

**Small Business Economic Impact Statement (SBEIS)  
Passenger Transportation Company Rulemaking  
Docket TC-161262  
June 2, 2017**

**I. Introduction:**

The Utilities and Transportation Commission (Commission) initiated a rulemaking in December, 2016, in Docket TC-161262, to consider amendments to Washington Administrative Code (WAC) Chapter 480-30.

The Commission requested and received two sets of comments on draft proposed rules from stakeholders and held two stakeholder workshops. The Commission is ready to publish proposed rules. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with Chapter 19.85 RCW, or explain why an SBEIS was not prepared. The Commission has prepared this small business economic impact statement in compliance with the requirements.

**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.” RCW 19.85.030. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rulemaking on small businesses. A business is categorized as “small” under the Regulatory Fairness Act if the business employs 50 or fewer employees. Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses.

**III. SBEIS Evaluation Procedure:**

On March 31, 2017, the Commission mailed a notice to all stakeholders interested in the Commission’s rulemaking, providing a copy of the draft rules and an opportunity to respond to an SBEIS Questionnaire. The notice requested that regulated companies provide information about possible cost impacts of the draft rules with specific information for each rule that the company identified as causing an impact. Only Shuttle Express responded to the questionnaire.

To conduct an SBEIS pursuant to the Regulatory Fairness Act, the Commission must determine the cost per employee, the cost per hour of labor, or the cost per \$100 of sales revenue. Shuttle Express quantified the cost per employee for one proposed requirement, but did not provide any other quantitative data. Although the survey produced only limited data, the Commission has extensive experience with passenger transportation companies and the stakeholders have communicated their views on the impacts of the draft rules throughout this process.

#### **IV. Results of the Analysis:**

Only one company responded to the SBEIS questionnaire. Shuttle Express expressed concerns regarding the cost of complying with proposed WAC 480-30-222(3) (records of inspections, repair and maintenance of vehicles), WAC 480-30-222(4) (driver qualifications), and amendments to WAC 480-30-231 (vehicle and driver identification). This analysis will discuss the issues raised by the company in the pertinent section analysis.

##### Proposed Rules Authorizing Use of Contractors

The repeal of WAC 480-30-213, the adoption of WAC 480-30-022, and several conforming amendments to other rules in the chapter will allow companies to contract for vehicles or drivers or both. Shuttle Express requested the opportunity to use vehicles and drivers through contracts to reduce the costs caused by owning or leasing vehicles or employing drivers. None of the companies provided data to demonstrate the cost reduction anticipated from using contractors, but the Commission is willing to provide the companies additional flexibility to reduce costs. Regulations proposed to be amended that remove impediments to contracting for vehicles or drivers are: WAC 480-30-056, 141, 166, 171, 191, 216(7), 236, and 456.

##### Proposed Rule Establishing Requirements for Vehicles with a Capacity of Seven or Fewer Passengers (including the driver) and their Drivers

The Commission proposes WAC 480-30-222 to tailor safety regulations for vehicles and drivers when the vehicle is designed by the manufacturer to hold seven or fewer passengers. Under existing WAC 480-30-221, passenger transportation companies must comply with the vehicle and driver requirements set forth in federal regulations. The federal regulations, however, were aimed at regulating services provided by vehicles designed or used to transport more than eight passengers (including the driver).

Shuttle Express expressed concerns that proposed WAC 480-30-222 could increase company costs, specifically the potential cost of record keeping and the cost of qualifying drivers to be employees or contractors. The Commission has revised the proposed rules in response to Shuttle Express' concerns. With respect to record keeping, the Commission proposes that records may be kept by either the certificated company or its contractor. A certificated company is only required to make records available to inspectors within forty-eight hours of a request. As for driver qualifications, the Commission revised the rule to clarify that a company must verify and document the qualifications of the drivers only before initially allowing the driver to provide service and annually thereafter, rather than prior to each trip, which gave Shuttle Express concern.

In the interest of a complete analysis, the Commission compared the requirements proposed in WAC 480-30-222 to the requirements of the applicable federal regulations and the state and local

regulations that currently apply to those vehicles and drivers that will most likely be used by companies under contract. Under federal regulations adopted by reference by the Commission, every vehicle and every driver used by a company must meet all of the federal regulations referenced. Therefore, in terms of “impact,” only new requirements that are more rigorous than federal rules are relevant.

- WAC 480-30-222(1) requires vehicles used by a company to be inspected, and certified as safe, annually by a mechanic who has passed the experience and testing requirements of the National Institute for Automotive Service Excellence (NIASE). This provision is comparable to 49 C.F.R. Part 396.17, which requires annual inspections by a qualified inspector. Under the federal regulations, an inspector must meet the requirements of 49 C.F.R. Part 396.19, including completion of a federal or state sponsored training program or holding an inspector certificate from a state or Canadian province. The ASE tests are online and cost \$39 each. The registration fee for any combination of tests is \$36. So, for example, to test in all eight areas of automobile/SUV/light truck service costs \$36 to register and \$312 for the examinations. The cost of qualifying a mechanic who conducts inspections is, however, necessarily a cost for the company. The rule does not require the inspectors to be employed by the company. The company can use any automotive repair shop or other business that employs mechanics who have met the certification requirements of the NIASE. In that case, the “cost” of the mechanic requirement would be spread among all customers of the mechanic. As an example of local regulatory requirements, the proposed standard for mechanics inspecting vehicles is the same as for for-hire vehicles regulated by King County under K.C.C. 6.64.010(c).
- WAC 480-30-222(2) requires daily vehicle inspections by drivers and documentation of the results. 49 C.F.R. Part 396.11 and 13, which are the current requirement for vehicles covered by the new regulation, require the same.
- WAC 480-30-222(3) requires records of inspection, repair and maintenance to be kept for three years. The proposed rule responds to the Shuttle Express concern by allowing the records related to vehicles used through a contractor to be kept by the contractor. The requirement under the federal regulations, 49 C.F.R. 396.3, requires records to be maintained for a period of one year and for six months after the motor vehicle leaves the motor carrier’s control; however the standard for record keeping for vehicles regulated under this proposed rule is the same as for for-hire vehicles regulated by King County under K.C.C.6.64.360(B).
- WAC 480-30-222(4) establishes requirements for drivers of vehicles with a capacity of seven or fewer passengers (including the driver). The drivers may be employed by the certificated company or may be provided through contract. The most likely type of drivers provided through contract will be limousine chauffeurs regulated by the Department of Licensing (DOL) or for-hire drivers regulated at the local level.

- Under WAC 480-30-222(4)(a) all drivers must be licensed to drive in Washington. That is the current requirement in federal, state and local regulations.
- Under WAC 480-30-222(4)(b) all drivers must be safe drivers, as demonstrated by a complete driving record from the DOL and any other state in which the driver resided within the past five years. The current standard, 49 C.F.R. Part 391.23, requires a company to obtain driving records for its drivers within 30 days of employment from each state in which the driver held a license within the previous three years. The company must make the same inquiry every year thereafter under 49 C.F.R. Part 391.25. WAC 308-83-140(2)(f) requires licensed limousine carriers to obtain a Department of Licensing driving record for its chauffeurs at the time of hire, and if the chauffeur has resided in another state within the past five years, a complete driving record from the previous state(s) of residence. As an example for for-hire drivers, King County, under K.C.C. 6.64.590, requires a copy of the current driver abstract from DOL. The cost of a DOL complete driving record is \$13. Companies can minimize costs by coordinating with contractors to conduct their “annual” review on a cycle that matches the contractor’s compliance with other regulations, so that the contractor can provide copies of documents it has obtained in complying with its own licensing requirements.
- Under WAC 480-30-222(4)(c) all drivers must submit to a state (Washington State Patrol) criminal background check. The background check currently costs \$16. 49 C.F.R. Part 391.21, the current requirement, does not require a background check: it relies on the driver to report all violations of motor vehicle laws or ordinances at the time of application that resulted in convictions and at all times subsequently. DOL requires a state background check for limousine chauffeurs at the time of initial certification by a limousine carrier under WAC 308-83-140(2)(d). King County, as an example, requires a background check under K.C.C. 6.64.520 that can be a state and federal background check or a background check that include local, state and national databases obtained from an approved third party. The proposed rules removed from the draft rules a requirement for a federal background check to be consistent with the limousine chauffeur requirement.
- Under WAC 480-30-222(4)(d), a company cannot employ or contract with a driver if the driver has been required to register as a sex offender or been convicted of a sex offense or kidnapping a minor. The federal regulations do not have a similar provision, but the Department of Licensing’s regulation WAC 308-83-150 includes rape and child molestation and being registered as a sex offender among the grounds for disqualifying a chauffeur. K.C.C. 6.64.600 also lists being a registered sex offender or being convicted of a sex offense or kidnapping offense against a minor as grounds for denial of a permit.

- Under WAC 480-30-222(4)(e), a driver must be medically examined and certificated by a medical examiner who is listed on the National Registry of Certified Medical Examiners and be physically and mentally qualified to operate a passenger carrying vehicle for compensation. The current regulation, 49.C.F.R. Part 391.41, requires the same, so the proposed rule does not increase costs.
- Under WAC 480-30-222(4)(f), the driver must have passed a defensive driving course certified by the National Safety Council or passed an equivalent course approved by the Commission. The NSC offers courses in defensive driving both online and in person. The online course (which would meet the requirement) is a four hour course and costs \$41.25. The driver has the option of taking an in person course of either four hours or eight hours and the cost varies depending on the venue. The federal regulations do not specifically require a defensive driving course, but 49 C.F.R. Part 391.11 (a)(8) and 49 C.F.R. Part 391.33 together require successful completion of a road test or its equivalent. Under 49 C.F.R. Part 391.11(a)(3), the employer must determine from the application for employment whether the driver can safely operate the type of commercial motor vehicle they will be driving. DOL requires chauffeur training in WAC 308-83-300(1)(a), including the National Safety Council defensive driving course.
- WAC 480-30-222(5) requires the company to verify and document the driver's qualifications prior to initially allowing the driver to operate a vehicle, and every twelve months thereafter. Federal regulations in 49 C.F.R. Part 391.21 and 23 require an extensive driver application process, but afterwards rely on self-reporting by drivers, except for an annual check of driving records under 49 C.F.R. Part 391.25. Under WAC 308-83-145 limousine carriers must certify to DOL that the chauffeurs named in its application or annual renewal meet the requirements of RCW 46.72A.090. King County requires an initial permit and annual renewals under K.C.C. 6.64.510.
- WAC 480-30-222(6) establishes maximum driving hours based on King County's ordinance K.C.C. 6.64.660(G). The standard is less rigorous than currently required under 49 C.F.R. 395.5.
- The requirements in WAC 480-30-222(7) related to record keeping regarding driver qualifications and accidents are the same as currently required under 49 C.F.R. Part 391.51 and 390.15.
- WAC 480-30-222(8), related to placing a vehicle or driver out-of-service replaces the current criteria under WAC 480-30-221 with one tailored to issues appropriate to the standards in WAC 480-30-222 and does not impose any additional costs.

#### Proposed Amendments to Rule Regarding Identification of Vehicles and Drivers

WAC 480-30-231 establishes the requirements for vehicle and driver identification. The draft rules initially included an amendment that would allow vehicles not owned by the certificated

company to be marked with a temporary, rather than permanent, sign. Even though the use of a contractor would be voluntary, Shuttle Express expressed concern about the cost and legality of requiring vehicle markings by contractors. Shuttle Express pointed out that the laws governing limousines, which might be used under a contract, do not allow the vehicle to have “markings” on the vehicle. Shuttle Express asserted it would not be able to contract with limousine carriers if WAC 480-30-231 continued to require identification on the vehicle. It also stated that temporary signs would have a cost and if they were dislodged from the vehicle, a potential expense in the form of accident liability. The Commission consulted with DOL and changed the language in the proposed rule to state that a vehicle does not have to be marked if other applicable law prohibits such markings. In those circumstances the driver of the vehicle must display a sign showing the name of the certificated company and the name of the passenger after the driver leaves the vehicle to greet the customer. A simple hand-held sign is inexpensive compared to a sign that attaches to a vehicle. Hand-held signs are also commonly used by limousine chauffeurs picking up passengers at the airport and other facilities.

#### Proposed Amendments Related to Tariffs

The Commission also proposes a paperwork reduction for companies by eliminating the requirement that every vehicle carry a copy of the company’s tariff (which documents the company’s rates, schedule, and rules of service), which can be voluminous, and the requirement that every vehicle carry a copy of any notice of a change in the tariff. The companies have not quantified the cost-savings of these amendments.

#### **V. Proposed Rules that May Create Costs:**

The Commission’s analysis shows that the proposed rules provide companies an opportunity to reduce the cost of doing business (use of contractors, for example), or at least set requirements that are equivalent to those currently in force for the companies or the businesses with which they would most likely contract. The additional costs per employee or contractor resulting from the proposed rules, such as the \$16 for a background check, \$13 for a driver record, or \$41.25 for a defensive driving course, are minor. Companies, moreover, can minimize or avoid those costs related to the use of contractors by effective coordination with the contractor.

#### **VI. Summary of Findings:**

The Commission finds that the proposed rule changes will not impose more than minor costs on passenger transportation companies. To the contrary, the proposed rules are more likely to reduce costs for all passenger transportation companies.

#### **VII. Summary of Mitigation:**

The Commission’s analysis supports a finding of no disproportionate economic impacts to small businesses and the Commission’s proposed rules minimize the costs for all companies. The

Commission revised the requirements in the initial draft for verification and document of driver qualifications to clarify that the process is not required before each trip. The commission also revised the record keeping requirements to allow the contractor to maintain the required records, rather than mandating that the company maintain a duplicate set. In addition, the Commission removed the requirement for a federal background check to eliminate the cost and delay involved and to be consistent with the requirements for chauffeurs.

### **VIII. Conclusion**

Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry.

The Commission has analyzed all information collected throughout the rulemaking process and concludes the proposed rules will not impose more than minor costs on passenger transportation companies and will not have a disproportionate impact on small businesses.