

Decision 03-07-047 July 22, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Ex Parte Approval of an Interim Alternative Plan for Protection of the Public Pursuant to General Order 120-C, Sections 3(E) and 6.

Application 03-05-039
(Filed May 30, 2003)

Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5.

Petition 03-05-040
(Filed May 30, 2003)

INTERIM DECISION ADOPTING MODIFICATIONS TO DECISION 03-07-036

At our meeting on July 10, 2003, we approved Decision (D.) 03-07-036, and also agreed to reconsider that action at a continuation meeting on July 22, 2003. In this decision, we modify D.03-07-036 to comply with the express provisions of relevant statutes and to continue to require that hot air balloon operators provide the same level of insurance as provided by General Order (GO) 120-C until there has been a public hearing.

Based on the methods provided by statute, by which a hot air balloon operator can provide protection against liability, we have modified D.03-07-036 to ensure that the hot air balloon operators comply with these provisions regarding how proof of insurance may be filed and the amount of insurance that must be maintained. We emphasize that the relief accorded applicants is an interim measure that may change as we proceed with Petition (P.) 03-05-040, the petition to amend GO 120-C.

We direct the assigned Administrative Law Judge to promptly set a Prehearing Conference no later than August 8, 2003 and to promptly schedule evidentiary hearings to address these issues and to allow for full consideration of the insurance requirements applicable to hot air balloon operators set forth in the GO.

Today's decision modifies D.03-07-036. D.03-07-036, as modified by today's decision is attached.

Waiver of Comment Period

Pursuant to Pub. Util. Code § 1701 and Rule 77.7(f)(9) of the Rules of Practice and Procedure, on our own motion, we find that public necessity requires the waiver of the 30-day period for public review and comment on this decision. We note that D.03-07-036 was subject to comment. Here the public interest in adopting a decision without a comment period clearly outweighs the public interest in allowing a comment and review period, in order to allow for the prompt modification of the interim decision, so that the decision complies with the express provisions of the relevant statutes and to continue to require hot air balloon operators to provide the same level of insurance required by GO 120-C until there have been public hearings.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. D.03-07-036 must be modified to comply with the express provisions of relevant statutes and to continue to require that hot air balloon operators provide the same level of insurance as provided by GO 120-C until there has been a public hearing.

Conclusions of Law

1. D.03-07-036 should be modified and reissued, as delineated herein.
2. The assigned ALJ should be directed to set a prehearing conference no later than August 8, 2003, and to promptly convene public hearings to consider the issues addressed herein and to allow for full consideration of the insurance requirements applicable to hot air balloon operators set forth in GO 120-C.
3. Public necessity requires the waiver of a comment period on this decision.
4. This order should be effective today in order to allow D.03-07-036 to be modified expeditiously.

INTERIM ORDER

IT IS ORDERED that:

1. Decision (D.) 03-07-036 is modified by today's decision. D.03-07-036, as modified, is attached and shall be filed and served on the service list and supplemental service list to this proceeding.

2. The assigned Administrative Law Judge is directed to hold a prehearing conference no later than August 8, 2003 and to promptly convene hearings in this application and in Petition (P.) 03-05-040 to fully consider the proposed amendment of General Order 120-C.

This order is effective today.

Dated July 22, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
SUSAN P. KENNEDY
Commissioners

Commissioner Geoffrey F. Brown, being necessarily absent, did not participate

ATTACHMENT

Decision 03-07-036 as modified by Decision 03-07-047

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Ex Parte Approval of an Interim Alternative Plan for Protection of the Public Pursuant to General Order 120-C, Sections 3(E) and 6.

Application 03-05-039
(Filed May 30, 2003)

Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5.

Petition 03-05-040
(Filed May 30, 2003)

INTERIM DECISION GRANTING RELIEF TO MANNED BALLOON OPERATORS PENDING FULL HEARINGS ON THE ISSUES

1. Summary

In these two proceedings, representatives of California's hot air balloon operators (Petitioners) seek expedited action by the California Public Utilities Commission (Commission) for relief from certain insurance requirements of General Order (GO) 120-C that are applicable to commercial manned balloon operations. Petitioners state that insurance for providers of hot air balloon rides to the public is all but impossible to obtain in a manner that meets all current requirements of GO 120-C, and that this threatens the continued operation of this tourist-oriented industry. This Interim Decision adopts a Modified Interim Plan applicable to GO 120-C to provide relief pending full hearings as necessary on whether amendments to GO 120-C are required.

2. Procedural History

Petitioners filed these two proceedings on May 30, 2003. Application (A.) 03-05-039, which we address today, seeks approval of an Interim Plan interpreting GO 120-C to enable hot air balloon providers to obtain required insurance without sacrifice to the public safety. Petition (P.) 03-05-040 seeks a permanent amendment to GO 120-C following hearings and briefings by the parties.

The assigned Administrative Law Judge (ALJ) on June 10, 2003, issued a ruling addressing procedural requirements of the two proceedings. Specifically, the ruling (1) granted Petitioners' request to shorten time for filing of protests to 10 days from the date of ruling; (2) adopted Petitioners' proposed Service List for these proceedings (comprised of 75 entities, including balloon operators, insurers, various district attorney offices, the Federal Aviation Administration (FAA), and several state officials); (3) directed Petitioners to serve a copy of A.03-05-039 and P.03-05-040 on cities and counties in which the Petitioners operate, and (4) shortened time to seven days for protests by cities and counties.

3. Background

Commercial hot air ballooning was a relatively small industry in California until the 1980s, when it began expanding to serve customer demand. Petitioners state that today approximately 50 companies offer balloon rides throughout California. The operations are concentrated in popular tourist regions, including the Napa Valley, Sonoma Valley, Palm Springs, Temecula, and San Diego areas. Petitioners state that most of the commercial balloons are designed to carry more than six passengers, and the largest balloons can carry up to 16 passengers. Hot air balloons are certificated and regulated by the FAA. Airworthiness standards for manned balloons are set forth in 14 CFR Part 31, pilots and instructors must

be licensed under 14 CFR Part 61, and operating and flight rules are set forth in 14 CFR Part 91.

Under GO 120-C, this Commission requires manned balloon operators to carry (1) passenger liability insurance of at least \$100,000 per passenger seat in aircraft with a seating capacity of 1 to 20 persons, (2) aircraft bodily injury and death liability for persons other than those aboard the aircraft of \$300,000 per accident, and (3) aircraft property damage liability insurance of at least \$100,000 for each accident. Pursuant to Public Utilities Code Sections 5506 and 5511, this coverage must be provided by a company licensed to write insurance in California, a surety bond issued by a California-licensed surety company, self-insurance, or by a non-admitted insurer in compliance with Section 1763 of the Insurance Code. Pursuant to Section 7 of GO 120-C, proof of coverage may be provided, among other means, by filing with the Commission a copy of the insurance policy, an abstract of the policy, or a Commission-approved certificate of insurance form, each signed as required by the General Order. The current Commission-approved certificate of insurance is form PE 794.

According to Petitioners, insurance that complies with all of the requirements of GO 120-C has become impossible to obtain for virtually all of California's balloon operators. They state that since the events of September 11, 2001, the few insurance companies that did provide balloon insurance have either withdrawn from the California market or refuse to write policies that meet all of the requirements of GO 120-C. Unless relief is granted, Petitioners state that they face a Hobson's choice: either cease operations or purchase insurance from a company that does not meet all of the Commission's regulations and face enforcement action by the Commission.

Petitioners state that balloon insurance today is available through only one U.S. company, the IMC Agency (IMC) in Burnsville, Minnesota. However, IMC has a new underwriter, Tudor Insurance Company (Tudor), which limits its balloon coverage to that available in states other than California. Thus, Tudor limits maximum liability to \$1 million, which is less than the minimum requirement of GO 120-C for any balloon with more than 10 passengers. Moreover, Tudor will not sell insurance to any operator that owns more than one balloon. This is because GO 120-C, Section 8, requires the insurance company to certify that all policies it may issue will apply to all commercial flights operated by the insured company whether or not a particular balloon is specifically mentioned in the policy.

Petitioners state that as existing insurance policies lapse and renewal is denied, the Commission staff has issued “cease and desist” letters to operators demanding that they obtain the specific insurance required by GO 120-C or cease operations. Petitioners state that at least one operator has been referred to a local district attorney who in turn has filed criminal charges against the operator for failure to comply with GO 120-C insurance requirements.

4. Relief Requested

Petitioners seek an alternative plan of protection, as permitted by GO 120-C, Sections 3(E) and 6. They note that such an alternative plan of protection must be approved via formal application to the Commission. The application in these proceedings seeks such approval. The application seeks adoption on an interim basis of an Interim Plan that would remain in place until the petition for a rule change in GO 120-C is completed. The application states:

Applicants only request approval of this Interim Plan on an interim basis, until a longer term solution for the ballooning industry can be addressed through a rulemaking proceeding that will amend

General Order 120-C, as requested in the Petition filed contemporaneously with this Application.

