

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	DOCKET TV-200086
WASHINGTON MOVERS CONFERENCE,	ORDER 01
To Amend Washington Administrative Code 480-15-570, Driver Safety Requirements.	DENYING PETITION

BACKGROUND

- 1 On February 6, 2020, the Washington Movers Conference (WMC) filed with the Washington Utilities and Transportation Commission (Commission) a petition for rulemaking (Petition) that seeks to amend Washington Administrative Code (WAC) 480-15-570, which requires employees who drive commercial motor vehicles (CMV) to be medically examined and certified.
- 2 In its Petition, WMC argues that the current Commission rule, which sets the gross vehicle weight threshold for CMVs at 10,001 pounds,¹ creates additional annual costs for its members of “approximately \$100 per employee plus lost productivity when the employee is away from the business obtaining a medical physical.”² The Petition complains that WMC members are cited and penalized for violating WAC 480-15-570 during routine inspections conducted by Commission transportation safety staff despite the fact that those drivers are “properly licensed by Washington State Licensing ... to operate such vehicles.”³

¹ WAC 480-15-570(1)(E) defines CMV as “any motor vehicle used by a household goods carrier to transport household goods, if either the vehicle has a gross vehicle weight rating or gross combination weight rating of 10,001 pounds or more or if the gross vehicle weight or gross combination vehicle weight is 10,001 pounds or more.”

² Petition, page 2.

³ *Id.*, page 1.

3 Currently, WAC 480-15-570(1)(E) adopts the Federal Motor Carrier Safety
Administration's (FMCSA) definition for CMVs, sets the weight threshold for such
vehicles at 10,001 pounds or more, and adopts Federal safety regulations related to
medical examination and certification requirements for CMV drivers. WMC proposes the
Commission amend its rule to instead adopt the requirements for intrastate motor carriers
set out in WAC 446-65-010(r), which provides that drivers operating vehicles with gross
vehicle weight ratings between 10,001 and 26,000 pounds need not be medically
examined and certified.

DISCUSSION

4 Within 60 days after receiving a petition to amend a Commission rule, the Commission
must either:

- (a) Initiate rule-making proceedings in accordance with chapter 34.05
RCW, or
- (b) Deny the petition in writing, stating [the Commission's]
reasons for the denial and specifically addressing the concerns stated in
the petition. Where appropriate, the [the Commission] must indicate
alternative means by which the agency will address the concerns raised in
the petition.⁴

5 We deny WMC's Petition for the reasons discussed below.

6 Chapter 82-05 WAC describes the requirements and process for petitioning an agency to
adopt, repeal, or amend a rule. WAC 82-05-020(c) encourages petitioners to address in a
petition for rulemaking whether:

- (i) The rule is authorized
- (ii) The rule is needed
- (iii) The rule conflicts with or duplicates other federal, state, or local laws
- (iv) Alternatives to the rule exist that will serve the same purpose at less cost
- (v) The rule applies differently to public and private entities
- (vi) The rule serves the purposes for which it was adopted
- (vii) The rule imposes unreasonable costs
- (viii) The rule is clearly and simply stated, and
- (ix) The rule differs, without adequate justification, from a federal law which
applies to the same activity or subject matter.

⁴ WAC 82-05-040(2).

7 WMC's Petition addresses none of these factors explicitly, implying only that the \$100 cost per driver for annual medical examination and certification is unreasonable, in part because obtaining certification creates lost revenue in proportion to the time it takes each driver to undergo an annual physical exam. We disagree.

8 *Safety.* The FMCSA estimates that 3,000 trucks per year are involved in crashes that result in a fatality or serious injury due to driver medical events, such as a heart attack or seizure. Medical examination and certification requirements are designed to reduce such incidents caused by vehicles that exceed certain weight limits. As a preventive measure, the FMCSA thus requires all drivers of commercial motor vehicles with a maximum gross vehicle weight rating of more than 10,000 pounds to obtain and maintain a valid Medical Examiner's Certificate.⁵ Those drivers that are medically certified are medically qualified to safely operate CMVs. In the interest of public safety, CMV drivers are held to higher physical and mental standards than drivers of privately owned passenger vehicles. We find that both the cost and time required to obtain medical certification are *de minimis* and, on balance, create a very small administrative burden in exchange for important safety protections.

9 *Regulatory Agency Interrelationship.* WMC's Petition also fails to acknowledge the regulatory relationship between the Commission and Washington State Patrol (WSP) and thereby argues unpersuasively that the Commission should adopt the standards enforced by WSP for motor carriers that are not economically regulated by the Commission.

10 Prior to 1994, state regulation of motor carriers included economic regulation, and the Commission regulated the rates, routes, and services of all motor freight carriers in Washington. This changed when Congress passed HR 2739, the Federal Aviation Act of 1994 (FAA or the Act). The FAA prohibits states from regulating the "price, route, or service of any motor carrier."⁶ The Act permits states to set requirements for size or weight limits, insurance requirements, hazardous materials requirements, and safety. The Act applies to carriers of property, but specifically excludes carriers of household goods. In response to the enactment of the FAA, the Washington Trucking Association, in cooperation with the Commission and WSP, proposed state legislation to transfer the remaining safety functions from the Commission to WSP for general freight motor carriers.

⁵ 49 Code of Federal Regulations (C.F.R.) Part 390.

⁶ Federal Aviation Act of 1994 § 601, 49 U.S.C. § 40101 (1994).

- 11 The state subsequently passed ESHB 1209 in April 1995. ESHB 1209 transferred “all powers, duties, and functions ... pertaining to safety inspection of commercial vehicles, including but not limited to terminal safety audits, except for those carriers subject to the economic regulation of the commission” from the Commission to WSP.⁷ The Commission and WSP subsequently entered into an interagency agreement that delineates motor carrier safety regulation functions between the agencies.
- 12 When the legislature enacted RCW 46.32.080, it excluded economically regulated carriers, including household goods carriers, from WSP’s safety inspection authority, thereby expressly preserving the Commission’s authority to regulate the safety of those carriers’ vehicles and operations. WMC’s proposal would conflate WSP and Commission safety regulation and thus directly conflicts with the legislature’s intent.⁸
- 13 *Conclusion.* In light of these factors, we find that WMC failed to demonstrate that amending the existing rule is reasonable or consistent with the public interest. The concerns raised by the Petition — medical examination costs of \$100 per driver plus 1-2 hours per year to obtain a physical exam — are significantly outweighed by the safety and public policy considerations discussed above. In addition, the proposed amendment directly conflicts with federal requirements with which the Commission must comply. Accordingly, we deny the Petition.

ORDER

- 14 **THE COMMISSION ORDERS** That the Washington Movers Conference’s Petition to amend Washington Administrative Code 480-15-570, Driver Safety Requirements, is DENIED.

Dated at Lacey, Washington, and effective February 20, 2020.

⁷ ESBH was codified at RCW 46.32.080 and became effective January 1, 1996.

⁸ We note that the Commission’s Motor Carrier Safety Program receives grant funding from the Motor Carrier Safety Assistance Program (MCSAP). As a recipient of MCSAP grant funding, the Commission must adopt and enforce state rules that are consistent with Federal regulations. WMC’s proposal, rather than demonstrating that the existing rule differs from a federal law that applies to the same activity, would put Commission rules in direct conflict with Federal regulations. In addition to violating basic tenets of public policy, WMC’s proposal would jeopardize the Commission’s Federal grant funding.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner