

DEPARTMENT OF TRANSPORTATION

Nonattainment Area Air Pollution Mitigation Enterprise

REGULATION 1 – NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE FEES

2 CCR 608-1

1.00 Statement of Basis and Purpose and Authority

The Nonattainment Area Air Pollution Mitigation Enterprise is authorized by C.R.S. § 43-4-1303(6)(h) to promulgate rules setting the amounts of the Air Pollution Mitigation Per Ride Fee and the Air Pollution Mitigation Retail Delivery Fee at or below maximum levels contained in C.R.S. § 43-4-1303(7) and (8).

SB21-260 Sustainability of the Transportation System created new sources of dedicated funding and new state enterprises intended to preserve, improve, and expand existing transportation infrastructure and mitigate environmental and health impacts of transportation system use. To accomplish these goals, the legislation established a Nonattainment Area Air Pollution Mitigation Enterprise (the Enterprise), an enterprise and government owned business within the Colorado Department of Transportation (CDOT) for the purpose of collecting fee revenue to mitigate the impacts of increased air pollution that results from increased motor vehicle use for Retail Deliveries and Prearranged Rides by Transportation Network Companies. The Enterprise is a Type 1 transfer agency and as such the Legislature specifically vested the Enterprise with the authority to promulgate rules to set the amounts of fees called for in the legislation in addition to other activities. The Enterprise is required to impose the Air Pollution Mitigation Per Ride Fee and the Air Pollution Mitigation Retail Delivery Fee. Per statute, for the Air Pollution Mitigation Retail Delivery Fee, the Enterprise can set a maximum fee of seven-tenths of one cent per Retail Delivery. The board can set a maximum fee of \$0.1125 for any Prearranged Ride in a Zero Emissions Motor Vehicle (ZEV) or that is a Carshare Ride and \$0.225 for any other Prearranged Ride. The fees delineated in the rule mirror the fee amounts set in C.R.S. § 43-4-1303.

The Enterprise shall notify the Department of Revenue (DOR) of the amount of the Air Pollution Mitigation Per Ride Fee to be collected for rides requested and accepted during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins. The Enterprise shall also notify DOR of the amount of the Air Pollution Mitigation Retail Delivery Fee to be collected for Retail Deliveries of Tangible Personal Property purchased during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins. CDOT will work with DOR to determine the maximum fee amounts that may be imposed, which shall be the maximum amounts for the prior state fiscal year adjusted for inflation.

2.00 Definitions

- 2.1 “Carshare Ride” means a Prearranged Ride for which the Rider agrees, at the time the Rider requests the ride through a digital network, to be transported with another Rider who has separately requested a Prearranged Ride regardless of whether or not another Rider is actually transported with the Rider.
- 2.2 “Prearranged Ride” means a period of time that begins when a Driver accepts a requested ride through a digital network, continues while the Driver transports the Rider in a personal vehicle, and ends when the Rider departs from the personal vehicle, as defined by C.R.S. § 40-10.1-602.
- 2.3 “Retail Delivery” means a retail sale of Tangible Personal Property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location

in the state, which sale includes at least one item of Tangible Personal Property that is subject to taxation under Article 26 of Title 39. Each such retail sale is a single Retail Delivery regardless of the number of shipments necessary to deliver the items of Tangible Personal Property purchased.

- 2.4 “Rider” means a passenger in a personal vehicle for whom transport is provided, including (a) an individual who uses a Transportation Network Company’s online application or digital network to connect with a Driver to obtain services in the Driver’s vehicle for the individual and anyone in the individual’s party; or (b) anyone for whom another individual uses a Transportation Network Company’s online application or digital network to connect with a Driver to obtain services in the Driver’s vehicle, as defined in C.R.S. § 40-10.1-602.
- 2.5 “Tangible Personal Property” means all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged, except newspapers excluded by law. Tangible property, as defined in C.R.S. § 39-26-102(15) does not include:
- 2.5.1 Real property, such as land or buildings, nor Tangible Personal Property that loses its identity when it becomes an integral and inseparable part of the realty, and is removable only with substantial damage to the premises. Property severed from real estate becomes Tangible Personal Property.
- 2.5.2 Intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or memberships, or uncanceled United States postage or revenue stamps sold for postage or revenue purposes.
- 2.5.3 Water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.
- 2.5.4 Computer software that does not meet the criteria enumerated in C.R.S. §39-26-102(15)(c).
- 2.5.5 An advertising supplement included in a newspaper.
- 2.5.6. The method of delivery does not impact the definition of Tangible Personal Property as defined in C.R.S. §39-26-102(15).
- 2.6 “Transportation Network Company” means a corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect Riders to Drivers for the purpose of providing transportation. A Transportation Network Company does not provide taxi service, transportation service arranged through a transportation broker, ridesharing agreements as defined in C.R.S. § 39-22-509(1)(a)(II), or any transportation service over fixed routes at regular intervals. A Transportation Network Company is not deemed to own, control, operate, or manage the personal vehicles used by Transportation Network Company Drivers. A Transportation Network Company does not include a political subdivision or other entity exempted from federal income tax, as defined in C.R.S. § 40-10.1-602.
- 2.7 “Transportation Network Company Driver” or “Driver” means an individual who uses their personal vehicle to provide services for Riders matched through a Transportation Network Company’s digital network. A Driver need not be an employee of a Transportation Network Company.
- 2.8 “Zero Emissions Motor Vehicle” or “ZEV” means a battery electric motor vehicle or a hydrogen fuel cell motor vehicle.

3.00 Fees

- 3.1 Effective July 1, 2022, the Enterprise shall impose an Air Pollution Mitigation Retail Delivery Fee of seven-tenths of one cent per Retail Delivery of Tangible Personal Property.
- 3.2 Effective July 1, 2022, the Enterprise shall impose an Air Pollution Mitigation Per Ride Fee of eleven and one-quarter cents for each Prearranged Ride that is a Carshare Ride or for which the Transportation Network Company Driver transports the Rider in a ZEV.
- 3.3 Effective July 1, 2022, the Enterprise shall impose an Air Pollution Mitigation Per Ride Fee of twenty-two and one-half cents for every other Prearranged Ride not covered by Rule 3.2.
- 3.4 Starting in 2023, CDOT will work with the Department of Revenue (DOR) to determine the maximum fee amounts that may be imposed, which shall be the maximum amounts for the prior state fiscal year adjusted for inflation.
- 3.5 The Enterprise shall notify DOR of the amount of the Air Pollution Mitigation Per Ride Fee to be collected for rides requested and accepted during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins. The Enterprise shall also notify DOR of the amount of the Air Pollution Mitigation Retail Delivery Fee to be collected for Retail Deliveries of Tangible Personal Property purchased during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins.

4.00 Declaratory Orders

The Enterprise board may, at its discretion, entertain petitions for declaratory orders pursuant to § 24-4-105(11), C.R.S.