

**Small Business Economic Impact Statement (SBEIS) Analysis
Contracted Railroad Crew Transportation
Docket TR-170780
February 8, 2018**

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I. Introduction

The Washington Utilities and Transportation Commission (Commission) initiated a rulemaking in July 2017 in response to the passage of Engrossed Substitute House Bill (ESHB) 1105, Chapter 333, Laws of 2017, codified in RCW 81.61. The Commission received responsive comments to the notice of rulemaking (CR-101) from parties representing the railroad industry, railroad labor representatives, and an individual passenger carrier performing the work of a contract railroad crew transportation provider. The Commission hosted a stakeholder workshop on October 5, 2017, to address stakeholder comments and concerns, the rulemaking, and the underlying legislation. On November 20, 2017, the Commission distributed draft proposed rules that incorporated stakeholder feedback. After receiving comments from rail labor and the railroad industry and discussing concerns with a contracted railroad crew transportation provider, the Commission is ready to publish proposed rules. Concurrent with a notice of proposed rules, the Commission must provide a copy of the small business economic impact statement (SBEIS) prepared pursuant to Chapter 19.85 RCW, or explain why an SBEIS was not prepared. While the Commission has concluded that the proposed rules will not “impose more than minor costs on businesses” in the affected industries and that no SBEIS is required, the Commission provides its analysis supporting that conclusion in the form of an SBEIS.

II. SBEIS Requirements

The Regulatory Fairness Act, codified in Chapter 19.85 RCW, provides that an agency must conduct an SBEIS “if the proposed rule will impose more than minor costs on businesses in an industry.”¹ An SBEIS is intended to assist agencies with evaluating any disproportionate impacts of the rulemaking on small businesses. A business is categorized as “small” under the Regulatory Fairness Act if it employs 50 or fewer employees.

III. SBEIS Evaluation Procedure

On November 22, 2017, the Commission mailed a notice to all stakeholders interested in the Commission’s rulemaking, providing both a copy of the draft proposed rules and an opportunity to respond to an SBEIS Questionnaire. The notice requested that stakeholders review the draft rule, identify any cost impact, and, if a cost impact is noted, to please provide, at a minimum, the following information:

1. Identify the rule number, i.e., WAC 480-62-278, of the draft proposed rule that you identify as having a cost impact.

¹ RCW 19.85.030.

2. Identify whether there is any change from the current rule to the draft proposed rule that creates an **additional** cost impact on the company (however, do not identify the cost of complying with a rule in which the only change is that it was moved from one section of the WAC to another);
3. Explain why there will be a cost impact on the company;
4. Provide a detailed analysis of how you calculated the cost impact of each draft rule you identify as having a cost impact; and
5. Identify any draft proposed rule that may create a cost savings to the company compared to the current rule.

The notice requested that regulated companies provide information about possible cost impacts of the draft proposed rules with specific information for each rule that the company identified as causing an impact. The Commission received no responses to the notice, nor did any stakeholder identify any cost impacts.

The Commission has performed a section-by-section analysis of the draft proposed rules. The draft proposed rules directly implement ESHB 1105, Chapter 333, Laws of 2017, as codified in RCW 81.61. As discussed below, no section of the draft proposed rules imposes costs on businesses beyond the costs, if any, already imposed by statute.

IV. Section Review

a) WAC 480-62-125 Definitions

The draft proposed rules amend existing WAC 480-62-125 to include the definitions for “contract crew transportation company” and “contract crew transportation vehicle”.

Cost Impact:

The term “contract crew transportation vehicle” is defined in RCW 81.61.010 and reflected in the draft proposed rules. The term “contract crew transportation company” is included to make clear in the rules whether the rule applies to the contract carrier or the railroad. Any impact on a company or operator due to changes in the definitions are a result of the statutory change and legislative process, and not a result of the rulemaking.

The definition of “passenger vehicle” owned by the railroad is amended to clarify which rules apply to vehicles used in passenger transportation of crew by the railroad or by a contract carrier. There is no negative impact due to the clarification.

b) WAC 480-62-275 Contract crew transportation registration and permit required.

The draft proposed rules require a person to register and receive a permit with the Commission before operating as a contract crew transportation company.

Cost Impact:

RCW 81.61.050(1) requires the Commission to regulate the companies that operate as contract crew transportation companies in a manner consistent with RCW 81.70 and RCW81.68, which

govern certain passenger transportation companies. Requiring registration and permits is consistent with the manner in which the Commission regulates other passenger transportation companies and any impact is as a result of the statutory change, not the rulemaking. The Commission has worked to ensure that its registration and permitting process is streamlined and efficient, reducing burdens on applicants.

c) WAC 480-62-278 Contract crew transportation vehicle and driver safety requirements

The draft proposed rules set out requirements for the vehicles and drivers used in rail crew transportation. Provisions in RCW 81.61.020 and RCW 81.62.050 require the Commission to adopt rules concerning the “construction and mechanical equipment of passenger carrying vehicles”, “operation” of such vehicles, including driver safety, as well as passenger safety, and to regulate the companies that operate as contract crew transportation companies in a manner consistent with RCW 81.70 and RCW 81.68.

Consistent with rules governing other passenger transportation companies regulated by the Commission, the draft proposed rules contain an adoption by reference to certain federal rules in Title 49 of the Code of Federal Regulations (49 C.F.R.) Companies must comply with the parts of Title 49 C.F.R., adopted by reference that are shown in the following chart. Information about 49 C.F.R., including the version adopted by the Commission and where to obtain copies, is set out in WAC 480-62-999, relating to adoption by reference.

<u>49 C.F.R. Part:</u>		<u>Notes:</u>
<u>Part 379 -</u>	<u>Preservation of Records</u>	<u>Entire Part 379 is adopted and applies to Washington intrastate operations.</u>
<u>Part 385 -</u>	<u>Safety Fitness Procedures</u>	<u>Entire Part 385 is adopted and applies to Washington intrastate operations.</u>
<u>Part 390 -</u>	<u>Safety Regulations, General</u>	<u>Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions:</u>
-	-	<u>(1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they have the meanings assigned to them in WAC 480-62-125 (Contract crew transportation vehicle).</u>
-	-	<u>(2) Whenever the term "director" is used in Title 49 C.F.R., it means the commission.</u>
<u>Part 391 -</u>	<u>Qualification of Drivers</u>	<u>Entire Part 391 is adopted, with the following exceptions:</u>
-	-	<u>(1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively in intrastate commerce. Instead refer to WAC 480-62-281 for intrastate medical waivers.</u>

<u>49 C.F.R. Part:</u>		<u>Notes:</u>
<u>Part 392 -</u>	<u>Driving of Motor Vehicles</u>	<u>Entire Part 392 is adopted and applies to Washington intrastate operations.</u>
<u>Part 393 -</u>	<u>Parts and Accessories Necessary for Safe Operation</u>	<u>Entire Part 393 is adopted and applies to Washington intrastate operations.</u>
<u>Part 395 -</u>	<u>Hours of Service of Drivers</u>	<u>Entire Part 395 is adopted and applies to Washington intrastate operations.</u>
<u>Part 396 -</u>	<u>Inspection, Repair, and Maintenance</u>	<u>Entire Part 396 is adopted and applies to Washington intrastate operations.</u>
<u>Part 397 -</u>	<u>Transportation of Hazardous Materials, Driving and Parking Rules</u>	<u>Entire Part 397 is adopted and applies to Washington intrastate operations.</u>

Consistent with its regulation of other passenger carrying vehicles under RCW 81.70 and RCW 81.68, the Commission will place out-of-service any motor vehicle having safety defects identified in the North American Uniform Out-Of-Service Criteria. A company must not operate any vehicle placed out-of-service until proper repairs have been completed. Information about the North American Uniform Out-Of-Service Criteria including the version adopted and where to obtain copies is set out in WAC 480-62-999.

Similarly, the commission will place out-of-service any driver meeting criteria identified in the North American Uniform Out-Of-Service Criteria. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until the conditions causing the driver to be placed out-of-service have been corrected.

Cost Impact:

RCW 81.61.020 and RCW 81.61.050 require the Commission to regulate all persons providing railroad crew transportation in the areas of driver qualifications, safety of the equipment, safety of operations, hours of service by drivers, safety of the passengers, drug testing requirements and the retention of records. Any costs imposed by these draft proposed rules are a result of the requirements in statute, not the rulemaking.

For example, the draft proposed rules require daily vehicle inspections by drivers and documentation of the results by adopting 49 C.F.R. Part 396.11 and 13, which are the current requirements for vehicles covered by the new regulation. Commercial non Department of Transportation (non-DOT) controlled substance and alcohol testing services that are offered range from a five panel non-DOT test for amphetamines, cocaine, opiates, PCP, and THC with a negative result parameter for approximately \$32.50; a five panel non-DOT test for amphetamines, cocaine, opiates, PCP, and THC with information for a positive result from any single identifier for approximately \$55.50; to a 10 panel non-DOT test for amphetamines,

cocaine, opiates, PCP, THC, propoxyphene, barbiturates, benzodiazepines, alcohol, and methadone for \$65.00.

d) WAC 480-62-284 Contract crew transportation insurance requirements.

The draft proposed rules outline the requirements for contract crew transportation insurance levels, as follows:

- (1) Companies operating a contract crew transportation vehicle must meet the following minimum insurance requirements:
 - (a) Five million dollars combined single limit coverage for bodily injury and property damage liability coverage.
 - (b) One million dollars uninsured and underinsured motorist coverage.
- (2) Insurance policies must:
 - (a) Be written by an insurance company authorized to write insurance in the state of Washington.
 - (b) Include the Uniform Motor Carrier Bodily Injury and Property Liability Endorsement (Form F).
- (3) A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E). Form E is a standard motor carrier insurance form recognized by the insurance industry and is filed with the commission by an insurance company.
 - (a) The Form E must be issued in the company name exactly as it appears on the company's permit.
 - (b) The Form E must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than thirty days before the cancellation effective date.
- (c) The commission will accept an insurance certificate or binder for up to sixty days pending receipt of the Form E.
- (d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) in place of a Form E.
- (4) If a company's insurance filing is canceled and a new filing is not received prior to the cancellation date, the commission may dismiss a company's application for a permit or cancel an existing permit.
- (5) If a contract crew transportation company hires a driver to drive a vehicle owned by the contract crew transportation company to transport a railroad crew, the insurance requirements outlined in section (1), above, apply.
 - (a) The insurance requirements may be met by either the contract crew transportation company, the third party, or the railroad company.
 - (b) It is the responsibility of the contract crew transportation company to obtain and retain proof of insurance coverage for the third party driver.

Cost Impact:

The insurance requirements in proposed WAC 480-62-290 are prescribed in statute – RCW 81.61.050(3) – and are consistent with how the Commission establishes insurance requirements for other passenger carrier companies. Any cost impact is the direct result of the statutory change.

e) WAC 480-62-287 Contract crew transportation passenger notice requirements

The draft proposed rules include the following:

“(1) Companies operating a contract crew transportation vehicle must post adequate notice in a conspicuous location in all vehicles that advises passengers of:

(a) Their rights 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.”

Cost Impact:

The notice requirements outlined in this section of the draft proposed rules are prescribed in statute – RCW 81.61.050(4) – and are consistent with how the Commission regulates other passenger carrier companies. Any cost impact is the direct result of the statutory change.

f) WAC 480-62-290 Contract crew transportation safety training.

The draft proposed rules require that “(1) Companies providing contract crew transportation must provide at least eight hours of safety training that includes, but is not limited to:

(a) Vehicle safety awareness.

(b) Passenger safety awareness.

(c) Rail yard safety.

(d) Grade crossing safety.

(e) Load securement.

(f) Distracted driving.

(g) Fatigued driving.

(h) Familiarization with:

a. Railroad yards, property, pick-up points and drop-off points where the driver is expected to operate the vehicle.

b. Any rules or requirements imposed by the railroad at the locations where the driver is expected to operate the vehicle.

c. General railroad safety requirements.

d. Grade crossing safety.

(i) The training required in subsection (h), above, must be provided by the railroad for whom the driver will be transporting railroad crews. 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.

(2) Each company providing contract crew transportation must provide to the commission a description of its safety training program for approval prior to implementing the program at the company.

(3) Each company must require existing drivers to attend the safety training within six months of approval of the training program by the commission.

(4) If the commission finds driver safety behavior is such that refresher training is warranted, the commission may require such training.”

Cost Impact:

The training requirements outlined in this section of the draft are prescribed in statute – RCW 81.61.050(5). Any cost impact of the draft proposed rules is a direct result of the statutory change. The Commission determined that the railroads, because they are most familiar with rail yards, should provide training to any contracted crew transportation company to ensure that drivers are aware of the necessary safety rules and procedures. The expense of the training will vary based upon the contract between the railroad and contract crew transportation company. The railroad may contract with a third party to provide this training, however, such delegation does not absolve the railroad of the responsibility to ensure compliance with the section.

g) WAC 480-62-293 Contract crew transportation enforcement.

The draft proposed rules concerning the enforcement of safety requirements include the following:

- (1) The Commission will investigate safety complaints related to contract crew transportation. Information included in safety complaints that identifies the employee who submitted the complaint is exempt from public inspection and copying pursuant to RCW 42.56.330.
- (2) The Commission may, in enforcing rules and orders, inspect any contract crew transportation vehicle.
 - (a) Contract crew transportation companies are required to inspect, or have inspected, every vehicle as required in WAC 480-62-280 through adoption of 49 CFR, Part 396.
- (3) The Commission may take enforcement action, based on a complaint or on its own motion, as follows:
 - (a) Assess penalties as warranted.
 - (b) Suspend or revoke a permit after notice and opportunity for hearing.

Cost Impact:

RCW 81.61.050(1) requires the Commission to regulate the companies that operate as crew transportation companies in a manner consistent with RCW 81.70 and 81.68. RCW 81.61.040 and RCW 81.61.050(6),(7), and (8) require the Commission to inspect contract crew transportation company vehicles, receive complaints, and take enforcement action as warranted. In addition, the provisions of WAC 480-62-305 are consistent with the manner in which the Commission regulates other passenger transportation companies. Any cost impact resulting from the provisions of this proposed rule are due to the statutory change, not the rulemaking.

h) WAC 480-62-296 Contract crew transportation reporting requirements.

The draft proposed reporting rules include the following:

Companies operating a contract crew transportation vehicle must, at the request of the commission, provide data relevant to any complaints and accidents, including:

- (1) Location.

- (2) Time of day.
- (3) Visibility.
- (4) Description of the event.
- (5) Any resulting property damage or personal injuries.
- (6) Any corrective action taken by the railroad company, person operating the contract crew transportation vehicle, or the commission.

Cost Impact:

RCW 81.61.050(1) requires the Commission to regulate the companies that operate as crew transportation companies in a manner consistent with RCW 81.70 and 81.68. RCW 81.61.070 requires companies to report accident information to the Commission, and such reporting is consistent with the manner the Commission regulates other passenger transportation companies. Any cost impact resulting from this draft proposed rule is due to the statutory change, not the rulemaking.

V. Conclusion

Chapter 19.85 RCW requires that an agency prepare an SBEIS if the agency's proposed rules will impose more than minor costs on businesses in an industry. The Commission analyzed all information concerning costs resulting from the draft proposed rules collected throughout the rulemaking process. No stakeholder responded to the Commission's request to identify any cost impact of the draft proposed rules. Further, staff's analysis shows that the draft proposed rules will impose no costs beyond those already imposed by statute. Because the draft proposed rules will not impose more than minor costs on passenger transportation or railroad companies, the Commission concludes that no SBEIS is required, but provides this analysis supporting that conclusion in the form of an SBEIS.