

VIA FAX

Date Received: March 2, 1998

Docket No.: TV-971477

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

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Williams, Kastner & Gibbs PLLC

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February 27, 1998

Mr. Paul Curl
Acting Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
Olympia, WA 98504
Attn: Kim Dobyns

78545.100

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

98 MAR -2 AM 11:00

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Re: TV-971477; Household Goods Rulemaking - Definitional Reference Concern

Dear Mr. Curl:

This is to note concern about the current proposal to revise the definition of "household goods" in the above rulemaking, which I have just now had a chance to review. Below, I set out the current and proposed regulation definition and suggested changes in the language of the proposed rule in italics.

<p><u>480-15-(12) Household Goods</u> When the term is used in connection with transportation, means personal effects and property used or to be used in a residence when it is a part of the equipment or supply of such a residence, and is transported between residences, <i>or between a residence and temporary storage facility with the intent to later transport to a residence. [excluding the transportation of containerized household goods.]</i> [emphasis added.]</p>	<p><u>WAC 480-12-400(1) - Existing Rule</u> The term "household goods," for the purpose of the following rules, means personal effects and property used or to be used in a dwelling; furniture, fixtures, equipment and the property of stores, offices, midgeteums, institutions, hospitals or other establishments, and articles, including objects of art, displays and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods.</p>
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As I review the above language, the proposed definition of "household goods" at WAC 480-15(12), inexplicably broadens the concept of what constitutes same by utilizing a reference to temporary or intervening storage facilities where the subject commodities might be stored. As shown, the current definition of household goods at WAC 480-12-400(1), or at WAC 480-12-900(2), contains no express or implied definitional reference encompassing a storage concept.

51-543930.1

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Tacoma

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In that the ICC Termination Act of 1995 also removed commercial moves from the purview of state economic regulation analogous to the Federal Aviation Administration Authorization Act ("FAAA") of 1994's removal of the freight industry from intrastate regulation, it would seem incongruous to broaden the definition of household goods for intrastate regulation purposes in a rulemaking ostensibly seeking to modernize and streamline intrastate economic regulation of the household goods industry. Including temporal storage would also seem to incorporate wholesale the movement of specially containerized household goods transported by homeowners or self-storage companies to temporary storage warehouse facilities in the proposed definition.

Such a definition would be inconsistent with the body of federal law addressing this issue. See, Tri State Transport, Inc., 1985 MCC Lexis 630 (1985). There, the Interstate Commerce Commission, citing a decades-old decisional line, reminded the applicant:

. . . that the transportation of goods in containers, should applicant be called upon to provide such service, does not require a specific grant of household goods authority and may be undertaken pursuant to a grant of authority to transport "general commodities (except household goods)." The mere transportation of containerized household goods, without the provision of the specialized service or equipment normally required for such commodities, is not within the definition of household goods transportation. American Red Ball Transit Co., Inc. v. McLean Trucking, 67 MCC 305, 314-315 (1956).

1985 MCC Lexis 630 at 5.

Thus, a definitional expansion for the purposes of intrastate regulation of "household goods" to include containerized household goods by even inadvertently subsuming movement of same between commercial self-storage facilities would appear legally suspect. Moreover, since containerized household goods movements would not qualify as "the transportation of household goods" within the meaning of the FAAA of 1994 as qualified by the ICC Termination Act, state regulation of rates, routes or service of such activity would appear invalid under 49 USC § 14501 (c)(2).

I am interested in responses of the Staff to the above concern.

Yours truly,

WILLIAMS, KASTNER & GIBBS PLLC



David W. Wiley

DAV:psb

cc: Ann E. Rendahl

TV-971477

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98 MAR -2 AM 10:37
STATE OF WASH
UTIL. AND TRANS
COMMISSION

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Tacoma

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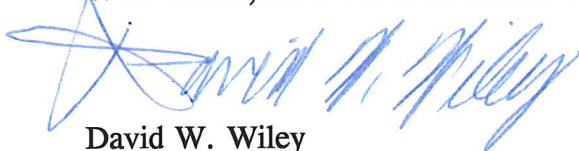
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