

**TR-170780 – Rail Crew Transportation Rulemaking  
 Stakeholder Comments in Response to 11-20-17 Notice of Opportunity to Submit Written Comments  
 February 7, 2018**

	<b>Commenter</b>	<b>Topic</b>	<b>Comment</b>	<b>Staff Response</b>
1.	BNSF Railway	Adoption by Reference – Federal CFRs	<p>BNSF comments that the adoption by reference of certain CFRs “. . . may contradict, conflict with, or otherwise obscure compliance and enforcement . . . ”</p> <p>For example, BNSF is concerned that the CFRs:</p> <ul style="list-style-type: none"> <li>• Apply to commercial motor vehicles which contract crew transportation companies will likely not operate.</li> <li>• Require a commercial driver’s license (CDL) which most contract crew transportation drivers would not otherwise be required to obtain.</li> <li>• Reference financial responsibility requirements that conflict with other parts of the proposed rule (Part 385).</li> <li>• Establish broad requirements for driver hours of service, including an on-board electronic recording device (Part 395).</li> </ul>	<p>Staff recommends leaving the adoption by reference for the Federal CFRs. Adoption of the CFRs for state safety requirements is consistent with other areas of commission regulation, such as auto transportation and charter bus rules.</p> <p>Specific to BNSF concerns:</p> <ul style="list-style-type: none"> <li>• It is true that the federal (interstate) application of the rules relate to the federal definition of commercial motor vehicle. The application of the rules in the proposed rulemaking at the state level will apply to any vehicle driven by a contract crew transportation company, regardless of whether that vehicle qualifies as a commercial motor vehicle under the federal rules.</li> <li>• The adoption of the CFRs do not require a CDL unless the vehicle operated requires a CDL under Washington state law.</li> <li>• Staff found no reference in Part 385 that conflicts with other parts of the proposed rule.</li> <li>• CFR 395 does establish requirements for hours of service as described in ESHB 1105, which states, “. . . (1) The commission must regulate persons providing contract railroad crew transportation and every contract crew transportation with respect to . . . hours of service by drivers . . .consistent with the manner in which the commission regulates these areas under chapter 81.70 . . . 81.68 . . . as well as with the approach used in the federal motor carrier safety regulations under Title 49 . . .” The use of electronic logging</li> </ul>

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				<p>devices (ELD) is intended to create a safer work environment for drivers and make it easier and faster to accurately track, manage, and share records of duty status (RODS) aka log books. An ELD is required for most motor carriers and drivers who are currently required to maintain RODS. There are exceptions to the ELD rules.</p> <ul style="list-style-type: none"> <li>• Exceptions to ELD requirements: (1) a driver who is not required to keep a RODS as a driver who operates under a short haul exemption (2) drivers requiring completion of a RODS on not more than eight days within any 30-day period, (3) drivers in a driveaway-towaway operation in which the vehicle being transported is a motor home or a recreational vehicle trailer, (4) drivers operating a commercial motor vehicle that was manufactured before model year 2000 or engines manufactured prior to 2000, as reflected in the vehicle identification number (VIN) as shown on the vehicles registration.</li> </ul> <p>WAC 480-62-140 allows for companies to request an exemption from any rule.</p>
2.	BNSF Railway	Adoption by Reference – OOS Criteria	BNSF expresses similar concerns with the North American Out-of-Service Criteria (OOS Criteria) because it applies to commercial motor vehicles and contains references to vehicle operations that do not exist in smaller vehicles, such as those contract crew transportation companies will most likely operate.	Staff recommends leaving the adoption by reference for the OOS Criteria. If the requirements within the OOS Criteria do not apply to a specific vehicle the commission will not enforce those requirements. Adoption of the OOS Criteria for state safety requirements is consistent with other areas of commission regulation, such as auto transportation and charter bus rules. WAC 480-62-140 allows for

