



**REPORT ON HOW TO BEST
REGULATE THE
TRANSPORTATION OF EMPTY
SOLID WASTE CONTAINERS**

Transportation Safety Division
Docket TG-191050

Pursuant to Order 03, Docket TG-190495

May 7, 2020

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EXECUTIVE SUMMARY

On February 27, 2020, Staff hosted a workshop in the Richard Hemstad Room at 621 Woodland Square Loop S.E. in Lacey, Washington. The workshop provided an opportunity for interested parties to comment and discuss the best way to regulate the transportation of empty solid waste containers to and from residences. This workshop focused on whether it would be appropriate for the Commission to require drivers transporting empty solid waste container vehicles to be medically certified. After the workshop, Staff reviewed a copy of the transcript and gathered additional data to prepare this report.

The workshop participants generally agreed that the financial impact to have the drivers transporting empty solid waste container vehicles to be medically certified is relatively inconsequential. However, on the other hand, the participants believed that the safety benefit to the public of having drivers of commercial vehicles greater than 10,000 pounds was significant. In light of the inconsequential financial impact and significant safety benefit to the public of having drivers of large vehicles being medically certified - most of the workshop participants agreed that it is in the public interest for the Commission to interpret 49 CFR 391.45(a) to apply to drivers of vehicles transporting empty solid waste containers. This will be discussed in further detail in the workshop comment summary section of this report.

The workshop participants further believed that consistency among Washington regulatory agencies and Federal regulatory agencies is beneficial. Staff's current interpretation of 49 CFR § 391.41(a) is consistent with how the Federal Motor Carrier Safety Administration ("FMCSA") regulates interstate commercial motor vehicles. Accordingly, under Staff's interpretation, inter and intrastate companies are subject to the same regulation. However, as the Commission noted in TG-191050, Order 03, Washington State Patrol's (WSP) regulations conflict with the Commission and the FMCSA by not requiring drivers of empty solid waste container vehicles to be medically certified. This is because WSP chose to adopt the federal regulation for intrastate motor carriers, including driver qualifications found in Title 49 CFR, Part 391, but not subparts D and E which include 49 CFR 391.45(a). Significantly, at the Workshop, the WSP representative stated that the agency is in the process of revising its regulations to make them consistent with the Commission and the FMCSA.

After reviewing the transcript of the workshop, Staff believes that interpreting 49 CFR 391.45(a) to require drivers of vehicles transporting solid waste containers over 10,000 pounds is appropriate and in the public interest. Accordingly, Staff recommends that the Commission use the discretion it is afforded by appellate courts to interpret 49 CFR 391.45(a) to require drivers of empty solid waste container vehicles to be medically certified. Staff believes this interpretation supports fairness to the industry, safety to the public (and drivers), and either is or will be consistent with other state and federal regulatory agencies.

Recommendations

1. The Commission continues to carry out its current enforcement policy and require its Motor Carrier Safety program to conduct safety interventions at the solid waste collection company's principal place of business. Motor Carrier Safety staff will sample records of regulated solid waste collection companies to ensure compliance with safety laws and rules, including those vehicles used to transport empty solid waste containers.
2. The Commission supports a uniform safety enforcement approach consistent with other state and federal regulations.
3. The Commission instructs its Motor Carrier Safety program to continue discussing with WSP rules and regulatory overlap which may be inconsistently applied or in direct conflict between the agencies.
4. Staff respectfully recommends that the Commission issue an interpretive policy statement outlining the Commission's preferred enforcement approach on the central issue in this Docket (whether or not drivers employed and/or contracted by regulated solid waste collection companies, who transport empty solid waste containers to and from residences in trucks ranging from 10,000 to 26,000 pounds gross vehicle weight, should be required to have medical certification.)

Legal Background of Workshop

On July 10, 2019, the Commission issued a penalty assessment against Waste Management of Washington, Inc. ("Waste Management" or "Company") for 477 violations of [Washington Administrative Code \(WAC\) 480-70-201](#), Vehicle and Driver Safety Requirements, and 49 CFR § 391.45, using a driver not medically examined and certified, in Docket TG-190495.¹ The Company responded to the penalty assessment on July 25, 2019, contesting 253 of the violations and requesting mitigation of the penalty.² After briefing by the parties, the Commission denied the Company's contest and upheld the violations on August 28, 2019, in Order 01.³

On September 9, 2019, the Company petitioned for administrative review of Order 01.⁴ In this petition, Waste Management appealed the violations of 49 CFR 391.45(a), which requires drivers of commercial motor vehicles to be medically examined and certified. The Commission adopts 49 CFR 391.45(a) by reference in [WAC 480-17-201\(1\)](#). In its petition, Waste Management's position was that 49 CFR 391.45(a) should not apply to its vehicles that transport solid waste containers that have no solid waste within them. Specifically, in briefing, Waste Management argued: (1) that the Commission does not have the jurisdiction to regulate empty solid waste container vehicles; and (2) that the Commission should interpret 49 CFR 391.45(a) to not apply to solid waste container vehicles. In its response brief, Staff made several legal and policy arguments on why 49

¹ Penalty Assessment - Docket TG-190495

² Waste Management Response - Docket TG-190495

³ Order 01 - Docket TG-190495

⁴ Waste Management Petition for Administrative Review - Docket TG-190495

CFR 391.45(a) should be interpreted to apply to Waste Management’s empty solid waste container vehicles—in response to the arguments set forth by Waste Management.

On November 14, 2019, the Commission issued Final Order 03 in docket TG-190495.⁵ In paragraph 9 of this order, the Commission found that it retained jurisdiction over Waste Management:

The Commission has broad regulatory authority over Waste Management, the safety of its operations, all matters affecting the relationship between the Company and its customers, and the comfort and convenience of Washington residents using Waste Management’s services.

Paragraph 11 of this order further concluded that these empty solid waste container vehicles may pose a significant risk to the public.

The vehicles at issue in this case are, according to the Company’s Petition, used to “deliver and retrieve empty solid waste and recyclable containers to and from the residents and businesses [the Company] serves.”⁶ It is undisputed that the vehicles in question weigh more than 10,001 pounds.⁷ These vehicles, therefore, are large and pose a significant risk to the travelling public if operated in an unsafe manner.

The Commission also acknowledged that its regulatory authority overlaps with the WSP:

The Washington State Patrol (WSP) is a general authority Washington law enforcement agency that exercises the powers and duties prescribed it by law.⁸ WSP has authority to inspect a commercial motor vehicle with respect to vehicle equipment, hours of service, and driver qualifications.⁹ WSP adopted federal regulations for intrastate motor carriers, including driver qualifications found in Title 49 C.F.R. Part 391, but not subparts D and E, which include 49 CFR § 391.45(a).¹⁰ With respect to subparts D and E, the Commission’s commercial motor vehicle requirements are more stringent than WSP’s.

As Waste Management notes in its Petition, the Commission and WSP both regulate the safety of CMVs, and both agencies have jurisdiction over aspects of Waste Management’s operations. . . WSP’s inspection authority in Chapter [46.32 RCW](#) concerning commercial motor vehicles used to transport more than eight passengers including the driver overlaps with Commission authority to regulate those same vehicles when used by a passenger charter or excursion carrier.

Waste Management’s Petition raises issues of potential conflicting regulations that apply not just to the Company, but to all solid waste collection companies subject to the Commission’s authority.

⁵ Order 03 - Docket TG-190495

Although the Commission recognized its jurisdiction to regulate the safety of Waste Management’s operations and that these empty solid waste container vehicles pose a significant risk to the public, the Commission did not exercise its deference to interpret 49 CFR 391.45(a). Instead, the Commission dismissed the violations against Waste Management and instructed Staff to coordinate among stakeholders and file a report with the Commission on how to best regulate these solid waste container vehicles:

We acknowledge that regulatory authority over the vehicles at issue may be unclear, and it would not be in the public interest to determine this question in the narrow proceeding before us. Therefore, we determine that it is appropriate to dismiss the 253 violations of 49 C.F.R. § 391.45(a) and the \$12,650 penalty assessed for those violations. While we decline to find here that the vehicles at issue fall outside the scope of the Commission’s jurisdiction, this question cannot be resolved in this case. Accordingly, we exercise our discretion to reserve judgment until we have sufficient information concerning this question as it applies to all regulated solid waste collection companies.

To that end, we direct Staff to coordinate with regulated solid waste collection companies and with WSP to determine how to best regulate the transportation of empty solid waste containers to and from customers. At the conclusion of those discussions, **we direct Staff to file a report with the Commission containing Staff’s findings and recommendations.**

In accordance with the Commission’s directive, Staff coordinated a workshop including all interested stakeholders on February 27, 2020.

Commission Workgroup

Kathy Hunter	Director, Transportation Safety
Mathew Perkinson	Assistant Director, Transportation Safety
Jason Sharp	Motor Carrier Safety Supervisor
Patrick Remfrey	Transportation Planning Specialist, Transportation Safety
Katie Hancock	Transportation Planning Specialist, Transportation Safety
Mike Young	Regulatory Services Section Manager, Regulatory Services
Kyle Murphy	Legislative and Policy Advisor, Commissioners
Joe Dallas	Assistant Attorney General, Office of the Attorney General
Daniel Teimouri	Assistant Attorney General, Office of the Attorney General

Other participants:

Kevin Valentine	Washington State Patrol
Brad Lovaas	Washington Refuse and Recycling Association
Andrew Kenefick	Waste Management
Scott Sizer	City of Tacoma
Ann Paisner	Public Counsel
Thomas Johnson	Public Counsel
Sarah Laycock	Public Counsel ⁶

⁶ Sign in Sheet available in Docket TG-191050.

Background

The Commission is a regulatory agency responsible for ensuring intrastate solid waste companies operate in the interest of the public. The Commission's mission in regulating solid waste companies is to protect the public and ensure consumer protection while providing a reasonable rate of return to companies.

[RCW 80.01.040](#) provides that the Commission shall:

- (1) Exercise all the powers and perform all the duties prescribed by this title and by Title 81 RCW, or by any other law.
- (2) Regulate in the public interest, as provided by the public service laws, all persons engaging in the transportation of persons or property within this state for compensation.
- (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.
- (4) Make rules and regulations necessary to carry out its other powers and duties.⁷

The Commission is authorized by statute to regulate other types of transportation companies including household goods, auto transportation, passenger charter and excursion carriers, private, non-profit transportation providers, general freight, and railroad crew transportation companies. (For additional information on the history of Commission motor carrier safety regulation, please refer to Appendix A.)

On July 10, 2019, the Commission issued a penalty assessment against the Company for 477 violations of [WAC 480-70-201](#), Vehicle and Driver Safety Requirements, and 49 CFR § 391.45, using a driver not medically examined and certified, in Docket TG-190495. The Company responded to the penalty assessment on July 25, 2019, contesting 253 of the violations and requested mitigation of the penalty. After briefing by the parties, the Commission denied the Company's contest and upheld the violations on August 28, 2019 in Order 01. On September 9, 2019, the Company petitioned for administrative review of Order 01.

On November 14, 2019, the Commission issued Final Order 03 in Docket TG-190495. Final Order 03 directed Staff to engage with regulated solid waste collection companies and WSP about the regulation of drivers and vehicles used to transport empty solid waste containers to and from customers, and to file a report with Staff's findings and recommendations no later than May 14, 2020.

⁷ Revised Code of Washington 80.01.040.

Workshop

Date and Location

On February 27, 2020, the Commission hosted a workshop to engage stakeholders as instructed by Order 03, in Docket TG-190495. The workshop convened at the Commission's Richard Hemstad Room at 621 Woodland Square Loop S.E in Lacey, Washington. Interested parties offered comments and discussed the transportation of empty solid waste containers to and from residences. A court reporter was also present and prepared a transcript of the workshop. Early on during the workshop, stakeholders were advised that it would not be a productive use of everyone's time if the group continued technical legal arguments already made in Docket TG-190495, as those arguments were already before the Commission. Instead, the stakeholder group was asked to focus on what constitutes the best policy to regulate vehicles transporting empty solid waste containers to and from residences.

Notice of Inquiry

A notice of inquiry was sent to the solid waste industry in advance of the workshop to better understand the scope of companies offering the services at issue in the workshop.⁸ Staff did not require written responses to the notice, and it received no written responses prior to the workshop. However, on April 28, 2020, Public Counsel submitted written comments.⁹ A few companies participated via teleconference, and the Washington Refuse and Recycling Association (WRRA) was represented by its Executive Director, Brad Lovaas.

The questions posed to the solid waste industry in the notice of inquiry:

1. Does your company operate commercial motor vehicles with a gross vehicle weight of 10,000 to 26,000 lbs.?
2. Does your company use those commercial motor vehicles to solely deliver empty solid waste containers to and from customers (exclude drop-boxes)?
3. Does your company require the drivers of those commercial motor vehicles to be medically certified by a medical examiner who is listed on the National Registry of Medical Examiners?
4. Does your company oppose or support requiring drivers of those commercial motor vehicles to be medically certified by a medical examiner listed on the National Registry of Medical Examiners?
5. How many drivers do you estimate operate those commercial vehicles to deliver solid waste containers to and from customers?

⁸ Notice of Inquiry and Workshop in Docket TG-191050.

⁹ Public Counsel Comments in Docket TG-191050.

6. What is the financial impact to your company to require drivers of commercial motor vehicles to be medically certified by a medical examiner who is listed on the National Registry of Medical Examiners?

Workshop Comment Summary

The following selected excerpts from the transcript are offered to highlight the stated positions of the parties who participated at the workshop. For a complete record of all statements made during the workshop, please refer to the transcript, attached hereto as Attachment A.

Washington State Patrol (Officer Kevin Valentine)

- “In the opening, it was mentioned that we did not adopt the part of 391. We did, although we did make an exception to the rule between 10,000 pounds and 26,001.”¹⁰
- “With the current information that we're getting from FMCSA, I think the answer to your question is, is there's been an uptick on collisions.”¹¹
- “[W]e're in the process of striking the part where we exempt 10,000 to 26,001 from our rule and making that more in line with and consistent with the federal rule and UTC's rule currently.”¹²

Waste Management of Washington (Andrew Kenefick)

- “[T]he fundamental issue that I see is the UTC regulating vehicles when it doesn't have the statutory authority to do so. You might all think it's a good idea, but I think it's a bad idea . . . that's a legislative decision, not a decision made in the context of a rulemaking or an enforcement action.”¹³
- “[F]rom the perspective of Waste Management, you know, the -- whether or not it makes sense to require these drivers to have medical cards, you know, at the end of the day, it is not that significant an issue for us. I think we've gone ahead and we've made sure that drivers of container delivery vehicles have those medical cards.”¹⁴

¹⁰ *In re Solid Waste Collection Companies*, Docket TG-191050, Workshop Transcript, Vol. 1, 24:16-19 (Feb. 27, 2020).

¹¹ *Id.* at 24:19-22.

¹² *Id.* at 24:22-25:1.

¹³ *Id.* at 15:4-10.

¹⁴ *Id.* at 16:9-15.

- “Waste Management never challenged the authority of the UTC to impose these regulations on those vehicles that are transporting solid waste. So if you've got a vehicle that's between 10,000 pounds and 26,000 pounds that actually transports solid waste, we're not -- we're not disputing that, and any driver who would be in that situation would be subject to the -- the UTC rules.”¹⁵
- “. . . [I]nconsistent rules is, in fact, what led to this whole issue in the first place. . .” and “. . . I don't think we had a reasonable notice to solid waste companies that this is how the UTC would be applying that particular standard.”¹⁶

Washington Refuse and Recycling Association (Brad Lovaas)

- Lovaas surveyed the WRRRA's members prior to the workshop regarding the use of drivers to deliver waste containers to and from customers, and the general responses were that companies ranged from “zero to a few to up to a couple dozen” drivers doing this work.¹⁷
- Large companies, like Waste Management, “would probably have the most” drivers operating vehicles solely to deliver empty solid waste containers.¹⁸
- Lovaas explained that in very few cases are drivers are only dedicated to this type of work.¹⁹
- “[J]ust to put it out there, we're supportive of these folks having medical cards. One, because we want to know that they're – they're safe. We're always concerned about safety. I mean, getting our workers home, not hurting a customer, it's all about the safety.”²⁰
- “I would just tell you again that our priority is safety. It's never more important when it comes to the operation of commercial motor vehicles. We support the UTC imposing this.”²¹
- “. . . [W]e'll be recommending to all our members that these drivers from 10,000 to 26,000 have medical cards.”²²

¹⁵ *Id.* at 19:1-8.

¹⁶ *Id.* at 27:8-14.

¹⁷ *Id.* at 18:16-18.

¹⁸ *Id.* at 18:3-4.

¹⁹ *Id.* at 18:4-5.

²⁰ *Id.* at 18:10-15.

²¹ *Id.* at 28:3-6.

²² *Id.* at 29:7-9.

Public Counsel (Ann Paisner)

- “We do view this issue as squarely within the Commission's authority.”²³
- Paisner noted that failing to require drivers operating vehicles transporting empty solid waste containers to and from residences to have medical certificates poses “. . . a significant safety concern and observe that this medical examination and certification requirement does appear to be required by a large number of states, if not a majority of other states, and also the federal government.”²⁴
- “The Commission itself has observed a significant number of injuries related to medical events, and so we also feel the cost here is vastly outweighed by the safety risk and benefits that could be gained here.”²⁵
- Paisner requested clarification as to whether or not empty solid waste containers may still contain items or remnants of solid waste when they’re collected.²⁶ Kenefick responded “. . . of course these containers are going to have incidental amounts of solid waste in it, but that doesn’t make the vehicle a vehicle driven for the purpose of transporting solid waste . . . There’s a difference between . . . collecting and delivering containers to and from customers, and . . . picking up a container full of solid waste.”²⁷
- “. . . [W]e do view the Commission’s authority as broad enough to cover these smaller vehicles, transporting containers.”²⁸
- Paisner inquired as to whether “a third party [] hired to pick up a used container, if those drivers are expected within your organization . . . [to] have medical cards . . .”²⁹ Lovaas replied that this was a complex issue and was “fairly novel to the industry” but that “[a]gain, we don’t disagree with it. Safety is the overriding concern.”³⁰ Kenefick questioned whether “the UTC thinks its jurisdiction is broad enough to include – to include vehicles that are not actually transporting solid waste.”³¹ Later, Paisner asked additional follow-up questions regarding “third-party contractors for this weight class vehicle about the extent to which third-party contractors are being used . . . it would be good to get a

²³ *Id.* at 5:1-2.

²⁴ *Id.* at 5:3-8.

²⁵ *Id.* at 5:8-12.

²⁶ *Id.* at 19:23-20:12.

²⁷ *Id.* at 20:24-21:11.

²⁸ *Id.* at 43:16-19.

²⁹ *Id.* at 35:12-18.

³⁰ *Id.* at 36:8-13.

³¹ 37:18-22.

sense for . . . approximately how many of those drivers are third parties . . .³² Lovaas replied that “. . . I don’t have that specific information on third parties, but I would – again, would suggest that that’s used primarily when there is a big swap-out. Could happen in UTC areas . . .”³³

Written Comment Summary

Public Counsel

On April 28, 2020, Paisner submitted written comments to Docket TG-191050 on behalf of Public Counsel.³⁴ The following selected excerpts from Public Counsel’s initial comments are offered to highlight the stated position of Public Counsel. For a complete record of Public Counsel’s initial comments, please refer to the document filed in Docket TG-191050 titled, “Comments, on behalf of Public Counsel, from Ann Paisner.”

In its comments, Public Counsel addressed two specific points:

- (1) Whether the commission has jurisdiction to regulate vehicles weighing 10,001-26,000 pounds operated by regulated solid waste collection companies that are used to transport empty solid waste containers to and from customer; and
 - (2) Whether WAC 480-70-201, which adopts by reference 49 CFR Section 391.45(a), should require empty waste container vehicle drivers to be medically certified.
- “Public Counsel believes the Commission has jurisdiction to regulate waste container vehicles of regulated solid waste companies, even if the vehicle is not being used to transport solid waste.
 - “. . . The Washington State Legislature defines motor vehicles of solid waste collection companies in RCW 81.77.010 as those “used for the purpose of solid waste collection or transportation. The solid waste containers in question, whether empty or full, exist to enable the collection and transportation of solid waste . . .”
 - “. . . Medical Certifications Promote Road Safety at Small Cost”
 - “We believe failing to impose the medical certification requirements on drivers of these vehicles, which weigh more than 10,001 pounds, would pose a significant safety risk to Washingtonians.”

³² *Id.* at 41:2-13.

³³ *Id.* at 42:6-9.

