

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 )

**ORIGINAL**

FILED

PUBLIC UTILITIES COMMISSION  
OCTOBER 22, 1997  
SAN FRANCISCO OFFICE  
R.97-10-050

ORDER INSTITUTING RULEMAKING

SUMMARY

Under existing law, the transportation of used household goods, for compensation, is subject to regulation by the Commission under the Household Goods Carriers Act. Senate Bill 1086 (Schiff) would alter the scope of this regulatory program. The Bill is intended to accommodate a recent evolution in the self-service storage industry and promote the efficient transportation of used household goods and personal effects in individual storage containers to and from self-service storage facilities. It seeks to do so by amending the Business and Professions Code to exempt this service, subject to certain specified conditions, from Commission regulation. If enacted in its present form, as amended September 3, 1997, this form of transportation would no longer be subject to existing rules and regulations specifically designed to protect the unique interests of consumers of moving services. SB 1086 has not yet been enacted. In fact, Legislative action has been postponed during 1997 allowing us time to institute an investigation into the issues raised by this proposed legislation. In this order we do so.

BACKGROUND

California has recognized household goods transportation as a specialized form of service and, since 1951, has provided for its regulation under special legislation, the Household Goods Carriers Act (HHG Carriers Act) (Public Utilities Code Section 5101 et seq.).<sup>1</sup> Pursuant to this legislation, the Commission has adopted various rules and regulations adapted to this particular form of transportation, including: Maximum Rate Tariff No. 4 (MAX 4) (setting upper limits on the rates that may be charged consumers); General Order (GO) 136 (establishing minimum cargo insurance and liability requirements for loss and damage); and GO 142 (providing minimum standards for the adequacy of equipment, training of employees and transportation and storage-in-transit of used household goods).

The rules and regulations adopted by the Commission and the underlying legislation both recognize the unique nature of household goods transportation and the heightened need for consumer protection requirements in this industry. The moving industry is unique among transportation service providers in a number of important respects. The public entrusts movers with personal effects, often their entire life's belongings, which include irreplaceable items of great personal value and emotional importance. In addition, unlike commercial shippers that often have ongoing relationships with their transportation suppliers and are privy to the intricacies of the transportation industry, most consumers moving and/or storing household goods are unfamiliar with the carriers with whom they entrust their goods

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<sup>1</sup> Since January 1, 1995, federal law has generally preempted state regulation of the rates, routes and services of the intrastate highway transportation of property, with the exception of the transportation of used household goods. Effective January 1, 1996, federal law (49 U.S.C. Section 13102 (10)) limited the definition of "used household goods" to include only residential property and personal effects.

and only infrequently deal with the industry. As a result, the state's regulation of the moving and storage industry has placed a heavy emphasis on consumer protection. Important elements of this regulatory program include:

- 1) **Insurance Requirements** - Carriers must maintain and file with the Commission evidence of cargo insurance as well as public liability insurance. This insurance can only be cancelled on 30 days' notice to the Commission.
- 2) **Disclosure/Loss and Damage Requirements** - Carriers are required to disclose, and mutually verify with consumers, the terms and conditions under which the transportation service will be governed.

Terms and conditions which must be verified include: 1) the contents and the condition of those contents, both before and after transportation is rendered; 2) provision for packing (carrier packed vs. shipper packed); 3) execution of agreement for services signed by both parties; 4) certification of weight of shipment; 5) verification of the level of loss and damage liability for shipment and degree of carrier's liability; 6) requirements for loss and damage claims; 7) provisions for storage, if required; and 8) form of payment.

- 3) **Carrier Qualification Requirements** - Carriers are required to show proof of financial soundness; freedom from prior convictions of fraud, dishonesty, and other crimes involving moral turpitude; and must establish by a written or oral examination that they possess the knowledge and ability to engage in business as a household goods carrier.
- 4) **Enforcement Program** - The Commission's enforcement staff investigates complaints against household goods carriers and brings enforcement actions, where necessary, to protect the public from "bait and switch" scams, theft and embezzlement, and other illegal activities. Such enforcement action may

include suspension and revocation of operating authority and civil injunctions enjoining carriers from further violations of law. When serious criminal activity occurs, such as theft of customer property by operators of moving and storage facilities, enforcement staff step in to protect the property of customers and work in cooperation with local law enforcement agencies to prosecute those responsible.

The Legislature has recognized the importance of consumer protection in this industry and has recently strengthened available enforcement remedies. Under legislation enacted last year, Chapter 1154, statutes of 1996, Commission enforcement staff may take possession of property, where necessary, and arrange for its return in accordance with orders of the court. Under separate legislation, Chapter 1042, statutes of 1996, enforcement staff may disconnect the telephone service of unlicensed movers who use telephone service and advertising as a means to assist in the violation of the state's criminal laws.

This year, Senate Bill 1086 sought to accommodate a recent evolution in the self-service storage industry. Traditionally, customers of self-service storage facilities have transported personal effects, including used household goods, to and from such facilities on their own. Several storage companies have recently begun offering their customers the option of storing such goods by delivering individual storage containers to the customer's home and, once the customer has packed the container, transporting the loaded container back to the storage facility. SB 1086 would exempt this form of service from regulation by the Commission under the HHG Carriers Act.

As amended September 3, 1997, the Bill would: 1) amend Section 21701 of the Business and Professions (B&P) Code by expanding the definition of a self-service storage facility to include real property designed for storing individual storage containers and 2) add Section 21701.1 to the B&P Code to permit,

subject to certain restrictions, the owner or operator of a self-service storage facility or a household goods carrier to transport "personal property", including household items in "individual storage containers", as defined,<sup>2</sup> to and from a self-service storage facility that he or she owns or operates, without Commission regulation under the Household Goods Carriers Act.

The transportation would be exempt from Commission regulation only if the following requirements of proposed B&P Code Section 21701.1(a) are met:

- (1) The fee charged (A) to deliver an empty individual storage container to a customer and to transport the loaded container to a self-service storage facility, or (B) to return a loaded individual storage container from a self-service storage facility to the customer does not exceed fifty dollars (\$50).
- (2) The owner, operator, or carrier, or any affiliate of the owner, operator, or carrier, does not load, pack, or

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<sup>2</sup> B&P Code Section 21701(e) defines "personal property" as movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

Proposed B&P Code Section 21701.1(b) defines an "individual storage container" as a container that meets all of the following requirements:

- (1) It shall be fully enclosed and locked.
- (2) It contains not less than 100 and not more than 1,100 cubic feet.
- (3) It is constructed out of a durable material appropriate for repeated use. A box constructed out of cardboard or a similar material shall not constitute an individual storage container for purposes of this section.

otherwise handle the contents of the container.

- (3) The owner, operator, or carrier is registered under Chapter 2 (commencing with Section 34620<sup>3</sup>) of Division 14.85 of the Vehicle Code.
- (4) The owner, operator, or carrier has procured and maintained cargo insurance in the amount of at least twenty thousand dollars (\$20,000) per shipment.

If enacted, the provisions of SB 1086 would remain in effect until January 1, 2000.

At its meeting of June 25, 1997, the Commission voted to oppose SB 1086, primarily due to concerns regarding the effect of the bill on existing rules and regulations designed to protect consumers.

By letter dated September 9, 1997, the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development stated that it had postponed additional legislative action on SB 1086 during 1997, allowing time for further discussion and analysis of the bill. It also indicated that if we should undertake a rulemaking process to address the issues raised in the bill, that process should begin immediately.

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<sup>3</sup> Through proposed B&P Code Section 21701.1(a)(3), SB 1086 would clarify that anyone, including household goods carriers, performing these moves must hold a motor carrier of property (MCP) permit issued by the Department of Motor Vehicles (DMV).

DISCUSSION

The Commission is dedicated to modifying existing rules and regulations as necessary and appropriate to increase efficiency, eliminate unnecessary barriers to competition, and accommodate changes in the industries we regulate. At the same time, we recognize the long history and continuing responsibility of the Commission for ensuring that the interests of consumers are protected, particularly in the moving and storage industry. To this end, we fully support a reevaluation of our current household goods regulatory program to consider what changes, if any, are necessary to accommodate and promote the efficient movement of containerized used household goods shipments to and from storage facilities, while protecting consumer interests.

Therefore, this order institutes a rulemaking proceeding, outlines a framework for a review of the Commission's household goods regulatory program as it relates to containerized moves, and provides an opportunity for all interested parties to submit written comments on the issues discussed herein.

**IT IS ORDERED THAT:**

1. A rulemaking proceeding is instituted on the Commission's own motion to determine what, if any, modifications to the 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.

2. Carriers, the Commission's Office of Ratepayer Advocates (ORA), other consumer interest groups and any other interested parties wishing to participate in this proceeding must file, with the Commission's Docket Office, 505 Van Ness Avenue, San Francisco, California, 94102, written comments in accordance with the Commission's Rules of Practice and Procedure, Rules 14.1-14.6, no later than November 17, 1997. Comments shall address the issues related herein and in Appendix A. Interested parties are invited to include in their comments recommended changes to existing rules, regulations, and/or state statutes

applicable to the used household goods service at issue in this proceeding. All comments submitted to the Docket Office must include an original and 7 copies, but need not be served on other parties unless specifically requested. A list of all parties filing comments, will be compiled and furnished to all parties.

3. The Executive Director shall serve by first class mail, a copy of this Order Instituting Rulemaking on all household goods carriers and to the parties on the attached service list in Appendix B, which includes organizations, governmental agencies and others which we believe may have a direct interest in this rulemaking.

This order is effective today.

Dated October 22, 1997 at San Francisco, California.

P. GREGORY CONLON  
President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

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)

APPENDIX B

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(End of Appendix B)



**ROLL NO. 510A**