

TV-090400 Rulemaking
Staff response to CR-105 comments
July 2009

	Section	Commenter	Comments	Staff Response
1.	General	Pontius	He is requesting a draft copy of the rule changes be mailed to him.	Mailed copy of OTS-2320.3 on July 8, 2009.
2.	General	Pontius	He does not want to lose any authority he holds at this time under CC20396 or G0212.	Commenter will not lose any authority under draft rules.
3.	010	Chapman	This should still refer to 480-12 for brokers and add 480-15 for HHG carriers.	Do not change: The reference in the prior rules to brokers and HHG carriers said that the federal government preempted state economic regulation of all carriers except brokers and HHG carriers on 1/1/95. We have removed this language since it is now 14 years later and preemption is a fact of the business and not a current change. There is no reason to keep the reference.
4.	010	Chapman	The rules also should apply to more than common carriers, as that is a specific class under RCW 81.80.010.	Do not change: The rules should and do apply to both common carriers and contract carriers. Since there is no practical or operational difference from UTC perspective between a common and contract carrier, we have defined a common carrier to include a contract carrier. See 480-14-040, “common carrier means any person who undertakes to transport property ... including under individual contracts or agreements ...”
5.	020	Chapman	Should retain in (3) “and regulations” as the commission has requirements that are not specifically in WAC rules. As drafted this would allow oral requests for exemptions or spray painted on the commission front door.	Do not change: This section specifically references an exemption from the rules, not an exemption from internal policies or requirements.

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6.	040	Chapman	This is not consistent with the definitions in RCW 81.80.010. It also “undefines” private carrier totally.	<p>Do not change: Although the definitions are not presented in 480-14-040 in a way that is identical to RCW 81.180.010, they are consistent. For the purposes of our rules, we have defined a common carrier to include the statutory definition of both a common and contract carrier. There is no practical or operational difference from UTC perspective between a common and contract carrier.</p> <p>Also, there is no reason to define a private carrier. These rules do not apply to private carriers.</p>
7.	040	Chapman	The terms “registered carrier” and “registered exempt” should be retained as they are still in operation and will need terms to classify them.	<p>Do not change: Although these types of interstate carriers may still operate, there is no reason to define them in these rules. The rules refer to interstate carriers as a total group and state that they must secure the appropriate operating authority and pay appropriate fees as required from USDOT or its successor agency (see 480-14-290 and 300). There is no reason to define each class of interstate carriers separately in our rules.</p>
8.	040	Chapman	Suggest adding terms for interstate leasing company and interstate broker.	<p>Do not change: Again, there is no reason to define them in these rules. The rules refer to interstate carriers as a total group and state that they must secure the appropriate operating authority and pay appropriate fees as required from USDOT or its successor agency (see 480-14-290 and 300). There is no reason to define each class of interstate carriers separately in our rules.</p>

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9.	050	Chapman	Suggest changing “common carrier” to motor carrier to be more accurate.	Do not change: Since “common carrier” is defined as “... any person who undertakes to transport property ... including under individual contracts or agreements ...” in 480-14-040, it is appropriately used in this section.
10.	090	Chapman	Retain requirement for the carrier to have an original permit in the office. This can still help the public and WSP compliance staff identify authorized carriers vs non-permit holders.	Do not change: There is no reason to retain the original permit. This rule is an artifact of full regulation. At that time, permits were a valuable commodity since they gave the carrier a restricted territory in which to haul. Permits were printed on specially designed vellum paper and imprinted with the UTC seal. None of this is true any longer. Permits are now printed on regular bond paper by a laser printer and are not imprinted with a seal. Carriers get statewide authority to haul any product (except hazardous materials has additional requirements). There is no sensible reason for a carrier to retain the original permit.
11.	100	Chapman	As drafted, a partnership, LLC, LLP, trust or an individual could not operate under their name. They would be required to obtain a trade or assumed name. This is also not consistent with the permit application process as it refers to d/b/a names, not trade name.	Do not change: This is a misinterpretation of the rule. The rule states, “Every common carrier must conduct its operations under its corporate, trade or assumed name as described in its permit.” If the carrier’s “trade name” is the name of its partnership, LLC, LLP, trust or an individual and it is so named on the permit, then the carrier can operate in that name.
12.	120	Chapman	This should be required in writing as that is the long standing practice for the permit licensing section as I understand it. This would help prevent address errors in the future.	Do not change: This is already required in writing. The rule states, “A carrier must ... report to the commission in writing any change in the address ...”

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13.	150	Chapman	Change common carrier to common or contract carrier.	Do not change: See comments for 010, above: The rules should and do apply to both common carriers and contract carriers. Since there is no practical or operational difference from UTC perspective between a common and contract carrier, we have defined a common carrier to include a contract carrier. See 480-14-040, “common carrier means any person who undertakes to transport property ... including under individual contracts or agreements ...”
14.	180	Chapman	Change common carrier to common or contract carrier to be consistent with RCWs.	Do not change: See comments for 010, above: The rules should and do apply to both common carriers and contract carriers. Since there is no practical or operational difference from UTC perspective between a common and contract carrier, we have defined a common carrier to include a contract carrier. See 480-14-040, “common carrier means any person who undertakes to transport property ... including under individual contracts or agreements ...”
15.	180	Chapman	Retain wording to require interstate carriers to register as required by federal law as FMCSA has not changed those regulations yet.	Do not change: The wording is deleted in 480-14-180, but retained in 480-14-290 and 300, which states that they must secure the appropriate operating authority and pay appropriate fees as required from USDOT or its successor agency.

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16.	180	Chapman	Retain section (4) to require application to be truthful.	Do not change: This rule stated, “applications for permits ... shall require that the applicant certify the truth of all information ...” There is no need in rule to prescribe what the application contains. The content of an applicant should be defined by the commission and staff and should be flexible enough that it can be changed when circumstances require it. Prescribing requirements in rule remove this flexibility. In addition, the application itself requires applicants to “declare and affirm that the information contained ... is true ...”
17.	190	Chapman	This wording would require the commission to issue permits in cases where it is not appropriate. Example: A carrier completes the application, pays the fee and files insurance. The corporation is not registered with the Secretary of State. As I read this, the commission would have to issue the permit since the form is complete. The same problem would exist if a carrier was out of service for interstate operations and applied for an intrastate permit. I think it should be revised to allow the commission to deny, dismiss or delay an intrastate permit for a carrier if their interstate operations are suspended or out of service for safety issues.	Do not change: This is a misunderstanding of the rule. 480-14-190 states, “The commission will issue a common carrier permit to any applicant that files an application satisfying the requirements of WAC 480-14-180 ...” In 480-140-180, it states that “The commission may refuse to accept any application until all required information is supplied.” And it states that even if it accepts an application, “... acceptance ... does not indicate ... approval, nor is the commission precluded from finding that the information presented ... is insufficient.” The requirements about what information is required is contained within the application itself, and the commission can reject or find insufficient any application that does not supply the required information. For example, Part A of the application states, “... the name must also match the corporate name as registered with the Secretary of State’s office.” This is a requirement of the application and the application can be rejected or found insufficient if the name does not match.

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18.	200	Chapman	Again, common vs common/contract carrier.	Do not change: See comments for 010, above: The rules should and do apply to both common carriers and contract carriers. Since there is no practical or operational difference from UTC perspective between a common and contract carrier, we have defined a common carrier to include a contract carrier. See 480-14-040, “common carrier means any person who undertakes to transport property ... including under individual contracts or agreements ...”
19.	210	Chapman	Add sections for changes to or from LLC since that is a very common business structure now, to make it clear. Similar standards should apply as to/from a corporation.	Change: Staff will add LLC to the provisions of 480-14-210.
20.	220	Chapman	Again, common vs common/contract carrier.	Do not change: See comments for 010, above: The rules should and do apply to both common carriers and contract carriers. Since there is no practical or operational difference from UTC perspective between a common and contract carrier, we have defined a common carrier to include a contract carrier. See 480-14-040, “common carrier means any person who undertakes to transport property ... including under individual contracts or agreements ...”
21.	220	Chapman	Add provision restricting reinstatement if a carrier is suspended or out of service for interstate operations.	Do not change: This change is not necessary. This rule only describes when a carrier may apply for reinstatement. It does not describe under what conditions the commission will grant reinstatement.
22.	230	Chapman	Retain “for cause” wording to suspend/cancel to allow commission regulatory flexibility.	Do not change: The only circumstances under which the commission can suspend a permit is for lack of insurance. This is clearly spelled out in the rules and the words “for cause” do not add value. Note that there are other circumstances under which the commission can cancel a permit as addressed in 480-14-230(3).

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23.	230		Note wording in the section about false information conflicts with removal of language in 180 removing “certify the truth” requirements.	Do not change: Staff does not believe this is a conflict. In 180, it stated that “applications for permits ... shall require that the applicant certify the truth of all information ...” This rule prescribed what the application contains. In 230, it states the commission can cancel a permit because a carrier submitted “false, misleading or inaccurate information.” These are two different things – the first requirements on an application and the second reasons a permit can be canceled. There is not a conflict.

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24.	250	Chapman	This should be revised for all the hazardous materials parts to match current federal regulations 49 CFR 397.9 as the terms “Class A” and “Class B” have not been valid for about 15 years. They should be revised to “Class 1” etc.	<p>Change: Staff will revise the language to read:</p> <p>For vehicles with gross vehicle weight ratings of ten thousand pounds or more ...</p> <p>Hazardous substances, as defined in 49 Code of Federal Regulations (CFR) 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk <u>Division 1.1, 1.2 and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2 Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403. quantity radioactive materials as defined in 49 CFR 173.455.</u></p> <p>Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in 2. above or in 4. below.</p> <p>Any quantity of <u>Division 1.1, 1.2, or 1.3 material Class A or B explosives; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material poison gas (Poison A); or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403. quantity radioactive materials as defined in 49 CFR 173.455.</u></p>

				<p>For vehicle with gross vehicle weight ratings less than ten thousand pounds ...</p> <p>Any quantity of <u>Division 1.1, 1.2, or 1.3 material Class A or B explosives</u>; any quantity of <u>a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material poison gas (Poison A)</u>; or highway route controlled quantities of a <u>Class 7 material, as defined in 49 CFR 173.403.</u> quantity radioactive materials as defined in 49 CFR 173.455.</p>
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25.	250	Chapman	Federal MCSAP grants require this section be retained for interstate (Refers to 250(d)).	Do not change: First, staff finds no reference in the MCSAP grant that requires states to enforce interstate insurance requirements. Second, the language in (d) stated that a registered interstate carrier ... “may provide evidence of insurance ...” This section did not require any proof of insurance from an interstate carrier.
26.	290	Chapman	Go back to old wording as 49 CFR still has these issues.	Do not change: There is no reason to define each type of interstate carrier in these rules. The rules refer to interstate carriers as a total group and state that they must secure the appropriate operating authority and pay appropriate fees as required from USDOT or its successor agency (see 480-14-290 and 300). There is no reason to define each class of interstate carriers separately in our rules.
27.	300	Chapman	Include private, exempt, broker, etc., as UCR list it.	Do not change: See comments for 290, above: There is no reason to define each type of interstate carrier in these rules. The rules refer to interstate carriers as a total group and state that they must secure the appropriate operating authority and pay appropriate fees as required from USDOT or its successor agency (see 480-14-290 and 300). There is no reason to define each class of interstate carriers separately in our rules.