

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Amending Chapter)	
480-12 to Repeal Sections -075, -082,)	DOCKET NO. TV-941290
-085, -090, -095, -105, -110, -131, -137,)	
-140, -155, -160, -181, -195, -196, -205,)	GENERAL ORDER NO. R-435
-225, -230, -233, -240, -240, -253, -260,)	
-305, -310, -321, -322, -380, -500, -510,)	ORDER AMENDING AND
-520; and to Adopt WAC 480-12-001;)	ADOPTING RULES PERMANENTLY
and Adopting Chapter 480-14 WAC)	
Relating to Motor Carriers.)	
.)	

This is a permanent rulemaking proceeding that is designed to repeal, amend and adopt permanent rules relating to motor carriers.

The Washington Utilities and Transportation Commission takes this action under Notice WSR #95-17-125, filed with the Code Reviser on August 23, 1995. The Commission brings this proceeding pursuant to RCW 80.01.040 and RCW 34.05.350. This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

The facts leading to this rulemaking are as follows:

In August 1994, the President signed federal legislation preempting the states' rights to regulate most economic areas of intrastate motor carriage. This legislation became effective January 1, 1995. Because the Commission's rules governing motor carriers, specifically chapter 480-12 WAC, includes economic regulation, it must revise those rules to be consistent with the federal law. Failure to make changes in Commission rules would hamper the implementation of state laws that remain effective to govern motor carrier safety. The Commission has adopted the rules on an emergency basis pending completion of this permanent rulemaking.

In order to remain in compliance with federal requirements, the Washington Utilities and Transportation Commission adopted emergency alternative motor carrier rules which are consistent with federal legislation that became effective on January 1, 1995. Washington statutory changes enacted and signed in the 1995 legislative session that are now effective diverted some Commission jurisdiction over motor carriers to the Washington State Patrol. The Commission completed extensive outreach among regulated industry and has consulted with the Washington State Patrol in adopting the rules in this proceeding.

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

NOV 22 1995

TIME: 12:35
WSR 95-24-001

The federal legislation did not change the regulatory structure for household goods carriers or intrastate common carrier brokers. This means that the Commission needs two sets of motor carrier regulatory rules, one which includes economic regulation for those industries not affected by the federal legislation, and one which does not include economic regulation, for those industries preempted by the federal action. Because of this requirement, the Commission is leaving chapter 480-12 WAC in place, repealing the sections that do not apply to household goods carriers and to brokers. The Commission is establishing a new chapter, 480-14 WAC, for all other intrastate motor carriers.

A workshop was held to discuss the proposal with stakeholders on September 22, 1995 in Kent, Washington. Eleven persons attended the workshop. The Commission notes that stakeholder participation actually began in September 1994, with planning for emergency rules after the federal law was enacted. The Commission expresses its appreciation for the extensive and consistent participation of affected interests in the rulemaking.

The Commission scheduled this matter for oral comment and adoption under Notice WSR #95-17-125, for 9:00 a.m., Wednesday, November 8, 1995, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission until September 27, 1995.

The rule change proposal was considered for adoption at the Commission's regularly scheduled open public meeting on November 8, 1995, before Chairman Sharon L. Nelson, Commissioner Richard Hemstad and Commissioner William R. Gillis. Cathie Anderson of the Commission Staff made oral comments and presented a written memorandum, supporting the proposal and describing the need for the proposed rule amendments and for certain changes from the noticed proposal. She described the Commission Staff's discussions with industry representatives.

Commission Staff recommended withdrawing four proposed sections: 480-14-030, relating to interim permit effect, because the interim period has expired; 480-14-270, relating to pseudo leasing and 480-14-280, relating to diversion of freight, in response to stakeholder request, because the regulations are inconsistent with the present regulatory environment; 480-14-330, because the Commission will have no role in regulating private carriers; and 480-14-410, because the reports required in the proposed rule are no longer required for Commission regulatory responsibilities and the information is required by other agencies. The Commission accepts the recommendations.

Commission Staff also recommended deleting noticed section WAC 480-14-200, temporary authority, because applications for "permanent" authority can be processed in the same time as applications for temporary authority and temporary authority is not needed for today's operational realities. Staff recommended substituting a new 480-14-200 that would add safety requirements for carriers providing armored car service. The Commission accepts the recommendation.

Other non-editorial changes that the Commission makes from the text published in WSR 95-17-125 include the following:

In proposed WAC 480-14-060, adopting the most-current version of pertinent federal regulations;

In WAC 480-14-080, modifying the procedures for issuing rulebooks, notifying carriers of pending rulemakings, and distribution of newly-adopted rules to conform with current practice and statutory requirements;

In WAC 480-14-090, to delete a fee for issuing a replacement permit, as the procedure is inexpensive and costs of fee processing may exceed the fee received;

In WAC 480-14-140, to reduce the fees for applications, reflecting updated analysis of actual costs incurred in processing applications;

In WAC 480-14-150, adding language to permit the Commission to waive regulatory fees when the revenue is not required;

In WAC 480-14-170, to allow rather than mandate that the Commission require annual reports, so that none would be required if the annual fee is waived under WAC 480-14-150;

In WAC 480-14-180, to clarify that permits are required before conducting carrier operations in the state;

In WAC 480-14-230, to delete references to safety education classes, as the function will be transferred to the State Patrol;

In WAC 480-14-250, to reduce liability insurance requirements for certain vehicles to be consistent with federal requirements; and

In WAC 480-14-260, to delete a long list of requirements to be included in leases, as the elements are unnecessary in the current regulatory environment.

The Commission received written comments from Andrew Shafer, attorney, on behalf of Armored Car Dispatch; Andrew Shafer, attorney, on behalf of WTA (Washington Trucking Associations); Joshua Herington, Manager of Armored Truck Operations for Security Services, and from Martin Sangster, representing Loomis Armored, Inc. Mr. Shafer expressed opposition to including safety requirements at all in the proposal, inasmuch as safety jurisdiction is to be transferred to the Washington State Patrol. Because the proposed rules will be adopted by the Patrol in the initial phases of jurisdictional transition, the objection was withdrawn informally and was not later expressed. Mr. Shafer also expressed opposition to the level of fees required (which the Commission reduced in light of current projections and which it has made provision to waive if funds are not required).

192

Oral comments were also made by Martin Sangster and James Lonsberry, representing Loomis Armored, Inc., requesting amendment to staff-recommended WAC 480-14-200; Michael Duppenenthaler, registered practitioner, representing Kenneth J. Kellar, Inc., supporting staff-proposed language in WAC 480-14-200; and from Donald G. Lewis, representing the Washington State Patrol, successor agency to the Commission for enforcement of these rules after January 1, 1996, supporting staff language in WAC 480-14-200.

Mr. Sangster and Mr. Lonsberry in oral and written comments requested that the proposed language for armored cars be changed to include more high-value commodities and to lower the cash threshold for armored-car safety requirements. They cited safety to drivers, guards, and members of the public in support of their arguments. Mr. Duppenenthaler supported the proposed language, pointing out that many carriers now transport high-value commodities without substantial problems and that broadening the rule could impose burdensome requirements on many general freight carriers. Mr. Lewis also supported the proposed language, pointing out that the Washington State Patrol could review the rules in light of industry experience and its own law enforcement and safety experience, and make changes if needed. He stated that the Patrol accepts the Staff proposal as an appropriate beginning point.

The Commission rejects the arguments for change to the Staff proposal. The proposal appears to impose lower costs on industry and appears to be more workable in light of reasonable business requirements than would be required under the suggested changes. If experience proves that the proposal is insufficient, the Washington State Patrol can amend this regulation or promulgate its own requirements.

The Commission Staff memorandum presented to the Commission for consideration at the November 8, 1995, adoption hearing, as supplemented by the text of this Order, is adopted as the Commission's concise explanatory statement of (1) the comments upon the proposal and the Commission's response to those comments; (2) reasons for making changes from the text that was proposed; and (3) reasons for adopting the proposal.

This adoption of new rules, and repeal and amendment of existing rules, adversely affects no economic values and has no adverse environmental effect, in that the adopted rules, amendments, and repealers merely implement the changes required by federal law within the framework of existing Washington State statutes. The rule changes reduce the number and weight of requirements upon regulated industry.

In reviewing the entire record, the Commission determines that it should amend chapter 480-12 WAC to adopt WAC 480-12-001 and to repeal sections -075, -082, -085, -090, -095, -105, -110, -131, -137, -140, -155, -160, -181, -195, -196, -205, -225, -230, -233, -240, -253, -260, -305, -310, -321, -322, -380, -500, -510, -520, and should adopt a new chapter, 480-14 WAC, to read as set forth in Appendix A, attached to this order and included in it by this reference, to be effective on the thirty-first day following filing with the Code Reviser, pursuant to RCW 34.05. These rule changes will allow the Commission to comply with federal legislation.

ORDER

THE COMMISSION ORDERS That WAC 480-12-001, as set forth in the attached Appendix A, is amended, to take effect as a permanent rule of the Washington Utilities and Transportation Commission pursuant to RCW 34.05.380(2) on the expiration of thirty days following the date of filing.

THE COMMISSION FURTHER ORDERS That chapter 480-14 WAC, as set forth in the attached Appendix A, is adopted, to take effect as permanent rules of the Washington Utilities and Transportation Commission pursuant to RCW 34.05.380(2) on the expiration of thirty days following the date of filing.

THE COMMISSION FURTHER ORDERS That WAC 480-12-075, -082, -085, -090, -095, -105, -110, -131, -137, -140, -155, -160, -181, -195, -196, -205, -225, -230, -233, -240, -240, -253, -260, -305, -310, -321, -322, -380, -500, -510, -520, as set forth in the attached Appendix A, are repealed, to take effect pursuant to RCW 34.05.380(2) on the expiration of thirty days following the date of filing.

THE COMMISSION FURTHER ORDERS That this order and the rules set forth in Appendix A, attached, after being first recorded in the order register of the Washington Utilities and Transportation Commission, be forwarded to the code reviser for filing pursuant to chapters 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, this 22nd day of November 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

Number of Sections Adopted in Order to Comply with Federal Statute: New 38, amended 0, repealed 31; Federal Rules or Standards: New 13, amended 0, repealed 13; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 38, amended 0, repealed 31.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.