In order to ensure that the public is protected to the fullest extent feasible, Applicants concur that only those balloon companies meeting the highest standards of professionalism and safety training may take advantage of the Interim Plan proposed by this Application.

The Interim Plan proposed by applicants would have the following requirements:

1. Each pilot shall have an FAA Commercial, Lighter-Than-Air Pilot Certificate with Balloon class rating.
2. Each pilot: (a) shall meet FAA requirements and demonstrate proficiency as Pilot-In-Command in Category and Class balloon to be flown in the passenger ride business; (b) shall attend a balloon safety seminar annually; (c) shall complete a biennial flight review in accordance with FAA regulations.
3. Each balloon used shall be FAA-certificated Standard and shall undergo FAA-mandated annual and/or 100-hour inspections from an FAA-certificated repair station.
4. All flight operations and passenger briefings shall be in full compliance with the regulations contained in 14 CFR Part 91 applicable to commercial hot air balloon operations.
5. Each balloon company must obtain and maintain insurance meeting the following minimum requirements: (a) the company issuing the policy shall be financially sound, with current net assets (as demonstrated by its most recent audited financial statements) of at least \$15,000,000; (b) if the insurance company is incorporated outside the United States, it (1) shall be regulated pursuant to the insurance laws of its country, and (2) the insurance broker or program manager for the underwriter shall operate in accordance with applicable laws and regulation of its jurisdiction; (3) the policy shall contain a minimum liability limit of \$1,000,000; (4) the company issuing insurance shall have re-insurance for any United States balloon program with a reinsurance company with a rating by the A.M. Best Company (Best) of at least B+, and a Best "Financial Size Category" of XL.

5. Public Interest

Petitioners state that the proposed Interim Plan both assures the public protection mandated by the Commission and the flexibility necessary to ensure that responsible balloon companies can continue to operate. They state that the Interim Plan will only be available to balloon companies that adhere to high safety standards.

According to Petitioners, statistics show that California balloon operators have safety records better than national averages. According to FAA records, there have been only 37 ballooning accidents in California since 1983. Since January 1, 2000, the National Transportation Safety Board reported only three accidents in all of California. Under the proposed Interim Plan, Petitioners state, safety is likely to improve even more, since only the most responsible operators will be permitted to operate legally.

The Interim Plan requires that only insurance companies meeting specified criteria may provide the necessary liability protection. Petitioners state that insurance companies meeting these criteria do exist, and will provide insurance to Petitioners.

For example, Petitioners state that a New Zealand company, Contractor's Bonding Limited (CBL), through the Schantz Agency and National Program Management, currently provides balloon insurance to about 30% of the balloons operated in the United States and is willing to write liability policies for California balloonists at the same levels it offers in the rest of the country. Petitioners state that CBL is a financially secure company with \$19 million in current assets and has a financial strength equivalent to highly rated U.S. insurance carriers. Petitioners state that IMC also has indicated that it will be interested in selling liability insurance to California balloonists if GO 120-C

requirements are amended. IMC's current underwriter, Tudor, is a financially secure company rated A+ Best and with a Best financial size category of VII, meaning that Tudor has between \$50 million and \$100 million in capital, surplus, and conditional reserves.

Accordingly, Petitioners state, if the Interim Plan is approved there are likely at least two, and perhaps more, financially sound insurers that will be offering liability insurance to California commercial balloonists.

6. Protests and Comments

The Commission on June 20, 2003 received a three-page letter commenting on the application and petition. We will treat the letter as a protest. In it, Robert C. Welker (Welker), a licensed insurance broker, states that he was able to offer hot air balloon insurance through underwriter General Star Indemnity until May 2002 and that he is negotiating now with another underwriter to offer balloon insurance in full compliance with GO 120-C. Welker alleges that there have been insurance violations by balloon operators and that the relief they seek is in fact "seeing GO 120-C vanish entirely at the public expense." By contrast, however, the protest generally supports Petitioners' claim that insurance meeting all of the requirements of GO 120-C is simply not available today for many operators.

Welker's allegations of violations are conclusions without evidentiary support. We invite Welker and other parties to participate in the Prehearing Conference on the petition to amend GO 120-C and state the evidentiary showing they intend to make at formal hearing. Welker also is concerned with the potential elimination of the PE 794 filing.

7. Discussion

We believe that Petitioners have made a strong showing for our adoption of interim relief. As current insurance policies expire, more and more California balloonists are finding themselves without insurance that complies with all of the requirements of GO 120-C. In addition, we are now in the heart of the ballooning and tourist seasons in California. From May to October, when the weather is usually ideal in the locations where most balloon companies operate, the operators generate about 70 percent of their annual revenues. With the cloud of the current insurance crisis hanging over them, balloon operators unable to obtain insurance may have to shut down, costing many people their full-time or seasonal employment. This in turn could have a ripple effect on the tourist economies in regions where Petitioners operate. Petitioners state that, for example, many visitors to the Napa Valley plan their trips around their balloon flight. Because balloon flights usually occur at sunrise, passengers usually stay in local hotels for at least one night and patronize local restaurants and other businesses. The Interim Plan proposed by Petitioners would be available only to responsible balloon operators that are in full compliance with FAA regulations.

However, we are unable to adopt the fifth section of the Interim Plan as proposed by Petitioners. First, contrary to the statutory requirements, as proposed the fifth section would authorize the use of insurance written by a non-admitted insurer without compliance with Section 1763 of the Insurance Code. (Section 1763 requires insurance placed with non-admitted insurers to be placed by a licensed surplus lines broker, thereby assuring Department of Insurance review of the financial wherewithal of the insurer). Second, Section 5 of the proposed Interim Plan would change the level of insurance coverage without a public hearing. Accordingly, we will revise the Interim Plan to require that any

insurance issued by a non-admitted insurer be issued subject to Section 1763 of the Insurance Code, and that any insurance filed with the Commission continue to provide liability limits of \$100,000 per passenger.

However, we will allow Petitioners to deviate from some of the other provisions of GO 120-C on an interim basis. More specifically, we will allow hot air balloon operators at their option to file an insurance policy or policies with the Commission that cover only specifically listed aircraft. (Compare Section 8 of GO 120-C.) Any hot air balloon operator that does so, will have its operating authority limited to the aircraft specifically named in the policy (or policies) on file with the Commission, until it files proof of additional insurance.

Furthermore, we will allow hot air balloon operators to limit their operations by filing with this Commission an affidavit describing the limits on the number of passengers they will carry in each of their balloons so that the insurance they have on file with the Commission will continue to provide \$100,000 per passenger aircraft passenger bodily injury and death liability coverage. Any hot air balloon operator that does so will have its operating authority limited accordingly until it increases its coverage, subject to the further provisions of this decision. In this connection, we note that GO 120-C requires \$400,000 of insurance (per accident) to cover personal injuries to those not aboard the aircraft and property damage, in addition to the \$100,000 per passenger of liability coverage. Accordingly, if a hot air balloon operator were to file an insurance policy with this Commission that provides a total of \$1 million, combined single limit coverage for any one accident, the operator would be limited to carrying a total of six passengers in the balloon covered by that policy, except as otherwise provided in this order.

Finally, we will take several steps that will allow hot air balloon operators to file proof of coverage for additional passengers, beyond those covered by the policy of insurance they have filed with the Commission, so long as they continue to have \$100,000 of coverage for each passenger. This additional coverage may be provided either by a surety bond issued by a company licensed to write surety bonds in California, or by self-insurance. We will at this time authorize staff to grant self-insurance authority to hot air balloon operators who submit: (1) a written, binding undertaking to provide the self-insurance, and (2) a confidential financial statement, submitted under penalty of perjury, showing \$100,000 in net assets for each \$100,000 of proposed self-insurance. (Any such financial statement shall be treated as confidential by the Commission and its staff.) Any operator that self-insures in accordance with this paragraph may not use the value of the balloon used in its operations in calculating this net asset value. Any operator that operates more than one balloon simultaneously must exclude the balloon with the greatest unencumbered value. Any operator that obtains authority to self-insure must immediately notify the Commission if its net assets fall below the amount required to support the level of self-insurance previously filed, and staff shall thereupon reduce the self-insurance authorization and make the necessary changes to the operating authority. In addition, any hot air balloon operator that desires to establish its ability to self-insure by other means may submit an application to the Commission's Consumer Protection and Safety Division. We direct staff to promptly process any such applications and promptly prepare a resolution for our approval disposing of any such application. A hot air balloon operator may have more than one insurance policy on file with the Commission (insuring different balloons), while self-insurance will necessarily (and a surety bond will likely)

cover any additional passengers carried by the balloon operator. Thus, it may be necessary for an operator who files proof of coverage for additional passengers, as permitted by this paragraph, to limit its operations so that there will be \$100,000 of coverage for each passenger aboard its balloons at any one time. Accordingly, any operator that files coverage for additional passengers as authorized in this paragraph shall submit an affidavit describing what, if any, limitations it will place on its operations to ensure that there is \$100,000 of passenger bodily injury and death liability coverage in place for all passengers aboard its balloon(s) at any one time. Staff is also directed to limit the operating authority of any operator submitting coverage pursuant to this paragraph so that the required amount of coverage will be in place for all authorized operations.

In sum, we will adopt an interim plan as modified by the above paragraphs (Modified Interim Plan). We will provide that if an insurer is unable to file a form PE 794, the balloon operator may provide proof of coverage by filing a copy of its policy of insurance with the Commission and otherwise complying with the requirements of the preceding paragraphs. We note that nothing in this decision authorizes any variance from Section 5 of GO 120-C, which requires 30 days advance written notice to the Commission before any coverage may be cancelled.

We emphasize that the relief accorded Petitioners is an interim measure that may change as we proceed with P.03-05-040, the petition to amend GO 120-C. We direct the assigned ALJ to promptly set a Prehearing Conference, no later than August 8, 2003, and to promptly convene public hearings to consider the issues addressed herein and to allow for full consideration of the insurance requirements applicable to hot air balloon operators set forth in General Order 120-C.

8. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Pursuant to Rule 77.7(f)(9), the time for comments was reduced to 13 days, and no reply comments were accepted. We reduced the public review and comment period so that the proposed Interim Decision could be placed on the Commission's Agenda for July 10, 2003. Public necessity requires this approach because the public interest is served by resolving these issues on an interim basis before the hot air ballooning season ends.

Comments were filed by Robert C. Welker. Essentially, Welker repeated the information he supplied in his June 20, 2003, letter that we have treated as a protest. Additionally, Welker questions whether our order today intrudes on an area that would be better directed to the California Department of Insurance. That is a valid point, and we share Welker's concern, which we have addressed by the modifications we are making to the proposed Interim Plan. Comments also were filed by Petitioners, which were supportive of the ALJ's draft decision.

9. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Petitioners seek expedited action by the Commission for relief from certain insurance requirements of GO 120-C applicable to commercial hot air balloon operations.

2. Insurance for providers of hot air balloon rides to the public has become difficult if not impossible to obtain in a manner that meets all current requirements of GO 120-C.

3. Approximately 50 companies offer balloon rides throughout California, concentrated in popular tourist regions.

4. Most commercial balloons are designed to carry more than six passengers, and the largest can carry up to 16 passengers.

5. Hot air balloons are certificated and regulated by the FAA.

6. Under GO 120-C, manned balloon operators are required to carry passenger liability insurance of at least \$100,000 per passenger seat, along with aircraft property damage liability insurance of at least \$100,000 per accident, and aircraft bodily injury and death liability coverage for persons other than those aboard the aircraft of \$300,00 per accident.

7. Balloon insurance today is apparently available only through one U.S. company, and that company limits the amount of coverage it is willing to write to \$1 million.

8. As existing policies lapse and renewal is denied, the Commission staff has issued "cease and desist" letters to operators.

9. Petitioners propose an Interim Plan of insurance coverage.

10. The Interim Plan would be available only to balloon operators in full compliance with FAA requirements and only through financially sound insurance companies.

11. The Interim Plan is likely to permit balloon operators to obtain insurance from a U.S. company that limits maximum liability to \$1 million.

12. Failure to grant relief could result in the closing of manned balloon attractions, with corresponding harm to tourist attractions and local economies.

Conclusions of Law

5. Pursuant to Public Utilities Code Section 5503, hot air balloon operators must have protection against liability. Pursuant to Public Utilities Code Sections 5506 and 5511, this coverage must be provided by: a company licensed to write insurance in California, a surety bond issued by a California-licensed surety company, self-insurance, or by a non-admitted insurer in compliance with Section 1763 of the Insurance Code.

6. Petitioners have made a strong showing for adoption of interim relief.

7. The fifth section of Petitioners proposed Interim Plan must be modified to comply with statutory law.

8. The interim plan as modified in accordance with the Discussion above (the Modified Interim Plan) should be adopted on an interim basis pending hearings on whether amendments to GO 120-C are necessary.

INTERIM ORDER

IT IS ORDERED that:

3. The interim relief sought in Application (A.) 03-05-039 is granted as modified by the Discussion above. This Modified Interim Plan is outlined in the Ordering Paragraphs below.

4. Hot air balloon operators who wish to deviate from the provisions of General Order (GO) 120-C may do so to the extent authorized by this decision and in accordance with the following Modified Interim Plan:

- a. Each pilot shall have a Federal Aviation Administration (FAA) Commercial, Lighter-Than-Air Pilot Certificate with Balloon class rating.
- b. Each pilot: (i) shall meet FAA requirements and demonstrate proficiency as Pilot-In-Command in Category and Class balloon

- to be flown in the passenger ride business; (ii) Shall attend a balloon safety seminar annually; (iii) Shall complete a biennial flight review in accordance with FAA regulations.
- c. Each balloon used shall be FAA-certificated Standard and shall undergo FAA-mandated annual and/or 100-hour inspections from an FAA-certificated repair station.
 - d. All flight operations and passenger briefings shall be in full compliance with the regulations contained in 14 CFR Part 91 applicable to commercial hot air balloon operations.
 - e. Each policy of insurance shall be issued by an insurer licensed to write such insurance in California, or, if the insurance is written by a non-admitted insurer, the policy must be issued subject to Section 1763 of the California Insurance Code. Hot air balloon operators may file a copy of the policy of insurance, rather than a Form PE 794, so long as it is signed or certified to in the manner required by Section 7 of GO 120-C.
 - f. Any hot air balloon operator that demonstrates compliance with the above requirements of this Ordering Paragraph may at its option deviate from the requirements of GO 120-C to the extent set forth in the following Ordering Paragraphs. Compliance with items a through d of this Ordering Paragraph may be shown by a statement of compliance submitted under penalty of perjury.
3. Any hot air balloon operator that meets the requirements of Ordering Paragraph 2, above, may file an insurance policy (or policies) with the Commission that covers only specifically listed aircraft. Any hot air balloon operator that does so, will have its operating authority limited to the aircraft specifically named in the policy (or policies) on file with the Commission, until it files proof of additional insurance.
4. Any hot air balloon operator that meets the requirements of Ordering Paragraph 2, above, may limit its operations by filing with this Commission an affidavit describing the limits on the number of passengers it will carry in each of its balloons so that the insurance it has on file with the Commission will continue

to provide \$100,000 per passenger aircraft passenger bodily injury and death liability coverage. Any hot air balloon operator that does so will have its operating authority limited accordingly until it increases its coverage, subject to the further provisions of Ordering Paragraph 5.

5. Any hot air balloon operator that meets the requirements of Ordering Paragraph 2, above, may file proof of coverage for additional passengers, beyond those covered by the policy of insurance it has filed with the Commission, so long as it continues to have \$100,000 of coverage for each passenger. This additional coverage may be provided either by a surety bond issued by a company licensed to write surety bonds in California, or by self-insurance. Any operator that files coverage for additional passengers as authorized by this Ordering Paragraph shall submit an affidavit describing what, if any, limitations it will place on its operations to ensure that there is \$100,000 of passenger bodily injury and death liability coverage in place for all passengers aboard its balloon(s) at any one time. Staff shall limit the operating authority of any operator submitting coverage pursuant to this paragraph so that the required amount of coverage will be in place for all authorized operations.

6. Staff shall grant self-insurance authority to a hot air balloon operator who meets the requirements of Ordering Paragraph 2, above, in order to provide the coverage authorized by Ordering Paragraph 5, above, if the operator submits: (a) a written, binding undertaking to provide the self-insurance, and (b) a confidential financial statement, submitted under penalty of perjury, showing \$100,000 in net assets for each \$100,000 of proposed self-insurance. (Any such financial statement shall be treated as confidential by the Commission and its staff.)

7. Any hot air balloon operator that desires to establish its ability to self-insure by other means may submit an application to the Commission's Consumer Protection and Safety Division. Staff shall promptly process any such application and promptly prepare a resolution for our approval disposing of any such application.

8. Staff shall take whatever steps are necessary to limit the authority of hot air balloon operators to the extent required by this decision.

9. The assigned ALJ shall set a prehearing conference no later than August 8, 2003, and promptly convene public hearings to consider the issues addressed herein and to allow for full consideration of the insurance requirements applicable to hot air balloon operators set forth in GO 120-C.

10. This Interim Order shall remain in effect until further decision of the Commission, as contemplated in the preceding ordering paragraph.

This order is effective today.

Dated _____, at San Francisco, California.