

Decision No. C07-0700

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 07R-255TR

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IN THE MATTER OF THE EMERGENCY RULES IMPLEMENTING FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS UNDER HOUSE BILLS 07-1065 AND 07-1249.

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**ORDER DENYING APPLICATION FOR REHEARING,  
REARGUMENT, OR RECONSIDERATION AND  
AMENDING EMERGENCY RULES**

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Mailed Date: August 17, 2007

Adopted Date: August 15, 2007

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of the Application for Clarification or Modification of Portions of Decision No. C07-0565, or Alternate Application for Rehearing, Reargument, or Reconsideration by Tazco, Inc., d/b/a Sunshine Taxi (Sunshine). We construe Sunshine's pleading as an Application for Rehearing, Reargument, or Reconsideration (RRR) pursuant to the provisions of § 40-6-114, C.R.S. In the Application for RRR, Sunshine requests reconsideration and modification of the emergency rules adopted in Decision No. C07-0565. Now being duly advised, we deny the Application for RRR. On our own motion, we amend the emergency rules adopted in Decision No. C07-0565 consistent with the discussion below.

2. The Rules adopted in Decision No. C07-0565 implement the provisions of House Bills 07-1065 (HB 1065) and 07-1249 which, in part, require fingerprint-based checks of the criminal history of drivers for certain transportation carriers. In particular, HB 1065 requires

drivers for Article 16 carriers<sup>1</sup> (motor vehicle carriers exempt from regulation as public utilities) and Article 10 taxi carriers<sup>2</sup> to submit their fingerprints to the Commission. The Commission, in turn, is required to submit those fingerprints to the Colorado Bureau of Investigation (CBI) to obtain a fingerprint-based criminal history record check of those drivers. In Decision C07-0565, we established specific requirements for drivers submitting their fingerprints to the Commission.

3. Sunshine raises a number of concerns relating to the rules. First, Sunshine requests clarification that, insofar as common carriers are concerned, the rules affect only taxi drivers and not drivers of other carriers. Sunshine points out that taxi carriers may hold certificates of public convenience and necessity authorizing other types of regulated services (*e.g.* charter service). The Application for RRR suggests modifications of the rules to clarify that drivers providing other regulated services are not required to submit their fingerprints to the Commission for criminal background checks.

4. To the extent Sunshine requests changes to the emergency rules, we deny the request as unnecessary. With respect to passenger transportation, HB 1065 and the implementing rules clearly apply only to drivers of exempt passenger carriers (*i.e.* Article 16 motor vehicle carriers) and common carriers with authority to provide taxicab service. *See* definitions of “driver” and “passenger carrier” in Rule 6016 (III) and (IV). Rule 6016(b) states that the rules’ requirements apply to “passenger carriers” (*i.e.* Article 16 carriers and taxi carriers) and drivers for “passenger carriers.”<sup>3</sup> There should be no doubt that the fingerprint requirements do not apply to drivers providing other regulated services. If Sunshine wishes to propose language

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<sup>1</sup> Sections 40-16-101 *et seq.*, C.R.S.

<sup>2</sup> Sections 40-10-101 *et seq.*, C.R.S.

<sup>3</sup> Rule 6016 additionally states that the new rules also apply to household goods movers and their principals; however, these provisions are not at issue in Sunshine’s Application for RRR.

seeking additional clarification for the rules, it should do so in the permanent rulemaking proceeding to implement HB 1065.

5. Sunshine also requests a safe-harbor provision that would permit a person to continue to drive if fingerprint results are not received from CBI within 60 days. At this time, we have no reason to believe that such a provision would be necessary. Therefore, we deny this request. Sunshine may raise this issue when the Commission considers permanent rules.<sup>4</sup>

6. Next, Sunshine objects to the Rules, especially Rules 6016(c)(V) and (VII), because they impose obligations on carriers themselves as opposed to the carriers' drivers. Sunshine suggests that HB 1065 does not authorize the Commission to require carriers themselves to do anything; therefore, these rules exceed the scope of the Commission's authority. We disagree.

