

Date Received: January 26, 1998

Docket No.: TV-971477

Company: Amends WAC 480-12, Relating to Household Goods Movers

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WASH. UT. & TP. COMM.

Washington Utilities and Transportation
Commission
PO Box 47250
Olympia, WA 98504-7250

To Whom It May Concern:

The enclosed comments were sent by the American Moving and Storage Association (AMSA) to the California PUC opposing an effort by Shurgard Storage To Go, Inc. to convince the California PUC that it was not transporting household goods and thus could not be regulated by California.

Shurgard has indicated that they have discussed their situation with regulators in your state. We disagree with Shurgard's interpretation of federal law (the ICC Termination Act) in this regard. I hope that you will review our enclosed petition in order to better understand the legal arguments involved with this issue. If you have any questions, please call Ann Wilson or myself at (703) 683-7410.

Thank you for your assistance in this matter.

Sincerely,

AMERICAN MOVING AND STORAGE
ASSOCIATION

Joe Harrison
President

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION



JOE HARRISON
President

January 21, 1998

Public Utilities Commission
State of California
Docket Office
505 Van Ness Avenue
San Francisco, CA 94102

Re: R.97-10-050
Regulation of Containerized Shipments
of Used Household Goods and Personal
Effects Transported to and from
Self-Service Storage Facilities

Dear President and Commissioners:

The American Moving and Storage Association, Inc. (AMSA)¹ submits these comments for your consideration in the above proceeding. It is my understanding that the comment period has expired. However, we were just recently made aware of late-filed comments submitted by Shurgard Storage To Go, Inc. (Shurgard) addressing the issue of federal preemption which was not specifically raised in the Commission's order instituting this proceeding. AMSA believes this issue is sufficiently important to warrant the filing of this response.

AMSA is the single national trade association representing the interests of household goods motor carriers. It has approximately 3,200 members nationwide and represents the entire spectrum of the industry, including national van lines, their affiliated agents, as well as independent regional and national carriers. AMSA's functions include representation and promotion of the interests of the moving industry before federal and state legislative and regulatory bodies. It is a conference of the American Trucking Associations, Inc.

Most AMSA members transport primarily household goods composed of personal effects used in a dwelling as defined in 49

¹ Prior to December 31, 1997, AMSA was known as the American Movers Conference (AMC). On that date, its name was changed to reflect an expanded membership.

U.S.C. § 13102(10), in the commercial market or for the Government, or both. They perform this transportation service and all related services in interstate, foreign, and intrastate commerce, and as pertinent, within California.

In this proceeding, the CPUC is conducting an analysis to determine what, if any, modifications to the existing Household Goods Regulatory Program may be necessary or appropriate with respect to movements of containerized used household goods shipments to and from storage facilities. As noted, we recently became aware of Shurgard's comments dated January 1, 1998. Shurgard, a self-storage warehouse company that operates in California, is of the view that its transportation operations and others like do not constitute for-hire household goods transportation and cannot be regulated by the State. We respectfully disagree and request that these comments be accepted into the record.

As described in its comments, Shurgard operates a nationwide system of self-storage centers which rent storage units to customers in which they may store and secure items. Shurgard provides customers a movable storage container with optional pickup and/or delivery of the container to the customer's residence (or place of business) and the warehouse. Customers may bring their items to the warehouse and pack them into the containers. Or, they may choose to have Shurgard bring an empty container to them, in which case, the customer loads, packs and locks the container and then notifies Shurgard that it is ready for pickup. Shurgard picks up the container on a flatbed trailer, and transports it to the warehouse (typically within a 30-60 mile distance) for storage. When the storage contract terminates, the customer may empty the contents from the container at the warehouse or can opt to have Shurgard deliver the container to the customer who unloads and unpacks the container. Shurgard then sends a truck to pick up the empty container. In California, Shurgard hires a company (Ryder Integrated Logistics, Inc.) to perform the transportation (the specifics of this arrangement are not disclosed). In other states, Shurgard performs the transportation with its own equipment and employees. Under the standard storage contract, the charges for pickup, delivery and transporting the containers are included in the monthly storage charge, but are not separately stated.

Shurgard argues that its transportation operations are not subject to California's Household Goods Regulatory Program relying in essence on the federal preemption provisions contained in the ICC Termination Act of 1995; Pub. L. 104-88; codified under Title 49 of the U.S. Code (hereinafter ICCTA). It contends first that its transportation operation is private carriage under federal law, viz., the so-called primary business test, codified at 49 U.S.C. § 13505. Since the federal preemption provision of the ICCTA prohibits states from enacting or enforcing any law or regulation related to a price, route, or service of any motor private carrier, it argues that California may not regulate this service. 49 U.S.C. § 14501(c)(1). Of course, this prohibition does not apply to the transportation of household goods. Id., subparagraph (2).² Shurgard acknowledges that the primary business test requires that it be engaged in a business other than transportation and that its transportation be within the scope of and furthers a primary business other than transportation. According to Shurgard, its operation meets the requisite of the test as explained by the former ICC in Lenoir Chair Company Contract Carrier Application, 51 M.C.C. 65 (1949), aff'd sub nom, Brooks Transportation Co. v. U.S., 93 F.Supp. 517 (E.D.Va. 1950), aff'd 340 U.S. 925 (1951).

Shurgard's contentions overlook a critical factor in the application of the primary business test, i.e., its status as a warehouseman. In its capacity as a warehouseman, Shurgard stands on a much different footing than manufacturers who also transport the products they make, such as considered in Lenoir City, supra. For that reason, the law evolved in such a way that warehouses could not meet the test for private carriage. See I.C.C. v. V.S.C. Wholesale Warehouse Co., 312 F.Supp. 541 (D.Id. 1969). The governing federal law on warehouses and private

² We do not understand Shurgard to argue that its transportation is exempt private carriage under California law. Rather, its argument is that the transportation is private carriage under federal law which the states may not regulate under federal preemption. The critical question then becomes whether it is household goods transportation which the states may regulate whether or not it is private carriage.

carriage is set forth in the ICC's decision in Interpretation-Intercompany Hauling, 132 M.C.C. 736 (1981), which, not uncoincidentally, is relegated to a footnote in Shurgard's letter together with the court's decision in I.C.C. v. V.S.C. Wholesale Warehouse Co.

One of the specific questions addressed by the ICC in Interpretation was whether it should overrule the prohibition against private carriage by warehouses. Id., 132 M.C.C. at 739. Finding no basis for overturning that rule, the ICC concluded that warehouses could not engage in private carriage as a matter of law or in the "compensated intercompany hauling" exemption. Notwithstanding Shurgard's characterization of V.S.C. and Interpretation as "little followed" and "poorly-reasoned", both decisions represent the controlling federal law on whether warehouses can properly engage in private carriage. There has been no relevant change in federal law which warrants a different conclusion. In short, Shurgard's transportation is not private carriage.³

The more critical question is whether Shurgard is engaged in the transportation of household goods. If it is, the CPUC may regulate such transportation under the exception to the federal preemption provisions of the ICCTA. Under the federal law, as amended by the ICCTA, the prohibition against state laws or regulations related to a price, route or service of any motor carrier "does not apply to the transportation of household goods". 49 U.S.C. § 14501(c)(1) and (2). Household goods are now defined essentially as "personal effects and property used or to be used in a dwelling". 49 U.S.C. § 13102(10). This definition is not in any way dependent on the manner or form of transportation.

Shurgard first argues that it is not engaged in the transportation of household goods because it does not know the exact contents of the containers loaded by its customers. Little need be said in response to such a contention. If the contents meet the definition of household goods, they are household goods regardless of Shurgard's knowledge. That it chooses not to know

³ It is our understanding that there is no similar private carriage exemption under California law.

what it is in the container cannot affect what it is actually transporting.

Shurgard next points to a line of ICC cases for the proposition that the transportation of containers holding household goods does not constitute transportation of household goods. Shurgard's reliance of these cases is misplaced. The ICC decisions relied upon dealt with operating rights interpretations. There was no dispute over whether the subject transportation was regulated (in either case, it was) which is, of course, a very different question.

The issue presented here is whether California can regulate the involved transportation. Shurgard urges that it cannot when personal effects are shipped in containers. In its view, the issue depends on the form of transportation. However, Congress created no such distinction. It provided simply that states may regulate the "transportation of household goods". It imposed no qualification, limitation, or restriction tying the definition to the type of equipment used to transport articles from or to a dwelling. Moreover, the ICCTA defines the term "transportation" to include motor vehicle, instrumentality, or equipment of any kind related to the movement of property, as well as services related to that movement including arranging for receipt, delivery, and storage. 49 U.S.C. § 13102(19). This definition is plainly all inclusive and embraces transportation of household goods in trucks, trailers, or containers. There is simply no basis in the statute to draw the distinction asserted by Shurgard.

Nor from a policy viewpoint, would it be prudent to create such a distinction. An exemption for containerized shipments would logically lead to the argument that trailers are forms of containers and that such transportation is also not subject to regulation. For example, it could be forcefully argued that a trailer full of personal effects which is locked, sealed, and tendered to another carrier in interchange is no different than a shipment in a wooden container on a flatbed trailer. Obviously, the policy reasons underlying the regulation of household goods transportation in protecting the consumer and his personal effects are not dependent upon the shipping device in which his belongings move.

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For all the foregoing reasons, AMSA submits that the transportation of containerized household goods is not private carriage, that the regulation of such transportation has not been preempted by federal law, and should continue to be regulated by the Commission.

Sincerely,



Joe Harrison
President

cc: Christina Mullaney McKay, Esq.
Judge Victor D. Ryerson
Mr. William Waldorf
Ira R. Alderson, Esq.
Mr. Richard Molzner
Edward J. Hegarty, Esq.
Mr. Douglas Hill

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