

Decision No. R14-0916-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14R-0641TR

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

**INTERIM DECISION
OF ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ISSUING PROPOSED RULE FOR
CONSIDERATION AT HEARING**

Mailed Date: August 1, 2014

I. STATEMENT, FINDINGS, AND CONCLUSION

1. By Decision No. C14-0638, the Colorado Public Utilities Commission (Commission) issued its Notice of Proposed Rulemaking (NOPR) regarding proposed Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The transportation rules generally describe the manner of regulation over persons providing services by motor vehicle in the State of Colorado. More specifically, the purpose of Rule 6007(a)(I) is to prescribe the necessary amounts of financial responsibility for regulated motor carriers.

2. 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 to 507; 42-4-235; 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

3. In Proceeding No. 13R-0009TR, the Commission revised financial responsibility requirements.

4. After implementation, “[t]he Commission found the prior insurance requirements [from Proceeding 13R-0009TR]...resulted in a substantial and immediate hardship to regulated motor carriers. In particular, the prior requirements were threatening the sustainability of two of the four taxicab carriers then serving the Denver metro area, yet were not necessary to protect the public safety at the time. Decision No. C14-0638 at ¶3, issued June 13, 2014 (footnote omitted).”

5. By Decision No. C14-0456 issued May 1, 2014, the Commission adopted the Rule 6007(a)(I), as currently in effect, on an emergency basis. The Commission invited comment regarding several issues in order to determine the minimum financial responsibility requirements on a permanent basis.

6. Several comments have been received to date.

7. Comments were filed by Cowen Enterprises, Youssef B Marrakchi, and Presidential Worldwide Transportation (Presidential) supporting adoption of \$1,500,000 for a financial responsibility requirement. The comments appear to address luxury limousine service and higher amounts are encouraged based upon applicable federal standards and avoiding disparity between interstate and intrastate transportation.

8. Presidential specifically contends that requirements applicable to luxury limousine service should be separated from common carriers and raised to \$1.5 million. In support, it is noted that prior \$1 million standard was adopted in 1985. Over the past 27 years, it is submitted that medical expenses have more than tripled. Illustratively, an ambulance ride in the Denver metro area in 1985 was approx. \$1,200. The same ride today the same ride would be

over \$3,800.¹ Cowen Enterprises also address how long it has been since the \$1 million standard was adopted.

9. Front Range Ski Bus (FRSB) filed comments addressing operation of a 30-passenger bus. Although finding the proposed increase applicable to this vehicle reasonable, concern is raised as to the effect on rates and the resulting barrier to new competition due to increased operating costs. Increasing financial responsibility from \$1,500,000 to \$5,000,000 more than doubled FRSB's insurance cost, now its largest single expense. FRSB's primary market is Denver to Loveland and Copper Mountain Ski Areas. The average expected cost of round-trip transportation will increase from \$20 to a range of \$35 to \$39. It is anticipated this increase will result in a loss of passengers.

10. Remaining comments were filed by Freedom Cabs Inc., Union Taxi Cooperative, and Mile High Cab, Inc. regarding taxi service. Providers of taxi service support, or do not appear to oppose, reinstatement of requirements under prior rule.

11. The comments include information comparing Colorado requirements to other states. Staff of the Commission has compiled additional information regarding insurance requirements for passenger carriers, although still not comprehensive. See attached Attachment B. Reported requirements are included for several states, airports, and local jurisdictions.

12. An appropriate balance must be struck in establishing minimum requirements. Without limitation, one must be mindful of the potential impact to the general public, in addition to vehicle occupants. Size and capacity of vehicle have historically driven distinctions

¹ Presidential also addresses matters outside the intended scope of the NOPR that will not be addressed in detail.

in requirements. The Commission must also be mindful of changes over time affecting the industry as well as past experience.

13. Insurance costs will disparately impact transportation providers. Insurance rates vary by company. Risk screenings affect rates based upon considerations such as the value and number of vehicles as well as drivers' background and experience. Thus, one must be mindful that financial responsibility requirements are only not the only factor in determining cost.

14. Ultimately, the resulting financial cost will be borne by all carriers and some or all of that cost will be passed on to passengers in rates. Requiring excessive insurance coverage results in higher operating costs not justifying the marginal benefits gained. If passenger rates rise too much or carriers are unable to meet requirements, transportation providers will fail. As a result, the public will suffer due to the lack of available services. Thus, the benefits of insuring the possibility of something extremely unlikely enough to occur may not exceed the certain costs of obtaining such insurance, harming the public interest.

15. It is noteworthy that, as with other insurance, required coverage provides minimum coverage. Carriers may obtain greater coverage. Ultimately, liability is not determined by the amount of coverage.

16. After only preliminary consideration of the Commission's notice and the comments filed, the proposed rules attached hereto as Attachment A are being provided. This version as well as comments provided will be considered at the hearing scheduled in this matter.

17. The undersigned requests commenters to include proposed or alternate rule language, as necessary, with their comments and encourages the filing of written comments on or before August 8, 2014.

18. Finally, comments to date have applied §387.33 of the Federal Motor Carrier Safety Administration Safety Act for determining minimal levels of financial responsibility. Section 49 CFR 387.27 (b)(2) creates an exception to the public liability requirements for: “A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points” Section 49 CFR 387.27 (b)(2).

19. Not concluding that existing comment is inadequate, additional comment is invited regarding the following:

- a) Assuming no other exception in § 49 CFR 387.27(b) applies, are federal minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate commerce if service is not provided in a taxicab?
- b) Rule 6201 defines:
 - (q) "Taxicab" means a motor vehicle with a seating capacity of eight or less, including the driver, operated in taxicab service.
 - (r) “Taxicab service” means passenger transportation by a common carrier on a call-and-demand basis in a taxicab, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.

Assuming no other exception in § 49 CFR 387.27(b) applies, are federal minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate commerce providing taxicab service and having a seating capacity of 7 or 8 passengers and not operated on a regular route or between specified points?

- c) Which motor carriers exclusively provide transportation of passengers in intrastate commerce?
- d) How many taxicabs having a seating capacity of seven or eight passengers are operated and what percentage of the respective fleet that number represents?
- e) In addition to seeking comment as to required coverage amounts, comment is specifically invited as to whether the type of transportation service should affect required coverage amount as well as the median and mode of passengers transported for each type of service.

II. ORDER

A. It Is Ordered That:

1. The proposed Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 that will be considered at hearing are set forth in Attachment A.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director