³⁴ See Docket TG-191050 for initial comments submitted by Public Counsel

- “. . . the cost to get these medical certifications seems small in comparison to the potential safety benefit.”
- “Continuing to impose the medical certification requirement for drivers of waste container vehicles weighing 10,001 pounds or more is consistent with how the Commission regulates household goods carriers. Such requirements would be consistent with the federal government’s regulations . . . along with other U.S. states that impose the same requirement on all commercial vehicles weighing 10,001 pounds or more.”

Public Counsel stated that the Commission and stakeholders would benefit from additional data, and that firm data from the regulated solid waste companies on the questions presented in the notice of inquiry would also be helpful.

Public Counsel believes the Commission should explore further the use of third-party contractors to transport empty containers. It believes the drivers of those vehicles should also be medically certified.

Federal Safety Regulation of Solid Waste Companies

The USDOT considers interstate solid waste companies common carriers based on the weight of the vehicle being operated. As previously noted, drivers operating CMVs with a gross vehicle weight greater than 10,001 pounds must obtain medical certification prior to operating in interstate commerce.

The FMCSA was established in 2000 pursuant to the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 113). Its primary mission is to prevent commercial motor vehicle related fatalities and injuries. Activities of the Administration contribute to ensuring safety in motor carrier operation through strong enforcement of safety regulations, targeting high-risk carrier and commercial motor vehicle drivers, improving safety information systems, and commercial motor vehicle technologies.

The agency works with Federal, State, and local enforcement agencies, the motor carrier industry, labor and safety interest groups, and others. (For information on intrastate safety regulation of solid waste companies, please refer to Appendix B. For further information on intrastate safety regulation of common carrier companies, see Appendix C.)

Regulatory Relationship between Agencies

The Commission maintains a regulatory agency interrelationship with other agencies responsible for safety oversight of motor carrier companies. One of the relationships exists between the Commission and WSP. The two agencies have long worked together to ensure and promote public

safety. In some cases, regulatory overlap occurs. For example, a motor carrier operating a vehicle weighing 16,001 lbs. transporting solid waste is subject to the Commission's jurisdiction. At the same time, the vehicle is subject to roadside inspection at a scale for weight and load safety by the WSP.

The Motor Carrier Safety program has also collaborated on several occasions regarding Oregon's household goods regulations. In this case, the program contacted its neighboring safety program to understand the requirements imposed upon commercial vehicle drivers in Oregon. Oregon Department of Transportation (ODOT) confirmed all intrastate commercial motor vehicle drivers operating vehicles 10,001 pounds or more must be medically certified. ODOT has a Motor Carrier Transportation Division, and Motor Carrier Safety rules are available at <https://www.oregon.gov/ODOT/MCT/Pages/TruckSafety.aspx>. See Chapter 740, Division 100 which covers vehicles, drivers, and equipment.

The Motor Carrier Safety program communicates with FMCSA on joint inspections, keeping in tune with changes in the regulatory framework throughout the country while ensuring its safety oversight of specific intrastate carriers is consistent and fair. The FMCSA provides safety oversight of interstate transportation companies; however, it has jurisdiction over controlled substance and alcohol testing and commercial driver license regulations of all motor carriers. The Motor Carrier Safety program also receives grant funding to conduct unannounced roadside inspections and safety interventions of interstate transportation companies throughout the state.

There have been, on occasion, major fatality events involving commercial motor vehicles regulated by the commission, the WSP, and FMCSA. Each agency coordinates during these events with each playing a role in safety oversight and compliance.

Financial Impact to Industry

During the Feb. 27 workshop Staff asked if the cost to have a driver medically certified is around \$100 per driver plus a few hours to obtain a physical exam. The group agreed that is roughly the cost. Companies must also research and assign a medical examiner who is listed on FMCSA's National Register of Certified Medical Examiners.

WRA indicated that the financial impact is minimal, but the largest impact is to the smallest companies. Public Counsel stated that the cost is vastly outweighed by the safety risk and benefit that could be gained. The WSP indicated that if it amended its rules, it would require an education period as the regulation change would impact all common carriers under [RCW 81.80](#) with limited exception. Waste Management's position remained that the vehicles being operated to transport empty solid waste containers are not subject to Commission jurisdiction.

In an Order, the Commission stated, “. . . 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. . .”

Public Safety and Accidents

Public 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 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.

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.

Accident Data

	2015-19 WA CMV Accidents ³⁵					
	2015	2016	2017	2018	2019	% Increase 2015 - 2019
Trucks and Buses 10,001 - 26,000 lbs.	173	244	252	283	248	43%
Trucks and Buses > 26,000	1,844	1,935	2,184	1,991	2,081	13%
Trucks only, 10,001 - 26,000	134	187	219	225	210	57%
Trucks only, > 26,000	1,649	1,713	1,986	1,799	1,904	15%

Data Explained

The FMCSA tracks recordable accident data on commercial motor vehicles (CMVs) in a federal program titled Motor Carrier Management Information System (MCMIS.) Large trucks are defined as “vehicle[s] with a gross vehicle weight rating or gross combined weight rating greater than 10,000 lbs.” and buses defined as “passenger-carrying vehicle[s] designed to seat at least nine people, including the driver.”³⁶

The table above shows that recordable accidents for bus and truck CMVs in the 10,001 to 26,000-pound weight range increased by approximately 43 percent between 2015 and 2019 in Washington, and by 57 percent looking at truck accidents alone. The accident rate increase in the 10,001 to 26,000-pound range is greater than the over 26,000-pound category, which increased by about 13 percent over the last five full years. Recordable accidents decreased in the 10,001 to 26,000-pound range between 2018 and 2019 from 283 to 248 for CMVs; however, 248 is still a significant number at more than one recordable accident every other day of the year

³⁵ *Data source:* Motor Carrier Management Information System (MCMIS), Analysis and Information (A&I) Online, Crash Statistics for Washington state. MCMIS recordable accident criteria is as follows: “The crash must result in at least one fatality; one injury where the person injured is taken to a medical facility for immediate medical attention; or one vehicle having been towed from the scene as a result of disabling damage suffered in the crash.”

³⁶ See A&I, Crash Statistics Summary Report, General Definitions.

APPENDICES

APPENDIX A
Workshop to Discuss Applicability of
WAC 480-70-201 and CFR 49 § 391.45
Docket TG-191050

History of Commission Motor Carrier Safety Regulation

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

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. The Commission and WSP subsequently entered into an interagency agreement that delineates motor carrier safety regulation functions between the agencies.

When the legislature enacted RCW 46.32.080, it excluded economically regulated companies, including solid waste collection companies as defined by Chapter 81.77, from WSP’s safety inspection authority and expressly preserved the Commission’s authority to regulate the safety of those companies’ vehicles and operations.

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Intrastate Safety Regulation of Solid Waste Companies

Commission Intrastate Safety Regulations of Solid Waste Collection Companies

The purpose of the commission’s Motor Carrier Safety program is to ensure transportation companies operate in a safe manner and in compliance with state and federal regulations. The program accomplishes this through safety fitness evaluations and interventions, destination checks, and vehicle inspections targeted at companies with the highest risk profiles.

The program directly impacts the safety of Washington highways and reduces risk to the motoring public. The Commission is charged by statute in RCW 81 to regulate certain transportation companies including solid waste collection companies. The Motor Carrier Safety program ensures that regulated transportation companies meet their statutory obligations to provide services that are safe, adequate, and fair.

The Commission adopts by reference in WAC 480-70-201(1) portions of the federal driver qualification requirements contained in Title 49 CFR § 391. This includes 49 CFR. § 391.45(a), which requires drivers of commercial motor vehicles to be medically examined and certified.

Statute Authority – Revised Code of Washington (RCW) 81.77

The following statutes establish regulation of intrastate transportation Solid Waste Companies.

RCW 81.77.010

Defines a “solid waste collection company” as a person who “owns, controls, operates, or manages vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation . . . over any public highway in this state as a ‘common carrier’ or ‘contract carrier.’”

RCW 81.77.030

Requires the commission to supervise and regulate every solid waste collection company in Washington.

RCW 81.77.040

A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring public convenience and necessity require such operation

Rule Authority – Washington Administrative Code (WAC) 480-70

The following rules establish regulation of intrastate transportation Solid Waste Companies.

WAC 480-70-041

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Docket TG-191050

Defines a “solid waste collection company” to mean every common carrier, including a contract carrier, who provides solid waste collection service.

WAC 480-70-041

Defines “solid waste collection” to mean collecting solid waste from residential or commercial customers and transporting the solid waste, using a motor vehicle, for collection and/or disposal over the highways of the state of Washington for compensation.

Intrastate Medical Certification Requirements

All Washington CDL drivers are required to meet FMCSA physical standards designed to ensure drivers are physically capable of handling large trucks for long periods of time. Drivers who don’t meet those standards are able to operate a commercial vehicle with a medical exemption.

Drivers operating a commercial motor vehicle (CMV) between 10,001 and 26,000 lbs. are not required to obtain a Commercial Driver License (CDL.) The following is a list of scenarios where medical certification is, and is not required when operating a CMV in this weigh category.

1. Company operates CMV 10,001 to 26,000 lbs. in interstate commerce
 - a. Medical certificate required
2. Company operates CMV 10,001 to 26,000 lbs. in intrastate commerce *and* regulated by the Commission
 - a. Medical certificate required
3. Company operates CMV 10,001 to 26,000 lbs. in intrastate commerce and regulated for insurance and operating authority only by UTC as a common carrier (no safety oversight)
 - a. Medical certificate *not* required

Medical Certification Exceptions

Certain drivers in specified categories, such as government employees, are excluded from medical certification requirements.

Medical Certification Waivers

A driver who does not meet the criteria to obtain a medical certificate may obtain a waiver for the condition if a medical professional certifies the driver can safely operate a commercial vehicle. The medical professional is required to provide sound medical judgement to ensure no adverse effect on safety.

APPENDIX C
Workshop to Discuss Applicability of
WAC 480-70-201 and CFR 49 § 391.45
Docket TG-191050

Intrastate Safety Regulation of Common Carrier Companies

Authority RCW 81.80

The following statutes establish regulation of intrastate transportation common carriers.

RCW 81.80.070

Requires common carriers, contract carriers, and temporary carriers to obtain a permit from the Commission.

RCW 81.80.010

Defines a common carrier to mean any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies. "Common carrier" does not include a personal delivery device or a personal delivery device operator as those terms are defined in RCW [46.75.010](#).

RCW 81.80.330

The commission may administer and enforce all provisions of this chapter and inspect the vehicles, books, and documents of all motor carriers and the books, documents, and records of those using the service of the carriers for the purpose of discovering all discriminations and rebates and other information pertaining to the enforcement of this chapter and shall prosecute violations thereof. The commission shall employ auditors, inspectors, clerks, and assistants necessary for the enforcement of this chapter. The Washington state patrol shall perform all motor carrier safety inspections required by this chapter, including terminal safety audits, except for (1) those carriers subject to the economic regulation of the commission, or (2) a vehicle owned or operated by a carrier affiliated with a solid waste company subject to economic regulation by the commission. The Washington state patrol and the sheriffs of the counties shall make arrests and the county attorneys shall prosecute violations of this chapter.

A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

APPENDIX C
Workshop to Discuss Applicability of
WAC 480-70-201 and CFR 49 § 391.45
Docket TG-191050

Rule Authority WAC 480-14

The following Rules establish regulation of intrastate transportation common carriers.

WAC 480-14-180

No person may conduct operations as a common carrier in Washington intrastate commerce without having first obtained a permit from the commission to do so. Common carriers must apply to the commission to acquire permanent common carrier authority, to extend existing permanent common carrier authority, or to change a carrier name or business structure. Common carriers must apply on forms furnished by the commission and must include all the information, documents and exhibits called for in the form or the form's instructions. The commission may refuse to accept any application until all required information is supplied.

WAC 480-14-010

These rules require intrastate common carriers of property by motor vehicle to obtain and maintain intrastate common carrier operating permits, to file reports and pay regulatory fees, and to file and maintain evidence of required insurance coverage. The rules also require interstate carriers to secure appropriate authority from the United States Department of Transportation (USDOT) and to register with the commission and pay fees as required by the Uniform Carrier Registration (UCR) program or any successor program.

ATTACHMENTS

Docket No. TG-191050 - Vol. I

In re: Solid Waste Collection Companies

February 27, 2020



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Re: Notice of Workshop to)DOCKET TG-191050
Discuss Applicability of)
WAC 480-70-201 and)
CFR 49 391.45 to Commission)
Regulated Solid Waste)
Collection Company Drivers)
and Vehicles)

WORKSHOP, VOLUME I

Pages 1-47

February 27, 2020

9:30 a.m.

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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A P P E A R A N C E S

MATHEW PERKINSON, Director or Transportation Safety
JASON SHARP, Motor Carrier Safety Supervisor
MIKE YOUNG, Regulatory Services
DANIEL TEIMOURI, Assistant Attorney General, Staff
JOE DALLAS, Assistant Attorney General, Staff
SARAH LAYCOCK, Public Counsel
ANN PAISNER, Public Counsel
THOMAS JOHNSON, Public Counsel
BRAD LOVAAS, Washington Refuse and Recycling
ANDREW KENEFICK (via bridge), Waste Management

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LACEY, WASHINGTON; FEBRUARY 27, 2020

9:30 A.M.

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P R O C E E D I N G S

MR. PERKINSON: Good morning, everybody. My name is Mathew Perkinson. I work with the Utilities and Transportation Commission. I'm the assistant director of transportation safety. I'm going to be facilitating the workshop today.

Thank you, everybody, for attending. We have potential for somebody to be calling in, so we're just going to cover some preliminary emergency exits, AEDs, things like that, today's process and ground rules, and hopefully they jump on the call to weigh in.

So with that, thank you for attending today's workshop to discuss the best way to transport empty solid waste containers. If we could begin with the round table, if you could just do an introduction of yourself, who you represent, and why you're interested in the discussion today. And I guess that maybe we'll start with Dan.

MR. TEIMOURI: Daniel Teimouri, Assistant Attorney General, on behalf of Commission Staff.

MR. DALLAS: Joe Dallas, Assistant Attorney

1 General, on behalf of Commission Staff.

2 MR. YOUNG: I'm Mike Young with the
3 regulatory services at Commission Staff.

4 MR. VALENTINE: Kevin Valentine, Washington
5 State Patrol.

6 MR. LOVAAS: Brad Lovaas, Washington Refuse
7 and Recycling Association. Here to represent the WRA
8 members and because we're regulated by the UTC for solid
9 waste collection and delivery since 1961.

10 MR. SHARP: Jason Sharp, motor carrier
11 safety supervisor here at the Commission.

12 MR. JOHNSON: Thomas Johnson, I'm a
13 paralegal with Public Counsel.

14 MS. LAYCOCK: Sarah Laycock with Public
15 Counsel.

16 MS. PAISNER: Hi, I'm Ann Paisner. I'm an
17 attorney with Public Counsel. And just to introduce us
18 and who we are, we are a division of the Washington
19 State Attorney General's Office, separate and distinct
20 from the Utilities and Transportation division that
21 represents the UTC Staff. And we have authority from
22 the Washington State Legislature, we are a statutory
23 party to participate in matters before the UTC,
24 including those that may have a major impact on safety
25 such as this one.

1 And I did just want to say briefly why we
2 were interested in being present today. We do view this
3 issue as squarely within the Commission's authority and
4 also we view it as a significant safety concern and
5 observe that this medical examination and certification
6 requirement does appear to be required by a large number
7 of states, if not a majority of other states, and also
8 the federal government. In an earlier docket, the
9 Commission itself has observed a significant number of
10 injuries related to medical events, and so we also feel
11 the cost here is vastly outweighed by the safety risk
12 and benefits that could be gained here.

13 So I just wanted to briefly state that those
14 are our interests here, who we are, and thank you for
15 giving us the opportunity to be here today.

16 MR. PERKINSON: Okay. Thanks, Ann.

17 I think that's everybody unless we have
18 anybody on the phone?

19 MS. MCPHERSON: I'm just observing. My name
20 is Kathryn McPherson. I am an investigator for the
21 solid waste division of motor carrier. I investigate
22 illegal haulers.

23 MR. PERKINSON: Okay. So we will basically
24 get into -- I'll show you guys, the emergency exits are
25 going to be over here in the event of -- probably

1 preference one will be right out here away from the
2 building along the sidewalk. This side we have another
3 exit just straight out where you came in front, across
4 at the park. There's an AED in the back of the room
5 with a fire extinguisher and bathrooms are there. Also,
6 there's a first aid kit right up here in the front of
7 the building. So just show of hands, is anybody in the
8 room that's CPR certified currently just for reference?
9 Couple of you, so that's good to know.

10 And also, there's coffee here, so feel free.
11 It's going to be a friendly group discussion, so it's a
12 safe place, and if you need a break, take a break. If
13 you need to use the restroom, by all means.

14 So with that, I'm going to hand it over to
15 Joe and Dan, who are going to cover a little bit of
16 background and why we're here today.

17 MR. DALLAS: All right. Thank you, Mat.

18 As I said earlier, my name's Joe, and I'll
19 be giving a brief procedural background of the workshop.

20 Now, this workshop arises out of Waste
21 Management's petition for an administrative review of
22 the penalty assessment in Docket TG-190495. This appeal
23 primarily involved Waste Management's alleged violations
24 of 49 CFR Section 391.45(a), which requires drivers of
25 commercial motor vehicles to be medically examined and

1 certified. The Commission has adopted this regulation
2 by reference in Washington Administrative Code
3 480-17-201 Subsection 1.

4 Now, Waste Management's position in this
5 appeal is that this regulation does not apply to its
6 drivers who operate vehicles that only move empty solid
7 waste containers to and from its customers. In its
8 final order, this Commission concluded that it has broad
9 jurisdiction to regulate Waste Management. In
10 particular, in paragraph 9 the Commission stated, quote,
11 The Commission has broad regulatory authority over Waste
12 Management, the safety of its operations, all matters
13 affecting the relationship between the company and its
14 customers, and the comfort and convenience of Washington
15 residents using Waste Management services.

16 In paragraph 11, the Commission further
17 concluded that these empty solid waste container
18 vehicles pose, quote, A significant risk to the
19 traveling public if operated in an unsafe manner.
20 However, and important to today's workshop, the
21 Commission noted that commercial motor vehicles are also
22 regulated by the Washington State Patrol as noted on
23 paragraph 12 of the Commission's final order. The
24 Commission noted that the UTC has more stringent rules
25 than the Washington State Patrol pertaining to

1 commercial motor vehicles. This is because the
2 Washington State Patrol has elected not to adopt 49 CFR
3 Section 391.45(a) where the Commission has.

4 Accordingly, in paragraph 14, the Commission
5 stated the following: Waste Management's petition raises
6 issues of potential conflicting regulations that apply
7 not just to the company, but to all solid waste
8 collection companies subject to Commission authority.
9 We acknowledge that regulatory authority over the
10 vehicles at issue may be unclear, and it would not be in
11 the public interest to determine this question in the
12 narrow proceeding before us.

13 Therefore, we determined that it is
14 appropriate to dismiss the 253 violations of 49 CFR
15 Section 391.45(a) and the \$12,650 penalty assessed for
16 those violations. While we declined to find here that
17 vehicles at issue fall outside the scope of the
18 Commission's jurisdiction, this question cannot be
19 resolved in this case. Accordingly, we exercise our
20 discretion to reserve judgment until we have sufficient
21 information concerning this question as it applies to
22 all solid waste collection companies.

23 To that end, we direct Staff to coordinate
24 with regulated solid waste collection companies and with
25 the Washington State Patrol to determine how best to

1 regulate the transportation of empty solid waste
2 containers to and from customers. At the conclusion of
3 those discussions, we direct Staff to file a report with
4 the Commission containing Staff's findings and
5 conclusions. Accordingly, the Commission has ordered
6 this workshop to determine how best to regulate these
7 solid waste collection vehicles.

8 Now, I don't think it would be productive to
9 go into the technical legal arguments that were made in
10 Docket TG-190495, and this is because the Commission has
11 already heard these arguments. Rather, today should
12 focus on what would constitute the best policy to
13 regulate these vehicles. To that end, Staff has
14 prepared an agenda with the topics that will be
15 discussed today.

16 We also have a court reporter, so please
17 talk slowly, as she's transcribing what is said today.
18 And based on the transcript of today's workshop, Staff
19 will provide a report detailing its findings and
20 recommendations in accordance with the Commission's
21 order.

22 With that, I will turn to Mathew Perkinson,
23 and he will be discussing the medical certificate
24 requirements, and then after that, we'll have a break.
25 Thank you.

1 MR. PERKINSON: So just one second. Andrew
2 is trying to connect to the line. If we can get him on,
3 I think it would be worth our time. So I'm going to
4 send him an email with instructions on how to do that
5 again. If we want to take five minutes.

6 (Pause in the proceedings.)

7 MR. PERKINSON: We'll go ahead and get back
8 started on the record.

9 So the next topic as seen on the agenda was
10 really to discuss the relationship between the UTC, the
11 Washington State Patrol, and FMCSA and how the
12 regulations currently work, sort of our relationship,
13 what -- what happens in practice, what do we get from
14 the State Patrol and FMCSA, and how do we work with
15 them.

16 So I'll just start with the Washington State
17 Patrol who's here today. A lot of the work that we do
18 with them is very similar to what our program does. We
19 get similar training, we do compliance review, we
20 conduct safety interventions or safety investigations,
21 we do vehicle inspections. Sometimes we will work in
22 the scale house to work toward our certification. We
23 work with them on quarterly training, and I just thought
24 that that was important to talk about how we work
25 together. We have regular conversations about

1 enforcement and best practices in the industry.

2 The FMCSA is another agency that we receive
3 federal funding from. So we have what's called an MCSAP
4 grant. It's something that helps us do federally
5 certified assignments. So we do safety interventions
6 for those carriers who travel interstate, and the
7 Washington State Patrol has a lot bigger model toward
8 interstate focus. We have a portion of our program that
9 does interstate assignments, and the majority of our
10 motor carrier safety program does intrastate
11 assignments. So, again, just kind of want to talk about
12 that. We obtain our certification from the United
13 States Department of Transportation, and the FMCSA is a
14 sub of that. Thought that was important to mention.

15 I think that covers it. But the -- I'm
16 going to have Jason talk about the definition of a
17 commercial motor vehicle.

18 If you wouldn't mind, Jason?

19 MR. SHARP: Thanks, Mat. So for the topic
20 we're here to discuss --

21 (Brief interruption.)

22 MR. PERKINSON: Hi, John, we can hear
23 everything you're saying. If you want to mute your mic.

24 UNIDENTIFIED SPEAKER: I apologize.

25 MR. PERKINSON: No problem. Thank you for

1 joining us.

2 MR. SHARP: So for the -- the reason we're
3 here today talking about how we safely regulate these
4 vehicles, which fall in the 10,001 pound to 26,000 pound
5 gross vehicle weight range, per WAC 480-70, which is the
6 solid waste rules, the driver and vehicle safety rules
7 have a part separate from the rest of the WAC, which is
8 strictly for vehicle safety regulation. And within
9 that, we have a definition of commercial vehicle being
10 that of one with a -- without getting too far into it, a
11 gross vehicle weight rating of 10,001 pounds or greater.
12 So that can top out beyond at the CDL level.

13 But other than that, we would also consider
14 a vehicle that transports a practicable amount of
15 hazardous materials as a commercial vehicle. And so
16 with that definition and how we adopt by reference part
17 391 of 49 CFR, we have our safety regulations, which we
18 adopt 391 nearly in its entirety. We do have an
19 exemption for 391.49, which is the waiver of certain
20 physical defects, which is not really applicable to this
21 topic. And we also have provisions in 391.11(b)(1),
22 which allow for drivers that operate wholly intrastate
23 to be 18 years of age as opposed to the difference with
24 the federal regulations at 21 for interstate
25 transportation.

1 MR. PERKINSON: Yeah, I think that pretty
2 much covers it. Thanks, Jason.

3 We -- I wanted to go over sort of the State
4 Patrol's rules.

5 Kevin, correct me if I'm wrong, but
6 essentially, the common carriers that operate in the
7 space of 10,000 to 26,000, currently the State Patrol
8 doesn't require those companies to have medical
9 certificate, and that's where we've seen some of the
10 conflict or the confusion and really brought forth some
11 of the conversation today.

12 So you can see that there are different
13 agencies with -- with difference rules. So a company
14 might be seen in a scale and a medical certificate card
15 violation might not be taken, and then we might be out
16 in the field visiting a company and take a medical card
17 violation, and I think the Commission recognizes there
18 was some conflict in their orders.

19 And that was -- is that about right, Kevin?

20 MR. VALENTINE: Very true.

21 MR. PERKINSON: Okay. And the other
22 scenario --

23 MR. KENEFICK: Hey, can I just actually
24 maybe ask a question or make a comment? And I'm not
25 sure -- I don't want to get in the way of how you

1 proceed with your -- your workshop, and -- and I
2 apologize for -- this is Andrew Kenefick with Waste
3 Management, and I apologize for not being able to be
4 there in person, but personal commitments didn't allow
5 it.

6 I think the -- you know, this discussion
7 could be useful, but I think there is really a threshold
8 question, maybe we'll get to it, maybe it won't be
9 covered here, but there -- the threshold question is the
10 question of jurisdiction. I think right now you --
11 there may be a lot of discussion about whether the UTC
12 should be regulating and requiring medical cards for
13 drivers of -- of container delivery vehicles. But
14 really the more fundamental question is whether or not
15 they have the -- the statutory authority to do that.

16 I understand the definition of commercial
17 motor vehicle that you have mentioned, but the thing
18 that I was pointing out in the -- in the -- the protest
19 that we -- we filed to the citations that we got, point
20 there was that -- that in the -- in 81.77, the
21 definition of -- of motor vehicles is defined very
22 specifically to those vehicles used for the purpose of
23 transporting solid waste.

24 Now, I know the Washington State Patrol's
25 got broader authority than that, and that's -- that's

1 kind of a main point that really does need to be
2 addressed. It's not -- the first question is, can the
3 UTC regulate; the second question is, should the WUTC
4 regulate. I think the funda- -- the fundamental issue
5 that I see is the UTC regulating vehicles when it
6 doesn't have the statutory authority to do so. You
7 might all think it's a good idea, but I think it's a bad
8 idea. But really it's not -- that's a -- that's a
9 legislative decision, not a decision made in the context
10 of a rulemaking or an enforcement action.

11 MR. DALLAS: Thank you, Andrew. This is Joe
12 Dallas with the Attorney General's Office. I -- I
13 definitely understand your point. I think we -- we
14 significantly briefed this before the Commission, and I
15 think the Commission's aware of these legal arguments,
16 and I think they convened this workshop with all the
17 stakeholders not to focus on these legal issues. I
18 think they're -- they're aware of them.

19 I think today would better be served to
20 focus on the policy given that, you know, we -- we have
21 a lot of stakeholders who aren't attorneys and aren't
22 going to be able to really contribute. And looking at
23 the Commission's order, it -- it's directing this
24 workshop to more look on what's the best policy to
25 regulate these vehicles. So I am aware of your legal

1 arguments, but I think for the purpose of today's
2 workshop, it would be best to follow the agenda, because
3 the Commission is aware of the legal arguments
4 pertaining to jurisdiction.

5 MR. KENEFICK: Okay. Well, I understood --
6 I thought that the Commission was in part interested in
7 exploring, you know, whether they, in fact, have
8 jurisdiction over this. And I can just, you know, say
9 to you from the perspective of Waste Management, you
10 know, the -- whether or not it makes sense to require
11 these drivers to have medical cards, you know, at the
12 end of the day, it is not that significant an issue for
13 us. I think we've gone ahead and we've made sure that
14 drivers of container delivery vehicles have those
15 medical cards.

16 Sort of regardless, it's just not worth
17 wasting a lot of effort on -- on the debate. It's --
18 it's -- but the -- the -- the question really at the end
19 of the day is, just in my mind is, again, not -- not
20 whether it's a good idea or a bad idea, it's just really
21 whether you've got the authority to do it. But I hear
22 what you say, and I'll -- I'll -- I'll take that into
23 the background. Thank you.

24 MR. DALLAS: All right. Thank you for your
25 comments, Andrew. I'm going to go ahead and pass the --

1 pass the mic back to Mathew and we'll proceed with the
2 agenda. Thank you.

3 MR. PERKINSON: Yeah, thanks, Andrew, for
4 bringing that up and, Joe, for covering it.

5 I think one of the things that I'd be
6 interested in hearing from maybe it's Brad representing
7 solid waste companies or Andrew, just in practice, sort
8 of what is the -- the magnitude of that type of
9 operation in the industry? How many drivers are
10 actually doing that sort of business and, you know,
11 what's the -- what is the volume, Andrew? You've
12 mentioned that it's not a big impact, so if you could
13 maybe talk about that a little bit, might be helpful.

14 MR. KENEFICK: Oh, shoot. I don't -- I
15 don't have the numbers. I think in the violation that
16 we had, we had three drivers that didn't have medical
17 cards. But I think -- I don't know, Brad, did you --
18 did we get the correct numbers on -- on the number of
19 drivers who are driving only -- only container delivery
20 vehicles?

21 MR. LOVAAS: It's very -- it's -- excuse me.
22 Obviously, it depends upon the size of the company. We
23 have some of the very smallest in the state just as
24 companies, and we have like Waste Management, the
25 largest essentially in the nation as a solid waste

1 collection company. And so it really does vary.
2 Almost -- some of them have just dedicated and some have
3 more. Obviously Waste Management would probably have
4 the most. In very few cases are they actually just
5 dedicated to this, though, we do use them as trainees.
6 I think that everybody's aware that there is a driver
7 shortage, especially those that are qualified for CDL.

8 So we use these as an attempt to find out if
9 they're going to show up, if they can drive a vehicle,
10 and then in this case, just to put it out there, we're
11 supportive of these folks having medical cards. One,
12 because we want to know that they're -- they're safe.
13 We're always concerned about safety. I mean, getting
14 our workers home, not hurting a customer, it's all about
15 the safety.

16 So I don't have specific numbers. I did
17 survey our members, and it came back from zero to a few
18 to up to a couple dozen.

19 MR. PERKINSON: Yeah, even -- even having
20 that number, I think a couple dozen is helpful, Brad.
21 Thank you for throwing something out there. I won't pin
22 you on that, but it helps to gauge sort of the magnitude
23 of it, how many drivers there are.

24 MR. KENEFICK: If I -- if I could, just so
25 that we can make sure we're focussing on the discussion,

1 one thing that -- to remind people of is Waste
2 Management never challenged the authority of the UTC to
3 impose these regulations on those vehicles that are
4 transporting solid waste. So if you've got a vehicle
5 that's between 10,000 pounds and 26,000 pounds that
6 actually transports solid waste, we're not -- we're not
7 disputing that, and any driver who would be in that
8 situation would be subject to the -- the UTC rules.

9 And, you know, on that one, you know, you
10 can certainly have a discussion as to whether a medical
11 card is necessary or not necessary. The Washington
12 State Patrol, you know, their rules do not have it be
13 necessary, but I just wanted to remind you that we're
14 only focussing on, our only issue was that those --
15 those vehicles that are, you know, delivery containers
16 and not transporting solid waste.

17 MR. TEIMOURI: Thank you. This is Dan
18 Teimouri, and I think Staff agrees with that, that this
19 is the narrow issue of the transportation of empty solid
20 waste containers to and from customers, so we're not
21 talking about instances of where there's actual solid
22 waste in the trucks. So thank you for that point.

23 MS. PAISNER: If I may offer a comment or
24 maybe even a question. I think that in the earlier
25 docket and also here where we discussed empty

1 containers, it seems to presume that there's maybe
2 absolutely no shred of solid waste left in these
3 containers when they're picked up, which to us seemed
4 unclear in the record. Especially if they've been used
5 by prior customers, it seems like they may still contain
6 items or remnants of solid waste when they're collected,
7 and since we are discussing definitions, the legislature
8 in RCW Chapter 81.77 describes a vehicle as a device
9 that in and upon or by which solid waste is or may be
10 transported. So I think that might be a detail that
11 perhaps is being overlooked here. I just wanted to
12 offer that. Thank you.

13 MR. KENEFICK: I'm sorry, who was that
14 speaking?

15 MS. PAISNER: This is Ann Paisner from
16 Public Counsel, the Public Counsel division of the
17 Washington State Attorney General. We're separate and
18 distinct from the Utilities and Transportation division.

19 MR. KENEFICK: Okay. Yeah, I guess I do --
20 this is Andrew Kenefick again. I do hear your point
21 there, but I -- I guess I got to offer up that that
22 seems to be -- I guess my argument would be these are
23 vehicles for the purpose of transporting solid waste.
24 Of course these containers are going to have incidental
25 amounts of solid waste in it, but that doesn't make the

1 vehicle a vehicle driven for the purpose of transporting
2 solid waste. I mean, if that were the case, then
3 virtually every single car, every single truck in the
4 state would be for the purpose of transporting solid
5 waste if there was a little bit of trash in there.

6 I think there's a level of reasonableness
7 that one has to recognize here. There's a difference
8 between, you know, collecting and delivering containers
9 to and from customers, and there's a difference between
10 that and, you know, picking up a container full of solid
11 waste. You know, if you've got a container that's going
12 to have incidental amounts of solid waste in it, that
13 doesn't make the vehicle a vehicle being -- being driven
14 for the purpose of transporting solid waste. Yes,
15 you're right, technically it is transporting solid
16 waste, but so is every other car, truck, motorcycle in
17 the state if there's any shred of solid waste anywhere
18 in it.

19 So I think there is a level of
20 reasonableness we have to remember.

21 MR. PERKINSON: Is there anybody else that
22 had a comment on that topic? I think again --

23 Thank you, Andrew.

24 -- you know, we're -- we don't intend to
25 have a legal debate. I think the Commission had clearly

1 explicitly wrote in its order that we needed to gather
2 more information about what's going on, learn more about
3 it so that we could write a report and put forth some
4 recommendations. So I think that, yeah, that's -- this
5 is all helpful discussion. We will continue to move on
6 through the agenda if there's nothing else?

7 So moving ahead a little bit, we've got a
8 little bit of time before a scheduled break at 10:30.
9 We might get out a little early today if we are ahead of
10 things. I think we can jump right into sort of the
11 public safety talking point if -- under the group
12 discussion. Really, again, we had gleaned some data
13 from FMCSA that demonstrated that there were some 3,000
14 trucks a year involved in crashes resulting in fatality
15 due to driver medical certificates -- or medical events.
16 Those could be --

17 Jason, help me here. It was heart attack,
18 what was the other sort of chief medical condition that
19 exists?

20 MR. SHARP: I think the greatest highlight
21 is on cardiac arrest behind the wheel. And so they --
22 there's further data to support reportable accidents
23 beyond just the fatalities, which is exponentially
24 higher, but they're generally issues that are covered in
25 the DOT's medical examination such as event of seizure

1 or, you know, in certain cases diabetic episodes, those
2 types of occurrences.

3 MR. PERKINSON: So that was one thing that
4 kind of stood out when we were doing our research
5 preparing for the workshop, was a nexus between
6 fatalities, medical incidents in trucks and that space.

7 And then the other thing that stood out was
8 just some of the language historically used by FMCSA and
9 how they came up with a determination of -- of 10,000
10 pounds to 26,000 was that those vehicles were large and
11 that they posed a significant risk to public if operated
12 in an unsafe manner. That was just something that stood
13 out to me personally. And, again, I'm not trying to
14 form an opinion right now. We're trying to gather
15 information, but those were just a couple of sticking
16 points as I was reading through different references,
17 and I think that everybody would agree that public
18 safety is best. And I don't know if anybody else has
19 anything on the topic of vehicle and driver safety
20 requirements and public safety?

21 MR. KENEFICK: This is Andrew Kenefick. I
22 guess I'll ask a question about that and that is, is
23 there a -- and I suspect I know the answer, but is there
24 data demonstrating that there's this -- that the
25 incident of -- of accidents or -- or fatalities for

1 vehicles in the state, the 10,000 to 26,000 pounds
2 space, is there any evidence showing that there is any
3 difference in the -- what the rates of -- of accidents
4 for, you know, those vehicles that are -- fall under the
5 UTC regulation versus those that don't? Because I note
6 that these vehicles under the Washington State Patrol
7 rules, the drivers are not required to have medical
8 cards.

9 So is there any -- you know, what -- what --
10 what is it that -- that puts the solid waste delivery
11 vehicle drivers into a different category than everybody
12 else including, you know, myself who could go down to
13 U-Haul tomorrow and rent one of these trucks and not
14 have a medical card?

15 MR. VALENTINE: Kevin Valentine here from
16 Washington State Patrol. In the opening, it was
17 mentioned that we did not adopt the part of 391. We
18 did, although we did make an exception to the rule
19 between 10,000 pounds and 26,001. With the current
20 information that we're getting from FMCSA, I think the
21 answer to your question is, is there's been an uptick on
22 collisions, and we are -- been aware of that, and we're
23 in the process of striking the part where we exempt
24 10,000 to 26,001 from our rule and making that more in
25 line with and consistent with the federal rule and UTC's

1 rule currently.

2 So -- so the answer to that is, yes, we did
3 adopt it, we've put an exemption on it, and currently
4 we're looking at that exemption to remove it, and we'll
5 have to go and part of the hearing and -- and do a
6 process of training and giving the information out to
7 our carriers, because it would affect a lot more of our
8 carriers than on just your guys' solid waste, although
9 there has been studies with FMCSA saying the uptick of
10 smaller vehicles under 26,000 pounds having collisions,
11 and I know that they were -- there was a part in there
12 when they did that of what was the instance of the
13 collision. So and I don't know that, I don't know how
14 many percent it was of medical compared to training, but
15 we have seen an uptick on that.

16 MR. KENEFICK: And I would just say on that,
17 if that's where the State Patrol is going, that's -- you
18 know, I think that's the very legitimate way to do it.
19 And if they do it, then it -- and if they say they want
20 it to apply to all vehicles within the space, then --
21 then, you know, that's fine. I don't know that -- I
22 don't think we -- we would dare to second guess that.

23 It just -- I'm just suggesting that it's
24 sort of odd that there is -- that there is some sort of
25 up -- concern with respect to container delivery drivers

1 that's more acute than everybody else who might be
2 driving in the space. But if you -- you go across the
3 board and say everybody's gotta have it, then of course
4 that's -- that's a very legitimate policy debate, and --
5 and I -- I don't think we would disagree with voting on
6 it.

7 MR. DALLAS: Thank you, Andrew. This is Joe
8 with the AG's Office. I'd also like to note that, you
9 know, this rule is adopted by the feds, and kind of
10 looking at the rulemaking record, it went through quite
11 a robust process in developing this rule. And the feds
12 do have a record on why they felt that this was
13 appropriate for those types of vehicles. And it looks
14 like the Washington State Patrol, the UTC, and the
15 federal government are all coming align on this point,
16 which is nice to have consistency.

17 And -- and I think it's important for
18 consistency because right now intrastate vehicles are
19 treated -- well, I don't want to say treated
20 differently. They should be treated differently than
21 intrastate, and I think -- I think consistency in
22 general is a good thing so...

23 MR. KENEFICK: And we, of course, would
24 wholeheartedly agree with that, and -- and that's -- in
25 some ways, that's sort of the origin of the problem

1 here, is nobody really thought that somebody driving
2 empty containers around would be subject to the same
3 regulations that -- that the solid waste drivers are. I
4 think it would be fair to say that, you know, most
5 people would assume that if the Washington State Patrol
6 doesn't require you have a medical card, then -- then --
7 then you don't need to have a medical card. And -- and
8 I think the fact that you've got inconsistent rules is,
9 in fact, what led to this whole issue in the first
10 place.

11 And -- and -- and -- and I don't think we
12 got a very -- I don't think we had a reasonable notice
13 to solid waste companies that this is how the UTC would
14 be applying that -- that particular standard.

15 MR. DALLAS: And just for the record, the --
16 the UTC is consistent with the federal government, so
17 intrastate carriers, we're -- we're consistent with how
18 they operate. That's how our rules are today.

19 MR. PERKINSON: This is Mat Perkinson. So
20 anybody in the room, feel free to weigh in. Maybe
21 Andrew and Brad again are the best for this question.
22 Just what is -- what do you think, as the Commission
23 asked us to do, to get together to determine what is the
24 best way to regulate transportation of solid waste
25 containers, what ideas or suggestions would either of

1 you guys have toward that? Maybe you could discuss that
2 a little bit. Less debate, more discussion.

3 MR. LOVAAS: Well, I would just tell you
4 again that our priority is safety. It's never more
5 important when it comes to the operation of commercial
6 vehicles. We support the UTC imposing this. I think
7 Andrew brought up a point, we could have had this
8 discussion a year ago and you probably heard the same
9 thing. So be it. Here we are. It is kind of a
10 complicated issue from time to time.

11 Just to show how old I really am, I was on
12 the legislative staff back in 1985 when this was
13 debated, and all these exemptions were hotly debated.
14 Try applying the CDL to the drivers of RVs, and as he
15 talked about, the people that go out and rent a vehicle.
16 So those were very interesting hearings from about '85
17 to '95. It's very -- the whole CDL issue was very...

18 But regardless of that, ensuring all of our
19 drivers have medical cards is really what we're going to
20 do regardless of what the UTC or State Patrol does.
21 We're going to advise it. Again, it's public safety,
22 it's our employees' safety, it's customers' safety.
23 And, again, given the -- the driver shortage, we want to
24 start people on smaller vehicles before we put them
25 behind the bigger solid waste collection vehicles.

1 And, again, I'm not trying to take away from
2 any of the legal arguments that I'll let you all have
3 and Andrew and stuff, but I do understand the confusion
4 of it, having dealt with the UTC and State Patrol and
5 CVD and the transfer and everything back in '95. But,
6 again, I would just reaffirm that we support and
7 regardless, again, of what a state agency does, we'll be
8 recommending to all our members that these drivers from
9 10- to 26,000 have medical cards. And Waste Management
10 has already done it, so it -- in this action, it's
11 smooth so...

12 MR. PERKINSON: Anything else?

13 MR. DALLAS: I -- I would like to propose a
14 question, and my question's from a liability
15 perspective. And I -- I was curious if -- if having
16 these drivers have medical certificates, if this would
17 impact your insurance or -- or any -- any type of that
18 manner?

19 MR. LOVAAS: It probably can't hurt. Five
20 to ten people at the table are lawyers, so I'll let
21 other people decide that. We're having all sorts of
22 issues right now. The biggest one, lithium batteries,
23 people putting them in the garbage. They're all sorts
24 of insurance problems. Have I heard of specific issues
25 with these specific drivers, which really are a small

1 part of the fleet, so I don't know and I don't mean to
2 be facetious about it. I know it can't hurt. Again,
3 somebody can bring up an action for anything, right? I
4 think it would help us to make sure that driver had a
5 medical card. It couldn't hurt so -- but I'm not a
6 lawyer.

7 MR. PERKINSON: Okay. If there's nothing
8 else, I think we could move on to sort of open a
9 discussion about the financial impact to the industry.
10 Any -- again, Brad, Andrew, you guys represent industry.
11 My understanding is there's some time loss for employee
12 to go get medically certified, and then the cost is
13 somewhere around a hundred dollars, and the certificate
14 typically would be -- last for about two years given
15 that there's no sort of caveat. Maybe sometimes they'll
16 issue for one year if there's some condition that needs
17 to be more frequently checked in on so...

18 MR. LOVAAS: Minimal. Bigger impact on the
19 smallest of companies, you know, with a couple drivers.
20 But then again, in those cases, most of them are already
21 going to have a medical card. So there will be some and
22 it will be the smallest. I said it. There.

23 MR. PERKINSON: And then has there been any
24 examples or instances other than the one squarely in
25 front of the Commission in Order 03 where they talk

1 about some conflicts in regulation, but in practice,
2 solid waste trucks enter scale houses or they do not,
3 and when is it difficult for maybe the Washington State
4 Patrol to enforce or has there been inaccurate roadside
5 violations taken for medical cards? Any examples like
6 that that anybody can think of might be helpful.

7 MR. VALENTINE: Kevin Valentine, Washington
8 State Patrol. Yes, they are required to enter the scale
9 houses, although, if they're running a special permit,
10 which they're allowed to in our state for weight-wise,
11 they do not run the interstate. So most of our man
12 scales are on interstate ports of entry, and they are
13 forbidden to have that permit be overweight and be on
14 the interstate travel. So a lot of them, as we know,
15 are running through the communities and don't come
16 across the scales in their travel mostly per day.

17 MR. LOVAAS: But those would be the big
18 solid waste collection trucks and they are required to
19 have the medical card. Again, we're talking about the
20 smaller trucks that may go through the scale houses and
21 they may not. And, again, our companies are not 100
22 percent perfect. Have we ever found a regulated company
23 of the big solid waste that has a medical card that's
24 expired, out of date? Yes.

25 MR. PERKINSON: So yeah, the -- the scenario

1 would probably be a larger box truck above 16,000 pounds
2 passing by the scale, then you might pull in, not
3 receive a medical certificate violation, and then a
4 couple weeks later maybe then the Commission sends them
5 a notice that we're going to come and do a compliance
6 review or safety intervention, and then take note that
7 the driver of that same vehicle doesn't have a medical
8 card and thus is a violation as the rules are adopted by
9 the Commission.

10 Is that accurate, Jason?

11 MR. SHARP: Yeah, that's an example of
12 highlighting where the conflict could come into play,
13 where if it's not recognized going through the point of
14 entry scale but we find it later, then yes, it's
15 reasonable to think that it would send a mixed message
16 to the carrier.

17 MR. LOVAAS: Not every solid waste
18 collection company in the state is regulated by UTC.
19 There are some that other jurisdictions we can talk
20 about that are done by city contract and that are --
21 only have city contracts.

22 There are also container delivery services.
23 If you buy, say, 50,000 containers because you're
24 swapping them out, that could be done by a company that
25 delivers containers. Or the container delivery

1 manufacturer itself could be contracted with if it's a
2 huge rollout. Because, again, let's go back to the
3 numbers we were discussing, that would take a whole lot
4 of employees to roll that out in a full community.

5 So there are still other subsets that the
6 UTC doesn't specifically may come under now, going
7 forward, State Patrol, but there are other situations
8 out there.

9 MR. KENEFICK: Yes, that's correct. If --
10 if we do a big swap-out, we would typically hire a third
11 party to do the deliveries because it's going to be a
12 one-time event. I'm not sure that those third parties
13 would think that they're subject to the UTC jurisdiction
14 for -- for medical cards. I'm not even sure that the
15 UTC would even say -- say that they are.

16 MS. PAISNER: This is Ann Paisner from
17 Public Counsel. I -- I am curious if you all have
18 information on the extent a regulated company would
19 supervise medical cards for these third parties
20 operating a vehicle?

21 MR. KENEFICK: Sorry, can you say the
22 question again?

23 MR. LOVAAS: I'm thinking we might more so
24 going forward.

25 MS. PAISNER: Yeah, this is Ann again. I

1 just am wondering if for these third-party container
2 trucks, are -- are you currently requiring that or
3 seeking that out or -- for those third parties that are
4 operating trucks for you?

5 MR. LOVAAS: Yeah, I'd have to get back to
6 you on that. I would suspect no.

7 MR. KENEFICK: If I am understanding the
8 question, you're -- you're saying that if a regulated
9 company of -- the UTC regulated company hires a third
10 party to do container delivery, would we expect that
11 those third parties would be having complied with the
12 UTC medical card rules as opposed to the Washington
13 State Patrol medical card rules? I don't -- I can't say
14 definitively because I haven't asked that question. But
15 I would suspect that what Brad said is right, is I don't
16 think anybody would have that expectation that they
17 would -- the third party who's been hired to deliver
18 containers would have to have the -- the medical cards
19 under the UTC regulations when they're not required to
20 have them under the State regulations.

21 And, for example, if -- you know, if we were
22 to hire someone to do container delivery in the city of
23 Seattle falling outside of UTC jurisdiction, then I
24 think pretty clearly the UTC rules would not apply, the
25 Washington State Patrol rules would, and no medical card

1 would be required.

2 Again, this kind of goes to the consistency
3 problem. You know, it's -- it's one where I don't think
4 people had an -- or a notice that this would be
5 required. And I would question that because I don't
6 think that the UTC would serve jurisdiction over those
7 contractors because there would not be considered solid
8 waste collection companies within the jurisdiction of
9 the UTC in the first place. But you'd have to -- you'd
10 have to look to UTC's counsel, the AG's Office, on that
11 one.

12 MS. PAISNER: This is Ann again. So for
13 pickups of used containers, it sounds like, and maybe
14 you can confirm or maybe Brad could speak to this, if a
15 third party is hired to pick up a used container, if
16 those drivers are expected within your organization, if
17 you seek out drivers that have medical cards if -- for
18 those trucks that are going to pick up used containers.

19 MR. VALENTINE: So currently -- Kevin
20 Valentine, State Patrol. Currently, there's no
21 requirement for another company to hold another
22 company's medical cards on file. So in other words, if
23 they're leasing on, they don't have to prove to it. It
24 would be the responsibility of the carrier doing the --
25 the service, okay? So does -- that answered your first

1 question, if you were required to hold -- or for them to
2 get it and/or see it prior to them doing it, there's no
3 requirement on the books.

4 MR. LOVAAS: Yeah, that gets into a lot of
5 other liabilities, joint employership and things, and
6 some rules have just come down from the Nation Labors
7 Relations Board on that so -- recently. Again, this is
8 fairly novel to the industry. Up until the Waste
9 Management violations that were found by the UTC Staff
10 and having gone through thousands and thousands and
11 thousands of audits, this is a fairly novel issue.

12 Again, we don't disagree with it. Safety is
13 the overriding concern. Make some common sense, but
14 again, it's new. So have we applied that to ourselves
15 or to third parties in the past, not so much. Some
16 companies have. I mean, don't get me wrong, some
17 companies have all along required this, or at least
18 since we surveyed them since this process. So I won't
19 go back so far and be held to they were doing it. And
20 much to Waste Management's credit regardless of being
21 ordered to or not, they're doing it so...

22 MR. KENEFICK: And I will also say this with
23 the question raised about the third parties and whether
24 they would be subject to it. It -- it sort of makes me
25 wonder that if the UTC kind of goes this route or

1 Washington State Patrol does not change their rules, are
2 there going to be some sort of unintended consequences?

3 We were -- Waste Management was certainly
4 concerned by the articulation of the -- of the AG's
5 Office in this case because they were making in effect
6 an argument that said well, you don't actually have to
7 be hauling medical -- I mean waste in order to be
8 subject to this rule. And I -- sort of, you know, so
9 long as you're -- you know, I can't remember the
10 language, but, you know, facilitating it, then you're
11 subject to the rule, and I didn't know where that --
12 does that mean a tow truck that might be towing a solid
13 waste vehicle? Does that mean a fuelling vehicle?
14 Would that mean any other sort of support vehicles that
15 are -- that somehow are -- are -- are -- are used in the
16 in the business of solid waste collection even if they
17 don't?

18 I -- I was just -- I think we were concerned
19 about, you know, how far does this go if the UTC thinks
20 its jurisdiction is broad enough to include -- to
21 include vehicles that are not actually transporting
22 solid waste. And -- and I -- I say that I'm not -- I'm
23 not trying to go back to the legal issue, I'm really
24 trying to go more to the practical policy issue of -- of
25 you better think through what all of the implications

1 might be if -- if you got a rule that is inconsistent
2 with the Washington State Patrol's rule.

3 MR. DALLAS: Thank you, Andrew. This is Joe
4 from the Attorney General's Office, and I -- I think I
5 just want to clarify Staff's position. In that docket,
6 it was a matter of statutory interpretation. And we --
7 Staff's position was that these solid waste container
8 vehicles are used for the purpose that they're an
9 essential function to transporting solid waste. So
10 Staff's position wasn't that any vehicle would be
11 subject to this regulation, but that the solid waste
12 container vehicles are an essential function.

13 So I did want to clarify Staff's position,
14 but all those arguments are in the briefs and the -- and
15 the Commission is aware of it.

16 MR. KENEFICK: Yeah, but of course, ten
17 years from now, we might have different people arguing
18 about what "essential" means. Somebody might say, well,
19 fuel for a vehicle is essential, therefore it's -- that
20 would be an essential vehicle. I -- I don't know. It's
21 one of those things that -- that if you leave it open to
22 interpretation, those interpretations can get pushed to
23 beyond the -- the realm of what was initially intended.

24 MR. TEIMOURI: I was going to just remind
25 everybody that the docket, you know, that -- that was --

1 190150 has been closed. So, you know, we're here today
2 squarely on the narrow issue that was contained in the
3 notice. And so I'd like to avoid discussing the legal
4 arguments that were made in that docket and just kind of
5 remain focused on the policy, if possible. Thank you.

6 MR. PERKINSON: Thanks, Dan.

7 I think with that, let's take a ten-minute
8 break. We'll come back at 10:45-ish and get started.
9 So thank you, everybody.

10 MR. KENEFICK: Before you get off, just a
11 warning, I do have to take off so I should be on at
12 10:45, but I won't be able to stay on much longer.
13 Thank you.

14 (A break was taken from
15 10:35 a.m. to 10:48 a.m.)

16 MR. PERKINSON: So we will go ahead and get
17 started back on the record here, if everybody can gather
18 in.

19 So to begin with, I was talking with Katie,
20 who does a lot of our data analysis, and she was running
21 some numbers really quickly just for -- again, for the
22 purpose of on the record, and Kevin mentioned earlier
23 that there was an uptick in commercial motor vehicles
24 10- to 26,000, there's an uptick in accidents,
25 reportable accidents. So what she did was pull some

1 data. Again, these are -- are rough numbers, but it
2 reflected that there had been a double since 2014 to
3 2019, nearly twice as many accidents in this space.

4 I mean, I thought that that was valuable.
5 For Washington State. Kevin mentioned that the federal
6 numbers, but at a glance, it looks like that's
7 consistent with Washington also. So that was
8 interesting.

9 And, again, thanks, everybody, for the --
10 the debate. I know we don't -- we're not getting into
11 the legal arguments here, but still, this is all really
12 good information for the purpose of the report. Helps
13 us understand the broad perspective and different
14 impacts that can -- can cause by one -- some -- one
15 decision.

16 So with that, I did jump ahead of the agenda
17 a little bit and got into our after break items, so
18 we've covered public safety, the financial impact, some
19 of what happens in industry and current practices, and I
20 wanted to open it up now really for just a discussion
21 and if anybody had any other agenda items that they'd
22 like to bring up, just open the floor.

23 So with that, I think what we'll do is we'll
24 open it for other agenda items and then we can probably
25 get out of here a little bit early today depending on

1 how long the conversation goes so...

2 MS. PAISNER: This is Ann Paisner again from
3 Public Counsel. I just wanted to ask some follow-up
4 questions about the third-party contractors for this
5 weight class vehicle about the extent to which
6 third-party contractors are being used. I know the
7 example has been used in discussion on this issue about
8 larger trucks delivering new ones, but it would be good
9 to get a sense for just the doing the rounds, picking up
10 used containers what -- approximately how many of those
11 drivers are third parties, third-party contractors or
12 what percentage of the fleet is a third-party contractor
13 or both?

14 MR. LOVAAS: Again, I think it's the
15 distinction would be between a full-on rollout, and I
16 would just suggest a lot of that happens more when the
17 cities would swap out. Those are typically ten-year
18 contracts. If -- if, for example, company X won the
19 contract and it was company Y that had it previously and
20 if it was a big rollout for a city of, you know, five
21 digits, ten to, whatever, 50,000 or more vehicles, I
22 would assume that would all be third party. Maybe even
23 bigger trucks, I don't know.

24 I would tell you on a routine basis, I would
25 think that this type of vehicle is used predominantly

1 between swapping out, you know, somebody moves. And so
2 it -- I would just suggest they might move territories
3 or whatever. That those deliveries could be made in a
4 regular solid waste collection truck quite possibly if
5 it's not on the route that day for something. Doubtful,
6 but I don't have that specific information on third
7 parties, but I would -- again, would suggest that that's
8 used primarily when there is a big swap-out. Could
9 happen in UTC areas, which is a big remaining territory.

10 MR. TEIMOURI: Sorry, I think we have
11 somebody on the mic [sic] that your phone might be not
12 muted, so if you could mute that, please.

13 MR. LOVAAS: You ought to hear our
14 conference calls.

15 MS. PAISNER: So if I may clarify, it sounds
16 like the majority of the drivers doing rounds in this
17 vehicle weight class are contracted out, they're not
18 employees because --

19 MR. LOVAAS: No, I don't think --

20 MS. PAISNER: -- you mentioned earlier.

21 MR. LOVAAS: I think that on a routine
22 basis, just people setting up new service moving into an
23 area, moving out, I'm guessing that that's primarily
24 done by company employees --

25 MS. PAISNER: Okay.

1 MR. LOVAAS: -- with this probably this size
2 truck. But that's a guess, but I think it's a pretty
3 good guess. I asked them specifically to respond to the
4 questions in the notice and that wasn't, so excuse my
5 informed or uninformed guesstimates.

6 MS. PAISNER: I suppose I did want to make
7 one more comment. I know it -- these trucks have been
8 described as smaller, but they are still large trucks,
9 and we think that they're still a safety concern as it
10 has been discussed already today.

11 And then lastly, I know we've been talking
12 about this definition of motor vehicle in 81.77 and
13 we -- we do think that reading that to mean only those
14 vehicles used to transport is not the same as the actual
15 words of the legislature, which state for the purpose of
16 transporting solid waste. And of course, we view these
17 containers as for the collection or disposal of. So we
18 do view the Commission's authority as broad enough to
19 cover these smaller vehicles, transporting containers.
20 Thank you.

21 MR. LOVAAS: And, again, I don't think we're
22 so much concerned about JBW-type. I mean, I think
23 really our safety concerns have to do with commercial
24 motor vehicles. People -- I mean, whatever the
25 configuration is or whatever. I mean, we're starting to

1 see -- and there are issues in front of the Commission
2 now where people are getting into solid waste and
3 they're commercial activities and yet the vehicles, they
4 try to use that as an out in some cases.

5 So the transport and safety of our folks in
6 commercial vehicles in solid waste is, you know, a
7 priority, and sometimes -- you know, and I understand
8 the legal arguments and -- and Andrew is one of our very
9 best, but I don't think that we're here to kind of look
10 for differences and distinctions. We're just here just
11 to say, you know, the drivers of these commercial
12 vehicles involved in solid waste should have medical
13 cards.

14 MR. YOUNG: This is Mike Young with
15 regulatory services, and I just wanted to echo both
16 parties here and say that from regulatory services'
17 perspective, we view these support vehicles as essential
18 to providing the regulated service, and if there's a
19 difference of opinion on how those should be treated,
20 then I think that's a broader discussion probably beyond
21 the scope of this -- this workshop, but one I'm willing
22 to have.

23 MR. KENEFICK: I just wanted to, you know,
24 say, you know, that maybe as a matter -- this is Andrew
25 Kenefick again. Maybe as a matter of -- of academic

1 purity, you know, I -- I disagree with Staff's opinion
2 that this falls -- just because something is, you know,
3 necessary to the -- the service doesn't necessarily mean
4 it is a vehicle used for the purpose of transporting
5 solid waste. And, you know, ten years from now, maybe I
6 have to make that argument. But I just -- you know, I
7 think -- I think this is ultimately a decision for the
8 legislature to make or for a court to make if it has to
9 interpret the scope of the UTC jurisdiction.

10 And as we've said, you know, the UTC doesn't
11 have the authority to interpret its jurisdiction beyond
12 what the legislature is granting, and we just have to
13 leave it at that. But, you know, as I said, you know,
14 we're -- we're fine with -- with doing this, it's just
15 that I didn't want it to be assumed that we're certainly
16 conceding that the UTC has this -- the authority that it
17 seems to be asserting.

18 MR. PERKINSON: Thank you, Andrew. This is
19 Mat again. I'm going to extend an offer, I think now is
20 a good platform to talk about just our program really
21 quickly, that the Commission is always available to --
22 to go out to different companies whether it be solid
23 waste or passenger transportation and work with
24 companies to sort of increase education. If there's
25 some areas where things aren't clear, you know,

1 everybody feel free to reach out to us.

2 You know, Jason Sharp is the supervisor for
3 the motor carrier safety program and he -- we're more
4 than willing to help out. We can't actually look at
5 physical documents when we do that. It's sort of like
6 if we see a violation, we have to take violation.
7 That's our policy, but we're happy to have
8 conversations. And I always like to plug that
9 opportunity for the industry to -- to use us as a
10 resource. That's what we're here for. And -- and it's
11 also our goal to eliminate these kinds of situations
12 that arise and understanding that issuing penalties is
13 not beneficial for us either. It's a -- it's really an
14 effort to gain compliance and so...

15 Is there any other ideas, suggestions,
16 comments that we wanted to get before we wrap things up?
17 Okay. Hearing none, I think we will get out early
18 today. Again, the transcript will become a part of the
19 docket. I'd like to apologize for any technical
20 difficulties that anybody experienced. If you do have
21 any comments or ideas, suggestions, other things that
22 you would like to add, please feel free to submit them
23 to the docket or email me, and I can help you get those
24 to the docket. And with that, I think we are adjourned.

25 (Adjourned at 10:59 a.m.)

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CERTIFICATE

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand
Reporter in and for the State of Washington, do hereby
certify that the foregoing transcript is true and
accurate to the best of my knowledge, skill and ability.

Tayler Garlinghouse, CCR 3358