

**Small Business Economic Impact Statement (SBEIS)
Auto Transportation Company Rulemaking
Docket TC-121328
June 5, 2013**

I. Introduction:

The Utilities and Transportation Commission (Commission) initiated a rulemaking in September, 2012 in Docket TC-121328, to consider rules to establish fare setting flexibility and competition for auto transportation companies in Washington Administrative Code (WAC) 480-30.

Over the past nine months, the Commission requested and received three sets of comments from stakeholders and held a stakeholder workshop. The draft rules are now sufficiently developed to publish them as proposed rules, and proceed to the next phase of the rulemaking. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with Chapter 19.85 RCW, or explain why an SBEIS was not prepared. RCW 34.05.320(1)(k). The Commission has prepared this small business economic impact statement in compliance with the requirements.

II. SBEIS Requirements:

The Regulatory Fairness Act, codified in Chapter 19.85 RCW, provides that an agency must conduct an SBEIS “if the proposed rule will impose more than minor costs on businesses in an industry.” *RCW 19.85.030*. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rulemaking on small businesses. A business is categorized as “small” under the Regulatory Fairness Act if the business employs 50 or fewer employees.

Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses. In determining whether there is a disproportionate impact on small businesses, agencies must compare the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the rule using either the cost per employee, the cost per hour of labor, or the cost per \$100 of sales revenue, as a basis for comparing costs. See RCW 19.85.040(1).

III. SBEIS Evaluation Procedure:

The Commission has prepared an SBEIS for the proposed rules in Docket TC-121328 to determine whether the rule would impose a disproportionate impact on small businesses and, if so, to consider means to minimize costs to small businesses.

On April 12, 2013, the Commission mailed a notice to all stakeholders interested in the Commission’s auto transportation company rulemaking, providing a link to the draft rules and an opportunity to respond to an SBEIS Questionnaire. The notice requested that the affected

companies provide information concerning the cost impact of draft rules, and to provide specific information for each draft rule that the company identified as causing an impact. The Commission received economic impact comments from Bremerton-Kitsap Airporter and Capitol Aeroporter. The response from the companies, as well as the general comments on the draft rules the Commission received from all stakeholders, are discussed below in Sections IV and V.

To conduct an SBEIS pursuant to the Regulatory Fairness Act, the Commission must either determine the cost per employee, the cost per hour of labor or the cost per \$100 of sales revenue. However, none of the affected companies provided this specific quantitative information in response to the questionnaire. Although the results of this survey are based on limited quantitative data, the Commission has extensive experience and history with auto transportation company activities and the stakeholders have communicated their views on the impacts of the draft rules throughout this process.

The Commission conducted its analysis by considering the purpose of the rule, the reason for the new rule revisions and the cost of compliance asserted by the companies. The Commission evaluated whether the estimated cost was reasonable or whether it is already a cost of compliance, and in weighing all the information, determined if any mitigation of the requirements of the draft rules was appropriate. Given the limitation of available economic data, the Commission made every effort to evaluate the impacts of the revised rule, to ensure that the effect of the rulemaking is fair and does not impose a disproportionate burden on the affected companies.

IV. Compliance Requirements of the Proposed Rules:

The Commission initiated this rulemaking in September 2012 by issuing a CR-101 Rulemaking Notice. The Commission has taken the following steps in pursuing this rulemaking:

- The Commission received comments on the CR-101 notice in October 2012. The Commission evaluated those comments and revised its approach to the rules based on the comments.
- The Commission issued a Notice of Opportunity to File Written Comments and a Notice of Workshop on February 8, 2013. The notice included a set of draft rules. The Commission received comments from three companies on the draft rules, summarized those comments, and held a workshop for interested parties on March 22, 2013.
- After reviewing the comments and considering the workshop discussion, the Commission revised the draft rules and issued another Notice of Opportunity to File Written Comments and an opportunity to respond to a Small Business Economic Impact Statement Questionnaire on April 12, 2013. The notice included the second draft rules.
- The Commission received comments on the second draft rules from four companies and SBEIS questionnaire responses from one of those companies.

- The Commission evaluated the comments on the second draft rules and responses to the SBEIS questionnaire, and made additional changes to the draft rules. The Commission is now ready to publish and circulate proposed rules, filing a CR-102 with the Office of the Code Reviser.

V. Results of the Analysis:

Despite receiving only two limited responses to the SBEIS Questionnaire, the Commission did consider the cost impact of complying with the proposed rules throughout the rulemaking process.

Under current law, an existing auto transportation company may object to an application for new or extended authority to provide service by another company. The current rules have resulted in applications for new or extended authority to provide service to be adjudicated in lengthy, formal hearings addressing a wide range of issues, not all of which are contemplated in the underlying law. The proposed rules narrow the scope of the adjudication to that required by the statute: (1) whether the public convenience and necessity requires the proposed service, and (2) whether an existing company is already providing the same service to the satisfaction of the Commission. The proposed rules also require that the adjudication be conducted under a “brief adjudication” process unless the administrative law judge determines that a more formal process is required. The companies acknowledged in workshop discussions that narrowing the scope of the adjudication and using the brief adjudication process would result in decreased costs for the applicants and objecting companies.

In addition, the proposed rules allow a company flexibility regarding what fares to charge passengers, up to a defined maximum fare. To obtain the flexible fare authority, a company must file a new tariff showing its current fares and stating the maximum fare allowed under the rule. The maximum fare also increases each year to (at least partially) off-set the impact of inflation and other potential cost drivers. In order to implement the increase, each company that opts for flexible fare authority must file a new tariff each year showing the new maximum rate. Although no company objected to filing tariffs to take advantage of the rule change, the Commission is aware that preparing and filing a tariff requires company staff time and expense. However, the Commission believes this cost increase is more than off-set by the elimination of the need to file monthly fuel surcharge requests (which will no longer be allowed for companies opting for flexible fare authority) and other tariff changes to adjust to market conditions. The cost savings associated with not having to file fuel surcharge requests and other tariff changes with the Commission was acknowledged, but not quantified, by both companies that responded to the SBEIS questionnaire.

The companies expressed concern in their written comments and during the workshops regarding the possible economic impact of the Commission authorizing additional companies to serve territories or routes already served by an existing company. Capital Aeroporter, in responding to

the SBEIS questionnaire, asserted that based on past experience, it would face a 10 percent reduction in revenue if another company was allowed to compete for the same customers. No data was provided to substantiate the concern. Bremerton Kitsap Airporter, in responding to the SBEIS questionnaire, expressed concern that if an applicant was allowed to provide “door-to-door” service where an existing company provides scheduled route service, the existing customer base would have to be shared between the two companies, making neither company viable. Again, no data was provided, other than the statement that the company had tried to provide both scheduled route service and door-to-door service at the same time, and there was little demand for door-to-door service.

The proposed rules do provide an increased opportunity for companies to seek to provide service to customers who are not receiving service or are not receiving service to the satisfaction of the Commission. However, a review of the Commission’s past decisions regarding applications shows that the Commission has only approved applications when there is no existing company providing service or the existing company is not providing the same service to the satisfaction of the Commission. That basic standard still holds under the proposed rules. The proposed rules do clarify for applicants and existing companies the factors the Commission will consider when determining if the proposed service is the same, and if the existing company is providing that same service to the satisfaction of the Commission. While some provisions in the rule are more rigorous than the cumulative case law of the Commission, the provisions substantially adopt existing policy and practices revealed in a review of past decisions. The Commission has amended the draft rules to balance the concerns expressed by the companies with providing the public greater opportunities to receive service.

The companies also expressed concern that the maximum fares authorized under the proposed rules will not be adequate, given anticipated cost increases. The concern is primarily focused on the annual increase of 5 percent. The Commission believes that an initial allowable increase of 25 percent and an annual increase of 5 percent thereafter are sufficient. However, the Commission has retained the opportunity for a company to file a new tariff to revise its “base” fares, which could then serve as an adjustment to which the maximum fares could apply. Also, the Commission has established an evaluation of the results of the rule changes in five years, which will provide an opportunity to determine whether the 5 percent annual increase factor is sufficient.

VI. Proposed Rules that May Create Costs:

The Commission’s analysis of the major policy issues in question in this rulemaking supports a finding that none of the proposed rule changes will result in disproportionate economic impacts on small businesses or any other stakeholders involved in these proceedings.

VII. Summary of Findings:

While only two companies responded to the SBEIS survey, the responses and other information from the companies leads the Commission to find that the proposed rule changes will not impose more than minor costs on auto transportation companies. In fact, the proposed rules are more likely to reduce administrative costs over the long term to small and large auto transportation companies.

VIII. Mitigation:

The Commission's analysis supports a finding of no disproportionate economic impacts to small businesses. As the analysis indicates there is a high likelihood of cost savings to most involved parties in implementing these rules, including small businesses, therefore there is no need to consider any mitigation measures.

IX. Conclusion

Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry, in this case, auto transportation companies. Staff mailed surveys designed to obtain information about the cost of compliance with the draft proposed rules to all the stakeholders and companies known to the Commission to be involved in or affected by this rulemaking. Staff received responses from only two companies. The companies' comments reflected a general concern about the possibility the Commission would introduce competition where competition would be harmful, while at the same time acknowledging the cost savings created by the proposed flexible fare rule and streamlining of administrative hearing processes.

The Commission has determined the proposed revisions to WAC 480-30 are necessary and prudent to conduct its statutory responsibilities and, in addition, the analysis indicates there is little or no possibility that these proposed rules will cause (net) cost increases to small or other businesses in the implementing of these rules. In addition, the Commission has determined there is a high likelihood that businesses affected by the rulemaking, including small businesses, will experience as a result of the proposed rules.

Therefore, based on all information collected throughout the rulemaking process to date, the Commission concludes there is no new major economic impact that will result from this rulemaking. In addition, the Commission concludes that, at least, minor long-term economic improvements and savings will result from this rulemaking.