



TO: David Danner, Chairman
Ann Rendahl, Commissioner
Amanda Maxwell, Executive Director

FROM: Rulemaking Team
Betty Young, Greg Kopta, Michael Howard, Jason Lewis, Jeff Roberson,
Harry Fukano, Kathy Hunter, Evan Enright

DATE: May 19, 2022

SUBJECT: TR-200536 - Rulemaking Pertaining to the Establishment of Minimum Crew Sizes on Certain Trains

RECOMMENDATION

Commission Staff (Staff) recommends that the Utilities and Transportation Commission (Commission) adopt the rules in Docket TR-200536 as published in the CR-102 filed with the Code Reviser and reflected in the proposed rules attached to this memorandum with the following revisions:

1. WAC 480-62-125

- a. Revises definition for “Remote-control operations” as follows:
 - i. *"Remote-control operations" means controlling of the movement of locomotives through the use of radio transmitter and receiver systems by persons not physically located at the controls within the confines of a locomotive cab.*
- b. Revises definition for “Remote-control zone” as follows:
 - i. *"Remote-control zone" means a designated ~~where access is restricted~~ restricted access area in which remote-control operations may occur under alternative point protection procedures.*

2. WAC 480-62-255(1)

- a. Adds language to clarify that specific statutory definitions apply to the section, as follows:
 - i. *For the purpose of this section, unless the language or context indicates that a different meaning is clearly intended, the following definitions apply:*
- b. Adds the following definitions:

- i. *“Class I” means a railroad carrier designated as a class I railroad by the United States surface transportation board and its subsidiaries or is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the United States surface transportation board designation as a class I railroad carrier.*
- ii. *“Class III” means a railroad carrier designated as a class III railroad by the United States surface transportation board.*
- iii. *“Crewmember” has the same meaning as “operating craft employee” as defined in this section.*
- iv. *“Operating craft employee” means a person employed by a railroad carrier and identified as train or yard crew as defined in Title 49 CFR Part 218.5.*
- v. *“Other railroad carrier” means a railroad carrier that is not a class I carrier.*
- vi. *“Railroad carrier” means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns. “Railroad carrier” includes any officers and agents of the railroad carrier.*

3. WAC 480-62-255(2)

- a. Adds language regarding the minimum train crewmember requirement:
 - i. *Any person, corporation, company, or officer of the court operating any railroad, railway, or any part of any railroad or railway, in the state as a common carrier of freight or passengers shall operate and manage all trains and switching assignments over its road with no less than two crewmembers.*

4. WAC 480-62-255(3)

- a. Adds language related to exemptions for Class III railroads and other railroad carriers from the requirements in WAC 480-62-255(2):
 - i. *The minimum crew size requirement of subsection (2) of this section does not apply to: (a) Class III railroad carriers operating on their roads while at a speed of twenty-five miles per hour or less, (b) other railroad carriers in possession of an effective automatic waiver issued under subsection (4) of this section, or (c) one person remote control operations in compliance with Title 49 CFR Part 218, Part 229, and any other applicable regulations regarding remote control operations.*

5. WAC 480-62-255(4)

- a. Adds language regarding automatic waivers for other railroad carriers from the train crew size requirement of WAC 480-62-255(2):
 - i. *Other railroad carriers operating in the state on or after June 11, 2020, receive an automatic waiver of the minimum train crew size requirements*

of subsection (2) of this section that shall remain in effect until the commission terminates the effectiveness of such a waiver by order.

6. WAC 480-62-255(5)

- a. Adds language describing the Commission’s ability to increase the number or direct the placement of additional railroad employees or crewmembers as it determines necessary, considering factors that may include those described in statute:
 - i. *The commission may order railroad carriers to increase the number of railroad employees, to require additional crewmembers, or direct the placement of additional crewmembers if the commission determines that the increase is necessary to protect the safety, health, and welfare of the public, passengers, or railroad employees, to prevent harm to the environment or to address site specific safety or security hazards. In issuing any order to increase the number of railroad employees, the commission may consider, but is not limited to, the factors found in RCW 81.40.025(4)(b).*

7. WAC 480-62-255(6)

- a. Adds language regarding monetary penalties for violations of this section:
 - i. *Any railroad carrier in violation of this section may be subject to fines of not less than one thousand dollars and not more than one hundred thousand dollars for each offense, as determined by the commission through order. In the event of a serious injury or fatality the commission may impose fines exceeding one hundred thousand dollars per offense.*

BACKGROUND

On July 20, 2020, the Commission filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) for a rulemaking to implement House Bill 1841 (HB 1841), Laws of 2020, chapter 170, which pertains to the establishment of minimum crew sizes on certain trains. Chapter 81.40 of the Revised Code of Washington (RCW) vests the Commission with regulatory authority over train crews. HB 1841 adds new sections to, and repeals specific sections in, chapter 81.40 RCW, necessitating a rulemaking to define Class I railroads, develop a mechanism for reviewing automatic waivers, and establish a process for Commission-ordered crew size increases. On July 21, 2020, the Commission issued a Notice of Opportunity to Comment seeking written comments on the rules the Commission should adopt to implement the statute. The Commission received comments in response to the notice on September 4, 5, and 17, 2020.

On September 25, 2020, the Commission issued a Notice of Workshop to be held on November 19, 2020. The purpose of the workshop was to discuss issues raised in stakeholder comments and to address how the Commission could best implement HB 1841.

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On May 6, 2021, the Commission mailed a notice to all stakeholders interested in the Commission's rulemaking, providing a copy of the draft proposed rules and an opportunity to respond to an SBEIS Questionnaire. The notice requested that companies that would be affected by the draft rules provide information about the rules' possible cost impacts, with specific information for each rule that the companies identified as causing an impact. The Commission received no responses to the SBEIS Questionnaire.

On Nov. 15, 2021, the Commission issued a supplemental SBEIS Questionnaire, providing an additional opportunity for affected companies to respond. The Commission received no responses to the supplemental questionnaire. Based on the information available to it, the Commission's analysis shows that the proposed rule has the effect of merely implementing the legislation passed in 2020, House Bill 1841 (HB 1841), Laws of 2020, chapter 170. The proposed rule outlines the requirement for establishing minimum crew sizes on certain trains.

On March 18, 2022, the Commission filed a CR-102, the Notice of Opportunity to File Written Comments on Proposed Rules.

CR-102 COMMENTS

On April 18, 2022, the Commission received three responses the CR-102 request for comments. Cascade and Columbia River Railroad (CSCD), Olympia & Belmore Railroad (OYLO), and Puget Sound and Pacific Railroad (PSAP); the American Short Line and Regional Railroad Association (ASLRRRA); and the Association of American Railroads (AAR) submitted comments in the following areas:

- **WAC 480-62-255(1)** - CSCD, OYLO, and PSAP commented that the definition of a short line company in the proposed rule is perplexing. These railroads are individually their own legal entities and are considered as such by both the Federal Railroad Administration and the Surface Transportation Board (STB). Each is considered a separate Class III short line common carrier freight railroad. They do not physically connect, and each have their own unique sets of on-line customers. Each has its own financial statements, and the revenue earned by each railroad determines the amount of capital reinvested by that railroad. Employees of each railroad operate under operating timetables specific to their own railroad. Furthermore, there is no legitimate basis to attempt to classify a short line railroad based on its ownership structure for the purpose of operational regulations.

ASLRRRA commented that this section is inconsistent with established STB railroad classifications, using ambiguous phrases such as "owned" and "operated" to distinguish certain short lines that may be affiliated with other short lines through a holding company structure without an appropriate understanding of the fact that these short lines are discrete legal entities. ASLRRRA stated that there is no justification offered in the

proposed rulemaking, based on relevant safety and performance history, to differentiate between Class III short line railroads based on ownership structure.

As outlined in the Comment Matrix, the Commission must exercise its authority in accordance with the Legislature's directives. The proposed rule implements the laws of 2020, chapter 170, in language that tracks the language of the statute.

- **WAC 480-62-255(3)** - CSCD, OYLO, and PSAP commented that the proposed rule would arbitrarily require a specific train crew size based on train speed. This could lead a small freight railroad to maintain its tracks to a lower speed limit, resulting in freight service that is less competitive with trucking and Washington residents coping with an ever-increasing number of trucks on public roadways.

ASLRRA commented that Class III short line operations would be exempted from the crew size restrictions if they choose to operate at speeds less than 25 m.p.h., creating a financial disincentive for small railroads to invest in their infrastructure, upgrade their track, and improve their performance times.

As outlined in the Comment Matrix, the Commission must exercise its authority in accordance with the Legislature's directives. The proposed rule implements the laws of 2020, chapter 170, in language that tracks the language of the statute.

- **WAC 480-62-255(5)** - CSCD, OYLO, and PSAP commented that the proposed rule would create an arbitrary and erratic process resulting in new operating mandates, and that there is no requirement for the mandates to be based on an unbiased factual analysis. The railroads expressed concern that they could be required to use additional crewmembers simply at the behest of the Commission without any guidance on how the process would work or how the Commission would determine that more crew members are needed.

ASLRRA commented that this section does not provide any regulatory guidance on how the Commission's process to order railroad carriers to increase the number of railroad employees, to require additional crewmembers, or direct the placement of additional crewmembers, would work, nor does it provide any process by which a railroad may appeal any such order. ASLRRA commented that this gives the Commission unfettered ability to dictate train crew staffing in Washington, which will result in an increase in the cost of shipping commodities by rail in Washington, which could then force a modal shift of traffic from rail to the less-environmentally friendly and more dangerous option of trucks on the highway.

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- **Preemption** - the AAR and ASLRRRA commented that the draft rules are preempted by federal law and that the Commission should withdraw its rulemaking.

As outlined in the Comment Matrix, the Commission must exercise its authority in accordance with the Legislature’s directives. The proposed rule implements the laws of 2020, chapter 170, in language that tracks the language of the statute.

Staff’s proposed responses to all comments received on the rulemaking are attached to this memorandum in a comment summary sorted by comment type.

CONCLUSION

After reviewing the comments filed in response to the CR-102 and proposed rules, Staff recommends the Commission adopt rules as filed with the Code Reviser on March 18, 2022, and attached to this memorandum with the recommended revisions.

ATTACHMENTS

Proposed Rules (including revisions)
Comment Matrix Summary