

Decision No. C08-0268

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08R-084TR

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

DECISION ADOPTING EMERGENCY RULES

Mailed Date: March 12, 2008
Adopted Date: March 12, 2008

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules implementing fingerprint-based criminal history record checks under House Bills 07-1065 and 07-1249.

2. By Decision No. C07-0565, we adopted emergency rules implementing House Bills 07-1065 and 07-1249. The emergency rules were subsequently amended by Decision No. C07-0700 after rehearing, reargument, or reconsideration. The emergency rules adopted by these decisions will expire on March 14, 2008.

3. By Decision No. C07-0742, we issued a Notice of Proposed Rulemaking to adopt permanent rules implementing House Bills 07-1065 and 07-1249. However, permanent rules have not been adopted because the permanent rulemaking process is not complete.

4. If this decision does not adopt emergency rules by March 14, 2008, there will no longer be any rules implementing House Bills 07-1065 and 07-1249. Therefore, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent

rules set forth in § 24-4-103, C.R.S.) the emergency rules appended to this Decision as Attachment A.

5. We take this action in accordance with the provisions of §§ 40-2-108(2) and 24-4-103(6), C.R.S.

6. We find that adoption of the emergency rules is imperative and necessary to implement the requirements of House Bills 07-1065 and 07-1249. Compliance with the rulemaking requirements associated with permanent rules, pursuant to § 24-4-103, C.R.S., would be contrary to public interest.

7. The rules attached to this order shall be effective on March 14, 2008, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The rules appended to this Decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. The attached rules shall be effective on March 14, 2008.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 12, 2008.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

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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

* * *

[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 the instructions available from the Commission or its website.
 - (IV) [Reserved].
 - (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 the official fingerprint form (FD-258) in accordance with the instructions available from the Commission or its website.
- (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.

* * *

[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]