

Explanations - Why the PUC regulates the way it does:

A **motor carrier** is defined in statute and means any person owning, operating or managing a motor vehicle that provides transportation in intrastate commerce pursuant to Article 10.1 of Title 40. It does not include Transportation Network Companies (TNCs) or TNC drivers. It does include common carriers, contract carriers, limited regulation carriers, towing carriers and household goods movers. [40-10.1-101(10)]

Common carriers are a subset of motor carriers. A common carrier is defined in statute and is a person directly or indirectly affording a means of transportation by motor vehicle by accepting and carrying passengers for compensation. Examples include taxicab service, shuttle service, sightseeing service, and scheduled service. It does not include TNCs, luxury limousines, contract carriers, towing carriers, or movers. [40-1-102(3)]

Common carriers and contract carriers are declared to be **public utilities** by statute. [40-10.1-103(1)]

Limited regulation carriers, towing carriers, household goods movers, and TNCs are not public utilities but they are **declared to be affected with the public interest** and are subject to varying levels of regulation by the PUC. [40-10.1-103(2-3)]

Regulation – Passenger Transportation:

Transportation Network Companies (TNCs): A TNC is an entity that uses a digital network to connect riders to drivers for the purpose of providing transportation. It does not provide taxi service. It does not own or control the personal vehicles used by TNC drivers. [40-10.1-602(3)] The PUC does not have rate, or operational control over a TNC but a TNC is subject to some PUC control because it is declared to be affected with the public interest. The bill gave the Commission the authority to promulgate rules concerning the filing of proof of insurance, administrative matters, and safety requirements.

Common Carriers: These common carriers (taxicab service, shuttle service, sightseeing service, and scheduled service) apply for a Certificate of Public Convenience and Necessity, (CPCN). In addition to safety and insurance regulations, these carriers are subject to economic regulation. “Economic regulation” refers to rules that limit who can enter an industry (entry controls) and what prices they may charge (price controls). An applicant must obtain an authority from the PUC. The CPCN gives the carrier a specific geographic area in which to provide a specific type of service, sometimes with specific restrictions. Common Carriers are obliged to serve the public indiscriminately. It is the provider of last resort. Applications are required to be noticed and existing common carriers may intervene as a statutory right. Again, a common carrier is a public utility. [40-10.1-101(4) *common carrier definition, 40-10.1-103(1) is a public utility and subject to control of commission, 40-10.1-106 commission prescribe rates and ensure public safety, 40-10.1-201 CPCN required, 40-10.1-203 entry standards and standing to protest, 40-6-108(2) notice of applications and ability to intervene*]

Contract Carriers are also subject to safety, insurance and economic regulation. They provide service pursuant to a contract and cannot serve the general public. This could include Medicaid providers or other special contract carriers such as a motor carrier that has a contract with a hotel. These carriers apply for a Contract Carrier Permit. The applicant must demonstrate that the proposed contracted service is unique and does not impair the efficient public service of an incumbent common carrier. Like Common Carrier applications, the PUC is required to notice Contract Carrier applications as well. Again, like a common carrier, a contract carrier is a public utility. [40-10.1-101(6) *contract carrier definition, 40-10.1-103(1) is a public utility and subject to control of commission, 40-10.1-106 commission prescribe rates and ensure public safety, 40-10.1-202 permit required, 40-10.1-206(2) contract carrier shall not impair common carrier, 40-6-108(2) notice of applications and ability to intervene*]

Limited Regulation Carriers: For luxury limousine service, charter scenic buses, children activity buses, off-road scenic charter services and fire crew transport, the PUC regulates insurance and safety elements but does not regulate their entry into the market, rates, and routes. For example, if the make, model, and age of vehicles meet the requirements and the transportation services are provided on a prearranged charter basis, then the luxury limousine carrier may operate anywhere in Colorado and at whatever rates the market will bear. These carriers go through a permitting process with the Commission which includes submitting an application and showing proof of insurance as well as a vehicle inspection form for each vehicle to be operated. [40-10.1-301 definitions, 40-10.1-302 permit required]

Existing state law dictates the entry standards:

TNCs complete the application, pay the application fee, provide proof of insurance and they can enter the market. TNCs do not have market entry controls and incumbent carriers are not protected from new entrants.

Limited regulation carriers: (luxury limousine) applicant completes the application, buys a \$5 per vehicle annual stamp, and provides proof of insurance and is good to go. It doesn't even have to pay an application fee. These limited regulation carriers do not have market entry controls and incumbent carriers are not protected from new entrants.

Three market entry standards currently apply to **common carriers**, they are: regulated competition, modified regulated competition, and regulated monopoly. The standard depends upon the territory and type of service sought. If authority is granted, proof of insurance and a tariff must be filed before the certificate is issued.

- **Regulated competition** doctrine governs taxi service in counties outside of the Denver metro area and El Paso County that have a population of greater than 70,000. Currently, this standard applies in the counties of Larimer, Weld, Pueblo, and Mesa. Under regulated competition, authority is granted upon the applicant showing operational, managerial, and financial fitness; unmet public need for transportation; and that the proposed service is not detrimental to the incumbent carrier. [40-10.1-203(2)(b(I))]
- Another form of regulated competition doctrine exist which is referred as **Modified regulated competition** and it governs taxi service in the Denver metro area (defined as counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson) and El Paso County. Under modified regulated competition the applicant has the initial burden of proof that it is operationally and financially fit to provide the proposed service. Should the applicant sustain its initial burden, there is then a rebuttable presumption of public need for the service. Any intervenor opposing the application will then bear the burden to prove that the public convenience and necessity does not require granting the application or that the issuance of the certificate would be detrimental to the public interest. [40-10.1-203(2)(b(II))]
- **Regulated monopoly** doctrine governs taxi service in the remaining 52 counties of the state, each with populations of less than 70,000. Additionally, this standard governs all other common carrier types of services statewide. Under regulated monopoly, 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 that existing services are substantially inadequate and that there is a public need for this service before being granted entry. This is the highest entry barrier under existing law. [40-10.1-203(2)(a)]

Regulation - Property Transportation:

States were preempted from regulating property transportation by the federal government [with regards to prices, routes, and service by the federal "ICC Termination Act of 1995".] However, the federal legislature did not apply the preemption to two types of property transportation - household goods moving and the non-consensual tows of motor vehicles. These were the two areas where the customer is the most "at risk" of price gouging by the motor carrier.

Towing Carriers are required to submit an application, pay an annual fee of \$150, pay the annual \$5 per vehicle stamp fee, show proof of insurance, and show proof of worker's comp (as required) to obtain a tow permit. The PUC does regulate the rates and circumstances for non-consensual tows of motor vehicles but not the rates for consensual tows. *These regulations became necessary because of numerous complaints to the PUC by motor vehicle owners regarding the exorbitant rates being charged by some towing carriers for non-consensual tows. [40-10.1-401-402 permit, 40-10.1-106(1)(b) circumstances and rates for nonconsensual tows]*

Household Goods Movers are required to submit an application, pay an annual fee of \$325, and proof of insurance. Some regulation was required because some movers were holding customers' household goods hostage demanding payments that were dramatically higher than were agreed to when the move started. *[40-10.1-501-507 permit]*

Rulemaking:

TNC temporary rules were adopted by the Commission by Decision C14-0773 in Proceeding 14R-0737TR on July 8th. These rules are effective for 210 days or until permanent rules are adopted. These rules clarified the application process, specified the fitness standards concerning a driver's medical fitness, clarified the length of time a driver must rest after 12 hours of offering service, and clarified vehicle safety inspection standards. The Commissioners felt that these were appropriate items to be addressed in the temporary rulemaking docket.

TNC permanent rules. A notice of Proposed Rulemaking (NOPR) will be issued by the Commission in early August. It will seek comments from all interested parties. Parties may file written comments and attend hearings.

Financial Responsibility (Insurance) emergency rules were adopted by the Commission by Decision C14-0456 in Proceeding 14R-0391TR on May 1, 2014. History – Docket 13R-0009TR was opened on January 11, 2013, and a NOPR issued on a multitude of motor carrier rules, financial responsibility being one of the proposed changes. The modified set of rules went into effect on February 14, 2014, over a year later. Shortly thereafter, Avi Limo, Colorado Cruisers, Union Taxi, Freedom Cabs, and Mile High Cab all filed requests to allow them to maintain lower limits due to the financial hardship the new higher limits placed on them. The three Commissioners instead adopted the lower limits for all carriers through the emergency rules with the understanding that a permanent rulemaking would follow.

Financial Responsibility (Insurance) permanent rules. A notice of Proposed Rulemaking (NOPR) was issued by the Commission in Proceeding 14R-0641TR by C14-00638 on June 13, 2014. Comments were due July 11, reply comments are due July 25, and a hearing is set for August 11, 2014.

Issues:

Medicaid – NEMT / NMT: Currently, Non-Medical Transportation (NMT) and Non-Emergent Medical Transportation (NEMT) services require a common carrier certificate or contract carrier permit. These types of applications go out on notice to existing carriers and existing Common Carriers have a legal right to intervene and frequently do so, thus requiring adjudicated hearings often taking months to process. Many applicants give up along the way.

Limited Regulation Carriers: Do not pay any type of annual permit fee nor even a one-time application fee.

Common Carriers: Do not pay any type of annual permit fee and only a one-time application fee.

State statute 40-7-113(g) currently refers to specific edition (October 2010) of C.F.R that PUC may adopt versus allowing the PUC to adopt a more current version of the federal safety rules.

Financial Responsibility limits:

These were the Financial Responsibility limits prior to February 14, 2014 and are the current limits as of May 1, 2014 after emergency rules were adopted by the Commission in Decision C14-0456.

Type of Carrier	Vehicle Seating Capacity or GVWR	Minimum Level
Common and Contract Carriers	8 or less	\$ 500,000
	9 through 15	\$1,000,000
	16 through 32	\$1,500,000
	33 or more	\$5,000,000
Limited Regulation Carriers	15 or less	\$1,000,000
	16 through 32	\$1,500,000
	33 or more	\$5,000,000 or, for public entities, the maximum amount per § 24-10-114(1), C.R.S.
Movers	10,000 pounds or more GVWR	\$ 750,000
	Less than 10,000 pounds GVWR	\$ 300,000
Towing Carriers	Any GVWR	\$ 750,000

These were the limits that became effective February 14, 2014 and remained in effect until the Commission adopted the emergency rules returning the limits back to the amounts prior to February 14, 2014..

Type of Carrier	Vehicle Seating Capacity or GVWR	Minimum Level
Common and Contract Carriers and Limited Regulation Carriers	8 or less	\$1,500,000
	9 through 15	\$1,500,000
	16 or more	\$5,000,000
Movers	10,000 pounds or more GVWR	\$ 750,000
	Less than 10,000 pounds GVWR	\$ 300,000
Towing Carriers	Any GVWR	\$ 750,000

Summary of PUC Passenger Transportation Regulation:

Transportation Service	Public Utility	Affected with the Public Interest	Market Entry Control	Rate Regulation	Insurance	Safety [Driver and Vehicle]	Fees [Original Application]	Fees [Annual]
Common Carriers (Taxi, Shuttle, Sightseeing, Scheduled Service)	Yes	Yes	Yes Monopoly, Regulated Competition, Modified Regulated Competition	Yes Tariffs filed with PUC – just and reasonable rates	Yes	Yes	Yes \$35 app fee, \$800 Denver area and El Paso county taxi app fee	Yes \$5 annual vehicle fee
Contract Carriers	Yes	Yes	Yes Service must be unique and cannot impair incumbent common carrier	Yes Tariffs filed with PUC	Yes	Yes	Yes \$35 app fee	Yes \$5 annual vehicle fee
Limited Regulation Carriers (Luxury limousines, Off-road scenic charters, Children’s activity buses)	No	Yes	No Over-the-counter registration	No May charge whatever the market will bear	Yes	Yes	No	Yes \$5 annual vehicle fee
Transportation Network Companies (TNC)	No	Yes	No Over-the-counter registration	No May charge whatever the market will bear	Yes	Yes Limited	Yes \$111,250 app fee	Yes \$111,250 annual app fee (PUC may adjust in future)