



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

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

**DATE:** November 22, 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.*

**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.

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 Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser. Pursuant to the CR-102, the Commission held an adoption hearing on May 19, 2022.

In June 2022, the Commission became aware that one of its primary stakeholders had not been served with the CR-102 and had been aware of neither the date of the adoption hearing nor the opportunity to comment on the proposed rules. To rectify the omission and provide ample opportunity for all interested persons and stakeholders to comment on the proposed rules, the Commission filed a supplemental Notice of Proposed Rulemaking (Supplemental CR-102) with the Code Reviser on June 22, 2022. The CR-102 established time for an adoption hearing on August 1, 2022, at 1:30 p.m. The Commission received substantive comments from stakeholders in response to the Supplemental CR-102. On July 22, 2022, the Commission advised interested persons that it would withdraw the CR-102 and cancel the adoption hearing.

On September 13, 2022, the Commission filed a CR-102 with the Office of the Code Reviser. The Commission also issued a Notice of Opportunity to Comment seeking written comments on the proposed rules.

### **CR-102 COMMENTS**

On November 8, 2022, the Commission received one response to the CR-102 request for comments. The Brotherhood of Locomotive Engineers and Trainmen and the International Association of Sheet Metal, Air, Rail, and Transportation Workers filed joint comments indicating no concerns or objections to the Commission's rules as proposed.

### **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 September 13, 2022, and attached to this memorandum with the recommended revisions.

Adoption Memo – Docket TR-200536 Minimum Train Crew Size Rulemaking  
November 22, 2022

**ATTACHMENTS**

Proposed Rules (including revisions)

Comment Matrix