Decision No. R12-0350

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-792TR

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

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE PAUL C. GOMEZ ADOPTING RULES

Mailed Date: April 6, 2012

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I. STATEMENT

1. The above-captioned rulemaking proceeding was commenced on September 30, 2011, when the Colorado Public Utilities Commission (Commission) issued its Notice of Proposed Rulemaking (NOPR) in this matter. *See*, Decision No. C11-1059. A copy of the proposed rule in legislative format (strikeout/underline) was attached to the NOPR.

2. The NOPR was published in the October 10, 2010 edition of *The Colorado Register*, on the website of the Colorado Secretary of State, as well as the Commission's website.

3. By Decision No. C11-0838, the Commission adopted emergency rules pursuant to §§ 24-4-103(6) and 40-2-108(2), C.R.S., implementing Senate Bill 11-180 (SB 11-180), which amended the authority of taxicabs to pick up passengers outside their assigned geographic areas, and House Bill 11-1198 (HB 11-1198), which reorganized the statutes governing motor carriers and made substantive and non-substantive amendments to provisions granting regulatory authority to the Commission.

4. Specifically, SB 11-180 amended § 40-10-105 (2) (d) (I), C.R.S., (subsequently recodified as § 40-10.1-203, C.R.S., by HB 11-1198) to allow taxicabs operating in Colorado to pick up passengers at any point in the state of Colorado when the taxicab has dropped off passengers in close proximity to that point, except if that drop off point is an airport.

5. HB 11-1198 repealed Articles 10, 11, 13, 14 and 16 of Title 40, C.R.S. and created new Article 10.1 in Title 40, C.R.S. (§ 40-10.1-101 *et seq.*), which is organized as follows: Part 1 contains general provisions applicable to all motor carriers; Part 2 governs motor carriers of passengers, including taxicabs, that are required to obtain operating authority; Part 3 governs motor carriers of passengers that are not required to obtain operating authority; Part 4 governs towing carriers; and, Part 5 governs carriers of household goods.

6. By Decision No. C11-1059, the Commission proposed amendments to the existing emergency rules adopted in Decision No. C11-0838. In addition, the Commission reviewed and amended other transportation rules in order "to enhance public safety; protect consumers of regulated transportation utilities, service the public interest; and make the rules more effective, efficient and elegant."[1] Those rules issued under the NOPR pursuant to Decision No. C11-1059 are at issue here.

7. The purpose of this proceeding is to amend certain Commission Rules Regulating Transportation by Motor Vehicle found at 4 *Code of Colorado Regulations* (CCR) 723-6 (Rules). More specifically, as indicated previously, the basis and purpose of the proposed rules is to implement SB 11-180 and HB 11-1198.

8. In addition to reorganizing existing statutory material, HB 11-1198 made substantive changes such as: clarifying the services authorized under the children's activity bus permit (§40-10.1-301(4), C.R.S.); transferring all safety jurisdiction over household goods movers from the Commission to the Colorado Department of Public Safety (repeal of §40-14-105, C.R.S.); standardizing provisions relating to the conduct of fingerprint based criminal history record checks, both on initial issuance and resubmission, as a condition of continued qualification to drive for a motor carrier (§40-10.1-110, C.R.S.); and, requiring towing carriers to maintain workers' compensation insurance and post a $50,000 bond to ensure payment of any civil penalties assessed by the Commission (§40-10.1-401(3), C.R.S.)

9. 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.

[1] *See*, Commission Decision No. C11-1059, Section I.A., ¶3.

10. A hearing was conducted in this matter on December 5, 2011. Commission Transportation Staff members (Staff) provided input on the various proposed amendment to the current rules. Representatives of the taxi, luxury limousine and towing industries entered appearances and provided oral comments at the hearing: The written comments, as well as the oral comments received at hearing are discussed in more detail below.

11. Subsequent to the hearing on the proposed rule amendments conducted on December 5, 2011, it was apparent that towing carriers disapproved of proposed Rule 6511, which amended the rates and charges applicable to towing carriers. The proposed rule eliminated the mileage charge and mountain area charges applicable to nonconsensual tows. In addition, the rule set a maximum charge for a nonconsensual tow of a motor vehicle with a GVWR of less than 10,000 pounds performed upon the authorization of the property owner at $100.00.

12. Due to the large number of towing companies that raised concerns regarding proposed Rule 6511, towing carriers were urged to communicate with Staff in order to provide additional financial data from which Staff could determine a cost-based rate that generally considers a towing carrier's costs for consensual and nonconsensual tows.

13. As a result of the oral comments received at the December 5, 2011 public comment hearing, Staff prepared a financial data survey for towing carriers to complete and return to the Commission. Transportation Staff received 73 responses to the Towing Carrier Cost Survey. The data from those surveys was distilled and analyzed by economists from the Commission's Economics Unit.[2]

[2] A copy of the financial data survey sent out to towing carriers was attached to Interim Decision No. R12-0080-I as Attachment A.

14. As described in Interim Decision No. R12-0080-I, after a detailed economic analysis of the financial data received from the 73 towing companies, it was the economists' recommendation that the current charge for nonconsensual tows of $154.00 should be maintained for a tow of a motor vehicle with a GVWR of less than 10,000 pounds. Additionally, it was recommended that a maximum mileage restriction should be adopted which would be set at 12 miles for tows occurring within the Front Range, and a maximum mileage charge restriction of 16.5 miles for non-Front Range nonconsensual tows. The maximum charge before impound fees would be $205.60 for Front Range nonconsensual tows and a maximum charge before impound fees of $224.95 for non-Front Range nonconsensual tows. The Interim Decision requested further comments regarding the proposed amendments to Rule 6511 be filed no later than February 8, 2012. In response to Interim Decision No. R12-0080-I, several towing companies filed written comments.

15. At the conclusion of the rulemaking hearing, the ALJ took the matter under advisement. Pursuant to §40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, as well as a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

A. General Provisions

16. Proposed Rule 6000 addressing Scope and Applicability removes unnecessary language about secured creditors and assignees.

17. The addition or amendment of several of the terms contained in the Definitions section of Rule 6001 were proposed in the NOPR. Proposed Rule 6001(s) adds the phrase, "executed by a duly authorized agent of the surety to the end of the definition of Form SB"

in order to clarify that a towing carrier's surety bond form is to be executed by a duly authorized agent of the surety.

18. Rule 6001(ii) which defines "multiple loading" for taxicabs is proposed to be deleted, which moves the numbering of the three subsequent rules down one level. Corresponding amendments are made to proposed Rule 6251.

19. Newly numbered Rule 6001(jj) amends the definition of "passenger" to include an assistance animal as defined in § 24-34-803, C.R.S. in order to ensure that persons with disabilities have full access to transportation services.

20. Related to that definition, proposed Rule 6001(ll) defines "person" as any individual, firm, partnership, corporation, company, association, joint stock association, or other legal entity and any person acting as or in the capacity of lessee, trustee, or receiver thereof, whether appointed by a court or otherwise."

21. Rule 6001(ss) includes "shuttle" in the definition of "Type of service."

22. One commenter maintains that proposed Rule 6001(jj) was mislabeled and should be (kk). In addition, the commenter stated that the term "assistance animal" is vague and could be applied to any animal based on the passenger/customer's preference. The commenter argued that it is impossible to know if the animal is a pet of comfort or a service animal when it is unlawful to ask for proof that the animal is a service animal.

23. Colorado Cab suggests that "shuttle" under Rule 6001(ss) should be defined as "shared ride shuttle."

24. Staff states that it did not re-define the term "assistance animal" from the statutory definition at § 24-34-803 to avoid the potential of future conflict.

25. The undersigned ALJ finds that the proposed amendments to Rule 6001 as indicated above are clear and unambiguous. Therefore, proposed amendments to Rules 6001(s), 6001(ii), 6001(jj), 6001(ll) and 6001(ss) will be adopted without change, including the deletion of Rule 6001(ii).

26. It is proposed that Rule 6002(h) be deleted which is a catchall provision that provides that a person may seek Commission action regarding "… any other matter provided by statute or rule, but not specifically described in this rule." Also, redundant language regarding the types of applications a person may file with the Commission is proposed to be removed. The proposed changes clarify that filings for rulemakings, declaratory orders and other such filings do not need to be styled as "applications."

27. No party commented on the proposed amendments. It is found that it is appropriate to delete Rule 6002(h).

28. Proposed amendments to Rule 6005 include additions to Rule 6005(c), which explicitly permits enforcement officials to interview personnel of regulated motor carriers to ensure that the Commission's rules are being followed. The title of Rule 6005 also reflects this change.

29. Proposed Rule 6005(c)(I) clarifies that motor carriers must make original records and copies available to an enforcement official, upon request by the official.

30. Proposed new Rule 6005(c)(V) requires that personnel and drivers for regulated transportation carriers must be available during normal business hours for interviews with Commission Staff. According to Staff, this rule change and the other changes to Rule 6005 will enhance the existing and proposed new rules with regard to driver service hours, vehicle maintenance, and other functions of the Commission's Investigatory Staff.

31. Several parties filed comments regarding the proposed changes to Rule 6005. The bulk of the comments express concern regarding proposed Rule 6005(c)(V), which requires making personnel and drivers available for interview during normal business hours. The comments note that having personnel or drivers come in for interviews at times other than when they are scheduled to work will require those companies to pay for the employee's time while being interviewed. Additionally, the comments point out that many drivers are part-time employees and have other jobs which may make it difficult for them to make themselves available for interviews. Several comments also note that some drivers are not employees, but are independent contractors, and as a result, companies do not have the authority to require independent contractors to make themselves available for interviews.

32. Transportation Staff argues that the Commission is required to enforce state law and part of that obligation requires investigations that may require interviewing personnel with pertinent information relevant to the investigation.

33. The proposed amendments to Rule 6005 are found to be reasonable. The investigative duties of Staff are critical in ensuring compliance with state law and Commission regulations. While it is acknowledged that it may be an inconvenience at times to make drivers and personnel available for interviews with investigators, it is nonetheless an important and necessary function to ensure the health, safety and welfare of the traveling public. Therefore, the proposed changes to Rule 6005 will be adopted without amendment.

34. Staff also proposes amendments to Rule 6006(b) which clarifies the information and documentation that must be filed with the Commission when a motor carrier changes name, address or telephone number.

35. No comments were provided either in writing or at the hearing regarding this proposed rule change. Therefore, the amendments to Rule 6006(b) will be adopted.

36. A minor change is proposed to Rule 6007(b)(V) regarding Financial Responsibility. The proposed change provides that the required surety bond for towing carriers is to be consistent with the form provided by the Commission.

37. The language of Rule 6007(d) is also slightly modified to change the word "shall" to "do" to indicate when the provisions of subparagraphs (IV) through (VI) of paragraph (c) do not apply, and when the provisions of subparagraphs (III) through (VI) of paragraph (c) do not apply regarding surety bond and worker's compensation requirements for towing carriers.

38. Finally, the entirety of rule 6007(m) concerning the posting of certain notices is proposed to be deleted.

39. The requirement for a surety bond is mandatory pursuant to HB 11-1198; therefore, the Commission must promulgate rules regarding the enforcement of this new statutory provision. The proposed changes to Rule 6007(b)(V), (d) and (m) accomplish that. Proposed Rule 6007(b)(V) clarifies that while a towing carrier's surety bond does not have to be in the form provided by the Commission, it must nonetheless be consistent with that form. Proposed Rule 6007(d) clarifies language with regard to which motor carrier's insurance policies must comply with certain provisions of Rule 6007(c)(III) through (VI). Former Rule 6007(m) is proposed to be deleted, removing obsolete language addressing waivers and variances of insurance limits.

40. Good cause is found to adopt the amendments to Rule 6007(b)(V) and (d). The striking of Rule 6007(m) in its entirety is adopted.

Rule 6008, addresses revocations, suspensions, alterations, or amendments of a carrier's authority. Staff proposes removal of the terms "common carrier," "contract carrier," "mover," and "limited regulation carrier," and "towing carrier" from Rule 6008(a) and replacing those terms with the single term "motor carrier." Additionally, Staff proposes to delete Rule 6008(b) and the bulk of Rule 6008(c) in their entirety. Instead, Staff proposes a new Rule 6008(b) which is more clear and concise regarding the grounds upon which the Commission may issue an order to cease and desist, suspend, revoke, alter, or amend any permit or certificate. In addition, the terms "certificate or permit" are inserted to ensure the both Certificates of Public Convenience and Necessity and permits are treated similarly.

41. Proposed changes to Rule 6008(d) (now 6008(c)) include replacing "motor carrier" for "limited regulation carrier," "mover," or "towing carrier," and including the term "certificate" along with "permit."

42. One commenter notes that the deletions to Rule 6008 would remove the provision which provides Staff with the ability to correct administrative errors or omissions which result in the suspension or revocation of authorities or permits. The commenter determines that a carrier's only remedy would be through a hearing process which it deems unreasonable. As a result, the commenter requests that Rule 6008(b) be retained.

43. Staff agrees with the commenter's assertions regarding Rule 6008(b). Staff states that it may be misleading to remove this rule and suggests that it be retained.

44. It is agreed that removing Rule 6008(b) has serious consequences regarding the ability of motor carriers to address administrative errors or omissions concerning their operating authorities. As a result, it is found that Rule 6008(b) will be retained. The remainder of the proposed changes to Rules 6008(a), (c), and (d) will be adopted.

45. Rule 6009(h)(II)(C) merely proposes making the term "non consensual" into a single word – "nonconsensual." This proposed change will be adopted.

46. Proposed Rule 6010 amendments include deletion of subsections (a)(I) through (IV) and (c). Subsection (b) is amended to state as follows: "The motor carrier must maintain evidence of its authority or permit at its principal place of business and, upon request, shall present it to any enforcement official." As a result, the rule no longer requires a carrier to place a copy of its authority letter in each vehicle it operates. The rule makes it sufficient to keep one copy of the letter at the carrier's principal place of business.

47. One commenter stated that it would prefer that motor carriers maintain a current copy of the Commission letter of authority in their vehicles, which is especially important with towing carriers to ensure towers do not release vehicles to a towing company with no Commission authority.

48. Staff notes that a carrier can still maintain a copy of the permit in the vehicle and the status and validity of a permit can be confirmed on the Commission's website. It is Staff's contention that eliminating the requirement of keeping a physical copy of a permit in the vehicle removes an unnecessary burden on the motor carrier.

49. It is found that Staff's proposal will remove an unnecessary burden on motor carriers, given the fact that a motor carrier's permit can be verified on the Commission website. Therefore, it is found that the amendments to Rule 6010 are reasonable and will be adopted.

50. Rule 6012 is proposed to be stricken in its entirety in order to remove obsolete language regarding the lease of motor vehicles. No party objected to the proposal. As a result, Rule 6012 will be stricken.

51. Rule 6016, dealing with advertising is proposed to be amended by striking subparagraph (a)(III) in order to remove obsolete and confusing language concerning advertising in sources such as the Yellow Pages.

52. No comments were filed regarding this proposed rule change. The proposed changes to Rule 6016 will be adopted.

53. Several amendments are proposed to Rule 6017. For example, subparagraph (f) is modified to include a citation to a specific statute - § 40-7-113, C.R.S. The amendment clarifies the source for the Commission to assess double or triple civil penalties. Additionally, subparagraphs (i) through (l) are proposed to be stricken. Newly enumerated subparagraph (i) merely spells out the word percentage rather than using the symbol for percentage.

54. No comments were filed regarding the proposed rule changes. The proposed changes to Rule 6017 will be adopted.

B. Safety Rules

55. Rule 6100 is proposed to be amended in several respects. Subparagraph (a) clarifies that the Safety Rules are applicable to regulated intrastate carriers, as well as limited regulation carriers, in addition to drivers, whether they are classified as employees or independent contractors. Subparagraph (b) is amended to clarify that Rule 6103(a) is also applicable to towing carriers and movers. Subparagraphs (c) and (d) are proposed to be stricken.

56. No comments were received regarding the proposed rule changes. Therefore, the amendments to Rule 6100 regarding the applicability of the Safety Rules will be adopted.

57. Rule 6101 is proposed to be amended by clarifying the definition of "commercial motor-vehicle means a motor vehicle operated by a "regulated intrastate carrier or limited regulation carrier." In addition, subparagraph (c) clarifies the definition of "employer."

58. No comments were received regarding the proposed rule changes. Therefore, the amendments to certain definitions contained in Rule 6101 will be adopted.

59. Rule 6102 updates the provision that incorporates by reference the regulations published in 49 *Code of Federal Regulations* (C.F.R.) from 2009 to 2010, and removes three regulation sections from those references. In addition, subparagraph (d) is stricken and former subparagraph (e) is amended to merely indicate that material incorporated by reference may be examined at the Commission's offices. These proposed changes incorporate federal regulations by reference and delete obsolete references to the Colorado Revised Statutes, as well as deleting excess language regarding the federal regulations incorporated by reference and where they can be accessed.

60. No comments were received regarding the proposed rule changes. Therefore, the amendments to certain definitions contained in Rule 6102 will be adopted.

61. Rule 6103, which addresses modification of regulations incorporated by reference, is proposed to be extensively amended.

62. In addition to some minor clarifying language, subparagraph (c) is amended by the addition of proposed subsection (c)(IV) which clarifies the Commission's standards on safety belt requirements. The original subsection (c)(IV) is proposed to be stricken. These proposals clarify which provisions of 49 C.F.R. §§ 393.55, 393.93(c), and 393.89 apply to buses and removes a reference to trucks and truck tractors. Additionally, the proposed rule removes provisions related to motorcycles and low-power scooters.

63. Proposed Rule 6103(d) regarding drivers' hours of service, clarifies the Commission's standards on those service hours and driver on-duty time. Staff represents that the

changes enhance public safety by ensuring that drivers are not on the road for dangerously long hours, which could endanger both the driver and the public at large.

64. Proposed Rule 6103(e) is amended to clarify the Commission's standards with regard to inspection of drivers and/or motor vehicles and the process concerning a Driver/Vehicle Compliance Report. Subparagraphs (f) and (g) are deleted and subparagraph (h) is renumbered as (f).

65. The proposed amendments to Rules 6103(d), (e), and (f) clarify provisions regarding when a driver or motor vehicle are to be declared out-of-service, and remove redundant language concerning inspections pursuant to 49 C.F.R. § 396.

66. One party commented that the hours of service in Rule 6103(d) should be standardized daily and weekly (Sunday through Saturday), and should be based on a daily number over a standard calendar week to avoid any confusion. Another commenter pointed out that the proposed language in Rule 6103(d)(II)(D) now provides that a driver may never drive again after being on duty 80 hours in eight consecutive days.

67. The proposed amendments to Rule 6103(c)(IV), (e) through (h) will be adopted. With regard to Rule 6103(d) the proposed amendments to the Rule will be adopted with the exception of subparagraph (d)(II)(D). It is agreed that the proposed language has the unintended consequence of preventing a driver from driving indefinitely after having been on duty 80 hours in any eight consecutive days. In order to rectify the matter, Rule 6103(d)(II)(D) will be amended to read as follows:

> (D) A motor carrier shall neither permit nor require a driver to drive, nor shall any such driver drive, for a minimum period of 8 consecutive hours after having been on duty 80 hours in any eight consecutive days.

68. Rule 6105 dealing with fingerprint based criminal history background checks is proposed to be amended by requiring drivers to re-submit a set of fingerprints every three years, as well as documentation of any name change from the agency where the change was approved. Staff maintains that this will ensure the Commission conducts criminal history background checks at least every three years on a driver, rather than a single time upon initial employment with a regulated passenger carrier. Staff believes this change will ensure that drivers with felony and misdemeanor convictions involving moral turpitude are discovered in a timely manner and appropriate protocols are followed which enhances public safety. Other proposed amendments to the Rule merely remove unnecessary language from sections (l) and (m).

69. Several parties commenting on proposed Rule 6105 generally take the position that fingerprints should be re-submitted every five years, rather than every three years. Those parties point to other agencies that typically require resubmission of fingerprints on a five year cycle and argue that the Commission should remain consistent with those agencies.

70. One party suggests that background checks should be conducted when the driver initially contracts with a carrier and should remain in force as long as the driver remains with that carrier. No further background checks should occur until the driver is suspected of a violation or has been reported, or moves to another carrier. Another commenter suggests that Rule 6105 should incorporate language that a driver may drive commercially for up to 90 days while waiting for the results of a background check.

71. Finally, one commenter asserts that Rule 6105 should indicate that a copy of all approvals for drivers to drive should be provided to the carrier with whom the driver contracts. Additionally, if the Commission notifies a driver he is not authorized to drive, the Rule should also provide that the Commission will notify the carrier so it can take appropriate action.

In the alternative, the commenter suggest providing a protected web page on the Commission's website which may be accessed by authorized parties to obtain information on drivers who have been qualified or disqualified.

72. Staff responds that it interprets the statute requiring a fingerprint based background check as a way to ensure that drivers subject to this requirement are law-abiding citizens. Staff additionally notes that after the initial review, the Federal Bureau of Investigation does not provide updates on criminal activity outside of Colorado. Because drivers subject to Rule 6105 are somewhat transient, it is Staff's perception that three years is not an unreasonable term for renewal.

73. Staff does recommend that in order to improve administrative efficiency associated with the renewal process, an amendment to subparagraph (j)(VI) be added which provides as follows: "A Commission finding that reverses an initial disqualification of a driver shall remain in effect for future fingerprint resubmissions. The reversed violation shall not be the basis for future disqualifications."

74. Public safety is of paramount importance and is indeed one of the main functions of this Commission. Rule 6105 is a means to ensuring the safety of the traveling public with jurisdictional carriers. Nonetheless, it is found that Staff has not stated good cause to alter the period of time to be re-fingerprinted from five years to three years. Consequently, the proposed amendment to Rule 6105(d) to require re-fingerprinting every three years will be denied. The current term of fingerprinting every five years will remain in effect. Staff's recommended language for subparagraph (j)(VI) will be adopted, as are the amendments to the remainder of Rule 6105.

75. Additionally, Rule 6105 will be further amended to indicate that a copy of all approvals for drivers to drive will be provided to the carrier with whom the driver contracts. Also, the Rule will be amended to provide that a password-protected web page on the Commission's website which may be accessed by authorized parties to obtain information on drivers who have been qualified or disqualified will be made available as soon as practicable. The remainder of the amendments to Rule 6105 will be adopted.

76. Proposed amendments to Rule 6106 – Safety Violations, Civil Enforcement and Civil Penalties - increases fines for various violations by jurisdictional passenger carriers, which includes failure to comply with recordkeeping rules, driver on-duty hours violations, and failure to comply with Commission safety regulations regarding driver substance abuse testing and enforcement. The enhanced penalty provisions are designed to complement the provisions clarifying driver hours-of-service requirements and to ensure that carriers have greater incentives to ensure their drivers comply with Commission safety rules. Penalty enhancement is permitted pursuant to § 40-7-113(1)(g), C.R.S. and 49 C.F.R. § 386(G), and related appendices.

77. One party comments that the civil penalty of up to $2,500 for a violation of the hours of service rule is disproportionate and should be reduced. The party argues that the civil penalty appears to be grounded in the federal rule applicable to interstate truckers, which is inapplicable to taxi drivers. Further, taxi drivers cannot absorb such high penalties as they make less income than interstate truckers.

78. Another party comments that no carrier would knowingly allow a driver to operate a jurisdictional vehicle while under the influence of alcohol or drugs (prescribed or illegal). In addition, that party takes the position that enforcement of the enhanced penalties will be an added burden on Staff.

79. Staff points out that 49 C.F.R. § 386, Appendix B provides for substantially higher penalties than proposed in this Rule. Staff further notes that the penalty is issued to the carrier and not the driver. Staff recommends modification of proposed Rule 6106(d) by updating the table to ensure that violations of Rule 6103(d)(II)(C) are subject to a $500 penalty. It is Staff's position that these violations should be held to the same standards as other recordkeeping and hours of service violations.

80. Staff's recommendations for Rule 6106 are compelling. The proposed penalties are to ensure compliance with the Commission's Safety Rules. Certainly, if a civil penalty assessment (CPAN) is issued to a motor carrier or driver, should mitigating circumstances exist, those circumstances could be brought to Staff's attention, or raised as part of a CPAN hearing, and the civil penalty adjusted accordingly. As a result, the proposed amendments to Rule 6106 will be adopted.

C. Common and Contract Carrier Rules

81. Proposed Rule 6200 deletes language in the Rule in order to clarify and refine the Rule. No parties offered comment regarding the proposed amendments. Therefore, the proposed amendments to Rule 6200 will be adopted.

82. Proposed Rule 6201 refines, deletes and clarifies various definitions. Subparagraph (c) includes the term "shuttle service" in the definition of call-and-demand service. Subparagraph (d) defines the terms "chartering party." The definition of "dual-use vehicle in subparagraph (f) is proposed to be deleted, and subparagraph (j) defines "shuttle service" as the "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."

83. The proposed definition amendments include clarification that auto livery, call-and-demand limousine service, and special bus service are only used in historical authorities. Shuttle service under call-and-demand type service is a new definition and will replace "call-and-demand limousine service" in order to eliminate any confusion with luxury limousine service. The definition of chartering party is also clarified, and the obsolete language regarding dual-use vehicles is also deleted.

84. No comments were received regarding the proposed rule changes. Therefore, the proposed amendments to Rule 6201 will be adopted.

85. Proposed amendments to Rule 6202 remove certain language and add certain language to subparagraph (b) regarding prohibitions on transferring rights or interests in a regulated intrastate carrier's operating authorities. The changes clarify the prohibition on transferring a regulated carrier's authority unless the transfer is approved by the Commission, is in compliance with Rule 6205, or in the case of a lease, is in compliance with § 40-11.5-102, C.R.S.

86. No comments were received regarding the proposed rule changes. Therefore, the proposed amendments to Rule 6202 will be adopted.

87. Proposed changes to Rule 6203, Applications to Operate as a Common Carrier or Contract Carrier add an e-mail address to the items required to be provided by an applicant, as well as clarifying the standards to be met for applications for contract carrier authority and taxicab authority in the most populous counties in the state - within and between the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso and Jefferson. The Rule is also amended to specify when an applicant seeking common or contract carrier authority must

provide a statement of the facts upon which the applicant relies to establish that the authority is in the public interest.

88. One commenter states that letters of support, if submitted, should include the information contained in subparagraphs (XI)(A) through (E), and such support letters should not be admitted if not complete or submitted in a timely manner. Staff points out that a determination of whether a letter of support is complete or timely is a decision to be made by the Commission or an ALJ.

89. The proposed amendments to rule 6203 are reasonable and make the application process for common and contract carrier authorities more streamlined and efficient. Therefore, the proposed amendments to Rule 6203 will be adopted.

90. Proposed Rule 6205(c)(II), (XIII), (XIV), (XVI), as well as the elimination of subparagraph (e) and the addition of new subparagraph (i) clarify the additional information required with operating authorities. Additionally, the changes include the filing of a tariff by a transferee within six months of a transfer of an operating authority. Rule 6205(c)(II) requires an application to transfer a contract carrier permit to include a signed letter of support from each customer. Proposed Rule 6205(c)(XVI) provides that an applicant bears the burden of proof to show that a transfer is not contrary to the public interest.

91. No comments regarding the substance of the amendments to Rule 6205 were filed. Therefore, the proposed amendments to Rule 6205 will be adopted.

92. Rule 6206 is proposed to be amended by eliminating obsolete language which clarifies the Commission's obligations regarding duplicating or overlapping authorities.

The new rule reads as follows: "The Commission shall cancel duplicating or overlapping authorities that arise as a result of any grant, extension, or other modification to a certificate or permit."

93. No party filed comment to the proposed changes. Therefore, the proposed language change to Rule 6206 will be adopted.

94. Rule 6207 regarding tariffs, is proposed to be amended at several subparagraphs in order to simplify the notice and disclosure requirements regarding tariffs and amended tariffs.

95. Proposed Rule 6207(e)(III) which addresses notice of tariff changes by contract carriers to affected entities is to be deleted. Subparagraph (i) regarding common carrier notice of proposed amendments to tariffs is amended to streamline the language and provide clarity regarding the issuance of such notice. In addition, subparagraph (j) is amended to clarify and streamline language regarding notice of amendments to tariffs on less than 30 days' notice.

96. A commenter objects to the proposed language because it requires posting notice of tariff changes on the company's website. The commenter points out that it does not have a website. Staff agrees that any carrier without a website should not be required to create one. Staff suggests that the rule be modified to account for this circumstance. In such cases, the carrier should be required to post notice in a newspaper of general circulation consistent with existing Rule 6207(i)(III).

97. The ALJ agrees with Staff that the language of Rule 6207 should be modified to address the issue of motor carriers who do not have websites. The language of proposed Rule 6207(i)(I) will be amended to include language that in the event a common carrier does not have a website, it may post notice of its proposed tariff amendment in a newspaper of general circulation, which newspaper's circulation covers the localities or areas of the state where

people affected by the proposed tariff reside. As further provided in the language of previous subparagraph (i)(III), the notice shall appear in the newspaper for at least 20 days prior to the proposed tariff amendment's effective date. A common carrier availing itself of this form of notice shall be required to file with the Commission no later than seven days prior to the proposed tariff amendment's effective date, an affidavit of publication prepared by the newspaper, or a copy of the published notice itself.

98. With those additions, the proposed amendments to Rule 6207 will be adopted.

99. Rule 6209 regarding contract carrier contracts, is amended to require all contracts for transportation to be in writing, rather than providing the option for oral agreements.

100. No party filed comment to the proposed changes. Therefore, the proposed language change to Rule 6209 will be adopted.

101. Proposed Rule 6210 amends the driver courtesy rule to make the requirements regarding "refusal of service" applicable to all regulated intrastate carriers and drivers. The language was previously contained in Rule 6253(c). One party comments that drivers may be put in the position of dealing with physical altercations with highly intoxicated individual who refuse to pay the drivers. Staff points out that Rule 6210(a) has not changed form as it existed as Rule 6253(c), and its provisions are nondiscriminatory.

102. No other comments were received from any party regarding the proposed rule. The language of proposed Rule 6210 will be adopted.

103. Rule 6211, Use of Motor Vehicles Qualified as Luxury Limousines, is proposed to be deleted in order to eliminate burdensome requirements concerning the dual-use of a motor vehicle qualified as a luxury limousine. Colorado Cab supports the elimination of this Rule.

104. No other comments were received regarding the proposed elimination of this rule. The deletion of Rule 6211 will be adopted.

105. Proposed Rule 6213 establishes a maximum age of motor vehicle for intrastate regulated carriers operating vehicles with a seating capacity of 15 or less. The proposed maximum vehicle age requirement for all common and contract carriers is proposed to be increased from 10 model years to 12 model years.

106. Several comments were received regarding this proposed amendment. Several parties opine that the age of a vehicle is arbitrary in determining vehicle safety. Since all Commission certified vehicles must be inspected annually by a certified auto mechanic, any problems with the vehicle can be identified and remedied prior to the vehicle returning to service, according to the parties. Additionally, it is noted that tour operators in Colorado have invested substantial funds in building and maintaining their fleets of custom tour vehicles, many of which are older than 12 years. However, when properly maintained, those vehicles are as capable and reliable as many newer model vehicles. The parties also note that it is difficult to replace many of these vehicles since they have been significantly modified.

107. Other comments suggest an exemption for certain seasonal sightseeing service providers since they do not use their vehicles the entire year, so mileage is typically lower and the vehicles generally in better condition than providers who operate year-round. Another party offers that it would be beneficial for providers that currently have vehicles that are 12 model years old to grandfather these vehicles into the new regulation for a period of four years to allow carriers ample opportunity to upgrade fleets.

108. Several towing carriers, as well as a household goods mover also responded to the proposed amendments citing concerns about the effect on them with the new rule. Staff points out that the proposed rule is not applicable to towing carriers or to movers.

109. Staff also offers comment regarding the concerns raised in filed comments and at the public comment hearing. Most significantly, Staff points out that under the current rules passenger carriers are subject to a 10 year rule, while the proposed rule increases the vehicle age to 12 model years. Staff also notes that vehicle age is a factor in appearance, safety, and passenger comfort. It takes the position that the examples cited in the comments are exceptions to the general makeup of vehicles in the common and contract carrier industry. It is Staff's position that the rule should be adopted as proposed. To the extent that carriers may have valid arguments for variances from the rule in specific situations, the proper procedure for such exemptions and variances is on a case-by-case basis through a request to the Commission for variance from the rule by individual carriers.

110. Regarding the request to grandfather vehicles that are currently 12 model years old, Staff agrees that those vehicles should have some time to cycle out of the fleet; however Staff is of the opinion that a more reasonable time frame is two years to comply with the rule.

111. The undersigned ALJ agrees with Staff that the age of a vehicle is not only a factor in appearance, safety, and passenger comfort, but it also falls under the Commission's most important charge, which is the health, safety, and welfare of the traveling public. Proposed Rule 6213 helps ensure those most important aspects. Therefore, Rule 6213 will be adopted in its entirety without amendment. However, it is also agreed that the rule should allow providers ample opportunity to cycle vehicles out of fleets that are currently 12 model years old. It is agreed that four years provides an excessive amount of time to replace those vehicles.

As a result, those carriers with vehicles aged 12 model years at the time of the effective date of a final Commission Decision in this matter will have two years to cycle those vehicles out of their fleets.

112. Proposed Rule 6214 addresses the condition of motor vehicles. The new rule provides that all vehicles operated by intrastate regulated carriers be in good physical condition, based on general guidelines set out in the rule. For example, vehicles generally should have unfaded paint jobs, be devoid of dents, rust, broken trim and cracked windows. Additionally, the interior should be clean, free of offensive odors, with no major tears, cracks, or stains on the upholstery, headliner and carpeting.

113. Parties commenting on this proposed rule point out that such cosmetic issues should be left up to the individual operators and in turn, the consumer. According to the arguments, the consumer will ultimately decide which carrier to use utilizing criteria that includes the appearance of the vehicles both inside and out. Other parties argue that the rule appears to be vague and unnecessary and the most important factor of vehicles is mechanical condition rather than appearance. In addition, the commenting parties are concerned that what constitutes offensive odors, cleanliness, and general condition is subjective and varies from person to person.

114. Staff responds that vehicle condition is a factor in appearance, safety and passenger comfort. While several parties raised valid reasons for variances from the rule regarding vehicle appearance, Staff takes the position that such exceptions should not determine the outcome of a rule that governs a much broader group of transportation provider vehicles. Staff maintains that the rule as proposed is reasonable for the health, safety, and welfare of the traveling public.

115. It is found that the proposed language of Rule 6214 is generally reasonable and will be adopted. However, certain criteria will be stricken from the proposed language including the term "offensive orders" in subparagraph (b). It is found that this criterion is so subjective as to be incapable of consistent enforcement. It is further noted that it is critical that Staff maintain a consistent criteria in making overall determinations of "good physical condition." It is important to inform motor vehicle carriers that they possess an avenue to contest findings by Staff that their vehicles are not in good physical condition, or to seek appropriate waivers from such requirements.

116. Proposed Rule 6215, Forms of Payment allows common carriers to accept any form of payment, but requires them to accept MasterCard® and Visa®.

117. One commenter states that the form of payment should be a business decision for carriers and not the Commission.

118. Staff argues that acceptance of a major credit card is now an expectation in society, and the use of credit cards should be a common practice by regulated common carriers.

119. Proposed Rule 6215 is reasonable and designed to provide consumers more options regarding payment for transportation services. Certainly, the use of credit cards is a regularly accepted form of payment and in many instances is more convenient than cash. In addition, many companies require the use of credit cards by employees in order to better track business expenses. The proposed rule will therefore be adopted without modification.

120. Proposed Rule 6216 (formerly Rule 6213) establishes a civil penalty for violation of proposed Rule 6210 for refusal of service and driver courtesy.

121. One commenter argues that a driver should be allowed to refuse service when his or her safety is compromised. Staff notes that this is addressed in Rule 6210 – Refusal of Service and its exceptions.

122. The language of proposed Rule 6216 is reasonable and will be adopted.

D. Rules Specifically Applicable to Taxicab Carriers

123. Proposed Rules 6251(f), 6252 and 6253 deal with multiple loading. Proposed Rule 6251(f) adds "Multiple loading" to the Definitions section. It is defined as the sharing of a taxicab ride, or portion thereof, by individuals or parties who are not traveling together. Corresponding amendments are also made to Rule 6001. Proposed Rule 6252 is amended to simplify the notice requirement in each taxicab, and removes the sentence regarding reduced fares for all passengers when the first passenger agrees to multiple loading and relocate that language to Rule 6253. Proposed Rule 6253(a) addresses the procedures for multiple loading and requires taxicab carriers to publish fares applicable to each passenger for multiple loading in its tariffs, and most notably requires the calculated meter fare for each passenger in a multiple load to be reduced by a minimum of 20 percent. *See*, Rule 6253(a)(II). The language of Rule 6253(c) is deleted and moved to Rule 6210. Finally, Rule 6253(d) reduces the amount of time a taxicab is required to arrive at the pickup location from the time the customer first requests service from 45 minutes to 30 minutes.

124. No parties offered comment on proposed Rule 6251(f) or proposed Rule 6252; therefore, Rule 6251(f) and Rule 6252 will be adopted.

125. Regarding the proposed amendments to Rule 6253, one commenter opines that the multi-loading fare reduction of at least 20 percent for each passenger is vague, particularly as the origin or destination of each passenger is different. It is requested that the rule be clarified;

however, no indication from the commenters was provided as to how they propose the rule be clarified. Two commenters also express concern about reducing the time to pick up passengers from 45 minutes to 30 minutes. One commenter suggests that the proposed time requirement should not apply beyond a specified distance such as 15 or 20 miles from the carrier's dispatch center.

126. The proposed language of Rule 6253(a)(I) through (III) is found to be reasonable and clear, and as a result, will be adopted.

127. Regarding the proposed decrease in pick up times to 30 minutes, the undersigned ALJ agrees with the commenters that distance restrictions should apply to the 30 minute time restriction. Rule 6253(c) will be amended to indicate that the 30 minute pickup time will be limited to passengers within a 25 mile radius of the taxicab carrier's dispatch center. Proposed Rule 6253(c) will be adopted with those changes.

128. Proposed Rule 6254 establishes additional service requirements for taxicab carriers operating within or between counties with a population density of 45 or more people per square mile. Taxicab carriers in those particular counties will be required to operate 24 hours a day, every day of the year. The proposed rule also establishes a maximum age of taxicabs of 10 model years. In addition, the rule provides that taxicabs subject to the rule equipped with disabled passenger facilities are exempt from the vehicle age requirement rules.

129. The only comment received regarding this proposed rule expresses some confusion with reference to the county population densities and that the rule requires taxicab companies to equip vehicles with disabled passenger facilities. Staff responds that it is the county population density area that applies and not the taxicab carrier's service area.

In addition, Staff explains that Rule 6254(e) does not require taxicab carriers to equip their vehicles with disabled passenger facilities, but merely exempts vehicles equipped as such from the vehicle age requirements. Staff also notes that the 2010 federal census creates a break at a population density of 45, which creates an irregular division. As a result, Staff proposes the proposed rule be amended to reference a population density of 40 people per square mile.

130. The language of proposed Rule 6254 is reasonable and will therefore be adopted with the amendment proposed by Staff that the rule shall apply to taxicab carriers operating within or between counties with a population density of 40 or more people per square mile, based on the most recent federal census.

131. Proposed Rule 6255 (formerly Rule 6254) is amended by placing additional service requirements for taxicab carriers operating within or between counties with a population of 60,000 or greater to counties with a population density of 200 or more people per square mile. Additionally, the proposed rule requires that taxicab carriers are to employ a GPS-based digital dispatch system with the ability to lock out drivers who exceed hours of service maximums. The rule also lowers the maximum age of a motor vehicle in the carrier's fleet to eight model years from ten model years and establishes that the average age of fleets is to be no more than six model years old.

132. One party comments that the Rule has expensive consequences for those taxicab carriers to which it will apply, which will then be passed on to customers in the form of higher rates. Another commenter believes that proposed Rules 6255(III) through (VII) appear to be dictating a dispatch system that accomplishes hours of service control electronically, which requires a technology capability that is not proven. The commenter believes that such technology may not even be on the current market. The commenter goes on to state that should

the Commission adopt this rule, it should ensure that all taxicab providers in the Denver metropolitan area employ such a system.

133. Regarding Rules 6255 (a)(IV) and (VII), one party comments that there is currently not a method to log a driver onto a dispatch system automatically when a taxicab is approaching a cab stand or the airport. The commenter suggests deferring this requirement until such technology is available.

134. One commenter does not agree with reducing the current ten model year requirement. The party notes that the balance of its taxi fleet is composed of driver owned vehicles, and the bulk of those vehicles are vintage 2006 and earlier. According to the commenter, without qualifying exceptions to the proposed rule, it would decimate its fleet and impose an enormous financial burden on drivers having difficulty earning a sustainable living at the present time. The commenter also argues that the overall condition of a vehicle is paramount for public safety. Mileage alone should not be sufficient to force retirement of the vehicle.

135. On the other hand, another commenter supports reducing the ten model year requirement to eight model years. The commenter takes the proposal further and suggests it be applied to shuttle vehicles and luxury limousines as well. However, as with the previous opinion, the commenter supports taking vehicle mileage into account. A vehicle with low miles should be able to be used through a waiver application. The commenter also maintains that it would be difficult to manage the six model year average fleet age requirement and suggests that any vehicle older than eight model years that has been granted a waiver should be counted as eight model years for purposes of the determining average fleet age.

136. Another commenter suggested that subparagraph (a)(VII) should be clarified as follows:

> (VII) Taxicab carriers shall log a driver as being on duty when the vehicle assigned to said driver enters an area no less than two miles from Denver International Airport or other major municipal airport, or 500 feet of known downtown taxi stands.

137. Staff agrees that the term "airport" should be clarified, but instead proposes the following language:

> (VII) Taxicab carriers shall log a driver as being on-duty when the vehicle assigned to said driver enters an area no less than two miles of Denver International Airport, or City of Colorado Springs Municipal Airport or 500 feet of known taxi stands.

138. One commenter suggests clarifying subparagraph (a)(III) as follows:

> (III) Taxicab carriers shall employ a GPS-based, digital dispatch system that tracks and records driver hours or service, and records and reports trip information, including origination point and customer wait times.

139. Staff indicates that it agrees with the proposed clarification of subparagraph (a)(III).

140. Finally, one commenter notes that with regard to utilizing the most recent federal census to determine which taxicab carriers operate in counties with a population density of 200 or more persons per square mile, it would be clearer to merely list the counties that meet that standard under the rule, rather than require that the data be researched individually.

141. The language proposed by the commenter regarding the language defining the operating area applicable to Rule 6255 will be adopted. As a result, Rule 6255 will read as follows:

> Taxicab carriers operating within or between the counties of Arapahoe, Adams, Boulder, Broomfield, Denver, Douglas, El Paso and Jefferson shall be subject to the additional requirements of this rule.

142. The amended language for Rule 6255(a)(III) as described in ¶139 above is a reasonable compromise regarding the requirement for a GPS-based, digital dispatch system. As a result, the language as set out in ¶139 will be adopted.

143. Proposed Rule 6255(a)(IV) will be adopted as well. While one commenter represented that current technology is not available to log a driver on-duty when his or her vehicle is within two miles of an airport or within 500 feet of a taxi stand, no other taxi carrier concurred with the commenter. In the event that it can be conclusively demonstrated to Staff that such is the case, the language of 6255(a)(IV) may be rescinded. However, absent such a demonstration, proposed Rule 6255(a)(IV) will remain. Regarding the term "airport" contained in Rule 6255(a)(IV), it is agreed that specifying Denver International Airport and Colorado Springs Municipal Airport is preferable to the generic term "airport." Therefore, those terms will be incorporated into Rule 6255(a)(IV).

144. Proposed Rule 6255(a)(V) which requires a GPS-based digital dispatch system to "lock out' a driver that has exceeded on-duty hours of service maximums will also be adopted. It is understood that such technology is possible with current GPS-based digital dispatch systems, and the Rule will assist taxicab carriers to ensure that drivers are complying with on-duty service hour maximums.

145. The language of proposed Rule 6255(a)(VI) will also be adopted. Requiring a "locked out" driver to remain so for at least eight hours is a reasonable safety regulation to ensure the health, safety and welfare of the travelling public.

146. The language proposed by Staff for Rule 6255(a)(VII) will be adopted as set out in ¶138 above. Similar to the language of Rule 6255(a)(IV), the term "airport" is

unambiguously defined by the proposed language as Denver International Airport or Colorado Springs Municipal Airport.

147. Regarding proposed Rule 6255(c), which lowers the maximum age of a taxicab from ten model years to eight model years, the proposed amendment will be adopted. However, it is acknowledged that the new Rule will result in the replacement of numerous taxicabs in a short period of time. Therefore, taxicabs which are currently eight model years old or older at the date of a final Order in this matter will be granted a two year grandfather period. In other words, taxicab carriers and drivers who own their own vehicles will have two years in which to replace vehicles which are at least eight model years old at the time of a final Order in this matter.

148. The ALJ also agrees that waivers for vehicles that exceed the age requirements should be considered, though such a determination should be made on a case-by-case basis depending on the age of the vehicle, its overall condition, and its mileage in relation to its age. To set a specific mileage standard here would prove to be impractical and ambiguous at best. Rather than provide for a waiver process in these Rules, it is noted that affected parties may make a filing for a waiver from any Commission Rule pursuant to the Rules of Practice and Procedure, 4 CCR 723-1-1003 and 1304.

149. Regarding proposed Rule 6255(d), the ALJ harbors some concern regarding setting an average vehicle age for the entire taxicab carrier's fleet at six years. Imposing such a requirement would create conflicts with subparagraph (c). While vehicles in the fleet would be in compliance with the eight model year requirement, if the average age of the entire fleet is at least six model years, then some vehicles would be required to be replaced, even though those vehicles are still in compliance with subparagraph (c). This creates an untenable friction

between the two subparagraphs that would be difficult to resolve. Therefore, the proposed language of Rule 6255(d) will not be adopted.

150. Proposed Rule 6256 (formerly Rule 6255) merely eliminates the need for taxicab carriers to maintain the address of a customer's destination in its records.

151. One commenter suggests that tracking customer destinations in dispatch logs serves a vital need to law enforcement and as a result, the rule should not be amended. Staff agrees with the commenter that such information could be important to law enforcement and to Commission Enforcement Staff in determining that a carrier is operating within its authorized service territory.

152. It is found that providing customer destination information is not burdensome to taxicab carriers and serves an important public service function. As a result, the proposed elimination of Rule 6256(V) will not be adopted. The rule language requiring the address of the customer's destination as part of a taxicab carrier's recordkeeping functions will remain intact.

153. Proposed Rule 6257 (formerly Rule 6256) is amended to simplify the determination of flat rates to and from Denver International Airport (DIA).

154. One party commented on the proposed amendments to the rule. According to the party, it is in agreement that there should be a better way to change the flat taxi rates to and from DIA. The commenter also believes it is important for all carriers to have the same rate since it simplifies the rates for the public as well. However, the commenter is of the opinion that a change in flat rates for all taxicab carriers should be possible if 50 percent or more of the taxi carriers in Denver apply and justify the change. It should also be possible for a single taxi carrier to petition the Commission to initiate an investigation of DIA flat rates on its own initiative.

155. The undersigned ALJ agrees with the commenter that taxicab carriers should be permitted the possibility of proposing new flat rates by filing an application and sustaining the burden of proof to change the flat rates. While proposed Rule 6257 deletes language providing that two or more taxicab carrier may file a joint application proposing new flat rates, it is nonetheless unquestionably appropriate for a single taxicab carrier, or multiple taxicab carriers to file an application to address flat rates. The mere deletion of the provision setting out the procedure for filing for such an increase does not bar a carrier from making such an application. As a result, while the proposed changes to Rule 6257 (formerly Rule 6256) at subparagraph (c)(I) through (IV), as well as the elimination of subparagraphs (e)(I) through (III), (g), and (h) will be adopted, taxicab carriers should be advised that the elimination of subparagraph (g) does not impede a carrier's ability to seek future adjustments to the flat rate.

156. Proposed Rule 6258 (formerly Rule 6257) eliminates subparagraph (c), which provides for issuance of a civil penalty assessment of up to $100 for each violation of paragraphs (c) and (e) of Rule 6254. Staff clarifies that the civil penalty assessments indicated in proposed Rule 6258 apply to Rules 6250 through 6257, while civil penalty assessments prescribed in Rule 6106 apply to safety violations involving a motor carrier subject to the safety rules.

157. No party offered comment regarding the proposed amendments. As a result, the proposed amendments to Rule 6258 will be adopted.

E. Limited Regulation Carrier Rules

158. Proposed Rule 6303 amends the current rule regarding information required for registration as a limited regulation carrier. The proposed amendments seek to streamline the information required for applications by eliminating a significant portion of the rule.

While Rule 6303 previously contained 14 subparagraphs of required information, the proposed amendments to the rule eliminate those subparagraphs and simply require a party seeking to operate as a limited regulation carrier to submit a completed application on a form provided by the Commission.

159. No comments were provided concerning the amendments to Rule 6303. The proposed language changes to Rule 6303 will be adopted.

160. Proposed Rule 6305(a) removes the term "major" from subparagraph (a)(I) in describing body dents in luxury limousines, as well as including windshields in the description of cracked windows. Subparagraph (b) clarifies that the age of luxury limousine vehicles are limited to ten model years.

161. Luxury limousine commenters suggest that the 10 model year rule should be eliminated, as well as any waiver process since it would then not be necessary. Commenters take the position that clients will make the ultimate decision as to which company they choose to do business with based on the appearance and age of its vehicles. The commenters note that safety regulations are still important and vehicles, despite their age, should still be subject to safety requirements.

162. Staff, on the other hand, argues that market forces are not strong enough to ensure all fleets throughout the state are maintained at a minimum level of luxury. Markets with negligible competition must have a minimum standard to which they must comply. Staff maintains that vehicle age is a factor in appearance, safety, and passenger comfort. Staff views the proposed rule as reasonable for the health, safety, and welfare of the traveling public.

163. It is found that the proposed amendments to Rule 6305 are reasonable and protect the health, safety and welfare of the traveling public. Therefore, the amendments to proposed Rule 6305 will be adopted.

164. Proposed Rule 6308(a)(II) amends the current rule by eliminating a significant number of specific manufacturer models from the list of vehicles that qualify as an "executive car.". In its place, Staff proposes at subparagraph (A), a broader list of qualifying vehicles by manufacturer rather than specific models. Additionally, subparagraph (B) lists several models that also qualify as an executive car, including: Chrysler 300; Hyundai Equus; Saab 9-5; Chevrolet Suburban and Tahoe; Ford Excursion and Expedition; GMC Yukon; and Hummer.

165. It is further proposed to deleted subparagraph (b) which requires luxury limousine carriers to produce evidence that a vehicle in question meets the requirement of a classic or antique limousine.

166. Several luxury limousine commenters noted other vehicles that should be included in the list of vehicles acceptable to operate under a luxury limousine license. Those vehicles include: Ford Edge all wheel drive and Edge Hybrid; Lincoln MKT Crossover, MKX Crossover, MKZ Hybrid, MKZ, and MKS; Cadillac SCX Crossover, and Escalade Hybrid.

167. Additionally, the commenters suggest including language requiring any new luxury limousine applicant to be required to have at a minimum, one stretched vehicle. The commenters state that the license is for a luxury limousine and that obtaining a customary stretched vehicle should be required of all applicants.

168. Staff disagrees with the inclusion of the Ford Edge in the list of vehicles that qualify as a luxury limousine. Staff points out that it relies in part on the list of luxury sedans provided by the U.S. Environmental Protection Agency as to which make and model qualify as a luxury limousine, and the Ford Edge is not listed as a luxury limousine there.

169. With regard to "crossover" vehicles, Staff believes that the term is new and agrees that it should be included to the definition of executive car in proposed Rule 6308(a)(II)(A). As a result, subparagraph (a)(II)(A) is proposed to read as follows: "(A) a sedan, crossover, or sport utility vehicle manufactured by: Acura, Audi, Bentley, BMW, Cadillac, Ferrari, Infiniti, Jaguar, Lexus, Lincoln, Maserati, Mercedes-Benz, Porsche, or Rolls Royce; or …"

170. Regarding the proposed requirement to obtain a stretched vehicle for the fleet of each luxury limousine permit holder, Staff disagrees with the proposal and believes that such a requirement would be burdensome on the entire industry.

171. The proposed amendments to Rule 6308 provide a restructured inventory of the vehicles which qualify as executive cars. Regarding the clarification requested by a commenter to Staff's proposed amendments; it appears that the following vehicles from the commenter's list are included in the definition of executive car: Lincoln models - MKT Crossover, MKX Crossover, MKZ Hybrid, MKZ, and MKS; Cadillac models - SCX Crossover, and Escalade Hybrid. The only vehicles not included in the proposed list are the Ford Edge products. Staff's reasons for not including the Ford Edge vehicle in the list of approved vehicles is reasonable and based on providing consistency between federal and state law in the luxury limousine realm. As a result, the Ford Edge will not be included in the list of qualifying vehicles at this time.

172. Additionally, no need is found to require new entrants into the luxury limousine field to acquire a stretch vehicle. Such a requirement would create an unreasonable barrier to entry into the industry. Therefore, the language of Rule 6308 as subsequently amended by Staff will be adopted.

173. Rule 6309 is proposed to be deleted in order to eliminate the constant qualification of vehicles qualified as a luxury limousine on or before July 30, 3008. Subsequent rules are renumbered to indicate the deletion of Rule 6309.

174. Staff proposes eliminating this rule as constant grandfathering creates a double standard for competing carriers and an unnecessary administrative and recordkeeping burden. Carriers in the same class should be held to the same standard of vehicles. However, Staff notes that in appropriate circumstances, carriers may seek a variance from the rule.

175. Staff's concerns are well taken. Grandfathering, in which an old rule continues to apply to some existing situations, while a new rule applies to all future situations should be applied temporarily at the initiation of a new regulation to impose a semblance of equity. However, such grandfathering, or exceptions, should not be utilized on an ongoing basis for an unlimited period of time. Here, it is found that good cause exists to conclude the grandfathering of vehicles qualified as a luxury limousine prior to 2008 and delete Rule 6309. As a result, the proposal to delete Rule 6309 will be adopted.

176. Regarding Rule 6309(a) (formerly Rule 6310(a)), one commenter opines that the term "prearranged basis" in rule 6309(a) is not clearly defined. The commenter suggests providing a specified period of time and requiring that the reservation be made on a listed business telephone in order to establish a "prearranged basis." According to the commenter,

the current language of Rule 6309(a) has led to abuse by some luxury limousine carriers who utilize the rule to operate as a taxicab. The prearranged requirement is met even if the limousine takes the call five minutes prior to picking up the fare. The commenter suggests additional language in the rule requiring at least one hour prearrangement in advance of a pickup, with the call made to a business telephone number listed in the telephone book as the luxury limousine's business contact number.

177. Luxury limousine service, as currently defined in existing and proposed rules, requires the use of specific vehicles and that the service is pre-arranged with a charter order in place and in the vehicle. Rules further provide that luxury limousine vehicles cannot be stationed at specific locations including, but not limited to, hotels, motels, taxi stands and airports.

178. While Staff agrees with the commenter that the proposed rules should clarify that a charter order should include the prearranged price, it disagrees that the Commission should impose further restrictions on limousine services beyond what already exists or is currently proposed. It is Staff's position that imposing an artificial time restriction from the time service is requested to the time such service is rendered would only serve to force a carrier to be less than efficient when responding to legitimate customer requests.

179. Regarding the proposed telephone call restrictions, Staff argues that imposing a requirement that luxury limousine carriers only take calls at a defined place of business fails to achieve the goals which the commenter seeks. Staff notes the requirement could be easily circumvented by merely forwarding a business telephone number to a cell phone.

180. While no amendments to Rule 6309 were initially proposed, the commenter and Staff are in agreement that including language that a charter order should include the prearranged price is appropriate. Therefore, good cause is found to adopt such language. Rule 6309(b) will be amended to indicate that in addition to the existing requirements, a charter order shall contain the prearranged price.

181. A commenter suggests including language in Rule 6311 that establishes a penalty for failure to display a livery license plate on a luxury limousine as required pursuant to § 42-3-235, C.R.S. Staff indicates that such a violation is provided for in the Safety Rules under Rule 6106, which incorporates by reference 49 CFR § 392.2, which provides for a penalty for "operating a motor vehicle not in accordance with the laws, ordinances and regulations of the jurisdiction in which it is being operated." A civil penalty of up to $2,500.00 may be assessed for each violation listed in Rule 6106.

182. While it is agreed that Rule 6106, which incorporates by reference 49 CFR § 392.2 provides for a penalty for generally violating state laws; at the same time, § 42-3-235, C.R.S. makes specific reference to Commission enforcement of failure to display livery license plates on luxury limousines. Consequently, it is reasonable to specifically include violations of § 42-3-235, C.R.S. under Rule 6311.[3] Rule 6311 will be amended to indicate the possible civil penalty assessment for violating the provisions of § 42-3-235, C.R.S.

F. Unified Carrier Registration Agreement Rules

183. Proposed Rule 6401 is amended to clarify Unified Carrier Registration requirements.

[3] The ALJ notes that violations of § 40-10.1-302, C.R.S. regarding failure to obtain a permit are specifically listed under Rule 6311; therefore, it seems logical to also include violations for failure to obtain a livery license plate under that Rule as well.

184. No comments were filed regarding the proposed amendments. As a result, proposed Rule 6401 will be adopted.

G. Towing Carrier Rules

185. Proposed Rule 6501(f) eliminates the definition of "mountain area." One commenter argues that the definition was developed mutually by the Commission and the towing industry in a cost survey conducted in 1997, which resulted in Rule 6511(i).

186. Staff argues that in the NOPR here, the Commission specifically requested input from interested persons regarding eliminating the term "mountain area," as well as information on the cost associated with all aspects of nonconsensual tows, including mountain tows, mileage charges and storage of vehicles, and how those nonconsensual tow costs differ from costs associated with consensual tows. Staff points out that no information supporting the need to retain the rule was received except for the comment above. Staff further points out that the entire western half of the State falls under the definition of "mountain area." Without cost information, Staff takes the position that it cannot justify or support the need for additional carrier revenues in all locations in Colorado more than ten miles west of I-25. Further comments relating to the term "mountain area" are found below under the discussion of proposed Rule 6511,

187. Based on the discussion and findings below regarding Rule 6511, the proposed amendment to Rule 6501(f) will be adopted.

188. Proposed Rule 6503 is amended to simplify the information necessary for a person to apply for a permit to operate as a towing carrier by clarifying that the Commission will provide the form. Subparagraph (b) is proposed to be eliminated in its entirety.

189. No party offered comments regarding the proposed amendments. As a result, the amendments to Rule 6503 will be adopted.

190. A commenter suggests that the Commission assert its authority pursuant to §§ 42-1-102(6)(b), 42-4-214(2), 42-4-230(4) and 42-4-213(2), C.R.S., and allow towing carriers to operate as authorized emergency vehicles. Staff addresses the various complexities involved in the Commission asserting such authority. Staff notes that § 42-1-102(6)(b) authorizes the Commission to approve privately owned tow trucks to respond to vehicle emergencies as an authorized emergency vehicle; however, due to the complexities of the various statutes involved, and the substantial consequences for implementing the suggested rule, Staff argues that there is no demonstrated need for the Commission to designate tow trucks as authorized emergency vehicles.

191. It is agreed that there appears to be no need for the proposed rule, and the commenter has failed to show good cause or a need for such a rule. Consequently, no rule will be enacted designating tow trucks as authorized emergency vehicles.

192. Proposed Rule 6507 is amended to establish the requirements for disclosure of all towed motor vehicles. Proposed Rule 6507(d) requires a towing carrier which places a motor vehicle in a storage facility to disclose the location of the storage facility, the total amount of charges and the accepted forms of payment.

193. No comments were received regarding this proposed amendment. Therefore, the amendments to Proposed Rule 6507 will be adopted.

194. Proposed changes to Rule 6508(b)(II)(C) include deleting this subparagraph, which requires written tow authorizations available for inspection, since enforcement officers may access such records through Rule 6005.

195. A commenter suggests amending subparagraph (a)(I) because it believes that the tow carrier should not act as an agent of the property owner. The commenter believes that this rule facilitates abuse by corrupt tow carriers. In addition, the rule increases the overhead cost to tow carriers patrolling parking lots.

196. Staff states that since the Rule was adopted in 2010, the Commission has not seen an increase in complaints for violations of proper authorization. While Staff agrees that there is certainly a potential for abuse by some towing carriers, that should not outweigh the potential efficiencies gained by such agreements.

197. A commenter also suggests language be added to Rule 6508(b)(II)(D) that a tow carrier that is requested to perform a tow upon the authorization of the property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to the storage facility without delay. In addition, no vehicle can be relocated and subsequently towed to a storage facility at a later time. Finally, the commenter suggests that if a tow is performed in violation of the proposed rule, the tow carrier cannot charge, collect, or retain any fees or charges for the services performed.

198. Staff agrees with these proposed amendments, but suggests an exception for police-ordered tows. Staff suggests that since these vehicles are towed without the consent of the owners, once a vehicle is in the custody of a towing carrier, it is to remain in the care, custody and control of the towing carrier.

199. Since there were no comments regarding the deletion of Rule 6508(b)(ii)(C), that change will be adopted. In addition, it is agreed that there is no need to amend Rule 6508(a)(I). It is also agreed that the proposed amendments to Rule 6508(b)(II)(D) as proposed by commenters are reasonable and will be adopted with the exception of police-ordered tows.

200. Proposed Rule 6510 is amended by clarifying that rate disclosures do not apply to nonconsensual tows.

201. No comments were filed regarding the amendments to Rule 6510. As a result, the proposed amendments to the Rule will be adopted.

202. Pursuant to the original NOPR, Rule 6511, Rates and Charges, was proposed to be amended by eliminating the mileage charge and mountain area charges applicable to nonconsensual tows. The maximum charge for a nonconsensual tow of a motor vehicle with a GVWR of less than 10,000 pounds performed upon the authorization of the property owner was proposed to be set at a $100.00 flat rate.

203. The Commission specifically requested cost data from the towing carriers affected by these rules for it to properly set rates and charges based on the cost of providing such service. However, Staff disclosed that only one hypothetical balance sheet was received in response from a single towing carrier. Staff observes that the Commission is responsible for setting rates for the provision of nonconsensual tows. In order to effectively perform this duty, Staff must balance the needs of the towing industry with the cost and overall benefit to the public. Because it did not receive proper financial data at that time, Staff took the position that the current rates were artificially high and should be lowered to the proposed Rule amount of $100.00 flat rate. Staff made a point of indicating that should towing carriers provide sufficient financial information, the issue could be revisited and cost-based rates established.

204. While no financial data was initially filed, the Commission did receive a significant number of written comments from towing carriers, as well as oral comments at the December 5, 2011 public comment hearing on the proposed Rule. Due to the large number of comments received, it is not possible to convey them all here in detail.

However, a review of the comments reveals a common theme among the towing carriers' concerns and those will be summarized below.

205. The general theme of the comments is that the proposed $100.00 flat rate does not cover the carriers' costs of doing business. The commenters remarked that they experienced cost increases in several areas including fuel, equipment, facilities, vehicles, employee salaries and benefits, as well as diminished income due to inflation. Commenters also mentioned that the costs of tows themselves are increasing and both fixed and variable costs are increasing. Cost increases also apply to intangible costs such as wait times, and the time expended patrolling parking lots as agents for the property owner under contractual agreements. Commenters also pointed to higher insurance and workers' compensation costs due to higher risks.

206. One commenter noted that it would potentially lose $54.00 per tow, although it did not provide any specific financial data to support its claim. While commenters did not provide specific financial data, they claimed that the proposed $100.00 flat rate would result in losses, which varied from commenter to commenter. The commenters also noted the new bond requirement costs as a significant new cost contributing to high overhead expenses. Commenters noted that the reduced rate would impact the tax base in that towing carriers would pay less tax based on lower collected rates.

207. It was the general consensus of the commenters that reducing the charge for nonconsensual tows as proposed would make it unprofitable to perform this type of tow and as a result, towing companies would be reluctant or altogether abandon performing nonconsensual tows.

208. After the public comment hearing on December 5, 2011, towing carriers were advised to communicate with Transportation Staff in order to provide more comprehensive financial data in order to set a cost-based rate that generally considered a towing carrier's costs for nonconsensual (as well as consensual) tows. Transportation Staff sent out a *Towing Carrier Cost Survey* to a large number of towing carriers throughout the state. Of those towing carriers, 73 responded by providing financial data confidentially to Transportation Staff.

209. As discussed in Interim Decision No. R12-0080-I, 73 towing companies responded to the survey. Of those, the Commission's Economics Unit distilled them down to 39 towing companies as the analysis population from which the cost per tow was derived. The analyzing economist stated that analysis of the survey results was intended to examine tow costs and to attempt to distinguish whether significant cost differentials existed between companies conducting nonconsensual tows exclusively; companies that do not conduct any nonconsensual tows; and, companies that conduct both consensual and nonconsensual tows. In addition, a geographic identifier was included in the analysis to determine if significant cost differentials exist between towing companies operating on the Front Range;[4] towing companies operating along the Interstate 25 Corridor; and non-Front Range[5] towing companies.

210. Commission economists calculate the cost of each tow in three categories: 1) driver cost + gas cost per tow; 2) driver cost + gas cost + average impound fee per tow; 3) driver cost + gas cost + average impound fee + any remaining overhead costs per tow = total cost per tow. The cost per tow for the analyzed sample of 39 companies is summarized in Tables 1 through 6 of the report. After testing for statistical differences in the average total cost

[4] The "Front Range" is defined as its generally understood meaning to include communities which lie immediately adjacent to the Interstate 25 Corridor.

per tow by region, it was determined that no statistical difference existed although the averages were not equal. Based on this conclusion, the economists determined that there is sufficient evidence that no need exists for a fee differential for nonconsensual tows based on location.

211. Ultimately, based on their comprehensive analysis of data received from the towing companies, the economists recommend that the current charge for nonconsensual tows of $154.00 should be maintained. Additionally, a maximum mileage restriction should be adopted. Those mileage reimbursement restrictions are recommended to be set at the reported average distance for Front Range tows of 12 miles and non-Front Range tows of 16.5 miles. The combination of these two revenue components for nonconsensual tows results in a charge before impound charges of $205.60 for Front Range towing carriers and a charge of $224.95 for non-Front Range towing carriers.[6]

212. Interim Decision No. R12-0080-I, issued January 25, 2012, indicates that this analysis was conducted based on the comments received at the December 5, 2011 public comment hearing, and the financial data subsequently provided to the Commission by various towing carriers in response to Staff's cost survey. The Interim Decision solicited comments on the new proposed nonconsensual towing rates. Comments were to be filed no later than February 6, 2012.

[5] The "Non-Front Range" area is generally defined as the mountain areas, Western Slope areas, and Eastern Plains communities.

[6] Based on a $4.30 per mile rate.

213. Several commenters provided their opinions on the proposed nonconsensual tow rates as noticed in Interim Decision No. R12-0080-I. A common objection appears to be the proposed maximum mileage charge restriction of 12 miles for Front Range tows and 16.5 miles for non-Front Range tows.

214. While commenters generally concede that mileage charge restrictions are appropriate, they nonetheless argue that the mileage restrictions as proposed are too restrictive. Commenters claim that many of the nonconsensual tows they provide are beyond the 12 mile limit and many times can be up to 50 miles. Commenters maintain that as proposed, the mileage charge restriction punishes ethical tow carriers who accurately charge for actual miles travelled.

215. Other commenters contend that the mileage charges are not really about miles travelled, but more about the time necessary to perform nonconsensual tows. Those commenters note that the longer the distance required to travel, the more time is expended by the driver, which increases labor charges.

216. One commenter suggests increasing the hook up fee from $154.00 to $164.00 based on the Consumer Price Index (CPI). The commenter also suggests increasing the maximum mileage charge to 25 miles for the Front Range, and 29.5 miles for non-Front Range nonconsensual tows. In addition, the commenter (as well as several others) argue that the 12 percent mountain charge should not be eliminated due to higher fuel costs in mountain areas and additional wear and tear on vehicles.

217. Another commenter suggests that the maximum mileage charge for Front Range companies be increased to 30 miles. In addition, the commenter also supports retaining the 12 percent mountain premium, as well as an amendment to the Rule that the $154.00 hook up fee

be adjusted annually based on increases or decreases in the CPI for the Denver, Boulder, and Greeley areas. The commenter is of the opinion that such a process will provide a more consistent regulatory environment.

218. It is understandable that amending rules related to the rates towing carriers may charge for nonconsensual tows would be contentious. Carriers have a vested interest in their companies and wish to enjoy as high a rate as possible for such services. Nonetheless, it is incumbent on the Commission and indeed its overarching responsibility to allow towing carriers to charge a reasonable and compensatory rate, while protecting consumers from unreasonable charges for nonconsensual tows.

219. The analysis conducted by Staff economists provides a fair-minded framework from which to determine reasonable rates that fulfill the Commission's dual obligations. As documented in the *Tow Truck Cost Report*[7] prepared by Commission Economics Staff, the costs per tow are based on data provided by the towing companies themselves and buttressed by data from the U.S. Bureau of Labor Statistics which includes the national average of wages, employee paid medical premiums of $356.00 per month, as well as gas costs and overhead costs, which include all other costs reported by the towing carriers.

220. With regard to the 12 percent "mountain area" price differential, economists performed an F-Test[8] to determine whether a statistical difference existed between operating in such mountain areas and operating within the Front Range. It was found that there was not a significant cost differential between the two areas.

[7] Attachment B to Interim Decision No. R12-0080-I.

[8] An F-Test is used to assess whether the expected values of a quantitative variable within several pre-defined groups differ from each other.

221. It was concluded that the average total cost per tow (consensual and nonconsensual) is $161.77. The average distance of a tow was determined to be approximately 11.67 miles for Front Range tows and 16.2 miles for non-Front Range tows. The average total cost for a Front Range nonconsensual tow was calculated at $201.64. The minimum average nonconsensual tow cost was determined to be $122.37, while the maximum average nonconsensual cost per tow was determined to be $274.08.[9]

222. The analysis revealed that a nonconsensual tow with a mileage reimbursement fee of 12 and 16.5 miles for Front Range and non-Front Range towing companies respectively leads to a significant after tax profit for Front Range towing carriers of 18.95 percent and 19.23 percent for non-Front Range towing carriers. This conclusion, when considered together with the statistical analysis that costs are not significantly different from Front Range to non-Front Range towing companies indicates that the current nonconsensual fee of $154.00 seems reasonable. Commission economists further concluded that the $4.30 per mile charge provides an opportunity for towing companies to collect additional revenue not technically based on cost, as the gas costs would range approximately $6.00 to $8.00 for a tow of 12 to 16.5 miles, divided by 8.5 miles per gallon multiplied by $4.00 per gallon of diesel.

223. Concerned that there may be a tendency for drivers to drive unnecessarily longer distances to increase the mileage fee collected, the economists suggest that this possibility should not be incentivized. As a result, along with maintaining the fee at its current level of $154.00 per nonconsensual tow, the economists recommend that a maximum mileage restiction should be adopted. As the gas cost per tow was the largest contributor to the cost difference from Front Range to non-Front Range areas, these mileage restrictions should be set at the reported averages

[9] *See*, Attachment B *Tow Truck Cost Analysis Report* to Interim Decision No. R12-0080-I

for the Front Range distance of a tow of 12 miles, and non-Front Range average tow distance of 16.5 miles. The economists conclude that the combination of these two facets of revenue for a nonconsensual tow leads to a rate before impound charges of $205.60 in the Front Range and $224.95 for non-Front Range nonconsensual tows.

224. The analysis provided by Staff is persuasive. It is cost-based in that the underlying financial data is based on information received from the towing carriers themselves, or from reliable, generally accepted sources. While several towing carriers take issue with the findings contained in the economic analysis, it is difficult to dispute those findings as they are based on industry-provided data.

225. Consequently, the proposed rates as discussed above will be adopted and incorporated into Rule 6511 with minor modifications. While it was suggested that the hookup fee for a nonconsensual tow remain at $154.00, a review of the economic analysis reveals that the average cost of a tow is slightly higher than that amount - $161.27. In order to address towing carriers' concerns regarding increased costs due to the required $50,000 bond and the cost of accepting credit cards (discussed in more detail below), the fixed hookup fee will be set at $160.00, which should help alleviate the additional costs of the bond and credit card fees. The maximum mileage charge will be set at $4.30 per laden mile and mileage charges will be capped at 12 miles for Front Range towing carriers and 16.5 miles for non-Front Range towing carriers. As the economic analysis illustrates, these rates will provide a healthy after tax profit percentage for towing carriers, while maintaining reasonable rates.

226. Proposed Rule 6512 is amended to require towing carriers to relinquish medicines, medical equipment, and child restraints immediately upon demand.

It also establishes a requirement that tow carriers may accept any form of payment, but must accept at a minimum, MasterCard® and Visa® credit cards.

227. Comments to the proposed rule changes generally agree with the language of proposed Rule 6512(a) regarding forms of payment, but with the caveat that credit cards are to be accepted only with "authorization." Another commenter maintains that the proposed Rule violates Colorado Constitution Article 11, Section 2 since MasterCard® and Visa® are corporations. Another commenter argues that with nonconsensual tows, it will be common practice for those whose vehicles were towed to later dispute the charges and create problems for the towing carriers.

228. A commenter suggests that requiring the use of credit cards will increase a tower's costs based on the merchant fee charged by the credit card companies to towing carriers, as well as the time and effort required to address disputed charges for nonconsensual tows, which the commenter estimates will be 80 to 90 percent of nonconsensual tows. As a result, the commenter recommends that the Commission adopt Rule 6512(a) as proposed, but also increase the maximum nonconsensual tow charge by five percent in order to allow towing companies to maintain current levels of profitability.

229. Proposed Rule 6512(f) requires the immediate relinquishment of prescription medicines, medical equipment, medical devices, or a child restraint system upon demand without additional payment or charges.

230. The commenters generally agree that the rule is reasonable and several note that they already make this a policy. One commenter, while agreeing with the provision, suggests that additional language be added that such a requirement would only be effective during normal business hours.

231. It is agreed that consumers are best served by requiring tow carriers to accept credit cards as a form of payment under Rule 6512(a). Requiring those whose vehicles have been towed nonconsensually late at night to come up with cash by visiting an ATM machine is risky at best for the costumer. Additionally, nothing in the Colorado Constitution at Article 11, Section 2 precludes the requirement to accept credit cards as suggested by one commenter. Therefore, it is found that the proposed language regarding acceptance of credit cards, specifically, MasterCard® and Visa® at a minimum is reasonable and will be adopted.

232. The language of Rule 6512(f) is reasonable and will therefore be adopted.

233. A commenter suggests an amendment to Rule 6514(a)(II). The commenter states that changes to Rule 6508(b)(II)(D) were proposed that a tow carrier that is requested to perform a tow upon the authorization of the property owner or agent of the property owner must immediately deliver the vehicle that is being removed from the property to the storage facility without delay. In addition, no vehicle can be relocated and subsequently towed to a storage facility at a later time. If a tow is performed in violation of the proposed rule, the tow carrier cannot charge, collect, or retain any fees or charges for the services performed. Should those changes be adopted, the commenter notes that additional language to Rule 6514(a)(II) is necessary to indicate that a violation of subparagraph (II)(D) of Rule 6508 is subject to a civil penalty of up to $1,100.00 as well.

234. Staff agrees with the proposed modification. As a result, the proposed amendment to Rule 6514(a)(II) will be adopted.

H. Household Goods Mover and Property Carrier Rules

235. Proposed Rule 6603 is amended to simplify the information necessary for a person to apply for a permit to operate as a mover by clarifying that the Commission will provide the proper form.

236. No comments were received regarding the proposed amendments to Rule 6603. As a result, the proposed amendments will be adopted.

237. Proposed Rule 6605 is amended to remove language regarding the payment of an annual permit fee to the Commission by movers.

238. No comments were received regarding the proposed amendment to Rule 6605. As a result, the proposed amendment will be adopted.

239. Proposed Rule 6607 is amended to clarify that if a mover accepts credit cards as a form of payment, then, while it may accept other credit card types, it must at a minimum accept MasterCard® and Visa® credit cards.

240. No comments were received regarding the proposed amendment to Rule 6607. As a result, the proposed amendment will be adopted.

241. Proposed Rule 6608 is amended to require that a mover shall provide a written estimate of the total costs and that a mover cannot charge more than 110 percent of the estimate. This proposed language is comparable to language found in 49 CFR § 375.401 through 405 regarding binding estimates, and § 375.501 regarding order for service. The proposed Rule also cleans up other language in order to clarify the Rule.

242. A commenter maintains that the proposed amendments should have specific language regarding services not accounted for in the original estimate, as well as whether the estimates are binding or non-binding. The commenter also suggests that the

proposed amendments should specify whether the changes apply prior to loading or after loading of the shipment. Additionally, if services are requested that were not specifically identified in the original estimate, the commenter argues that a carrier should not be required to honor the original estimate. The commenter requests language similar to 49 CFR § 375.403.9, which allows for a maximum charge of 115 percent if changes are requested subsequent to the shipment being loaded and a bill of lading generated.

243. Staff is of the opinion that the recommendation to limit any increase in cost to 110 percent of the original estimate is intended to protect consumers from a large and growing problem of providing an intentionally low estimate to acquire business, then substantially increasing the actual cost over the original estimate at the door, at a time when the consumer has limited options at their disposal. Staff's opinion is that a thorough and accurate estimate is a necessity when moving household goods. A quality estimate protects the consumer and legitimate carriers.

244. In order to protect carriers and provide consumers a legitimate opportunity to secure the services of a different carrier, at a minimum, Staff suggests that no contract be permitted to be amended within 24 hours of the commencement of a move. Staff also believes a maximum charge of 110 percent of the estimate is sufficient to cover any unforeseen expenses if a legitimate estimate is provided.

245. The intent of Staff regarding the proposed amendments here is evident. Protection of a shipper against sudden increases in fees at the last minute or after an initial price is agreed upon, is an issue in the moving industry which Staff wishes to address. However, in protecting a shipper from such practices, it is also imperative that movers be provided some

recourse from shippers who request additional services after a contract has been executed or a bill of lading has been issued.

246. It appears that the proposed amendments to Rule 6608 accomplish those purposes. If a shipper requests additional services after the bill of lading has been issued, a mover must fully inform the shipper of the charges involved for such additional services through an amendment to the original contract. Such a scenario is addressed in subparagraph (e), which provides that the moving contract may be amended upon mutual agreement of both parties. If the shipper requires additional services not addressed in the original contract, the mover may add an amendment to the contract to cover those costs. Should the shipper refuse to accept the amended terms, it would seem that the mover is free to refuse to provide the additionally requested services. Further, Staff's contention that a contract cannot be amended within 24 hours of the commencement of a move appears to protect both parties here. Any legal recourse either party may have is a matter for a court of competent jurisdiction.

247. Consequently, proposed Rule 6608 will be adopted without amendment.

248. Proposed Rule 6610 is amended by removing unnecessary language defining the term "business day," in order to simplify the Rule. No parties filed comment on the proposed amendment to the Rule. Therefore, the proposed amendment to Rule 6610 will be adopted.

249. Proposed Rule 6611 regarding violations, civil enforcement and civil penalties is amended to simplify the rule. No parties filed comment on the proposed amendments to the Rule. Therefore, the proposed amendments to Rule 6611 will be adopted.

250. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Commission Rules pursuant to 4 *Code of Colorado Regulations* 723-6-6000, *et seq.*, contained in Attachment A to this Order are adopted consistent with the discussion above. The adopted 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/EFI.homepage Once at the *Electronic Filings* (E-Filings) system page, the rules can be accessed by selecting "*Search"* and entering this docket number (11R-792TR) in the "*Proceeding Number*" box and then selecting "Run."

2. 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.

3. 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.

4. 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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge