

(Decision No. C93-1128)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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| IN THE MATTER OF EMERGENCY RULES) | |
| AUTHORIZING SUMMARY SUSPENSION) | DOCKET NO. 93R-524CY |
| OF CERTIFICATES OR PERMITS OF) | |
| REGULATED CARRIERS FOR FAILURE) | ORDER ADOPTING EMERGENCY |
| TO MAINTAIN MANDATORY INSURANCE) | RULES |
| COVERAGE, AMENDMENTS TO RULE 73,)) | |
| 4 CCR 723-1.) | |

Mailed Date: September 10, 1993
Adopted Date: September 8, 1993

STATEMENT

BY THE COMMISSION:

At the August 31, 1993 and the September 8, 1993 Commission Open Meetings, Commission Staff presented a review of current procedures for the revocation of certificates or permits of regulated carriers who no longer maintain required insurance coverage. Statutes mandate that regulated carriers file with the Commission liability insurance policies in such sum and in such form as the Commission deems necessary to adequately safeguard the public interest (e.g., sections 40-10-110, 40-11-109, 40-13-105, C.R.S.). Our carrier-specific rules implement these statutes, in part, by specifying the evidence of insurance which must be filed with the Commission (Rule 12, Rules and Regulations Governing Common Carriers, 4 CCR 723-8).

CR16-3183

In their presentations at the Open Meetings, Staff raised a serious matter regarding present procedures for the revocation of carrier certificates and permits in the circumstance where carriers fail to maintain required insurance coverage. Specifically, Staff explained that under current procedure, when violations of the insurance statutes and rules occur (when the Commission receives notice of cancellation of insurance from insuring companies), revocation proceedings are initiated by sending a notice of hearing to the subject carrier. Rule 73 requires a hearing followed by a written decision in which revocation is ordered. Under that Rule, the carrier retains its certificate or permit and may continue to operate without adequate insurance coverage until after the written decision is issued.

We find that such uninsured carrier operations pending revocation hearings create unacceptable risks to the public health, safety, and welfare. In particular, such operations present the risk that members of the public will fail to receive adequate compensation in the event of personal injury or property loss caused by uninsured carriers. Such risk is increased by the delay inherent in revocation procedures for notice and hearing).

In order to address this problem, we now determine that immediate adoption of the attached emergency rules is imperatively necessary for the preservation of the public health, safety, or welfare. We find that compliance with rulemaking notice and

comment requirements as set forth in the Administrative Procedure Act, section 24-4-103, C.R.S., would be contrary to the public interest in that failure to change the procedure could result in permitting an uninsured carrier to retain its certificate or permit while the Commission procedure runs its course. In such situation, the public could face exposure to increased risk of no compensation for injuries sustained at the hands of the uninsured carrier. This risk could be significant in light of the fact that the Commission receives several hundred notices of insurance cancellations every month.

The emergency rules address this problem by providing for summary suspension of certificates and permits when Commission files indicate that mandatory insurance coverage for a particular carrier has expired.¹ Such summary suspension shall be effective pending a hearing on permanent revocation or until evidence of insurance is filed with the Commission. In addition to protecting the public, it is our belief that, under the new rule, carriers who are currently lax about maintaining insurance coverage will have increased incentive not to allow insurance coverage to lapse since there will be no grace period.

¹ We note that summary suspension of licenses is provided for in section 24-4-104(4), C.R.S., when an agency has reasonable grounds to believe that a licensee has been guilty of deliberate and willful violations or if the public health, safety, or welfare imperatively requires emergency action. Additionally, recent amendments to the Common Carrier and Contract Carrier statutes, sections 40-10-112(2) and 40-11-110(2), C.R.S., expressly permit summary revocation of the registration of carriers operating within the state under authority issued by the Interstate Commerce Commission for failure to maintain effective insurance and file evidence of such insurance with the Commission.

For these reasons, we determine that emergency rules should be adopted immediately without notice, such rules to be effective for 90 days following the issuance of this order. We will initiate proceedings to adopt permanent rules to replace these emergency regulations within this 90-day period.

The statutory authority for these rules is found at sections 40-2-108, 40-3-102, 40-10-110, 40-10-112, 40-10-120, 40-11-109, 40-11-111, 40-11-115, and 40-13-105, C.R.S.

THEREFORE THE COMMISSION ORDERS THAT:

1. The emergency rules attached to this order are hereby adopted to be effective immediately. Such rules shall be in effect for 90 days or until replaced by permanent rules, whichever period is less.

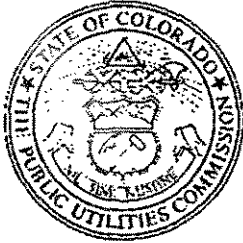
2. Within 20 days following adoption, the attached emergency rules and this decision shall be filed with the Secretary of State along with the Attorney General's Opinion regarding the legality of the rule.

3. The adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the Attorney General's Opinion regarding the legality of the rule.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING September 8, 1993.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Robert E. Temmer

Christine E. M. Alvarez
Commissioners

COMMISSIONER VINCENT MAJKOWSKI ABSENT

ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

4 Code of Colorado Regulations 723-1

NEW RULE 73(f)

(f) MOTOR CARRIER INSURANCE SHOW CAUSE PROCEEDINGS

(1) WHENEVER THE COMMISSION RECORDS INDICATE THAT A MOTOR CARRIER'S LIABILITY INSURANCE IS NO LONGER EFFECTIVE, AND THERE IS NO PROOF ON FILE WITH THE COMMISSION INDICATING REPLACEMENT COVERAGE, THE CARRIER'S AUTHORITY WILL BE SUMMARILY SUSPENDED UNTIL THE COMMISSION RECEIVES PROPER PROOF OF NEW COVERAGE AS REQUIRED BY COMMISSION RULES, OR UNTIL THE CARRIER'S AUTHORITY IS REVOKED PURSUANT TO THE COMMISSION'S SHOW CAUSE PROCEDURES.

(A) A CARRIER RECEIVING NOTICE OF SUMMARY SUSPENSION SHALL NOT CONDUCT OPERATIONS UNDER ITS AUTHORITY OR PERMIT UNTIL PROPER PROOF OF INSURANCE IS FILED WITH THE COMMISSION.

(B) WHEN PROPER PROOF OF INSURANCE IS RECEIVED BY THE COMMISSION, THE SUMMARY SUSPENSION WILL BE LIFTED WITHOUT FURTHER ORDER OF THE COMMISSION.

(2) THE DIRECTOR OF THE COMMISSION SHALL SEND A NOTICE OF SHOW CAUSE PROCEEDINGS TO A MOTOR CARRIER THAT FAILS TO MAINTAIN PROPER PROOF OF INSURANCE AS REQUIRED BY COMMISSION RULES. THE NOTICE SHALL ADVISE THE CARRIER THAT ITS AUTHORITY TO OPERATE IS SUMMARILY SUSPENDED.