

Rulemaking Analysis

CONSIDERATIONS REGARDING AGENCY DECISIONS DURING THE RULEMAKING PROCESS¹

Docket Number TV-991559

Date: 4/21/00

Staff lead Bonnie L. Allen, Transportation Program Coordinator

Division/Section: Regulatory Services Division/Transportation and Water Section

Exempt manager authorizing this review: Paul Curl, Deputy Director Regulatory Services

Approved for Rulemaking Proceeding: (mgr's Init/date) _____ (10/15/99)

Subject of rule: Chapter 480-15-WAC

Rule title: Rules Relating to Household Goods Carriers

Expected schedule () Firm (x) Target () Expected

CR 101 public meeting: October 27, 1999

CR 102 public meeting: April 12, 2000

Adoption hearing: May 24, 2000

Filing with code reviser (effective 30 days later): May 31, 2000

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?

If rules are amended as a result of this proposal all household goods carriers (approximately 229 companies) and their customers who ship household goods could be affected. The commission maintains a list of all

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.

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permitted household goods moving companies. Additionally a list of interested person was established under Docket No. TV-971477 which includes storage companies involved in self-storage container transportation, state office of procurement, office of the attorney general consumer protection, and other persons that have identified themselves as having an interest in household goods carrier rules.

2. Why is this rulemaking being proposed?

Current rules were adopted under Docket No. TV-971477, December 14, 1998, effective January 15, 1999. Since January 15, 1999, certain rules have generated questions leading staff to believe they may be unclear, incomplete, or have resulted in unintended consequences. Additionally several household goods moving companies and representatives of the household goods moving industry continue to express concern that rules are having a negative effect on consumers and the household goods moving industry.

Because of these concerns, this rulemaking was proposed to inquire whether certain rules are working well; to gather factual information about the effect of the rules; and to determine if changes, additions, or deletions might be appropriate.

The needs identified in this process are discussed more fully in Item 11.

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 chapter of rules under review is intended to establish standards for household goods carriers operating in Washington State. The objective is to refine the household goods rules adopted approximately a year ago to reflect learning gained regarding their implementation.

WAC 480-15-010 Purpose and Application - The existing rule states the reason for the chapter and who must comply. The proposed revision is intended to clarify that the carriers who must comply with the chapter are not relieved from compliance with other state laws.

WAC 480-15-020 Definitions - The existing rule defines the term household goods, as it is used in the chapter. The proposed revision is intended to limit the existing exclusion of customer packed and sealed self-storage containers to those containers transported between a self-storage facility and a customer, in conjunction with a self-storage agreement. The existing rule defines the term motor vehicle, as it is used in the chapter. The proposed revision is intended to clarify that a motor vehicle is not a self-storage container.

WAC 480-15-035 Exemption from Rules - The new rule is intended to clearly describe the filing requirements and review process for requests for exemption from rules and requirements established in the chapter. This new rule is intended to replace WAC 480-15-030 Waiver of Rules.

WAC 480-15-260 Are there exceptions to the application process? - The existing rule lists circumstances under which exceptions to the permanent authority application process apply. The proposed revision is intended to clarify existing exceptions to the permanent authority application process and include additional circumstances under which exceptions may be allowed.

WAC 480-15-490 Tariff and rates, general - The existing rule describes the tariff and rate requirements and establishes a rate band based on a percentage above and a percentage below a fixed rate. The proposed

revision is intended to establish a new maximum rate, annual review and adjustment of the maximum rate according to an index for the next five years, and a new fixed minimum rate based on a percentage of the maximum rate.

WAC 480-15-560 Equipment and safety requirements. - The existing rule establishes vehicle and equipment safety requirements and specifies sections of federal rules that apply to intrastate operations. The proposed revision is intended to ensure that the definition of commercial vehicle is consistent with federal definition and will result in consistent application of safety regulations to vehicles operated interstate and intrastate. The proposed revision is also intended to eliminate reference to hazardous materials regulations that do not apply to household goods carriers.

WAC 480-15-570 Driver safety requirements. - The existing rule establishes driver safety requirements and specifies sections of the federal rules that apply to drivers operating vehicles intrastate. The proposed revision is intended to ensure that the definition of commercial vehicle is consistent with federal definition and will result in consistent application of safety regulations to drivers operating vehicles interstate and intrastate.

WAC 480-15-620 What information must I provide to each shipper? - The existing rule establishes a customer notice requirement and contains the text of the brochure. The proposed revision is intended to eliminate confusion about the purpose of the rule and to allow flexibility in updating the brochure text.

WAC 480-15-650 Form of estimates. - The existing rule establishes requirements regarding household goods moving estimates. The proposed revision is intended to reduce the record keeping requirements for companies that provide estimates, and to clarifying language, and require additional disclosure of rates charged on supplemental estimates.

WAC 480-15-660 Supplemental estimates. - The existing rule establishes requirements for supplemental estimates of household goods moving services. The proposed revision is intended to clarify when a company must provide a supplemental estimate to a customer and the rate that the company may use on the supplemental estimate.

WAC 480-15-740 What information must I include on a bill of lading? - The existing rule describes the information that must be included on a company bill of lading. The proposed revision is intended to provide the household goods carriers with an alternative to recording the details for each person on a job on the bill of lading.

4. **Would changes to other rules or statutes achieve the same objective? [What rules? statutes? Why is this approach preferable?]** No. This approach respects the concerns expressed by those affected by the rules and refines rules where appropriate to meet their concerns.
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.** None known.
6. **Why is this a reasonable, cost-effective manner to achieve the regulatory objective, in light of available alternatives including no rulemaking?**

The rules adopted under Docket No. TV-971477 have been in effect since January 15, 1999. A rulemaking is the best process for involving the affected industry in a review of existing rules to identify problems, gather factual information, and determine if changes, additions, or deletions might be appropriate. This rulemaking was initiated to address concerns expressed by the industry in a forum which could implement a shared understanding of how the rules could be improved.

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. Clarification and revision and of rules can only be accomplished through 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. None of the rules revised include behavior standards.

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 81.01.040; RCW 81.04.160; RCW 81.04.250; RCW 81.28.040; RCW 81.80.090; RCW 81.80.120, RCW 81.80.130; RCW 81.80.170; RCW 81.80.290; and RCW 81.80.211.

11. **List specific reasons why the rule is needed:**

By the filing of the CR-102 the following specific rules and reasons have been identified:

WAC 480-15-010 Purpose and Application - Household goods carriers expressed their concern that new entrants to the household goods moving industry were not establishing proper accounts with other agencies. The rule is needed to clearly state that household goods carriers operating under the chapter must comply with other state laws.

WAC 480-15-020 Definitions - Household Goods carriers and staff expressed concern that the exclusion of customer packed and sealed self-storage containers from the household goods definition was too broadly stated resulting in more services offered under the exclusion than was originally intended. Further concern was expressed that a "self-storage container" was undefined and that any customer loaded truck and/or trailer could be considered a "self-storage container". Revision of the household goods definition and the motor vehicle definition is necessary to ensure that the rule is clearly stated and serving its intended purpose.

WAC 480-15-035 Exemption from Rules - this rule is needed to replace WAC 480-15-030 Waiver of Rules that staff believed to be incomplete and inconsistent with agency policy. The household goods carriers expressed concern that the existing rule did not allow for public notice and opportunity for other affected companies to comment or complain about a request for waiver of rules. Additionally, the superior court stayed implementation of the rule as it appeared to be incomplete. The rule is necessary to provide companies with a clearly stated and complete description of the filing and review process for a request for exemption from rules and requirements established in the chapter. This rule is also necessary to ensure that requests for exemption from rules in this chapter are consistent with agency policy and requests for exemption from rules in other chapters.

WAC 480-15-260 Are there exceptions to the application process? Household goods carriers expressed concern that existing rules that require six months temporary operations before a transfer or acquisition of control is approved may result in harm to the company being purchased by negatively affecting its ability to ensure continuity of service to its customers and to remain financially viable during transition to the new owner(s). The rule is needed to clearly state the exceptions to the permanent authority application process and to include additional circumstances under which the exceptions apply to transfers or acquisitions of control.

WAC 480-15-490 Tariff and rates, general - Household goods carriers expressed their concerns that the rate band in the existing rule should not be based on an old rate, that base rate should be adjusted or eliminated. When the existing rule was adopted staff made a commitment to continue working with the household goods carriers to develop a new rate-setting methodology. The rule is necessary to establish a new rate band and a new rate-setting methodology.

WAC 480-15-560 Equipment and safety requirements. - Staff expressed concern that the definition of commercial vehicle in the existing rule is not consistent with federal rules resulting in unintended additional regulation of intrastate operations. The rule is necessary to ensure that the application of the equipment and safety regulations is the same for all vehicles operated intrastate and interstate. The rule is also necessary to eliminate reference to hazardous materials requirements that do not apply to household goods carriers.

WAC 480-15-570 Driver safety requirements. - Staff expressed concern that the definition of commercial vehicle in the existing rule is not consistent with federal rules, resulting in unintended additional regulation of drivers operating vehicle intrastate. The rule is necessary to ensure that the application of driver safety requirements is the same for drivers of vehicles operated intrastate and interstate.

WAC 480-15-620 What information must I provide to each shipper? - Staff and members of the general public have found this rule confusing and have incorrectly referred to this rule as establishing many of the requirements that are described in the brochure text. The rule is necessary to establish the customer notice requirement and allow flexibility in updating the brochure by describing the brochure's contents rather codifying the actual text of the notice.

WAC 480-15-650 Form of estimates. - The household goods carriers complained that the existing rule requires them to retain copies of estimates for moves that they did not perform, that retaining the records serves no

purpose. Staff also complained that the record keeping requirement served no purpose and was not enforceable as estimates are not uniquely order or consecutively numbered. The rule is necessary to establish requirements for household goods moving estimates, including a reduced record retention requirement, additional clarifying language, and disclosure regarding rates on supplemental estimates.

WAC 480-15-660 Supplemental estimates. - Staff expressed concern that the existing rule does not clearly state that the rate given to a customer on an estimate must be honored, or a supplemental estimate must be given. The rule is necessary to establish requirements for supplemental estimates and to clearly state when a supplemental estimate must be provided to a customer, and when a supplemental estimate may use a different rate (within the rate band) than the rate on an original estimate.

WAC 480-15-740 What information must I include on a bill of lading? - Household goods carriers expressed concern about the requirement that additional detailed information be on the face of the bill of lading. They stated that those details were available through payroll records. The rule is necessary to allow household goods carriers an alternative to recording the details for each person on a job on the bill of lading.

12. What are the goals of the proposal? Why are rules on the topic needed and what might they accomplish?

The goals of this proposal are to ensure that household goods carrier rules are easily read, clearly understood, protect consumer interests, and meet the needs of the household goods moving industry.

Rules are needed to establish fair entry standards, competitive practices, consumer protections, minimum levels of public liability, and safety standards. The proposed rule revisions will improve the effectiveness of the rules, and ensure that they are serving their intended purpose.

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 may participate in meetings and public comment opportunities. Notice of workshop and opportunity to file written comments will be sent to all regulated companies and any other interested person, as well as all interested persons from prior household goods carrier rulemaking completed under Docket No. TV-971477. The first scheduled stakeholder meeting will be used to identify specific issues and possible solutions. Any person may join the stakeholder group; may comment in writing, by fax, by phone; and may suggest rule language or revisions.

Notices of opportunities to file written comments were sent on October 27, 1999, March 10, 2000, and April

21, 2000. The Commission held a stakeholder workshop on December 9, 1999.

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

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 agency relies heavily on technical assistance and education when working with the industry, using penalties and enforcement action only where necessary. This is reflected in WAC 480-15-130 What is the commission's compliance policy? and WAC 480-15-140 How will the commission enforce this chapter? No need for change of these rules was identified and neither is modified in this rulemaking.

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

Since January 15, 1999, certain rules have generated questions leading staff to believe they may be unclear, incomplete, or have resulted in unintended consequences. The reasons why each rule is needed are supported by comments from stakeholders, and other interested persons, informal consumer complaints investigated by staff, staff suggestions and comments as a result of working with the rules, in training sessions, and through other staff surveys and inquiries. (See answer to Item 11 for specific reasons why each rule is needed.)

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:

Small Business Economic Impact Statements are governed by chapter 19.85 RCW. Sec. 030 requires that the agency prepare an SBEIS if the proposed rule will impose more than minor costs on "businesses in an industry relative to compliance costs under existing rules." Sec. 020 defines "industry" as "all of the businesses in this state in any one four-digit standard industrial classification". We believe, and the Asst. A.G.s advise, that if a proposed measure may impose "more than minor" costs within a "substantial" segment of an industry it is to the agency's advantage to make the effort to prepare an SBEIS. While it is a valuable preemptive way to avoid a legal challenge for failure to do one, it is also a valuable means to gather

relevant information, to check the costs and benefits of a rule, to gauge whether changes are worthwhile, and to gain credibility from industry.

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 all businesses within any one (4-digit) industry? No If not, should the agency prepare an SBEIS anyway?]

No, the agency completed an SBEIS when existing rules were adopted in December of 1999 under Docket No. TV-971477. This rulemaking is focused on a review of existing rules to determine if they are working well and to identify any problems which exist that modifications may remedy.

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

We do not expect costs to businesses to increase from any modification of rules resulting from this rulemaking. In fact, we expect modification of the rules will result in a reduced cost to businesses. Specifically, exceptions to the application process will result in a 6 month decrease in temporary operations and a savings of \$250 application fee. Revision of the driver and equipment safety rules will result in a decrease in costs to comply with record keeping and other safety regulations for those companies that use lightweight vehicles.

19. What are the costs of compliance?

See item 18 above.

20. Are the costs more than minor [that is, tiny]? *[If they are larger, an SBEIS is required].*

New costs, if any, are expected to be minor.

NOTE: If an SBEIS is required, special notice requirements exist under RCW 19.85.070. The agency must either notify affected small businesses and trade associations of the proposed rulemaking or notify media likely to serve such small businesses of the proposal.

RCW 19.85.040 and .030 state steps that the agency must take in preparing and using an SBEIS. Loosely paraphrased, they include: Obtain detailed information from businesses regarding the impact of the proposed rule on costs and revenues; Conduct a detailed economic analysis to determine the economic impact on small and large businesses and 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.

SEPA Requirements:

21. **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 197-11-856, this rulemaking is exempt from SEPA requirements.

POST-ADOPTION Requirements:

22. **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.**

(Available after May 24, 2000 adoption date)

23. **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.**

(Available after May 24, 2000 adoption date)