7. Notably, §§ 40-10-105.5(5) and 40-16-104.5(5) in HB 1065 empower the Commission to "promulgate rules concerning the employment of, contracting with, and retention of an individual whose criminal history record is checked" pursuant to the new legislation. The specific rules challenged by Sunshine, in part, prohibit carriers from employing drivers who have not submitted fingerprints for a criminal history check as required by HB 1065, or whose criminal history bars such employment under the new legislation. The rules mandate that carriers, as a condition of employment, require drivers to submit their fingerprints to the Commission for a record check every two years. These and similar provisions are certainly

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<sup>4</sup> If Sunshine offers such a suggestion for the permanent rules, it should address the Commission's authority to adopt such a rule in light of the provisions of § 40-10-105.5(3) and 40-16-104.5(3) in HB 1065.

within the scope of HB 1065 and the rulemaking authority delegated to the Commission by HB 1065.<sup>5</sup>

8. Finally, Sunshine raises questions such as: what if a potential driver has not been in the country long enough for a fingerprint history to exist; are subsequent fingerprint checks necessary after the initial one, etc.? Such questions should be raised in the proceeding to adopt permanent rules. No need exist to modify the emergency rules to address such issues at this time.

9. For the foregoing reasons, we deny the Application for RRR. However, on our own motion we modify the rules as discussed here.

10. We delete the provisions in Rule 6016(c)(IV) and modify the provisions of Rules 6016(c)(III) and (d)(II). Those provisions directed drivers, applicants, and principals, as defined, to leave empty certain fields in the official fingerprint form submitted to the Commission, or to complete those fields only after receiving instructions from the Commission's Transportation Section. However, information now available from the Commission or on the Commission's website should permit the proper completion of those fields without special instructions from the Transportation Section.

11. We also adopt the provision in new Rule 6016(c)(VIII). Generally, the rule directs Commission Staff to make the initial determination regarding a driver's qualifications based upon the results of a fingerprint check, and authorizes Staff to request information from a driver to assist in that determination, if necessary. In addition, in the event Staff determines that the individual is disqualified from driving as a result of a fingerprint check, the rule permits

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<sup>5</sup> Moreover, the Commission has broad authority over taxi carriers under the general provisions of the Public Utilities Law.

drivers to petition the Commission to reverse Staff's determination. Staff's experience in administering the emergency rules indicates that these provisions are immediately necessary.

12. We adopt these revisions to the emergency rules in accordance with the provisions of §§ 40-2-108(2) and 24-4-103(6), C.R.S. We find that immediate adoption of these revisions is imperative and necessary to implement the requirements of HB 07-1065 and 07-1249. Therefore, compliance with the rulemaking requirements associated with permanent rules, pursuant to § 24-4-103, C.R.S., would be contrary to the public interest.

13. The rules attached to this order shall be effective immediately upon the mailed date of this order and shall remain in effect for 210 days from July 3, 2007,<sup>6</sup> or until permanent rules become effective, which period is less.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Application for Clarification or Modification of Portions of Decision No. C07-0565, or Alternate Application for Rehearing, Reargument, or Reconsideration by Tazco, Inc., d/b/a Sunshine Taxi is denied.

2. The revisions to the rules reflected in Attachment A to this decision are effective immediately on the Mailed Date of this decision, consistent with the above discussion.

3. This Order is effective upon its Mailed Date.

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<sup>6</sup> This is the date the emergency rules were initially adopted in Decision No. C07-0565.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
August 15, 2007.**

(S E A L)



ATTEST: A TRUE COPY

*Doug Dean*

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

RON BINZ

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CARL MILLER

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Commissioners

## **COLORADO DEPARTMENT OF REGULATORY AGENCIES**

### **Public Utilities Commission**

#### **4 CODE OF COLORADO REGULATIONS (CCR) 723-6**

##### **PART 6**

#### **RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE**

### **BASIS, PURPOSE, AND STATUTORY AUTHORITY**

The basis for and purpose of these rules is to describe the manner of regulation over persons providing transportation services by motor vehicle in or through the State of Colorado. These rules address a wide variety of subject areas including, but not limited to, safety; civil penalties; the issuance, extension, transfer, and revocation of authority to operate as a transportation carrier; insurance and registration requirements; tariff and time schedule requirements; the identification, condition, and leasing of motor vehicles; record keeping; and service standards. These rules cover an array of carriers, including motor vehicle carriers (common carriers), contract carriers by motor vehicle, interstate carriers, hazardous materials carriers, towing carriers, household goods movers, and motor vehicle carriers exempt from regulation as public utilities (charter or scenic buses, children's activity buses, luxury limousines, off-road scenic charters, and property carriers by motor vehicle).

The statutory authority for the promulgation of these rules can be found at §§ 40-2-108, 40-2-110.5(8), 40-2-116, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10-105(1), 40-10-105(2)(c), 40-10-107, 40-10-110, 40-10-111, 40-10-120(4), 40-11-103(1), 40-11-105, 40-11-106, 40-11-109, 40-11-115(4), 40-13-104(1), 40-13-105, 40-13-107, 40-13-110(1), 40-14-103(2)(c), 40-14-104(2), 40-14-108(1), 40-14-110, 40-16-105, 40-16-103.6(1), 40-16-104(1.5), 40-16-105(1), 42-4-1809(2)(a), and 42-4-2108(2)(a), 42-20-202(1)(a), C.R.S.

### **GENERAL PROVISIONS**

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[signifies omission of unaffected rule sections 6000 through 6015(I)]

#### **6016. Fingerprint-Based Criminal History Background Checks.**

(a) For purposes of this rule only:

- (I) "Applicant" means a household goods mover seeking to establish or renew a household goods mover registration.
- (II) "CBI" means the Colorado Bureau of Investigation.

- (III) "Driver" means a person who drives or wishes to drive for a passenger carrier, regardless of whether such person drives or wishes to drive as an employee or independent contractor.
  - (IV) "Passenger carrier" means an exempt passenger carrier or a common carrier with authority to provide taxicab service.
  - (V) "Principal" means a director, officer, owner, or general partner of a household goods mover.
  - (VI) "Record check" means a state and national fingerprint-based criminal history record check.
- (b) This rule applies to passenger carriers, drivers, household goods movers, and principals.
- (c) Drivers and passenger carriers.
- (I) Within ten days of contracting or being employed to drive for passenger carrier, a driver shall submit to the Commission a set of the driver's fingerprints and payment of the actual cost to conduct a record check.
  - (II) A driver shall re-submit to the Commission a set of the driver's fingerprints and payment of the actual cost to conduct a record check at least once every two years.
  - (III) The driver may obtain information regarding the actual cost of the record check from the Commission or its website. The driver shall submit his or her fingerprints on an official form (FD-258). The Commission will only accept official forms completed in accordance with ~~this rule and the instructions on the official form~~ available from the Commission or its website.
  - (IV) ~~A driver submitting an official fingerprint form (FD-258) to the Commission shall ensure that the following fields remain empty, for completion by Commission personnel: [Reserved].~~
    - ~~(A) — Employer and Address;~~
    - ~~(B) — Reason Fingerprinted;~~
    - ~~(C) — Your No. OCA; and~~
    - ~~(D) — ORI.~~
  - (V) A passenger carrier shall not permit a driver to drive for the passenger carrier if:
    - (A) the driver has not complied with this rule and § 40-16-104.5 or § 40-10-105.5, C.R.S., as applicable;
    - (B) the driver is disqualified and prohibited from driving under § 40-16-104.5(4) or § 40-10-105.5(4), C.R.S., as applicable; or



- (C) the passenger carrier becomes or reasonably should have become aware that the driver has been
  - (i) convicted, within the last ten years, of any offense listed in § 40-16-104.5(4)(a) or § 40-10-105.5(4)(a), C.R.S., as applicable; or
  - (ii) convicted, within the last two years, of any offense listed in § 40-16-104.5(4)(b) or § 40-10-105.5(4)(b), C.R.S., as applicable.
- (VI) Passenger carriers are authorized to contact the Commission regarding whether a particular driver has been disqualified and prohibited from driving.
- (VII) A passenger carrier shall, as a condition of continued contract or employment, require a driver to submit his or her fingerprints to the Commission for a record check:
  - (A) at least once every two years; and/or
  - (B) within ten days of becoming aware that the driver has been convicted of the offenses listed in subparagraphs (V)(C)(i) and (ii) of this rule.

(VIII) Driver qualification determinations.

- (A) Upon the Commission's receipt of a completed record check, Staff of the Commission (Staff) shall make the initial determination regarding the driver's qualification status under § 40-16-104.5(4) or § 40-10-105.5(4), C.R.S., as applicable.
- (B) In making its initial qualification determination, Staff is authorized to request from the driver, and the driver shall provide, additional information that will assist Staff in making the initial determination regarding the driver's qualification status under § 40-16-104.5(4) or § 40-10-105.5(4), C.R.S., as applicable. If, within 15 days of Staff's request, a driver does not provide such additional information or a reason explaining why it is unavailable, Staff shall disqualify the driver.
- (C) Staff shall give to the driver written notice of its initial qualification determination. If Staff initially determines that the driver is disqualified and prohibited from driving, the driver may, within 60 days of Staff's written disqualification notice, petition the Commission for an order reversing Staff's initial determination.
- (D) Staff's initial qualification determination may be relied upon by all persons, unless and until the Commission reverses Staff's initial qualification determination.

(d) Principals and household goods movers.

- (I) Prior to the issuance of a household goods mover registration, an applicant and each principal thereof shall submit a set of his or her fingerprints, using an official fingerprint form (FD-258), together with the established fee, to CBI for the purpose of conducting a record check. The applicant should begin the fingerprint process at least three months prior to the date that the applicant wishes to begin operations as a household goods

mover; fingerprint processing may take longer if results are returned as unreadable or unclassifiable.

- (II) ~~Applicants and principals shall complete Prior to submission of the official fingerprint form (FD-258) to CBI, applicants and principals shall contact the Commission's Transportation Section regarding the appropriate completion of the form in accordance with the instructions available from the Commission or its website. In particular, the following fields on the form shall be completed only after receiving instructions from Commission personnel:~~

~~(A) — Employer and Address;~~

~~(B) — Reason Fingerprinted;~~

~~(C) — Your No. OCA; and~~

~~(D) — ORI.~~

- (e) The Commission may require a name-based criminal history record check of a driver, principal, or household goods mover who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unreadable or unclassifiable.

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[signifies omission of unaffected rule sections 6017 through 6602(b)]

#### **6603. Registration.**

- (a) Any person seeking to register as a household goods mover or property carrier shall provide the following information, as applicable:
- (I) The name of the registrant and the trade name under which operations will be conducted.
  - (II) A copy of the registrant's certificate of assumed trade name or trade name registration.
  - (III) The registrant's telephone number, complete physical address, and complete mailing address. A post office box is only acceptable if a physical address is also provided.
  - (IV) A statement describing the registrant's business structure (corporation, limited liability company, partnership, or sole proprietorship).
  - (V) The name and address of the registrant's Colorado agent for service of process, as required by rule 6012.
  - (VI) If a registrant is a corporation:
    - (A) The name of the state in which the registrant is incorporated.

- (B) The location of the registrant's principal office, if any, in Colorado.
  - (C) The name and title of each director and officer.
  - (D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.
- (VII) If the registrant is a limited liability company:
- (A) The state in which the company is organized.
  - (B) The location of the registrant's principal office, if any, in Colorado.
  - (C) The name and title of each member.
  - (D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.
- (VIII) If the registrant is a partnership:
- (A) The name and business address of all general and limited partners.
  - (B) The location of the registrant's principal office, if any, in Colorado.
- (IX) If the registrant is a sole proprietorship:
- (A) The name and business address of the sole proprietor.
  - (B) The location of the sole proprietor's principal office, if any, in Colorado.
- (X) A statement that the registrant is familiar with the Household Goods Mover and Property Carrier Rules and all applicable safety rules and that the registrant will comply with them.
- (XI) A statement that the registrant understands that the filing of a registration does not constitute authority to operate.
- (XII) A statement indicating whether any of the motor vehicles to be used have a GVWR of 10,000 or more pounds.
- (XIII) A verification made under penalty of perjury and signed by an authorized officer, partner, owner, employee, or manager of the registrant, as appropriate, verifying that the contents of the registration form and all attachments are true, accurate, and correct. The registration form shall contain the complete address of the affiant.
- (b) In addition to the information required by paragraph (a):
- (I) A person registering as a household goods mover or property carrier under this rule shall cause to be filed both the required proof of financial responsibility and the required annual identification fees.

- (II) Household goods movers shall pay an annual filing fee of \$300.00.
- (III) Household goods movers shall provide the following information for each director, officer, owner, or general partner of the household goods mover:
  - (A) First, middle, and last names;
  - (B) Gender;
  - (C) Social Security Number; and
  - (D) Date and place of birth.
- (IV) Property carriers shall pay a registration filing fee of \$50.00; except that a person that simultaneously registers as a property carrier and as a household goods mover shall be exempt from the \$50.00 registration filing fee and need only pay the \$300.00 annual filing fee for a household goods mover.
- (c) The Commission will not register any person as a household goods mover or property carrier until the Commission has received all information, documentation, and payments required by paragraphs (a) and (b) of this rule.
- (d) The Commission shall treat the Social Security Number and the date and place of birth, acquired under subparagraph (b)(III) of this rule, as confidential.
- (e) Household goods mover registration.
  - (I) The Commission may deny or refuse to renew the registration of a household goods mover pursuant to §§ 40-14-103(3) and 103.5(2), C.R.S.
  - (II) Commission staff shall review the results of the fingerprint-based criminal background check and issue a household goods mover registration if:
    - (A) the results of the fingerprint-based criminal background check are negative for each director, officer, owner, or general partner of the household goods mover; and
    - (B) all other requirements are met.
  - (III) If the results of the fingerprint-based criminal background check are not negative for each director, officer, owner, or general partner of the household goods mover, then the Commission, after hearing upon reasonable notice, shall determine whether to issue a household goods mover registration.

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[signifies omission of unaffected rule sections 6603(f) through 6699]