



ADDRESS ALL COMMUNICATIONS
TO THE COMMISSION
CALIFORNIA STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

Public Utilities Commission
STATE OF CALIFORNIA

October 31, 1978

FILE NO.

TO ALL RADIAL HIGHWAY COMMON CARRIERS:

Attached is the Commission's decision concerning the implementation of SB 860. It should be read carefully. Important information is contained explaining how you will be permitted to operate in the future and what choice you should make in converting your radial permit under SB 860.

In considering the options under SB 860, you should be aware that maximum flexibility can be obtained by converting your permit into both a highway common carrier certificate and a contract carrier permit. In addition, you should file for agricultural authority if you qualify. We remind you that applications for conversion must be received by December 31, 1978.

The Commission will conduct public meetings throughout the State as set forth in the attached schedule in order to answer any questions you might have regarding today's decision implementing SB 860. Should you be unable to attend any of these meetings, you may contact any of the Commission field offices for assistance.

Although we expect this to be our final decision on SB 860, any comments that you may wish to send to the Commission in writing by November 30, 1978, will be treated as petitions for reconsideration and rehearing. All such comments will be considered by the Commission at its conference on December 12, 1978. You will be notified if this decision is modified or if rehearing is granted.

Very truly yours,

Frederick E. John
Executive Director

Attachments

SCHEDULE OF SB 860 MEETINGS

<u>C</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
Bakersfield	Nov. 15, 1978 Wednesday	7:00 p.m.	Bakersfield City College Forum West 1801 Panorama Drive Bakersfield
Brawley	Nov. 14, 1978 Tuesday	7:30 p.m.	Brawley Union High School Palmer Auditorium 480 North Imperial Avenue Brawley
Daly City	Nov. 15, 1978 Wednesday	7:00 p.m.	Daly City War Memorial Community Center 6655 Mission Street Daly City
Eureka	Nov. 15, 1978 Wednesday	7:00 p.m.	College of Redwoods The Forum Auditorium Eureka
Fresno	Nov. 17, 1978 Friday	7:00 p.m.	State Building Room 1036 2550 Mariposa Street Fresno
Hayward	Nov. 17, 1978 Friday	7:00 p.m.	Chabot College Student Center 25555 Hesperian Blvd. Hayward
Inglewood	Nov. 15, 1978 Wednesday	7:30 p.m.	Inglewood City Hall One Manchester Blvd. Community Room A Inglewood
Lancaster	Nov. 16, 1978 Thursday	7:30 p.m.	Antelope Valley Inn Sierra East Room 44055 North Sierra Hwy. Lancaster
Norwalk	Nov. 14, 1978 Tuesday	7:30 p.m.	City Council Chambers 12700 South Norwalk Blvd. Norwalk
Oakland	Nov. 14, 1978 Tuesday	7:00 p.m.	State Building Assembly Room 1111 Jackson Street Oakland

<u>City</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
Pasadena	Nov. 17, 1978 Friday	7:30 p.m.	Pasadena Center Conference Building Little Theater C-124 300 East Green Street Pasadena
Redding	Nov. 14, 1978 Tuesday	7:00 p.m.	Nova High School Auditorium 2200 Eureka Way Redding
Sacramento	Nov. 13, 1978 Monday	7:00 p.m.	Department Water Resources Auditorium 1416 9th Street Sacramento
San Bernardino	Nov. 15, 1978 Wednesday	7:30 p.m.	State Building 303 West Third Street San Bernardino
San Diego	Nov. 13, 1978 Monday	7:30 p.m.	Veterans War Memorial Building Park Blvd. & Zoo Drive (Balboa Park) San Diego (Parking - north end San Diego Zoo lot)
San Jose	Nov. 16, 1978 Thursday	7:00 p.m.	San Jose City Hall City Council Chambers (Rm. 205) 801 North 1st Street San Jose
Santa Ana	Nov. 17, 1978 Friday	7:00 p.m.	Santa Ana City Hall City Council Chambers 22 Civic Center Plaza Santa Ana (Parking - Sixth & Flower Streets)
Santa Barbara	Nov. 13, 1978 Monday	7:30 p.m.	City Recreation Department Bldg. Corner Carrillo and Anacapa Santa Barbara (Parking - directly across street)
Santa Rosa	Nov 16, 1978 Thursday	7:00 p.m.	Sonoma County Veterans Building Lodge Room 1351 Maple Street Santa Rosa
Stockton	Nov. 13, 1978 Monday	7:00 p.m.	State Building West Wing Auditorium 31 East Channel Street Stockton

Decision No. 89575 OCT-31 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
for the purpose of considering and
determining minimum rates for
transportation of any and all
commodities statewide including,
but not limited to, those rates
which are provided in Minimum Rate
Tariff 2 and the revisions or
reissues thereof.

And Related Matters.

Case No. 5432, OSH 957
(Filed April 12, 1977)

Case No. 5439, OSH 310
Case No. 5441, OSH 392
Case No. 5603, OSH 208
Case No. 7783, OSH 156
(Filed April 12, 1977)

Case No. 5330, OSH 100
Case No. 5432, OSH 958
(Filed April 12, 1977)

Case No. 5433, OSH 67
Case No. 5432, OSH 959
Case No. 5438, OSH 116
Case No. 7857, OSH 159
(Filed April 12, 1977)

Case No. 5436, OSH 244
Case No. 5432, OSH 960
Case No. 6008, OSH 36
(Filed April 12, 1977)

Case No. 5437, OSH 292
Case No. 9819, OSH 22
Case No. 9820, OSH 8
Case No. 5432, OSH 961
(Filed April 12, 1977)

Case No. 5440, OSH 103
Case No. 5432, OSH 962
(Filed April 12, 1977)

Case No. 5604, OSH 59
Case No. 5432, OSH 963
(Filed April 12, 1977)

Case No. 8808, OSH 38
(Filed February 3, 1977)
Case No. 8808, OSH 42
Case No. 5432, OSH 964
(Filed April 12, 1977)

O P I N I O N

Senate Bill 860 (SB 860), enacted as Chapter 840, Statutes 1977, amended the Public Utilities Code (Code) to eliminate the radial highway common carrier classification. Carriers holding radial permits are provided the opportunity to continue their operations by converting such permit into either, or both, a highway common carrier certificate or a highway contract carrier permit. In addition, SB 860 established two new highway permit carrier classes, agricultural carrier and seasonal agricultural carrier. Highway carriers engaged in the transportation of agricultural commodities are able to apply for agricultural carrier authority on a grandfather basis.

Shortly after the enactment of SB 860, the Commission received inquiries concerning the implementation of the legislation. The majority of these inquiries came from the California Trucking Association (CTA). Through the Commission staff's answers to these inquiries, policies on implementation developed. These policies were formalized through a series of six Commission resolutions. The first four, Resolutions 18017, 18018, 18019, and 18020, were issued on April 4, 1978. Resolution 18017 established policy relative to a variety of issues raised in the questions previously answered by the staff. Resolution 18018 established special rules governing the filing of applications for highway common carrier certificates pursuant to SB 860. Resolution 18019 adopted a list of commodities determined to require an agricultural carrier permit, and Resolution 18020 suggested guidelines concerning the proper scope of contract carrier operations. On April 11, 1978, the Commission issued Resolution 18021 which amended Resolution 18017 in minor respects. The last resolution concerning the implementation of SB 860 was issued April 18, 1978. This last resolution, Resolution TS-296, established a procedure for common carrier tariff filing under SB 860.

Commencing May 25 and continuing through June 16, 1978, hearings were held to obtain public comment on the method of implementation established through the above series of resolutions. Parties representing all facets of the for-hire truck transportation industry in California appeared. Although few persons testified orally, a total of 28 written statements were received. A variety of changes in the resolutions and alternative implementation policies were recommended.

A number of these recommendations were beyond the scope of this proceeding. Several of these recommendations, such as that of the Teamster union representative to limit the extent of subhauling, are appropriate subjects for proceedings now in progress in Cases Nos. 10278 and 10368. Such recommendations should be raised in those proceedings, where they will be considered. Recommended changes which are neither necessitated nor anticipated by SB 860 are beyond the scope of this proceeding and have not been acknowledged or discussed herein.

Recommendations relevant to our implementation of the legislation have focused upon seven areas of controversy:

1. Conversion of radial permits
2. Tariff filing requirements
3. The permissible scope of contract carrier operations
4. Specialized carriers
5. Transportation of rate-exempt commodities
6. Agricultural authority
7. Subhauling

Each of these areas of controversy will be discussed in order.

This decision will supersede all of the guidelines contained in the six resolutions previously issued, and will serve as the single document containing all Commission guidelines issued to date for the implementation of SB 860. As will be observed from the discussion which follows, we are amending some of the guidelines previously adopted.

The following parties who provided oral testimony or filed written statements will be identified for purposes of this opinion as follows:

- (Acme) Robert Hildreth for Acme Transportation Inc.
- (Bailey) Charles Lindle Bailey for himself
- (CDTOA) E. O. Blackman for California Dump Truck Owners Association
- (CTA) Thomas C. Schumacher, Jr., for CTA
- (Delta) Thomas R. Dwyer for Delta Lines, Inc.
- (Grain and Feed Association) Lee Adler for California Grain and Feed Association
- (Handler) Marvin Handler for 31 trucking companies and one tariff bureau
- (HCA) Herbert Davis of Heller and Weiner for Highway Carriers Association
- (Johnson) Eldon M. Johnson for himself
- (Kings) Jack Ellingson for Kings County Truck Lines
- (LA County) Bill T. Farris for the county of Los Angeles
- (Lodi) Arthur Altnow for Lodi Truck Service
- (Loughran) Frank Loughran of Loughran and Hegarty for four messenger service transportation companies
- (Miles) Earl N. (Sam) Miles for 15 trucking and construction companies
- (Murchison) Donald Murchison of Murchison and Davis for 34 trucking companies
- (Murphy) Dixie Murphy for Murphy Truck and Equipment Rentals
- (Osterkamp) Michael R. Eggleton for Osterkamp Trucking, Inc.
- (Pierro) Leona Pierro for herself
- (PMT) John MacDonald Smith for Pacific Motor Trucking Company
- (Reed) Dennie Walter Reed, Sr., for himself
- (Shafer) John Samuel Shafer, Jr., for Trucking by J..S. Shafer, Jr.
- (Staff) Edward W. O'Neill for the Commission staff

(Stecher) Michael J. Stecher for six trucking companies

(Teamsters) Roger Carnagey for Western Conference of Teamsters and California Teamsters Public Affairs Council

(Traffic Managers) Calhoun E. Jacobson for Traffic Managers Conference of California

(Trucking Unlimited) Robert E. Murray for Trucking Unlimited

(Tuttle & Taylor) Ronald C. Peterson for Tuttle & Taylor representing agricultural interests

(Universal Transport) Frank R. Golzen for Universal Transport System, Inc.

(Viking) Jim Dellamaggiore for Viking Freight System

(Wigle & Larimore) Donald A. Clegg for Wigle & Larimore

(Willig) Lee Pfister for Willig Freight Lines

(Wine Institute) Hugh Cook for Wine Institute

(WMTB) M. J. Nicolaus for Western Motor Tariff Bureau, Inc.

Conversion of Radial Permits

A variety of parties suggested that common carrier certificates granted under Section 1063.5 should be restricted both in availability and in scope. Teamsters, Universal Transport, Delta, PMT, and Willig contend that Section 1063.5 certificates should be granted for only those operations prior to the conversion which can be shown to be bona fide operations of the applicant radial carrier, or operations that constitute the actual "holding out" of the carrier. They believe substantial previous operations should be the criterion for bona fide operations, and that incidental, sporadic, or infrequent service should not qualify. Areas, points of service, and routes should be strictly defined and supported by documentary evidence of service. CTA, citing Section 1063.5, argued that radial highway common carriers who were in suspension on January 1, 1978, should not be granted certificates. Handler and Lodi suggested that

radial carriers who have engaged exclusively in subhauling should be limited to subhauling after converting their permits to certificates. Delta joined Handler and Lodi in arguing that a converted radial permit should be restricted to the extent of the carrier's current equipment. A carrier not owning tank equipment to haul bulk commodities, for example, should not be granted a certificate for such transportation.

Prior to SB 860, radial carriers could generally operate statewide, serving all areas of the State on an irregular route basis. They could expand their operations as their own desires and abilities, and the needs of their shippers dictated. Section 1063.5 permits radial carriers to apply for a highway common carrier certificate "to continue such operations". It provides for the issuance of such certificates upon finding the carrier to have been in bona fide operation as a radial carrier, without further proof of public convenience and necessity. Moreover, neither Section 1063.5, nor Section 3572.5 restrictively limits the authority grandfathered to the extent of the operations actually conducted prior to the enactment of SB 860. The only section of SB 860 containing such a restriction is Section 1064.5, which only applies to the sale or assignment of Section 1063.5 certificates. Had the legislature intended that the certificates themselves be so limited, it would have employed the same or similar language in Section 1063.5. Since the legislation permits radial carriers to apply for certificates to continue their operations as highway common carriers without limitation to the extent of operations actually conducted, we will grant certificates which provide the same statewide opportunity they had prior to SB 860 without requiring evidence of operation in each county in which certificated authority is sought.

Granting such certificates upon application will provide common carriers grandfathered under Section 1063.5, the opportunity to expand without the showing of public convenience and necessity traditionally required of common carriers. This opportunity is not however unlimited. Section 1064.5 clearly anticipates that the scope of certificates granted under Section 1063.5 may be broader than the operations actually conducted, but it limits this to a period of five years. Section 1064.5 provides:

"No certificate of public convenience and necessity issued pursuant to Section 1063.5 may be sold, mortgaged, leased, assigned, transferred or otherwise encumbered for a period of five years after issuance except to the extent of operations actually conducted in good faith, not including operations as a subhauler."

Transfers within five years are limited "to the extent of operations actually conducted in good faith".^{1/} Transfers after the expiration of this period are not so limited. We interpret the legislature to have drawn this distinction in order to place a specific time period after which the distinction between traditional Section 1063 common carriers and grandfathered Section 1063.5 carriers is to be abolished. Were we to interpret Section 1064.5 to allow the transfer of certificates broader in scope than the operations actually conducted after the five-year period, Section 1063.5 carriers would be free to expand their operations in perpetuity without regard to considerations of public convenience and necessity. This would in essence interpret SB 860 to continue in effect the radial class of carrier while abolishing the name. We believe the legislative intent was clearly to abolish the class as well as the name. By permitting carriers to hold operating authority in excess of their operations actually conducted for a five-year period, carriers are provided a five-year

^{1/} This restriction would be entirely unnecessary if the certificates granted under Section 1063.5 were already limited in scope to the same extent.

transition period in which to expand, and a specific time is established after which the distinction created by SB 860 between Section 1063 and Section 1063.5 carriers will be entirely eliminated. This interpretation is consistent with the intent of the legislation and equitably balances the interests of both existing Section 1063 common carriers and radial carriers who must convert their authority.

Section 1063.5, which establishes the conditions under which a radial highway common carrier may convert such authority into a highway common carrier certificate, draws no distinction between radial carriers who have operated as prime carriers and radial carriers who have operated as subhaulers. Neither does it draw any distinctions based upon the equipment the carrier may possess. Restricting the certificate granted to carriers to subhauling or according to the equipment owned would restrict the opportunity such carriers have to grow and expand their operations in a manner which we feel is inconsistent with the intent of the legislation. We will not restrict the certificates granted these carriers in this manner.

We disagree with CTA regarding the conversion rights under Section 1063.5 of radial carriers who were in suspension on January 1, 1978. Section 1063.5 provides in part, "Any person or corporation operating as a radial highway common carrier on the effective date of this section may...file an application for a certificate..."^{2/} (Emphasis added.) It further provides, "...the commission shall issue a certificate... if it finds upon examination that the carrier was in bona fide operations as a radial highway common carrier on July 1, 1978, and continuously thereafter to date of filing." (Emphasis added.) It is common practice for seasonal carriers to put their permits in suspension for periods of time during which their operations are inactive. Since this section does not require "Bona Fide" or active operations on January 1, 1978, carriers holding permits on January 1, 1978 will be eligible for conversion even though their permits were in temporary suspension on that date. We agree, however, that radial carriers in suspension at any time from July 1, 1978, to the date of filing for their certificate, are not eligible for a grandfathered certificate under Section 1063.5. This may prove

^{2/} The effective date of the section was January 1, 1978.

a hardship for a number of carriers, but is clearly stated in the legislation, which we are without power to amend.

Several carriers suggested expanding the availability of Section 1063.5 certificates. HCA recommended that contract carriers "who operate as radial carriers" be allowed to file for certificates. Willig suggested that any opportunity granted Section 1063.5 common carriers to expand their operations in the future be extended to all common carriers. We cannot accept either of these suggestions. SB 860 provides no provision for grandfathering any authority other than radial permits into highway common carrier certificates. Neither does it alter or amend existing restrictions on Section 1063 common carriers.

The issue of whether a radial carrier should be allowed to convert its permit into both a common carrier certificate and a contract carrier permit was addressed by a number of parties, including CTA, Delta, and the Teamsters, all of whom opposed the granting of such dual authority. Neither Section 1063.5, nor Section 3572.5, or any other Code section amended by SB 860 precludes the granting of such dual authority. Finding no reason to prohibit such, we affirm our policy permitting conversion applications for both authorities. Neither will we prohibit Section 1063.5 carriers from removing routes and commodities from their certificates to permit transportation on these routes or of these commodities under contract carrier authority. Willig's recommendation of such a restriction is contrary to well-established Commission policy permitting withdrawal of routes and commodities from carriers' certificates when they can show that public convenience and necessity no longer require the service. See, among others, Decision No. 87181, dated April 5, 1977, in Application No. 56589, and Decision No. 87182, dated April 5, 1977, in Application No. 56588.

Tariff Filing Requirements

WMTB, Teamsters, Delta, Willig, CTA, PMT, Murchison, and HCA commented in opposition to our guidelines concerning tariff filing by Section 1063.5 carriers. They generally believe that such carriers should be required to file tariffs as any other common carrier must, and should be permitted neither to adopt a Commission minimum rate tariff nor a tariff covering anything less than the entire scope of authority covered by their certificate. They also recommended requiring carriers engaged exclusively in subhauling to file tariffs.

Our earlier resolutions established different tariff filing requirements for carriers possessing certificates converted under Section 1063.5 than apply to present Section 1063 common carriers. Traditionally, tariffs must be filed by Section 1063 carriers for all authority (territories and commodities) described in their certificates. Our resolutions would permit Section 1063.5 carriers to file tariffs covering only a portion of their certificated authority. We would also permit Section 1063.5 carriers who intend to engage in for-hire motor transportation strictly on a subhaul basis to possess a certificate without initially filing any tariff. As we have already indicated, certificates granted under Section 1063.5 may be more extensive than the operations the carrier granted such authority can or may initially intend to conduct. We find no justification or purpose to be served by requiring such carriers to publish tariffs beyond the scope of the authority they will be exercising. We have adopted this policy in order to permit implementation of SB 860 without undue administrative burden or expense to the carriers involved. This policy applies equally to carriers who initially intend to operate exclusively on a subhaul basis. Accordingly, the general policy that we adopted in Resolution TS-296 will be carried forward to Appendix C of this decision which contains our guide for common carrier tariff filings under SB 860. That policy provides for granting statewide authority to

Section 1063.5 applicants with the option of exercising only part of the authority by filing tariffs covering only that part the carrier wishes to serve. Expansion of the carrier's operation may take place by further tariff filings during the five-year transition period. After the end of the transition period, the growth period manifest in SB 860 will have expired, and authority not exercised will be considered lapsed. Section 1063.5 certificates will be amended accordingly.

In Resolution TS-296 we indicated that carriers were free to expand their operations during the transition period without establishing public convenience and necessity. We further stated that any contraction of such operations would be deemed abandonment, precluding subsequent operations to the extent of the authority abandoned unless a traditional showing and finding of public convenience and necessity was made. Upon reconsideration, we find no intent in SB 860 to restrict grandfathered carriers in this manner. Since SB 860 requires no showing of public convenience and necessity for carriers to expand their operations during the transition period, we will not deem contractions during this period as abandonment. The extent of Section 1063.5 carriers' dedication will be considered only at the expiration of the five-year transition period.

With regard to tariff publishing, we recognize the need for an easy and equitable method of having new common carriers establish their first tariffs, however limited or broad in scope. Many of these carriers are small operators, unsophisticated in the "science" of tariff preparation and publication. Tariffs may be filed in accordance with any of the following methods:

1. A tariff may be filed by an individual carrier on its own, in its own name.

2. A tariff may be filed by an individual carrier through the use or with the aid of a tariff publishing agent. A tariff-publishing agent may provide advice and assistance in structuring the carrier's tariff and publishing it, but does so solely upon the instruction of the individual for whom the tariff is being published. Tariff-publishing agents do not engaged in collective ratemaking.
3. A carrier may participate in a bureau tariff.^{3/} Such tariffs are established through collective ratemaking and can only be published by bureaus operating under Commission approval granted pursuant to Section 496 of the Code.
4. A carrier may, under the special procedure we are establishing through Appendix C, adopt one or more of the Commission minimum rate tariffs either in entirety or with specific exceptions set forth in the carrier's adoption notice.

We reaffirm the fourth method, adopting one or more Commission minimum rate tariffs, as an easy, inexpensive, and equitable method of compliance with this requirement. In order to avoid any discrimination, this procedure will be available to existing Section 1063 common carriers as well as new carriers granted authority under Section 1063.5.

We also recognize the need for prompt and liberal modification of tariffs and tariff rules to provide flexibility to common carriers with unusual problems. It will be our policy to act accordingly.

^{3/} Whether the Commission will continue to grant antitrust immunity to rate bureaus under Section 496, and if so, under what conditions, are issues presently under consideration in Case No. 10368. Until hearings are completed and a decision issued, bureau agreements will continue to be approved in accordance with existing Commission practice.

CTA has recommended that tariff filings by Section 1063.5 common carriers have a common effective date with at least a 90-day advance notice to the public. They have also suggested that the authority of such carriers be revoked if tariffs are not filed by the common effective date. We agree that a common effective date, with the consequence that all radial permits will be converted on the same date, is desirable. In order to accomplish this result, we must allow sufficient time for administrative processing of the tariff filings as well as the applications for issuance of grandfathered authority. In view of these considerations, we find the following schedule reasonable. The Commission will begin to grant Section 1063.5 certificates on or after January 2, 1979, as the applications are processed. All certificates will be granted by July 1, 1979. Certificates will be granted with a 30-day effective date. Carriers must file their tariffs within 30 days of the effective date of the certificate, but not prior to the effective date. Tariffs must be filed with at least a 30-day notice to the Commission and the public. All Section 1063.5 certificates will have an issue date of July 1, 1979 and all tariffs must be made effective October 1, 1979. Since no highway common carrier can conduct operations until tariffs have been made effective, carriers applying for grandfathered certificates may continue to conduct operations under their radial highway common carrier permits until October 1, 1979, at which time all radial highway common carrier permits will be canceled.

Controversy has continued with regard to the ability of Section 1063.5 carriers to offer service after conversion of their radial permit at rates previously approved under Section 3666 of the Code. Section 3666 allows permitted carriers to assess rates less than otherwise applicable minimum rates upon the approval of the Commission. Common carriers may be granted similar authority under Section 452 of the Code. The requirements for granting rate deviations to common carriers under Section 452 differ, however, from those applicable to permitted carriers under Section 3666.

Section 452 provides that a common carrier may establish a lower than maximum reasonable rate^{4/} when the needs of commerce or public interest require. Section 3666 permits the Commission to approve a permit carrier deviation upon finding the proposed rate reasonable. Under the circumstances, where a substantial number of radial highway carriers have Section 3666 deviations which have all been found reasonable, and where Section 1063.5, as added by SB 860, indicates a legislative intent to permit radial carriers to continue their operations as highway common carriers, we find that the needs of commerce and the public interest require publication of these rates under Section 452.

We note that it is not necessary to consider the second sentence of Section 452 since we know of no Section 3666 deviations granted for either the purpose of meeting competition or the cost of other means of transportation.

Permissible Scope of Contract Carrier Operations

It is important for carriers to understand the differences between common carrier and contract carrier operations in order to reach informed decisions with respect to the conversion of their radial permits. Resolution 18020, which established guidelines concerning the permissible scope of contract carrier operations, was issued to provide carriers with some guidance. The resolution provoked considerable comment and controversy. Much of this controversy carried over into the issues of specialized carriers and the transportation of exempt commodities which are discussed in sections following under those headings.

^{4/} Under our present minimum rate system the "maximum reasonable rate" is actually in most instances equivalent to the minimum rate.

A variety of changes to our guidelines were recommended by parties presenting statements. The Teamsters recommended increasing the "continuing relationship" criteria from 30 to 90 days. Bailey recommended that the guidelines be liberalized to eliminate the frequency restrictions and minimum number of shipments. Delta, Willig, and the Teamsters supported a numerical limitation on the number of contracts permitted. Both Bailey and the staff felt the requirement of written contracts should be abolished. Miles suggested that petroleum contract carriers be exempt from the provisions of the resolution and Los Angeles County proposed exemption of government agencies from the frequency and period of service criteria.

The Code contains a very broad definition of "highway contract carrier". It is defined solely by exclusion. We are of the opinion that the legislature, in retaining this broad definition, intended the Commission to exercise wide discretion in establishing the scope of operations which may be conducted by highway contract carriers. SB 860 eliminated the radial highway common carrier classification; it neither eliminated nor restricted the highway contract carrier classification. Accordingly, we will adopt and apply guidelines which generally will allow contract operations to continue in the future as they have in the past.

Historically, the question of whether a particular highway contract carrier is in lawful operation has been determined on a case-by-case basis upon the facts surrounding the individual carrier's operations. This practice will, in general, continue, although we have made exception in this decision in discussing specialized carriers and the transportation of exempt commodities.

The amendments to Resolution 18020, which we adopt and incorporate in Appendix G to this decision, thus provide only guidelines, not absolute or rigid rules.^{5/} We recognize that exceptions to one or more of these guidelines will have to be recognized in individual cases upon analysis of carriers' actual operations. We expect, however, that such exceptions will not be common.

Our guideline requiring written contracts will be applied strictly. Although we have not previously required written contracts, SB 860 has made carrier status more important in California. With the elimination of the radial highway common carrier, lines can be more clearly drawn between common and contract operations and issues of status will become more hotly disputed. Requiring written contracts will provide a tool to be used in resolving such disputes. In order to assure the effectiveness of this enforcement tool, we are further requiring that these contracts be filed with the Commission prior to, or on the date of, the initiation of service. All contract carriers, except petroleum contract carriers and highway contract carriers transporting exempt commodities, shall be subject to this requirement. Since SB 860 has not affected the status of petroleum or cement contract carriers, we feel it unnecessary to require written contracts of them at this time. Our reason for excluding highway contract carriers from this requirement when transporting exempt commodities is primarily historical. Rate-exempt transportation has historically been performed, with relatively few exceptions, pursuant to contracts. As we indicate in our discussion

^{5/} This discussion and our guidelines contained in Appendix G apply only to carrier-shipper relationships; they do not apply to carriers subhauling for other carriers. Where contract carrier transportation service is provided through subhauling, only the overlying or prime carrier is subject to our guidelines concerning the permissible scope of contract carrier operations.

of rate-exempt commodities, we expect this to continue after the implementation of SB 860. As a consequence, we expect little inter-authority competition in this segment of the transportation market, which should substantially reduce the need for status enforcement. Absent the rationale for written contracts, we will not subject this segment of the industry to this added regulatory burden. With the exceptions noted, this requirement of written contracts filed with the Commission prior to, or on the date of, the initiation of service will be binding upon all highway contract carriers.

In Resolution 18020 we indicated that our staff may establish guidelines concerning the number of contracts which may result in a staff review of lawfulness. We now reject any implication that status may be determined by a specific number of contracts uniformly applied. We anticipate no such uniform limit on the number of contracts a contract carrier may have or the number of shippers it may serve. To establish such a limit would attribute far too much significance to but one of the relevant criteria. See, e.g., Samuelson v CPUC (1951) 36 CA 2d 722. Consistent with our intent to define rather than restrict contract carriage, we will presume lawful operations presently conducted pursuant to contract authority without regard to the number of contracts or shippers served.

We find no merit to, or basis for, the exemption of government agencies from the frequency and period of service criteria.

Specialized Carriers

Several parties have expressed concern that through the implementation of SB 860 we will unnecessarily restrict the present operating practices of highly specialized carriers.

Among these parties were Acme and Loughran. They perceived themselves to be caught in a legal dilemma. They contend that the specialized and varied nature of the transportation they provide renders it practically impossible to construct an adequate and reasonable tariff, and virtually impossible to construct a truly responsive one. This factor may as a practical matter preclude conversion of their radial permits into common carrier certificates. The only alternative remaining under SB 860 is conversion to contract authority, but many such carriers hold themselves out to serve the public generally, which under Resolution 18020 excludes conversion to contract authority. This latter problem could be overcome by limiting the scope of their operations, refusing service to shippers who require it. This, however, would be inconsistent with the interests of the general public, as well as shippers and carriers, and would require the carriers involved to forfeit the opportunity provided under Section 1063.5 to continue their present operations. This dilemma may be felt most acutely by radial carriers currently engaged in "heavy hauling". The typical transportation service provided by these carriers is unique and non-repetitive involving a multitude of variables. We are sympathetic with their alleged inability to construct a responsive tariff. We do not think, however, that they have fully understood their options under SB 860.

Resolution 18020, as amended by our preceding discussion, provides only guidelines to aid carriers in the selection of the appropriate conversion option for them under SB 860. It does not contain absolute or rigid rules. The question of the proper scope of highway contract carrier operations must ultimately be determined on the basis of the facts surrounding each individual carrier's operations. Although, in some instances, the extent of a carrier's

holding out may be of critical importance; in others, it is not. Heavy hauling is an example of the latter. Operations so specialized as heavy hauling are by their very nature contract carriage. Such operations may be conducted under contract carrier authority without compliance with either our guideline concerning the continuing relationship with the shipper or our guideline relative to solicitation of individual shipments.

Obviously there may be other types of operations which are so specialized as to be by their very nature contract carriage. Initially, the carrier and shipper must determine whether the transportation at issue is so specialized as to fall within this exception to the otherwise applicable contract carrier guidelines. Eventually the Commission may have to decide, again on a case-by-case basis, whether the transportation provided was truly contract or common in nature. This involves some risk to carriers. Consequently, we expect the industry to be cautious in its determination that any particular transportation is so specialized as to fall within this exemption.

Transportation of Rate-Exempt Commodities

Many carriers currently transport commodities exempt from minimum rate regulation pursuant to radial permit authority. After the implementation of SB 860, this transportation must be provided pursuant to either a common carrier certificate or a contract carrier permit. These options entail different rate treatment of such exempt commodities.

Highway common carriers are required by Code Sections 486, et seq., to publish tariffs specifying rates for every commodity they are authorized to transport and every service they

render. These tariff rates must be strictly observed. This tariff filing requirement fully applies to commodities exempt from minimum rate regulation where common carrier operative rights encompass such commodities. Under existing regulation permitted carriers are not required to file tariffs, but are subject to the minimum rate tariffs. Since, however, no minimum rates are set for rate-exempt commodities, permitted carriers are free to assess any reasonable rate they may desire to charge.

Wigle & Larimore, Handler, and Acme have identified this consequence of SB 860 as a matter of both carrier and shipper concern. If carriers convert to certificated authority for these commodities, they may have difficulty constructing an adequate tariff covering this transportation. One of the primary bases for exemption of commodities from minimum rate regulation is the difficulty of establishing meaningful minimum rates for the transportation of certain commodities. It is not surprising that this difficulty may carry over to the establishment of tariff rates. In addition, publication of precise tariff rates on these commodities would introduce inflexibility into a segment of the transportation industry which has traditionally been unusually responsive. Publication of tariff rates would severely hamper the ability of shippers to negotiate, and carriers to offer, differing rates predicated upon differing service demands. Carriers have also expressed concern about the ability of highway common carriers to compete with contract carriers for this traffic. Contract carriers, being subject to neither tariff publishing requirements nor minimum rates on these commodities, could theoretically exercise such flexibility to obtain traffic by offering a lower rate than that published by competing common carriers.

This problem is in many respects similar to that raised with respect to specialized carriers. It is also subject to essentially the same resolution. Historically, very little transportation of exempt commodities has been conducted pursuant to common carrier authority. This remains true today. Where highway common carriers have desired to transport exempt commodities, they have almost without exception excluded rate-exempt commodities from their certificates and transported them as highway permit carriers. This is in part due to special circumstances surrounding such transportation. Commodities have generally been exempted from minimum rate regulation because of these special circumstances and special requirements. Such circumstances have made them particularly appropriate for transportation in contract carriage as they have historically been transported. We find no intent in the passage of SB 860 to alter or disrupt historical patterns of exempt-commodity transportation; neither does the implementation of SB 860 require any such disruptive change. Accordingly, we find the transportation of commodities presently exempt from minimum rate regulation to be specialized transportation within the permissive scope of contract carrier operations.^{6/} Such operations may be conducted without compliance with our guidelines concerning the continuing relationship with the shipper, solicitation of individual shipments, or our requirement of written contracts. In order to accurately define the

^{6/} We do not intend to imply that carriers holding highway contract permits may transport all commodities exempt from minimum rate regulation. Many commodities exempt from rate regulation, for example, can only be transported by carriers holding agricultural or seasonal agricultural authority. Highway contract carriers may transport any commodity exempt from minimum rate regulation which does not require some other authority.

extent of this exception, we will direct our staff to prepare a list of commodities exempt from minimum rate regulation. It should be noted that transportation is exempted from rate regulation in some instances by reference to particular commodities and in other instances by reference to geographic areas. Although our discussion is expressed in terms of commodities, it applies equally to geographic areas in which transportation is exempt. Accordingly, this list of rate-exempt commodities shall include geographic area exemptions as well as commodity exemptions.

Agricultural Authority

The principal issue of controversy concerning the agricultural authority created by SB 860 was the extent of the commodities requiring an agricultural permit and which can be transported by an agricultural carrier. Virtually all parties commenting on this issue proposed expansion of the list of such commodities we previously adopted in Resolution 18019. Included among the recommendations were the following proposed additions: grape must (Wine Institute), unprocessed cotton (CTA), fodder (CDTOA), any commodity in its first move from the farmer (Miles), all dairy products that can be or are transported in tank trucks (Miles), all agricultural commodities covered by Minimum Rate Tariff 8-A (Tuttle & Taylor), all agricultural commodities covered by Minimum Rate Tariff 14-A (Tuttle & Taylor), all bagged products covered by Minimum Rate Tariff 2 (Tuttle & Taylor), bulk skim milk for pasteurization (Tuttle & Taylor), bulk low fat milk for pasteurization (Tuttle & Taylor), bulk condensed skim milk (Tuttle & Taylor), and bulk condensed whey (Tuttle & Taylor). In addition to these recommendations, CTA suggested that the term "unprocessed" be clearly defined as employed to delineate the scope of agricultural authority.

We believe that in order to implement the new law in an orderly manner so as to avoid disruptive changes in the established transportation modes for agricultural commodities, we should liberally expand the list of commodities requiring an agricultural permit and which an agricultural carrier may transport. We have reviewed the list previously adopted in Resolution 18019 and hereby expand it in accordance with the Appendix F to this decision. The extent of agricultural authority can best be defined by such a listing of specific commodities. Generalized descriptions of commodities and general definitions of "unprocessed" can only result in confusion and uncertainty. The list we adopt in Appendix F is not static. We invite interested parties who feel we have omitted some commodity which should be listed to petition for such addition or to petition for deletion of listed commodities.

The suggestion by Tuttle & Taylor that contract carriers be allowed to continue to transport agricultural commodities and livestock manifests a misunderstanding which may be shared by others. The Commission does not intend that contract carriers be prohibited from hauling unprocessed agricultural commodities. A contract carrier transporting unprocessed agricultural commodities under its current contract permit can apply for an agricultural carrier permit and hold that permit in addition to its present contract permit. If a contract carrier is hauling livestock, it is required to have a livestock carrier permit (Sections 3581 and 3582) and, therefore, is not affected by any of the provisions of SB 860. Contract carriers transporting commodities not within our list of unprocessed agricultural commodities may continue such transportation without an agricultural permit. Additionally, contract carriers can subhaul under the provisions for subhauling that we adopt in this decision.

Subhauling

Although the issues surrounding the practice of subhauling are under more extensive consideration in Case No. 10278, they are of necessity also issues in this proceeding. A significant number of carriers holding radial highway common carrier authority presently conduct operations in whole or in part as subhaulers. In order for these carriers to reach informed decisions regarding the conversion of their radial permits, they must be provided some indication of the extent to which subhaul operations may be continued under grandfathered common and contract carrier authorities. These issues were addressed in our Resolutions 18017 and 18020 and by the industry in the public hearings. Industry response ranged from recommending that any certificated or permitted carrier be permitted to subhaul for any other certificated or permitted carrier (Stecher, Grain and Feed Association) to unconditional opposition to all subhauling (Universal Transport). There was virtually no consensus among the members of the industry commenting upon this issue. Several parties suggested that we should retain the present Commission policy at least pending disposition of Case No. 10278 (Handler, Staff).

We feel compelled, however, to provide some guidance to those carriers who will be affected by the resolution of this issue. At a minimum, we will permit cross operating authority subhauling to the extent indicated in the table attached as Appendix B to this decision. In general, this table has three features:

1. Any carrier may subhaul for any carrier holding like authority. Highway common carriers may, for example, subhaul for other highway common carriers.
2. Contract carriers may subhaul for any other type of carrier except household goods carriers.
3. Any carrier may subhaul for an agricultural carrier, with the exception of logs by a seasonal agricultural carrier. ^{7/}

We find that the needs of commerce require subhauling at least to this extent. Future decisions in Case No. 10278 may further liberalize, but will not further restrict subhauling between classes of carriers. We make no findings with regard to other issues involving the practice of subhauling not addressed herein.

Findings of Fact

1. In order to permit the implementation of SB 860 without undue administrative burden or expense to the carriers involved, the Commission should establish liberal tariff publishing requirements and procedures for Section 1063.5 carriers in accordance with Appendix C and our discussion herein.

^{7/} In Resolution 18021, adopted April 11, 1978, after a careful reading of Section 3584.2 of the Code, we revised our policy previously set forth in answer to Queries 10 and 23 set forth in Resolution 18017. Section 3584.2 restricts the authorization provided by a seasonal agricultural permit to the transportation of unprocessed agricultural commodities.

2. A common date to convert all radial permits is desirable and in the public interest. Sufficient time must, however, be allowed for administrative processing.

3. In order to convert all radial permits on a common date, and in order to allow sufficient time for administrative processing, we find the following schedule reasonable:

- a. Section 1063.5 certificates will be granted during the period January 2, 1979, to July 1, 1979.
- b. Certificates will be granted with a 30-day effective date.
- c. All certificates will be issued July 1, 1979.
- d. Carriers must file their tariffs or affidavit of subhauling within 30 days after, but not prior to the effective date of the certificate.
- e. Tariffs must be filed upon at least a 30-day notice to the public.
- f. All Section 1063.5 tariffs must be made effective on the common date October 1, 1979.
- g. All radial highway common carrier permits will be revoked effective October 1, 1979.

4. Since a substantial number of radial highway carriers have Section 3666 deviations which have all been found reasonable, and since Section 1063.5 manifests a legislative intent that radial carriers be permitted to continue their operations as highway common carriers, we find that the needs of commerce and the public interest require publication of these rates under Section 452 where carriers holding such Section 3666 authority apply for certificates encompassing such transportation.

5. We find no Section 3666 deviations have been granted for either the purpose of meeting competition or the cost of other means of transportation.

6. The question of whether a particular highway contract carrier is in lawful operation must be determined on a case-by-case basis upon the facts surrounding the individual carrier's operations.

7. In order to insure effective enforcement, all written contracts required of highway contract carriers should be filed with the Commission prior to or on the date of the initiation of service as provided in Appendix G.

8. We find no merit to, or basis for, the exemption of government agencies from the frequency and period of service criteria set forth in Appendix G for contract carrier operations.

9. Some transportation is so specialized as to be by its very nature contract carriage. It is reasonable that such transportation may be conducted under contract authority without regard to our guidelines concerning the continuing relationship with the shipper or the solicitation of individual shipments.

10. Heavy hauling is an example of specialized transportation inherently contract by its very nature.

11. There may be other examples of specialized transportation inherently contract in nature which the Commission will evaluate on a case-by-case basis.

12. Rate-exempt transportation has historically been performed primarily pursuant to individually negotiated contracts.

13. One of the primary bases for exemption of commodities from minimum rate regulation is the difficulty of establishing minimum rates for the transportation of such commodities. This is generally due to special circumstances surrounding such transportation.

THB

14. Publication of tariffs covering these commodities would be difficult and would introduce inflexibility into a segment of the transportation market which has traditionally been unusually responsive to the needs of both shippers and carriers.

15. The transportation of commodities exempt from rate regulation involves special circumstances which have made them particularly appropriate for transportation in contract carriage (as they have historically been transported).

16. In order to implement SB 860 in an orderly manner so as to avoid disruptive changes in the established modes for transportation of agricultural commodities, the list of commodities which could be transported by an agricultural carrier should be expanded in accordance with Appendix F to this decision.

17. We find that the needs of commerce and the public interest require cross authority subhauling at least to the extent indicated in the table attached as Appendix B to this decision.

18. It is common practice for seasonal carriers to put their permits in suspension for periods of time during which their operations are inactive.

19. Applications for conversion under Sections 1063.5 and 3572.5 should be filed in accord with Appendix E and Finding 3.

Conclusions of Law

1. SB 860 amended the Code to eliminate the radial highway common carrier classification.

2. Carriers holding radial highway common carrier permits may convert such permits into either, or both, a highway common carrier certificate or a highway contract carrier permit.

3. Section 1063.5 added by SB 860 allows radial highway common carriers to convert their permits to certificates in order to continue their operations.

4. No Section 1063.5 certificate may be sold, mortgaged, leased, assigned, transferred, or otherwise encumbered for a period of five years after issuance except to the extent of operations actually conducted, not including operations as a subhauler.

5. Authority grandfathered under Section 1063.5 may exceed the scope of operations actually conducted for a period of five years following the date the grandfathered certificate is issued.

6. Neither Section 1063.5 nor Section 3572.5 restricts the authority grandfathered to the extent of operations actually conducted prior to SB 860.

7. During the five-year period referred to in Conclusions 4 and 5, Section 1063.5 carriers may expand and contract their operations without showing public convenience and necessity.

8. After the expiration of the five-year transition period referred to in Conclusions 4, 5, and 7, the distinction between Section 1063 common carriers and Section 1063.5 common carriers will be eliminated.

9. The extent of Section 1063.5 carriers' dedication will be considered at the end of the five-year transition period.

10. Section 1063.5 draws no distinction between radial carriers who have operated as prime carriers and radial carriers who have operated as subhaulers; neither does it draw any distinctions based upon the equipment the carrier may possess.

11. Radial carriers in temporary suspension on January 1, 1978 are not ineligible for a grandfathered certificate under Section 1063.5

12. Radial carriers in suspension at any time from July 1, 1978, to the date of filing for their certificate, are not eligible for a grandfathered certificate under Section 1063.5

13. SB 860 provides no provision for grandfathering any authority other than radial highway common carrier permits under Section 1063.5.

14. Section 1063.5 carriers should be allowed to remove routes and/or commodities from their certificates to permit transportation on these routes, or of these commodities under contract authority.

15. In order to permit the implementation of SB 860 without undue administrative burden or expense to the carriers involved, the Commission should liberalize tariff publishing requirements for Section 1063.5 common carriers in accordance with Appendix C and our discussion herein.

16. Section 1063 common carriers should also be permitted to file tariffs through the special procedure we have established for adopting one or more of the Commission's minimum rate tariffs as their own.

17. The question of whether a particular highway contract carrier is in lawful operation should be determined on a case-by-case basis upon the facts surrounding the individual carrier's operations.

18. The Commission should issue guidelines concerning the permissible scope of contract carrier operations to assist carriers in reaching informed decisions with respect to conversion of their radial permits under the provisions of SB 860.

19. The amendments to Resolution 18020 reflected in our discussion should be adopted and issued as Appendix G to this decision.

20. There should be exceptions to our guidelines concerning the permissible scope of contract carrier operations, but such exceptions will not be common.

21. To establish a limit on the number of contracts or number of shippers a contract carrier could serve would attribute far too much significance to but one of the criteria relevant to the determination of the permissible scope of contract carriage.

22. SB 860 eliminated the radial highway common carrier classification; it neither eliminated nor restricted the highway contract carrier classification.

23. We will presume lawful operations presently conducted pursuant to contract authority without regard to the number of contracts or shippers served.

24. We find no intent in SB 860 to alter or disrupt historical patterns of exempt-commodity transportation.

25. Transportation exempt from minimum rate regulation is specialized transportation within the permissible scope of contract carrier operations. Such transportation may be conducted without compliance with our guidelines concerning the continuing relationship with the shipper, solicitation of individual shipments, or our requirement of written contracts.

26. Contract carriers may qualify for an agricultural carrier permit and hold that permit in addition to a contract permit.

27. Contract carriers transporting commodities not within our list attached as Appendix F should be allowed to continue such transportation without an agricultural permit.

28. Further decisions in Case No. 10278 may further liberalize, but will not further restrict subhauling between carriers.

29. Resolution 18017 should be amended in accordance with our discussion herein and attached as Appendix D to this decision.

30. The following order should be made effective the date of signature so that radial carriers may make informed elections pursuant to SB 860 prior to the statutory deadline of December 31, 1978.

O R D E R

IT IS HEREBY ORDERED that:

1. Senate Bill 860 shall be implemented in accordance with this decision and the appendices attached hereto.

2. Commission Resolutions TS-296, 18017, 18018, 18019, 18020, and 18021 are rescinded.

3. The Executive Director shall serve a copy of this decision on all highway carriers.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 31st day of OCTOBER, 1978.

I consent.
William S. Lyons, Jr.

Robert Batinauch

President

Vernon L. Sturgeon

Richard W. Lovell

Clair T. Deibel

Commissioners

APPENDIX A
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LIST OF APPEARANCES

Respondents: Henry Bartolo, for Jet Delivery, Inc.; Al Cole, for Max Binswanger Trucking; John W. Conner, for IT Transportation; Philip N. Deckard, for Dedicated Transport, Inc.; Michael Eggleton, for Osterkamp Trucking, Inc.; Jack W. Ellingson, Attorney at Law, for Kings County Truck Lines, Dairyman's Cooperative Creamery, and San Joaquin Valley Dairyman's Association; Ernest E. Gallego, Attorney at Law, and Robert C. Johnson, for Bekins Moving & Storage Co.; C. E. Goacher, for Di Salvo Trucking Company; Frank R. Golzen, Attorney at Law, for Universal Transport System, Inc.; Warren S. Goodman, for Ventura Transfer Company; Handler, Baker, & Greene, by Marvin Handler, Attorney at Law, for A & B Garment Delivery, A & B Transportation Service, Associated Freight Lines, Doudell Trucking Company, Hawkey Transportation, Lodi Truck Service; Logistics Express, Inc., Market Express, Inc., Harry McKenzie Trucking, System 99, Preston Trucking Co., Lemore Transportation, Associated Transportation, Ditto Freight Lines, Morris Draying Company, Pozas Bros. Trucking Co., Bill Rackley Trucking, Warren Transportation, Frank's Trucking, Pacific Coast Tariff Bureau, Pellco Trucking, Inc., Mammoth of California, American Transfer Co., Noerr Motor Freight, Sheedy Drayage Co., Boland Trucking Co., Georgia-Pacific Corporation, dba The Paper Transport Company, Weston Trucking Company, Groskopf-Weider Trucking Co., Inc., Kimkris Trucking Co., Inc., Roy Jameson & Son, and Osterkamp Trucking, Inc.; S. M. Haslett, for Haslett Company; Robert J. Hildreth, for Acme Transportation Inc.; Walter L. Keeney, for Keeney Truck Lines Inc. and Flour Transport Inc.; Robert L. LaVine, Attorney at Law, and Lee Pfister, for Willig Freight Lines; Loughran & Hegarty, by Frank Loughran, Attorney at Law, for Viking Freight System; Joseph MacDonald, for California Motor Express; David J. Marchant, Attorney at Law, for California Carriers Association; J. McSweeney and Andrew J. Skaff, Attorney at Law, for Delta Lines, Inc.; John E. Miller, for Miller Transfer & Storage; Ray V. Mitchell, for System 99; James A. Nevil, for Nevil Storage; Frank Ogi, for Insured Transporters, Inc.; Roger L. Ramsey, Attorney at Law, for Red Arrow Bonded Messenger Corp.; Kenneth W. Ruthenberg, Jr., Attorney at Law, for Rocor International; J. S. Shafer, Jr., for Trucking by J. S. Shafer, Jr.; Ray Sharp, for Sharp Farms Trucking; John MacDonald Smith, Attorney at Law, for Pacific Motor Trucking Company; Linda Spangler, for numerous dump truckers in Sonoma County; Silver, Rosen, Fischer & Stecher, by Michael J. Stecher, Attorney at Law, for Applegate Drayage Company, Shifflet Bros., Devine and Sons Trucking, Thompson Transport Systems, Clark Trucking Service, Blincoe Trucking, Teresi Trucking, and Guthmiller Trucking; and John W. Telfer, for Telfer Tank Lines, Inc.

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Interested Parties: Lee Adler, for California Grain & Feed Association; Joe Alvarez, and David R. Wallace, for California Department of General Services (Traffic Management); T. W. Anderson, for General Portland, Inc.; Don G. Austin, for Monolith Portland Cement Co.; William T. Barklie, for California Portland Cement Co.; Emil J. Bertana, for Lone Star Industries, Inc.; Barbara L. Bibb, for Dispatch Trucking; E. O. Blackman and James Martens, for California Dump Truck Owners Association; Walker Brown, for Walker Brown Trucking, Inc.; Richard H. Brunt, for Hadley Auto Transport; Asa Button, for Spreckels Sugar Division - Amstar Corporation; Brundage, Beeson & Pappy, by Roger A. Carnagey, Attorney at Law, for Western Conference of Teamsters, California Teamsters Public Affairs Council; Wigle and Larimore, by Donald A. Clegg, for Anderson Clayton Co., J. G. Boswell Co., Kingsburg Cotton Oil, Producers Cotton Oil, and Ranchers Cotton Oil; Richard B. Colby, for Flintkote Supply Company; Allen R. Crown, Attorney at Law, and Ralph O. Hubbard, for California Farm Bureau Federation; P. K. Davies, for himself; Floyd L. Farano, Attorney at Law, for himself; Louis J. Guarrella, for Willig Freight Lines; Robert L. Hansen, for Automobile Transport Co. of California; Vaughan, Paul & Lyons, by Robert Andrew Harkness, Attorney at Law, for California Forest Protective Association and California Fertilizer Association; Kenneth P. Harrison, for Harrison-Nichols Co. Ltd.; Thomas J. Hays, for California Moving & Storage Association; Fred P. Hughes, for Southern California Rock Products Assn.; Calhoun E. Jacobson, for himself; Eldon M. Johnson, Attorney at Law, for himself; Knapp, Stevens, Grossman & Marsh, by Wyman C. Knapp, for Dealers Auto Transport, Inc. and Pacific Messenger Service, Inc.; Tuttle & Taylor, Inc., by Lisa Mayes and Ronald C. Peterson, Attorney at Law, for Agricultural Council of California, Blue Anchor, Inc., Bud Antle, Inc., California Cattlemen's Association, DFA of California, and Sunkist Growers, Inc.; Jim E. Miller, for himself; Sam Miles, for Jack Burtch Company, Don E. Keith, Cain Trucking, Inc., Corcoran Construction Co., Inc., Hayter Trucking, Hannah Trucking Service, Inc., James Petroleum Corporation, Petroleum Transportation Company, Vel Marv Petroleum Corporation, Western Hyway Distributing Co., Inc., A. W. Coulter Trucking, Mitchell West, Shannon Bros. Co., and Souza's Milk Transportation Co., Inc.; William Mitze, for Riverside Cement Co.; R. G. Moon and M. J. Nicolaus, for Western Motor Tariff Bureau; Tad Muraoka, for IBM Corporation; Murchison & Davis, by Donald Murchison, Attorney at Law, for Airway Trucking Co., Alco Transportation Co., Auto Fast Freight, Inc., Baker International Warehouse, Bob's Delivery Service, Budway Enterprises, Inc., dba Budway Express, Courier Express, Inc., Delliplaine Truck Co., Inc., Joseph N. LeBow, dba Desert Empire Express, Desmond Mail Service, Inc., G & H Transportation, Inc., G. I. Trucking Co.,

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Golden Chariot Truck Lines, Inc., Inland Freight Lines, J.I.M. Corporation, Kam Freight Line, King Delivery, Inc., L.D.S. Truck Lines, M.A.P., Inc., Mac Adam International, Marino Freight Lines, Inc., Metropolitan Distribution Centers, Inc., Roy Miller Freight Lines, Inc., Norco Delivery Service, Inc., Price Transfer, Inc., Ram Freightways, Inc., Redway Truck & Warehouse Co., Smith Transportation Co., States Warehouse, Inc., Steve's Lowbed Trucking, Inc., Universal Mail Delivery Service, Warren Trucking Co., Inc., Weber Truck and Warehouse, and Williams Transportation, Inc.; Dixie L. Murphy, for Murphy Truck & Equip. Rentals, Inc.; Robert E. Murray, for Trucking Unlimited; Harry C. Phelan, Jr., for California Asphalt Pavement Association; Fred D. Preston, for Actran; Loughran & Hegarty, by Ann M. Fouglaes, Attorney at Law, for Wine Institute; Dennie W. Reed, Sr., for Dennie Reed & Sons, Inc.; Link Richmond, for Link Richmond and Sons; George B. Shannon, for Southwestern Portland Cement; Don B. Shields, for Highway Carriers Association; Thomas M. Skinner, for Coast Machinery Movers, Inc., et al.; Harry Smith, for Realistic Transport; Richard W. Smith, Attorney at Law, for California Trucking Association; Frank Spellman, for himself; Ralph J. Staunton, for Purchasing & Stores Dept. County of Los Angeles; Silver, Rosen, Fischer & Stecher, by Michael J. Stecher, Attorney at Law, for Frontier Transportation, Inc., Roy Lay Trucking, and J. M. Buckley and Son, Inc.; William E. Still, Attorney at Law, for Pacific Motor Trucking Company; Vic Sward, for Sward Trucking Inc.; and W. A. Watkins, for Bethlehem Steel Corp.

Commission Staff: Edward W. O'Neill, Attorney at Law, and Robert E. Walker.

APPENDIX B

AUTHORIZED SUBHAULING BETWEEN HIGHWAY CARRIERS

PRIME CARRIER SUB-HAULER	HIGHWAY COMMON	PETROLEUM IRREGULAR ROUTE	CONTRACT	CEMENT	AGRICULTURAL	SEASONAL AGRICULTURAL	LIVESTOCK	SEASONAL LIVESTOCK	DUMP TRUCK	PETROLEUM CONTRACT	HOUSEHOLD GOODS
HIGHWAY COMMON	YES				YES						
PETROLEUM IRREGULAR ROUTE		YES			YES						
CONTRACT	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	
CEMENT				YES	YES						
AGRICULTURAL					YES						
SEASONAL AGRICULTURAL					YES*	YES*					
LIVESTOCK					YES		YES				
SEASONAL LIVESTOCK					YES		YES	YES			
DUMP TRUCK					YES				YES		
PETROLEUM CONTRACT					YES					YES	
HOUSEHOLD GOODS					YES						YES

BLANK SQUARES = NO

*Subhauling limited to unprocessed agricultural commodities.

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RULES GOVERNING GRANDFATHERED SECTION 1063.5
HIGHWAY COMMON CARRIER TARIFF FILINGS

Highway common carriers are required by law to publish and file tariffs with the Commission setting forth all rates, rules, and regulations governing operations conducted as a common carrier. They must completely observe the provisions contained in these tariffs at all times, and they may not perform any service or assess any charge not set forth in their own tariffs. Highway common carriers are required to publish in their tariffs a rate for every commodity they transport and every service that they render. Those rates must be observed as set forth in the tariff.

There follows the detail on the filing of such tariffs. Essentially there are four ways in which these tariffs may be filed under these special provisions. The first is an individual tariff filed by an individual carrier; second, is an individual tariff filed with the assistance of a tariff-publishing agent or service; third, is as a participant in a tariff filed by a rate bureau; and fourth, is to adopt one or more of the Commission minimum rate tariffs either in its entirety or with specific exceptions as set forth in the adoption notice which tariff will then become the carrier's tariff.

Initially, tariffs filed by common carriers under these rules may contain any level of rates or provisions as long as they do not violate the minimum rate provisions established by the Commission. After the tariffs are on file and have become effective, no increase in rates or any change in a rule which results in an increase may be made without Commission approval under Section 454. Such approval may be sought by the filing of a formal application or by filing under certain circumstances a shortened procedure tariff docket application or a special tariff docket application. Other changes made in the tariffs not resulting in an increase and which do not go

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below the Commission minimum rate levels, may be made on not less than thirty days' notice to the Commission and the public. Such notice is effected by filing an amendment to the tariff with provisions to make the change effective not less than thirty days after it is filed with the Commission. The tariff change is also to be posted with the tariffs maintained for public inspection. Highway common carriers may also seek authority to publish less than minimum rates pursuant to Section 452 of the Code. A guide outlining the procedure for seeking such authority is set forth in Commission Resolution TS-284, which was recently sent to affected carriers and interested parties, and a copy of which is available from the Commission on request.

The filed tariffs of highway common carriers are open for public inspection at the Commission's offices in San Francisco and Los Angeles. Also, carriers must have a copy of their tariffs available for public inspection at their principal office or offices in California.

The specific details consisting of the form and procedures for tariff filings and tariff maintenance are set forth in the guide which follows. Some considerations in regard to filing tariffs and special rules are:

- a. Individual tariffs filed by carriers must contain all the rates, rules, and regulations covering their operations. These tariffs may be prepared by the carriers themselves, or by someone else on behalf of the carriers, e.g., a tariff-publishing agent or service. The approximate cost of having a complete individual tariff prepared by a publishing service averaged about \$20 per page as of March 1978.
- b. Carriers electing to become participants in bureau tariffs are required to join the bureau. The carrier should contact the bureau and sign the various documents, including a power of attorney, authorizing the bureau to publish the tariffs on the carrier's behalf. As of March 1978, the

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initial fee for such participation ranged from \$150 to \$300. There is also a monthly charge of \$20 and up to maintain the tariffs, or a charge based upon the number of tariff page amendments issued.

- c. Carriers filing an adoption notice pertaining to the Commission's minimum rate tariffs can make exceptions to such tariffs, such as higher rates, alternative rates, etc. The exceptions must be published in their entirety setting forth all the conditions and related provisions in the adoption notice. From time to time the Commission will make changes in the minimum rate tariffs, and at the same time will direct common carriers who file their own tariffs to publish the changes. Those carriers who adopt the Commission's minimum rate tariffs need not make a change but must abide by the changed rates.
- d. Highway common carriers must be participants in any publications that govern their tariffs, such as the National Motor Freight Classification (NMFC) and the Hazardous Materials Regulations (Hazardous). At the present time these publications are related to the Commission's minimum rate tariffs and permitted carriers must abide by them but have not had to be participants in them. The yearly fee for such participation by a common carrier is \$40 for NMFC and \$22.50 for Hazardous. Those carriers who choose to adopt Commission tariffs are still required to become participants in NMFC and Hazardous as described above.
- e. Radial highway common carriers becoming highway common carriers under SB 860 and who have deviations granted under Section 3666 of the Code are allowed to publish those

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deviated rates in their common carrier tariffs. Renewals of such rates will be made pursuant to the regulations set up by the Commission under Section 452 of the Code.

The following are general comments concerning the scope of tariffs that a converted radial highway common carrier may file with the Commission.

- a. The scope of geographic operations and the commodities described in the grandfathered Section 1063.5 certificate may be larger in scope than the operations such carriers intend to initially conduct. As Section 1063.5 grandfathered common carriers alter service in or to counties listed in their certificate as common carriers, they will be required to file tariffs to cover the common carrier operations.
- b. Grandfathered Section 1063.5 common carriers may initially serve only some of the points listed in the Section 1063.5 certificate pursuant to filed tariffs. Such a carrier may serve other counties, even those listed in its Section 1063.5 certificate for which tariffs have not been filed, as a contract carrier if it possesses contract carrier authority. That authority, however, will be limited on its face to services not covered by the tariff on file for the Section 1063.5 certificate. This means that a Section 1063.5 common carrier may serve a point named in its certificate hauling commodities listed in its certificate as a contract carrier or as any permitted carrier provided it does not have tariffs on file to serve these points for the same commodities as a common carrier. When a Section 1063.5 common carrier files tariffs to serve points as a common carrier, it is precluded by law from hauling the same commodities between the same points as both a common and permitted carrier. (See Section 3542 of the Code.)

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- c. Grandfathered Section 1063.5 common carriers are put on notice that they may expand or reduce service simply by filing or canceling tariffs for a five-year period without a showing before the Commission that public convenience and necessity require such expansion or reduction. After the five-year period, there will be no distinction between 1063 and 1063.5 common carriers. Therefore, after the period, public convenience and necessity will have to be shown to allow any such expansion or contraction.

COMMON CARRIER TARIFF FILING PROCEDURES

Common carriers are subject to various tariff filing rules and regulations of the following Commission general orders:

General
Order No.

Title of General Order

80-A	Rules Governing the Construction and Filing of Tariffs Issued by Highway Common Carriers, Petroleum Irregular Route Carriers, Freight Forwarders, and Express Corporations (Except Air Express Companies and Air Freight Forwarders).
84-G	Regulations Governing the Handling of Collect on Delivery Shipments and Accounting for Collection made Thereon by Express Corporations, Freight Forwarders, Highway Carriers, Passenger Stage Corporations, and Household Goods Carriers.
109	Regulations Governing the Filing and Handling of Requests for Tariff Changes Under the Special Tariff Docket.
113-A	Rules Governing Petitions for Suspension and Investigation of Tariffs and Schedules of Common Carriers as Defined in Division 1 of the Public Utilities Code, Air Transportation Companies, Warehousemen, and Wharfingers.

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- 122 Rules Governing Public Inspection of Tariff Schedules of Common Carriers as Defined in Division 1 of the Public Utilities Code.
- 132 Rules Governing the Filing of Rate Quotation Statements for Transportation by Common Carriers for the State, County, or Municipal Governments Pursuant to Section 530 of the Public Utilities Code.

Upon conversion of its radial highway common carrier permit to a highway common carrier certificate, a Section 1063.5 common carriers must, unless it is engaged exclusively as a subhauler:

1. File an individual tariff on its own;
2. File an individual tariff through or with the assistance of a tariff-publishing agent or service;^{1/}
3. Become party to a bureau tariff; and/or
4. Adopt any of the Commission's minimum rate tariffs which will then become the carrier's tariff.

The procedures for 1, 2, and 3 are already established. The establishment of procedure 4 will be accomplished by special provisions the Commission will issue through formal orders in the minimum rate cases amending the present minimum rate tariffs by adding prescribed requirements for adoption notices and a grant of authority to depart from the provisions of General Order No. 80-A.

An adoption notice of the Commission tariffs will be required to be filed on a prescribed form which will provide that:

1. The carrier will adopt every item of the tariffs except as noted.
2. The tariffs will apply to the carrier as exact rate tariffs.
3. The name and number of each Commission tariff to be adopted will be clearly stated.

^{1/} A tariff-publishing agent may provide advice and assistance in structuring the carrier's tariff and publishing it, but does so solely upon the instruction of the individual for whom the tariff is being published. Tariff-publishing agents do not engage in collective ratemaking.

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4. The adopted tariffs will apply only to the extent of the operations the carrier will conduct as a common carrier.
5. As the carrier subsequently alters the territorial scope of operations, it must file a notice to reflect the changed operations.
6. The carrier must be a party to all publications which govern the tariffs to be adopted, including the NMFC and Hazardous.
7. Carriers choosing to publish an additional rate item, or an exception to any existing rate item, must publish the item in its entirety, identify the tariff to which the item is an exception, and in the case of the publication of alternative application items, indicate the authority for publication of such items by tariff and item number from which the rates were obtained.

There follows a proposed adoption notice and examples of how exceptions or additions can be published therein.

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ADOPTION NOTICE

TO:

- () EXCEPTION RATINGS TARIFF 1
- () DISTANCE TABLE 8
- () DIRECTORY 1
- () MINIMUM RATE TARIFF 1-B Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 2 Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 3-A Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 4-B Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 7-A Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 8-A Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 9-B Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 10 Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 11-A Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 12-A Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 13 Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 14-A Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 15 Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 17-A Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 18 Except those items which are reprinted herein.
- () MINIMUM RATE TARIFF 19 Except those items which are reprinted herein.

HEREBY ADOPTS AS ITS EXACT (NOT
(Name of Carrier & Cal-T Number)

MINIMUM) RULES, RATES, AND CHARGES ALL PROVISIONS OF THE ABOVE
INDICATED TARIFFS, EXCEPT AS PROVIDED HEREIN.

ISSUED BY:

(NAME AND ADDRESS OF OWNER OR COR-
PORATE OFFICER)

EFFECTIVE: (DATE)

NOTE (Attach list of territories to be served as a common carrier and
any exception to the adopted tariffs.)

EXCEPTIONS TO APPLICATION OF MINIMUM RATE TARIFF 2

The following exceptions or additions will apply to the operations of the above named carrier:

Item 181-A (Supercedes Item 181-1 and 182)
Carrier will not accept C.O.D. shipments.

Item 765-A (Supercedes Item 765)

IRON and STEEL ARTICLES as described in Item 760.

JUNK, viz.:
Waste Paper and Rags in machine pressed bales.

Rates in Cents per 100 Pounds

Over	MILES But Not Over	MINIMUM WEIGHT (In Pounds)	
		10,000	20,000
0			
0	5	37	28
5	10	44	32
10	--	66	37

Item 2000 (added)

CONTAINERS or PARTS THEREOF Iron or steel, viz.:
COLUMN 1: Cans, empty, in straight shipments or in mixed shipments with Can Bottoms, Can Tops.
COLUMN 2: Can Bottoms, Can Tops.

FROM	TO	RATES IN CENTS PER 100 POUNDS		
		COLUMN 1		COLUMN 2
		MINIMUM WEIGHT IN POUNDS		
		14,000	17,500	20,000
San Francisco (AT:SP:WP) Oakland (AT:SP:WP) Alameda (AT:SP:WP)	Selma (SP)	(1) 183	(1) 175	(1) 87
	Kingsburg	(1) 189	(1) 175	(1) 87
	Hanford (AT:SP)	198	183	87
Sunnyvale (SP)	Selma (SP)	183	175	--
	Kingsburg (SP)	183	175	--
Stockton (AT:SP)	Selma (SP) Kingsburg (SP)	(1) 175	(1) 155	--
	Hanford (AT:SP)	175	155	--

* The minimum weight applies to each unit of equipment. For the purpose of this provision, a unit of equipment is a combination of two trailers with a minimum of 40 feet loading space.

(1) Subject to an additional charge of \$39.30 per shipment when originating at railhead locations on AT or WP.

Authority: Items 8255 and 8261 of PSFB Tariff 300-B.

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POLICY GUIDELINES FOR THE
IMPLEMENTATION OF SENATE BILL 860

On April 4, 1978 the Commission issued Resolution 18017 which adopted some policy answers to questions on the implementation of SB 860. This appendix organizes that material into subject categories, summarizes the responses for each category, and eliminates material no longer applicable to the implementation of SB 860 or required by carriers to exercise their options under SB 860.

In general, an applicant under Section 1063.5 will be granted a certificate for all general commodities unless the application seeks restrictions thereon. The geographical scope of the grandfather certificate will be the counties applied for in the application. Appropriate tariffs must be filed with the Commission prior to the time the carrier commences service to or within any of the counties listed in the grandfather certificate. A carrier need not initially provide service to or within all counties named in the grandfather certificate.

1 - COMMON CARRIER V. CONTRACT CARRIER CONVERSION FROM
RADIAL HIGHWAY COMMON CARRIER

A radial highway common carrier may apply for a common carrier certificate and/or a highway contract carrier permit under Sections 1063.5 and 3572.5. However, such dual authorities would be limited by Section 3542 which provides:

"No person or corporation shall engage or be permitted by the commission to engage in the transportation of property on any public highway, both as a highway common carrier and as a highway contract carrier or as a highway common carrier and a petroleum contract carrier of the same commodities between the same points, except as provided in Section 1066.2."

If a carrier elects to convert its radial permit into a highway common carrier certificate and a highway contract carrier permit, it is required to submit both applications at the same time so

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as to avoid cancellation of its radial permit since Sections 1063.5 and 3572.5 provide that upon issuance of the sought authority the radial permit held by the applicant shall be revoked.

2 - APPLICATIONS FOR AGRICULTURAL CARRIER PERMITS

An applicant for this permit is required to certify under penalty of perjury that it operated as an agricultural carrier in 1977 and remit the \$25 filing fee. Documentary evidence to support the application is not required.

An applicant is required to file one copy of its application with the Commission without service of notice upon any party. Applications will be accepted anytime during 1978; the deadline for filing such applications is December 31, 1978. An agricultural carrier who qualifies but fails to file a timely application will be required to file a conventional application with a filing fee of \$500 and meet the entry requirements provided in amended Section 3584.

A carrier who presently holds a certificated authority to transport fresh fruits and fresh vegetables will not be required to obtain an agricultural carrier permit to continue such operations.

A highway contract carrier who fails to file a timely application for a grandfather agricultural permit will not be able to transport fresh fruits and fresh vegetables after January 1, 1979. If the carrier intends to continue to transport such commodities after that date, it will be required to file in a conventional manner for the agricultural carrier permit.

Section 3583.1 of the Code, which is the section authorizing the grandfathering of agricultural carriers, was effective January 1,

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1978. Since this section does not require the applicant to be in bona fide operations on that date, a suspended carrier will be eligible to apply for a grandfather agricultural carrier permit provided it operated as such during 1977.

3 - REQUIRED PROOF OF RADIAL HIGHWAY COMMON CARRIER OPERATIONS

An applicant for conversion from a radial permit to a common carrier certificate will be considered to be in operations on January 1, 1978 and from July 1, 1978 until the date of filing the application if its radial permit was in good standing during the period from July 1, 1978 until the date of filing the application. The applicant will further be required to attest or affirm under penalty of perjury that it was in bona fide operations as a radial carrier on July 1, 1978 and continuously thereafter to date of filing.

The applicant will also be required to provide the Commission with whatever documentary evidence is available to substantiate this representation that operations were conducted. A freight bill for each county the carrier wishes to serve will not be required, but may be provided to satisfy this requirement.

Although Resolution L-194 dated December 6, 1977 authorizes the holder of any affected radial permit to engage in the transportation of commodities subject to the minimum rate tariffs only upon purchase and maintenance of such tariffs, it is not necessary for a radial carrier to subscribe to any of the minimum rate tariffs in order to convert its permit into a general commodity certificate.

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4 - CLASSES OF APPLICANTS AND DUPLICATIVE RADIAL PERMITS

Code Section 3572 recognizes four classes of applicants: an individual, a partnership, a domestic corporation, and a foreign corporation. The Commission's policy has been to issue radial highway common carrier permits to affiliated entities in view of the mandatory language that the Commission shall issue a permit to an applicant who meets the residency test and establishes financial responsibility.

SB 860 provides that any person or corporation may file an application for highway common carrier authority. In the circumstances, the Commission will carry out the legislative mandate by granting certificates to holders of radial highway common carrier permits who file proper applications to convert such permits. However, adequate safeguards will be taken to prevent affiliated carriers from granting preference in services and rates.

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5 - SEASONAL AGRICULTURAL CARRIERS AND REQUIREMENT FOR
PROOF OF RESIDENCY

An applicant for a seasonal agricultural carrier permit will not be required to meet a residency test and/or financial responsibility requirement test, two tests which are required for the agricultural carrier permit. Code Section 3584.2 requires the Commission to issue a seasonal agricultural permit to any applicant for such a permit.

However, it is noted that the seasonal agricultural carrier will be subject to other provisions of the law applicable to highway carriers, including the filing of accident liability insurance under Article 5 of the Highway Carriers' Act.

6 - HIGHWAY CARRIERS OPERATING UNDER MULTIPLE AUTHORITIES

In general, a highway common carrier may transport, if authorized under its common carrier certificate, any commodities between any points for which it has a tariff on file. These would include commodities for which a permit carrier may have to have a special authority such as an agricultural carrier. A permit carrier cannot transport commodities unless it holds the appropriate permit to do so. As an example, a contract carrier cannot haul fresh fruits and vegetables unless it has an agricultural carrier permit.

In all cases where a carrier has a tariff on file under a common carrier certificate for the transportation of given commodities between given points, that common carrier cannot transport those commodities between those points under any type of permit.

Concerning grandfather agricultural carrier permits, a carrier who holds a highway common carrier certificate will not be required to file a concurrent application to delete the transportation of agricultural products from its existing authority should it file for a grandfather agricultural carrier permit. This is because permits issued to such carriers will carry restrictions that preclude transportation under the permit if the carrier's certificate authorizes that same transportation.

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The following general guidelines apply to the conversion of radial highway common carrier authority into both a highway common carrier certificate and a highway contract carrier permit:

- a. The transportation of property on any public highway both as a highway common carrier and as a highway contract carrier of the same commodities between the same points is not permitted under Code Section 3542.
- b. Commodities which are not subject to minimum rates (exempt commodities) may be excluded from a highway common carrier certificate by specific reference to such commodities and transported under that same carrier's highway contract carrier permit. It is noted, however, that carriers operating as a highway contract carrier are subject to the provisions of Appendix G herein.
- c. A highway common carrier may exclude from its certificate the leasing of equipment with drivers for the exclusive use of a vehicle or combination of vehicles pursuant to hourly, daily, weekly, monthly, or yearly vehicle unit rates, and enter into such arrangements with shippers under its highway contract carrier permit via written contracts. Section 3542 is inapplicable under such an arrangement because carriers operating under vehicle unit rates are not always aware of the identity of the articles transported under such rates. The leasing of equipment with drivers to shippers at unit rates is a rental service without regard to the kind of commodities loaded in a vehicle, whether commodities are loaded or transported in a vehicle, whether the equipment is idle portions of the time during the period of the contract, or whether the equipment is loaded or empty when idle (Decision No. 81389 dated March 22, 1977 in Application No. 53306).

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- d. A certificated carrier who has established joint rates may have a highway contract carrier permit to serve shippers to points not covered in its certificate or points not subject to the joint rates.

7 - RATES FILED BY SECTION 1063.5 COMMON CARRIERS

The rates to be filed by common carriers certificated under Section 1063.5 are required to be tariff rates no lower than the applicable minimum rates or common carrier rates which may be alternatively applied under Section 3663 of the Code.

After the initial filing, any adjustment to the filed tariff rates would require Commission approval. Section 454 of the Code prohibits increases in certificated carrier rates without the Commission's finding that such increases are justified.

A common carrier that is exclusively engaged in subhauling is not required to file a tariff with the Commission. However, since we will not allow carriers to exercise a certificate who do not have a tariff on file as of October 1, 1979, it is necessary that carriers engaged only in subhauling file a statement to that effect with the Commission.

Since we will make all conversions effective on a common date, October 1, 1979, that will be the date that carrier tariffs must be filed and be effective for transportation under their certificates.

8 - SUBHAULING BY RADIAL HIGHWAY COMMON CARRIERS CONVERTING TO COMMON CARRIER CERTIFICATES

Code Section 1063.5 makes no distinction between an applicant who operates as an overlying carrier or as a subhauler. A radial highway common carrier who subhauls and files an appropriate application will be issued a certificate to operate as a highway

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common carrier, and such certificate will not, in any way, be restricted in whole or in part to subhauling. As a certificated public utility carrier, it will, when serving shippers directly, be required to publish a tariff consistent with its certificate showing the rates, rules, regulations, and classifications for the transportation it offers.

A general commodities certificated carrier, as in the past, will be permitted to subhaul for another certificated highway carrier. It will not, however, be required to file rates for subhaul service. A carrier who converts its radial permit into a contract carrier permit may subhaul for a highway common carrier. (See Appendix B.)

We reiterate that a certificated carrier who subhauls need not file special rates for subhaul service nor charge its tariff rates for such service.

9 - RATE DEVIATIONS UNDER SECTION 3666 PRIOR TO OCTOBER 1, 1979

Radial highway common carriers may continue to file for deviations from minimum rates under Section 3666 until October 1, 1979. The Commission will process these in the usual manner. Applications for deviations submitted prior to October 1, 1979 but not acted upon by the Commission before that date must be supplemented by a request to continue processing either as a 3666 deviation for contract authority or a 452 deviation for highway common carrier authority.

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10 - COMBINING PRESENT COMMON CARRIER CERTIFICATES AND
NEW CERTIFICATES ISSUED UNDER SECTION 1063.5

There will be no limitation on tacking of "old" (Section 1063) and "new" (Section 1063.5) authorities. The Commission will not issue a single in lieu certificate because practically all of the existing certificates have been registered with the Interstate Commerce Commission under the provisions of Section 206(a)(6) or (7) of the Interstate Commerce Act. The issuance of an in lieu certificate would present practical problems in administering the provisions of added Section 1064.5, which provides that no part of the newly issued certificate may be transferred for a period of five years "except to the extent of operations actually conducted in good faith, not including operations as a subhauler."

11 - MIXED SHIPMENTS OF AGRICULTURAL AND GENERAL FREIGHT
COMMODITIES

A carrier who holds certificated authority to transport both fresh vegetables and canned vegetables will be governed by his published common carrier tariff.

A carrier who has certificated authority to transport fresh vegetables and a highway contract carrier permit to transport canned vegetables has a mixed shipment which must be rated as two separate shipments. The fresh vegetables must be rated under the applicable provisions of the carrier's filed tariff, and the canned vegetables under the applicable minimum rate tariff, in this case, MRT 2. (See the Rulings Manual, Part 1, p. 19, Mixed Certificated and Permitted Operations.)

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Where a carrier has certificated authority to transport canned vegetables and an agricultural permit to transport fresh vegetables, the mixed shipment must be rated as two separate shipments. The canned vegetables must be rated under the applicable provisions of the carrier's filed tariff, and the fresh vegetables under MRT 8.

In the case of a carrier holding highway contract authority to transport canned vegetables and an agricultural permit to transport fresh vegetables, the mixed shipment must be rated as two separate shipments under the provisions of an applicable minimum rate tariff. The provisions of Item 270 paragraph 2(b) of MRT 8-A may not be utilized since the canned vegetables will be transported under the highway contract carrier permit, and the fresh vegetables under the agricultural carrier permit. Prior to the advent of SB 860, the carriers were permitted to take advantage of Item 270 since a carrier with only a highway contract carrier permit could transport the concerned commodities under a single permit.

12 - SOME GENERAL COMMENTS ON CONVERTING AUTHORITIES

Some Commission riders or restrictions on radial permits held by certificated carriers indicate that their radial permits were not applicable in territories or between locations where they had entered into joint through rates and routes with other certificated common carriers. The restriction was removed by the Commission pursuant to Decision No. 82360 dated January 22, 1975 in Case No. 9472. Commission Resolution L-194 of December 6, 1977, amending radial highway common carrier permits by referring to all such permits which are otherwise limited in scope of operations, technically eliminated this restrictive language from the permits involved. As a result of these two actions, scope of carriers' radial permits covers all points outside their highway common carrier certificates. However, the restriction which prohibits operations under the permit when the transportation is covered by the highway common carrier authority remains unchanged and continues in effect.

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13 - A LIMITATION ON SEASONAL AGRICULTURAL CARRIER PERMIT
TRANSPORTATION

It should be noted for the guidance of carriers that a seasonal agricultural carrier permit authorizes only the transportation of unprocessed agricultural commodities. Therefore, a seasonal agricultural carrier cannot transport all of the commodities that an agricultural carrier can transport; logs is an example. This applies even though the seasonal agricultural carrier may be subhauling for an agricultural carrier. (See the note on Appendix B.)

14 - HOUSEHOLD GOODS CARRIERS AND THE CONVERSION OF THEIR
RADIAL HIGHWAY COMMON CARRIER PERMIT IF HELD

The definition of household goods carriers (Section 5109) restricts the operation to vehicles being used exclusively in the transportation of used household goods. The Commission, in interpreting Sections 5109 and 5112, has held that the word "exclusively" applies to the vehicle used to perform the transportation. Exclusively is not used to describe the operations being conducted by the carrier, but, instead, whether or not the vehicle is loaded entirely with used household goods and personal effects and/or office, store, and institution furniture and fixtures for a given movement. (Re Household Goods Carriers Act (1951) 51 CPUC 333, 336.) According to this interpretation, a highway contract or radial highway common carrier permit is insufficient authority if the property being transported in a vehicle is nothing but used household goods. On the other hand, a household goods carrier permit is not required if a carrier transports mixed freight, e.g., dry freight and used household goods in the same vehicle at the same time.

If a radial carrier wishes to continue the mixed freight operations described above under a certificate, it would be required to publish in its common carrier tariff rates on dry freight and used

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household goods. The certificated authority that would issue in this circumstance would authorize the carrier to transport used household goods only when shipped in a vehicle also containing dry freight. If a carrier who converts its radial permit into a certificate also holds a highway contract carrier permit, the carrier will be prohibited from using that permit to transport mixed freight consisting of dry freight and used household goods unless it is done pursuant to the policy in Appendix G.

A certificated carrier publishing rates for household goods service may also hold a household goods carrier permit. If the carrier transports household goods exclusively in a single vehicle, the carrier must possess a household goods carrier permit and observe the rates, rules, and regulations in MRT 4-B.

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SPECIAL RULES GOVERNING THE FILING OF AN
APPLICATION FOR A HIGHWAY COMMON CARRIER CERTIFICATE AND/OR
A HIGHWAY CONTRACT CARRIER PERMIT PURSUANT TO SENATE BILL 860

SB 860 which became effective on January 1, 1978 provides in added Section 1063.5 of the Code that a radial highway common carrier may, under certain conditions, convert its permit into a highway common carrier certificate and/or under Section 3572.5 into a highway contract carrier permit.

In order to implement this provision of the law, the following procedural rules are established for the filing for a highway common carrier and/or a highway contract carrier authority:

1. An application for a highway common carrier certificate and/or a highway contract carrier permit shall be filed on a printed form provided by the Commission.
2. The applicant shall file an original and a duplicate of the application. The original of the application shall be signed in ink by the party thereto.
3. Documentary evidence required by the application to show bona fide operations as a radial highway common carrier between July 1, 1978 and the date of filing of the application shall be attached to the original of the application but need not be attached to the copy thereof.
4. The application shall be filed with the Commission's San Francisco office, Attention: Cashier's Office, State Building, 350 McAllister Street, San Francisco, California 94102.
5. The application shall be filed between July 1, 1978 and December 31, 1978, inclusive. If the application is mailed, the post office cancellation mark shall be used in determining the timeliness of the filing. An application filed outside of the above-mentioned period shall be rejected.

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6. The applicant shall remit a filing fee of \$25 for a certificate and/or \$25 for a permit with the application. Application fees are not refundable.

In connection with the application for common carrier certificates:

1. The application shall be docketed, and the docket number assigned to the application shall be prefixed with the alphabetical designation "CC". Applications which are not in compliance with the procedural rules shall be rejected. Assignment of a docket number constitutes acceptance of the application for filing, and such application shall be noticed in the Commission's Daily Calendar.
2. Applicant shall serve a copy of the application upon request to any interested party.

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COMMODITIES REQUIRING AN
AGRICULTURAL CARRIER PERMIT FOR TRANSPORTATION

SB 860 established the agricultural carrier as a new class of highway permit carrier. An agricultural carrier is defined in Section 3525 of the Code as:

"...any person or corporation engaged in the transportation for compensation over any public highway in the state of fresh fruits, nuts, vegetables, logs, and unprocessed agricultural commodities in any motor vehicle or combination of vehicles."

The following list of commodities is established by the Commission as those that may be transported by an agricultural carrier. In addition to the commodities named below, and in connection with their transportation only, the transportation of used empty containers returning from an outbound paying load or forwarded for a return paying load will be permitted under the agricultural carrier permit.

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<u>Item No.</u>	<u>Commodity Description</u>
21400	Balsa wood
23020	Beans, castor
23420	Berries, juniper or sloe, dried, in bags, barrels, or boxes
23440	Berries, palmetto, in bags, barrels, or boxes
32750	Broom corn
47450	Chicory mass, in barrels or boxes
49985	Coconuts, in bags, barrels, or boxes
52640	Cones, fir or pine: Sub 1 - green LTL, in bags, barrels, or boxes; TL, loose or in packages
53350	Copra (dried coconut meat), LTL, in bags, barrels, or boxes; TL, loose or in packages
53930	Corn cobs
	<u>COTTON</u>
54170	Cotton, NOI Sub 1 - in bags or in bales not compressed Sub 2 - in compressed bales
54230	Unginned (cotton in the seed)
54270	Cotton grabots or immature cotton bolls
54310	Cotton Linters
54410	Cotton seed hulls Sub 1 - not ground
	<u>EGGS</u>
55540	Egg, chicken, in shell, not cooked, for human consumption
	<u>MILK</u>
55660	Milk, NOI
	<u>DRUGS, MEDICINES OR TOILET PREPARATIONS</u>
58590	Beans, nux vomica, not ground nor powdered, in bags, barrels, or boxes
58710	Corn silk, dry Sub 1 - in barrels or boxes Sub 2 - in machine-pressed bales
58800	Ergot of rye, in bags or boxes
59050	Nuts, areca (betel nuts), not ground nor powdered, in bags

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<u>Item No.</u>	<u>Commodity Description</u>
59140	Roots, not ground nor powdered: Sub 1 - ginseng, in barrels or boxes Sub 2 - golden seal (hydrastic canadensis), in bales, barrels, or boxes Sub 3 - laurel, in bags, barrels, or boxes Sub 4 - sassafras, loose or in packages
<u>EVERGREENS, DECORATIVES, CUT</u>	
63670	Christmas trees, NOI
63690	Evergreens, decorative, cut, NOI, other than in the form of design, wreaths, or sprays; Sub 1 - in packages not machine pressed; also TL, loose Sub 2 - in machine-pressed bales
63800	Excelsior, wood: Sub 1 - in machine-pressed bales weighing less than 12 pounds per cubic foot Sub 2 - in machine-pressed bales weighing 12 pounds or over per cubic foot
<u>FEED</u>	
66800	Bean, pea, or seed refuse or screenings
67200	Fodder, legumes, cane, corn, sorghum grain plants, cereal grass plants, leguminous plants, including heads, stalks and leaves
67260	Hay, in machine-pressed bales or cubed
67550	Mustard bran, or tailings
67570	Pea bran
67590	Peanut chaff (peanut skins)
67610	Peanut hearts (peanut germs), in bags
67620	Peanut hull fibre, in machine-pressed bales
67640	Peanut hulls, stems or roots, not ground
67700	Rice bran or rice polish
67730	Rice hulls, unground (rice chaff)
<u>FIBRES</u>	
68210	Absorbent, cotton, NOI, in bales, barrels, or boxes having a density of: Sub 1 - less than 6 pounds per cubic foot Sub 2 - 6 pounds or greater per cubic foot
68220	Bast (bass), other than broom splints, in machine-pressed bales or in boxes
68240	Caroa (coroa), in machine-pressed bales

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<u>Item No.</u>	<u>Commodity Description</u>
68280	Coconut husk (cocoa or coir fibre), brush (brush making):
	Sub 1 - in packages other than machine-pressed
	Sub 2 - in machine pressed bales
68300	Coconut husk (cocoa or coir fibre), NOI
	Sub 1 - in bales not machine pressed or in bundles
	Sub 2 - in bales machine pressed to less than 20 pounds per cubic foot
	Sub 3 - in bales machine pressed to 20 pounds or more per cubic foot
68320	Flax
	Sub 1 - on cores or tubes in bales, or in machine-pressed bales
68600	Yucca, in bags, boxes, crates, or machine-pressed bales
68620	Zacaton (mexican rice root), in bales
70200	Flax straw or hemp stalks, partially decorticated
70340	Flocks, cotton
70380	Flocks, hair or wool
	<u>FLORIST OR NURSERY STOCK</u>
71270	Plants, strawberry
71295	Plants, vegetables
71290	Plants, trees, shrubs, vines
71840	Foliage or leaves, asparagus, fern, galax, huckleberry, leucothia or smilax, fresh in barrels, baskets, boxes, or crates, prepaid; also TL, in bales
	<u>FOODSTUFFS</u>
72080	Beans, cocoa
72100	Beans, tonka
72120	Beans, vanilla or Tahiti
72660	Coffee, green
73440	Honey, comb, in section frames
73620	Must
74180	Olives
74560	Rice, cleaned, in bulk or in sack
74580	Rice, rough (paddy)
74900	Sugar beet
75440	Whey
76800	Fruit or berries, in a solution of water and sulphur dioxide, sodium metabisulphite

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<u>Item No.</u>	<u>Commodity Description</u>
<u>DRIED FRUITS OR VEGETABLES</u>	
77020	Apples
77060	Beans, edible, NOI, including mung beans, dried
77080	Beans, soybean or velvet, dried
77140	Fruit, dried or evaporated, NOI, not candied, crystallized, glazed, nor stuffed
77180	Lentils, peas or split peas, NOI
77200	Mushrooms, dried
77260	Peas, Canada field, dried
77270	Peas, cow, dried
77320	Pepper pods, NOI, dried
77340	Potatoes, dried, not sliced, not ground, not suitable for human consumption
77380	Sweet corn, dried
77400	Vegetables, dried or evaporated
<u>FRESH OR GREEN FRUITS OR VEGETABLES</u>	
77520	Apples
77540	Apricots, nectarines, plums, or prunes
77560	Artichoke tubers, beets without tops, carrots without tops, parsnips without tops, pumpkins, radishes without tops, rutabagas without tops, turnips without tops, or winter squash
77580	Avocados
77600	Bananas
77620	Beans, green, string, lima or wax
77640	Beets, carrots with tops, onions with tops, parsnips with tops, rutabagas with tops, squash, summer, turnips with tops
77660	Berries, NOI
77680	Cabbage
77700	Cantaloupes, muskmelons, or melons, NOI
77720	Celery
77740	Celery roots
77760	Citron melons
77780	Corn, in the husk
77800	Cranberries
77820	Cucumbers
77840	Currants
77860	Dasheens (malangas)
77880	Eggplant
77900	Fruit, fresh, NOI
77920	Garlic, dry
77940	Grapes, including crushed and/or must
77960	Horseradish roots
77980	Lemons or limes
78000	Lingonberries

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<u>Item No.</u>	<u>Commodity Description</u>
78020	Mushrooms, fresh
78040	Onion sets
78060	Onions without tops
78080	Oranges, grapefruits, or tangerines
78100	Papayas
78102	Peaches
78140	Pears
78160	Peppers
78180	Pineapples
78200	Potatoes, sweet, or yams
78220	Potatoes, other than sweet
78240	Quinces
78260	Rhubarb (pie plant)
78280	Tomatoes
78300	Vegetables, fresh or green, NOI
78320	Watermelons
<u>GRAIN</u>	
89020	Barley
89050	Buckwheat
89070	Corn, NOI, not shelled
89080	Corn, NOI, shelled
89100	Grain sorghums, such as durra, teterita, kafir, kaoliang, milo, or shallu
89130	Oats
89150	Popcorn, in the ear or shelled, not popped, NOI
89170	Rye
89190	Spelt
89210	Wheat
<u>GRAIN PRODUCTS</u>	
89470	Grain screenings
89700	Hulls, barley, buckwheat, or oats, LTL, in bags or barrels; TL, in bulk or in packages
89700	Millet
89730	Oat clippings
99990	Hops, NOI
101540	Hulls, tung nut, LTL, in bags; TL, in bulk or packages
107760	Ivory, nut or vegetable, other than meal, scrap or shavings, in bags, barrels, or boxes
11800	Loofas
<u>LUMBER</u>	
112780	Logs, foreign wood, NOI

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<u>Item No.</u>	<u>Commodity Description</u>
112800	Logs, native wood, Canadian wood, or Mexican pine
138400	Moss, sphagnum (florist's moss)
138440	Moss, NOI
138720	Mulch, horticultural
138740	Mushroom spawn
139580	Myrobalans
	<u>EDIBLE NUTS</u>
141620	Black walnuts, in shell
141640	Chestnuts, in shell
141680	Hickory nuts, in shell
141700	Kola nuts, not ground
141740	Nuts, edible, NOI, in shell
141780	Peanuts, raw
	Sub 1 - in shell
141840	Pecans, in shell
141860	Pinon (Indian nuts)
141900	Nuts, tung oil
141920	Nuts or kernels, oil bearing palm, NOI, including babassu, cohune, murumuru, ouricury, aouara, tucum or ocohuba
154900	Peat, NOI, not ground, in packages; also TL, loose
155670	Pine needles (pine straw)
159960	Pods, tara, in bags, barrels, or boxes
162870	Psyllium seed (flea seed) hulls
164920	Raffia, in bales
168990	Reeds or rushes
	<u>ROOTS OR SPICES</u>
170720	Allspice (pimento), in bags, barrels, bales, boxes, or pails
170740	Capsicum (cayenne pepper)
170760	Cassava roots, not ground nor powdered
170780	Cassia
170800	Chicory roots, dried or green, not ground nor powdered
170840	Cinnamon
170860	Clove stems
170880	Cloves
170920	Ginger roots, dry, not ground nor powdered
170980	Licorice roots, not ground nor powdered

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<u>Item No.</u>	<u>Commodity Description</u>
171000	Nutmeg
171080	Roots, NOI, not ground nor powdered
171120	Soap weed or yucca, not ground nor powdered
171180	Vegetable roots, NOI, not ground nor powdered
171450	Rubber nut kernels
	<u>SEEDS</u>
172770	Acorn
172790	Ajowan
172810	Alfalfa
172830	Anise
172850	Annatto
172870	Apricot (apricot pits)
172890	Beggar weed
172910	Blue lupine
172930	Broom corn
172950	Canary
172970	Caraway
172990	Cardamon
173010	Celery
173030	Cevadilla (sabadilla)
173050	Cherry (cherry stones)
173070	Chili pepper
173090	Clover
173110	Coriander
173130	Cotton
173150	Crotalaria
173170	Cumin
173190	Dill
173210	Fennel
173230	Fenugreek
173250	Flax (linseed)
173270	Flower or garden, NOI
173290	Grape or raisin
173310	Hairy indigo
173350	Hemp
173370	Honey bean (St. John's bread seeds)
173390	Kapok
173410	Kernels, apricot or peach
173430	Lespedeza
173450	Melon, pumpkin or squash
173470	Millett
173490	Mustard, other than wild
173510	Mustard, wild
173530	Niger
173550	Oiticica

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<u>Item No.</u>	<u>Commodity Description</u>
173570	Peach (peach stones)
173590	Pea, Austrian winter
173600	Pea, caley, or singletary (wild winter peas)
173620	Poppy
173640	Psyllium (pleaseed)
173660	Rape
173680	Safflower
173720	Seed beans; seed corn, seed peas, NOI; or seed grain, NOI
173740	Seeds, NOI, see note, Item 174002
173760	Seradella
173780	Sesame
173800	Sesbania
173820	Sorgo (sweet sorghum)
173840	Sudan grass
173860	Sugar beet
173880	Sunflower
173900	Thistle
173920	Timothy
173940	Tomato
173960	Tree, NOI
173980	Vetch
174000	Wormseed (Jerusalem oak seed), not ground nor powdered
174002	NOTE--Will also apply on seed or soil inoculating bacteria or agricultural insecticides or fungicides, not exceeding 2 percent of the gross weight of the shipment, when in the same shipping container with seeds.
<u>SHELLS</u>	
175375	Bean, cocoa
175400	Coconut
175450	Fruit pit, not ground
175740	Shucks (husks), corn
<u>STALKS</u>	
178230	Corn, NOI
178250	Cotton
178270	Hemp
179600	Straw
179740	Sugar cane
179960	Sumac leaves
179980	Sunflower seed hulls

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Item No.

UNMANUFACTURED TOBACCO

183240	Tobacco, unmanufactured leaf
183330	Stems, not ground
188300	Valonia

NOTE: The items named in this list may not be transported under an agricultural permit if any of these commodities have been processed. Processing includes cooking, glazing, candying, freezing, blanching, milling, coating, grinding, dyeing, pelleting, chopping, cubing, shredding, treating, deseeding, blending, and crystallizing.

EXCEPTION: Any agricultural commodity whose physical form or shape is altered in the process of harvesting the crop, including its by-product, shall be deemed to be an unprocessed agricultural commodity.

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COMMISSION POLICY ON THE PROPER
SCOPE OF HIGHWAY CONTRACT CARRIER OPERATIONS^{1/}

Senate Bill 860 which became effective January 1, 1978, allows holders of radial highway common carrier authority to convert to highway common carrier or highway contract carrier operating authority. If radial carriers are to make an informed decision with respect to converting their authority under this bill, carriers must understand the difference between common and contract carrier operations. The Commission is issuing this policy statement to inform carriers of the Commission's policy on the proper scope of highway contract carrier operations and further to satisfy the request of the Assembly Committee on Finance, Insurance and Commerce's oversight Committee on the Reform of Transportation for a formal Commission policy statement.

The Code defines the obligations and operations of highway common carriers. These carriers have public utility obligations. However, the highway contract carrier is defined by exclusion in Section 3517 of the Code.^{2/} The Commission is of the opinion that the Legislature intended the highway contract carrier to have operations and obligations different from the public utility highway common carrier, otherwise it would not have established the two classes of highway carriers. The Commission is further of the opinion that the Legislature has established a regulatory scheme for California's highway carrier industry which leaves the specifics of describing contract carrier operations as compared to common carrier operations to the Commission.

The principal distinction between common carrier and contract carrier operations that has evolved from Commission operating status

^{1/} These guidelines including the requirement of written contracts filed with the Commission shall be effective October 1, 1979.

^{2/} Section 3517. "Highway contract carrier" means every highway carrier other than (a) a highway common carrier, (b) a petroleum contract carrier, (c) a petroleum irregular route carrier, (d) a cement contract carrier, (e) a dump truck carrier, (f) a cement carrier, (g) a livestock carrier, or (h) an agricultural carrier.

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investigations is that highway contract carriers cannot hold out services with attendant specific rates to shippers generally. If they operate in a fashion that results in holding out, even though specific tariffs are not published, such highway contract carriers are operating unlawfully as a public utility common carrier. The question of whether a highway contract carrier is lawfully operating is determined on a case-by-case basis dependent upon the facts surrounding the carrier's operations.

This policy statement is a general outline of what the Commission deems to be the permissible scope of highway contract carriage. The following are guidelines which we will apply in determining whether a highway carrier is operating as a highway contract carrier:

1. A highway contract carrier generally may not solicit individual one-time shipments; it may solicit and enter into negotiated continuing hauling relationships with shippers, i.e., contracts. Individual one-time shipments may be solicited where the specialized nature of the transportation is sufficient to distinguish it from common carrier service or where a carrier is performing a rate-exempt transportation service.
2. A highway contract carrier must generally have a continuing relationship with the shipper or shippers it serves. A continuing relationship requires that service be provided periodically over a period of time, not less than thirty days in duration. A continuing relationship cannot be predicated upon a single shipment.
3. A shipper using the service of a contract carrier can be either the consignee or consignor. Normally, the shipper is regarded as the party who pays the charges for the transportation provided; however, the shipper may also be the party who controls the traffic such as the manufacturer of Brand X who ships freight collect to exclusive dealers of Brand X.
4. A highway contract carrier must provide services that are specialized or tailored to the particular requirements of the shipper being served. Examples of specialized services include, but are not

limited to, providing repeat service over a period of time with specialized equipment, unique loading/unloading and accessorial activity, or specialized scheduling of service. Such specialization alone in some instances distinguishes contract from common carrier operations. Heavy hauling and the transportation of rate-exempt commodities are examples of such specialized operations.

5. All highway contract carriers, except petroleum contract carriers, and carriers engaged in rate-exempt transportation must file written contracts with the Commission prior to, or on the same day, service is initiated. Such carriers may provide service only pursuant to written contracts which shall bind both carrier and shipper to good faith performance for a specific term, and shall contain the following:
 - a. The name of the carrier.
 - b. The name of the shipper.
 - c. The duration of the contract.
 - d. The area involved in performance, such as the route and/or termini.
 - e. A description of the services to be provided and the projected frequency.
 - f. The commodities involved, and the projected tonnage or other appropriate unit of measurement to be handled.
 - g. The compensation to be paid and received.
 - h. The conditions, if any, under which changes in compensation or other terms of the contract may be made by the parties.
6. ~~Copies of contracts must also be kept on file in the carrier's office and available for inspection by the Commission or the Commission staff. They shall be retained by the carrier for not less than three years after expiration.~~
7. A contract carrier may perform subhauling for any other highway carrier except a household goods carrier, independent of any guidelines listed above, but subject to any general orders or other pertinent regulations issued by the Commission. A highway contract carrier with household goods carrier authority may perform subhaul services for a household goods carrier.

Changes in Trucking Regulation by the Public Utilities
Commission; SB 860

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

The majority's "plan for implementation" of SB 860 is distorted and immoderate.

From 1975 to 1977 the truckers of California suffered through a period of Commission-induced regulatory turmoil. It looks like the industry is in for a repeat. In Decision 87047 on March 9, 1977 the majority was officially supposed to have ended the "days of arbitrariness" with its pledge of a "new spirit". During the Summer of 1977, compromise and concessions led to consensus legislation in the form of SB 860. The legislature sought to simplify the basic choice between common carrier authority and private carrier authority. The legislature decided to phase out the radial carrier. These authority holders were to be given a free choice for future operations under the simplified framework of highway common carriers and highway contract carriers. In no way did the legislature intend SB 860 to be the instrument to destroy the trucking industry as it has served the state for the last forty years.

Yet, as the Commission majority interprets SB 860, illegal and unfair competition will result. Three areas of principal concern are:

FIRST: The majority sets up destructive subhaul rules that purport to allow uncertificated contract carriers to subhaul certificated carriers' freight.

SECOND: The majority set ups "super-certificates" for the newly-created PUC § 1063.5 common carriers. These contain none of the statutory restrictions as to territory or routes found in existing certificates but give the new holders carte blanche authority to operate anywhere and everywhere in the state.

THIRD: The majority innovatively, but without authority, creates a group of extra-legal hybrids who will operate under contract carrier permits, yet without written contracts; who will hold out to serve the public at large, yet file no tariffs.

1. It is Unfair and Illegal for Uncertificated Contract Carriers to Subhaul for Common Carriers.

SB 860 only strengthens the basic distinction our legislature has written into California transportation law: the difference between the public utility common carrier and the and the private contract carrier. The public utility carrier has extra obligations and responsibility that the private carrier does not. The contract carrier has the competitive advantage. He does not have to serve the entire public. He can pick and choose his customers. Additionally, he does not have to offer the same rates to everyone. He can take higher rates when he finds it in his power to secure them.

Many existing public utility common carriers have invested heavily in trucks and terminals to serve every member of the public in an undifferentiated way. Under the subhaul cross-over rule announced today, these common carriers will be up against the "truck broker" who can bid for the lucrative traffic and move it with a bevy of subhaulers, including any contract carrier the broker can sign up. To pit the contract carrier (with his privilege to be selective) against established trucking firms (who generally have professional drivers paid prevailing union wages, and are heavy into public service investments such as terminals) is to establish a struggle that will be unfair and unequal.

I also think such a subhaul rule is illegal and flies in the face of clear legislative instruction. In choosing between contract and common carrier authority, radial carriers would best consider the possibility that this rule may not withstand legal challenge. It appears to me that the wide-open subhaul rule violates PUC § 216(c). It reads in relevant part:

"When any person...delivers any commodity to any person,...which in turn either directly or indirectly...delivers such commodity to or for the public..., such person is a public utility subject to...the provisions of this part".

This means the subhauler is a public utility. And, to operate as a public utility a certificate is required; the contract carrier permit will not do.

2. There is no Justification for the New "Super Certificates" Which Grant Operating Authority Everywhere in the State.

While the legislature wished that the radial carrier should obtain a new certificate "...to continue its operations..." (PUC § 1063.5), it is a heavy distortion to authorize unlimited operating service statewide where the trucker never operated this way in the first place. This establishes the new grandfathered certificates in a position superior to existing certificates. These authorities have been developed painstakingly over the years. Such an interpretation makes a farce out of the present authorizations. Such an unjust result was clearly not the intent by the legislature.

3. Carriers Who Hold But to the Public at Large are Not Contract Carriers But Common Carriers and Must File Tariffs as a Matter of Law.

The Commission concocts a hybrid authority for "specialized" carriers and carriers of present "rate exempt commodities" that has no justification in the law. As common carriers, they must file tariffs or the law must be changed. The Commission is not the legislature. Desired flexibility and difficulty in tariff construction do not exonerate from legal mandates. It is noted that specialized carriers have found themselves able to file operating tariffs with the Interstate Commerce Commission.

In sum, the Commission should defer to the legislature in all three of these matters. The Commission should not arrogate to

itself the power to revoke the law or radically alter the intended statutory framework designed to maintain nondiscriminatory, adequate, and reliable freight transportation for the people of California.

San Francisco, California
October 31, 1978


WILLIAM SYMONS, JR.
Commissioner