

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 13R-0009TR

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

NOTICE OF PROPOSED RULEMAKING

Mailed Date: January 11, 2013
Adopted Date: January 3, 2013

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding proposed Rules Regulating Transportation by Motor Vehicle.
2. The Commission proposes amendments to the existing rules.

3. At the heart of the rules review and NOPR are the citizens of Colorado whom we serve every day. The purpose of the proposed rules is to describe the manner of regulation over parties providing transportation service by motor vehicle in the State of Colorado. The proposed rules enhance public safety, protect consumers of regulated transportation utilities, serve the public interest, and make the rules more effective and efficient. The rules provide for clarity, necessity and conciseness and those rules found to be duplicative, inconsistent or burdensome are repealed.

4. The statutory authority for the proposed rules is found in §§ 40-2-108, 40-2-110.5, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10.1.101 through 507; 42-4-235; 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

5. The proposed rules in legislative (strikeout/underline) format [as Attachment A] and in final version [as Attachment B] are available through the Commission's E-Filings system at: https://www.dora.state.co.us/pls/efi/EFL.Show_Docket?p_session_id=&p_docket_id=13R-0009TR.

B. Description of Individual Rule Changes

1. Rules primarily affecting public safety

6. This NOPR proposes to make the following amendments, without limitation, to the Rules Regulating Transportation by Motor Vehicle (rule numbers below appear in abbreviated form; *e.g.*, rule 6001(ss) of 4 *Code of Colorado Regulations* (CCR) 723-6 appears as Rule 6001(ss)). The first category of proposed amendments are those that primarily affect **public safety**:

a) Proposed Rule 6002(a) makes it clear that motor carriers must have an authority or permit issued by the Commission.

b) Proposed Rule 6007(b)(I)(B) increases the amounts of financial responsibility minimum levels for some motor carriers to bring them closer to the levels set by the federal government.

c) Proposed Rule 6213(b) clarifies the dates within the rule.

d) Proposed Rules 6213(c), 6254(c), and 6255(d) clarify that vehicles that have ramps, lifts, or other special devices to facilitate the loading, unloading, or transportation of individuals with disabilities that are in good working order are exempt from age of motor vehicle rules.

e) Proposed Rule 6255(c) clarifies the dates within the rule.

f) Proposed Rule 6309(f) require a luxury limousine carrier to provide the chartering party at the passenger pickup point its name and phone number when the service was arranged by a third party that is not a luxury limousine permit holder.

g) Proposed Rule 6506(d) is added to require towing carriers to attach a portable, combination light system on the rear of towed vehicles in certain situations.

h) Proposed Rule 6508(a)(II) mandates that a towing carrier may not come in contact with, hook-up to, or tow a motor vehicle that is occupied.

i) Proposed Rule 6508(a)(III) mandates that a towing carrier may not enter into a contract with an owner or manager of a private property parking lot and nonconsensual tows may not be performed from private property parking lots without signage warning that unauthorized vehicles will be towed at the vehicle owner's expense. It also provides for signage requirements.

j) Proposed Rule 6509(d) requires a towing carrier to place a warning sign on the driver-side window of a vehicle to be towed or, if window placement is impracticable,

in another location on the driver-side of the vehicle prior to the commencement of the tow that states the vehicle is in tow.

2. Rules primarily affecting public interest and consumer protection

7. The second category of proposed amendments are those that primarily affect the **public interest and consumer protection**:

a) Proposed Rule 6001(ff) explicitly clarifies that advertising or otherwise offering to provide transportation is the same as providing transportation for the purposes of these rules.

b) Proposed Rules 6010(a) and (c) require that applicants apply under a trade name or business name that is not misleading as to the type of service required and for those carriers that have misleading names to modify their names.

c) Proposed Rules 6016(c) and (d) specifically require towing carriers and luxury limousine carriers to include their PUC number in advertising.

d) Proposed Rule 6017(a) sets the civil penalty amount for violations of proposed Rule 6002(a).

e) Proposed Rule 6301(a) is amended to add the requirement of “a specific fixed price” as part of a charter basis.

f) Proposed Rule 6302 is deleted as the permit requirements for limited regulation carriers are addressed under Rule 6002(a).

g) Proposed Rule 6304 clarifies markings requirements for luxury limousines.

h) Proposed Rule 6309(a) better defines the term “prearrangement.”

i) Proposed Rules 6309(c), (d), and (e) are amended to establish requirements regarding stationing luxury limousines at certain locations prior to the commencement of the transportation service. The Commission specifically requests input from interested persons regarding these proposed rules.

j) Proposed Rule 6501(b) is added to specifically state that an “agent for a property owner” cannot be a towing carrier.

k) Proposed Rule 6501(c) clarifies the definition of “authorized agent.”

l) Proposed Rule 6501(i) is amended to reflect changes proposed to Rules 6501(b) and 6508(a).

m) Proposed Rule 6502 is deleted as the permit requirements for towing carriers are addressed under proposed Rule 6002(a).

n) Proposed Rule 6507(a) amends the time that a towing carrier has to notify law enforcement of a nonconsensual tow to 30 minutes. This amendment is proposed to match language in Title 42-4-2103(2), C.R.S.

o) Proposed Rule 6502 is deleted to correspond changes to Rule 6501(b).

p) Proposed Rule 6509 clarifies the requirements pertaining to tow records/invoices, drop time notification forms, and warning signage requirements.

q) Proposed Rules 6509(a) and 6509(b) are amended to clarify requirements of towing carriers concerning the completion of the tow record/invoice and the distribution of the tow record/invoice.

r) Proposed Rule 6509(c) is added to give a person retrieving a vehicle prior to the vehicle being towed from the private property a minimum of ten minutes to provide the drop charge payment and require a towing carrier to complete a time notification form.

s) Proposed Rule 6511(b)(I) clarifies that drop charge amounts may be set at a lower amount by municipalities.

t) Proposed Rule 6511(b)(III) and 6511(i) are added to state that the maximum charge for a nonconsensual tow in violation of certain rules or statutes is \$0.00.

u) Proposed Rule 6512 clarifies the requirements regarding the release of the towed motor vehicle and of personal property.

v) Proposed Rule 6512(e) clarifies when a towing carrier may require a written attestation from the vehicle owner prior to the release of the vehicle to an authorized operator. The Commission requests input from interested persons on this rule. Specifically, interested persons are invited to comment on whether third parties recovering towed vehicles on behalf of vehicle owners should be required to verify their status as authorized agents to the towing carrier. If so, please comment how should such verification be accomplished given the circumstances.

w) Proposed Rule 6512(f) is amended to add certain personal property items that must be released by the towing carrier upon demand, without requiring payment and without additional charge.

x) Proposed Rule 6602 is deleted as the permit requirements for towing carriers are addressed under proposed Rule 6002(a).

y) Proposed Rule 6608(XII) is amended to clarify to the shipper that he/she has at least two separate options for cargo valuations.

z) The Commission specifically requests input from interested persons on Rule 6257 and whether the rates are just and reasonable for trips to or from Denver International Airport and Zones A, B, and C. Also, whether there should continue to be a Zone C or if there should be other specific zones created and added.

3. Rules primarily designed to make the rules more efficient and effective

8. The third category of proposed amendments are those that are primarily designed to make the rules more efficient, effective, and elegant:

a) Rules 6007(a)(V), 6007(b)(V), and 6007(f)(V) are deleted in accordance with House Bill 12-1327 which eliminated the surety bond requirement for towing carriers.

b) Rule 6007(g) is modified in accordance with House Bill 12-1327.

c) Proposed Rule 6011(a) removes redundant language that a carrier shall have a signed statement by the designated agent that such person has approved the designation.

d) Proposed Rule 6015 clarifies the markings requirements for motor vehicles that were previously located in Rule 6103(a).

e) Rule 6103(a) is deleted per the discussion above.

f) Proposed Rule 6105 clarifies the process for determining whether a driver is qualified to drive following a fingerprint-based criminal history background check. Proposed Rule 6105 further clarifies the burdens of proof involved when the Commission Staff's determination results in the denial of a qualification to drive or the revocation of a driver previously qualified to drive.

g) In accordance with § 40-10.1-110(3)(b), C.R.S., proposed Rule 6105 also states that a felony or misdemeanor involving moral turpitude includes any unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or a comparable offense in any other

state or in the United States. Further, pursuant to § 40-10.1-110(3)(b), C.R.S., a felony or a misdemeanor conviction involving moral turpitude results in a permanent disqualification to drive a motor vehicle. The Commission specifically requests input from interested persons on whether and, if so, which offenses other than those involving an unlawful sexual offense against a child constitute a moral turpitude conviction for purposes of § 40-10.1-110(3)(b), C.R.S., based on applicable statutes and/or case law.

h) Proposed Rule 6106 modifies the rule citations based on the renumbering of rules.

i) Proposed Rule 6203(a)(IX) removes obsolete language from this rule.

j) Proposed Rule 6203(a)(XI) clarifies that if specific statements are included in the application itself for common carrier authority than a letter of support is not required.

k) Proposed Rule 6203(b)(I) clarifies information that shall be filed with a temporary authority application.

l) Proposed Rule 6205(i) establishes that an adoption notice of a tariff or time schedule is valid for a maximum of 120 days.

m) Proposed Rule 6205(j) establishes that a transferee shall file a tariff in its own name within 60 days from approval of the permanent transfer.

n) Proposed Rule 6205(l) states that if a temporary assumption of operating control is not made permanent through the grant of a transfer then the original regulated intrastate carrier shall file an adoption notice reassuming permanent control.

o) Former Rule 6207(i)(I) changes “may” to “shall” concerning the posting of a notice of a proposed tariff amendment.

p) Proposed Rule 6212 adds the requirement that all annual reports shall comply with the additional rules found in the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1.

q) Proposed Rule 6255 is amended to include Douglas County.

r) Proposed Rule 6255(a)(VII) adds “than” to clarify the rule.

s) Proposed Rule 6258(c) cleans up the statutory citations in relation to civil penalties.

t) Proposed Rules 6311(a), (b), and (c) clean up citations to the rules and statutes in relation to civil penalties.

u) Proposed Rules 6514(a), (c), (d), and (e) clean up citations to the rules and statutes in relation to civil penalties.

v) Proposed Rule 6611(a) cleans up the rule cites in relation to civil penalties.

C. Conclusion

9. The proposed amendments will be published in the January 25, 2013 edition of The Colorado Register.

10. An Administrative Law Judge (ALJ) will conduct a hearing on the proposed rules and related issues at the below-stated time and place. Interested persons may submit written comments on the proposed rules, including data, views, or arguments, and present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission prefers and strongly encourages that interested persons submit comments through the Commission’s Electronic Filing System and do so in this docket number (13R-0009TR) no later than February 11, 2013. Reply comments should be submitted in the same docket and through the

Commission's Electronic Filing System by February 25, 2013. The Commission will consider all submissions, whether oral or written.

11. In submitting comments or replies, interested persons are invited to suggest changes that will make the subject rules more efficient, effective and elegant. We recognize that regulation imposes costs; therefore, suggestions concerning rules that may be unnecessary or unduly burdensome will be fully considered by the Commission.

12. We wish to proceed with this rulemaking in an efficient, effective and elegant manner which requires us to maintain an efficient timeline. Therefore, we request commentors to include alternate rule language, as necessary, with their comments, by the dates and manner specified above.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the January 25, 2013 edition of *The Colorado Register*.

2. A Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: March 11, 2013
TIME: 9:00 A.M.
PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

3. The ALJ may set additional hearings, if necessary.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

5. Interested persons may file written comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> and do so in this docket (13R-0009TR) no later than February 11, 2013.

6. Interested persons may file reply comments in this matter before hearing. The Commission prefers and strongly encourages that interested persons submit comments through the Commission's Electronic Filing System and do so in this docket (13R-0009TR) no later than February 25, 2013.

7. This Order is effective upon its mailed date.

**ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 3, 2013.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners

CHAIRMAN JOSHUA B. EPEL
ABSENT.