

Rulemaking Analysis

CONSIDERATIONS REGARDING AGENCY DECISIONS DURING THE RULEMAKING PROCESS¹

Docket number UW-980082

Date: November 22, 1999

Staff lead Danny P. Kermode

Division/Section Utilities Water Division

Exempt manager authorizing this review: Dixie Linnenbrink

Approved for Rulemaking Proceeding: (mgr's Init/date) Dixie 11-30-99

Subject of rule Water Regulation for Investor Owned Water Companies

Rule title: Governors Executive Order 97-02 - Review of Water Rules

Expected schedule Firm Target Expected

CR 101 public meeting 2/11/98

CR 102 public meeting 06/02/99

Adoption hearing 08/11/99

Filing with code reviser (effective 30 days later): 11/30/99

¹NOTE: Most of the information in this form is required to be contained in the agency's rulemaking file or in one or more of the rulemaking notices (CR-101 and CR-102) for permanent rules. The information is encouraged (in one case required) for emergency rules. *Some of the information called for in this form may not be available when the topic of a rule is first discussed. That information is generally required no later than the time a CR-102 is filed. Please provide all information now available, indicate when other information will be available, and update the information as it becomes available.* This form can be made available on a shared drive and then printed at the conclusion of a proceeding for inclusion in the file.

RND

1. What persons or industries will be affected by this proposal? What agency rulemaking lists identify such persons? Who are significant interests not on these lists?

(a) These proposed rules will affect only those companies that fall under WUTC jurisdiction. Currently, the WUTC regulates approximately 70 water companies of the 481 companies reporting under SIC 4941 or 14.6% of the total reported industry.

(b) The commission maintains a list of the regulated water companies and a list of interested parties whom have identified themselves by requesting copies of all rulemaking notices, communications, rulemaking documents, or have requested to be kept on the list.

(c) All parties with significant interests have been included in either of the above lists.

2. Why is this rulemaking being proposed?

The Governor's Executive Order 97-02 requires all agencies to review their rules that have a significant effects on businesses, labor, consumers, and the environment. The Commission has determined that the current rules need to be:

- retained but rewritten, or
- amended,
- repealed., or
- supplemented with new provisions.

The following information is required for a statement to be included in the rulemaking file no later than the CR-102 filing date; it must be updated based on additional information received by the agency during the rule making process.

3. What is the objective of this rule?

The objective of the water rulemaking review is to assure that the current water company rules of the Commission:

- Comply with statutes that authorize them
- Are not obsolete or already duplicated in other rules
- Are providing the results that they were originally intended to achieve
- Are written and organized in a clear and concise manner
- Are readily understood by those that the rule applies to
- Are adequate for the Commission to discharge its obligation to regulate in the public interest.

4. Would changes to other rules or statutes achieve the same objective?

No.

5. **What are the anticipated environmental and financial consequences of adopting and not adopting the proposal, recognizing the difficulty of quantifying some consequences?**
- A. **Environmental consequences.**
None known.
- B. **Financial consequences.**
See the Small Business Economic Impact Statement (SBEIS) dated May 26, 1999.

6. **Why is this a reasonable, cost-effective manner to achieve the regulatory objective, in light of available alternatives including no rulemaking?**

When considering the many objectives and results expected from this rulemaking, including the clarification of Commission policies and consumer rights, alternatives such as industry or public information campaigns would be vastly more expensive. The rulemaking also provides for the codification of current policy and clarification of the current rules which are objectives that can only be achieved through a rulemaking.

7. **Will the proposed changes overlap or conflict with local, state, or federal law or the rules of this or any other state or federal agency?**
No.

How will the proposal be coordinated with other governments?

The Washington State Department of Health has been actively involved in this rulemaking. No other agency has jurisdiction.

Is an Agency Rules Coordinating Committee needed under EO 93-06?

No. As part of the process the Commission conducted an outreach to government agencies.
1. State Agencies - Washington State Department of Health.

8. (a) **Could alternative forms of regulation achieve the same goals?**
No, fulfilling the Commission's obligation to implement statutes involving water regulation requires the implementation of standards and processes that can only be achieved by rule.
- (b) **Does the proposed rule include performance standards? Could performance standards be used in lieu of behavior standards or manner of compliance?**
Yes, many of the proposed rules have embedded in them performance standards that must be met by the company. An example of a performance standard is the requirement, in WAC 480-110-325 application for service that the company inform the applicant within ten days of the company's intention to provide service or deny service. The performance standards have been placed in the rules that allow for their use.
9. Is this proposal made only to comply with federal law? No If so, does it contain significant differences from comparable federal rules or standards, or does it propose differences in application to public and private entities? N/A If so, provide a written analysis explaining the differences, evaluating their consequences, and stating the

reasons for adopting the rule as drafted as opposed to a rule consistent with federal regulation. N/A

Is a CR-101 required? Yes

[See, RCW 34.05.010(3)(c) --exemptions for emergency rules; Internal rules not submitting an outsider to sanctions; rules merely adopting or incorporating federal laws or rules or Washington law or rules; rules whose content is required by statute; rules setting fees that are explicitly and specifically dictated by statute; and rules that adopt, amend or repeal practices or procedures for agency hearings or a process for applying to an agency for a license or permit]. NOTE: to assure constituent involvement and support it may often be better to file a CR-101 and engage in prerulemaking discussions even if not required.

The following information is required for a statement to be included in the preproposal notice (CR-101):

10. **What is the specific statutory authority for the rule?**
RCW 80.01.040 and RCW 80.04.160
11. **List specific reasons why the rule is needed:**
See item 2 above.
12. **What are the goals of the proposal? Why are rules on the topic needed and what might they accomplish?**
See item 3 above.
13. (a) **What process will be used for developing the rule?**
() Negotiated rulemaking () Pilot rulemaking
(X) Agency study, consisting of [check as many as apply]:
 (X) Workshops and dialogue (X) Public meetings
 (X) Written comment () Other _____
() Other _____
- (b) **What is the process by which interested persons can participate in developing the rule? NOTE: If the selected process fails to provide an opportunity for interested persons to "participate" in the rulemaking process prior to publication in the CR-102, the agency must place a written justification for failing to do so in the rulemaking file. "Participate" means the opportunity to do more than the statutory minimum of offering written and oral comments. State the justification here and in your staff support memorandum for the request for Commissioner authorization to file the CR-102**

Interested persons participated in developing the rule through dialogue occurring in a series of meetings, workshops and public comment opportunities. The first meeting was public forum, intended to gather as much information as possible from the regulated public service companies and any other interested persons. Notice of the public forum was sent to all regulated companies and interested parties.

Stakeholders involvement was beyond written comments. Stakeholders were asked to participate in the drafting of the rule proposal, aimed at reaching consensus.

(c) What other federal and state agencies have jurisdiction over this subject?

The Washington State Department of Health.

What process will be used to coordinate with that/those agencies?

The Washington State Department of Health (DOH) has been active in the rulemaking process by actively providing comments both written and oral. DOH participated in a stakeholder subcommittee meeting on the scope of rules relating to water quality issues.

The following information will guide rule drafting and approach and help assure that the rulemaking file contains sufficient evidence to support the eventual decision:

14. Does the rule promote voluntary compliance through technical assistance?

The rules are designed to promote companies to become more self-reliant with minimal input from Commission staff.

15. List specific evidence (facts) that supports the reasons why the rule is needed:

The rulemaking was needed to address a number of issues. The Commission is currently applying policies that have not yet be codified such as the policies related to the approval of facility charges. The Commission rules currently lack requirements for customer notice, customer notice is a vital part of the regulatory process. The rules need to be rewritten in clear and concise language as directed by the Governor's Executive Order 97-02. Some of the words and terms in the current glossary are not needed or no longer used and new words or terms need to be added to provide clarification of their usage within the proposed rules. The current rules do not provide clear guidance regarding the Commission's method for determining jurisdiction.

For an emergency rule -- Not Applicable

16. Answer either (a) or (b):

a. Why is the immediate adoption, amendment or repeal necessary for the preservation of the public health, safety, or general welfare, to the extent that observing the time requirements for notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest?

b. What state or federal law, or federal rule, or federal deadline for receipt of federal funds, requires the immediate adoption of this rule?

**Preliminary Small Business Economic Impact Statement (SBEIS)
analysis:**

17. **What industry is (industries are) affected by the proposal (4-digit Standard Industrial Classification[s]):**
Water Supply SIC 4941
18. **What elements of the rule may impose a cost on business?**
See SBEIS prepared May 26, 1999.
19. **What are the costs of compliance?**
See SBEIS prepared May 26, 1999.
20. **Are the costs more than minor [that is, tiny].** Yes. See SBEIS prepared May 26, 1999.

NOTE: If an SBEIS is required, special notice requirements exist under RCW 19.85.070. The agency must either notify affected small businesses and trade associations of the proposed rulemaking or notify media likely to serve such small businesses of the proposal.

RCW 19.85.040 and .030 state steps that the agency must take in preparing and using an SBEIS. Loosely paraphrased, they include: Obtain detailed information from businesses regarding the impact of the proposed rule on costs and revenues; Conduct a detailed economic analysis to determine the economic impact on small and large businesses and develop cost ratios.

- 20a **Does the rule impose a proportionately higher economic burden on small business?**
No.
If so, the agency should modify the proposal to mitigate the impact on small business.

Confer with your ALS adviser and the assistant attorney general if an SBEIS is needed to define the scope of the statement and the process by which you will accomplish it.

SEPA Requirements:

21. Consult SEPA rules to determine whether the proposed action is exempt from SEPA. With minor exceptions, *programs* administered by the agency in 1978 are exempt. If the proposal is not exempt, prepare a SEPA checklist and, as needed, an environmental impact statement.
N/A

POST-ADOPTION Requirements:

- 22. List the commenters at the adoption meeting, state the suggestions they made, identify those that were rejected by the Commission, and state the Commission's reasons for rejecting the suggestions.**
Refer to the final adoption order for the discussion of commenters and the reasons for rejection of suggestions.
- 23. List any changes that were made in the text of the rule between filing the CR-102 and adopting the rule, and state the Commission's reasons for making those changes.**
Refer to the final adoption order for the discussion of changes to the proposed rules as filed with the CR-102 and the final adopted rules.