there should be no opportunity to qualify these vehicles “except in circumstances where the vehicle is so unique

and/or expensive that there is no question that it is not a garden variety vehicle. It has been [the commenters'] experience that far too often the waiver is used as simply a basis to register conforming (and cheap or old) vehicles as luxury limousines." Joint Comments at ¶ 4. The change will not be made. First, the opportunity to file an application with the Commission is the only administrative means available to an affected carrier to reverse a Staff determination that the motor vehicle in question does not meet the required standards. Clearly, carriers should have the right to seek Commission review of such a determination. The rule gives, or at least preserves, that right. Second, interested persons will receive notice of any such application filed and will have the opportunity to intervene. In the course of the ensuing proceeding on the application, intervenors can present arguments in opposition to the application.

21. Rule 6303 concerns registration requirements and limitations. The rule sets out what a carrier can and cannot do after it obtains an article 16 registration. At ¶ 7, the Joint Comments suggested a change to the language of Rule 6303(b) to clarify that provision. The suggestion will be adopted and the language changed for clarity.

22. Rule 6305 pertains to the information a carrier must provide to the Commission for registration as an exempt carrier. The Joint Comments, at ¶ 8, proposed additional language. The suggested addition is reasonable, is appropriate, and will be made. *See* Rule 6305(a)(VIII).

23. Rule 6306 requires carriers to file name (including trade name) and address changes, accompanied by specified documentation. This will ensure that the Commission's records are consistent with, and accurately reflect, carriers' actual operations. In addition, this rule will assist in administration of financial responsibility requirements. *See* Rule 6307(g).

24. Rule 6307 pertains to financial responsibility required of exempt passenger carriers. The rule applies to vehicles that are used to provide transportation under article 16.

25. The Joint Comments, at ¶ 5, addressed Rule 6307. The commenters suggest that Rule 6307(b)(I)(C) be changed to allow carriers to be self-insured only if the certificate of self-insurance is “in at least the amounts” set out in Rule 6307(b)(I)(B). Because a carrier may use a combination of self-insurance and insurance provided by an insurance carrier to meet the financial responsibility requirements, the proposal will not be adopted.

26. Telluride Express proposed that the insurance requirements set out in Rule 6307(b)(I)(B) be increased. Because the rule restates the minimum financial responsibility requirements as established by § 40-16-104(1), C.R.S., the suggestion will not be adopted. The ALJ notes that Rule 6307(b)(I)(B) sets the floor, not the ceiling, for insurance coverage. Carriers must have in effect insurance coverage in the amounts stated in the rule and the statute. Carriers are free to have, but are not required to have, insurance coverage in excess of the stated amounts.

27. Rule 6308 pertains to annual motor vehicle identification fees. The Joint Comments, at ¶ 6, proposed that the Commission increase the fee for exempt vehicles “so that it covers the costs of enforcement inspection and administration for these types of vehicles.” Section 40-2-110.5(1), C.R.S., establishes an annual registration fee in the amount of \$5 for each motor vehicle which an exempt carrier owns, controls, manages, or operates. Rule 6308 contains that statutory amount and, therefore, will not be changed.

28. Rule 6313 pertains to the federal regulations which are incorporated by reference into these rules. Telluride Express expressed some confusion about the incorporation by reference of the U. S. Environmental Protection Agency’s (EPA) fuel economy guide. *See*

Rule 6315 as proposed. That publication, which is available on the EPA's website and is not a regulation, will not be incorporated by reference. Rather, the fuel economy guide will be used in determining whether or not a motor vehicle qualifies as a "discretionary vehicle." *See* Rule 6315(a); *see also* Rule 6301(r), which defines "fuel economy guide."

29. Rule 6314 addresses what is and what is not permitted as an exterior sign or graphic.⁹ This rule implements § 40-16-101(3)(a)(I), C.R.S., which states that, among other requirements, a luxury limousine "[i]s not identified by exterior signs or graphics other than license plates." The rule provides guidance with respect to questions frequently asked of Staff, and it incorporates Commission determinations on this topic.

30. The Joint Comments, at ¶ 9, addressed Rule 6314. The Joint Comments suggest a modification to identify, by specific reference, the types of identification permitted by Rules 6314(d)(I) and (II). This suggestion will not be adopted. The rules of the entities referenced in Rules 6314(d)(I) and (II) may change, making a list obsolete, incomplete, or inaccurate. In addition, the Commission may inadvertently miss a type of required identification. Finally, it is the responsibility of the regulated entity to be familiar with, and to comply with, applicable statutes, regulations, and requirements. The Commission should not assume that burden.

31. The Joint Comments also contain a general statement that the statute does not allow the types of exterior identification permitted by Rule 6314(d). This is incorrect. Rule 6314(c) contains the Commission's interpretation of the word "identified" as used in § 40-

⁹ Telluride Express commented on this Rule in the context of dual use vehicles. For the reasons discussed, the comment is beyond the scope of this proceeding and, therefore, is not addressed.

16-101(3)(a)(I), C.R.S., and Rule 6314.¹⁰ Rule 6314(c) interprets “identified” to mean: “an identification of the name, address, Internet address, phone number, or other contact information of the person offering luxury limousine service.” The Commission’s interpretation is reasonable and is consistent with the statutory language. In addition, the interpretation avoids conflict with other legal and operational requirements (*e.g.*, vehicle identification stamp required to be on windshield (*see* Rule 6308(e)(I)); under certain circumstances, vehicle required to have U. S. Department of Transportation number on its side).

32. Rule 6315 pertains to discretionary vehicles. Section 40-16-101(3)(a)(IV)(E), C.R.S., states that a motor vehicle is a luxury limousine if, in addition to meeting other specified requirements, the vehicle is a “[d]iscretionary vehicle, which is any other luxury motor vehicle that, in the commission’s discretion, qualifies as a luxury limousine.” Rule 6315 implements this statutory provision.

33. Rule 6315(a) sets out five requirements. If a motor vehicle meets any one of the requirements, the Commission has determined, in this rule and in the exercise of its discretion, that the vehicle falls within the category of “discretionary vehicle.” One purpose of this rule is to provide a degree of certainty to carriers by informing them of the requirements a vehicle must meet to be considered a discretionary vehicle. Another purpose is to provide guidance to Staff, and others, who may need to make a determination with respect to a vehicle. Yet another purpose is to simplify the administration of the statutory provision.

34. Rule 6315(a)(IV) has been rewritten to make it clear that this requirement has two parts. First, a vehicle must be built on a cutaway chassis or must be a motor coach or must be

¹⁰ No commenter expressly challenged this interpretation.

classified as a van (but not a mini-van) in the EPA's fuel economy guide. Second, and in addition, the vehicle's interior seating must have been enhanced from standard bench seating by the installation of couch seats, captain's chairs, or similar seating. A vehicle which does not meet both criteria will not qualify as a discretionary vehicle under Rule 6315(a)(IV).

35. At the hearing the Home James representative stated that 15-passenger vans used as school buses would meet the requirements of Rule 6315(a)(IV). He opined that, in the near future, there would be a market in such used vans and that they might find their way into service as luxury limousines. The representative requested changes to the rule so that this would not occur. As clarified, the rule sets a standard that would not be met by a used school bus without substantial change to the interior of the bus. In addition, such a vehicle would have to meet the other statutory and regulatory requirements. This addresses the identified concern. No change to the rule, other than rewriting for clarity, will be made.

36. After review of the requirements, the ALJ finds they are reasonable; are well-defined and well described; and, when judged against the standards established by §§ 40-16-101(3)(a)(IV)(A) through (D), C.R.S., do not diminish the standards which a vehicle must meet to be deemed a luxury limousine. In addition, the ALJ finds that the requirements fall well within the authority and discretion of the Commission.¹¹

37. The Joint Comments, at ¶ 10, argue that "a discretionary vehicle should never include a people mover or van *that is not also a luxury motor vehicle as required by statute.*" (Emphasis supplied.) Rule 6315(a) supplements § 40-16-101(3)(a), C.R.S., by defining what

¹¹ The Joint Comments, without elaboration, object that the five requirements are stated in the disjunctive rather than the conjunctive. Joint Comments at ¶ 10. Use of the disjunctive is within the discretion of the Commission and, for the reasons stated above, is appropriate.

constitutes a discretionary vehicle. The rule does not affect, and certainly cannot limit, the language of § 40-16-101(3)(a), C.R.S., which, as pertinent here, defines “luxury limousine” as “a chauffeur-driven, *luxury motor vehicle*” (emphasis supplied). To find that a vehicle is a luxury limousine, one must conclude that the vehicle in question is a “luxury motor vehicle” within the meaning of § 40-16-101(3)(a), C.R.S. Thus, the Joint Comments’ concern raises a factual issue to be resolved on a case-by-case basis. For this reason, no change to Rule 6315(a) is necessary.

38. Rule 6315(a)(V) provides that a vehicle is a discretionary vehicle if it “is a classic, antique, or specially built motor vehicle that, at the time of registration as a luxury limousine, has a retail value of not less than fifty thousand dollars.” Telluride Express suggested that this provision be amended to provide for an annual adjustment to the \$50,000 using a Consumer Price Index (CPI). This proposal will not be adopted. First, an annual adjustment factor introduces uncertainty and confusion and is at odds with one purpose of the rule as discussed above. Second, an annual adjustment factor introduces administrative complexity at odds with another purpose of the rule. Third, selection of the appropriate CPI (*e.g.*, Denver-Boulder-Greeley area, Western Slope, statewide average) requires data not available in the record. Neither the suggestion nor the ramifications of its adoption were developed sufficiently.

39. Similarly, the proposal of the Joint Comments at ¶ 10 that the retail value of the motor vehicle “be limited in the first instance to a retail value of much more than \$50,000, because at the time the statute was passed several years ago the baseline was \$50,000” will not be adopted. The Joint Comments suggested neither a specific higher-than-\$50,000 threshold nor a calculation method.

40. The Joint Comments requested changes in the language of Rule 6316(a), the rule which sets out the features which a luxury limousine must have. *See* Joint Comments at ¶ 11.

41. First, the Joint Comments object to the use of, and request further definition of, the term “professional manner” when applied to the means used to secure required amenities in the interior of a luxury limousine. *See* Rules 6316(a)(I) and (III). Rule 6316(b) provides sufficient definition to allow a luxury limousine carrier to know and to understand the standard to which she/he is held.¹² In addition, Commission decisions will provide a gloss on the meaning of “professional manner.” More specific definition at this time is unnecessary. This requested change will not be made.

42. Second, the Joint Comments observed that Rule 6316(a)(I), as proposed, was contrary to statute because it permitted a luxury limousine to have an electronic media system in lieu of a television. The Joint Comments are correct. Rule 6316(a)(I) has been changed to comply with the statute and to allow an electronic media system in conjunction with a television.

43. Third, the Joint Comments requested another change in the language of Rule 6316(a)(I) to the effect that the television should be of a size that would allow passengers seated to the rear of the driver to comprehend what is on the screen. This suggestion will not be adopted. The language of Rule 6316(a)(I) now specifies the size of the television screen and, thus, provides both certainty to the carriers and ease of administration for the Commission. Adoption of rule language as vague as that proposed by the Joint Comments would introduce an unacceptable level of uncertainty and administrative complexity. In addition, the record contains

¹² The Joint Comments suggest a prescriptive standard (*e.g.*, a list or description of what constitutes a secure, professional manner of attachment). A prescriptive approach limits the carrier’s ability to take advantage of developments and technologies which become available subsequent to promulgation of the rule. To avoid this result, a prescriptive standard will not be adopted.

no information or data on which to determine the size of the television screen that will allow passengers seated to the rear of the driver to comprehend what is on the screen.

44. Fourth and finally, the Joint Comments suggest that the language of Rule 6316(a)(III) be modified. As worded, the rule is clear and informs the carrier of the requirement to be met. Because the Joint Comments neither identify clearly the problem they seek to correct nor suggest language to correct the problem, the modification will not be made.

45. Rule 6317 addresses the requirement that luxury limousine service be prearranged. At the hearing the commenters questioned whether Rule 6317 would permit a prospective customer or chartering party to go, in person, to the limousine carrier's office to arrange transportation. The answer is no. In pertinent part, § 40-16-102.5, C.R.S., requires that luxury limousine service "be provided on a prearranged basis only." Section 40-16-101(6.3), C.R.S., in relevant part, defines "prearranged," when used in conjunction with a transportation service regulated under article 16, to mean: "transportation has been arranged or reserved by mail, telephone, telefacsimile, or computer before the carrier begins to render the transportation service or any service ancillary to the transportation[.]" Rule 6317 does not, and cannot, expand or change the requirement for prearrangement, as defined by the statute. Rule 6317 is clear that transportation cannot be arranged in person under any circumstances. Because the language is clear and is consistent with the cited statutes, no change will be made to the rule.

46. The Joint Comments, at ¶ 13, propose that all the requirements of the statutory provisions on prearrangement, chartering party, and so forth be included in Rule 6317. Because these rules (including Rule 6317) are a supplement to, and not a restatement of or a substitute for,

the statutory provisions and because those subject to these rules are presumed to know that they are also subject to the applicable statutory provisions, the suggested changes will not be made.

47. The Joint Comments also propose that Rule 6317 be amended to state that luxury limousine service “may not be provided as a result of a reservation at any reservation counter in any airport, hotel, etc.” Joint Comments at ¶ 13. This restriction does not appear in the statute, and the Commission’s ability to limit luxury limousine service beyond the restrictions contained in the statute is at least questionable. *See* §§ 40-16-1102(1), C.R.S. (exempt carriers are “subject to regulation to the extent provided in” article 16).¹³ In addition, the ALJ discerns no reason to impose the suggested restriction because prearrangement in person is prohibited by § 40-16-102.5, C.R.S., and Rule 6317, as discussed above. Finally, if a person believes that an exempt carrier, including a luxury limousine carrier, is operating in a manner which does not conform to the statute, that person may pursue established remedies and/or may complain to the Commission. The proposed restrictive language will not be added.

48. Telluride Express also discussed the provisions of Rule 6317. This commenter identified a problem with the term “fixed charge,” as did the Joint Comments. This term does not appear in the rule. Thus, there is nothing to correct.¹⁴

49. Rule 6318 contains the rebuttable presumption that a carrier which engages in the listed activities without prearrangement provides luxury limousine service within the meaning of

¹³ In making this observation, the ALJ does not find or conclude definitively that the Commission lacks such authority. The ALJ simply presents the issue, which was not raised by any party and which need not be decided in this proceeding.

¹⁴ As the suggested remedy to this identified problem, Telluride Express recommends that the rule requires luxury limousine transportation carriers to file their “fixed charge” with the Commission. Because this remedy appears to be beyond the scope of the Commission’s authority with respect to these carriers (*see* § 40-16-102(1), C.R.S.), the ALJ would not have adopted this suggestion in any event.

§ 40-16-102.5, C.R.S. This change makes the intent of the rule clear and addresses the oral comment on the rule made by Alpine Taxi and Home James.

50. Rule 6319 is a new rule, added as a result of a comment made at the hearing. The rule provides that a carrier must maintain, for a period of at least three years, records required by the exempt carrier rules. At present, carriers are subject to the provisions of the Uniform Records Retention Act, §§ 6-17-101 *et seq.*, C.R.S. See Hearing Exhibit No. 2. This rule is consistent with that statute and puts carriers on notice of the existing requirement. The rule imposes no new burden on carriers, and no commenter at the hearing objected when the idea of including a new record keeping rule was broached. A similar provision is found in 4 CCR 723-9-6520(c), recently promulgated by the Commission.

51. A contested issue at the hearing was the legal effect the absence of required records would have in proceedings before the Commission. Home James and Alpine Taxi advocated that the absence of records should create a presumption that the transportation was illegal, thus permitting a party challenging the carrier's operation to establish its *prima facie* case that the statute had been violated. Other parties objected to the creation of such a presumption. The rule will not be amended to create or to state any presumption. First, it is unclear whether the Uniform Records Retention Act, §§ 6-17-101 *et seq.*, C.R.S., itself creates such a presumption. If it does, a rule is unnecessary. Second, the need to create, and the effects and ramifications of creating, such a presumption were not developed in this record.

52. Telluride Express suggested that Rule 6320, which addresses rule waivers and rule variances, state that a waiver cannot be used to circumvent the rules. This change will not be adopted. First, the purpose of the rule is to provide a mechanism by which a carrier, in an

appropriate circumstance, can obtain Commission permission not to comply with a rule. The proposed change appears to run counter to this purpose. Second, the proposed language is unnecessary because the process of obtaining Commission approval for a waiver or variance provides assurance that a waiver will not be used to circumvent the rules.

53. The Joint Comments at ¶ 14 suggest a modification to Rule 6320(a). Specifically, they argue that the “impossible, *impracticable*, or unreasonable” standard, which the Joint Comments state as “impossible, *impractical*, or unreasonable” (emphasis added), is neither objective nor difficult to meet. The ALJ disagrees.

54. In all Commission rules of which the ALJ is aware, the standard for obtaining a waiver or a variance is that strict compliance is “impossible, impracticable, or unreasonable” under the circumstances presented. This standard is well understood by those to whom it applies. As a review of Commission decisions reveals, the standard has been (and is) applied consistently by the Commission. The Commission grants or denies a requested waiver or variance on the basis of the facts presented. In addition, the Joint Comments do not propose language. This leaves the ALJ to guess the language which, in the opinion of the commenters, will address their identified concern. Finally, contrary to the Joint Comments’ assertion, “impracticable” is a stringent standard. As stated in *Webster’s II New Riverside University Dictionary* (Anne H. Soukhanov et al. eds. 1984) at 615 (emphasis in original): “*Impracticable* applies to that which is not capable of being carried out or put into practice. *Impractical* refers to that which is not sensible or prudent. A plan may be *impractical* because it involves undue cost or effort and yet it may not be *impracticable*.” Rule 6320(a) will not be modified.

55. The Joint Comments at ¶ 14 request that all variance or waiver requests be noticed and set for hearing. The Commission's practice is to provide public notice of applications for waiver or for variance. If there is an intervention which contests or objects to the application, the Rules of Practice and Procedure, 4 CCR 723-1, provide for a hearing. The Joint Comments provide no support or reason for the request that even unopposed and uncontested applications be set for hearing. The suggested procedure will be not adopted.

56. Rule 6323 contains civil penalty amounts consistent with § 40-7-113, C.R.S., as amended in 2003. It also puts carriers on notice that the Commission may both impose civil penalties and take other action as authorized by law. *See* Rule 6323(k).

57. At the hearing, Staff made a number of recommendations for changes to the language of the proposed rules. There was no disagreement with the proposed changes. The changes make the rules clearer and the language more precise. The changes will be adopted.

58. Presenters commented on proposed rules in addition to the rules discussed above. Some of the comments included suggested changes. The suggested changes which are not addressed in this decision are not adopted because the ALJ finds that they will not make the rules clearer or are otherwise unnecessary. In some instances, the suggested changes run counter to the purpose of the rule.

59. The rules attached to this Decision contain grammatical and similar changes made so that the rules are clearer, more understandable, and internally consistent.

60. The rules attached to this Decision are clear; are necessary to protect the public health, safety, and welfare; are understandable; do not conflict with other provisions of law; and do not duplicate other rules. The rules are in the public interest, and they should be adopted.

61. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Rules Regulating Exempt Passenger Carriers, 4 *Code of Colorado Regulations* 723-33, which are set out in Attachment A to this Order, are adopted.

2. The Motion for Waiver of Ten Day Response Provisions of PUC Rules filed by Levtzow, LLC, doing business as Mountain Limo, is granted.

3. This Recommended Decision shall 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 shall be served upon the parties, who may file exceptions to it.

a) 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 shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) 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.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

RULES REGULATING EXEMPT PASSENGER CARRIERS

4 CCR 723-33

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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, civil penalties, insurance, and registration requirements. These rules cover motor vehicle carriers exempt from regulation as public utilities (*i.e.*, charter or scenic buses, children's activity buses, luxury limousines, and off-road scenic charters).

The statutory authority for the promulgation of these rules is found at §§ 40-2-108, 40-2-110.5(8), 40-7-113(2), and 40-16-101(3)(a)(IV)(E), C.R.S.

RULES REGULATING EXEMPT PASSENGER CARRIERS

6300. Applicability of Rules Regulating Exempt Passenger Carriers. Rules 6300 through 6399 apply to all exempt passenger carriers.

6301. Definitions. In addition to the statutory definitions, the following definitions apply throughout this Part 6, except where a specific rule or statute provides otherwise:

- (a) "C.F.R." means the Code of Federal Regulations.
- (b) "Commission" means the Public Utilities Commission of the State of Colorado.
- (c) "Driver" means any person driving a motor vehicle on behalf of, or at the direction of, an exempt passenger carrier, including an independent contractor.
- (d) "Enforcement official" means authorized personnel of the Commission, the Colorado Department of Revenue, the Colorado State Patrol, and any other law enforcement agency.
- (e) "Enforcement staff" means the authorized personnel of the Commission's Transportation Section.
- (f) "Exempt passenger carrier" means a "motor vehicle carrier exempt from regulation as a public utility," as that term is defined in § 40-16-101(4), C.R.S., that transport passengers.
- (g) "Exempt passenger carrier registration" means the registration issued to an exempt passenger carrier pursuant to § 40-16-103, C.R.S.
- (h) "Exempt interstate carrier" means any interstate or foreign commerce carrier by motor vehicle operating into, from, within, or through the State of Colorado for hire pursuant to federal exemptions or partial exemptions from economic regulation, as described in § 40-10-120(3) and 40-11-115(3), C.R.S.
- (i) "FMCSA" means the Federal Motor Carrier Safety Administration and includes predecessor or successor agencies performing similar duties.
- (j) "Form D-1" means a NARUC Uniform Identification Cab Card for motor vehicle or driveway operations conducted by an exempt interstate carrier.
- (k) "Form E" means a NARUC Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, executed by a duly authorized agent of the insurer.
- (l) "Form G" means a NARUC Form G Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond, executed by a duly authorized agent of the surety.
- (m) "Form H" means a NARUC Form H Uniform Motor Carrier Cargo Certificate of Insurance, executed by a duly authorized agent of the insurer.
- (n) "Form J" means a NARUC Form J Uniform Motor Carrier Cargo Surety Bond, executed by a duly authorized agent of the surety.
- (o) "Form K" means a NARUC Form K Uniform Notice of Cancellation of Motor Carrier Insurance Policies.

- (p) "Form L" means a NARUC Form L Uniform Notice of Cancellation of Motor Carrier Surety Bonds.
- (q) "Form RS-3 registration receipt" means a receipt issued to a regulated interstate carrier indicating that the required financial responsibility has been filed with the Commission and fees have been paid.
- (r) "Fuel economy guide" means the fuel economy guide published by the federal Environmental Protection Agency and available on that Agency's website.
- (s) "GVWR" means gross vehicle weight rating, which is the value specified by the manufacturer as the loaded weight of a single motor vehicle.
- (t) "Interstate carrier" means a "regulated interstate carrier" or an "exempt interstate carrier," as those terms are defined in this rule.
- (u) "Luxury limousine" means "luxury limousine," as that term is defined in § 40-16-101(3), C.R.S.
- (v) "Luxury limousine carrier" means an exempt passenger carrier providing transportation by luxury limousine.
- (w) "Motor vehicle" means "motor vehicle," as that term is defined in § 40-16-101(3.5), C.R.S.
- (x) "Motor coach" means an over-the-road bus which has luggage storage and which usually has three axles.
- (y) "NARUC" means the National Association of Regulatory Utility Commissioners.
- (z) "Passenger," except as otherwise specifically defined or contextually required, means any person, other than a driver, occupying a motor vehicle.
- (aa) "Registrant," except as otherwise specifically defined or contextually required, means a transportation carrier.
- (bb) "Regulated interstate carrier" means any interstate or foreign commerce carrier by motor vehicle operating into, from, within, or through the State of Colorado under authority issued by the FMCSA, as described in §§ 40-10-120(2) and 40-11-115(2), C.R.S.
- (cc) "Rules Regulating Exempt Passenger Carriers" or "rules" means rules 6300 through 6399, inclusive.
- (dd) "Safety Rules" means the rules found in 4 CCR 723-15, inclusive.
- (ee) "Seating capacity"
 - (I) Except as otherwise specifically defined or contextually required, and in the absence of the manufacturer-rated number of seating positions in a motor vehicle, "seating capacity" means the greatest of the following:
 - (A) the total number of seat belts, including the driver's, in a motor vehicle; or

- (B) the number generated by adding:
 - (i) for each bench or split-bench seat, the seat's width in inches, divided by 17 inches, rounded to the nearest whole number; and
 - (ii) the number of single-occupancy seats, including the driver's seat if it is not part of a split-bench seat.
- (II) In all cases, any auxiliary seating positions such as folding jump seats shall be counted in determining seating capacity.
- (III) For purposes of the definition of "seating capacity," "manufacturer" means the final person modifying the physical structure of a motor vehicle, such as when a motor vehicle's wheelbase is stretched in a luxury limousine.
- (ff) "Transportation carrier" or "carrier" means an exempt passenger carrier.

6302. Applications. Transportation carriers may seek Commission action regarding any of the following matters through the filing of an appropriate application:

- (a) For a waiver or variance of any of these rules.
- (b) To qualify a motor vehicle as a luxury limousine after enforcement staff has determined that the motor vehicle does not meet relevant statutory or regulatory requirements, as provided in paragraph 6316(h).
- (c) For any other matter provided by statute or rule but not specifically described in this rule.

6303. Registration Requirement and Limitation.

- (a) No person shall offer services as an exempt passenger carrier without a valid registration issued by the Commission.
- (b) Registrations do not authorize transportation services covered by Articles 10, 11, 13, or 14 of Title 40, C.R.S., and do not authorize property carrier transportation covered by Article 16 of Title 40, C.R.S.
- (c) Every transportation carrier shall maintain a copy of its proof of registration under this rule in each motor vehicle it owns, controls, operates, or manages under its registration.
- (d) Upon demand, the transportation carrier shall present the copy of its proof of registration and, if applicable, its Form D-1 or Form RS-3 to any enforcement official.

6304. Registrations. Transportation carriers may seek Commission action regarding any of the following matters through the filing of an appropriate registration:

- (a) For registration as an exempt passenger carrier, as provided in rule 6305.

6305. Information required to be provided for registration.

- (a) Any person seeking to register as a transportation carrier shall provide the following information, in written form, to the Commission:
 - (I) The name of the registrant and the trade name, if applicable, under which operations will be conducted.
 - (II) The registrant's telephone number, and complete physical location and mailing addresses. A post office box is only acceptable if a physical location address is also provided.
 - (III) If a registrant is a corporation:
 - (A) The name of the state in which it is incorporated. If the state of incorporation is not Colorado, the registration shall also contain a certificate from the Colorado Secretary of State that qualifies the registrant to do business in Colorado.
 - (B) The location of its principal office, if any, in the State of Colorado.
 - (C) The names of its directors and officers.
 - (D) A copy of its articles of incorporation or charter.
 - (E) A copy of its certificate of assumed trade name, if any.
 - (IV) If a registrant is a limited liability company:
 - (A) The name of the state in which it is organized. If the state of organization is not Colorado, the registration shall also contain a certificate from the Colorado Secretary of State that qualifies the registrant to do business in Colorado.
 - (B) The location of its principal office, if any, in the State of Colorado.
 - (C) The name, title, and business address of each member.
 - (D) A copy of its certificate of assumed trade name, if any.
 - (V) If a registrant is a partnership: the name, title, and business address of each partner.
 - (VI) A statement whether any of the motor vehicles to be used has a GVWR of 10,000 or more pounds.
 - (VII) A statement setting out the seating capacity of the vehicle with the largest seating capacity in the fleet of vehicles to be used by the transportation carrier under its registration.
 - (VIII) A statement that the registrant is familiar with the Rules Regulating Exempt Passenger Carriers and all applicable safety rules, that the registrant will comply with the rules, and that the registrant is aware that it may incur civil penalties or other sanctions for violations of the rules.

- (IX) A statement that registrant understands that the filing of a registration does not constitute authority to operate.
 - (X) A statement which is made under penalty of perjury; which is signed by an officer, a partner, an owner, or an employee of the applicant, as appropriate, who is authorized to act on behalf of the applicant; and which states that the contents of the application are true, accurate, and correct. The application shall contain the complete address of the affiant.
- (b) In addition to the application, a person seeking a registration to operate as a transportation carrier shall cause to be filed both the required proof of financial responsibility and the required annual identification fees.
 - (c) The Commission will not issue a registration to operate as a transportation carrier until the Commission has received a complete application, the required proof of financial responsibility, and the required annual identification fees.

6306. Reports, Name and Address Changes.

- (a) When a transportation carrier changes its name, changes or adds a trade name, or changes its address from that on file with the Commission, within 48 hours of receipt of all supporting documentation required by this paragraph, that transportation carrier shall file a signed report with the Commission detailing the name change or address change. This filing shall include the affected registration numbers. Name change filings, including trade name changes or trade name additions, shall include supporting documentation from the Colorado Secretary of State or the Colorado Department of Revenue.
- (b) In the event of any name or address change, the transportation carrier shall comply with all other applicable Commission rules, including but not limited to, rules regarding financial responsibility filings.
- (c) No name change shall be effective until proper proof of financial responsibility in the carrier's new name has been filed with the Commission.
- (d) Notice sent by any person to the transportation carrier's address on file with the Commission shall constitute prima facie evidence that the notice was sent to the carrier at its correct address.

6307. Financial Responsibility.

- (a) Motor vehicle liability. Every transportation carrier shall obtain and keep in force at all times motor vehicle liability insurance coverage or a surety bond providing the same coverage. Motor vehicle liability means liability for bodily injury or property damage.
- (b) Financial responsibility, minimum levels. Every transportation carrier shall obtain and keep in force at all times financial responsibility as follows:
 - (I) Motor Vehicle Liability:
 - (A) Motor vehicle liability coverage shall be combined single limit liability.

(B) Schedule of limits:

Type of Carrier	Vehicle Seating Capacity	Minimum Level
Exempt Passenger Carriers:		
Charter or Scenic Bus	33 or more	\$5,000,000
Luxury Limousine	15 or less	\$1,000,000
	16 through 32	\$1,500,000
	33 or more	\$5,000,000
Off-Road Scenic Charter	Any size	\$1,000,000
Children's Activity Bus	Any size	\$1,000,000

(C) Transportation carriers may obtain a certificate of self-insurance issued pursuant to § 42-7-501, C.R.S.

(c) Coverage criteria. The transportation carrier shall ensure that insurance or surety bond coverage:

- (I) is provided only by insurance or surety companies authorized to provide such coverage in the State of Colorado;
- (II) is not less than the minimum limits set forth under paragraph (b) of this rule;
- (III) covers all motor vehicles which may be operated by or for the transportation carrier, or which may be under the control of the transportation carrier, with such coverage being accomplished by a "Waiver of Description" endorsement on each policy;
- (IV) provides for the payment of benefits by the insurance or surety bond company directly to parties damaged by the transportation carrier on a "first dollar/dollar one" basis;
- (V) if the coverage contains a retained risk provision, such provision shall obligate the insurance or surety company to pay the party damaged by the transportation carrier regardless of the level of funds in the retained risk pool; and
- (VI) does not permit a transportation carrier to pay benefits directly to a party damaged by said carrier.

(d) The provisions of subparagraphs (IV) – (VI) of paragraph (c) of this rule shall not apply to transportation carriers who have filed proof of self-insurance pursuant to § 42-7-501, C.R.S.

(e) The transportation carrier shall maintain at its principal place of business each original insurance policy, surety policy, or certificate of self-insurance for required coverage; shall maintain proof of its motor vehicle liability coverage in each motor vehicle that it operates; and shall make such information available for inspection by any enforcement official.

(f) Forms. The transportation carrier shall cause to be filed with the Commission the appropriate form in lieu of the original policy as follows:

(I) Motor vehicle liability.

(A) For all transportation carriers, a Form E or Form G.

- (B) For transportation carriers obtaining a certificate of self-insurance under the provisions of § 42-7-501, C.R.S., a copy of said certificate. Upon renewal of the certificate, the carrier shall file a copy of the most current certificate.
- (g) The transportation carrier shall ensure that the policy and the forms specified in this rule contain the transportation carrier's exact name, its trade name (if any), and its address as shown in the records of the Commission.
- (h) The transportation carrier shall ensure that any change of name, trade name (if any), address, or policy number is filed, using an appropriate endorsement or amendment, with the Commission.
- (i) The proof of minimum levels of financial responsibility required by this rule is public information. Upon written request from a member of the public, the Commission will release this information.
- (j) Each certificate of insurance required by and filed with the Commission shall be kept in full force and effect unless and until canceled by a 30-day written notice, on Form K or Form L, as applicable, from the insurer to the Commission. Time shall run from the date the notice is received by the Commission. In lieu of the prescribed form, the insurer may cancel a certificate of insurance by letter to the Commission provided the letter contains the same information as required by the prescribed form.
- (k) In lieu of paragraph 6307(j), the Commission, upon receipt of a new certificate of insurance or surety bond, may administratively cancel any earlier certificate of insurance or surety bond on the effective date of the new certificate of insurance or surety bond.

6308. Annual Motor Vehicle Identification Fees.

- (a) Before the first day of January of each calendar year, every transportation carrier shall pay to the Commission an annual identification fee of five dollars for each motor vehicle that the carrier owns, controls, operates, or manages within the State of Colorado, as set forth in § 40-2-110.5, C.R.S.
- (b) A transportation carrier that obtains a registration during the calendar year shall pay the annual identification fees at the time of registering as a transportation carrier.
- (c) A transportation carrier that acquires one or more additional motor vehicles during the calendar year shall pay the annual identification fees prior to putting the additional vehicle(s) in-service.
- (d) Annual identification fees shall be valid only for the calendar year for which they are purchased.
- (e) Proof of payment of each annual identification fee shall be in the form of a vehicle identification stamp issued by the Commission, except that a Form RS-3 shall be issued to a regulated interstate carrier registered under the Single State Registration System.
 - (I) Except as provided in subparagraphs (II) or (III) of this paragraph, a carrier shall not operate a motor vehicle unless a valid vehicle identification stamp is affixed to the inside lower right-hand corner of the motor vehicle's windshield.
 - (II) In lieu of affixing the vehicle identification stamp to the windshield, transportation carriers which are also exempt interstate carriers shall carry a Form D-1 with the identification stamp on the back of the cab card in the square bearing the name of the State of Colorado.

(III) In lieu of affixing the vehicle identification stamp to the windshield or to carrying a Form D-1, transportation carriers which are also regulated interstate carriers registered under the Single State Registration System shall carry a copy of the current year's Form RS-3 Registration Receipt in each motor vehicle.

(f) Transportation carriers using a motor vehicle in both interstate and intrastate operations need only pay the fees associated with interstate operations for that motor vehicle.

6309. [Reserved].

6310. Designation of Agent.

- (a) Each transportation carrier shall file in writing with the Commission, and shall maintain on file, the name and address of a person upon whom service may be made of any notice, order, process, or demand. The named person is the carrier's designated agent. A carrier shall not name the Secretary of State of the State of Colorado as its designated agent. The designated agent, if a natural person, shall be at least 18 years of age. The address of the designated agent must be in the State of Colorado.
- (b) If a carrier's designated agent changes, or if a carrier's designated agent's name or address changes, the transportation carrier shall notify the Commission by filing a new designation within 48 hours of receiving the information required to be filed.
- (c) At all times, the carrier shall maintain in its files the correct name and address of its designated agent.
- (d) Service upon a transportation carrier's named designated agent as filed with the Commission shall be deemed to be service upon the transportation carrier.

6311. [Reserved].

6312. [Reserved].

6313. Regulations Incorporated by Reference.

- (a) The Commission incorporates by reference the regulations published in:
 - (I) 40 C.F.R. Part 600.315-82, as revised on July 1, 2002.
 - (II) 49 C.F.R. Part 393.88, as revised on October 1, 2002.
- (b) No later amendments to or editions of the C.F.R. are incorporated into these rules.
- (c) Persons interested in information concerning how the material incorporated by reference may be obtained or examined should contact:

Transportation Section Chief
Colorado Public Utilities Commission
Office Level 2
1580 Logan Street
Denver, Colorado 80203

Telephone: (303) 894-2850

- (d) The material incorporated by reference may be examined at the offices of the Commission, Office Level 2, 1580 Logan Street, Denver, Colorado 80203, 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.

6314. Exterior Signs or Graphics.

- (a) No person shall operate a luxury limousine that is identified by exterior signs or graphics.
- (b) Signs or graphics located inside the luxury limousine that are legible from outside the luxury limousine shall be deemed to be exterior signs and graphics.
- (c) For purposes of this rule and § 40-16-101(3)(a)(I), C.R.S., and except as specifically provided in paragraph (d) of this rule, "identified" means an identification of the name, address, Internet address, phone number, or any other contact information of the person offering luxury limousine service.
- (d) Nothing in this rule shall prohibit the following:
 - (I) markings required by any rule or order of the Commission;
 - (II) markings, signs, or graphics required by law, including (but not limited to) those required by any rule of the Colorado Department of Public Safety, an airport authority, or the FMCSA;
 - (III) markings, signs, or graphics attached by any law enforcement agency; or
 - (IV) signs or graphics attached by the motor vehicle manufacturer or dealership for the purpose of identifying the manufacturer, the dealership, or the motor vehicle's make or model.

6315. Discretionary Vehicle.

- (a) Discretionary vehicle, as used in § 40-16-101(3)(a)(IV)(E), C.R.S., means a motor vehicle that meets any one of the following requirements:
 - (I) A motor vehicle whose wheelbase has been lengthened beyond the manufacturer's original specifications.
 - (II) A motor vehicle that has four doors, that meets or exceeds the interior volume index 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.
 - (III) A motor vehicle which is similar to a motor vehicle which falls within the parameters of subparagraph (II) but is so new that it is not yet listed in the fuel economy guide.
 - (IV) A motor vehicle, first, which is built on a cutaway chassis, which is a motor coach, or which is a motor vehicle that is classified as a van (but not a mini van) in the fuel

economy guide; and, second, whose interior seating has been enhanced from standard bench seats by the installation of captain's chairs, couch seats, or similar seating.

- (V) A motor vehicle which is a classic, antique, or specially built motor vehicle that, at the time of registration as a luxury limousine, has a retail value of more than fifty thousand dollars.
- (b) A registrant seeking to qualify a motor vehicle pursuant to subparagraph (a) (V) of this rule shall supply proof of the retail value of the vehicle in the form of: a 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 establishing the actual price paid for the vehicle.

6316. 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 when waiting to pickup a chartering party, are equipped with the following:
 - (I) A television. The television shall be 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. The screen shall have a diagonal measurement of at least three inches, must be usable by passengers seated to the rear of the driver, and must comply with 40 C.F.R. § 393.88.
 - (II) A telephone. The telephone shall at all times be accessible to the passengers and capable of making and receiving calls. An intercom system does not meet the requirements of this rule.
 - (III) 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 console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. Alcoholic beverages need not be provided.
- (b) For purposes of paragraph (a) of this rule, attachment by a means of tape, Velcro straps, or similar means does not constitute a secure or a professional manner of attachment.
- (c) Qualification. No luxury limousine carrier shall operate any motor vehicle as a luxury limousine unless the motor vehicle has 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 enforcement staff.
 - (II) In the alternative, a luxury limousine carrier may receive approval by:
 - (A) contacting enforcement staff responsible for inspecting motor vehicles for qualification;
 - (B) adequately describing the motor vehicle to enforcement staff; and

- (C) receiving written confirmation from enforcement staff that, based on the description given by the carrier, the subject motor vehicle meets relevant statutory and regulatory requirements for operation as a luxury limousine.
- (d) A luxury limousine carrier may obtain approval using the qualification method contained in subparagraph (c)(II) only if that luxury limousine carrier has contacted enforcement staff responsible for inspecting motor vehicles for qualification, has asked for an appointment for an inspection, and has been informed that the motor vehicle cannot be inspected within the next 24 hours.
- (e) A luxury limousine carrier whose motor vehicle is approved using the qualification method contained in subparagraph (c)(II) must make the motor vehicle available for inspection by enforcement staff within six months of the date of qualification pursuant to subparagraph (c)(II).
- (f) An approval received using the qualification method contained in subparagraph (c)(II) expires six months from the date of qualification pursuant to subparagraph (c)(II) and cannot be renewed or extended.
- (g) No luxury limousine carrier can use the qualification method contained in subparagraph (c)(II) to qualify a motor vehicle as a luxury limousine more than one time per motor vehicle.
- (h) If enforcement staff 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 the enforcement staff determination, the luxury limousine carrier may file an application with the Commission seeking a Commission determination that the motor vehicle meets the requirements for operation as a luxury limousine. In any hearing on such an application, the luxury limousine carrier shall bear the burden of proving that the motor vehicle in question complies with relevant statutory and regulatory requirements.

6317. Luxury Limousine – Prearrangement Required. No person shall provide luxury limousine service except on a prearranged basis. No person shall provide luxury limousine service, or a service ancillary to luxury limousine service, if that person either arranges provision of the service with the chartering party at the point of departure or reserves the service in person (that is, not by mail, telephone, telefacsimile, or computer) with the chartering party, whether or not at the point of departure.

6318. Presumption of Providing Luxury Limousine Service.

- (a) For purposes of determining whether luxury limousine service has been “provided” within the meaning of § 40-16-102.5, C.R.S., a person shall be presumed to have provided luxury limousine service if, without prearrangement, such person:
 - (I) accepts payment for the transportation from the chartering party at the point of departure; or
 - (II) makes the luxury limousine available to the chartering party at the point of departure; or
 - (III) negotiates the immediate availability of, or the price for immediate use of, the luxury limousine at the point of departure; or
 - (IV) loads the chartering party or its baggage into the luxury limousine; or
 - (V) transports the chartering party in the luxury limousine.

- (b) A carrier may rebut the presumption created in paragraph (a) by competent evidence.

6319. Record Keeping. Unless a period of record retention is specified in a rule, transportation carriers shall maintain the records required by these rules for a minimum of three years.

6320. Waivers and Variances.

- (a) The Commission may permit a variance of a rule, or may waive a rule, if it concludes that, under the circumstances presented, strict compliance with the rule is impossible, impracticable, or unreasonable. The Commission may grant a variance or a waiver subject to such terms and conditions as it deems appropriate. The Commission will not grant a variance or a waiver if the requested variance or waiver, if granted, would be contrary to law.
- (b) Variance or waiver - general.
- (I) As used in this rule, "variance" means authorization to use a different method or means to comply with a rule.
- (II) As used in this rule, "waiver" means authorization not to comply with a rule.
- (c) A transportation carrier must comply with the rules until and unless the Commission grants that carrier a variance or a waiver of one or more rules.
- (d) Procedure for seeking variance or waiver.
- (I) A request for a variance or a waiver made in an existing docket shall be made by motion.
- (II) A request for a variance or a waiver made outside a docketed proceeding shall be made by petition.
- (III) A request for a variance or a waiver, whether made by motion or by petition, shall include at least the following information:
- (A) Citation to the specific provision of the rule which is sought to be varied or waived;
- (B) A clear and concise statement of the variance or waiver requested;
- (C) A statement of the facts and circumstances relied upon to demonstrate why the Commission should grant the variance or waiver;
- (D) A statement regarding the duration of the requested variance or waiver, including a statement of specific date or event which will terminate the variance or waiver, if granted;
- (E) A statement whether the variance or waiver, if granted, would be full or partial; and
- (F) An acknowledgment that the transportation carrier requesting the variance or waiver understands that the variance or waiver is not effective until approved by the Commission.

- (e) Record keeping requirements. A transportation carrier that has obtained a variance or a waiver of any rule in this Part shall:
 - (I) If the variance or waiver pertains to a motor vehicle: maintain a copy of the variance or waiver both in the affected motor vehicle and in the carrier's motor vehicle maintenance files.
 - (II) If the variance or waiver pertains to a driver: ensure that a copy of the waiver or variance is carried on the affected driver's person whenever the driver is operating a motor vehicle pursuant to the carrier's registration and is maintained in the affected driver's qualification file.
 - (III) If the variance or waiver pertains to any matter not listed in subparagraphs (e)(I) or (II) of this rule: maintain a copy of the variance or waiver at the carrier's primary place of business.

6321. Revocations for Lack of Financial Responsibility.

- (a) Whenever Commission records indicate that a transportation carrier's required insurance or surety coverage is or will be canceled, and the Commission has no proof on file indicating replacement coverage, the Commission:
 - (I) Prior to coverage cancellation, shall mail notice to said carrier indicating that its required coverage will be cancelled and that the carrier's registration to operate will be revoked on the date of coverage cancellation; and
 - (II) After coverage cancellation, immediately shall revoke the carrier's registration and shall mail notice to the carrier indicating that its required coverage has been cancelled and that its registration to operate has been revoked.
- (b) In addition to revocation, the Commission may take other action as authorized by law.

6322. Revocation of Registration. On its own motion or as a result of a complaint or grievance by any person, and after reasonable notice and an opportunity for a hearing, the Commission may revoke a luxury limousine carrier's registration pursuant to § 40-16-103.6, C.R.S. In addition to revocation, the Commission may take other action as authorized by law.

6323. Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates any of the following provisions regarding motor vehicle liability insurance requirements may be assessed a civil penalty of up to \$11,000 for each violation: § 40-16-104(1)(a), (b), (c), or (d), C.R.S.; or paragraph (a) or (b) of rule 6307.
- (b) A person who violates any of the following provisions may be assessed a civil penalty of up to \$1,100 for each violation:
 - (I) Luxury limousine operational requirements: § 40-16-102.5, C.R.S.; or paragraph 6317.
 - (II) Registration requirements: § 40-16-103, C.R.S.; or subparagraph 6303(a).

- (c) A person who violates § 40-2-110.5, C.R.S., may be assessed a civil penalty of up to \$400 for each violation.
- (d) Except as provided for in paragraphs (a), (b), and (c) of this rule, a person who violates any provision of Title 40, C.R.S., or rules 6300 through 6322 pertaining to exempt passenger carriers may be assessed a civil penalty of up to \$550 for each violation.
- (e) Pursuant to § 40-7-114, C.R.S., any owner or other person who employs a driver who operates a motor vehicle in violation of the statute or these rules may be assessed a civil penalty for such violation.
- (f) Notwithstanding any provision in these rules to the contrary, the Commission may assess double or triple penalty assessments against any person, as provided by statute and this rule.
- (g) The Commission may assess any person a civil penalty containing doubled penalties if:
 - (I) the person engaged in prior conduct which resulted in the issuance of a prior civil penalty assessment notice;
 - (II) the conduct for which doubled penalties are sought is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notice;
 - (III) the conduct for which doubled penalties are sought occurred within one year after the conduct which resulted in the issuance of a civil penalty assessment notice; and
 - (IV) the conduct for which doubled penalties are sought occurred after the person's receipt of the prior civil penalty assessment notice.
- (h) The Commission may assess any person a civil penalty containing tripled penalties if:
 - (I) the person engaged in two or more instances of prior conduct which resulted in the issuance of two or more prior civil penalty assessment notices;
 - (II) the conduct for which tripled penalties are sought is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notices;
 - (III) the conduct for which tripled penalties are sought occurred within one year after the most recent conduct which resulted in the issuance of the prior civil penalty assessment notices; and
 - (IV) the conduct for which tripled penalties are sought occurred after the person's receipt of two or more prior civil penalty assessment notices.
- (i) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the conduct for which triple penalties are sought.
- (j) Nothing in this rule shall preclude the assessment of triple penalties when double and triple penalties are sought on the same civil penalty assessment notice.
- (k) In addition to the imposition of civil penalties, the Commission may take other action as authorized by law.