

VIA FAX

Date Received: January 4, 2000

Docket No.: TV-991559

Company: Review of Rules Relating to Household Goods Carriers

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David W. Wiley
Attorney at Law
(206) 233-2895
dwiley@wkg.com

Two Union Square
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
P.O. Box 21926
Seattle, Washington 98111-3926
Telephone (206) 628-6600
FAX (206) 628-6611

January 4, 2000

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

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Re: Further Comments in TV-991559
Household Goods Regulation Following December 9, 1999 Stakeholder Meeting

Dear Ms. Washburn:

On behalf of Shurgard Storage To Go, Inc. ("SSTG") and Door to Door Storage, Inc. ("DTD"), this letter is written in response to the above-referenced Stakeholder meeting in Olympia and in response to written and verbal comments from the Washington Movers' Conference ("WMC") presented at the first Stakeholders' meeting.

As the separate comments of SSTG and DTD suggest, the current definition of household goods and WAC 480-15-020 (14) exclude customer-packed and sealed containers from the definition of household goods subject to Commission jurisdiction.

While the WMC may in fact argue that the current regulation is "based on misinterpretation, and is contrary to the intent of state law," WMC letter by Jay Lawley of December 7, 1999, as the written comments of SSTG of November 29, 1999 and the letter of DTD of the same date would seem to suggest, it is the Movers' Conference that misconstrues and dissembles existing state law in advancing that position.

Relying on purported developments at the federal and a few other state levels, the WMC apparently overlooks the long-codified exclusion in Washington law that historically exempted containerized movements of household goods from regulation, including Administrative Ruling No. 7 (December 10, 1959) and the more recent letter from the Commission Secretary to the undersigned dated September 18, 1995 which collectively conclude that mere transportation of storage containers not requiring special handling or special equipment is not equivalent to the transportation of household goods. While the WMC would now rely on a revised definition of household goods at 49 CFR § 375 et seq. to buttress its view that the deregulation of household goods from commercial establishments (when the Interstate Commerce Commission was sunsetted in 1995) implicated a larger regulatory role for state economic regulation of household goods, it cites no legal authority for any change in law for intrastate jurisdiction of residential

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household goods movements. Indeed, the WMC also does not attempt to explain how the modification of the federal household goods definition in light of the removal of commercial household goods from the general definition of household goods in any way alters the federal government's traditional exclusion of containerized household goods transported on conventional flatbed equipment. See, American Redball Transit Co., Inc. v. McLean Trucking, 67 MCC 305, 314-315 (1956).

Moreover, as we mentioned on the record at the December 9 Stakeholder meeting, the focus of the traditional movers in opposing maintenance of the exclusion seems to generally misapprehend the law on what the triggering factors are for state economic regulation. As indicated, the focus or touchstone for economic regulation in Washington is traditionally not the nature of the commodity per se, but whether the transportation in question constitutes the type and kind of movement that the law would characterize as traditional for-hire movement of household goods.

We analogize to the related regulatory scheme for solid waste regulation under Title 81.77 RCW in highlighting a similar premise. Under that provision, whether a material is solid waste or a recyclable depends not on the nature of the product, but whether the intent of the tender is for discard, or whether the generator intends that the material be transported for a subsequent reuse or modification.

See, Order M.V. No. 133753, In re Sunshine Disposal, Inc. d/b/a Valley Transfer & Storage, App. E-19104 (Feb. 1986) at 6; Order M.V.G. No. 1840, In re Drop Boxes R Us, Inc. TG-5039, 5040 (Oct. 1998) at 7-9.

As the Commission has previously noted in Order M.V. No. 143916, In re Safco Safe Transport, Application P-73623 (Oct. 1991), merely defining the commodity at issue with a label (there, "waste") is meaningless in determination of which transportation authority Title 81 RCW requires. Here, when a shipper places materials from his or her household into a self-storage container which the householder packs and does not require any specialized handling equipment or other accessorial services from the transporter for, the subsequent transportation over the public highways for compensation is not regulated household goods carriage.

While admittedly the inherent nature of household goods and solid waste differs, some common principles between regulated solid waste and household goods transportation exist. For instance, a used household goods product such as a kitchen appliance or part or used apparel that is transported by box, package or mailer via United Parcel Service and/or other general commodities transporters, has never been viewed as the transportation of "household goods." To isolate simply on the commodity and therefore characterize that as regulated household goods transportation would require that typical type of transportation movement to be subject to full economic regulation, a strained and ultimately incorrect analysis under traditional Washington law.

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Washington and Commission law have always looked beyond the mere isolation of the article in the stream of commerce in drawing the ultimate determination of whether that item is to be regulated as, i.e. a general freight/general commodities movement, or as household goods transportation. Rather, the traditional test under state law evaluates the underlying type of service and whether accessorial labor and equipment, etc. is needed in order to reach the threshold regulatory characterization.

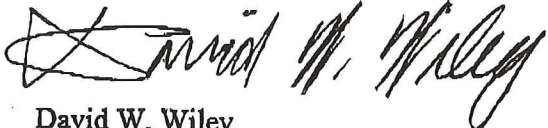
There is nothing in the reformed household goods regulation at the federal level cited by the WMC (ironically in the wake of total commercial household goods deregulation by definition), that is inconsistent with retention of the traditional state tests for household goods regulation, and the WMC can cite us to no authority which would implicate or otherwise support a reversal of long-standing intrastate regulatory criteria.

Customer packed and sealed containers of goods with which the carrier does not interact but merely transports on flatbed containers is simply not regulated household goods transportation, nor should it be subsumed by any new sweeping definition encompassing a sector of the industry never before regulated as "household goods" by this Commission. Such an about-face would be contrary to the spirit of not only Executive Order 97-02, but Washington precedent and the past two decades of federal law that have reduced, not "layered on" new constraints for entrance into and operations within the transportation industry.

We look forward to further Stakeholder and task group sessions where we fully intend to defend the definitional exclusion of household goods at WAC 480-15-020(14), and will be glad to provide other information about the Washington containerized household goods industry should you so require.

Yours truly,

WILLIAMS, KASTNER & GIBBS PLLC



David W. Wiley

DAV:mm

- cc: Tim Riley
- Rob Outcalt
- Chris McKay, Esq.
- Todd Glass, Esq.

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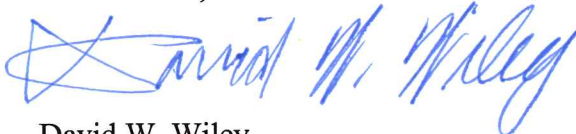
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