

TC-161262 Comments

1. WAC 480-30-213 requires that a passenger transportation certificate holder own or lease vehicles operated under authority of its certificate and that only the certificate holder or the certificate holder's employees operate the vehicles.
 - a. If this rule impacts the ability of auto transportation companies to compete with other passenger transportation options, please explain how.

Shuttle Express sees the impacts of this rule as follows:
Requiring a certificate holder to use only vehicles leased or owned by it severely cripples the ability of a certificate holder to compete with other transportation options. Other options, such as taxis, for-hire vehicles, and TNC operators are operating vehicles not owned by the facilitating company and are not independently responsible for the safety or road-worthy maintenance of those vehicles. In regards to the vehicles being operated by employees, again the other options are not under the regulatory requirements to have employees operate the vehicles causing the control of the facilitating company to be lessened and the responsibility to be shifted to the individual operator instead of the company generating the profit and control. Additional issues currently causing competition concerns are the regulations regarding minimum wage and scheduling. While Auto Transportation companies utilize employees and are obligated to pay minimum wages as required by local, county, state, and federal laws, the other operators such as TNC and taxi companies are under no such obligation to their operators, who also are members of the public. Finally, due to the employee and vehicle ownership requirement, Auto Transportation operators must schedule and pay employees for all time worked. It is unreasonable to expect an employee to work a piecemeal schedule based on trips as the safety requirements obligate a thorough pre- and post-trip inspection of their vehicle, and any non-productive time (i.e. waiting for the next trip) is considered on-duty and paid time. Non-employees, such as those that work for the other operators, are only paid for the time (and/or distance, and/or fare amount) they are productive, thus allowing any unproductive time to not impact their financial viability and allowing a lower cost to the parent company as well as additional flexibility in pricing and profits.
 - b. If this rule impacts the ability of auto transportation companies to compete, how should the Commission modify the rule?
 - The commission should modify WAC 480-30-213 by adding an exception under (1) allowing that "A certificate holder may operate its trips utilizing un-owned vehicles that meet or exceed the minimum safety and vehicle standards and are licensed as a limousine vehicle in Washington State after submission and approval of the exemption request by the

commission. The certificate holder remains responsible for all commission regulations with activity performed under the exemption, and the exemption may be revoked for cause by the Commission.”

- The Commission should modify WAC 480-30-213 by adding an exception under (2) allowing that “A certificate holder may operate its trips utilizing non-employee drivers that meet or exceed the minimum safety and driving standards and are licensed as limousine chauffeur or for-hire operators in Washington State after submission and approval of the exemption request by the Commission. The certificate holder remains responsible for all commission regulations with activity performed under the exemption, and the exemption may be revoked for cause by the Commission.”

Utilizing the changes above, the Commission could allow (after their approval for an existing certificate holder in good standing) employees or contractors to operate vehicles not owned by the certificate owner, as well as allowing operations be allowed by non-employee contractors. This rule change however should transfer the responsibility for any safety issues from the independent operator to the certificate holder. This will ensure that the certificate holder ultimately be held responsible for the driver and vehicle used to provide certificated service to protect the public interest.

- c. What effect would any such modifications have on public health and safety? How would the Commission fulfill its obligation to protect public health and safety if it adopted these modifications? Please provide this information for each modification you propose.
- Modifying the vehicle requirement would have no negative impact on public health and safety. By requiring that the vehicles already be licensed to meet the standards of the limousine safety rules, the Commission is thereby protecting its obligation by ensuring a vehicle approved to transport passengers for transportation is being used. The safety of limousine operators is already enforced by other regulatory bodies, and the commission’s enforcement would be to ensure that only those approved and licensed vehicles were used.
 - Modifying the driver requirements would have no negative impact on public health and safety. Drivers with valid chauffeur credentials and/or for hire licenses must already meet background screening, driving record, minimum age, and medical standards on an initial and annual basis, which in some cases has higher standards than the current rules regarding auto transportation providers employee drivers.

By not enforcing Commission rules in regards to TNC auto transportation operations, the Commission has inadvertently allowed non-regulated and potentially unsafe operators an opportunity to compete with the regulated and restricted operators under its control. Should the Commission allow the modifications described above, there would be no impact to public health and safety as there are already protections in place for operations of this type through limousine and for-hire laws, and the commission is not currently regulating the TNC or for-hire regulations that are much less than auto transportation rules despite the performance of trips with multiple unaffiliated passengers operating from a central terminal at SeaTac Airport.

- d. If auto transportation companies were allowed to provide regulated service using vehicles they do not own or lease, or use drivers other than the certificate holder or employees,
 - i. How would the certificate holder ensure adequate insurance coverage?
The Commission could easily ensure this regulation and protection for the public by requiring that any operator utilizing this exception secure insurance, of the highest level required by the commission, for all hired autos. Regulations already require that licensed limousine vehicles maintain insurance coverages of \$1,050,000 CSL, and the additional coverage provided by a certificate holder for all owned and hired vehicles would cover to the required \$5,000,000 CSL regardless of the vehicle size. This coverage would allow the certificate holder's coverage to extend to any non-owned autos and non-employees for the purposes of work performed under their certificate thus ensuring WAC 480-30-191 levels of coverage for any passenger utilizing auto transportation services and thereby increasing the public health and safety of those utilizing this exception service.
 - ii. How would the Commission hold the certificate holder accountable for violations of the RCW and WAC?
Shuttle Express recommends the Commission require any operator who utilizes this rule change to be required to provide proof, upon Commission request, that the operator performing the work met all requirements of the new rule conditions. The language of the exemption proposal above also includes clarification that the certificate holder retain responsibility for violations of Commission regulations for any driver or vehicle utilizing the approved exemption.
2. WAC 480-30-221 and WAC 480-30-999 require that a passenger transportation certificate holder comply with specified provisions in the code of federal regulations (CFRs).
 - a. If there are CFRs that impact auto transportation companies' ability to compete with other transportation options, please explain how.

While several CFR's, as they're adopted in WAC 480-30-221, impact an auto transportation companies' ability to compete with other transportation options, one specific change of the CFR's made by the WAC impacts the use of vehicles and drivers that are similar to other transportation options. In WAC 480-30-221, 49 CFR Part 390's adoption also includes a change to the definitions used by the CFR. The change in definition of "Commercial Motor Vehicle", as defined in WAC 480-30-211, causes all vehicles and drivers used by a certificate holder to fall under these regulations. These same CFR's apply to other transportation providers as well, but in a different scope due to the change in definition. Many of the competing operators utilize vehicles that, as defined by the CFR's, are NOT commercial motor vehicles due to their size and capacity and thus are not held to federal standards for safety, documentation, or use. These same vehicles, if operated by a certificate holder, would however fall under the rules due to the definition change causing additional requirements to be met and reducing the ability to compete effectively.

- b. If there are CFRs that impact the ability of auto transportation companies to compete, how should the Commission modify its rules to eliminate, limit, or add to the requirements in these CFRs as they apply to auto transportation companies? Please note that the Commission cannot modify a CFR – it can only adopt CFRs by reference and make exceptions to that adoption.

The most efficient way to waive the irrelevant or incompatible CFR regulations, while retain the relevant ones, is to modify the definition in WAC 480-30-221 that extends all the adopted USDOT regulations to all vehicles (per the definition in WAC 480-30-211), not just to vehicles carrying more than 8 passengers, which is the CFR's definition of "Commercial Motor Vehicle" in Part 390 of CFR Title 49.

- A modification to accomplish this would be to replace the language in Part 390 with the following: "Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions: (1) Whenever the term "director" is used in Title 49 C.F.R., it means the commission."

By removing the additional restrictions, operators will be able to compete on a level playing field without additional restrictions being placed on one subset of vehicles but not on others operating under similar circumstances.

- c. What effect would any such modifications have on public health and safety? How would the Commission fulfill its obligation to protect public health and safety if it adopted these modifications? Please provide this information for each modification you propose.
- By removing the additional inclusion of all motor vehicles into the commercial motor vehicle definitions, the commission would be reducing

public health and safety in a very minimal respect, if at all. Currently, limousine operators are already providing service to standards that do not meet the CFR requirements placed on auto transportation providers, and TNC/for-hire operations have even lower requirements than those. This change would only allow auto transportation providers to compete and not change the perceived or actual safety in the current marketplace for a similar trip in a similar vehicle as is provided by other operators not regulated by the commission.

By adjusting the Part 390 definition, the commission would still regulate auto transportation companies, could enforce all CFR's as the USDOT rules apply to them, but would have eliminated the double standard of no federal regulations for some vehicles while they are under stronger state regulations than the same service provided by unregulated providers of identical vehicles.

3. The Commission has established other state regulations regarding safety, insurance, and consumer protection, specifically WAC 480-30 Part 4 (WAC 480-30-131 through 201), Part 5 (WAC 480-30-206 through 236), and part 8 (WAC 480-30-441 through 476).
 - a. If there are regulations in WAC 480-30 Parts 4, 5, or 8 that impact the ability of auto transportation companies to compete with other passenger transportation options, please explain how.
 - The definition of Commercial Vehicle in WAC 480-30-211 impacts the ability to compete as it requires all motor vehicles operated by a certificate holder to be qualified as Commercial Motor Vehicles. This WAC impacts only the adoption of the CFR's as defined in WAC 480-30-221.
 - WAC 480-30-213 regarding vehicles and drivers also impacts the ability to compete as the non-auto transportation operators are not required to comply with the employee and owned vehicle requirements.
 - WAC 480-30-216 (8) (b) requires posting of no smoking signs in vehicles. Should the commission allow non-owned vehicles, it would be unreasonable to require those unowned vehicles to comply with this rule as the certificate holder has no direct control over the postings in or on the vehicle, especially when competing operators are not required to comply yet state law restricts smoking in commercial vehicles as they are considered a place of business.
 - 480-30-221 makes a change to the definition of 49 CFR 390 for commercial motor vehicles which creates additional requirements for certificated holders that other operators are not required to abide by.
 - WAC 480-30-231 also creates a substantial competition issue as an operator who utilizes non-employee drivers or unowned vehicles may

not be able to enforce the posting of company information, vehicle unit identification, USDOT numbers, or employee identification. Requiring non-employee and unowned vehicles to comply with some regulations may inadvertently place the certificate holder into question with regard to their employer/contractor relationship and risk challenge under existing labor laws. Other operations, such as TNC's, allow private citizens to operate for them in their personal vehicles. These vehicles are under no obligation to display the name of their operating company, unit identification, or other compliance information. Additionally, licensed limousine operators are in fact prohibited from putting any markings on the exterior of their vehicle which puts them in conflict with the auto transportation rules.

- b. If there are regulations in WAC 480-30 Parts 4, 5, or 8 that impact the ability of auto transportation companies to compete, how should the Commission modify these regulations to eliminate or minimize any adverse impacts on company competitiveness?
- The definition of Commercial Vehicle in WAC 480-30-211 should be maintained if adjustments are made to 480-30-221's adoption to it, or altered to define a motor vehicle as being "manufactured to carry 8 or more passengers, including the driver."
 - WAC 480-30-213 should be modified as described in comment 1. b. above.
 - WAC 480-30-216 (8)(b) should be modified to read "Each company must post signs in its owned or leased vehicles informing passengers that smoking is not permitted." This would remove a requirement for unowned vehicles where labor law conflicts with direct control could be at issue.
 - 480-30-221 should be modified as described in comment 2. b. above
 - WAC 480-30-231 should be modified to allow an exclusion as follows "(3) 480-30-231 does not apply to non-employees or vehicles that are not owned or leased by a certificate holder under an approved application for exemption of WAC 480-30-213."
- c. What effect would any such modification have on public health and safety? How would the Commission fulfill its obligation to protect public health and safety if it adopted these modifications? Please provide this information for each modification you propose.
- WAC 480-30-211 – Adjusting the definition in this rule would have no impact on public health and safety. The standards for vehicles with a limousine license, and potentially applicable to the CFR's if it has a

capacity of 8 or more passengers is well established and acceptable by the public.

