

Docket No. TV-971477

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Rulemaking for Motor Carriers of Household Goods

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Recommendation:

(1) Repeal all rules in chapter 480-12 WAC, except WAC 480-12-100 and 480-12-375, and (2) Adopt a new chapter 480-15 WAC governing carriers of household goods.

Discussion:

1. Background:

Chapter 81.80 RCW requires the Commission to regulate household goods carriers by issuing permits to carriers if they are fit, willing and able to provide service, the proposed service is in the public interest and granting authority is necessary for the current and future public convenience and necessity. Under the same chapter, the Commission must also establish fair, just and reasonable rates for household goods carriers and ensure household goods carriers operate in a safe manner.

Historically, Chapter 81.80 RCW has governed all motor carriers of property including those transporting general freight and specialized commodities, such as household goods. However, in late 1994, Congress passed and the President signed the Federal Aviation Authorization Act, which preempted state regulation of rates, routes, and services of motor carriers of property, except household goods carriers, brokers, and freight forwarders. In 1995, Congress passed and the President signed the ICC Termination Act which preempted most state regulation of brokers and freight forwarders and redefined household goods to exclude office and commercial moves

from state regulation. Since that time, many states have significantly changed their method of regulating household goods, from complete deregulation to more modest changes.

2. The Rulemaking Process:

On November 4, 1997, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Code Reviser, giving notice of its intent to review all rules in chapter 480-12 WAC governing household goods carriers, as well as freight forwarders and brokers. The Commission indicated it would review the rules in Chapter 480-12 in compliance with Executive Order 97-02, Commission Docket No. A-971104, and the Commission's strategic plan. In November 1997, the Commission also mailed a letter to interested parties stating the Commission would review all rules in Chapter 480-12 WAC with the purpose of considering easing entry, providing rate flexibility, strengthening consumer protection rules, and clearly defining the transportation of household goods and any other issues stakeholders wanted to address.

On August 12, 1998, the Commission directed the Secretary to file a Notice of Proposed Rulemaking (CR-102) and a Small Business Economic Impact Statement (SBEIS) with the Code Reviser to begin the process of establishing a new chapter of rules governing carriers of household goods. The Commission noted on the CR-102 that the proposed rules would ease entry requirements, eliminate barriers to areas of operations, allow pricing flexibility, strengthen consumer protection elements, and clarify commission policy regarding the definition of household goods.

During the discussion phase of this rulemaking (prior to filing the CR-102), staff concluded that brokers should be discussed in a separate rulemaking and is therefore recommending that WAC 480-12-100 and WAC 480-12-375 be retained in Chapter 480-12 WAC.

Since January 1998, staff and other participants have developed several different drafts of rules. Since that time, staff has held several workshops, stakeholder meetings, and drafting sessions, and has solicited written comments to seek and encourage involvement of all interested persons to define how rules should be changed to promote competition within the industry, increase consumer choice, provide stronger consumer protection, allow carriers to expand their operations, and provide an opportunity for new carriers to enter the market. The Commission provided five formal opportunities for written comments and held numerous individual discussions. A summary of all comments received since the CR-102 was filed, and staff's response to those comments is included as Attachment 3 to this memorandum.

Staff wishes to thank all those who participated in the process: Individual consumers, representatives of the Consumer Protection and Public Counsel Divisions of the Attorney General's Office, representatives and members of the Washington Movers Conference, representatives of the container storage and transportation industry, representatives of the Office of State Procurement, State of Washington, representatives of the Better Business Bureau, non-permitted carriers, representatives and members of the Washington Association of Independent Movers, and state legislators. The staff and these participants have developed the proposed rules which accomplish the goals of the rulemaking. A chart listing the participation of all stakeholders throughout the rulemaking process is included as Attachment 4 to this memorandum.

In addition to working with stakeholders, staff has reviewed the historical policies and decisions of the Commission concerning household goods carriers, other state and federal practices, intrastate carrier practices, and the concerns of consumers. Staff has also sought to promote the regulatory strategies set forth in the Commission's strategic plan.

Copies of all meeting notices mailed by the Commission, discussion drafts, letters and e-mails, any responses by staff, and all materials upon which staff has relied in this rulemaking process are included in the rulemaking file, which is located in the Commission's records management section.

3. Overview of the proposed rule changes:

The proposed rules make several significant changes to existing rules. They seek to ease entry requirements by changing the application process and interpreting the standards of public interest and public convenience and necessity to more clearly address the concerns of the consumer. The proposed rules require applicants for permanent authority to apply for and obtain temporary authority so that the Commission may better determine whether a carrier should be granted permanent authority. The proposed rules will allow carriers greater opportunities to operate in the state by eliminating rules which require carriers to obtain specific operating authority (local cartage and commercial zones) to provide services in specific cities and metropolitan areas. The proposed rules also provide that all carriers will hold state-wide authority unless they request county-wide authority. These changes are necessary to allow more carriers to provide household goods moving services and will allow existing carriers to expand their operations at the same time. It is expected these changes will increase both competition and consumer choice.

Additionally, the proposed rules provide for pricing flexibility through the use of an interim rate band which allows carriers to price their services within a range of the current tariff rates. This policy change is necessary to allow for service expansion in the industry and to increase consumer choice where price is a determining factor.

The proposed rules strengthen consumer protection by capping the amount a carrier can charge a consumer above the amount quoted in an estimate, providing carriers the option to issue binding estimates, clarifying credit options, reducing carrier complaint response time, and providing a more complete range of valuation options for consumers.

The proposed rules also clarify Commission policy and authority in the areas of compliance, complaint resolution, and what constitutes the transportation of household goods.

Finally, while the content of many rules remains the same, especially those governing safety, the proposed rules are drafted in clear language, as directed in the Governor's Executive Order 97-02, and are reorganized to allow users to more easily locate rules.

Based upon comments received since the CR-102 was filed, staff believes it has reached consensus with stakeholders on several rule changes. These include rules concerning cargo insurance (WAC 480-15-550), valuation (WAC 480-15-620), payment options concerning credit

(WAC 480-15-795), and the amount of time a carrier has to respond to the Commission about a complaint (WAC 480-15-890). These proposed rules were fully discussed in the staff's August 12, 1998, memorandum recommending the Commission file a notice of proposed rulemaking with the Code Reviser. Other issues remain contested by some participants and are discussed below.

4. Key Issues

a. Easing Entry

Easing entry into the current household goods carrier market became a primary goal for the rulemaking due to the following factors and changes in market conditions: Directives in Governor Locke's Executive Order 97-02 for agencies to completely review all existing regulations for need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost and fairness; sweeping changes in regulation by the federal government of motor carriers, including household goods carriers; regulatory strategies set forth in the Commission's strategic plans; as well as concerns expressed by the public and the Commission's compliance staff, and the difficulties encountered by carriers wishing to enter the household goods market.

Gaining entry into the household goods moving industry in Washington has been expensive and restricted. Comments by the Association of Independent Movers indicate that no applications have been granted since 1948 to movers who are not members of the Washington Movers Conference. In reality, the Commission has issued permits to new carriers, although not many. For example, the Commission issued 7 applications for household goods authority since September 1990, some of which were applications to transfer existing authority. In addition, the Association asserts that the number of active moving companies has shrunk in that same time period from about 150 to 100 active carriers. During this same time period, the population of the state of Washington has grown significantly since that time. For example, the state population has grown nearly 17 percent from 1990 to 1998.

Current applicants for household goods moving authority must follow rules that previously applied to the entire trucking industry before all but household goods carriage was deregulated by the federal government. One of the challenges of this rulemaking has been to fashion rules that make sense for this smaller industry segment out of rules formerly applicable to all intrastate motor carriers.

In focusing on easing entry, the staff has remained mindful of the statutory requirements in chapter 81.80 RCW. The Commission is required, by statute, to apply a "public convenience and necessity" standard when considering applications for new authority to operate as a household goods carrier. The Commission must also consider whether an applicant is "fit, willing and able" to provide service when considering whether to grant authority to operate as a household goods carrier. Staff believes the new processes identified in the rules concerning temporary and permanent authority allow the applicant to more effectively prove its ability to provide quality service, and the current or future need for service. The proposed rules governing new entrants allow the Commission to better determine whether a carrier is fit, willing and able to provide service by monitoring the service provided to consumers under a temporary permit.

Under the present rules, an applicant for permanent household goods moving authority must prove a present or future need for its services, based primarily upon testimony by shippers. This kind of standard made sense for carriers who would carry a commercial commodity over and over again for the same shipper: It makes no sense for a household goods mover who serves individual consumers who move, on average, only once every seven years.

The current rules allow any existing carrier to “protest” the grant of new authority. Given that the Movers Conference and its members have protested nearly every application for new authority, the only way for a new moving company to obtain a permit has been to purchase an existing permit at inflated prices. The prices cited by the Movers Conference as purchase prices for existing permits are, to the Commission Staff, evidence that the current entry process is not working, and that it needs to be opened up.

The proposed rules require new applicants to apply for authority, receive Commission approval to operate, and operate for at least 180 days under temporary authority before the Commission will consider granting permanent authority. During this 180 day period, staff will evaluate the applicant’s fitness, willingness and ability to provide service as a household goods carrier, whether the service is in the public interest and whether the service is needed for the current or future public convenience and necessity. Staff will also provide the applicant with an appropriate level of education, technical assistance, safety evaluation, and will monitor customer satisfaction of the services provided by the applicant. Based on this analysis, the Commission will be in a better position to determine if the applicant is fit, willing and able to provide service, if that service is in the public interest, and if that service is needed for the current or future “public convenience and necessity.”

The proposed rules allow any interested person to provide comment to the Commission about the grant of temporary authority and to provide comment on a pending application for permanent authority. The proposed rules are intended to allow anyone, not just existing carriers, an opportunity to provide information to the Commission, to determine whether to grant or deny the application.

The Washington Movers Conference appears to have supported easing entry in the hearing concerning the Commission’s interpretive statement on temporary authority and during the rulemaking hearing on the CR-102. The Conference appears to be withdrawing that support at this point. The Association of Independent Movers supports staff’s proposal with the exception of requiring personal financial information and providing shipper support statements. See Attachment 1: WAC 480-15-280(3)(a) and WAC 480-15-330(4)(a). Consumer interests support easing entry requirements.

In order to bring the creativity, service options, and efficiency of a competitive market to the intrastate household goods moving industry in Washington, staff believes one key is to open up, or ease, entry process requirements. The other key is rate flexibility which is addressed below.

b. Eliminating Area of Operations Restrictions

Existing Commission rules created a patchwork of authorized areas of operations, such that a carrier with authority to serve King County could not serve Seattle unless the carrier also had local cartage or commercial zone authority for the city. Staff proposes to eliminate rules governing local cartage and commercial zones and to grant household goods carriers authority to operate statewide unless a carrier chooses to provide service in a smaller area. Staff proposes the smallest area in which a carrier may restrict its services would be at the county level, and thus no city level authority may be requested or granted. See Attachment 1: WAC 480-15-190. Staff believes it is in the public interest to eliminate restrictions that limit consumer choice and make enforcement more difficult. Staff also believes carriers will benefit from these proposed rule changes. Under the proposed rules, the opportunities for business growth will not be hampered by artificial boundaries.

As of the CR-102 filing, the Washington Movers Conference was opposed to eliminating local cartage zones.

c. Rate Flexibility

The second essential change necessary to open up the household goods moving industry to market influences is rate flexibility. Easing entry will only be effective if existing and new carriers are allowed flexibility in pricing different service options. This issue is discussed in detail in Attachment 2, staff's memorandum concerning the economics of banded rates.

The interim rule proposes a band of rates carriers may offer, set at 15% above and 35% below the existing tariff rates in effect on the adoption date of these rules. See Attachment 1: WAC 480-15-490. Attachment 2 describes the methodology and reasons these percentages are recommended.

The Washington Movers Conference and those representing its position believe it is inappropriate for the Commission to set an interim banded rate because the percentages proposed by staff did not result from a fully allocated cost study. Staff does not believe a fully allocated cost study based on the current market environment would be useful in setting rates for a more competitive environment. Easing entry in conjunction with rate flexibility will transform the industry structure from a closed to an open market. For this reason, a fully allocated cost study would be an inappropriate basis to set a band of rates.

Staff believes the new market structure must have time to develop before any useful or meaningful cost information can be gleaned. Further, staff believes a fully allocated cost structure is not the correct method on which to review rates for the new market structure in this industry. Staff commits to recommending to the Commissioners what they believe would be the correct model to set rates not later than October 1999. If the proposed rules are adopted, staff believes the market structure would be adequate enough in two years to perform a meaningful cost study. Attachment 2 more fully describes what indices would be used to determine the market structure.

The Washington Movers Conference supports the concept of banded rates but opposes the percentages proposed by staff. The Association of Independent Movers supports the staff's

proposal but would prefer no lower limit on the banded rates. Consumer interests support pricing flexibility at the percentages proposed by staff.

d. Estimate Percentage Limits

The Commission has received several complaints from consumers regarding underestimating, and issues penalties against carriers for this practice. Underestimating does not appear to be as great a problem in Washington as in other states, such as New York and Florida, and in interstate moves. For example, the National Association of Attorneys General, in comments on a recent Federal Highway Administration rulemaking on household goods carriers, noted that “[n]umerous consumer complaints that we have received over that past several years reveal a troubling pattern of misleadingly low estimates by carriers. . .” However, the staff proposes taking a proactive approach to strengthening consumer protection rules. Further, when the Commission does receive complaints from consumers, even under our stringent existing rules, the nature of the complaint is often very serious, e.g., 200% above the estimate.

The strongest protection for consumers proposed in these rules sets a limit on the amount a carrier may charge a customer above their non-binding written estimate. The proposed rule states a carrier may not charge more than 25% above its written estimate (plus supplemental estimates) for an hourly-rated move, nor may a carrier charge more than 15% above its long-distance rated moves. Accessorial charges are also limited to 15% above the written estimate. See

Attachment 1: WAC 480-15-690.

The proposed rule will make carriers accountable for the written estimates they provide to their customers. The percentages are set at the level the Commission penalizes a carrier for underestimating its bid. Under existing rules, if a carrier underestimates the cost of a move by the percentages noted above, the Commission may penalize the carrier but the consumer is still required to pay the full amount. The proposed rules allow the Commission to not only penalize the carrier but also provide relief to the consumer. Lastly, this rule would allow a carrier the flexibility to satisfy its customer in a way that has not been possible in the past. Carriers have not had authority to say, “We made a mistake in our estimate and do not want to charge our customer for that mistake.”

The Washington Movers Conference opposes this proposed rule. Consumer interests support this proposed rule.

e. Binding Estimates

The second strongest protection for consumers in these proposed rules concerns binding estimates. The current rules do not allow for this option. Staff proposes that, at the carrier’s option, it may offer a binding estimate to its customer. See Attachment 1: WAC 480-15-630. Binding estimates are allowed for interstate moves. Allowing binding estimates at the intrastate level will reflect what some carriers offer their Washington customers for interstate moves. The household goods transportation industry is confusing and complicated to consumers who do not routinely transact business to move property. Informal consumer complaints and inquiries received by the Commission often center around misunderstanding transportation terminology, tariff language, and the concept of regulating an industry regarding pricing. Staff believes

binding estimates will aid in eliminating some confusion and will increase consumer confidence that the written binding estimate is the price they will pay.

The Washington Movers Conference opposes this proposed rule. Consumer interests support this proposed rule.

f. Definition

The proposed rules define household goods by clarifying that household goods refer to residential rather than commercial goods, and clarifies the services that fall under Commission regulation. Previously, the Commission has excluded from regulation “the transportation of customer packed and sealed self storage containers when no accessorial services are provided by the carrier in connection with the transportation of the container” through staff opinion of the permit interpretation committee. Staff does not believe the transportation of stage containers involves the same need for consumer protection as a typical household goods move. Staff has reviewed and considered opinions and opinion letters concerning the classification of the transportation of storage containers issued by the Federal Highway Administration and several other states. The proposed rule is consistent with the determination reached in other jurisdictions. See Attachment 1: WAC 480-15-020.

The Washington Movers Conference and the Association of Independent Movers object to this proposed rule. However, representatives of the container storage and transportation industry support the proposed rule.

g. Compliance Rules

The proposed rules in Part 1.3 describe authority the legislation has given to the Commission to enforce the state laws and rules, describe what actions the Commission may take in any given circumstance, and describe the Commission’s policy on compliance. These rules are offered so a carrier may know what to expect and what options are available to the Commission to address non-compliance.

The Washington Movers Conference does not believe the proposed rules concerning compliance are sufficient.

h. Rule Waivers

The proposed rules include a new provision allowing carriers to request, and the Commission to consider granting, rule waivers. The Commission will grant a waiver when doing so is consistent with the public interest, the purposes underlying regulation, and sound public policy, and is consistent with applicable statutes. See Attachment 1: WAC 480-15-030. Further, comparable rule waiver provisions presently exist in rules governing other industries regulated by the Commission.

The Washington Movers Conference opposes this proposed rule.

5. Rule changes since the CR-102 was filed:

Based on comments staff has received since the CR-102 was filed, staff has drafted the following clarifications to the proposed rules:

- a. WAC 480-15-630 (b)(iii) A binding estimate cannot exceed the highest authorized tariff rate. If a binding estimate exceeds the highest tariff rate, the carrier may not collect more than the highest authorized tariff rate.
- b. WAC 480-15-660 (2) What rates must I use to prepare a supplemental estimate? You must use the same rates as you used in determining charges for the original estimate.
- c. WAC 480-15-780 (8) When may I refuse to provide service to a shipper? You do not have suitable equipment necessary to perform the service.
- d. WAC 480-15-800 What must I do if a shipper is not satisfied with my service? ... The shipper has nine months, from the date of delivery or the date the household goods should have been delivered, to file a claim for loss and damage. ...

The Washington Movers Conference is opposed to the clarifying changes in WAC 480-15-660(2) because they believe it penalizes a carrier who accommodates a customer who has made a last minute change. They believe the carrier should be able to charge a higher rate for services that were not included on the original estimate. Staff added this clarifying rule in response to the comments received at the August 12, 1998, open meeting regarding a perceived problem that an unscrupulous carrier could give an estimate at the bottom of the rate band knowing full well it could increase the price on a supplemental estimate. Staff's recommended rule proposal is not intended to penalize a carrier, it is intended to protect consumers. Staff believes the consumer benefits outweigh the Washington Movers Conference's concerns, because the carrier always has the option of not providing the additional service or providing the additional service at the hourly rate quoted in the original estimate.

6. Recommendations:

Staff believes the proposed rules are good public policy and will ultimately benefit both the industry and consumers. Therefore, staff recommends the Commission (1) repeal all rules in chapter 480-12 WAC, except WAC 480-12-100 and 480-12-375, and (2) adopt a new chapter 480-15 WAC governing carriers of household goods.

Attachments