

ORIGINAL

Decision 82 01 40 JAN 5 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into )  
rules, etc; re handling of C.O.D. )  
shipments by express corporations, )  
et al. )

Case 7402

Investigation on the Commission's )  
own motion to establish require- )  
ments to be met by applicants for )  
highway carrier authority issued )  
by the Commission. )

Case 10278  
(Filed March 9, 1977)  
Phase II, Topics 5 & 6

SUPPLEMENTAL OPINION AND ORDER

General Order (GO) 102-H was adopted June 2, 1981 by Decision 93146, in Application 59014 to become effective August 31, 1981. GO Series 102 requires as a condition of engaging subhaulers or leasing equipment from lessor-employees, that prime carriers file a bond of \$15,000 with the Commission.

GO Series 84 requires, as a condition of handling collect-on-delivery (C.O.D.) shipments, that carriers file a bond of \$2,000 with the Commission.

The Commission finds:

1. Senate Bill 721, which became law in California on January 1, 1980, created a new class of carrier designated the Heavy Specialized Carrier. Senate Bill 1886, which became law on January 1, 1981, replaces the classifications of Petroleum

Irregular Route Carrier and Petroleum Contract Carrier with two new classes of permit carriers, Tank Truck Carrier and Vacuum Truck Carrier. C.O.D. and subhaul operations may in the future be performed by the new classes of carriers established by Senate Bills 721 and 1886. Accordingly, the C.O.D. and subhaul bonds should be amended to apply to the new classes of carriers established by the Legislature.

2. The subhaul bond should be additionally amended to correspond with the elimination of the disclaimer by the surety in paragraph 4(a) of GO 102-H, the shortened time period for payment of subhaulers in paragraph 5(a), the increased amount of the bond (\$15,000) in paragraph 7(a); and the notification to the carrier of a filing of claim in paragraph 7(c).

3. Since paragraph 8 of GO 84-G exempts carriers that transport property under rates in Minimum Rate Tariff 7-A from filing a C.O.D. bond, carriers that transport property under rates in Minimum Rate Tariffs 17 or 20 should also be excluded from filing the bond.

4. A public hearing is not necessary.

The Commission concludes that the C.O.D. bond and the subhaul bond should be amended to apply to the new classes of carriers; that the subhaul bond should be further amended to correspond to the GO Series 102; and that GO 84-G should be canceled and superseded by GO 84-H.

Appendix A sets forth the changes which will be incorporated into GO Series 84.

Appendix B sets forth the changes which will be incorporated into the C.O.D. bond.

Appendix C sets forth the changes which will be incorporated into the subhaul bond.

IT IS ORDERED that:

1. General Order (GO) 84-H, in Appendix A, is adopted to supersede GO 84-G which is canceled on the effective date of this order.
2. The C.O.D. and subhaul bonds in Appendixes B and C, are adopted to supersede the existing C.O.D. and subhaul bonds, on the effective date of this order.

C.7402, C.10278 T/DML/FS/WPSC

3. The Executive Director shall serve a copy of this decision on all highway carriers, household goods carriers, express corporations, freight forwarders, and passenger stage corporations.

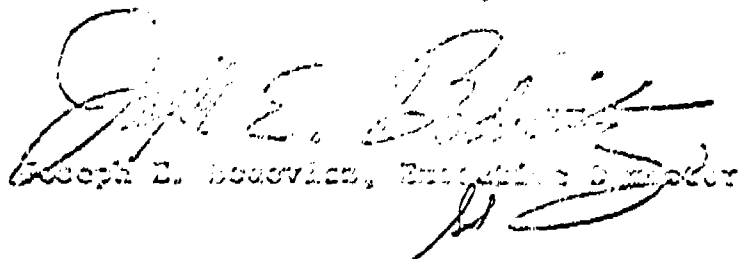
This order becomes effective 30 days from today.

Dated JAN 5 1962, at San Francisco, California.

JOHN E. BRAYSON  
President  
RICHARD D. GRAVELLE  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS.

  
Joseph E. Bouvier, Executive Director

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GENERAL ORDER 84-H

(Cancels General Order 84-G)

Public Utilities Commission  
of the State of California

RULES GOVERNING COLLECT-ON-DELIVERY SHIPMENTS AND THE MONEYS  
COLLECTED BY EXPRESS CORPORATIONS, FREIGHT FORWARDERS, HIGHWAY  
CARRIERS, PASSENGER STAGE CORPORATIONS, AND HOUSEHOLD GOODS  
CARRIERS.

1. A collect-on-delivery shipment (C.O.D. shipment) means a shipment upon which the consignor has attached, as a condition of delivery, the collection of a specific sum or sums of moneys by the carrier making delivery and the return of those moneys to the consignor or other payee named by the consignor.

2. No express corporation, freight forwarder, highway carrier, passenger stage corporation, or household goods carrier, as defined in the Public Utilities Code, shall handle C.O.D. shipments unless it has on file with the Commission a bond of not less than \$2,000. The principal amount of the bond of any particular carrier may be increased from time to time where the Commission finds it is in the public interest.

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3. The bond required by Paragraph 2:
  - a. Shall be filed by the carrier as principal and by a qualified surety insurer, authorized to do business in the State of California, as surety;
  - b. Shall be payable to any person or persons to whom any amount may be due on any C.O.D. shipment transported by the carrier and not remitted to the person or persons to whom it is due within 10 days after delivery of any C.O.D. shipment;
  - c. Shall specify the extent to which the carrier's operations are covered;
  - d. May cover more than one operative authority held by the same carrier;
  - e. Shall be revised or reissued, when a carrier obtains additional operative authority, to show whether or not the additional operative authority is covered; and
  - f. Shall state that the name of the carrier's surety company will be made public by the Commission upon reasonable request.

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4. The bond shall include these provisions:

- a. That any person or persons to whom an amount may be due on any C.O.D. shipment transported by a carrier and not remitted within 10 days after delivery of that shipment may file a claim with the surety;
- b. That upon the filing of the claim, the surety shall notify the Commission and the carrier in writing of the filing;
- c. That the notice to the Commission shall be addressed to the Public Utilities Commission of the State of California at its office in San Francisco;
- d. That suit against the surety shall be started within one year after the date the shipment was tendered to the carrier; and
- e. That the surety waives any rights it may have under Section 2845 of the Civil Code.

5. The bond may be canceled by the surety by written notice to the Commission. The cancellation shall become effective 30 days after the Commission receives the notice.

6. Claims arising from failure to remit C.O.D. moneys may be filed by any person or persons to whom an account may be due directly against the surety company and any suits against the surety must be started within one year from the date the shipment was tendered.

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7. The name and address of the surety company may be obtained from the Public Utilities Commission, State Building, San Francisco, California 94102.

8. The bond shall not be required:

- a. Of carriers while engaged as independent-contractor subhaulers;
- b. Of carriers while transporting property under rates in Minimum Rate Tariffs 7, 17, or 20; or
- c. Of highway carriers operating within lawfully established pickup and delivery limits as agents of a common carrier in the performance for the common carrier of transfer, pickup, or delivery services provided for in the lawfully published tariffs of the common carrier.

9. Every express corporation, freight forwarder, highway carrier, passenger stage corporation, and household goods carrier, handling C.O.D. shipments shall:

- a. Establish and maintain a separate bank account or accounts wherein all moneys (other than checks or drafts payable to consignor or payee designated by consignor) collected on C.O.D. shipments will be held in trust until remitted to payee, except C.O.D. moneys which are remitted within 5 days after delivery.



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- b. Establish and maintain records of all C.O.D. shipments that will show the following information about each shipment:
  - (1) Number and date of freight bill.
  - (2) Name and address of consignor or other person designated as payee.
  - (3) Name and address of consignee.
  - (4) Date shipment delivered.
  - (5) Amount of C.O.D. moneys collected.
  - (6) Date C.O.D. moneys remitted.
  - (7) Check number or other identification of remittance to payee.
  
- c. Collect the full amount of the C.O.D. moneys at the time C.O.D. shipments are delivered to the consignee and remit all such collections to consignor, or to other persons designated by the consignor on such shipments, promptly and in no event later than 10 days after delivery to the consignee, unless consignor instructs otherwise in writing. All remittances for C.O.D. shipments shall refer to or otherwise identify the C.O.D. shipment or shipments covered by the remittance.
  
- d. Not accept checks or drafts (other than certified checks, cashier's checks, or money orders) in payment of C.O.D. charges unless authority has been received from the consignor.

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- e. Except in situations covered by subparagraph f, notify the consignor immediately if a C.O.D. shipment is refused or cannot be delivered on the carrier's initial attempt. Upon instructions from the consignor the carrier may attempt subsequent deliveries. The charge for each such delivery shall be determined by the applicable freight charges from carrier's terminal to the point of destination but shall not be less than the rate for mileages of less than three miles. The carrier may also return the shipment to the consignor upon his request, subject to a charge equal to the applicable freight charges on the original outbound movement.
- f. While transporting property under rates in Minimum Rate Tariffs 7, 17, or 20, notify the consignor immediately if a C.O.D. shipment is refused or cannot be delivered because of circumstances beyond the carrier's control. Under the consignor's instructions, the shipment shall either be returned to the consignor subject to double the outbound freight charges for the round-trip movement or delivered to another consignee subject to the applicable distance rate, in addition to the original rate, from the point of nondelivery to the new destination; provided, however, that if hourly rates apply to C.O.D. shipments, such hourly rates shall supersede the rates in this subparagraph.
- g. Not make a C.O.D. shipment part of a split delivery shipment.

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10. No express corporation, freight forwarder, highway common carrier, passenger stage corporation, or cement carrier shall handle C.O.D. shipments unless and until such carrier has published and filed tariffs containing the rates and rules governing that service, which rules shall conform to this general order and shall include provisions that:

- a. Claims arising from failure to remit C.O.D. moneys may be filed directly against the surety company and any suits against the surety must be started within one year from the date the shipment was tendered.
- b. The name and address of the surety company may be obtained from the Public Utilities Commission, State Building, San Francisco, California 94102.

11. Every express corporation, freight forwarder, highway common carrier, passenger stage corporation, and cement carrier, while acting as a delivery carrier on C.O.D. shipments moving in interline service, shall, at the time of remittance of the C.O.D. collections to the consignor or payee, notify the originating carrier of such remittance.

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12. If a carrier believes exemption or deviation from any of these requirements is necessary, it shall apply to the Commission for an exemption or deviation. The application shall contain a full statement of the facts justifying the exemption or deviation.

13. Each express corporation, freight forwarder, highway common carrier, passenger stage corporation, or cement carrier not electing to transport C.O.D. shipments may withdraw and cancel its rules and rates and establish instead a provision that C.O.D. shipments will not be accepted. Each highway permit carrier or household goods carrier not electing to transport C.O.D. shipments shall be deemed to have given notice of that election by not filing the C.O.D. bond.

(END OF APPENDIX A)

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COLLECT - ON - DELIVERY BOND

(Prescribed by the California Public Utilities  
Commission under General Order Series 84)

BOND \_\_\_\_\_ C.P.U.C. FILE \_\_\_\_\_

1. Parties: The parties to this bond are:

Principal: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

Surety: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

2. Recitals:

a. Principal is a highway carrier, express corporation, freight forwarder, or passenger stage corporation under Public Utilities (PU) Code Sections 3511, 219, 220, or 226.

b. Surety is a corporation authorized to transact a general surety business in the State of California.

3. Definition: "Highway Carrier" means:

a. Any certificated carrier transporting property for compensation over any public highway in this State under PU Code Sections 1061-1074, and

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- b. Any permitted carrier transporting property for compensation over any public highway in this State either under PU Code Sections 3501-3809 or under PU Code Sections 5101-5319, as a household goods carrier.

4. Transportation Covered: This bond covers transportation of property by Principal as a highway carrier which carries with it a duty to collect from consignee, on delivery of the property, moneys for consignor's account and to remit them to consignor.

5. Bond: Principal and Surety bind ourselves, and our heirs, executors, administrators, successors, and assigns, jointly and severally, to the State of California in the penal sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), to be paid to the State of California and/or consignors of Collect-on-Delivery shipments to assure the faithful remittance of sums collected by Principal.

6. Undertaking of Principal: Principal, in transporting property, undertakes to collect from consignees on delivery of property by Principal the sums directed by consignors to be collected, and to remit those sums to consignors when collected, and in no event later than 10 days after delivery to the consignees of the transported property unless Principal is otherwise instructed in writing by consignors.

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7. General Order Series 84: General Order Series 84 requires Principal to file a bond before transporting Collect-on-Delivery shipments. The amount of the bond has been determined by the Commission to secure the payment of the claims of consignors.

8. Conditions: If Principal, during the term of this bond, honestly and faithfully performs its undertakings to collect and remit the sums to consignors then this obligation shall be void; otherwise, it shall remain in full force and effect, subject to the following conditions:

- a. Any person or persons to whom an amount may be due on any Collect-on-Delivery shipment transported by a carrier, and which amount is not remitted within 10 days after delivery of the shipment, may file a claim with the surety. Upon the filing of the claim, the surety shall notify the California Public Utilities Commission at its office in San Francisco in writing of the filing of the claim and shall further notify the Commission of judgments rendered against, and payments made by, the surety under this bond. Suit against the surety premised upon the claim shall be started within one year after date the shipment was tendered to the carrier.

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- b. Surety's duty under this bond shall not be discharged by any payment or succession of payments on claims unless and until such payment or payments shall amount in the aggregate to the penalty of this bond; provided, however, that the aggregate liability of the surety for all such claims shall, in no event, exceed the amount of the penalty.
- c. Surety expressly waives its rights under Section 2845 of the California Civil Code.
- d. Any obligee or obligees may bring suit directly against the surety.

9. Term: This bond, effective from the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, \_\_.m., Pacific Standard Time, at the address of Principal, shall be continuous and remain in full force and effect until canceled.

10. Cancellation: Surety may cancel this bond as provided by law and shall forward written notice to the California Public Utilities Commission at its office in San Francisco. The cancellation shall become effective 30 days after the Commission receives the notice.



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11. Surety's Liability: Surety shall not be obligated to pay any sums for which Principal becomes liable in connection with a Collect-on-Delivery shipment occurring after this bond is canceled, but such cancellation shall not affect the duty of Surety respecting a Collect-on-Delivery shipment occurring during the time the bond is in effect.

12. Premium: The obligation of this bond is assumed by Surety and is in consideration of a premium paid to Surety in the sum of \$ \_\_\_\_\_.

Principal and Surety executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

AFFIX  
CORPORATE SEAL

\_\_\_\_\_  
Principal  
By \_\_\_\_\_

AFFIX  
CORPORATE SEAL

\_\_\_\_\_  
Surety  
By \_\_\_\_\_

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STATE OF CALIFORNIA

PUBLIC UTILITIES COMMISSION

File T-\_\_\_\_\_

SURETY COMPANY BOND

To Secure Payment of the Claims of Subhaulers, Sub-Subhaulers, and Lessor-Employees Under the Public Utilities Code Sections 3575 and 1074, and General Order Series 102 of the Public Utilities Commission of the State of California.

Bond No. \_\_\_\_\_

Know all men by these presents:

THAT WE, The Undersigned \_\_\_\_\_

\_\_\_\_\_, whose address is

\_\_\_\_\_, as Principal,

and \_\_\_\_\_, a corporation

authorized to transact a general surety business in the State of California, whose address is \_\_\_\_\_

\_\_\_\_\_, as Surety,

are held and firmly bound unto the State of California in the penal sum of \$15,000 to be paid to the people of the State of California for the benefit of any person, firm, or corporation for services rendered as a subhauler for, sub-subhauler for, or for the benefit of

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a lessor-employee who leases equipment to, the Principal, for which payment well and truly to be made we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this bond is such that:

WHEREAS, the Principal is or intends to become a carrier of property by motor vehicle for hire as a highway carrier which, means any certificated carrier transporting property for compensation over any public highway in this State under Public Utilities Code Sections 1061-1074 and any permitted carrier transporting property for compensation over any public highway in this State either under PU Code Sections 3501-3809, or as a household goods carrier under PU Code Sections 5101-5319, and engages or intends to engage subhaulers, sub-subhaulers, or lease equipment from lessor-employees; and

WHEREAS, PU Code Sections 3575 and 1074 require the filing of a bond in such circumstances, the amount of which has been determined by the Commission in its General Order Series 102 to secure the payment of the claims of subhaulers, sub-subhaulers, and lessor-employees of such highway carrier; and

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WHEREAS, the term Principal includes a carrier as defined in General Order Series 102, as one who leases equipment from a lessor-employee, or one who is a prime or overlying carrier, as these are defined in General Order Series 102, or one who is a subhauler who engages another carrier to perform all or part of the services which such subhauler has agreed to render for a prime carrier. Such an engaged carrier is designated as a sub-subhauler and as to it, the original subhauler is a prime carrier; and

WHEREAS, the term subhauler includes any carrier who renders service for a prime or overlying carrier for a specified recompense, for a specified result, under the control of the prime or overlying carrier as to the result of the work only and not as to the means by which such result is accomplished; and this term includes sub-subhaulers in appropriate cases; and

WHEREAS, the term Lessor-Employee includes every employee of the Principal who owns, controls or is entitled to the possession of any vehicle or vehicles as described in PU Code Section 3510 and transfers to the Principal, under any contract or arrangement, other than a bona fide sale, conditional sales contract, chattel mortgage, or a statutory lien, the right to possession and control of said vehicle or vehicles.

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NOW, THEREFORE, if the Principal shall pay the claims of sub-haulers, sub-subhaulers, or lessor-employees of the Principal, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject to the following conditions:

1. Any claim of a person or persons to whom an amount may be due either as transportation charges for any shipment subhauled, sub-subhauled or as the rental of any equipment leased from a lessor-employee, and not paid within the time limits specified in General Order Series 102, must be filed with the Surety within 120 days after the date of completion of shipment or termination of lease. Upon the filing of the claim, the Surety shall notify the carrier and the Public Utilities Commission of the State of California at its office in San Francisco in writing of the filing of said claim. Suit against the Surety premised upon said claim shall be commenced within one year after the the filing of said claim.

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2. General Order Series 102 requires that every agreement for subhauling, sub-subhauling and for leasing of motor vehicles from a lessor-employee entered into by a highway carrier shall be in writing and signed by the parties prior to, or within five days after, the commencement of any subhaul service, sub-subhaul service, or such lease of equipment and that such writing shall contain all of the terms of such agreement and shall specify all charges payable thereunder for subhaul service, sub-subhaul service, or lease of equipment. Failure of the prime carrier or lessee-carrier to provide an agreement as specified herein shall constitute a violation of said general order, but shall not be cause for rejection or denial of any claim by the surety.
3. The Surety's obligation under this bond shall not be discharged by any payment or succession of payments on claims hereunder unless and until such payment or payments shall amount in the aggregate to the penalty of this bond; provided, however, that the aggregate liability of the Surety for all such claims shall, in no event, exceed the sum of \$15,000.
4. Surety hereby expressly waives its rights under Section 2845 of the Civil Code of the State of California.

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This bond, effective from the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_m., Pacific Standard Time, at the address of the Principal, as stated herein, shall be continuous and remain in full force and effect until canceled as hereinafter provided.

The Surety may cancel this bond, only by written notice to the Public Utilities Commission of the State of California at its office in San Francisco, California, such cancellation only to become effective thirty (30) days after receipt of said notice by the Commission.

The Surety shall not be obligated hereunder for the payment of any sums for which the Principal becomes liable in connection with subhauling, sub-subhauling, or leasing occurring after the cancellation of this bond, but such cancellation shall not affect the obligation of the Surety herein respecting subhauling, sub-subhauling, or leasing occurring during the time the bond is in effect.

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The obligation of this bond is assumed by the Surety and is in consideration of a premium paid to the Surety in the sum of \$\_\_\_\_\_.

IN WITNESS WHEREOF, the above Principal and Surety have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

AFFIX  
CORPORATE SEAL

\_\_\_\_\_  
Principal  
By \_\_\_\_\_

AFFIX  
CORPORATE SEAL

\_\_\_\_\_  
Surety  
By \_\_\_\_\_



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ACKNOWLEDGMENT OF SURETY

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_, personally appeared

\_\_\_\_\_  
known to me (or proved to me on the oath of \_\_\_\_\_)  
to be the person whose name is subscribed to the within instrument as  
the attorney in fact of \_\_\_\_\_ and  
acknowledged to me that he subscribed the name of \_\_\_\_\_  
thereto as Surety, and his own name as attorney in fact.

\_\_\_\_\_

(SEAL)

(END OF APPENDIX C)