



SAMPLE

STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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August 19, 1998

The Honorable Bill Backlund
Washington State House of Representatives
8055 171st Ave NE
Redmond, WA 98052

Re: Status of Household Goods Movers Rulemaking (TV-971477)

Dear Representative Backlund:

For the last several months, the Washington Utilities and Transportation Commission (Commission) has been conducting a rulemaking process involving household goods movers in the State of Washington. The purpose of the rulemaking (Docket No. TV-971477) is to eliminate regulatory barriers to business entry, allow for greater pricing competition and increase consumer protection. To achieve this purpose, Commission Staff held several stakeholder meetings and workshops, received numerous comments from industry members and consumers, and rewrote the household goods movers rules several times in response to comments..


On July 22, 1998, the Commission began issuing temporary, six-month permits to new movers. This new practice is consistent with the proposed rule, and was supported by the Washington Movers' Conference and members of the industry. They do not, however, support other aspects of the proposed rule, particularly those changes related to pricing flexibility and consumer protection.

At the August 12, 1998, Open Meeting, the Commission voted unanimously to formally propose major revisions to the household goods movers rules. The Commission will accept comments on the proposed rule until September 30, 1998, for possible adoption on October 14, 1998.

I have enclosed a copy of a press release on the revised rule and a copy of the interpretive statement on eased entry for new movers. For more information, please visit the Commission's website, www.wutc.wa.gov, and browse our document library under Docket No. 971477.

If you have any questions, please contact me by e-mail at tosinski@wutc.wa.gov or by telephone at (360) 664-1204. I am available to assist you as needed.

Sincerely,

for 

Teresa C. Osinski
Legislative Liaison

Enclosures

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August 13, 1998

For immediate release

Open entry, consumer protection proposed for moving industry

OLYMPIA, Wash. - The Washington Utilities and Transportation Commission (WUTC) is proposing to enforce new protections for consumers who use the services of a professional mover. In the process, the WUTC hopes to make it easier for movers to do business within the state of Washington.

This week, the Commission voted unanimously to formally propose a major rewrite of the state rules governing household goods movers. The new rule that will eliminate regulatory barriers to business entry, allow for greater pricing competition and increase consumer protection.

The rules are a result of a lengthy series of workshops and meetings with members of the moving industry and consumers. While some of the issues addressed by the rule are supported by the industry, others aspects of the rule, particularly those providing consumer protection, are not supported.

Here are the major provisions of the new rule:

Eased Entry:

The proposed rule allows new movers to operate under a temporary six-month permit. Previously, new entrants had to demonstrate they were meeting a demand for service that could not be satisfied by existing carriers--a standard that was rarely met.

The new rule will allow moving companies to do business within the state on a temporary basis. During that time, WUTC staff will evaluate the firm's performance to ensure the carrier is providing reliable service. Successful completion of the temporary permit will lead to permanent authority.

Pricing Flexibility:

The proposed rule allows moving firms to charge rates that vary from the existing state-regulated rate for moving services. Carriers will be able to offer rates ranging from 35 percent below the current regulated rate to 15 percent above the current rate for a given service.

Consumer protection against lowball estimates:

Under the proposed rule, customers are not obligated to pay more than 25 percent over a carrier's

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written estimate for short-range moves (under 35 miles) and not more than 15 percent of the written estimate for long-range moves within the state. Under such circumstances, carriers will also be subject to monetary penalties.

Binding estimates:

The proposed rule will allow carriers to offer binding estimates. Current rules do not allow carriers to offer an estimate that is binding when the move is completed.

Other consumer protections:

The proposed rule includes minimum insurance requirements that are slightly higher than federal minimum and credit rules that allow carriers to accept personal checks and credit cards. Carriers also must accept for final payment the same credit arrangement (credit card or check) as was accepted for the deposit.

While the proposed rules received endorsements from consumers and some individual movers, the Washington Movers Conference is opposed to many of the rule's major provisions.

The WUTC will accept comment on the proposed rule until September 30 for possible adoption by the Commission on October 14. If adopted on that date, the rule will take effect by November 16.

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For more information contact: Tim Sweeney, 360-664-1118, tims@wutc.wa.gov

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JUL 22 1998

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	DOCKET NO. TV-980900
)	
the Application of Provisions of)	INTERPRETIVE STATEMENT
WAC 480-12-033)	REGARDING ISSUANCE OF
)	TEMPORARY PERMITS FOR
_____)	HOUSEHOLD GOODS CARRIERS

I. INTRODUCTION

This is an interpretive statement of the Washington Utilities and Transportation Commission (Commission) pursuant to RCW 34.05.010(8) and (15), 34.05.230(8),¹ and WAC 480-09-200. The purpose of this statement is to clarify the Commission's current application of the Commission rule articulating the grounds for issuing temporary permits to carriers of household goods under WAC 480-12-033. There currently exists some uncertainty as to how the Commission will apply that rule pending the existing rule-making proceeding in Docket No. TV-971477.

II. BACKGROUND

The Commission currently is reviewing the rules in chapter 480-12 WAC as that chapter relates to carriers of household goods regulated by the Commission. In the Preproposal Statement of Inquiry (CR-101) which initiated this proceeding, the Commission listed a number of reasons for reviewing the rules, including the following:

(2) In Docket No. TV-941290, the Commission limited existing chapter 480-12 WAC to a small segment of the motor carrier industry -- household goods movers and transportation brokers -- and created new chapter 480-14 for all other motor carriers. That left chapter 480-12 with some rules that appear less relevant in today's environment, or which may be unnecessarily complex or ill-suited for regulating the carriers that remain subject to the chapter.

(7) Current application of the "public convenience and necessity" standard may no longer be appropriate under emerging market and legal conditions. Rule changes could streamline and clarify household goods rules, provide more effective consumer protection, ease carrier entry and reduce costs associated with entering this market.

¹ Due to vetoes by the governor, the section referring to interpretive and policy statements does not have a number, but follows section 8 of the statute. See Reviser's Note to RCW 34.05.230.

While these issues remain under consideration in the rulemaking, the Commission continues to receive applications for temporary and permanent authority to transport household goods. Three applications for permanent authority and three applications for temporary authority to transport household goods are currently pending before the Commission. Two of the pending applications for permanent authority have been protested, while the other application has not. Two of the pending temporary applications have been filed by individuals who have operated in the past without authority, but now wish to comply with Commission regulations by obtaining a permit. One pending application has been filed by an existing permit holder.

The Commission may consider these applications before the rulemaking has been completed and new rules are adopted concerning the transportation of household goods. The outcome of these applications is uncertain, given comments made in public meetings in the rulemaking proceeding. Some persons have suggested that given current market realities and the need for more competition in the household goods market, the Commission should be liberal in granting applications for both temporary and permanent authority. In other words, they suggest that the Commission by case-by-case processing of permits should open up the household goods market to more competition by freely allowing new entrants into that market. Others suggest that because of the pending rule proceeding, no action should be taken on permit applications because the standards have been put in a state of flux by the rule proceeding. Finally, some suggest that new permit applications may be considered, but only under the standards and interpretations historically applied by the Commission.

III. THE ISSUE OF WHETHER AND UNDER WHAT STANDARDS TO PROCESS PERMIT APPLICATIONS DURING THE PENDENCY OF THE RULE-MAKING PROCEEDING MUST BE ADDRESSED.

The Commission should not defer action on all such applications during the pendency of the rule-making proceeding. That would be unfair to the applicants who have a right to have their applications considered. Further, we believe that it is not necessarily appropriate to freeze in time the Commission's discretionary authority under the statute and rules simply because the Commission is contemplating revisions to those rules. If there had been no rule-making proceeding, the Commission would have continued its historical case-by-case processing of permits, both for temporary and permanent authority, and would have been free, within limits of existing law, to continue or revise its interpretations of existing statutes and regulations.

American Trucking Ass'n v. Atchison, Topeka, and Santa Fe Ry. Co., 387 U.S. 397, 416, 87 S. Ct. 1608, 18 L. Ed. 2d 847 (1967).

However, we likewise recognize that it may not be appropriate to attempt to accomplish by case-by-case permit decision what may be better accomplished and decided in the rule-making proceeding. Indeed, the Commission opted for the rule-making process for consideration of revised application of state statutes because that is the best process for involving all interested persons and entities in that discussion.

IV. DISCUSSION

Though the Commission at this time does not intend to revise its existing interpretation of the law as it relates to granting permanent authority,² the consideration of applications for temporary authority is a different issue. In order to grant an application for permanent authority, the Commission must consider the applicant's fitness, whether the application is in the public interest, and whether the proposed service is required by "the present or future public convenience and necessity." RCW 81.80.070.

By contrast, the Commission by statute and current regulation may grant an application for temporary authority after considering the applicant's fitness and whether issuance of the permit would be "consistent with the public interest." RCW 81.80.170; see also WAC 480-112-033(1). As with the term "public convenience and necessity," the term "public interest" is not defined in Title 81 RCW. What constitutes the "public interest" is within the reasoned discretion of the Commission, Arco Products Co. v. Utils. and Transp. Comm'n, 125 Wn.2d 805, 810, 888 P.2d 728 (1995), and may change over time. See Permian Basin Area Rate Cases, 390 U.S. 747, 784, 88 S. Ct. 1344, 20 L. Ed. 2d 312 (1968), citing American Trucking Ass'n, 387 U.S. at 416; see also Springfield Educ. Ass'n. v. Springfield Sch. Dist. No. 19, 621 P.2d 547 (1980), citing McPherson v. Employment Division, 591 P.2d 1381 (1979).

There are several reasons why the public interest in the Commission's granting of permits for temporary household goods authority has changed in recent years.

First, under the current application of the rule, the pool of existing household goods carriers has been shrinking, as old permits are abandoned, and very few new permits are issued.

Second, following the deregulation of motor freight carriers in 1995 under Section VI of the Federal Aviation Administration Authorization Act of 1994, Commission transportation compliance staff was dramatically reduced. As a result, the Commission no longer has the same local presence in the state sufficient to independently investigate special shipper, public and community needs, and whether local services are, in fact, available.

Third, a number of existing and nonpermitted carriers have contacted the Commission inquiring about how they may obtain new or additional authority from the Commission, and two nonpermitted carriers and one existing carrier have recently come forward, requesting temporary and permanent authority from the Commission.

²For an example of the Commission's most recent approach to granting permanent authority, see Order M. V. No. 148596, In re Son M. Pae, d/b/a Western Moving Co., Hearing No. E-78164 (June 12, 1995); see also Order M. V. No. 126429, In re Glenn Mar, Inc., App. No. P-65982 (November 1992).

Fourth, the Commission is committed in its strategic plan and mission to increase the use of market mechanisms, where they work, to replace economic regulation. Allowing more carriers into the household goods carrier profession will allow more competition.

Fifth, the Commission seeks to protect consumers. Giving consumers more choice, in a system that monitors the performance of "temporary" carriers, and tests their ability to serve consumers well will help the Commission ensure that consumers are protected. Also, Commission technical assistance in the "temporary" period will help aspiring carriers to learn the duties they owe to the consuming public, and to comply with Commission statutes and rules after they obtain permanent authority.

Sixth, under the Administrative Procedure Act (APA), "[a]gencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule." RCW 34.05.310(2). Among such procedures are "pilot rules" in which rules are tested on a small group of volunteers. Although a formal "pilot" is not appropriate here because the rulemaking is scheduled to be completed within a few months, the Commission and the industry would benefit from some experience in application of new interpretations of existing regulatory standards to test how revised rules may be implemented, such as standards for financial fitness and shipper support.

Therefore, during the pendency of the current rule-making proceeding, the Commission intends to interpret the provisions of WAC 480-12-033 as set forth below.

Commission Rule on Issuance of Temporary Permits

WAC 480-12-033 currently states in part:

- (1) The commission may issue temporary permits for authority to engage in common or contract carrier operations for a period of up to one hundred eighty days, but only after it finds that the issuance of the temporary permit is consistent with the public interest.
 - (a) In determining whether the requested temporary authority is consistent with the public interest the commission will consider evidence of the following factors:
 - (i) Any immediate and urgent need for the requested service;
 - (ii) Any available service capable of meeting the need; and
 - (iii) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

(b) An application for a temporary permit shall be supported by a notarized statement from one or more shippers setting forth all pertinent facts relating to need for the service.

(2) The commission may also issue temporary permits pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more common carriers or contract carriers or of a purchase or lease of one or more common or contract carriers or of the transfer of a permit.

In determining whether the requested temporary authority will be granted, the commission will consider whether the failure to grant such authority may result in damage to the motor carrier properties sought to be acquired, or may interfere with the future usefulness of those properties in the performance of adequate and continuous service to the public. The commission may also consider the reasons for seeking to transfer the permit, whether the permit sought to be acquired has been operated during all of the past twelve months, and the reasons for any break in operations.

(3) In all cases, the commission may consider whether the applicant has been cited for violation of motor carrier law or has been denied authority on the basis of fitness.

(4) The commission will publish notice of the issuance of temporary authority under this section in its weekly application docket. The commission shall also publish the names of the shippers which the applicant may serve under the temporary authority issued pursuant to subsection (1) of this section. . . .

(5) The commission may impose special terms and conditions in connection with the grant of any temporary permit. . . . A temporary permit may be cancelled at any time if the commission determines that its grant was based on fraud, misrepresentation, or erroneous information by the applicant. . . .

Likely Commission Course of Action on Applications for Temporary Permits

Although the Commission continues to reserve the power to dispose of applications for temporary authority on a case-by-case basis, given the discussion above and the materials and discussions considered to date in the rulemaking proceeding, the Commission will adhere to the following interpretation of WAC 480-12-033:

1. WAC 480-12-033(1)(a) sets out a basic "public interest" test and sets forth a list of factors we will consider in applying that test. These are:

- (i) Any immediate and urgent need for the requested service;
- (ii) Any available service capable of meeting the need; and
- (iii) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

2. The rule provides that we "consider" these factors, but does not require us to deny an application for temporary authority if there is little or no evidence supporting one of these factors. Therefore, in considering the factors in subparagraphs (i) and (ii), we will give relatively higher weight to subparagraph (ii) than subparagraph (i) and will give higher weight still to the factors defined above as falling within paragraph (iii). In other words, we will give greater emphasis to whether there is public need for the service than whether there is an urgent or immediate need.

3. The additional factors referenced in subparagraph (iii) will include, but not be limited to:

a) Whether the service provided by the applicant will provide additional consumer choice, as demonstrated through shipper support statements, statements of need expressed by the community or local entities, or evidence of population and industry growth;

b) Whether the commission can more effectively regulate the household goods industry by allowing:

(i) existing carriers to more effectively compete by expanding their areas of operation; and

(ii) new entrants to demonstrate that they have the ability and commitment to work within the regulatory framework to provide residential household goods transportation services to the public, despite evidence of past operations without authority.

4. Under RCW 81.80.170, and WAC 480-12-033(5), the Commission may impose conditions in granting temporary authority which are reasonable and necessary in regulating the industry. In order to ensure that a carrier who is granted temporary authority will, in fact, comply with Commission rules and provide quality service to the consuming public, the Commission will impose a number of conditions to the grant of temporary authority, including, but not limited to the following:

o Submission of a verified statement of compliance with other state and federal agency requirements, e.g., business license, unemployment taxes, federal income and payroll taxes;

- A verified statement that the carrier carries cargo insurance issued by an insurance company licensed to do business in the state;
- Payment of any penalties due the commission for violation of commission rules;
- Cancellation of any illegal advertising;
- Mandatory training or technical assistance by Commission staff concerning compliance with Commission rules;
- Periodic audits of the carriers activities for the purpose of determining compliance with statutes, rules and policies;
- An escrow account to be forfeited in the event the carrier violates state law relating to transportation of household goods,
- Cancellation of the temporary permit in the event the carrier violates state law relating to the transportation of household goods.
- Notice to customers that the right to operate has been granted conditionally under a temporary permit and a requirement that the carrier provide customer service questionnaires to each customer served, addressed to the commission, with postage paid.

The Commission will evaluate the effectiveness of these conditions in its consideration of proposed rule revisions.

5. In addition, WAC 480-12-033(1)(b) requires that notarized statements from one or more shippers be supplied to support the need for the service. In the past, the Commission has applied this provision by requiring carriers to provide notarized statements from those shippers to whom the carrier would provide service, and limiting the temporary authority to serve those particular shippers. This interpretation of the rule made sense in granting temporary authority to carriers of general commodities who may transport several different shipments for a particular shipper. However, this interpretation of the rule does not work well for household goods carriers, where residential customers move, on average, once every seven years. However, the Commission has allowed carriers of specialized commodities to serve additional shippers than those who submit notarized statements. The Commission will interpret WAC 480-12-033(1)(b) to require a carrier to submit notarized shipper support statements to support the need for service, but not limit the grant of temporary authority to those shippers.

6. Any persons granted temporary authority under the interpretations articulated above (or any other interpretations which may be made in the permit process) should be on notice that the granting of such temporary authority does not indicate the Commission's action on applications for permanent authority nor what standards or interpretations the Commission will apply in its consideration for such authority. As indicated above, the Commission intends to define standards for granting permanent authority on a going forward basis in the pending rule-making proceeding.

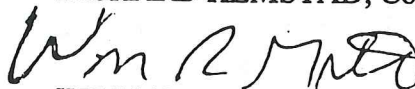
DATED at Olympia, Washington and effective this 22nd day of July, 1998.



ANNE LEVINSON, Chair



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner