



MEMORANDUM

April 10, 2018

TO: Dave Danner, Chairman
Ann Rendahl, Commissioner
Jay Balasbas, Commissioner

FROM: Contract Railroad Crew Transportation Rulemaking Team
Mat Perkinson, Vicki Elliott, Jason Sharp, Jason Lewis, Rayne Pearson, and
Julian Beattie

CC: Steve King
Sean Mayo

SUBJECT: Contract Railroad Crew Transportation Rulemaking - Docket TR-170780

RE: Adoption Hearing on April 12, 2018

RECOMMENDATION

Staff recommends the Utilities and Transportation Commission (Commission) adopt the revised rules in Docket TR-170780 as published in the CR-102 filing with the Code Reviser and reflected in the proposed rules attached to this memorandum with the following revisions:

- 1. WAC 480-62-240(1)(d)**
Staff recommends amending the spelling of “insure” to “ensure.”
- 2. WAC 480-62-240(1)(g)**
Staff recommends adding clarifying language as to when a driver must determine whether required equipment is in a vehicle.
- 3. WAC 480-62-245(5)(a)**
Staff recommends inserting roman numerals (i), (ii), (iii), and (iv) for consistency throughout the rules. Staff also recommends inserting the word “or” after (iii).
- 4. WAC 480-62-278(6) and WAC 480-62-278(7)**
Staff recommends replacing the word “that” with “who” in two separate places.
- 5. WAC 480-62-281(1), WAC 480-62-281(2), and WAC 480-62-281(3)**
Staff recommends replacing the word “passenger” with “contract crew” in three places.

6. WAC 480-62-287(2)

Staff recommends amending the language requiring a contract railroad crew transportation company to post a specific contact person at the commission. Staff proposes to make the notice requirement more general in nature.

7. WAC 480-62-999

Staff recommends removing the words “branch of the Washington state”.

BACKGROUND

Engrossed Substitute House Bill (ESHB) 1105 required the commission to implement the statutory changes made to railroad crew transportation during the 2017 legislative session. Commission staff sought approval from the commission to open a rulemaking in May 2017 to implement rules consistent with ESHB 1105, Chapter 333, Laws of 2017, regarding contract railroad crew transportation companies, thus Docket TR-170780 was created.

Railroad companies transport employees from one location to another to perform work. Railroad companies either provide the transportation directly or contract with a private company to transport employees. The commission regulates charter companies that provide passenger transportation in a vehicle with a seating capacity for eight total passengers or more under chapter 81.70 RCW. Prior to ESHB 1105, A railroad company that contracted with a company operating vehicles with a seating capacity of seven or less total passengers was not required to follow the same safety standards as the larger eight or more passenger capacity vehicles.

ESHB 1105 establishes safety standards for the smaller vehicles that provide railroad crew transportation. The safety standards are consistent with passenger carriers regulated under chapter 81.68 RCW and chapter 81.70 as well as with the approach used in the federal motor carrier safety regulations under Title 49 of the code of federal regulations.

The Commission filed a CR-101 Preproposal Statement of Inquiry on July 21, 2017, to write rules to implement ESHB 1105 regarding contract railroad crew transportation. At the same time the Commission issued a Notice of Opportunity to File Written Comments and Notice of Workshop set for October 5, 2017. The Commission held the workshop and issued a draft of proposed new rules.

The responses to the original notice and comments received at the workshop were used to develop the proposed rules the Commission issued under the CR-102, Proposed Rulemaking, on February 23, 2018. At the same time, the Commission issued a notice of Opportunity to Submit Written Comments and Notice of Proposed Rule Adoption Hearing set for Monday, April 12, 2018, at 1:00 p.m.

CR-102 Stakeholder Comments

The commission received comments from QM Transport Inc., Sheet Metal, Air, Rail and Transportation Union, and BNSF Railway.

March 7, 2018 - QM Transportation, Inc. (QM)

QM comments that the Commission should require drivers to be over 18 years of age; the Commission should not require studded winter tires on crew transportation vehicles; the Commission should not require driver training to be provided by a source other than the driver’s employer; and the Commission should not require drivers to have medical certification cards. QM expressed concerns regarding hiring and retaining employees

and the cost to have drivers be medically certified. QM states that the majority of its drivers are retirees, people between jobs, and the disabled.

March 26, 2018 - Sheet Metal, Air, Rail, and Transportation Union (SMART)

SMART comments that the Commission should require drivers to be over 18 years of age; the Commission should require studded winter tires on crew transportation vehicles; and the Commission should require driver training to be provided by a source other than the driver's employer. SMART also strongly urges the commission to proceed forward and adopt the current proposed rules immediately and consider allowing a limited rulemaking process to remain open for the next 12 to 18 months to evaluate the effectiveness of the rules.

March 29, 2018 – BNSF Railway (BNSF)

BNSF comments that the Commission should, instead of requiring railroads to provide specific training to crew transportation drivers, allow BNSF to provide the materials to the crew transportation company and that company provide the training. BNSF also comments the Commission should specifically note that vehicle equipment safety requirements include only items that are applicable as the vehicle manufacturer originally intended; and notice requirements should provide a general telephone number rather than an individual staff person.

The staff proposed responses to the comments are attached to this memorandum in a comment summary sorted by comment type and the associated rule section.

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 February 23, 2018, and attached to this memorandum with the recommended revisions. Staff believes that the commission and various stakeholders have reached reasonable consensus in developing rules.

ATTACHMENTS

Proposed Rules (including revisions)
Comment Matrix Summary (including staff responses)