



Motor Carrier Safety Increase Regulatory Consistency Report

Transportation Safety Division

This report highlights UTC motor carrier safety regulations that intersect with the Washington State Patrol (WSP) and the Federal Motor Carrier Safety Administration (FMCSA) commercial vehicle safety regulations. The report addresses the UTC's strategic business goal to work with the WSP and FMCSA to align safety rules and apply them equally to transportation companies regulated by the UTC.

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Contents

Executive Summary	3
Recommendations.....	3
Project Purpose	4
About the UTC.....	4
About Motor Carrier Safety and Regulations	4
Revised Code of Washington Authority.....	5
Washington Administrative Code Authority	5
Changes Recommended.....	6
Inconsistent Industry-Wide Regulations	6
WAC 480-15 UTC Household Goods Moving Company Rules.....	8
WAC 480-30 UTC Passenger Transportation Company Rules	8
WAC 480-70 UTC Solid Waste Collection Company Rules	9
WSP Rules Compared to UTC Rules	9
Rules Not Needing Changes	10
Conclusion.....	10

Executive Summary

In pursuing its mission to ensure the transportation services it regulates are safe, available, reliable, and fairly priced, the UTC seeks to establish necessary, understandable, and clear regulations in the interest of consumer protection and public safety. In support of Goal Two: Advance Public Safety in the UTC's 2021-2023 Strategic Business Plan, the UTC's Transportation Safety Division reviewed rules that fall under its Motor Carrier Safety program's jurisdiction. This report provides a high-level review of rules where redundant, overlapping, or inconsistent regulations exist that may create uncertainty and confusion to regulated industries or offer no public benefit. In summary, the Transportation Safety Division identified rules that may need to be repealed or amended to reduce inconsistencies that may cause confusion or to avoid imposing unnecessary costs on intrastate commerce and regulated transportation industries.

Differing or patchwork regulations between the UTC and other state or federal regulatory agencies such as the Washington State Patrol (WSP) or the Federal Motor Carrier Safety Administration are unsustainable, ineffective, and create unnecessary burdens on regulated transportation entities, consumer safety, and the UTC. Over the past several years, the transportation sector has seen many changes across the country. The FMCSA worked with regulated transportation industries and stakeholders to modernize outdated regulations that no longer provide a safety benefit. Updated regulations included hours-of-service rules, electronic logging devices, establishing a drug and alcohol clearinghouse, and updating daily vehicle inspection report requirements for passenger transportation companies. Many of the changes directly impact existing rules and policies of the UTC and its Transportation Safety Division. To continue moving forward in motor carrier safety regulation, it is critical that the UTC keep pace with the evolving marketplace and ensure uniformity with the federal and state regulatory landscape. Consistent rules across the state directly benefit drivers, consumers, and Washington state commerce. Uniform regulations are easier to understand and result in regulated industries reaching higher levels of compliance. This report considers existing UTC motor carrier safety rules and provides options to help eliminate issues created by patchwork regulations.

UTC Staff (Staff) recommends the UTC take the following actions to repeal or amend unnecessary and inconsistent regulations, and adopt rules necessary to ensure consistent state and federal motor carrier regulation:

Recommendations

1. Initiate a rulemaking in January 2023 to address inconsistencies identified in this report between the UTC, the WSP's Washington Administrative Code (WAC) rules, and Title 49 Code of Federal Regulations (CFR). Through rulemaking, the UTC should:
 - a. File a preproposal statement of inquiry (CR-101) in a docket to initiate a full review of UTC safety rules in WAC [480-15](#); household goods companies; [WAC 480-30](#), passenger transportation companies; and [WAC 480-70](#), solid waste companies.
 - b. Host stakeholder workshops and issue broad notice to interested persons. Inviting regulated companies and other interested parties to participate will allow stakeholders to provide feedback on the impacts of inconsistent regulations and how the UTC can address them.
 - c. Amend, repeal, or adopt regulations causing confusion or uncertainty to the public or regulated companies when doing so is in the interest of consumer protection, public safety, and increased transparency.
2. Implement updated rules in early 2024.

Project Purpose

The UTC is charged by law in [Title 81](#) of the Revised Code of Washington (RCW) to regulate certain transportation industries including charter and excursion, auto-transportation, non-profit, solid waste, household goods, and railroad crew transportation companies. The Motor Carrier Safety program ensures regulated transportation companies meet statutory obligations to provide services that are safe, adequate, and fair through a safety compliance program. The compliance program begins with technical assistance and education and ends with enforcement.

The purpose of this project is to identify where the UTC can improve consistency with the WSP's and FMCSA's safety regulations. The UTC included this project in its 2021-2023 Strategic Business Plan under Goal Two: Advance Public Safety. This goal requires Staff to prepare and share a report with the WSP that identifies UTC motor carrier safety regulations that are inconsistent or in conflict with WSP's commercial vehicle safety division rules by September 2021. Staff will work collaboratively with the WSP and FMCSA to initiate a rulemaking by January 2023 to repeal, amend, and adopt safety rules and apply them as equally as possible, and where it benefits the public, to transportation companies.

About the UTC

The UTC protects the people of Washington by ensuring investor-owned utility and transportation services are safe, available, reliable, and fairly priced. The UTC balances the interests of service providers with the interests of Washington consumers, who pay more than \$6.5 billion annually for these vital services. This is a role the UTC has performed since 1905, and one that has required considerable change over time. The UTC regulates a wide range of services provided by investor-owned companies, including electricity and natural gas, community solar projects, landline telecommunications, solid waste collection, water systems, natural gas and hazardous liquid pipelines, railroad carriers, residential movers, commercial ferries, passenger buses, low-level nuclear waste storage, and marine pilotage. The type and purpose of regulation for each industry varies, as does the UTC authority and jurisdiction. The UTC regulates rates, service quality, consumer protection, and safety measures. New market conditions, technology advances, federal and state laws, and evolving consumer expectations make for a constantly evolving regulatory landscape.

About Motor Carrier Safety and Regulations

The UTC Motor Carrier Safety program ensures transportation companies operate in a safe manner and in compliance with state and federal regulations. The program accomplishes this through compliance reviews, safety investigations, destination checks, and vehicle inspections targeted at companies with high risk profiles. The program directly impacts the safety of Washington highways by reducing risk to the motoring public. The UTC adopts and enforces safety requirements for vehicles operated by entities holding authority under the Revised Code of Washington as indicated in the UTC's Enforcement Policy (See Appendix).

In addition, the UTC oversees the permitting and insurance requirements of motor freight carriers under chapter [81.80](#).¹

Prior to 1994, state regulation of motor carrier companies included economic regulation and the UTC regulated the rates, routes, and services of all motor freight carrier companies in Washington. This changed when Congress passed HR 2739, the Federal Aviation Act of 1994 (FAA or the Act). The FAA prohibited states from regulating the "price, route, or service of any motor carrier." The Act permitted states to set requirements for size or weight limits, insurance requirements, hazardous materials

¹ RCW 81.80.

requirements, and safety. The Act applies to carriers of property, excluding carriers of household goods. In response to the enactment of FAA the Washington Trucking Association, in cooperation with the UTC and WSP, proposed state legislation to transfer remaining safety functions from the UTC to WSP for general freight motor carrier companies.

The state subsequently passed ESHB 1209 in April 1995. ESHB 1209 transferred “all powers, duties, and functions ... pertaining to safety inspection of commercial vehicles, including but not limited to terminal safety audits, except for those carriers subject to the economic regulation of the commission” from the UTC to WSP. The UTC and WSP subsequently entered into an interagency agreement that delineates motor carrier safety regulation functions between the agencies.

When the Legislature enacted RCW [46.32.080](#), it excluded economically regulated companies, including solid waste collection companies as defined by Chapter [81.77](#), from WSP’s safety inspection authority and expressly kept the UTC’s authority to regulate the safety of those companies’ vehicles and operations.

The Motor Carrier Safety program participates with the FMCSA on joint inspections and stays informed on changes in the regulatory framework throughout the country, while ensuring UTC safety oversight of specific intrastate carriers is consistent and fair. The FMCSA provides safety oversight of interstate transportation companies and retains jurisdiction over controlled substance and alcohol testing and commercial driver license regulations of all motor carriers. The UTC’s Motor Carrier Safety program receives federal grant funding to conduct unannounced roadside inspections and safety interventions of interstate transportation companies throughout Washington.

In the event of major fatality incidents involving commercial motor vehicles (CMVs) regulated by the UTC, the WSP, and FMCSA, the agencies coordinate in investigations, and each agency plays a role in safety oversight and compliance.

Revised Code of Washington Authority

Laws enacted by the Washington State Legislature establish the UTC’s jurisdiction in Title 80 RCW and Title 81 RCW. The following RCWs provide the UTC with authority to regulate specific transportation industries in Washington for public safety:

- [81.61](#) Contract railroad crew transportation companies
- [81.66](#) Transportation for persons with special needs
- [81.68](#) Auto transportation companies
- [81.70](#) Passenger charter carriers
- [81.77](#) Solid waste collection companies
- [81.80](#) Motor freight carriers (trucking and household goods movers)

Washington Administrative Code Authority

The rules governing motor carrier safety clarify the laws and provide further guidance to the above listed transportation laws and ensure regulated industries operate safely, in compliance with state and federal regulations. The UTC’s motor carrier safety rules include the following WAC chapters:

- [480-12](#) Motor carriers
- [480-14](#) Motor carriers, excluding household goods carriers and common carrier brokers
- [480-15](#) Household goods movers
- [480-30](#) Passenger transportation companies

- [480-31](#) Private, nonprofit transportation providers
- [480-62](#) Railroad companies (contract crew transportation)
- [480-70](#) Solid waste and/or refuse collection companies

Changes Recommended

This section identifies rules that the UTC should consider repealing or amending.

Inconsistent Industry-Wide Regulations

Passenger Capacity References

The definition of passenger capacity for regulated charter and excursion vehicles in UTC rules is inconsistent with 49 CFR Parts 383 and 390.5. WAC [480-30-036](#) states that a vehicle is subject to UTC regulation when the passenger capacity is eight or more passengers (including the driver). In 49 CFR Part 390.5, the definition of commercial motor vehicle includes, “. . .designed or used to transport more than eight passengers (including the driver) for compensation.”

Recommendation: Staff will seek stakeholder feedback to determine the potential benefit or negative impacts of making changes to the UTC’s passenger capacity definitions.

Insurance and Weight Threshold

The UTC’s rules² include insurance requirements for motor carriers. The UTC does not adopt federal insurance rules however the WSP does, and the UTC’s insurance limits do not match the federal insurance limits. The UTC rules for property carriers identify insurance minimums for vehicles with gross vehicle weight ratings (GVWR) of less than 10,000 pounds while the federal rules establish at 10,001 pounds GVWR as the minimum. The UTC rules match the federal minimum of \$750,000 for vehicles with a GVWR of 10,000 pounds or more, applying this rate at one less pound.

Recommendation: The UTC should consider modifying the weight threshold of 10,000 pounds GVWR to 10,001 pounds GVWR to mirror the federal insurance filing requirement to be more consistent with the WSP rather than having its own weight threshold for property carriers.

Insurance Surplus Lines

All regulated companies must file evidence of currently effective liability and property damage insurance written by a company authorized to write such insurance in the state of Washington with the commission. No regulated transportation industry can get insurance from a surplus lines company currently. The use of surplus lines insurance is allowable by the FMCSA and other states under certain circumstances and with conditions. The UTC has allowed mostly common carriers to use surplus lines insurance on several occasions, so long as the surplus lines company is highly rated (A- or better by AM Best or similar financial rating company).

Recommendation: The UTC should consider modifying its insurance rules with the Office of the Insurance Commissioner (OIC) to allow regulated transportation companies to use surplus lines insurance, rather than only allowing the use of admitted insurance companies and requiring companies to seek an exemption from UTC rules. The rules that the UTC should amend are [WAC 480-14-250\(1\)](#) Motor Carriers; [WAC 480-15-530\(1\)\(a\)](#) Household Goods; [WAC 480-30-191\(1\)\(a\)](#) Passenger Transportation Companies; [WAC 480-31-070\(1\)](#) Private; Non Profit Transportation Providers; and [WAC 480-70-181\(1\)\(a\)](#) Solid Waste.

² WAC 480-15-530 and 480-70-181.

Leasing

The UTC has not adopted the federal leasing requirements, but the WSP has done so.³ The UTC's leasing requirements are specific to each industry.⁴ For example, the UTC's leasing requirements for the solid waste industry closely match the federal requirements, the household goods requirements are less restrictive, and the passenger leasing requirements state that a leasing agreement must exist and a copy must be held on the vehicle.

Recommendation: The UTC should consider adopting federal rules governing the filing of lease agreements, rather than having its own set of leasing standards across multiple industries to be more consistent with the WSP and evaluate whether such a change benefits public safety.

Motor Vehicle Identification Requirements

[WAC 480-15-560 Equipment Safety Requirements](#)

The UTC rules include specific marking requirements for household goods companies that differ from federal requirements. A company must display its UTC permit number if it operates intrastate only. If a household company operates in interstate commerce it can use its federal identification numbers in place of the UTC permit number.

[WAC 480-30-231 Vehicle and Driver Identification](#)

The UTC rules include specific marking requirements for auto transportation companies. A company must list a certificate number if it operates intrastate only, but if the company operates interstate as well, it can list the USDOT number in place of the certificate number. There are also requirements for identification of drivers. While the federal rules allow for leased and interchanged passenger vehicles to list their identification information only on the passenger side of the vehicle, the UTC's WAC rules do not allow this.⁵

[WAC 480-70-206 Motor Vehicle Identification](#)

The UTC rules include a specific requirement for marking the company's certificate number on vehicles. The UTC adopts 49 CFR Part 390 which includes FMCSA marking requirements; however, there are items in 49 CFR Part 390.21T that are not included in WAC [480-70-206](#). Examples include:

- 49 CFR Part 390.21T requires companies to list the USDOT number but the UTC rule does not.
- The UTC's rule says the markings must be "legible," but does not define what legible means. The federal rule specifies what legible means.
- The UTC's rule requires all markings must be permanent except for leased vehicles which may use temporary markings, the federal rule allows for removable marking devices for vehicles leased less than 30 days. The federal rule also allows for the lessor's information to be present on the vehicle if the rental agreement includes all the lessee's information. 49 CFR Part 390.21T(1) states "the legal name or a single trade name of the motor carrier . . . as listed on the motor carrier identification report" must be put on the vehicle.

Recommendation: The UTC should decide if there is a benefit to public safety and consumer protection for requiring any regulated company to comply with unique marking rules. The UTC should consider if allowing the use of federal identification in place of the UTC permit number, such as the USDOT number, is sufficient for all transportation regulated industries.

³ 49 CFR § 376.

⁴ WAC 480-15-590, 480-30-236, and 480-70-211.

⁵ 49 CFR § 390.21T(f).

WAC 480-15 UTC Household Goods Moving Company Rules

[WAC 480-15-555 Criminal Background Checks](#)

This rule requires all household goods companies to complete a criminal background check for every person the company intends to hire. This rule is unique to Washington state and does not exist in federal rules. The UTC established this rule in 2013 to increase consumer protection and prevent persons with convictions involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years from working in the state moving industry. To complete these criminal background checks, household goods companies commonly use the WSP's WATCH report, which only details offenses in Washington. It is possible that a household goods company may hire an employee based on a WATCH report and comply with the UTC's rule but be unaware that the employee has been convicted of a prohibited criminal offense in another state.

Recommendation: The UTC should consider amending its rule to include a national criminal background check to increase public safety. The UTC should also revisit this rule and find if the criminal offenses previously defined are adequate to protect public safety.

[WAC 480-15-570 Driver Safety Requirements](#)

The UTC rules allow for household goods companies to use drivers who are 18 years or older. WAC 480-15-570 specifically states, "(a) 49 C.F.R. Part 391.11 (b)(1): Minimum age requirements. The minimum age for drivers of motor carriers operating solely intrastate is eighteen years of age rather than the twenty-one years of age required to operate in interstate commerce." If the driver is under the age of 21 the CDL receives a "K" restriction signifying that the driver can only drive in intrastate commerce. All states except one issue CDLs with intrastate restrictions to individuals ages 18-20. The restrictions mean that these drivers cannot operate commercial motor vehicles (CMVs) in interstate commerce.

WSP's WAC [446-65-010](#) does not specifically address or allow such an exemption. WSP is aware of DOL's [WAC 308-100-020](#) which allows for eighteen-year-old commercial driver's license holders.

Recommendation: The UTC should continue discussions with the WSP regarding its rules and the driver age requirements to be consistent where it makes sense. Other states have similar allowances for intrastate only CDL drivers, such as Idaho. FMCSA sets the threshold at 21 years for interstate commerce.

WAC 480-30 UTC Passenger Transportation Company Rules

[480-30-226 Intrastate Medical Waivers](#)

This rule allows intrastate-only passenger transportation drivers who do not have a commercial driver license (CDL) to use a doctor's statement in place of a medical certificate when the driver does not meet the minimum federal medical standards.⁶ These statements reflect the doctor's opinion that the driver's medical condition is not likely to interfere with the safe operation of the commercial vehicle. For CDL drivers, they may apply for a medical waiver through the Washington State Department of Licensing (DOL) if the driver operates solely in intrastate commerce. The doctor's statement waiver does not exist in the household goods, solid waste, or contract rail crew transportation rules.

Recommendation: The UTC should consider either eliminating this allowance from the passenger transportation rules or incorporating it into the other industries. The UTC should also consider whether the rule is consistent with federal rules and if allowing the waiver is in the best interest of the public. Other

⁶ 49 CFR § 391.41.

industries that would like to use a doctor's statement of intrastate medical waiver must receive an exemption from the UTC. This is another area where stakeholder feedback is necessary to understand the population of drivers that use this specific waiver.

WAC 480-70 UTC Solid Waste Collection Company Rules

[WAC 480-70-201 Driver Safety Requirements](#)

The UTC rules allow for solid waste collection companies to use drivers who are 18 years or older. If the driver is under the age of 21 the CDL receives a "K" restriction signifying that the driver can only drive in intrastate commerce.

WSP's WAC [446-65-010](#) does not seem to specifically address or allow such an exemption, while the Department of Licensing website allows the exemption for intrastate CDL drivers 18 years of age or older.

The UTC rules include an exemption for solid waste companies to use drivers who are 18 years old or older, if operating solely intrastate.

Recommendation: The UTC should work with the WSP regarding its rules and the driver age requirements to be consistent with the FMCSA and WSP where it makes sense. There are other states that have a similar allowance for intrastate only CDL drivers such as Idaho. FMCSA sets the threshold at 21 years for interstate.

WSP Rules Compared to UTC Rules

This section compares the WSP's rules to the UTC's rules and identifies differences in the rules. It also provides options for the UTC to consider during a rulemaking.

[WAC 446-65-010 Transportation Requirements](#)

The UTC adopts 49 CFR Part 391 Subpart D in its entirety, including the definition of commercial motor vehicles for drivers of vehicles above 10,001 pounds. The WSP applies Subpart D to drivers of vehicles over 26,000 pounds or drivers transporting hazardous materials. The WSP rules state, in part:

"Part 391 Qualification of Drivers. Provided that 49 C.F.R. 391 D (Tests), and E (Physical Qualifications and Examinations) do not apply to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placards."

Recommendation: UTC Staff and WSP have communicated about this difference in rules in the past and the WSP is currently considering a rulemaking to amend its rules to be consistent with the FMCSA and UTC but has not initiated a rulemaking. UTC Staff will continue to work with WSP Staff on this matter.

[WAC 446-65-030 Intrastate High Risk and Imminent Hazard Carriers](#)

The WSP typically starts a compliance review based on a company's safety management score established by roadside vehicle inspection violation data. If the WSP discovers critical or acute violations, companies must schedule another inspection with the WSP.

The UTC develops an annual work plan based on industry and risk to complete its compliance reviews. For example, the UTC sees passenger transportation companies more frequently than property transportation companies due to the potential safety risk to passengers. If the UTC finds critical or acute violations, it may require a safety management plan and schedule a follow-up safety intervention. The future intervention date is

determined by internal policy or at the direction of an administrative law judge's order. If the UTC finds violations it requires the regulated company to submit a 15-day letter addressing the violations and providing corrective action.

Recommendation: The UTC should consider reviewing this rule and ways to create efficiencies through rulemaking. Often, UTC-regulated companies do not receive safety management scores because certain industries such as passenger transportation companies receive fewer roadside inspections and do not receive roadside inspection violations. With less roadside inspection data available the UTC should consider establishing a requirement similar to how the household goods industry is regulated. For example, require passenger transportation companies to receive a satisfactory safety rating from an intrastate compliance review within a specific amount of time such as two years.

[WAC 446-65-040 Compliance Review Hearing Process](#)

The WSP gives companies 20 days to respond to a penalty notice. The WSP's mitigation request must be notarized.

The UTC gives companies 15 days to respond to a penalty notice. Companies have the right to admit the violations occurred, request mitigation, or request a hearing to contest the violations. The UTC does not require notarization on the mitigation request.

Recommendation: The UTC should discuss with the WSP the benefits or burden of requiring a regulated company to submit notarized mitigation requests. Following those conversations, the UTC should evaluate its hearing process and determine where the process can be streamlined. The UTC could also review its 15-day requirement and determine if 20 days is more appropriate and if such a change benefits public safety.

Rules Not Needing Changes

[WAC 480-31 Private, Non-profit Transportation Providers](#) and [WAC 480-62 Contract Railroad Crew Transportation Rules](#)

The Motor Carrier Safety program reviewed the rules in this section and determined there is no need to change or repeal rules in this section. While these rules go beyond federal rules, the UTC created them specifically for the purpose of consumer protection and public safety to implement legislation. Transportation Division Staff believes the rules are necessary and in the best interest of the public. The UTC will need to change these rules if they change intrastate medical waiver or surplus lines rules for other industries.

Conclusion

It is the responsibility of the UTC and its Staff to work with other regulatory agencies and stakeholders to ensure the agency's rules are clear and designed in the best interest of public safety. Many of the UTC's transportation safety rules in Chapter 480 WAC have not been reviewed in the past ten years. Staff's recommendations in this report will allow the UTC to review each of its transportation safety rules to ensure they are necessary and not duplicative.

Efficiencies gained through clear regulatory framework benefits the UTC, regulated companies, and the public. While the rulemaking process is inevitably complex, the issue before the UTC is clear. Its rules need to be "cleaned-up" from time to time and the time has come to do just that. The way to accomplish this is to review the rules and update them through the rulemaking process allowing for interagency and industry stakeholder feedback. Again, Staff recommends the UTC initiate a rulemaking in January 2023 with the goal of adopting and implementing rules in 2024.

Appendix

[Service Date January 7, 2013]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the) DOCKET A-120061
)
Enforcement Policy of the)
Washington Utilities and) ENFORCEMENT POLICY OF THE
Transportation Commission) WASHINGTON UTILITIES AND
) TRANSPORTATION COMMISSION
)
.....)

I. INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission) is charged by statute, in RCW Titles 80 and 81, to regulate certain utility and transportation companies.¹ It is responsible for ensuring that regulated companies meet their statutory obligations to provide service that is safe, adequate and efficient at prices to consumers that are just and reasonable.² The Commission meets its responsibility by issuing orders and establishing rules governing company operations, and establishing tariffs that contain the rates and charges those companies must assess for services rendered. The Commission is authorized to enforce these orders, statutes, rules, and tariffs through various means and procedures.
- 2 In order to articulate to the public the Commission's policies relating to its enforcement authority, the Commission issues this policy statement pursuant to RCW 34.05.230 and WAC 480-07-920.³

¹ Companies subject to the Commission's jurisdiction include any corporation, association, partnership, individual, trustee or receiver that provides regulated utility or transportation service. The policy statement issued by the Commission in this docket applies equally to all such entities.

² RCW 80.28.010 and RCW 81.28.010.

³ RCW 34.05.230 states, in part, "An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements."

II. PROCESS FOR DEVELOPMENT OF STATEMENT OF POLICY

- 3 On February 28, 2012, the Commission issued a notice in this docket indicating its intent to consider issuing a policy statement relating to its enforcement efforts. In response to that notice, the Commission received eight comments, including comments from regulated companies or industry group representatives,⁴ the Office of Public Counsel of the Office of the Attorney General, and a private citizen.⁵ Based on these comments and on prior Commission orders that addressed enforcement policies,⁶ the Commission issues this policy statement.
- 4 This document conveys the Commission's current view of its enforcement policies. As a policy statement adopted under the Administrative Procedure Act, it is not intended to be binding as a formally adopted rule.⁷ Entities subject to enforcement by the Commission retain the right to make any arguments they wish to contest any Commission enforcement actions. The Commission retains discretion to apply and adapt its enforcement efforts in individual cases to implement its overall duty under the public service laws to regulate "in the public interest."⁸

III. STATUTORY PROVISIONS RELATING TO ENFORCEMENT OF COMMISSION STATUTES

- 5 By statute, the Commission and Commission Staff (Staff) are authorized to "at any and all times ... inspect the accounts, books, papers and documents of any public service company" (RCW 80.04.070 and RCW 81.04.070). The Commission or Staff initiates an investigation when it has reason to suspect a company has violated a Commission statute, rule, order or tariff. The Legislature has provided for enforcement of Commission statutes, rules, orders and tariffs in both civil and criminal contexts. These provisions include:

⁴ The Commission received comments from Puget Sound Energy, Avista Corporation, CenturyLink, Pacific Power, Washington Movers Conference, and Washington Refuse and Recycling Association.

⁵ The Commission received comments from David and Luann Young.

⁶ E.g., Docket UT-971063, Commission Decision and Final Order ¶¶ 154-58; Docket UG-001116, Order Accepting Settlement ¶¶ 34-38; Docket UG-020230, 2nd Supp. Order ¶¶ 24-25; *id.*, 3rd Supp. Order ¶¶ 24, 25, and 33.

⁷ RCW 34.05.230.

⁸ RCW 80.01.040.

A. Civil penalties imposed by the Commission administratively before a hearing:

- (1) The Commission may issue a penalty of one hundred dollars against a regulated utility or transportation company for each violation and for each day the violation continues to occur (RCW 80.04.405 and RCW 81.04.405).
- (2) The Commission may issue a penalty of one hundred dollars for every instance a motor freight carrier offers a rebate, charges less than tariff rates, or fraudulently seeks to evade regulation (RCW 81.80.230).
- (3) The Commission may issue a penalty up to \$10,000 for each violation when an excavator does not notify the one-number locator service before excavating and causes damage to hazardous liquid or gas pipeline (RCW 19.122.055 and RCW 19.122.150).

B. Civil penalties imposed by the commission after a hearing:⁹

- (1) The Commission may issue a penalty against a regulated utility or transportation company up to one thousand dollars for each violation and for each day the violation continues to occur (RCW 80.04.380 and RCW 81.04.380).
- (2) The Commission may issue a penalty against corporations other than a regulated utility or transportation company of up to one thousand dollars for each offense (RCW 80.04.387 and RCW 81.04.387).
- (3) The Commission may issue a penalty up to five thousand dollars to any household goods moving company operating without a permit (RCW 81.80.075(4)).
- (4) The Commission may issue a penalty up to ten thousand dollars per violation for any person who engages in business as a household goods

⁹ The Commission typically initiates actions described under items B through E, below, by filing a complaint against a regulated utility or transportation company and holding a hearing as provided by RCW 80.04.110 or RCW 81.04.110.

moving company in violation of a cease and desist order (RCW 81.80.075(5)).

- (5) The Commission may issue a penalty up to five hundred dollars for each violation when a household goods moving company does not include its permit number, physical address, and telephone number in its advertisements (RCW 81.80.357).
- (6) The Commission may set penalty amounts for violations by regulated gas and hazardous liquid pipeline companies, not to exceed federal penalty amounts (RCW 81.88.040). In WAC 480-93-223 and WAC 480-95-250, the Commission set such penalties not to exceed \$100,000 per violation and not to exceed a total penalty for related violations of one million dollars.
- (7) The Commission may issue a penalty up to \$1,000 for each violation of underground utility locator requirements in RCW 19.122, other than violations of RCW 19.122.150 as described above (RCW 19.122.140).

C. Refunds and reparation ordered by the Commission:

- (1) The Commission may order refunds if it finds that a regulated utility or transportation company has charged in excess of the rates set by tariff (RCW 80.04.230 and RCW 81.04.230).

D. Authority to revoke permit or certificate:

- (1) The Commission may cancel, suspend, alter, or amend a transportation company permit or certificate for violations of federal or state law, or Commission rule (RCW 81.80.280, RCW 81.68.030, RCW 81.70.250 and RCW 81.77.030).

E. Authority to order an unpermitted company to cease operations:

- (1) The Commission may issue a cease and desist order against a transportation company operating without authority issued by the Commission (RCW 81.04.510).

F. Criminal penalties imposed by a prosecutor:

- (1) The Commission may pursue action with local prosecutors to charge officers, agents, or employees of a regulated utility or transportation company with a gross misdemeanor for violations (RCW 80.04.385 and RCW 81.04.385).
- (2) The Commission may pursue action with local prosecutors to charge officers, agents, or employees of a company other than a regulated utility or transportation company with a gross misdemeanor for violations (RCW 80.04.390 and RCW 81.04.390).
- (3) The Commission may pursue action with local prosecutors to charge a transportation company that operates or advertises without authority issued by the Commission with a gross misdemeanor for violations (RCW 81.80.355).

G. Injunction relief imposed by the court:

- (1) Through the Office of the Attorney General, the Commission may file in court for appropriate relief through mandamus or injunction for violations by a regulated utility or transportation company (RCW 80.04.260 and RCW 81.04.260).

IV. COMPANY RESPONSIBILITIES

- 6 The Commission expects companies subject to the public service laws in RCW Titles 80 and 81 to comply with all statutory and regulatory requirements.
- 7 When the Commission or Staff finds a violation, the company has an obligation to correct the particular violation. The company has the further obligation to correct the underlying system or program problems that caused the violation to occur. It is not sufficient to correct only the instant violation.
- 8 In order to facilitate compliance, the Commission expects companies to have a compliance program in place. A compliance program should include personnel whose stated job responsibilities include understanding and implementing Commission statutory and regulatory requirements. The program also should designate personnel responsible for interacting with the Commission on enforcement matters and should also include systems and programs to detect and correct violations and to report those violations to company management.

V. COMMISSION ENFORCEMENT POLICY

A. Objectives of the Commission's Enforcement Program

- 9 The Commission's objective when enforcing statutes, rules, orders, and tariffs is to ensure services within the Commission's jurisdiction are delivered safely, adequately, efficiently, and at rates and charges that are just and reasonable. The Commission will use the authorized means it deems most appropriate under the circumstances to accomplish this objective.

B. Technical Assistance

- 10 The Commission attempts to ensure compliance with statutes, rules, orders and tariffs by encouraging voluntary compliance by the companies it regulates.
- 11 Consistent with state law,¹⁰ the Commission has a program to provide technical assistance as an important tool for gaining compliance.
- 12 Technical assistance is only one aspect of the Commission's comprehensive compliance and enforcement program and is not required before other enforcement action is undertaken. In some cases, Commission requirements are so fundamental to safe operations and consumer protection that the Commission may issue penalties for a first-time violation, even if Staff has not previously provided technical assistance on the specific issues.
- 13 The Commission's technical assistance program includes:
- (1) Staff site visits for the purpose of providing companies with information about or clarification of Commission compliance requirements.
 - (2) Compliance information provided through other methods including but not limited to, informing companies of Commission requirements by

¹⁰ RCW 43.05.020 states:

All regulatory agencies shall develop programs to encourage voluntary compliance by providing technical assistance consistent with statutory requirements. The programs shall include but are not limited to technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods to provide technical assistance. In addition, all regulatory agencies shall provide upon request a list of organizations, including private companies that provide technical assistance. This list shall be compiled by the agencies from information submitted by the organizations and shall not constitute an endorsement by an agency of any organization.

telephone, in writing, or through electronic means, for example in the context of resolving customers' informal complaints.

- (3) In-person individual and group regulatory training opportunities, both ad-hoc and regularly scheduled, such as periodic training for newly permitted household goods carriers.
- (4) Written notice provided directly to a company or companies of new or amended rules, processes, or procedures. An example is a letter to an industry group that informs the group of new rule requirements and actions companies need to take to be in compliance with the new rules.
- (5) Participation in rulemakings conducted by the Commission.
- (6) Participation in stakeholder meetings concerning the establishment or revision of programs, processes, or rules.
- (7) Participation in open meetings convened by the Commission.

- 14 In addition to such technical assistance, regulated companies, or those seeking to operate as a regulated company, may contact the Commission or its Staff directly if they wish technical assistance in any area of regulation. Companies seeking such assistance should call the main Commission telephone number – (360) 664-1160. The receptionist will refer the company to the correct person.

C. **Factors the Commission will Consider in Determining the Type of Enforcement Action to Take or the Level of Penalty to Be Imposed**

- 15 Upon finding, at the conclusion of an inspection or investigation, that a company has violated an applicable statute, rule, order, or tariff, the Commission will consider whether an enforcement action, beyond technical assistance, is appropriate and, if so, which action to take. The Commission will consider factors that include but are not limited to:
- (1) *How serious or harmful the violation is to the public.* The more serious or harmful a violation, the more appropriate penalties or other sanctions may be. Certain violations or conditions are a likely candidate for penalties or a complaint, even for a first-time offense. Examples include, but are not limited to, the responsibility to charge consumers the tariff rates; the requirement for a drug and alcohol testing program, driver medical cards, and commercial drivers' licenses; and the requirement to maintain or repair

corrosion protection on pipelines. In addition, if a violation exists that puts the public at an imminent safety risk, the Commission will take immediate action to prevent the risk from becoming reality, up to and including shutting down company operations.

- (2) *Whether the violation is intentional.* A company that willingly and intentionally violates a Commission requirement may be dealt with more severely than a company that unknowingly committed a violation. In determining whether a company willingly and intentionally committed a violation, the Commission will consider factors that include, but are not limited to, whether:
 - a. The company ignored Staff's previous technical assistance.
 - b. The company committed previous violations of the same statute or regulation.
 - c. The company appears to be hiding or obscuring the facts.
 - d. There is clear evidence through documentation or other means that show the company knew of and failed to correct the violation.
- (3) *Whether the company self-reported the violation.* The Commission may be more lenient with a company that self-reports to the Commission a violation that occurred.
- (4) *Whether the company was cooperative and responsive.* The Commission may consider the company's cooperation and responsiveness during an investigation when it considers enforcement action after the investigation is completed.
- (5) *Whether the company promptly corrected the violations and remedied the impacts.* The Commission may be more lenient when a company promptly corrects a violation, and any underlying system problems, when these are pointed out by Staff. For example, if the violation had an impact on customers, such as an overcharge, the Commission may be more lenient if the company immediately took steps to refund the money and to remedy any other harm.

- (6) *The number of violations.* While numbers alone do not determine appropriate enforcement actions, the more violations the Commission finds, the more likely it is to take an enforcement action.
- (7) *The number of customers affected.* The more customers affected by a violation, the more likely the Commission will take enforcement action.
- (8) *The likelihood of recurrence.* If the company has not changed its practices, or if the violations are repeat violations made known to the company in the course of an earlier inspection or investigation, the Commission will be more likely to take an enforcement action.
- (9) *The company's past performance regarding compliance, violations, and penalties.* The Commission will deal more harshly with companies that have a history of non-compliance, repeated violations of the same or other regulations, and previous penalties.
- (10) *The company's existing compliance program.* The Commission is more likely to take enforcement action if the company does not have an active and adequate compliance program in place, or if the Commission has previously identified deficiencies with the company's compliance program and the company has not corrected the deficiencies.
- (11) *The size of the company.* The Commission will consider the size of the company in taking enforcement actions. It is not the Commission's intention to take enforcement actions disproportionate to companies of similar size with similar penalties, or to take enforcement actions disproportionate to a company's revenues.

16 In addition, company size is also a consideration with respect to a first-time paperwork violation. RCW 34.05.110 exempts certain first-time paperwork violations committed by small businesses from penalties or administrative sanctions. This statute also describes what an agency must do when a small business incurs violations that may or may not be exempt from violations. For the purposes of RCW 34.05.110, a small business is one with 250 or fewer employees or annual revenue of less than seven million dollars.

D. Procedural Options to Initiate an Enforcement Action

- 17 The Commission has at its disposal a range of procedural options for enforcing Commission statutes, rules, orders, and tariffs. These include:
- (1) Sending the company a compliance letter noting the violation and asking for voluntary compliance and perhaps requiring the company to develop a compliance plan for addressing the business practices that resulted in a violation;
 - (2) Assessing a monetary penalty administratively against a company;
 - (3) Issuing a formal complaint seeking to impose a monetary penalty or other remedy, including regulatory orders to cease and desist or undertake certain practices;
 - (4) Through the Office of the Attorney General, commencing an action in superior court to secure compliance through order or injunction;
 - (5) Referring violations to either the appropriate county prosecuting attorney or the Attorney General for possible criminal prosecution.
- 18 Generally, the Commission will pursue options (1), (2) or (3). In choosing among those options, the Commission will consider the factors stated in V.C., above. The Commission would seek civil enforcement in superior court where compliance through the administrative process may not be effective. The Commission will refer matters to a prosecuting attorney or the Attorney General for criminal prosecution in exceptional circumstances where criminal enforcement is important to protecting the public interest.

E. Factors the Commission Will Consider in Determining Whether to Mitigate a Penalty

- 19 If the Commission issues a penalty assessment administratively, the company against which the penalty is assessed has an opportunity to respond in writing either to dispute the assessment or to request that the Commission mitigate the penalty. Generally, the company would request mitigation if it agrees the violations occurred, but believes circumstances exist to warrant a lesser penalty. The company seeking mitigation must file a written statement providing the grounds for mitigation, and must request either a hearing or a Commission determination based solely on the

written statement. The Commission will consider the following factors in determining if mitigation is appropriate:

- (1) Whether the company demonstrates that the facts considered by the Commission underlying the assessment were incorrect or do not support the penalty assessed.
- (2) Whether the company demonstrates that mitigating information or factors exist that the Commission may not have considered in setting the assessed penalty amount.
- (3) Whether the company explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring compliance by the company with applicable statutory and regulatory requirements.

F. Factors the Commission Will Consider in Determining Whether to Suspend a Penalty

20 The Commission will consider to following factors in determining whether to suspend a portion of a penalty:

- (1) Whether this is a first-time penalty for this or a similar violation.
- (2) Whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future. Examples include purchasing new technology, making system changes, or training company personnel.
- (3) Whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.
- (4) Whether Staff and the company have agreed that Staff will conduct a follow-up investigation at the end of the suspension period and that if a repeat violation is found, the suspended penalties are re-imposed.
- (5) Whether the company can demonstrate other circumstances exist that convince the Commission to suspend the penalties.

VI. COMMISSION DISCRETION

- 27 As part of its official policy regarding enforcement practices, the Commission explicitly reserves discretion in applying any stated portion of the policy. The Commission retains the discretion to apply enforcement actions on a case-by-case basis. If circumstances exist that influence the Commission to take more lenient, or more severe, action than described within this policy, the Commission will do so without limiting itself to the confines of the stated policy.

DATED at Olympia, Washington, and effective January 4, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner