

Decision No. C04-0254

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-109EC

IN THE MATTER OF EMERGENCY AMENDMENTS TO THE RULES REGULATIONS,
AND CIVIL PENALTIES GOVERNING MOTOR VEHICLE CARRIERS EXEMPT FROM
REGULATION AS PUBLIC UTILITIES, 4 CCR 723-33.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: March 11, 2004

Adopted Date: March 10, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules governing carriers exempt from regulation as public utilities, 4 *Code of Colorado Regulations* (CCR) 723-33. For the reasons set forth in this decision, we now adopt, on an emergency basis (*i.e.* without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, Colorado Revised Statutes) the rules appended to this order as Attachment A. The emergency rules we adopt are the same emergency rules set forth in Decision No. C03-0889. We take this emergency action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. Generally, the purpose of the rules adopted by this order is to update exempt carrier rules to comply with recently adopted statutes. Specifically, Senate Bill 03-225, set forth new civil penalty assessments applicable to exempt carriers. However, the event that precipitates the adoption of these emergency rules is the expiration of the previous set of emergency rules

adopted in Decision No. C03-0889, pursuant to that decision, without passage of permanent exempt carrier rules.

3. We find that adoption of the rules is necessary for the preservation of public health, safety, and welfare, and compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest.

4. As grounds for these findings, we state: On August 19, 2003, the Commission mailed Decision No. C03-0889 which implemented emergency rules regulating carriers of household goods, effective on that date. On September 18, 2003, a notice of proposed rulemaking for permanent rules was issued in Decision No. C03-1053. The permanent rulemaking has not yet concluded, and the emergency rules will expire on March 15, 2004, pursuant to Decision No. C03-0889.

5. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-7-112 through 40-7-116, and 40-16-102, C.R.S. The rules attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. Emergency Rules 4 CCR 723-33, which are appended to this decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 10, 2004.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO
EMERGENCY RULES, REGULATIONS, AND CIVIL PENALTIES GOVERNING
MOTOR VEHICLE CARRIERS EXEMPT
FROM REGULATION AS PUBLIC UTILITIES

4 CODE OF COLORADO REGULATIONS (CCR) 723-33

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BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to regulate motor vehicle carriers exempt from regulation as public utilities as defined in § 40-16-101(4), C.R.S.; to specify the luxury features a luxury limousine must offer; to designate the type of written documentation, as set forth in § 40-16-104(2), C.R.S., that a motor vehicle carrier exempt from regulation as a public utility must file with this Commission; to designate the amounts and form of insurance a property carrier by motor vehicle must maintain, as set forth in

§ 40-16-104(1.5); and to provide penalties for the violation thereof. These rules are issued in accordance with § 40-2-110.5, C.R.S.

The statutory authority for these rules is found at §§ 40-2-108, 40-7-112 through 116, 40-16-101(3)(a)(III), and 40-16-103.6, C.R.S.

RULE (4 CCR) 723-33-1. APPLICATION OF RULES.

These rules apply to motor vehicle carriers exempt from regulation as public utilities as defined in § 40-16-101(4), C.R.S.

RULE (4 CCR) 723-33-2. DEFINITIONS.

723-33-2.1 "Commission" means the Colorado Public Utilities Commission.

723-33-2.2 "Commodities" means property other than office or specialty goods.

723-33-2.3 "Discretionary vehicle." A vehicle may be qualified as a discretionary vehicle if the vehicle would have qualified as a luxury vehicle at the time the vehicle was new and if the vehicle is in exceptional physical condition at the time of registration. A vehicle is in exceptional physical condition if: (1) The body of the vehicle has a good, unfaded paint job, and is devoid of dents, rust, missing or broken chrome, and has no broken or cracked glass or lenses; (2) The interior of the vehicle is clean, free of offensive odors, and has no tears, cracks, or major stains upon the upholstery, headliner, and carpeting; and (3) is in sound mechanical condition with no safety defects. The applicant shall bear the burden of proving that the original Manufacturer's Suggested Retail Price of the vehicle was equal to or in excess of that required of a luxury vehicle.

723-33-2.4 "Exempt carrier" means "motor vehicle carrier exempt from regulation as a public utility" as that term is defined in § 40-16-101(4), C.R.S.

723-33-2.5 "Form E" means a NARUC Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, executed by a duly authorized agent of the insurer.

723-33-2.6 "Form G" means a NARUC Form G Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond, executed by a duly authorized agent of the surety.

723-33-2.7 "Form H" means a NARUC Form H Uniform Motor Carrier Cargo Certificate of Insurance, executed by a duly authorized agent of the insurer.

723-33-2.8 "Form J" means a NARUC Form J Uniform Motor Carrier Cargo Surety Bond, executed by a duly authorized agent of the surety.

723-33-2.9 "Form K" means a NARUC Form K Uniform Notice of Cancellation of Motor Carrier Insurance Policies, executed by a duly authorized agent of the insurer.

723-33-2.10 "Form L" means a NARUC Form L Uniform Notice of Cancellation of Motor Carrier Surety Bonds, executed by a duly authorized agent of the surety.

723-33-2.11 "Office and specialty goods" means

723-33-2.11.1 Furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; except that this subparagraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment, or a portion thereof, from one location to another; and

723-33-2.11.2 Articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods; except that this subparagraph shall not be construed to include any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

723-33-2.12 "NARUC" means the National Association of Regulatory Utility Commissioners.

723-33-2.13 "Property carrier" means "property carrier by motor vehicle," as that term is defined in § 40-16-101(6.5), C.R.S.

723-33-2.14 "Public entity" shall have that meaning as set forth in § 24-10-103(5), C.R.S.

RULE (4CCR) 723-33-3. INSURANCE REQUIREMENTS FOR ALL EXEMPT CARRIERS.

723-33-3.1 Every exempt carrier shall obtain and keep in force at all times public liability and property damage insurance or a surety bond providing similar coverage issued by an insurance company or surety company authorized to do business in the State of Colorado. Public entities may

obtain a certificate of self-insurance from the Division of Insurance in the Department of Regulatory Agencies.

723-33-3.1.1 The exempt carrier shall ensure that coverage:

723-33-3.1.1.1 Is not less than the minimum amounts prescribed by § 40-16-104, C.R.S.;

723-33-3.1.1.2 Covers all vehicles which may be operated by or for the exempt carrier, or which may be under the control of the exempt carrier;

723-33-3.1.1.3 Is accomplished by a "Waiver of Description" endorsement on each policy;

723-33-3.1.1.4 Provides for the payment of benefits by the insurer(s) directly to parties damaged by the exempt carrier on a "first dollar"/"dollar one" basis;

723-33-3.1.1.5 If the coverage contains a retained risk provision, such provision shall obligate the insurer to pay the party damaged by the exempt carrier regardless of the level of funds in the retained risk pool; and

723-33-3.1.1.6 Does not permit an exempt carrier to pay benefits directly to a party damaged by the exempt carrier.

723-33-3.1.2 The exempt carrier shall cause to be filed with the Commission a Form E or Form G in lieu of the original policy. Public entities obtaining a certificate of self-insurance issued by the Division of Insurance in the Department of Regulatory Agencies shall file a copy of said certificate with the Commission in lieu of a Form E or Form G. The original policy is to be retained by the exempt carrier and kept available for inspection by any authorized representative of the Commission. The exempt carrier shall ensure that:

723-33-3.1.2.1 The policy and Form E or G contain the exempt carrier's exact name, trade name (if any), and address as shown in the records of the Commission, and

723-33-3.1.2.2 Any subsequent name or policy number changes shall be reflected by the filing of an endorsement or amended Form E or G.

723-33-3.1.3 Every insurance or surety bond certificate required by and filed with the Commission shall be kept in full force and effect, and shall bind the insurer or surety, unless and until the insurer or

[] are not subject to appreciable loss or damage due to the physical characteristics of the commodities.

If the Commission receives a Form H or Form J after the submission of the signed statement, the Commission shall thereafter deem the signed statement null and void for all purposes.

723-33-3.2.4 Except as provided in 723-33-3.2.3, the property carrier shall cause to be filed with the Commission a Form H or Form J, in lieu of the original policy. The property carrier shall retain the original policy, keeping it available for inspection by any authorized representative of the Commission. The property carrier shall ensure that:

723-33-3.2.4.1 The policy and Form H or J contain the property carrier's exact name, trade name (if any), and address as shown in the records of the Commission; and

723-33-3.2.4.2 Any subsequent name or policy number changes shall be reflected by the filing of an endorsement or amended Form H or J.

723-33-3.2.5 The Commission shall not accept any insurance or surety bond certificate not completed in full.

723-33-3.2.6 Whenever Commission records indicate that a property carrier's cargo insurance is canceled and there is no proof on file with the Commission indicating replacement coverage, the property carrier's registration shall be immediately revoked.

RULE (4 CCR) 723-33-4. PROOF OF REGISTRATION.

Every exempt carrier having registered under the provisions of § 40-16-103, C.R.S., shall carry proof of such registration in the motor vehicles operated under said registration, and make available to all enforcement officers such proof upon request.

RULE (4 CCR) 723-33-5. DESIGNATION OF AGENT.

Each exempt carrier shall file with the Commission, and maintain on file, the name and address of a person upon whom service may be made of notices or orders in proceedings pending before the Commission, process issued by or under the authority of any court or board in any judicial or other proceeding brought against such exempt carrier, or any other process, notice, or demand required or permitted by law to be served upon the exempt carrier. The designation of agent shall be in writing in a form prescribed by the

Commission. The designation may be changed by a similar filing. The Secretary of State of the State of Colorado shall not be the person designated as agent. The person designated, if a natural person, shall be at least 18 years of age. The address of the person designated shall be in the State of Colorado.

RULE (4 CCR) 723-33-6. REGISTRATION AS A LUXURY LIMOUSINE.

Registration as a luxury limousine shall require the provision of the following information, to the extent applicable, either on the Commission's registration form or in appropriately identified attached exhibits:

723-33-6.1 The name and complete mailing address and physical address of the applicant, and the name under which the operation shall be conducted.

723-33-6.2 A copy of its certificate of assumed trade name, if any.

723-33-6.3 If the applicant is a sole proprietorship the name of the owner.

723-33-6.4 If the applicant is a corporation:

723-33-6.4.1 A statement of that fact and the name of the state in which it is incorporated.

723-33-6.4.2 The complete mailing address and physical address of its principal office, if any, in this state; and the names of its directors and officers.

723-33-6.4.3 A copy of its Articles of Incorporation.

723-33-6.4.4 If the applicant is an out-of-state corporation, a copy of the authority qualifying it to do business in Colorado.

723-33-6.5 If the applicant is a partnership:

723-33-6.5.1 The name and title of each partner, whether general or limited.

723-33-6.5.2 The name and title of each trustee.

723-33-6.6 If the applicant is a Limited Liability Company, ("LLC"):

723-33-6.6.1 A statement of that fact and the name of the state in which it is organized.

723-33-6.6.2 The complete mailing address and physical address of its principal office, if any, in this state; and the names of its managers.

723-33-6.6.3 A copy of its Articles of Organization.

723-33-6.7 The application for a registration shall also include a statement describing any other type of operating authority issued either by a state or federal agency under which the applicant contends that it may provide for hire service in the transportation of passengers in the State of Colorado.

RULE (4 CCR) 723-33-7. VEHICLE IDENTIFICATION STAMPS GENERALLY.

723-33-7.1 Before the first day of January of each calendar year, every exempt carrier shall apply to the Commission for the issuance of a vehicle identification stamp for each self-propelled vehicle which the exempt carrier owns, controls, operates, or manages within the State of Colorado.

723-33-7.2 The vehicle identification stamps shall be valid for the calendar year for which they are purchased. Vehicle identification stamps shall expire at 12:00 midnight on December 31st of the year for which they are issued.

723-33-7.3 Vehicle identification stamps for exempt carriers obtaining a new registration, or acquiring new or additional vehicles during the year, shall be obtained and affixed to the vehicle before it is put into service.

723-33-7.4 The vehicle identification stamps shall be permanently affixed to the inside, lower, right-hand corner of the windshield of each vehicle, or to the Form D1 Cab Card if the exempt carrier operates in interstate commerce and transports commodities which are exempt from regulation by the Federal Highway Administration. An exempt carrier that is also registered under the Single State Registration System for regulated interstate carriers shall carry a copy of the Form RS-3 Registration Receipt in each vehicle in lieu of the vehicle identification stamp.

RULE (4 CCR) 723-33-8. VEHICLE IDENTIFICATION STAMPS FOR LUXURY LIMOUSINES.

723-33-8.1 Prior to accepting the fee for a vehicle identification stamp as required by § 40-2-110.5, C.R.S., the enforcement staff of the Commission may inspect any vehicle intended to be operated as a luxury limousine. The enforcement staff shall inspect any vehicle intended to be operated as a luxury limousine which vehicle has not been previously inspected. The enforcement staff shall make the preliminary determination whether the specific vehicle meets the requirements of § 40-16-101(3), C.R.S., and Rule 9 of these rules.

723-33-8.2 If the vehicle meets these requirements, a vehicle identification stamp shall be issued.

723-33-8.3 If the vehicle does not meet these requirements, and the person attempting to pay the vehicle identification fee disagrees with the enforcement staff's determination, that person may request a hearing before the Commission by filing a written application. In any hearing conducted by the Commission or one of its administrative law judges, the person attempting to pay the identification fee for a luxury limousine shall have the burden of proving that the vehicle in question complies with the standards set forth in applicable statutes and these rules. This application will be published in the Commission's Notice of Applications Filed for a period of not less than ten days for comment by existing regulated common carriers and the public generally.

RULE (4 CCR) 723-33-9. LUXURY LIMOUSINE FEATURES.

723-33-9.1 External signs and graphics. A luxury limousine shall not have any exterior signs or graphics except license plates; those otherwise required by law; those attached by a law enforcement agency; those attached by the vehicle manufacturer or dealership for the purpose of identifying the manufacturer, dealership, or the vehicle's make and model; and those attached for the purpose of indicating special events such as weddings, graduations, and parades.

723-33-9.2 Luxury features. The luxury limousine shall offer the following:

723-33-9.2.1 A television. The television screen shall be at least three (3) inches in size, measured diagonally, when positioned inside an overhead console. When not located in an overhead console the television screen shall be at least five (5) inches in size, measured diagonally. The television shall be positioned inside a console or cabinet which is securely attached to the body of the vehicle. The television shall be located so that the screen and controls are in compliance with the safety rules found at 4 CCR 723-15 incorporating, among other things, 49 C.F.R., section 393.88;

723-33-9.2.2 A telephone which shall be accessible to the customer, in working order, and capable of making and receiving calls. Each

luxury limousine must have a separately assigned telephone number. An intercom system does not meet the requirements of this rule; and

723-33-9.2.3 Beverages and beverage service amenities including, but not limited to, glasses or cups, and an ice container which shall be positioned inside a console or cabinet which is securely attached to the body of the vehicle and located inside the passenger compartment of the luxury limousine.

RULE (4 CCR) 723-33-10. HARDSHIP.

In case of hardship, an exempt carrier may file a written application for relief from any rule. The Commission, to the extent authorized by applicable law may, at its discretion, grant the application or set the matter for hearing. The Commission may permit variance from Rules 723-33-1 through 723-33-9 of these rules for good cause and if it is satisfied that the public interest will be served, and if it finds compliance to be impossible, impractical, or unreasonable. All applications will be noticed by the Commission for a period of not less than ten days for comment.

A copy of any grant of such application by the Commission shall be carried in the vehicle(s) affected by it and shall be made available for inspection upon request by the enforcement staff of the Commission.

RULE (4 CCR) 723-33-11. VIOLATIONS - CIVIL PENALTIES ASSESSMENTS - REVOCATION FOR CAUSE.

723-33-11.1 A violation of §§ 40-16-102.5 or 40-16-103, C.R.S., by any person subject to the requirements of Article 16 of Title 40, C.R.S., may result in the assessment of a penalty of up to \$1,100.00.

723-33-11.2 Except as provided for in 723-33-11.1 a violation of any other provisions of Title 40, C.R.S., pertaining to exempt carriers, by any person subject to the requirements of Article 16 of Title 40, C.R.S., may result in the assessment of a penalty of up to \$550.00.

723-33-11.3 A violation of Rule 723-33-3.1 by any person subject to the requirements of Article 16 of Title 40, C.R.S., may result in an assessment of a penalty of up to \$11,000.00.

723-33-11.4 Except as provided for in 723-33-11.3 a violation of any other rule of these rules by any person subject to the requirements of Article 16 of Title 40, C.R.S., may result in an assessment of a penalty of up to \$550.00.

723-33-11.5 Driver and Owner Violations.

723-33-11.5.1 Any owner or other person employing or directing a driver who operates a motor vehicle in violation of Rules 723-33-11.1 through 723-33-11.4 of these rules may be assessed a civil penalty in the amount stated in such rules if such owner or person knows or had reason to know that the driver was engaged in such violation, or directs the driver to operate the motor vehicle in violation of such rules.

723-33-11.5.2 Any driver who operates a motor vehicle in violation of Rules 723-33-11.1 through 723-33-11.4 of these rules may be assessed a civil penalty in the amount stated in such rules.

723-33-11.5.3 Any civil penalty provided for in Rules 723-33-11.5.1 and 723-33-11.5.2 of these rules shall be in addition to and not in lieu of any civil penalty against the actual driver, and any such penalty may be assessed upon the initial violation by such owner, other person, or driver.

723-33-11.6 Each day in which an owner, other person, or driver, violates the provisions of these rules for which a civil penalty may be assessed may constitute a separate violation.

723-33-11.7 Any person shall be deemed to have intentionally violated a provision of these rules if, after having been issued a written notification of such violation, such person violates the same provision again. An intentional violation may be shown also by other facts, circumstances, or conduct.

723-33-11.8 Multiple offenses. The violation of more than one statute, rule, or regulation during the course of one 24-hour period shall constitute multiple offenses for which civil penalties may be assessed as set forth in these rules.

723-33-11.9 Separate offenses. Each violation of a statute, rule, or regulation within the scope of these rules shall constitute a separate offense for which a civil penalty may be assessed as set forth in these rules.

723-33-11.10 Repeat Violations of Statutes or Rules.

723-33-11.10.1 If any person receives a second civil penalty assessment for a violation of the provisions of Rules 723-33-11.1 through 723-33-11.4 of these rules within one year after the first violation, the

civil penalty assessed for such second violation may be two times the amount specified in Rules 723-33-11.1 through 723-33-11.4 of these rules.

723-33-11.10.2 If any person receives more than two civil penalty assessments for violation of the provisions of Rules 723-33-11.1 through 723-33-11.4 of these rules within one year, the civil penalty assessed for each such subsequent violation may be three times the amount specified in Rules 723-33-11.1 through 723-33-11.4 of these rules.

723-33-11.11 Revocation for Cause. The Commission, on its own motion or as a result of a complaint by any carrier or other person under these rules and the Commission's Rules of Practice and Procedure, except for insurance revocation under Rule 723-33-11.12, by order duly entered, after hearing upon notice to the holder of a luxury limousine registration and when it is established to the satisfaction of the Commission that such holder has failed or refused to operate a luxury limousine service in accordance with Article 16 of Title 40, C.R.S., or of these rules, may revoke the registration issued under the provisions of § 40-16-103, C.R.S.

723-33-11.12 The Commission shall revoke the registration of any person not complying with the insurance requirements set forth in § 40-16-104, C.R.S.
