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STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
<http://www.dot.state.ny.us>

JOSEPH H. BOARDMAN
COMMISSIONER

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GOVERNOR

October 14, 1998

Docket Clerk
USDOT Dockets, Room PL-401
400 Seventh Street, S. W.
Washington, D.C. 20590-000 1

RE: DOCKET NO. FHWA-97-2979 -44

Dear Sir or Madame:

Attached are the comments of the NYS Department of Transportation regarding FHWA Docket No. FHWA-97-2979 – Proposed Federal Regulations Concerning Transportation of Household Goods and Consumer Protection, as requested in the May 15, 1998 Federal Register.

Sincerely,

A handwritten signature in black ink that reads "Norman R. Schneider".

Norman R. Schneider, Director
Passenger and Freight Safety Division

cc: J. Guinan, 5-502
D. Cottrell, 7A - 630
P. Reinert, 7A - 405
R. Rybak, 5-509

**New York State DOT Comments on
Proposed FHWA Regulations Concerning
Transportation of Household Goods and Consumer Protection
49 C.F.R. Parts 375 and 377, Docket Number FHWA-97-2979
Federal Register, Vol. 63, No. 94 (May 15, 1998)**

The Passenger and Freight Safety Division of the New York State Department of Transportation, which is responsible for overseeing the regulation of intrastate carriers of household goods in New York State, strongly supports this proposed rule-making.

Since the termination of the federal Interstate Commerce Commission, there has been a significant hole in the oversight of interstate household goods carriers. We believe that the proposed FHWA regulations, as published in the Federal Register on May 15, 1998, are an important first step in protecting consumers. Such consumers have increasingly become the victims of unscrupulous and oftentimes illegal interstate movers in recent years.

While these regulations are the necessary first step, they will require a strong federal enforcement program that penalizes, on a progressively severe basis, those interstate movers who either operate illegally or who violate these regulations. Without such a follow-up effort, these regulations will have little or no impact or meaning.

For those interstate movers who choose to operate illegally outside of the law and regulations, appropriately severe penalties should be applied so that the carrier has a significant incentive to either operate within the parameters set by the legislation or cease operating illegally. For those interstate movers who have a federal license and who violate federal regulations, FHWA must be willing to impose appropriately severe penalties for such violations. If a carrier does not respond to such initial efforts, FHWA must be willing to take away such mover's federal authority.

I think that New York State's significant experience in overseeing the household goods industry will offer some sense as to why we believe a strong enforcement effort is essential. Let me elaborate.

The State has been regulating intrastate carriers of household goods for approximately sixty years. While the laws and state regulations we operate under have not significantly changed over this period, our approach to and level of enforcement has changed.

While we had developed a long working relationship with the legally regulated portion of the intrastate moving industry in our state, we found the Department's enforcement activities were not having a significant impact on illegal movers. Up until two years ago, this problem was growing and with limited enforcement resources, we seemed to be losing the battle. While citations were being issued for illegal operations and, after hearing, such illegal movers were being assessed penalties, there was not a consistent follow-up process to ensure that the penalties assessed were, in fact, paid. As a result, it was not uncommon for illegal movers to continue to operate while ignoring the penalties and the department's enforcement efforts.

Under the leadership of Governor Pataki, State Transportation Commissioner, Boardman and Attorney General Vacco, New York State has aggressively cracked down on illegal movers and their unscrupulous practices over the past two years. Such practices victimize consumers, cost taxpayers money, and give all of the professional moving industry a bad reputation.

Working with Attorney General Dennis Vacco, the Department has filed civil suits against three illegal movers seeking, among other items:

- * a permanent injunction barring parties from engaging or even soliciting moving business within, to or from New York State;
- * the payment of restitution and damages to consumers who have been ripped off;
- * a court determination that all intrastate contracts for unlicensed moves are void and unenforceable;
- * the payment of all outstanding civil penalties owed to this Department;

- * the payment of legal costs; and
- * a legal bar on incoming telephone calls to numbers associated with these companies and the principals of such companies.

These cases are still pending.

Working with Queens County District Attorney Richard Brown, we have also obtained criminal convictions against the owners of one the worst movers in New York City. The sentences imposed upon the owners include:

- * the payment of a \$5,000 fine,
- * the payment of \$15,000 in restitution to affected consumers,
- * a term of probation against the company's officers, and
- * an agreement from the principals not to be in the moving business in any way, shape or manner for up to three years.

When the defendants failed to follow the directions of the court while the case was pending, the Judge sent one of the owners to jail for 14 days. If there are any further violations of any of the foregoing terms, the District Attorney will be requesting the court to sentence the defendant(s) to a jail term.

As a result of these efforts, the message is out. It is now common for an attorney who represents an illegal intrastate company to voluntarily contact the State Transportation Department when such company receives a Citation from our enforcement staff. One of the first questions they ask is whether the company is the target of any other criminal or civil action.

With regard to follow up efforts on civil penalties imposed on moving companies, the Department has undertaken several additional initiatives:

- * First and foremost, we now file judgments on all unpaid civil penalties.
- * If a regulated carrier doesn't pay, their intrastate operating certificate is either suspended and revoked.
- * Since a significant portion of the penalties we levy are in New York City, we are working closely with the New York City Sheriff to collect unpaid civil penalties.

- * When permitted by state law, the State Transportation Department requests the State Motor Vehicles Department to suspend the state registrations of motor vehicles involved in illegal moves.
- * We publicize these ongoing efforts in order to educate consumers as to the dangers of dealing with an illegal mover.
- * We also work with the publishers of telephone Yellow Pages to ensure that only licensed movers are permitted to advertise.

In closing, we appreciate the opportunity to offer our views on the proposed FHWA's regulations for the interstate household goods industry. We believe the proposal lays the groundwork for more effective control of illegal movers preying on interstate shippers.

While our review of the FHWA proposal reveals significant improvements in almost all areas over the rules transferred from the former Interstate Commerce Commission, we can not stress too strongly the need for a commitment from FHWA to aggressively enforce both existing regulations and the proposed regulations, once they become effective. Based on our own recent experience in New York, we strongly believe an aggressive, effective enforcement program benefits consumers, legitimate movers and the public as a whole.

Submitted on behalf of the Office of Passenger and Freight Transportation of the New York State Department of Transportation by:



Norman R. Schneider, Director
Passenger and Freight Safety Division