

WSR 23-21-066

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed October 12, 2023, 3:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-071.

Title of Rule and Other Identifying Information: Conducting risk-based inspections of rail fixed guideway public transportation systems (RFGPTS).

Hearing Location(s): On December 15, 2023, at 10:00 a.m., at the Nisqually Conference Room, 310 Maple Park Avenue S.E., 1st Floor Room 1D02, Olympia, WA 98501.

Date of Intended Adoption: April 1, 2024.

Submit Written Comments to: Molly Hughes, 310 Maple Park Avenue S.E., P.O. Box 47300, email hughesm@wsdot.wa.gov, fax 360-705-6820, by December 14, 2023.

Assistance for Persons with Disabilities: Contact Sarah Rose, ADA accessibility coordinator, phone 855-362-4232, email wsdotada@wsdot.wa.gov, by December 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to implement the Federal Transit Administration's (FTA) Special Directive 22-51 that requires Washington state department of transportation (WSDOT) to implement a risk-based inspection program for the RFGPTS that it oversees. Its anticipated effects will be to expand WSDOT's state safety oversight program reach to the authority and capability to enter facilities of each RFGPTS that the state safety oversight agency oversees to inspect infrastructure, equipment, records, personnel, and data. This proposed rule making would not change any existing rules. Rather, it expands WSDOT's authority for risk-based inspections.

Reasons Supporting Proposal: On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, which continues the public transportation safety program. The Bipartisan Infrastructure Law amended 49 U.S.C. Section 5329 to require state safety oversight agencies to conduct risk-based inspections of the RFGPTS that it oversees. By supporting this proposal, WSDOT helps to ensure its compliance with this federal law and reduces the likelihood FTA will take any enforcement action for noncompliance that could include withholding of FTA grant funding.

Statutory Authority for Adoption: Existing WAC 468-550-010 outlines the statutory authority for chapter 468-550 WAC, Safety oversight of rail fixed guideway systems rules. This proposed rule making provides the statutory authority for adoption.

Statute Being Implemented: RCW 81.1.4.115 [81.104.115], 43.06.120.

Rule is necessary because of federal law, 49 U.S.C. Section 5329(k).

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: Steven Meyeroff, WSDOT Headquarters, Olympia, 520-820-5389; Implementation and Enforcement: Molly Hughes, WSDOT Offices, Seattle, 360-742-8458.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making will have minimal or no economic impact to small business in Washington state. This was determined by the fact that this proposed rule only impacts four entities in Washington state, all of which are government or quasi-governmental entities that provide public rail fixed guideway public transportation. Therefore, as defined in RCW 19.85.025(4), the requirements do not apply to the rule-making process for chapter 468-550 WAC, Safety oversight of rail fixed guideway public transportation systems.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 49 U.S.C. Section 5329(k) and C.F.R. Part 670. These laws require WSDOT to submit documentation that demonstrates that WSDOT has developed and implemented a risk-based inspection program.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making will have minimal or no economic impact to small business in Washington state. This was determined by the fact that this proposed rule only impacts four entities in Washington state, all of which are government or quasi-governmental entities that provide public rail fixed guideway public transportation. Therefore, as defined in RCW 19.85.025(4), the requirements do not apply to the rule-making process for chapter 468-550 WAC, Safety oversight of rail fixed guideway public transportation systems.

Scope of exemption for rule proposal:

Is fully exempt.

October 11, 2023
Sam Wilson, Director
Business Support Services

OTS-4874.1

NEW SECTION

WAC 468-550-071 Access and implementation of risk-based inspections. All WSDOT trained inspection personnel, including consultants hired for the purpose of conducting inspections, are granted authority under the state safety oversight program to conduct both announced and unannounced inspections of the rail fixed guideway public transportation system (RFGPTS). Each RFGPTS must allow WSDOT and/or consultants to do all things reasonable and necessary to conduct their inspections including, but not limited to, entering RTA facilities and other relevant locations, and inspecting infrastructure, equipment, records, personnel, and data, including the data that the rail fixed guideway public transportation agency collects when identifying and evaluating safety risks. It is expected that the RTA will provide the WSDOT inspection staff with the resources and information necessary to conduct the inspection in an effective and efficient manner.

WSDOT, in consultation with each rail fixed guideway public transportation agency that it oversees, will establish policies and procedures regarding the access to each RFGPTS for the purpose of conducting inspections of the rail fixed guideway public transportation system, including access for inspections that occur without advance notice to the rail fixed guideway public transportation agency.

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