

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RESOLUTION TEA-4
SAFETY AND ENFORCEMENT DIVISION

R E S O L U T I O N

RESOLUTION DIRECTING ADDITIONAL REGULATORY
CHANGES TO IMPLEMENT PUBLIC LAW 103-305SUMMARY

Resolution TEA-2 (passed 10/26/94) requested public comment on the Commission's implementation plan, adapting regulatory programs to Section 601 of Public Law (PL) 103-305. Effective January 1, 1995, PL 103-305 generally preempts the states' ability to enforce laws related to a price, route, or service of motor carriers of property, except household goods carriage. Transportation economically deregulated by Section 601 is here referred to as "deregulated carriage." This resolution makes changes in the implementation plan in response to comments received by staff as of December 1, 1994.

Twenty written responses to the resolution were received by December 1, 1994 along with numerous oral comments. Based on staff recommendation, the following changes are adopted for deregulated carriage:

General Order (GO) 84 and parts of GO 102 will be considered preempted and not enforced;
Additional explanation is provided on the federal law's effect on the following issues:

State Standard Transportation Practices;
Bills of Lading;
Bureau Tariffs and Antitrust Immunity;
Undercharges;
Scope of Operating Authority;
New Operating Authority - Highway Carrier Permit;
Transfer and Partial Transfer of Authority;
Temporary and Seasonal Permits;
Revocation for Non-Use;
Acquisition and Control;
Voluntary Suspensions;

Several wording changes are made to clarify intent in Resolution TEA-2.

GO 102 and GO 84: Subhaul and C.O.D. Bonds

Several commentators argue that regulations requiring subhaul and C.O.D bonds are related to price and service and do not meet the specific exemptions set forth in PL 103-305. In Resolution TEA-2, GO 102 and 84 were retained because subhaul and C.O.D. bonds were considered to regulate financial responsibility. Section 601 of PL 103-305 specifically states the preemption does not cover "the authority of the state to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization" (subsection (b)(1)(4)(B)(i) and (c)(h)(2)(A)). Subhaul and C.O.D bonds clearly ensure carriers are financially responsible in paying debts to subhaulers and shippers, but commentators state this is not the type of financial responsibility intended by the law. Unlike bonds for liability or workers' compensation coverage, subhaul and C.O.D. bonds do not take the place of insurance or self-insurance. Upon review, subhaul and C.O.D. bonds are not the type of proof of financial responsibility contemplated by Section 601 of PL 103-305. Accordingly, the part of GO 102 supporting the subhaul bond program and all of GO 84 are preempted regulations and will not be enforced for deregulated carriage.

The following parts of GO 102 support the subhaul bond program: 1) requiring carriers using subhaulers to: maintain a subhaul bond, pay the subhauler within 15 days after completion of the shipment, make freight bills available to subhaulers, and maintain a subhaul register; and 2) requiring carriers and subhaulers to: enter into written agreements and maintain copies of those agreements. The rules for subhaul bonds should not be confused with bonds for lessor-employees. Lessor-employees are not motor carriers so PL 103-305 does not change the program for any carrier using lessor-employees.

Another part of GO 102 that is not part of the subhaul bond program is Rule 3. It makes the prime carrier responsible for ensuring that it hires only licensed subhaulers. This is an essential part of our safety and insurance program, is not preempted, and will be enforced.

Staff is directed not to enforce, for deregulated carriage, GO 84, Section 5 of GO 102, and Sections 4 and 7 of GO 102 as they relate to transportation by subhaulers or sub-subhaulers.

State Standard Transportation Practices: Several commentators may have misinterpreted our intended policy for state standard transportation practices. Hopefully the following discussion will clarify the issue.

Section 601 of PL 103-305 specifically identifies state standard transportation practices as:

- uniform cargo liability rules
- uniform bills of lading or receipts

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uniform cargo credit rules, and
antitrust immunity for joint line rates or routes,
classifications and mileage guides.

The identified state standard transportation practices can only be enforced on deregulated carriage if they are no more burdensome than Interstate Commerce Commission rules on the same subject and only if a carrier requests the rule apply to it.

In light of these restrictive conditions, the Commission does not plan on enforcing, on deregulated carriage, any state standard transportation practice currently in force (e.g. GO 139 and 148) except for the granting of antitrust immunity. Antitrust immunity may still be granted, upon request, pursuant to Public Utilities (P.U.) Code Section 496 and GO 154. The Commission will consider enforcing state standard transportation practices if requested, but the request must cite the public benefit to be derived from the requested activity.

Bills of Lading

Resolution TEA-2 did not discuss the effect of preemption on bills of lading. Under PL 103-305, a bill of lading is a state standard transportation practice. Therefore, bills of lading are not required for deregulated carriage. A bill of lading is required of highway common carriers transporting freight that is not deregulated carriage (e.g. freight considered household goods by federal law and general freight by state law).

Bureau Tariffs and Antitrust Immunity:

PL 103-305 preempts the states' ability to grant antitrust immunity to collectively set rates, except joint line rates or routes, classifications and mileage guides. Resolution TEA-2 may not have been as clear as necessary on this point. As of the effective date of PL 103-305, the Commission will only grant antitrust immunity to newly filed collectively set rates that meet the two conditions listed below. The Commission has revoked previously granted antitrust immunity to collectively set rates currently on file that do not meet the following conditions:

1. a) the collectively set rate, rule, or charge applies to transportation that was not deregulated by Section 601 of PL 103-305; or

b) the collectively set rate, rule or charge applies to joint line rates or routes, classifications, or mileage guides for deregulated carriage;
and,

2. the rate bureau has requested and obtained an order from the Commission specifically granting it antitrust immunity for the collectively set rates.

Because the state is preempted from regulating the rates (prices) of deregulated carriage, no rate on file will set the legal rate for deregulated carriage. This includes all collectively set rates that retain antitrust immunity, because

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the exception in Section 601 is only designed to allow states to grant antitrust immunity and not to allow states to continue price regulation. For example, a collectively set joint line rate that could apply to both federally defined household goods and deregulated traffic is not limited in the grant of antitrust immunity, but is limited in its application as the legal rate to federally defined household goods.

Staff has requested that rate bureaus cancel tariffs that do not meet conditions one and two stated above. This request was for administrative convenience. Failure to file a cancellation notice will not prevent the removal of antitrust immunity. Further, rate bureau tariffs on file as of January 1, 1995 set the legal rate only for traffic that is not deregulated. All rate bureau tariffs will be retained in a historical file to assist in resolving disputes concerning transportation performed before the effective date of Section 601 of PL 103-305.

Undercharges

Several P.U. Code sections require a common carrier to assess the rates, fares, and charges specified in its filed tariff schedules. Other code sections make it a violation for a common carrier to assess rates not in its filed tariff schedules. Section 601 of PL 103-305 preempts the states' ability to regulate rates or to require the filing of tariff schedules for deregulated carriage. Resolution TEA-2 eliminated the filing of tariffs, and there are no effective tariffs on file with the Commission for deregulated carriage, except a limited number of bureau tariffs for joint line rates and routes. However, rate bureau tariffs are filed to obtain antitrust immunity and should not be considered the legal rate. Consequently, there are no legal rates, fares, or charges on file for deregulated carriage and hence nothing on which to apply the filed rate doctrine. Therefore, the Commission will consider all undercharge claims based on deregulated carriage transported on or after January 1, 1995 without merit and will not award undercharges on such traffic.

Scope of Operating Authority:

PL 103-305 does NOT preempt the states' ability to issue a license (i.e. certificate, permit or registration) and does NOT invalidate any license previously issued by the Commission. As of January 1, 1995, a carrier holding any of the certificates or permits listed below may transport any property (except household goods as defined in federal law) as long as the carrier follows the safety and insurance rules for that commodity:

- highway common carrier certificate
- cement carrier certificate

- agricultural carrier permit
- cement contract carrier permit
- dump truck carrier permit

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of authority to separate counties is a regulation of route, it is preempted. All trucking authorities are now statewide, so it is no longer possible to split off part of an authority and transfer it to another party. Therefore, no partial transfers of authority will be approved.

Temporary and Seasonal Permits:

There have been some questions concerning temporary dump truck, seasonal agricultural, and seasonal livestock permits under the federal preemption. Temporary permits will still be issued for ninety days with one 45 day renewal and seasonal permits will still be issued for six months with the opportunity for one three month renewal. Temporary and seasonal permit holders, like other holders of operating authority, are generally no longer bound by restrictions on what they haul. A carrier with a temporary or seasonal permit can haul general freight, cement, sand, or almost any other commodity except household goods (see explanation under Operating authority). Carriers are required to meet safety and insurance requirements for the commodity hauled.

Revocation for Non-Use:

Under the current program the Commission may revoke a carrier's operating authority if the carrier does not use it for one year. Section 601 of PL 103-305 preempts that part of the program, because it is an impermissible limitation on service. Therefore no operating authorities, except household goods, will be revoked for non-use. Carriers will still have their operating authorities revoked for non-payment of fees, for failure to have adequate insurance on file, or for any of the other reasons current rules allow.

Acquisition and Control

P.U. Code Sections 1076 and 3551 provide that no person or corporation shall acquire or control any highway carrier without securing authorization from the Commission. The application process is simple and basically gathers information necessary for the safety and insurance programs. As such little will change because of Section 601 of PL 103-305. The Commission will continue to need the name and address of the acquiring parties and the relative participation by purchasers in order to evaluate safety risk and to know who is responsible in case of loss. Current questions on the reasons for the transaction are not required for safety and insurance and will be considered preempted for deregulated carriage.

Voluntary Suspensions

P.U. Code section 3771 states a highway permit carrier may request and the Commission may grant a suspension of the carrier's operating authority for no more than one year. Voluntary suspension allows a non-operating carrier to terminate insurance coverage without having its operating authority revoked. The granting of voluntary suspension is, therefore, a matter concerning insurance and is not preempted.

Clarifications to Resolution TEA-2

GO 102: Several commentors complained about the wording contained in the section of Resolution TEA-2 dealing with GO 102. Specifically, the resolution stated "However, these rules are also part of a regulatory scheme of protecting subhaulers, who have some of the characteristics of employees." Commentors believe this language could be misinterpreted to imply subhaulers are employees and not independent contractors. This was not the Commission's intent; subhaulers are required to obtain operating authority because they are independent contractors and not employees. Since the specified sentence does not add materially to the discussion and is made moot by the GO 102 program adopted above, it will be deleted from Resolution TEA-2.

Application Part II: The second sentence of paragraph three states "Staff will continue to ask whether the applicant is applying for parallel ICC authority, since a carrier may operate under its ICC number in lieu of the Commission's T number." (emphasis added) The underlined words were poorly chosen and are deleted and replaced with "display."

Finding Number 57: Several persons have asked whether this finding requires highway carrier permit applications to be publicly noticed. The Commission did not intend and will not require highway carrier permit applications to have a period of public notice.

FINDINGS

1. Section 601 of Public Law (PL) 103-305 generally preempts states from enacting or enforcing laws or regulations related to a price, route or service of motor carriers transporting property and air carriers transporting property by motor vehicle.
2. Transportation economically deregulated by Section 601 is here referred to as "deregulated carriage."
3. The preemption became effective January 1, 1995.
4. Under Section 601 of PL 103-305 states may 1) regulate the safety and financial responsibility of carriers, 2) license carriers subject to the federal preemption, and 3) within certain limits establish and implement state standard transportation practices.
5. Section 601 of PL 103-305 explicitly does not preempt state regulation of household goods carriage. Household goods carriage is not deregulated carriage. The Commission's ongoing household goods program is unaffected by PL 103-305.

