

GENERAL ORDER 139-B
(Supersedes General Order 139-A)

**PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

**REGULATIONS GOVERNING THE HANDLING OF CLAIMS FOR LOSS OR
DAMAGE OF PROPERTY FILED WITH EXPRESS CORPORATIONS, FREIGHT
FORWARDERS, HIGHWAY CARRIERS, AND PASSENGER STAGE CORPORA-
TIONS.**

Adopted April 6, 1994. Effective May 6, 1994.
(Decision 94-04-041 in R.93-06-032)

RULE 1—PURPOSE OF THE REGULATIONS

- 1.1 To obtain uniformity on the part of all carriers and uniform treatment of all claimants in the disposition of claims of like nature.
- 1.2 To secure and preserve harmonious relationships in claim matters between carriers and their patrons.
- 1.3 To effect and maintain a prompt and efficient service to the public in connection with the investigation and disposition of freight claims.

RULE 2—FILING OF CLAIMS

- 2.1 Claims in writing required.

A claim for loss, damage, injury, or delay to property will not be voluntarily paid by a carrier unless filed in writing, as provided in Rule 2.2 and 2.3, below, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or carrier whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits provided in Rule 2.3.

- 2.2 Minimum filing requirements.

A communication in writing from a claimant, filed with a proper carrier within the time limits specified in Rule 2.3, and (1) containing facts sufficient to identify the shipment (or shipments) of property involved, (2) asserting liability for alleged loss, damage, injury, or delay, and (3) making claim for the payment of a specified or determinable amount of money, will be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage.

- 2.3 Time limitations for filing claims or suits.

A claim for loss, damage, injury, or delay of property shall be filed within nine (9) months after delivery of the property, or in case of failure to make delivery, then within nine (9) months after a reasonable time for delivery has elapsed. Suits shall be instituted against any carrier within two (2) years and one (1) day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

2.4 Documents which do not comply.

Bad order reports, appraisal report of damage, notations of exceptions on freight bills or other documents, inspection reports issued by carrier inspectors or inspection agencies, tracers or inspection requests do not comply with the claim filing requirements.

2.5 Documents required in support of claims.

- a. A written demand for payment, asserting carrier liability for alleged loss, damage, injury, or delay, and containing facts sufficient to identify the shipment or shipments involved will constitute a claim, regardless of form, and will be required.
- b. When claimant does not appear from the supporting documents to be an interested party, carrier will require any necessary written assignment or other proof to determine the claimant as the proper party to receive any claim payment.
- c. The original freight bill and bill of lading or other contract of carriage will be required. When claimant cannot furnish both of these documents, carrier will require suitable indemnity from the claimant.
- d. Claim must be supported by either the original invoice; a photographic copy of the original invoice; an exact copy thereof, or an extract therefrom, certified by the claimant or his authorized representative to be true and correct with respect to the property involved in the claim and reflecting all trade or other discounts, allowances, or deductions of any nature. When the original invoice is not submitted, such document must be made available for inspection by carrier representative upon request.
- e. When property involved in the claim has not been invoiced to the consignee or where invoice does not show price or value, or where the property has not been sold but transferred at bookkeeping values only, or where property has been shipped on consignment or approval, claimant will be required to establish destination value in the quantity shipped and certify the correctness thereof.
- f. In order to establish the full recoverable loss caused by the carriers, there will be required the original account of sale, showing the date of sale and the amounts realized on the damaged and undamaged portions, respectively, showing grade, brands, quality, variety, size, and condition, together with any deductions, allowances, and commissions, or a copy thereof certified correct over the signature of the claimant or an authorized representative thereof.
- g. When shipment has received prior transportation and is reshipped from a distribution or warehousing point but has been opened and examined and contents verified as being in undamaged condition, certification thereof must be made by

person having actual knowledge of such inspection and statement to that effect incorporated in such certification.

- h. When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier will obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

2.6 Claims filed for uncertain amounts.

Whenever a claim is presented against a proper carrier for an uncertain amount, such as "\$100 more or less", the carrier against whom such claim is filed will determine the condition of the shipment involved at the time of delivery by it, if it was delivered, and will ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It will not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money has been filed in accordance with the provisions of Rules 2.1, 2.2, and 2.3.

2.7 Acknowledgment and disposition of claims.

- a. Carrier will acknowledge claim in writing within thirty (30) days after receipt thereof, informing the claimant of identifying number assigned thereto, and will pay, refuse payment, or make a firm compromise offer within one hundred twenty (120) days after receipt of claim, except, that if claim cannot be disposed of within this period, carrier will at that time and at the end of each succeeding sixty (60) day period thereafter while claim remains pending, inform the claimant in writing of the reason for failure to conclude claim.
- b. A separately numbered file will be established for each claim filed in accord with the provisions of this General Order. All documents, records, correspondence pertaining to such claim will be identified with this file number.

2.8 Two or more claims filed.

When investigation of a claim develops that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating such claim will communicate with each such other carrier and, prior to any agreement entered into between or among them as to the proper disposition of such claim or claims, will notify all claimants of the receipt of conflicting or overlapping claims and will require further substantiation, on the part of each claimant of his title to the property or his right with respect to such claim.

**RULE 3—INSPECTION OF FREIGHT BEFORE OR AFTER DELIVERY TO
CONSIGNEE AND ADJUSTMENT OF CLAIMS FOR LOSS OR
DAMAGE**

3.1 Application.

Loss of or damage to contents of package, not definitely known to exist at time of delivery by carrier to consignee may be due to negligence in packing, handling, or unpacking, or abstraction from containers, and is the subject of frequent claims and controversies. In order to avoid any discrimination, and so that practices will be certain and uniform in the treatment of claims of this character, the following rules apply.

3.2 Pilferage.

When a shipment is offered for delivery, if any portion of shipment bears any indication of having been pilfered, a joint inventory of contents must be made by carrier and consignee and the results of inventory so noted on carrier's delivery receipt.

3.3 Reporting concealed damage.

When damage to contents of a shipping container is discovered by the consignee which could not have been determined at time of delivery it must be reported by the consignee to the delivering carrier upon discovery and a request for inspection by the carrier's representative made. Notice of loss or damage and request for inspection may be given by telephone, in person, but in any event must be confirmed in writing by mail. If more than fifteen days pass between date of delivery and request for inspection by consignee, it is incumbent upon the consignee to offer reasonable evidence to the carrier's representative when inspection is made that loss or damage was not incurred by the consignee after delivery of shipment by carrier. While awaiting inspection by carrier, the consignee must hold the shipping container and its contents in the same condition they were in when damage was discovered insofar as it is possible to do so.

3.4 Inspection by carrier.

Inspection by carrier will be made as promptly as possible and practicable after receipt of request by consignee. Inspection will be made within five normal work days after receipt of request from consignee, excluding Saturdays, Sundays, and holidays. A day will be considered as the passing of twenty-four (24) hours from 9 a.m., local time from the date of receipt of request for inspection. Inspection of carrier will include examination of the damaged merchandise, the shipping container, and any other action necessary to establish all facts. If a shortage is involved, inspector will check contents of package with invoice, weigh the shipping container and contents, or conduct any other type of investigation necessary to establish that a loss has occurred. In either case inspection will be limited to a

factual report. Consignee must cooperate with carrier in every way possible to assist the inspection. A written record of carrier's findings will be made at least in duplicate. The original of the report will be given the consignee for claim support. Any inspection report issued must be incorporated in claim file.

3.5 Failure to inspect.

In the event carrier does not make an inspection the consignee must make the inspection and record all information to the best of his ability pertinent to the cause. Consignee's inspection, in such case, will be considered as the carrier's inspection and will not jeopardize any recovery the consignee is due based on the facts contained in the report.

3.6 Prior transportation.

If a concealed damage inspection report covers merchandise which has had prior transportation movement, consignee is required to assist carrier in determining if shipment was opened and inspected by shipper prior to reshipment, and, if not, shall then assist carrier in every way possible to establish record of prior transportation.

RULE 4—SALVAGE RETENTION—DISPOSITION OF DAMAGED MERCHANDISE

4.1 When visible or open damage to a shipment has been established by notation having been given at time of delivery or concealed damage established by inspection report, it is the duty of the consignee to retain damaged merchandise and shipping container until the carrier desires to take possession of merchandise as salvage. If record conclusively reflects carrier liability, carrier will take possession of the damaged merchandise as soon as possible and, in any event, within thirty (30) days from date shipment was noted damaged on carrier delivery receipt or from date of inspection report, if damage was concealed. If carrier does not take possession of the damaged merchandise within the time prescribed above, consignee must contact delivering carrier and request removal within fifteen (15) days from the date of such communication.

4.2 Rule 4.1 above applies only when the carrier and consignee agree that the carrier will handle disposition of the salvage, and does not in any manner affect the legal duty that the consignee, when there is substantial value in the salvage, must accept and handle it in such a manner as to mitigate the carrier's loss as much as possible. If there is doubt of carrier liability, the carrier will so advise the consignee; in which event the consignee may hold the merchandise until liability of carrier is determined, or may dispose of it so as to mitigate the damage, and may file claim for such damage.

- 4.3 Carrier will remove the damaged goods within the fifteen (15) day period or advise consignee that carrier liability is in doubt and that the damaged merchandise is to be retained by the consignee until the carrier has completed investigation of claim.

RULE 5—PENALTY PROVISIONS

- 5.1 Each passenger stage corporation transporting express and each highway common carrier, express corporation, freight forwarder, petroleum irregular route carrier, and cement carrier shall publish and file, effective concurrently with the effective date of this order, in each of its tariffs, rules and regulations which shall conform to this General Order providing for the filing of loss and damage claims. Such rules and regulations shall be filed concurrently with an initial tariff filing of any passenger stage corporation transporting express or any highway common carrier, express corporation, freight forwarder, petroleum irregular route carrier, or cement carrier.
- 5.2 Common carriers participating in the National Motor Freight Classification, revisions thereto or reissues thereof or Claims Rules Tariff, and governed by rules set forth therein covering the Principles and Practices for the Investigation and Disposition of Freight Claims, as ordered by the Interstate Commerce Commission, shall be deemed in compliance with the provisions of this General Order, provided, however, that any provision therein which does not conform to this General Order shall be clearly delineated in the tariff provision(s) making reference to such Classification or Claims Rules Tariff.
- 5.3 Authority for tariff filing described in Rule 5.2 shall be sought pursuant to General Order No. 109 (Special Tariff Docket) or under the Commission's Rules of Practice and Procedure (Chapter 1, Title 20, California Administrative Code.)

RULE 6—PENALTY PROVISIONS

- 6.1 Violations.

Carriers are hereby notified that violations of any portion of the requirements of this General Order shall constitute grounds for suspension or revocation of operating authority and may subject the carrier to fines and penalties as provided in the Public Utilities Code.

RULE 7—CONFLICTING PROVISIONS

- 7.1 If the provisions of this General Order conflict with the provisions of any minimum tariff rate tariff issued by this Commission, the provision of the minimum rate tariff shall apply.
- 7.2 Except as provided by Rules 5.2 and 5.3, existing common carrier tariff provisions which conflict with this General Order and are not published pursuant to a minimum rate order shall be amended to conform to this General Order.

- 7.3 A common carrier must obtain Commission authorization as provided in Rule 5.3, before including in its tariff and provisions in conflict with this General Order. Publication of such provisions shall include reference to the authorization decision number or other Commission authorization.

RULE 8—THE USE OF NON-PAPER ALTERNATIVES BY HIGHWAY COMMON AND HIGHWAY CONTRACT CARRIERS

- 8.1 The following provisions are applicable only to highway common and highway contract carriers as defined in PU Code Sections 213 and 3517 respectively. By offering or using a non-paper alternative pursuant to this rule, each carrier so doing acknowledges that the Commission's grant of authority to use a non-paper alternative does not constitute a waiver of, or limitation on, the Commission's and/or its staff's rights and powers with respect to access to information, documents, papers, records, etc.
- 8.2 Highway Common Carriers must use paper for documents specified in General Order 139-A, unless they publish in their tariffs whether and under what circumstances they will offer shippers the option to use a non-paper alternative. Similarly, Highway Contract Carriers who are required to file their contracts with the Commission must specify in their contracts if the agreed upon service entails the use of a non-paper alternative.
- 8.3 No common carrier shall require the use of a non-paper alternative as a condition of service.
- 8.4 Highway Common Carriers which offer service involving non-paper alternatives must do so to all shippers on a non-discriminatory basis.
- 8.5 A paper hard copy shall be available to all relevant parties upon request.
- 8.6 Non-paper alternatives must meet the following criteria:
1. Information is retrievable.
 2. Information is readily available to all relevant parties. Information can be "read" and is as available as a written paper hard copy.
 3. Information content completely complies with the current regulations.
 4. Authenticity of stored data can be assured by appropriate means.

5. Information can be traced to the degree necessary to meet current regulations. This includes a methodology to confirm shipment, pickup, and delivery.

Approved and dated April 6, 1994, to become effective May 6, 1994,
at San Francisco, California.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By NEAL J. SHULMAN
Executive Director