

Rulemaking Analysis

CONSIDERATIONS REGARDING AGENCY DECISIONS DURING THE RULEMAKING PROCESS¹

Docket number TV-991559

Date: 10/15/99

Staff lead Bonnie L. Allen, Program Coordinator

Division/Section: Regulatory Services Division/Compliance - Business Practices Section

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

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

Subject of rule: Chapter 480-15-WAC

Rule title: Rules Relating to Household Goods Carriers

Expected schedule Firm 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?

Motor Carriers of household goods regulated under Chapter 81.80 RCW are affected by these rules. Interested persons are identified in household goods interested persons lists, household goods permits lists, prior household goods rulemaking lists in docket TV-971477.

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.

2. Why is this rulemaking being proposed?

To gather information from stakeholders about rules adopted December 14, 1998, that may not be serving the purpose they were intended to serve, that may be confusing or unclear, that may need to be amended or deleted.

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 of this rulemaking is to refine the household goods rules adopted approximately a year ago to reflect learning gained regarding implementation of those rules since their adoption.

(Specific rules to be identified prior to CR-102)

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

(To be identified prior to CR102)

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, gathering factual information, and determining 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?
(To be identified prior to CR102)
- (b) Does the proposed rule include performance standards? Could performance standards be used in lieu of behavior standards or manner of compliance?
(To be identified prior to CR102)
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.

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 81.80.130; RCW 81.80.140
11. List specific reasons why the rule is needed:
The chapter of rules is needed to define household goods carriers as a class of carrier under Title 81.80 RCW, and to establish requirements including: compliance, entry, safety, insurance, consumer, rates, and tariffs. Specific rules will be identified by the filing of a CR-102.
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.

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 the household goods carrier rulemaking completed under Docket No. TV-971477. The first scheduled 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.

- (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?

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

(To be identified prior to CR102)

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?
(To be identified prior to CR102)
19. What are the costs of compliance?
(To be identified prior to CR102)
20. Are the costs more than minor [that is, tiny]? [*If they are larger, an SBEIS is required*].
(To be identified prior to CR102)

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.*

Confer with your ALD adviser and the assistant attorney general if an SBEIS is needed to define the scope of the statement and the process by which you will accomplish it.

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 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 adoption date)