

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-137TR

IN THE MATTER OF THE EMERGENCY RULES FOR FINGERPRINT-BASED CRIMINAL
HISTORY RECORD CHECKS.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: February 25, 2009

Adopted Date: February 25, 2009

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules implementing amendments to fingerprint-based criminal history record check requirements under House Bill 08-1227.

2. Existing emergency rules adopted in Decision No. C08-0669 expire on February 25, 2009. The permanent rulemaking in Docket No. 08R-478TR, pertaining to fingerprint and various other transportation rules, is not complete (the recommended decision adopting permanent rules was mailed on February 19, 2009, and is subject to the filing of exceptions).

3. Because the Commission's permanent rules are not yet final and emergency rules are set to expire, 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.

4. We find that adoption of the emergency rules is imperative and necessary to implement the requirements of the bill and to avoid a gap in our rules. Compliance with the rulemaking requirements associated with permanent rules, pursuant to § 24-4-103, C.R.S., would be contrary to public interest.

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

6. The rules attached to this Decision shall be effective on the mailed date of this Decision and shall remain in effect until permanent rules become effective or for 210 days from their effective date, 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 the mailed date of this Decision.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 25, 2009.**

(S E A L)



ATTEST: A TRUE COPY

**Doug Dean,
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

MATT BAKER

Commissioners

COMMISSIONER JAMES K. TARPEY
ABSENT.

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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), 40-10-105.5(5), 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), 40-14-106(2)(a)(I), 40-14-108(1), 40-14-110, 40-16-103.6(1), 40-16-103.8, 40-16-104, 40-16-104.5(5), 40-16-105(1), 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

GENERAL PROVISIONS

* * *

6015. 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.~~ [Reserved].
- (II) "CBI" means the Colorado Bureau of Investigation.
- (III) "Driver" means a person who drives or wishes to drive a taxicab for a taxicab carrier or who drives or wishes to drive for an exempt 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 and a taxicab carrier, but only to the extent the taxicab carrier uses or wishes to use drivers to drive taxicabs.

~~(V) "Principal" means a director, officer, owner, or general partner of a household goods mover.~~

~~(V)~~ "Record check" means a state and national fingerprint-based criminal history record check.

(b) This rule applies to passenger carriers, and drivers, ~~household goods movers, and principals.~~

~~(c) Drivers and passenger carriers.~~

~~(c)~~ 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.

~~(d)~~ 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 within two years after the Commission provides him/her with the qualification notice required by ~~subsection (c)(VII)(C) subparagraph (i)(III)~~ of this rule.

~~(e)~~ 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.

~~(f) Disqualification.~~

~~(I) A driver is not of good moral character, and shall be disqualified and prohibited from driving, if the driver has been convicted of a felony or misdemeanor involving moral turpitude. For purposes of this rule, a felony or misdemeanor involving moral turpitude means:~~

~~(A) a conviction in the State of Colorado, within the ten years preceding the date the criminal history record check is completed, of a crime of violence, as defined in § 18-1.3-406(2), C.R.S.;~~

~~(B) a conviction in the State of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 1, 2, 3, or 4 felony under Article 3 of Title 18, C.R.S., other than an unlawful sexual offense against a child as defined in § 18-3-411, C.R.S.; or~~

~~(C) a conviction in the State of Colorado at any time of any unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S.;~~

~~(D) an offense in any other state or in the United States that is comparable to any offence listed in subparagraphs (I)(A) through (C).~~

(II) A driver shall be disqualified and prohibited from driving if, within the two years preceding the date the criminal history record check is completed, the driver was:

(A) convicted in this state of driving under the influence, as defined in § 42-4-1301 (1) (f), C.R.S.; driving with excessive alcoholic content, as described in § 42-4-1301 (2) (a), C.R.S.; driving while ability impaired, as defined in § 42-4-1301 (1) (g), C.R.S.; or driving while an habitual user of a controlled substance, as described in § 42-4-1301 (1) (c), C.R.S.; or

(B) convicted of a comparable offense in any other state or in the United States.

(IVg) 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 ~~subparagraph (c)(VII), or § 40-16-104.5(4) or § 40-10-105.5(4), C.R.S., as applicable~~ paragraph (j) of this rule; or

(C) the passenger carrier becomes aware that the driver has been convicted of any disqualifying offenses under paragraph (f) of this rule.

(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.

(Vh) Passenger carriers are authorized to contact the Commission regarding whether a particular driver has been disqualified and prohibited from driving.

(Vi) 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 (IV)(C)(i) and (ii) (f)~~ of this rule.

(Vii) 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~~ paragraph (f) of this rule.

(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~~may disqualify the driver.

- (CIII) 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.

(IV) Upon the filing of a petition to reverse Staff's initial determination:

- (A) Staff shall be an indispensable party and shall bear the burden of going forward to demonstrate the reasons for its initial determination;
- (B) the driver shall bear the burden of proving that Staff's initial determination is not supported by fact or law; and
- (C) the Commission will consider the petition using the standards set forth in § 24-5-101(2), C.R.S.

- (DV) 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.~~
- ~~(III) The Commission will use the results of the record check to determine whether to issue a household goods mover registration under rule 6603(e).~~

- (ek) The Commission and its Staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks. 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.

- (fl) Nothing in this rule shall be construed to make an independent contractor driver an employee driver of a passenger carrier.

HOUSEHOLD GOODS MOVER AND PROPERTY CARRIER RULES

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6603. Registration.

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(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:~~[Reserved].
 - ~~(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.~~[Reserved].

(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) For a household goods mover that submitted registration materials during the effectiveness of House Bill 07-1249 and whose registration remains pending, the Commission waives all fingerprint-based criminal history record check rule requirements derived under House Bill 07-1249 that preclude the immediate issuance of said registration. ~~Commission staff shall review the results of the fingerprint based criminal~~

~~history record check and, using any commercially or governmentally available information source, research relevant criminal and civil history for the household goods mover and each director, officer, owner, and general partner thereof.~~

~~(III) — Commission staff shall issue a household goods mover registration only if:~~

~~(A) — the results of the fingerprint based criminal history record check are negative for each director, officer, owner, or general partner of the household goods mover;~~

~~(B) — the results of the research conducted by Commission staff indicates that the household goods mover has no unsatisfied final judgments arising out of any civil or criminal action in a court of law, pursuant to § 40-14-103(3)(c), C.R.S.; and~~

~~(C) — all other requirements are met.~~

~~(IV) — If Commission staff is unable to issue a household goods mover registration under subparagraph (e)(III) of this rule, then the Commission, after hearing upon reasonable notice, shall determine whether to issue a household goods mover registration. Notwithstanding anything in this subparagraph (IV) to the contrary, the Commission may issue an order without hearing when:~~

~~(A) — the Commission has already held a hearing in prior annual registration cycles;~~

~~(B) — after such hearing the Commission issued the registration; and~~

~~(C) — since the prior annual registration cycle, the civil and criminal history has not changed for the household goods mover and each director, officer, owner, and general partner thereof.~~

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