- WAC 480-30-213 – The safety impact on allowing non-employee drivers, but those that are licensed and certified chauffeurs or for-hire operators would be none. The state and county already has regulations that are deemed acceptable for operators with these two certification types and public health is maintained in their existing operations.
- WAC 480-30-216 – There would be no public health or safety impact should this change occur. State law already forbids smoking in or within 25' of a workplace or public doorway, and the posting of signage is redundant.
- WAC 480-30-221 – Again, there would be no impact to public health and safety should this adjustment be adopted. See comments regarding 480-30-211 above.
- WAC 480-30-231 – Public health and safety is not affected by removing the vehicle marking or identification requirement from unowned vehicles. Other operations, such as limousine, TNC, and for-hire drivers have their own identification requirements that must still be met when operating through a certificate holder.

4. The Department of Licensing, Washington State Patrol and some local governments have adopted regulations for the passenger transportation providers they regulate.

a. How do these regulations compare to the Commission's requirements for auto transportation companies?

Regulations vary between agencies depending on the regulations required. At their lowest, for-hire vehicles and drivers have minimal requirements for insurance, payment acceptance, business licenses, and medical examinations. TNC operators generally utilize for-hire drivers as there is a much lower barrier to entry for an ordinary citizen with minimal fee and training. Conversely, to utilize a limousine license and receive chauffeur credentials, many requirements of the WUTC and Washington State Patrol are similar. In some cases, such as with regards to background screening, the for-hire and limousine requirements are much more stringent with limousine operators being required to submit to a Washington State Patrol background screen with specific disqualifying offenses, while the Commission requirements meet the federal standards which require inquiry to previous employers where the federal drug testing or safety sensitive position requirements were maintained. Additionally, drug testing requirements are much higher for limousine carriers with all limousine operators being required to submit to both pre-employment and random ongoing drug screening, while Commission rules (through adoption of CFR's) only require

drivers of CDL licensed vehicles to be involved in pre-employment and random drug screening.

- b. If the Commission adopted the same or comparable regulations for vehicles auto transportation companies operate that have the same passenger capacity, how would the Commission fulfill its obligation to protect public health and safety? By providing the same protection as the public already expects for vehicles of a similar size and capacity, the commission would be fulfilling its obligation by requiring current state vehicle standards, including for-hire and limousine rules, apply, even in some respects with higher regulations and inspection placed on them. The public safety is not inherently at risk when being transported by a taxi or limousine, and as such the standards for a similar capacity vehicle providing similar service, potentially with an additional passenger or two, or even just providing service to/from one location to two separate locations would be identical. Finally, the Commission has never regulated non-terminal based shared ride service with unaffiliated passengers. The inherent safety risk of these types of trips has not, to our knowledge, been called into question nor been of large concern to the Commission and its safety requirements. Additional restrictions on the regulatory authority of the Commission, including operations within a single city which are exempted from regulation, should be reviewed as a part of this inquiry as to the need for additional Commission safety requirements, or the lack thereof. We believe the commission should maintain its regulatory control over public service companies, as it holds the ultimate responsibility to protect the public health and safety. Additional protection the Commission provides is over fares, price gouging and control of customer complaints that should be extended, not reduced, to protect the travelling public. The Commission should expand its regulation and enforcement to include currently excluded operators, as well as those operating outside of the current regulation environment. By not enforcing existing rules on operators who are in violation of the law, the Commission is failing at its obligation to protect public health and safety.