

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0359TR

IN THE MATTER OF THE PROPOSED AMENDMENTS TO AGE OF MOTOR VEHICLE
RULES, 4 CODE OF COLORADO REGULATIONS 723-6.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: July 30, 2021

Adopted Date: July 14, 2021

TABLE OF CONTENTS

I. BY THE COMMISSION	2
A. Statement	2
B. Background.....	3
C. Discussion of Proposed Amendments to Age of Motor Vehicle Rules	4
1. Rule 6003(b) and (c). Petitions	5
2. Rule 6018(e). Maximum Civil Penalties, without Statutory Enhancement	5
3. Rule 6020(m). Report by Commission Staff.....	5
4. Rule 6117(b) through (g). Age and Condition of Passenger Carrying Motor Vehicles	5
5. Rule 6302(e) and (f). Application and Permit.....	6
6. Rule 6305(a)(V) and (c). Luxury Limousine	6
D. Questions to Stakeholders	7
E. Conclusion.....	7
II. ORDER.....	8
A. The Commission Orders That:	8
B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING July 14, 2021	10

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

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to Rules 6003 (Petitions), 6018 (Maximum Civil Penalties, without Statutory Enhancement), 6020 (Report by Commission Staff), 6117 (Age and Condition of Passenger Carrying Motor Vehicles), 6302 (Application and Permit), and 6305 (Luxury Limousine) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6. The Commission has statutory authority to adopt these rules under §§ 40-2-108 and 40-10.1-106, C.R.S.

2. The Commission issues this NOPR to reexamine and consider revisions to its rules regarding the age of the motor vehicles allowed to be used by regulated motor carriers in the State of Colorado. The proposed amendments to the above listed rules for consideration in this rulemaking are available for review as Attachment A (redline) and Attachment B (clean) to this Decision through the Commission's Electronic Filings website (Proceeding No. 21R-0359TR) at <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

3. The proposed amendments reflect the Commission's intent to consider adjusting the way that it addresses and balances the issue of aging motor vehicles in carrier fleets and the need to ensure the continued safety of the traveling public. Through this NOPR, the Commission proposes to eliminate the bright-line 15-year age limit established in the current rules, and the attendant petition process for waiving this fixed age limit, and instead focus on requiring periodic safety inspections of all motor vehicles. The Commission proposes that this modified approach will render the Commission's consideration of the safety of older motor vehicles more objective and uniform across all regulated motor carriers. This approach will

eliminate the need for rule waivers, based on the specific circumstances of individual motor carriers, and instead rely upon the uniform requirement that all motor vehicles must continue to meet the rigorous periodic safety inspection requirements, with increased frequency as they age or increase in mileage, as set forth in Commission rules.

4. The Commission welcomes comments from interested rulemaking participants, regarding the amendments proposed in this NOPR. To the extent a participant disagrees with the proposed amendments, they are encouraged to submit comments that include any suggested revisions to the rule language in legislative (*i.e.*, strikeout) format.

B. Background

5. As noted in prior Commission Proceeding No. 94R-398CP, age of motor vehicle rules were adopted for taxicab carriers dating back to at least, 1994. Over the years, the motor vehicle age restrictions for taxicab carriers have ranged between 8 and 12 years. Similar age limitations were applied to luxury limousine vehicles, based on rules adopted in Proceeding No. 07R-327TR. Since they were first adopted, the motor vehicle age restrictions for luxury limousine carriers have ranged between 10 and 15 years. Based on Proceeding No. 11R-792TR, the Commission imposed age of motor vehicle rules on additional intrastate regulated carriers, limiting them to 12 years. Most recently, through Proceeding No. 17R-0796TR, the age restrictions for motor vehicles in applicable categories of services were increased. At the same time, an additional range of carriers not previously subject to any specific motor vehicle age restrictions, including those operating larger or wheelchair accessible motor vehicles, and those operating under various types of limited regulation permits (other than luxury limousines carriers), were limited to 15 years. Additional rules were also adopted regarding the procedures

for how to petition for a waiver from the maximum age of motor vehicle rules, as well as what information to include in such petitions.

6. While most of the passenger carrying transportation carriers regulated by the Commission have simply complied with the aforementioned age rules, some have elected to file petitions for a waiver of these provisions, rather than replace the noncompliant motor vehicles. Between 2014 and 2019, Commission records show approximately 1,651 age of motor vehicle petitions have been filed. In response to these filings, the Commission has denied less than 8 percent.

7. The Commission is concerned that the review of individual carriers' petitions for waiver of the age of motor vehicle rules can require more of a subjective determination, based on individual circumstances presented in the petition, rather than an objective safety analysis of the subject motor vehicle, based on a clear set of safety criteria. To address this concern, the proposed rule changes shift away from the more subjective petition for rule waiver process and instead focus on ensuring continued safety to the traveling public by requiring motor vehicles to pass rigorous periodic safety inspections more regularly, as the vehicles age or increase in mileage. The proposed rules establish appropriate standards for more frequent inspections, based on both age of motor vehicle and mileage.

C. Discussion of Proposed Amendments to Age of Motor Vehicle Rules

8. The proposed amendments to the Age of Motor Vehicle Rules are shown in Attachment A (redline) and Attachment B (clean) to this Decision. These changes reflect the rule changes discussed below.

1. Rule 6003(b) and (c). Petitions

9. This rule provides procedures for when a petition for rule waiver is filed. The proposed amendment removes references to Rules 6117 and 6305 in part (b) of the existing rule. It is also proposed that part (c) of the existing rule be eliminated, in its entirety, as it will no longer be relevant.

2. Rule 6018(e). Maximum Civil Penalties, without Statutory Enhancement

10. It is proposed that the civil penalty reference relating to the age of motor vehicle be removed and replaced with a civil penalty reference relating to the condition of motor vehicle.

3. Rule 6020(m). Report by Commission Staff

11. It is proposed that existing Rule 6020(m) be eliminated in its entirety, to remove the requirement for Commission Transportation Staff to include the number of petitions for age waivers for each year, and the previous four years, action taken by the Commission, and age of vehicles and mileage for petitions granted and denied. Remaining paragraphs should be renumbered, as appropriate.

4. Rule 6117(b) through (g). Age and Condition of Passenger Carrying Motor Vehicles

12. It is proposed that the reference to motor vehicle age in the header of these rules be removed. It is also proposed that paragraphs 6117(b) and (c) be eliminated, in their entirety, to remove maximum age of motor vehicle requirements. Existing paragraph 6117(d) is proposed to be altered to remove the current safety inspection requirements, based on the age and mileage of motor vehicles, and replaced with clearer safety inspection requirements, also based on a combination of age and mileage of motor vehicles. All motor vehicles are required to have periodic safety inspections, as set forth in Rules 6103 and 6104. More specifically, for motor

vehicles that are over eight model years old and/or have more than 150,000 miles, inspections will need to be completed every six months. For motor vehicles that are over 15 model years old and/or have more than 225,000 miles, inspections will need to be completed every three months. It is believed that these requirements will provide equity among all carrier types and reestablishes criteria for safety inspections, based on the principle that motor vehicles that are older or have higher mileage should be inspected more frequently. Existing paragraph (e) is proposed to be updated to calculate the age of motor vehicles for purposes of the revised rule.

13. It is proposed that existing paragraph (f), sections (I) and (II), be amended to include the word “significant”. As currently written, the rules for condition of motor vehicles leave no room for a motor vehicle, other than a motor vehicle in perfect condition, to be used for passenger transportation. This creates a situation where, for example, a motor vehicle that has a minor defect would not meet the minimum requirements. While the condition of motor vehicles providing passenger transportation services need to meet high standards, those standards should also be reasonable. Existing paragraph (g) is proposed to be eliminated, in its entirety, to remove requirements of what must be included in a petition for waiver of age of motor vehicle rules. Remaining paragraphs will be renumbered, as appropriate.

5. Rule 6302(e) and (f). Application and Permit

14. It is proposed that the reference to “Age and Condition” be removed in both paragraphs (e) and (f).

6. Rule 6305(a)(V) and (c). Luxury Limousine

15. It is proposed that the reference to age of motor vehicle in paragraph 6305(a)(V) be removed. It is also proposed that paragraph (c) be eliminated, in its entirety.

D. Questions to Stakeholders

16. With the proposed elimination of the age of motor vehicle rules, the provisioning of information that may help the Commission with data analysis of individual providers and specific industries is being removed, by way of filed petitions.

17. The Commission requests that stakeholders provide information on whether additional reporting or records should be requested and/or kept, regarding the age and mileage of motor vehicles, given the proposed absence of a specific waiver process for older motor vehicles.

18. The Commission also requests that stakeholders consider and recommend any specific considerations for seasonal fleets, which may not operate for six months of the year or more, to ensure that motor vehicles falling within the age and mileage ranges requiring more frequent inspections understand the expectations that the rules establish for them.

19. Finally, the Commission requests that stakeholders comment on the inclusion of the word “significant” in the motor vehicle condition rules or, in the alternative, provide proposed ideas and/or language that would allow Commission discretion regarding any motor vehicle condition defects.

E. Conclusion

20. Through this NOPR, the Commission solicits comments from interested persons and stakeholders on whether to adopt, revise, or not adopt, some or all the proposed amendments to the age of motor vehicles rules, as set forth in the attachments to this Decision and discussed above. The Commission encourages members of the transportation industry and other interested persons to participate in the rulemaking proceeding and to contribute to the rulemaking record, on which the Commission will base its decision on whether to adopt rule amendments.

21. The Commission refers this matter to an Administrative Law Judge (ALJ) for the issuance of a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking, including attachments, shall be filed with the Colorado Secretary of State for publication in the August 10, 2021 edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, as described in this Decision and its attachments. The Commission prefers and encourages interested persons to file comments through the Commission's Electronic Filings website (Proceeding No. 21R-0359TR) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0359TR.

3. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

4. The rulemaking hearing on the proposed rules and related matters shall be held before an ALJ, as follows:

DATE September 20, 2021

TIME: 9:00 a.m. until not later than 5:00 p.m.

PLACE: By video conference using Zoom at a link to be provided to parties by email prior to the scheduled hearing date.

5. The ALJ will set procedures for a remote hearing, if necessary, by a separate decision issued in this Proceeding.

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

7. Written comments may be filed at any time in this Proceeding. Initial written comments are requested to be filed no later than August 27, 2021, and any comments responsive to the initial comments are requested to be filed no later than September 10, 2021, so that the initial comments and responsive comments may be considered at the hearing.

8. At the time set for hearing, interested persons may submit written comments and may present these orally, unless the ALJ deems oral comments unnecessary. The Commission will consider all comments, whether written or oral.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 14, 2021**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners