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Decision 98-02-107 February 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion into the regulation of containerized shipments of used household goods and personal effects transported to and from self-service storage facilities.	R.97-10-050 (Filed October 22, 1997)

ORIGINAL

O P I N I O N

Summary

This decision adopts recommendations for amendments to Senate Bill (SB) 1086 for transmission to the California Legislature, and considers the need for and timing of changes to the Commission's household goods regulatory program in light of the pendency of SB 1086.

Introduction

We ordered this rulemaking to review our household goods regulatory program as it relates to the movement of used household goods that are packed by householders into storage containers for storage in commercial self-service storage facilities. The impetus for this decision is the Legislature's pending consideration of SB 1086, a measure which would amend the California Self-Service Storage Facilities Act, Bus. & Prof. C. Section 21700 et seq. (Act). The amended Act would permit the owner or operator of such a facility, or a household goods carrier, to transport the loaded storage containers to and from its self-service storage facility without being subject to certain regulations if the company meets certain qualifications.

At our June 25, 1997, meeting we voted to oppose SB 1086 out of concern that the legislation could undermine existing protections for consumers that apply to the transportation of used household goods by household goods carriers. The bill was voted out of the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development (Committee) on August 26, but additional

legislative action on the bill was postponed during 1997 to allow time for further discussion and analysis. The Committee sought our contribution as part of this process.

On October 22 we initiated this proceeding by issuing an Order Instituting Rulemaking (OIR) to explore the issues presented by the proposed amendments to SB 1086. Our order today responds to the Committee's request for specific examples of consumer protections which may be missing from SB 1086, and for proposed amendments to the bill. In addition, we are following our own directive to "determine what, if any, modifications to [the Commission's] existing Household Goods Regulatory Program may be necessary or appropriate to promote the efficient movement of containerized used household goods shipments to and from storage facilities while maintaining necessary consumer protections." (Ordering Paragraph (OP) 1.) We hope that these actions, taken together, will enable the Legislature to adopt a strategy for addressing the issues presented by this legislation, and pave the way for the Commission's work after the Legislature takes final action on the bill.

Background

The Act defines "self-service storage facility" and other terms, and codifies the general rights of the parties who enter into an agreement for its use. Currently, such a facility is defined as "any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property (except) a garage or other storage area in a private residence." Bus. & Prof. C. Section 21701(a). It is neither a warehouse nor a public utility, as defined in Section 216 of the Public Utilities (PU) Code, and its storage operations do not fall within the regulatory jurisdiction of this Commission. As long as property is moved to and from the storage facility by the occupant, no regulated transportation activity takes place.

In recent years a number of self-service storage facility operators have expanded their service by delivering to the premises of a customer one or more storage containers, each of which the customer loads and locks. The operator then removes each container to the operator's local self-service storage facility, where it is stored until the customer

has it redelivered at the expiration of the rental agreement. The company then returns the loaded container to the customer's premises to be unlocked and unloaded by the customer. During the period of storage at the storage facility the customer has access to the goods in the container, but the storage facility operator does not at any time have independent access to the goods as long as the storage charges are paid. Although there is some variation among container storage services offered by different operators, these basic features typify all such services.[1]

The movement of customer-loaded containers on public roads outside the self-storage facility is a recent development. This adds a new dimension to the operator's activities, one which was previously within the exclusive domain of regulated used household goods carriers. The advent of this relatively recent innovation in self-service storage was apparently not foreseen by the authors of the present Act. The transfer of these containers could be construed as being subject to regulation under the Household Goods Carriers Act (HGCA), PU Code Section 5101 et seq., which is administered by the Commission. Entities performing such transportation must comply with the Commission's regulatory requirements under a comprehensive regulatory program, which is principally set forth in the Commission's Maximum Rate Tariff No. 4 (MAX 4), General Order (GO) 136, and GO 142.

The Commission's regulations include a number of provisions designed to protect customers of household goods carriers from loss of, or damage to, their possessions, and from harm resulting from misunderstandings, carriers' incompetence, overreaching, dishonesty, or lack of financial responsibility. As explained in the OIR, important features of the Commission's program include requirements that the carrier prove it maintains a minimum level of cargo and liability insurance; for advance disclosure of the terms and conditions of carriage, including packing, liability, and payment; and for proof of the financial and operational fitness of the carrier.

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[1] The price of container service is bundled with storage fees by some, and charged separately by others.

Investigation and enforcement of complaints concerning prohibited practices, theft, and other illegal actions by the carrier are also an integral part of the Commission's work under this program.

To accommodate this new activity under the Act, SB 1086 would, among other things, exempt the transportation of individual storage containers to and from the operator's facility from regulation under the HGCA if four conditions are met.[2] These four conditions are, first, that the fee charged for delivering and retrieving the container when it is first loaded, or for returning it to the customer for unloading, must not exceed fifty dollars; second, that neither the company, nor an affiliate thereof, may load, pack, or otherwise handle the contents; third, that the owner, operator, or carrier must be registered under the Motor Carriers of Property Permit (MCP)Act, Veh. C. Section 34600 et seq.; and fourth, that the company has procured and maintains a minimum of $20,000 cargo insurance per shipment. The statement of legislative intent in the bill says that although qualifying activities may be conducted without a household goods carrier permit, the Legislature does not intend to limit the ability of an owner or operator of a self-service storage facility to otherwise transport household goods under the authority of a household goods carrier permit.[3] Thus, the bill would create a narrow regulatory exception for this specific activity, but would not otherwise disturb our jurisdiction to regulate the activities of household goods carriers.

Procedural History

The Commission served the OIR upon all household goods carriers in the state and other persons the Commission believed to have a direct interest in the proceeding. OP #2 of the OIR directed comments to address eleven issues which were identified by

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[2] SB 1086 also adds a definition of "individual storage container" which contains standards of size and construction.

[3] By extension, the bill would not limit a household goods carrier from offering exempt container storage service if it complies with the four conditions, although this activity would have to be separately registered under the MCP Act.

the staff as being relevant to a comprehensive review of current Commission rules and regulations.[4] Comments were due to be filed by interested persons not later than November 17, and no reply comments were called for.

Timely comments were filed by Public Storage, Inc. (PSI); the California Moving and Storage Association (CMSA); Door To Door Storage, Inc.; the Commission's Office of Ratepayer Advocates (ORA); and the Commission's Consumer Services Division (CSD).[5] CSD deferred to ORA to avoid potential duplication of effort.

The ALJ scheduled oral argument pursuant to Commission Rule of Practice and Procedure (Rule) 14.4 (a) in response to commenting parties' desire to rebut other comments. Oral argument was conducted January 5, 1998, and was restricted to the issues set forth in the OIR. PSI, CMSA, and ORA appeared and participated. Both of the assigned commissioners attended and actively questioned the parties. At the conclusion of oral argument the participants, at their request, were afforded additional time to confer and offer a compromise proposal for consideration and possible adoption by the Commission. Although the participants were unable to reach agreement, they did discuss the issues in a workshop setting, and provided separate proposals which have proven to be useful in our deliberations.

The ALJ issued a draft decision, which was mailed to parties and to the Committee on February 5. The assigned Commissioners, having reviewed the draft decision, desired to give parties an opportunity to review and comment upon the draft. That opportunity was given under Rule 77.1, but the comment period was drastically shortened in order to insure that the information imparted by this decision is timely for

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[4] These issues were enumerated in Appendix A to the OIR, which is reproduced as the appendix to this order.

[5] We also received some informal correspondence, most notably a lengthy letter from Shurgard Storage To Go, Inc. (Shurgard), describing its container delivery and pickup services, which it offers to its self-service storage customers as an option at no additional cost, and a rebuttal to the federal preemption claim raised in that letter from the American Moving and Storage Association (AMSA).

the Legislature's purpose. The comments we received in response, as well as some late-tendered correspondence, is reflected in this final decision.

Issues

Our task in this decision is threefold. First, in response to the Committee's inquiry we must identify specific consumer protections that are missing from SB 1086. Second, we must respond to the Committee's request for proposed amendments to SB 1086. Finally we must determine what modifications to our own household goods regulatory program are called for to promote efficient movement of containerized used household goods to and from self-storage facilities, while maintaining necessary consumer protections, as we stated in the OIR.

Discussion

General

As we observed in the OIR, the movement of household goods has been singled out for regulation because of the unique relationship that exists between the mover and the customer. We have not changed our view that special protection is required for a customer whose personal possessions are turned over to the care, custody, and control of another for movement for compensation, even though the customer may have access to the goods when they are stored at the new location. The reason such protection is needed is that the goods are of a highly personal nature, and when they are in the custody of the mover, the customer has absolutely no control over them.

There is plainly a difference between the containerized transportation and storage service which is the subject of SB 1086 and the mere storage of items brought by the customer to the self-service storage facility. During the period when the loaded container is in transit to or from the storage facility, the container and its contents are vulnerable to loss or damage from theft, accident, or even the weather. Without adequate assurances that the company is operationally qualified and financially responsible, and without reasonable advance disclosure of the terms and conditions under which the service will be provided, the customer would be relegated to the maxim, caveat emptor, once the container is relinquished to the storage operator.

The relationship between a self-service storage company and its customers is by nature not characterized by repetitive transactions, such as that which may exist between a manufacturer and a carrier. This circumstance can lessen any incentive produced by competitive market forces to provide good service. The customer is left to rely upon the integrity, competence, and fitness of the company to insure that the service will be provided properly. It is small solace that a customer may choose another storage operator on the next occasion if the customer belatedly discovers that the current one mishandled his or her possessions; the damage is done, and the loss may be irreparable. Our experience with household goods carriers has further shown that such relationships tend to be unbalanced, as the company not only has physical control of the customer's goods, but also a better understanding of the contractual relationship.

Finally, it is well to remember that used household goods in a public storage facility are not warehoused merchandise, but personal possessions whose value is likely to be sentimental as well as monetary. Loss or damage of these items in transit may be disruptive to the customer's life, and perhaps emotionally devastating. The most effective way to minimize loss, damage, or the potential for disputes about the terms and conditions of their handling is by rationally addressesing the causes of such problems before they arise. This can be accomplished by statute, administrative regulation, or a combination of both. However, it is essential to insure that some method is in place to afford governmental oversight, as it would not serve the interest of consumers to leave them entirely to the mercies of the marketplace to protect them from abuse.

Which Approach Should the Legislature Adopt?

Although consumer protections may be established by statutory enactment, they are potentially so extensive and detailed in the present situation that statutory oversight is probably not an efficient way to address the problem. In a letter to the ALJ, William T. Bagley stated the matter succinctly:

> "A simple suggestion occurs to me as a former legislator: Rather than cluttering the code with a lot of qualifications, why not just specify CPUC jurisdiction in the statute, and allow the Commission the flexibility to

assure the necessary consumer protections. Seems better and more efficient to me."[6]

We have already gone on record as being opposed to SB 1086, because it does not afford important protections to household goods owners, and may unwittingly provide a route for companies to circumvent those protections which now exist. We believe it would be greatly preferable to amend SB 1086 so that it specifies that the movement of containerized used household goods is deemed to be an activity of a household goods carrier under the HGCA, and directs the Commission to adopt an appropriate program of regulation under the Household Goods Regulatory Program which would "promote the efficient movement of such goods to and from storage facilities while maintaining necessary consumer protections." This would preserve the simplicity of SB 1086, but provide for consumer protections and eliminate duplicative administrative requirements. Consequently, this is the approach we most strongly endorse.

Only if the Legislature is unwilling to direct the Commission to adopt a special program of regulation for this activity should the current approach be adopted, i.e., that of exempting the activity from Commission regulation and legislating the many consumer protections we believe it requires. In that event we rely upon the following analysis as the way to respond to the Committee's requests.

Consumer Protections Missing from SB 1086

If the Legislature determines to regulate containerized self-service storage directly through this legislation, we find that several additional features would have be added to SB 1086 to provide adequate protection for consumers. Most significant, in our view, is the need for an express requirement for advance disclosure of the terms and conditions of the rental agreement to the customer. This disclosure must be made to the customer sufficiently in advance of the movement of the goods to enable the customer to make an informed decision whether to elect the containerized storage

[6] Letter dated February 11, 1998.

service over other options. The comments, correspondence, and oral argument revealed that rental contracts for containerized self-service storage may contain severe limitations upon the company's liability, which may not be disclosed to the customer before the time of container pickup. Such information may well affect the customer's willingness to use the service if it is disclosed in advance.

A provision in one form of contract, for example, places the responsibility upon the customer to pack the container with such care as to avoid damage, including any damage from the company dropping the container from a height of three feet or collision with a forklift at up to 5 miles per hour. Another contract requires the customer to declare a limitation of $5000 upon the value of the items in any container. Another allows the company to remove the container to a different facility up to 35 miles away from the original one without prior notice to the customer. These provisions dramatically affect the customer's convenience and risk of loss, and may be quite material to the decision whether to sign the rental agreement. Fundamental fairness requires such terms to be disclosed to the customer before the driver pulls up to the door.

Once the container is on the customer's doorstep, and particularly once it is loaded, the balance of bargaining power shifts in favor of the company. We have no objection to relying upon competition among self-service storage companies and household goods movers as a means of policing some behavior, but the only way this method will regulate the quality of service is to provide full disclosure of material terms to the customer before the customer believes his or her options are foreclosed. Such disclosure must be made a reasonable period in advance of loading, the act which essentially seals the agreement. When the truck arrives, the customer may feel "locked in."

PSI contends that an advance face-to-face disclosure requirement such as that currently imposed upon household goods movers is onerous, and will engender prohibitive regulatory expense. PSI claims that this expense will have to be passed on to the customer and will negate the cost advantage of storage container delivery service. We disagree. We believe that the company can easily furnish the rental agreement,

along with an informational brochure and an appropriate disclosure statement, in advance of delivery of the container, noting the time and manner of transmission and other information which can be kept as an appropriate record. Delivery of the disclosure package may be accomplished my mail, courier, or electronic means, but there should be a reasonable advance receipt requirement in order to afford the customer a meaningful opportunity to evaluate the options. The customer may also be permitted to waive the advance disclosure requirement at the time the order is placed, as long as the waiver is given freely, expressly, and with full knowledge of the consequences.

The written disclosure statement should summarize the essential terms of the rental agreement, i.e. the nature of the transportation and storage services to be provided, the unit price charged for the service, and the time of performance. It should also include (in terms understandable by lay persons) specific information about the responsibility for risk of loss and damage in transit, the dimensions and construction of the container, the maximum distance from the location of origin where the goods will be stored, and the procedure for handling claims. The rental agreement and the disclosures regarding time of performance should specifically address the schedule arrangements for pickup and delivery sufficiently so that the customer may, if he or she wishes, arrange never to leave the loaded container unattended, and provision for penalties in the event that the company fails to comply with those arrangements for reasons within its control.

In their comments and at the oral argument, ORA and CMSA expressed concerns about the adequacy of requirements in SB 1086 for the company to demonstrate financial responsibility for loss or damage to customers' possessions while engaging in exempt container transportation activities. Although SB 1086 would require the company to procure and maintain cargo insurance in the amount of at least twenty thousand dollars per shipment in order to avail itself of the exemption, the concern of these parties is that the company would not have an ongoing duty to file proof of insurance with the Department of Motor Vehicles in the manner that household goods carriers must file such proof under the HGCA. This does not impress us as a serious

deficiency in the legislation, and it is easily remedied by inserting an appropriate amendment requiring the filing of such proof.

The minimum amounts of cargo and liability insurance which would be required by SB 1086 are commensurate with what we require under the HGCA. We received comments expressing concern about this, but we believe that the minimum is adequate to guarantee that the carrier will be able to meet its liability obligations.

Some comments suggest that the permitting procedure under the MCP Act is insufficient to insure that containerized self-service storage operators will be fit to furnish those services. Licensing of household goods carriers under the HGCA is considerably more rigorous, requiring, among other things, that the applicant take a written test to demonstrate competence. But we do not believe that the licensing of self-service storage container movers calls for elaborate measures, because the skills required are minimal. These operators do not pack, unpack, inventory, or otherwise handle the goods. As described in the comments, the equipment they use is no more specialized than that of a warehouse operator, consisting for the most part of a forklift and a flatbed truck. The distance of any movement is that of a local move. Given these circumstances, we believe the permitting of operators can be accomplished adequately under the MCP Act, even though there will be some duplication of the licensing agencies.

Proposed Amendments to SB 1086

In view of the need for detailed and comprehensive regulation of the activity of transporting customer-packed storage containers, we recommend that the Legislature amend SB 1086 by dispensing with the exemption and delegating all regulation of this activity to this Commission. Absent the Legislature's willingness to adopt this approach, we recommend instead that the following amendments be made to SB 1086:

- A provision should be added requiring any company which engages in exempt container transportation to disclose to the customer in advance the following information regarding the container transfer service it offers, in a written document separate from others furnished at the time of disclosure:

- The exact details of the transfer service which the company will provide, and a statement that the company will use its best efforts to place the container in an appropriate location designated by the customer;

- The dimensions and construction of the containers used;

- The unit charge, if any, for the container transfer service, in addition to the storage charge or any other fees under the rental agreement;

- The availability of delivery and/or pickup by the customer of his or her goods at the storage facility as an alternative to the container delivery and pickup services;

- The maximum allowable distance, measured from the initial storage facility, for initial pickup and final delivery of the loaded container;

- The precise terms of the storage company's right to move a container from the initial storage location at its own discretion, and a statement that the customer will not be required to pay additional charges in respect of any such transfer;

- Conspicuous disclosure in bold text of the allocation of responsibility for the risk of loss or damage to the customer's goods, including any disclaimer of the company's liability, and the procedure for presenting any claim regarding loss or damage to the company.

- As part of the disclosure requirement the company should be required to deliver two items in addition to the written disclosure statement:

  - A copy of the rental agreement;

  - An informational brochure containing the following information about loading the container:

    - packing and loading tips to minimize damage in transit;

    - a suggestion that the customer make an inventory of the items as they are loaded, and keep any other record (e.g., photographs, videotape) which may assist in any subsequent claims processing;

    - a list of items which are impermissible to pack in the container (e.g., flammable items);

- a list of items which are not recommended to be packed in light of foreseeable hazards inherent in the company's handling of such containers, and in light of any limitation of liability contained in the rental agreement.

- This provision of the legislation should also specify that the above written disclosure of terms and conditions and the rental agreement must be received by the customer a minimum of 72 hours in advance of delivery of the container to be loaded, unless the customer knowingly and voluntarily waives such receipt in writing. The company should be required to record in writing and retain for a period at least of six months[7] after the end of the rental the time and method of delivery of the information, any waiver made by the customer, and the times and dates of initial pickup and redelivery of the containerized goods.

- A provision should be added specifying that pickup and/or delivery of the container(s) shall be on a date which is agreed upon between the company and the customer; that the company shall in fact be at the customer's premises prepared to perform the service not more than four hours later than the scheduled time when the company and customer agree that the customer will be physically present for the pickup; and that in the event of a preventable breach by the company, the customer shall be entitled to receive a penalty of fifty dollars from the company and to elect rescission of the rental agreement without liability.

- A provision should be added to reflect that no charge shall be assessed with respect to any movement of the container between facilities by the facility operator at its own discretion, nor for the delivery of a container to a customer's premises if the customer advises the company, orally or in writing, that he or she does not desire to order the containerized transfer and storage of his or her possessions at least 24 hours before the agreed time of container drop-off.

- A provision should be added requiring annual filing of cargo proof of insurance coverage.

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[7] The record retention period under our household goods program is three years.

Modifications to the Commission's Household Goods Regulatory Program

Because we do not know the fate of SB 1086 at this time, any effort to revise our rules now would be premature. Whether the Legislature does not change the Act in concept or adopts the approach that we favor, we will have to revise MAX 4 and other regulations to accommodate the new legislation. Until we are certain how the Legislature deals with this subject, we should act with a restrained hand. In any case, it is clear that some revision of our rules will be necessary.

Pending legislative action our current rules remain in effect. We are concerned about allegations by CMSA and others that certain self-service storage companies are currently violating the HGCA by engaging in the transportation of containerized household goods "for compensation or hire as a business" within the meaning of PU Code § 5109 without complying with our regulations. If the allegations are true, the above discussion demonstrates that consumers are at risk.

PSI argues that the phrase "as a business" in Section 5109 currently relieves self-service storage operators from the obligation to comply with this regulation because the transportation activity is incidental to the storage business. We believe this argument is disingenuous. It is clear that this container delivery and pickup service is offered as an integral part of the company's unbroken activity of storing personal household possessions, and is quite unlike the incidental transportation of manufactured goods in private carriage. A charge is made to cover its cost, whether bundled with storage charges or not. We therefore believe the activity to be within the ambit of the HGCA, and we hereby place the industry on notice that self -service storage operators who ignore requirements under the HGCA until the Legislature settles the question do so at their peril.

Conclusion

We conclude that consumer protections in addition to those in the current version of SB 1086 are needed to afford adequate protection to self-service storage customers who avail themselves of the option of portable containerized self-service storage. Accordingly, our decision suggests appropriate amendments to SB 1086 to

provide these additional protections. These amendments will be communicated to the Legislature by formal resolution. Until the Legislature acts, we do not believe it would be appropriate to revise our household goods regulatory program.

Findings of Fact

1. The transportation of household goods involves a unique relationship between the mover and the customer, because the goods are of a highly personal nature and the relationship is not characterized by repetitive transactions between the customer and the mover.

2. Special protections are necessary for the customer during the course of transportation of his or her household goods to a storage facility, because the customer has no physical control over the goods while they are in the care, custody, and control of the mover, and because the mover generally has the greater knowledge and understanding of the parties' contractual relationship.

3. During the period when a loaded container of household goods is in transit to or from a self-storage facility, the container and its contents are vulnerable to loss or damage from theft, accident, and other causes.

4. SB 1086 would exempt the owner or operator of a self-service storage facility, or a household goods carrier, from regulation under the HGCA with respect to the transportation of containerized used household goods to and from the storage facility and the customer's premises.

5. SB 1086 requires amendment in order to provide adequate protections for consumers of containerized self-service storage services in which the containers are transported to the self-service storage facility by persons other than the consumers.

6. A requirement that the self-service storage operator disclose the terms and conditions of the rental agreement under which self-service storage containers are moved to and from the storage facility as part of the operator's service would not be onerous or prohibitively costly, but in any event a waiver could be given by the customer.

Conclusions of Law

1. The movement on public roads of containerized used household goods in conjunction with the self-service storage business is currently subject to regulation under the HGCA.

2. There are significant omissions from SB 1086 of protections which ought to be afforded to consumers of containerized used household goods transportation services.

3. SB 1086 preferably should be amended by eliminating the statutory exemption for transportation of self-service storage containers, and directing this Commission to adopt appropriate regulation of that activity under its Household Goods Regulatory Program.

4. If the Legislature declines to amend SB 1086 in accordance with the foregoing conclusion of law, the following amendments should be added to SB 1086 in order to provide adequate consumer protections:

- A provision should be added requiring any company which engages in exempt container transportation to disclose to the customer in advance the following information regarding the container transfer service it offers, in a written document separate from others furnished at the time of disclosure:

  - The exact details of the transfer service which the company will provide, and a statement that the company will use its best efforts to place the container in an appropriate location designated by the customer;

  - The dimensions and construction of the containers used;

  - The unit charge, if any, for the container transfer service, in addition to the storage charge or any other fees under the rental agreement;

  - The availability of delivery and/or pickup by the customer of his or her goods at the storage facility as an alternative to the container delivery and pickup services;

  - The maximum allowable distance, measured from the initial storage facility, for initial pickup and final delivery of the loaded container;

- The precise terms of the storage company's right to move a container from the initial storage location at its own discretion, and a statement that the customer will not be required to pay additional charges in respect of any such transfer;

- Conspicuous disclosure in bold text of the allocation of responsibility for the risk of loss or damage to the customer's goods, including any disclaimer of the company's liability, and the procedure for presenting any claim regarding loss or damage to the company.

- As part of the disclosure requirement the company should be required to deliver two items in addition to the written disclosure statement:

  - A copy of the rental agreement;

  - An informational brochure containing the following information about loading the container:

    - packing and loading tips to minimize damage in transit;

    - a suggestion that the customer make an inventory of the items as they are loaded, and keep any other record (e.g., photographs, videotape) which may assist in any subsequent claims processing;

    - a list of items which are impermissible to pack in the container (e.g., flammable items);

    - a list of items which are not recommended to be packed in light of foreseeable hazards inherent in the company's handling of such containers, and in light of any limitation of liability contained in the rental agreement.

- This provision of the legislation should also specify that the above written disclosure of terms and conditions and the rental agreement must be received by the customer a minimum of 72 hours in advance of delivery of the container to be loaded, unless the customer knowingly and voluntarily waives such receipt in writing. The company should be required to record in writing and retain for a period of at least six months after the end of the rental the time and method of delivery of the information, any waiver made by the customer, and the times and dates of initial pickup and redelivery of the containerized goods.

- A provision should be added specifying that pickup and/or delivery of the container(s) shall be on a date which is agreed upon between the company and the customer; that the company shall in fact be at the customer's premises prepared to perform the service not more than four hours later than the scheduled time when the company and customer agree that the customer will be physically present for the pickup; and that in the event of a preventable breach by the company, the customer shall be entitled to receive a penalty of fifty dollars from the company and to elect rescission of the rental agreement without liability.

- A provision should be added to reflect that no charge shall be assessed in respect to any movement of the container between facilities by the facility operator at its own discretion, nor for the delivery of a container to a customer's premises if the customer advises the company, orally or in writing, that he or she does not desire to order the containerized transfer and storage of his or her possessions at least 24 hours before the agreed time of container drop-off.

- A provision should be added requiring periodic filing of proof of insurance coverage.

5. No modifications should be made to the Commission's program of regulation of used household goods transportation pending final action on SB 1086 by the California Legislature.

O R D E R

IT IS ORDERED that:

1. The Executive Director shall cause the Commission Staff to prepare a resolution embodying the Findings of Fact and Conclusions of Law set forth in our decision herein, and shall certify a copy of the Resolution to the California Legislature after final action of the Commission thereon.

2. At such time as the California Legislature has acted finally upon Senate Bill 1086, the Executive Director shall cause the Commission Staff to prepare, and the Commission shall consider in an appropriate proceeding, changes to the Commission's

household goods regulatory program and the rules, regulations, orders, and tariffs thereunder in light of the Legislature's final action.

3. This is a final order, and the proceeding is closed.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I abstain.

/s/ JESSIE J. KNIGHT, JR.
Commissioner

APPENDIX A

Using the criteria for the used household goods transportation services discussed herein, namely: 1) establishment of a transportation fee; 2) prohibition on owner, operator or carrier from loading, packing or handling the contents of the container; 3) requirement for licensure; and 4) requirement for cargo insurance, the Commission staff developed the following list of issues and relevant questions. These issues provide an outline that will enable the Commission to conduct a comprehensive review of current Commission rules and regulations and to afford interested parties the opportunity to submit written comments addressing these issues as they relate to the transportation of containerized household goods between residences and self-service storage facilities. Interested parties should suggest, within the framework of this rulemaking proceeding, applicable modifications to those rules and regulations that will allow for the efficient movement of individual storage containers while protecting the interests of consumers.

ISSUES TO BE CONSIDERED

ISSUE 1: What, if any, current requirements of the Household Goods Regulatory Program are unnecessary or unduly burdensome to the efficient movement of containerized used household goods shipments as discussed herein?

How can any unnecessary or unduly burdensome requirements be modified to accommodate the transportation services discussed herein?

ISSUE 2: What current consumer protections provisions under the Household Goods Regulatory Program could be relaxed or eliminated to accommodate the efficient movement of containerized used household goods shipments as described herein?

ISSUE 3: Should the used household goods services discussed herein be made exempt from household goods regulation? If so, why? How?

ISSUE 4: If the used household goods services discussed herein are made exempt from household goods regulation, are there consumer protection provisions which are essential and which should be retained? If so, how and what?

ISSUE 5: If the used household goods services discussed herein were made exempt from household goods regulations, what, if any, provisions and/or sanctions should be retained to protect consumers from illegal operators and/or criminal violations committed by unscrupulous operators?

ISSUE 6: If the used household goods services discussed herein were made exempt from household goods regulation, should any modifications to the existing B&P Code be enacted to require truth-in-transportation and storage provisions, or other consumer protection provisions, in rental agreements between the owner and occupant?

ISSUE 7: Assuming that the $50 transportation charge proposed in SB 1086 does not violate federal law (PL 103-305), is this a realistic transportation charge for this service?

ISSUE 8: What, if any, provisions of MAX 4 should be applicable to the transportation service discussed herein?

What, if any, provisions of MAX 4 should NOT be applicable to the transportation service discussed herein?

ISSUE 9: What, if any, provisions of GO 136 and MAX 4 should be modified, eliminated, or made applicable to the used household goods services discussed herein?

What, if any, provisions of GO 142 should be modified, eliminated, or made applicable to the used household goods services discussed herein?

ISSUE 10: What, if any, provisions of Public Utilities Code Section 5135 (carrier qualifications) should be

applicable to the used household goods services discussed herein?

ISSUE 11: Are there other issues that should be addressed relating to the used household goods services discussed herein? If so, list and provide comments.

(End of Appendix A)