

**WSR 22-13-173
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Filed June 22, 2022, 8:18 a.m.]

Supplemental Notice to WSR 22-07-071.

Preproposal statement of inquiry was filed as WSR 20-15-127.

Title of Rule and Other Identifying Information: Rule making to implement HB 1841, chapter 170, Laws of 2020, which pertains to the establishment of minimum crew size on certain trains. This rule making is recorded as Docket TR-200536 at the utilities and transportation commission (UTC).

Hearing Location(s): On August 1, 2022, at 1:30 p.m., Zoom <https://utc-wa-gov.zoom.us/j/85252735543?pwd=UjhXOE9ITlFnNkt0TjROTkZqZUhQQT09>; by phone 253-215-8782, Meeting ID 852 5273 5543, Passcode 223459. Public hearing to consider adoption of the proposed rule.

Date of Intended Adoption: August 1, 2022.

Submit Written Comments to: Amanda Maxwell, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email records@utc.wa.gov, 360-664-1160, by July 18, 2022.

Assistance for Persons with Disabilities: Contact human resources, phone 360-664-1160, TTY 360-586-8203, email human_resources@utc.wa.gov, by July 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2020, the legislature enacted the chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. The legislation also added new sections to and repeals specific sections of chapter 81.40 RCW, necessitating a rule making to define Class I railroads, provide automatic waivers, and establish a process for UTC-ordered crew size increases.

Reasons Supporting Proposal: In 2020, the legislature enacted the chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. This rule making enables UTC to implement the new law, establishing rules for UTC to apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160; chapter 81.40 RCW. RCW 81.40.150(1) states that UTC's "paramount obligation" is the furtherance of safety in railroad transportation. RCW 81.40.025 (4)(a) states that UTC "may order railroad carriers to increase the number of railroad employees in areas of increased risk to the public, passengers, railroad employees, or the environment ..."

Statute Being Implemented: RCW 81.40.005 - [81.40].025, [81.40].150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: UTC, governmental.

Name of Agency Personnel Responsible for Drafting: Betty Young, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-292-5470; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1110.

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. RCW 34.05.328 does not apply to UTC as it is not one of the listed agencies in RCW 34.05.328 (5) (a) (i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. UTC is proposing to adopt rules that enable UTC to implement the law, apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations. On May 6, 2021, UTC mailed a notice to all stakeholders interested in the rule making, providing a copy of the draft rules and an opportunity to respond to a small business economic impact statement (SBEIS) questionnaire. The notice requested that entities affected by the proposed rules provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. UTC did not receive any information in response to the questionnaire. On November 15, 2021, UTC sent a supplemental SBEIS questionnaire to affected entities, providing an additional opportunity to respond. UTC received no responses to the supplemental questionnaire. Based on the information available to it, UTC determined that the proposed rules merely implement the statute as required by the legislature.

June 22, 2022

Amanda Maxwell

Executive Director and Secretary

OTS-3674.1

AMENDATORY SECTION (Amending WSR 18-10-001, filed 4/18/18, effective 5/19/18)

WAC 480-62-125 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Class I railroad company" means a railroad company having annual operating revenues of (~~(\$250 million)~~) \$250,000,000 or more;

"Class II railroad company" means a railroad company having annual operating revenue of less than (~~(\$250 million)~~) \$250,000,000, but more than (~~(\$20 million)~~) \$20,000,000; and

"Class III railroad company" means a railroad company having annual operating revenues of (~~(\$20 million)~~) \$20,000,000 or less.

"Commission" means the Washington utilities and transportation commission.

"Contract crew transportation company" means any person, organization, company or other entity that operates one or more contract crew transportation vehicles.

"Contract crew transportation vehicle" means every motor vehicle designed to transport (~~(fifteen)~~) 15 or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers and used primarily to provide railroad crew transportation.

"Department of labor and industries" means the Washington state department of labor and industries.

"Department of transportation" means the Washington state department of transportation.

"On track equipment" means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

"Passenger carrying vehicle" means those buses, vans, trucks, and cars owned, operated, and maintained by a railroad company primarily used to transport railroad employees, other than in the cab of such vehicles, and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

"Railroad" means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

"Railroad company" means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

"Railroad police officer" means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

"Remote-control area" means any place remote-control operations are conducted on a railroad.

"Remote-control operations" means (~~controlling~~) control 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.

"Remote-control zone" means a designated restricted access area (~~where access is restricted~~) in which remote-control operations may occur under alternative point protection procedures.

"State" means the state of Washington.

[Statutory Authority: RCW 80.01.040, 81.04.160, and 81.61.050. WSR 18-10-001 (Docket TR-170780, General Order R-591), § 480-62-125, filed 4/18/18, effective 5/19/18. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 04-11-023 (Docket No. TR-021465, General Order No. R-514), § 480-62-125, filed 5/11/04, effective 6/11/04. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. WSR 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-125, filed 1/30/01, effective 3/2/01.]

NEW SECTION

WAC 480-62-255 Minimum crew size on certain trains. (1) For the purpose of this section, unless the language or context indicates that a different meaning is clearly intended, the following definitions apply:

"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.

"Class III" means a railroad carrier designated as a class III railroad by the United States surface transportation board.

"Crewmember" has the same meaning as "operating craft employee" as defined in this section.

"Operating craft employee" means a person employed by a railroad carrier and identified as train or yard crew as defined in 49 C.F.R. Part 218.5.

"Other railroad carrier" means a railroad carrier that is not a class I carrier.

"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.

(2) 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.

(3) 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 25 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 49 C.F.R. Parts 218 and 229, and any other applicable regulations regarding remote control operations.

(4) 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.

(5) 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).

(6) Any railroad carrier in violation of this section may be subject to fines of not less than \$1,000 and not more than \$100,000 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 \$100,000 per offense.

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