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				companies to request an exemption from any rule.
3.	BNSF Railway	Drug and Alcohol Testing	BNSF states the drug and alcohol testing program in the proposed rules conflicts with the Canadian Human Rights Commission policy on alcohol and drug testing. BNSF believes the rules require an exemption for Canadian drivers who may operate in Washington state.	Staff recommends leaving the rules as proposed. If a driver is going to drive in Washington state, he or she must meet the requirements for drug and alcohol testing as required by the state. The proposed rules are consistent with other areas of commission regulation, such as auto transportation and charter bus rules. Additionally, transportation between Washington and British Columbia is not intrastate commerce and therefore not under the commission's jurisdiction.
4.	BNSF Railway	Passenger Notice Requirements	BNSF recommends additional specificity regarding passenger notice requirements in the areas of passenger rights, the complaint process, and specific contract information.	Staff agrees more information would be useful in this area. Staff suggests revising the proposed rule to read as follows:  WAC 480-62-287 Contract crew transportation passenger notice requirements. (1) Companies operating a contract crew transportation vehicle must post adequate notice in a conspicuous location in all vehicles that advise passengers of: (a) Their right to submit a complaint to the commission regarding alleged unsafe driver or vehicle conditions. (b) The telephone number and email address of the commission's Motor Carrier Safety Manager where passengers may file complaints. The contact information for the Motor Carrier Safety Manager can be found on the agency's public website.
5.	BNSF Railway	Familiarization Training Requirements	The proposed rules require that railroad companies provide training specific to familiarization with railroad yards, property, pick-up and drop-off points. BNSF comments that ". . . it is not necessary or perhaps	Staff recommends leaving this requirement. The railroad itself is in the best position to provide training for its own rail yards, property, pick-up points and drop-off points, as well as providing

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			even feasible that this training be conducted by the railroad. . . ”	its own expectations for driver operations and behavior at its facilities. However, staff believes it would be useful to add the following language:  “The railroad may contract with a third party or other designee to provide training, however, such delegation does not absolve the railroad of responsibility to ensure compliance with this section.”
6.	BNSF Railway	Refresher Training	The proposed rules allow the commission to require refresher training when it “. . . find[s] driver safety behavior is such that refresher training is warranted. . . .” BNSF comments that the commission should provide specific conditions under which it would require refresher training.	Staff recommends no revisions to the proposed rules. This would be on a case-by-case basis and it is not feasible to include all conditions under which refresher training may be warranted.
7.	United Transportation Union (UTU)	Driver Age	UTU opposes allowing anyone under 25 to driver a contract crew transportation vehicle.	Staff recommends leaving the current requirements. The proposed rules are consistent with other areas of commission regulation, such as auto transportation and charter bus rules.
8.	UTU	Driver Training	UTU comments the following three requirements be included: <ol style="list-style-type: none"> <li>1. The rules should require more than a minimum of eight hours of training.</li> <li>2. The rules should require training be conducted by state-certified driving instructors and schools.</li> <li>3. The rules should require drivers to pass a UTC or state-approved and administered written qualifications test.</li> </ol>	Staff recommends leaving the current requirements. The proposed rules are consistent with the legislation.
9.	UTU	Traction Tires	UTU comments that traction tires should be required on all railroad transportation vans, and studded snow tires when a reasonable possibility exists that vehicles may encounter adverse weather conditions.	Staff does not believe it is reasonable to include this requirement because the level of detail is overly perscriptive. However, staff recommends adding language consistent with WAC 480-62-245, which sets general operational standards for crew transportation vehicles operated by the

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				<p>railroad itself. Staff believes this will accommodate the concerns, as follows:</p> <p>“Every contract crew transportation company must operate its vehicles in compliance with state law, no matter where the vehicle is operated. Drivers must operate and equip vehicles with due regard to circumstances or conditions at the time of operation, in a careful and prudent manner, at reasonable and proper speeds.”</p>