6. Under Section 601 of PL 103-305, the Commission may no longer require the following programs in GO 84 for deregulated carriage: a C.O.D. bond, separate accounts, and record keeping.
7. Under Section 601 of PL 103-305, the Commission may no longer require the following programs in GO 102 for deregulated carriage 1) requiring carriers using subhaulers to: maintain a subhaul bond, pay the subhauler within 15 days after completion of shipment, make freight bills available to subhaulers, and maintain a subhaul register; and 2) requiring carriers and subhaulers to: enter into written agreements and maintain copies of those agreements.
8. The Commission will continue to prohibit carriers from engaging unauthorized carriers as subhaulers and it will continue to be the responsibility of the carrier actually engaging the subhauler or sub-subhauler to comply with this requirement, pursuant to GO 102.
9. In part, GO 102 regulates the leasing of equipment by an employee of a carrier to its employer. Since these regulations relate to employees, and not the price, route or service of a motor carrier, they are not affected by Section 601 of PL 103-305.
10. The Commission does not plan on enforcing, on deregulated carriage, any state standard transportation practice currently in force. The Commission will continue to grant permissible antitrust immunity pursuant to P.U. Code section 496.
11. A bill of lading is a state standard transportation practice.
12. The Commission will consider all claims for undercharges, regarding deregulated carriage transported on or after January 1, 1995, without merit and will not award undercharges on such traffic.
13. Section 601 of PL 103-305 does NOT preempt California's ability to issue licenses (i.e. certificates, permits, registrations) and does NOT invalidate any license previously issued by the Commission.
14. Under Section 601 of PL 103-305, all authorities, except household goods, are now statewide, so it is no longer possible to transfer part of an authority to another carrier.
15. Section 601 of PL 103-305 preempts the Commission's authority to revoke a carrier's operating authority, except household goods permits, for non-use.
16. For deregulated carriage, section 601 of PL 103-305 preempts the Commission from requiring detailed reasons for

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entering into the transaction from applicants to acquire or control a highway carrier.

17. Section 601 of PL 103-305 does not preempt the Commission's ability to grant voluntary suspension for up to one year.

18. Subhaulers are required to obtain operating authority because they are independent contractors and not employees.

19. Finding 57 of Resolution TEA-2 does not require highway carrier permit applications to have a period of public notice.

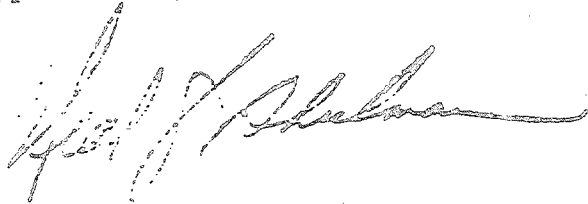
THEREFORE, IT IS ORDERED that:

1. Staff shall cease enforcing on deregulated carriage those regulations preempted by Section 601 of PL 103-305, as described in greater detail in the text of this resolution.

2. The section of Resolution TEA-2 titled Application Part II: (page 12) is amended in the second sentence of paragraph three. "Staff will continue to ask whether the applicant is applying for parallel ICC authority, since a carrier may operate under its ICC number in lieu of the Commission's T number" is deleted and replaced by "Staff will continue to ask whether the applicant is applying for parallel ICC authority, since a carrier may display its ICC number in lieu of the Commission's T number."

3. The Executive Director shall cause copies of this resolution to be served on all highway carriers, freight forwarders, motor transportation brokers, express corporations, tariff bureaus, and on all persons listed on Appendix A to this resolution. The Executive Director shall also cause notice of the issuance of this resolution to be included in the Commission's Daily Calendar.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 24, 1995. The following Commissioners approved it:



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