

Rulemaking Analysis

CONSIDERATIONS REGARDING AGENCY DECISIONS DURING THE RULEMAKING PROCESS¹

Docket number: TV-971477

Date: 08/12/98

Staff lead: Kim Dobyms, Program Development Analyst

Division/Section: Regulatory Services Division/Program Development Section

Exempt manager authorizing this review: Paul Curl, Deputy Director

Approved for Rulemaking Proceeding: (mgr's Init/date) _____

Subject of rule: Motor carrier regulations for household goods carriers

Rule title: Laws and Rules Relating to Motor Carriers

Expected schedule () Firm (X) Target () Expected

CR 101 public meeting: 10/22/97

CR 102 public meeting: 08/12/98

Adoption hearing: 11/16/98

Filing with code reviser (effective 30 days later): 12/02/98

- 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?**

The proposal will affect the household goods carrier industry (approximately 250

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.

companies); and shippers of household goods (both consumers-at-large and businesses that regularly move their employees).

The commission maintains two rulemaking lists which would include a number of these affected parties -- one which contains all persons who have identified themselves as requesting a copy of all rulemakings for the transportation industry; and one which contains all persons who have identified themselves as requesting a copy of all rulemakings for the household goods industry. Moreover, a rulemaking list was established for docket number TV-950239 which attempted to address the same household goods issues.

In addition, there are a number of "significant interests" not represented by the rulemaking lists. The commission has identified many of these interests through two other mailing lists which the commission will use to publicize this rulemaking. It includes the carrier list, which contains all current household goods carriers; and the tariff list, which contains all persons who subscribe to the household goods tariff.

2. Why is this rulemaking being proposed?

There are a number of problems with the current rules, procedures and policies in the household goods industry which the commission, shippers, and carriers hope to address through this rulemaking. For example:

- * The current definition of household goods does not correlate to that established in recent federal legislation which may result in confusion.
- * Federal preemption of economic regulation of motor carriers, with the exception of household goods carriers, has left household goods carriers, a group of 250 regulated carriers, under the rules, policies and procedures designed to regulate almost 4,000 motor carriers. Some of these rules, policies and procedures appear less relevant in today's environment or unnecessarily complex or ill suited for regulating the carriers that remain subject to the chapter. These include tariff publication, application docketing, local cartage and commercial zone authority provisions.
- * Consumer protection rules for household goods customers are minimal. When a household goods company is at fault in a customer dispute, the commission may fine the company, but can offer little relief to the consumer. This hampers the Commission's ability to assist the customers.
- * It is difficult to acquire household goods authority under current application of the "public convenience and necessity" standard. The household goods industry appears to be subject to the very same political, economic and demographic changes that are so profoundly affecting the telecommunications and energy industries. The Commission believes it is appropriate at this time to consider whether current application of the entry

standard is still appropriate under emerging market and legal conditions.

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 household goods rulemaking is to resolve the problems that exist with the current rules, procedures and policies. Specifically, the commission would like to:

- * Develop a better definition of household goods.
- * Limit applicability of chapter 480-12 WAC to household goods
- * Simplify or eliminate both local cartage and commercial zone provisions in reference to household goods authority, as appropriate.
- * Establish a more effective method of establishing and publishing tariff rates, charges, and classification rules for household goods carriers.
- * Establish effective consumer protection rules for the household goods industry including, possibly, a requirement of binding estimates.
- * Establish appropriate standards for application of the “public convenience and necessity” standard for entry of household goods carriers.

4. Would changes to other rules or statutes achieve the same objective? [What rules? statutes? Why is this approach preferable?]
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.

Streamlined rules should reduce costs to the regulated carriers. However, if the SBEIS determines an economic impact will cause an undue burden on small business, mitigation measures will be taken if possible.

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

Both the staff and household goods moving industry agree the current rules under which we operate are, in some cases, confusing, and may be unnecessarily complex or inappropriate in today's regulatory environment. The apparent problems with the existing rules can only be addressed in a rulemaking, and a rulemaking is the best process for involving the entire industry in a review of the appropriate application of the "public convenience and necessity" standard.

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?

Since there is no overlap, conflict or impact on other governments, there will be no need for this type of coordination.

Is an Agency Rules Coordinating Committee needed under EO 93-06? No

8. (a) Could alternative forms of regulation achieve the same goals?

No. Simplification and clarification of rules can only be accomplished in a rulemaking.

(b) Does the proposed rule include performance standards? Could performance standards be used in lieu of behavior standards or manner of compliance?

No. The commission plans to gather information on the federal practices and discuss this possibility with the industry group through the stakeholder process.

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; 81.80.130; 81.80.140

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

Agency study, consisting of [*check as many as apply*]:

Workshops and dialogue

Public meetings

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 can participate in developing the rule through a series of meetings, workshops and public comment opportunities. The first meeting will be a public forum, intended to gather as much information as possible from the regulated carriers and any other interested persons. Notice of the public forum will be sent to all regulated companies (approximately 250); companies other than regulated companies which subscribe to the household goods tariff; and other entities who may be interested in this rulemaking as expressed through response to the preproposal statement of inquiry (CR101) or directly requested through the secretary. This meeting will also be used to identify specific stakeholder issues.

Throughout this process, any interested person may join the stakeholder group; may comment to commission staff in writing, by fax or by phone; and may suggest rule

language or revisions.

- (c) **What other federal and state agencies have jurisdiction over this subject?**
None
What process will be used to coordinate with that/those agencies? N/A

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 commission promotes voluntary compliance through technical assistance at the policy level. The Transportation Division management philosophy relies heavily on technical assistance and education in working with the industry, using penalties and other enforcement action only where necessary. The rules will be designed to promote voluntary compliance, but will be flexible enough to allow enforcement actions for those carriers who have proven to be either unwilling or unable to comply on a voluntary basis.

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

1. Under the ICC Termination Act of 1995, economic regulation of office moves was preempted and rulemaking is needed to delete reference to offices moves in the household goods rules.
2. The rule is scheduled for 1998 agency review in compliance with Governor Locke's EO 97-02 and Commission Docket No. A-971104.

For an emergency rule --

16. Answer either (a) or (b): N/A

- 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]):

SIC 4512 - Local Trucking Without Storage

(Includes furniture moving, local, without storage)

SIC 4214 - Local Trucking With Storage

(Includes furniture and household goods moving, local, with storage)

[Does the rule affect more than 20% of all businesses or more than 10% of any one (4-digit) industry? If not, an SBEIS is not required.]

The rule does not affect more than 20% of all business and we believe this rule will not economically affect more than 10% of the 4214 businesses. However, the Commission intends to conduct a SBEIS to ensure small businesses due not bear an undue burden..

18. What elements of the rule may impose a cost on business?

The commission expects overall costs to businesses to decrease as a result of this rulemaking. However, new consumer protection rules may add an incremental cost to existing procedures. These should be offset by savings in legal costs (avoidance of costs associated with private attorneys) realized through more flexible entry standards.

19. What are the costs of compliance?

See item 18 above.

20. Are the costs more than minor as established by the Business Assistance Center? *[If not, an SBEIS is not required].*

Costs to regulated companies likely decrease as a result of this rulemaking. Any new costs are not expected to be more than minor

NOTE: If an SBEIS is required, special notice requirements exist under RCW 19.85.070 and the following steps are to be taken: obtain detailed information from businesses regarding the economic impact of the proposed rule; Conduct a detailed economic analysis of costs to determine the economic impact on business and to develop cost ratios; Does the rule impose a proportionately higher economic burden on small business? If so, the agency should modify the proposal to mitigate the impact on small business. Does the rule impose an equal burden on large and small businesses? If so, the agency should take steps to mitigate the costs. In either event, document the ratios and how they were derived; and list all mitigation measures the agency has used, in the SBEIS.

SEPA Requirements:

20. 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.

Under WAC 197-11-865, this rulemaking is exempt from SEPA requirements.

POST-ADOPTION Requirements:

- 21. 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. See staff's adoption meeting memorandum.**
- 22. 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. See staff adoption meeting memorandum.**