



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Room 029 State Capitol, Denver, CO 80203-1784

Phone: (303) 866-3521 • Fax: (303) 866-3855

lcs.ga@state.co.us • leg.colorado.gov/lcs

Memorandum

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TO: Interested Persons

FROM: Libby Taylor, Constituent Services Analyst, (303) 866-3687
Erin Reynolds, Senior Fiscal Analyst, (303) 866-4146

SUBJECT: State Regulation of Passenger Carrier Services, Taxis, and Transportation Network Companies

Summary

This memorandum summarizes the Public Utilities Commission's (PUC's) authority to regulate passenger carrier services, taxis, and transportation network companies (TNCs). Specifically, this memorandum discusses PUC regulations concerning common carriers, contract carriers, limited regulation carriers, and TNCs. It also provides an overview of the legislative changes to large-market taxicab regulation that passed during the 2018 legislative session and take effect for taxicabs operating in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld counties on January 1, 2019.

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Overview of Passenger Carrier Service Regulation

The PUC in the Department of Regulatory Agencies regulates passenger carrier services, such as small- and large-market taxicab services, shuttles, charter buses, and TNCs. The PUC has the authority to promulgate rules on all motor carrier types but TNCs, and may take enforcement actions on all carrier types including TNCs. Additionally, each type of service is subject to safety, insurance, and operational standard oversight by the PUC. As part of this oversight, the PUC requires vehicle inspections and insurance liability certificates before allowing carriers to operate. The PUC has adopted many of the federal safety regulations as prescribed by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration in the areas of driver qualifications, vehicle identification, vehicle requirements, hours of service, and recordkeeping.

Regulations vary depending on the category of carrier, as summarized below:

- *Common carriers* provide a means of transportation or related service in a vehicle that indiscriminately carries passengers for compensation, with the exception of large-market taxicab services.
- *Contract carriers* provide a means of passenger transportation over any public highway in the state with a special contract (i.e., hotel shuttles).
- *Limited regulation carriers* include charter scenic buses, luxury limousines, children’s activity buses, fire-crew transport, Medicaid client transport, off-road scenic charters, and, effective January 1, 2019, large-market taxicab services.
- *Transportation network companies (TNCs)* provide ride-hailing services that rely upon a mobile application to pair drivers with riders. Uber, Lyft, and HopSkipDrive are currently permitted to operate as TNCs in Colorado.

Levels of PUC oversight. Common and contract carriers are subject to the regulation of rates, routes, services, and market entry, in addition to insurance and safety requirements. Limited regulation carriers and TNCs are not subject to regulation of their rates, routes, services, or market entry. Table 1 shows the level of PUC oversight for each type of carrier.

Table 1
Level of PUC Oversight by Carrier Type

Carrier Type	Safety	Insurance	Operational Standards	Rates	Routes	Services	Market Entry
Common	✓	✓	✓	✓	✓	✓	✓
Contract	✓	✓	✓	✓	✓	✓	✓
Limited Regulation	✓	✓	✓				
TNCs	✓	✓	✓				

Source: Public Utilities Commission.

Common Carrier Regulation

Colorado law defines a common carrier as a person who provides a means of transportation or a related service in a vehicle that indiscriminately carries passengers for compensation. This category includes small-market taxicab services, scheduled services, shuttles, charters, and sightseeing services. Any person, partnership, or corporation seeking permanent authority to operate as a common carrier, or wishing to extend its authority, must file an application with the PUC. As public utilities, these carriers are subject to the broadest regulation, including but not limited to: market entry; rates; quality of service; insurance; vehicle safety; driver safety; and recordkeeping.

Service standards. According to the PUC's rules, a common carrier must:

- operate under approved tariffs and, if applicable, time schedules;
- operate only the type of service authorized in its Certificate of Public Convenience and Necessity (CPCN);
- operate only within the metes and bounds of the territory included in the CPCN;
- file an annual report with the PUC;

- accept MasterCard and Visa credit cards;
- operate vehicles no older than 12 model years, in good physical condition, with a clean interior, and no major tears, cracks, or stains on the upholstery, headliner, or carpeting;
- transport any passenger unless the passenger is acting in an unlawful, disorderly, or endangering manner; and
- behave courteously.

PUC processing of applications. Many steps are involved in processing common carrier and contract carrier applications. Each application must be reviewed with the applicant to ensure the applicant is applying for the appropriate service. After receiving an application, the PUC is required to provide incumbent carriers with notice of the application at which point incumbent carriers have the opportunity to oppose the application by filing an intervention. If no interventions are filed, the uncontested applications are administratively dealt with by the PUC in its weekly meeting. At the weekly meeting, a decision is rendered, which normally grants the applicant authority. However, the authority is not issued until the applicant complies with requirements within the written decision. Compliance requirements include: insurance, stamps, and tariff and time schedules, where applicable.

If an existing common carrier intervenes in the application, the contested application is resolved through a fully adjudicated proceeding. The PUC must assign an administrative law judge to hear and decide the case. A court reporter is assigned to record the hearing, and staff experts may participate in a hearing to ensure a complete record. When staff participate, they are represented by counsel.

A judge's decision may be appealed to the PUC. In these instances, the PUC must review the hearing record, with advisory staff and counsel assigned to assist the PUC in making its decision on the review. Upon completion of the review, a decision is written and issued. PUC decisions may be appealed to District Court and ultimately the Colorado Supreme Court. When a decision is appealed, counsel must represent the PUC before the court. A recommended decision may become a PUC decision.

Certificate of Public Convenience and Necessity. Following a successful application to provide common carrier service, the PUC issues a CPCN, which is considered a property right. These certificates obligate their holders to indiscriminately serve the public need. The authority issued by the PUC specifies the type of service to be provided and the geographic area to be covered.

Contract Carrier Regulation

Colorado law defines a contract carrier as a person who provides a means of passenger transportation over any public highway in this state with a special contract. An example of a contract carrier is a shuttle that has a contract with a hotel to transport its guests to and from the airport under which the hotel pays the shuttle for the service. The PUC issues contract carriers a permit to perform services for a customer that are agreed to in advance. Contract carriers may not charge less than a common carrier would charge for the same service and cannot serve the general public.

PUC contract carrier regulation is more limited in practice, but still includes: rates, quality of service, insurance, vehicle safety, driver safety, and recordkeeping. To enter the contract carrier market, the applicant must demonstrate that the proposed contracted service is unique and does not impair the efficient public service of an incumbent common carrier. Notice requirements are the same as those of common carrier applications. Uncontested applications are administratively dealt with by the PUC in its weekly meeting and contested applications are resolved through a fully adjudicated proceeding. If granted authority, proof of insurance and a tariff must be filed before the permit is issued.

Limited Regulation Carrier Regulation

Colorado law governs the PUC's role in the regulation of limited regulation carriers, which includes children's activity buses, charter scenic buses, luxury limousines, fire-crew transport, Medicaid client transport, off-road charter services, and, effective January 1, 2019, large-market taxicab services (which are described further in the section below). All limited regulation carriers must obtain a permit from the PUC before they can operate. Through a permitting process that requires a vehicle inspection by a qualified mechanic, the PUC provides safety, insurance, and operational oversight, but does not regulate market entry or rates. If a limited regulation carrier violates a rule or the terms of its permit, the PUC may take civil action against the carrier.

Taxicab-Specific Regulation

Under [House Bill 18-1320](#), large-market taxicab services are distinguished from other taxicab services as a new category of limited regulation motor carriers, effective January 1, 2019.

Large-market taxicab services. The newly established large-market taxicab services provide indiscriminate passenger transportation for compensation in a taxicab on a call-and-demand basis within and between points in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld counties, and between those points and all points in Colorado. The first passenger has exclusive use of the taxicab unless the passenger agrees to multiple loadings. While traditional taxicab services are common carriers and, as such, are considered public utilities, large-market taxicab services are no longer considered public utilities and are not subject to market entry standards or traditional rate regulation. Large-market taxicab services may change their rates freely, but are required to keep the current rates on file with the PUC, and the rates must be under approved caps set by the PUC.

As large-market taxicab service providers, these companies must:

- obtain a permit on or after January 1, 2019;
- be insured;
- have all vehicles inspected by a qualified mechanic;
- ensure drivers submit to a fingerprint background check; and
- keep rates on file with the PUC.

In order to be eligible for the permit, a large-market taxicab service must have at least 25 vehicles in its fleet at all times (at least 10 vehicles for El Paso, Larimer, and Weld counties).

The PUC must determine by rule the maximum rate that may be charged for large-market taxicab services in each county. Permitted large-market taxicab services must file a rate schedule with the PUC, with no limit to the number or frequency of updated rate schedules. Unless a rate schedule exceeds the maximum rate established by the PUC, the PUC may not reject a rate schedule.

Small-market taxicab services. The remaining class of taxicabs fall under common carrier regulation. Small-market taxicab services are subject to several additional regulations that do not apply to other types of common carriers, including rules regarding:

- the route they must take to the passenger's destination;
- multiple-loading of passengers;
- how charges and rates are posted within the vehicle;
- hours of operation;
- the area in which they can operate; and
- how they keep records.

PUC rules have additional requirements for taxicab carriers depending on where they operate. Taxicab carriers that operate within or between counties with a population density of 40 or more people per square mile are subject to two additional regulations. Based on the 2010 census, these counties currently include Mesa, Pueblo, Summit, and Teller counties. According to population forecasts by the Department of Local Affairs, this list may also include Eagle, Gilpin, and La Plata Counties after the 2020 Census. These taxicab carriers must:

- provide service 24 hours per day, every day of the year; and
- use taxicabs no older than ten model years.

Market entry for small-market taxicab services. Applicants wishing to enter the small-market taxicab service industry are governed by the "regulated monopoly" doctrine. Under the regulated monopoly doctrine, service is authorized based upon unmet public demand. Incumbent providers are entitled to protection from new competitors so long as they stand ready, willing, and able to adequately serve public demand. A new entrant must prove a public need and that existing services are substantially inadequate before market entry is granted. An exception to this policy exists for applications to provide taxi service in counties outside the Denver metro area with populations greater than 70,000 (currently Mesa County). These jurisdictions are governed by the "regulated competition" doctrine, whereby applicants must show operational, managerial, and financial fitness; an unmet public need for the proposed service; and that the proposed service is not detrimental to the incumbent carrier. If a party opposing the application proves that the additional authority will result in destructive competition, the application must be denied.

Transportation Network Company Regulation

In June 2014, with the passage of [Senate Bill 14-125](#), Colorado became the first state to enact a law regulating on-demand TNCs. Unlike the taxicab industry, TNCs rely solely on a digital network service to connect riders to drivers. Drivers use their personal cars for fares and connect with passengers through a mobile application. Uber, Lyft, and HopSkipDrive currently have permits to operate TNCs in Colorado.

Transportation network company requirements. TNCs must be permitted by the PUC and meet certain requirements. These requirements include:

- filing a certificate of insurance with the PUC for at least \$1 million in primary liability coverage per occurrence for incidents occurring while a network driver has a rider;
- conducting a safety inspection of a prospective driver's vehicle before it is approved for use and at least once a year thereafter; and
- overseeing drivers as outlined in the subsection below.

Under statute, the PUC is permitted to promulgate rules concerning administration, fees, safety requirements, and financial responsibility requirements. Final PUC rules that became effective January 30, 2016, address, among other areas: safety; civil penalties; the issuance, extension, transfer, and revocation of authority to operate as a motor carrier; insurance and permit requirements; tariff and time schedule requirements; the identification, condition, and leasing of motor vehicles; recordkeeping; and service standards.

The PUC may take an enforcement action against a TNC that fails to comply with a PUC order, decision, or rule. The TNC is subject to a penalty of up to \$11,000 per offense depending on the violation. The PUC may not assess a penalty against a TNC driver.

TNC oversight of drivers. TNCs must obtain a criminal history record check for each driver, but are not required to do a fingerprint-based criminal background check. TNCs must also review a prospective driver's driving history report; and individuals with certain convictions and/or moving violations are barred from working for TNCs. TNCs must maintain on the driver's behalf or require drivers to maintain a personal automotive liability insurance policy that recognizes the driver as a TNC driver and provides coverage while the driver is logged onto the TNC network.

A driver must be 21 years of age and may not drive for more than 12 consecutive hours. A TNC must require its drivers to display an exterior marking indicating that the vehicle is for hire; however, the driver may not provide services unless the TNC has matched the driver to a rider — in other words, hailing is not permitted. When a rider submits a ride request, the mobile application notifies nearby drivers and matches rider to driver.

TNC drivers must provide service regardless of race, ethnicity, gender, sexual orientation, gender identity, or disability. A rider's mobility equipment must be stored in the vehicle for the duration of the ride unless no storage is available. In that instance, the driver must refer the rider to another driver with a vehicle that can accommodate the mobility equipment. A driver may not refuse to transport a passenger, except when the passenger is acting in an unlawful or disorderly manner; the passenger is

unable to care for himself or herself and is not in the charge of a responsible companion; or the driver has already committed to providing a ride to another passenger. Violations of these requirements are subject to a maximum of \$550 in civil penalties.

Payment. TNCs do not accept cash; instead, payments are processed through a company's mobile application. TNCs are permitted to set their own rates and provide potential riders with an upfront fare estimate. Fares are calculated automatically by the application and charged to the passenger's credit card, debit card, or other mobile payment. The receipt is emailed to the passenger and includes ride details.