



264  
SERVICE DATE

NOV 29 2000

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

November 27, 2000

**NOTICE OF OPPORTUNITY TO COMMENT  
(Wednesday, December 13, 2000)**

**AND**

**NOTICE OF PROPOSED RULE ADOPTION HEARING  
(Thursday, January 11, 2001)**

RE: Railroad Operations Rulemaking, Docket No. TR-981102  
WAC 480-62

TO INTERESTED PERSONS:

On November 8, 2000, the Commission authorized the filing of a Notice of Proposed Rulemaking (CR-102) with the Code Reviser for WAC 480-62 "Railroad Companies - Operations." The proposal would repeal the existing rules and replace them with revised rules and add several new rules.

Enclosed with this letter is a copy of the CR-102, the rule text and the Small Business Economic Impact Statement. Please respond with your suggestions, comments, or questions regarding the enclosed revised rules no later than **Wednesday, December 13, 2000**. Submit your comments to: Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250.

**Electronic copies.** The Commission also requests, but does not require, that comments be provided in electronic format to facilitate quotations from the comments, to enhance public access, and to reduce the need for additional paper copies. Please help us by sending an electronic copy with your paper filing on a 3-1/2 inch, IBM-formatted, high density disk, in .pdf Adobe Acrobat format, reflecting the pagination of your original. Please also send us the text in your choice of .doc (Word 97 or later) or .wpd (Wordperfect 6.0 or later). Please include all of the following information on the label of the diskette:



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Docket No. TR-981102

November 27, 2000

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- \* The docket number of this proceeding (TR-981102)
- \* The commenting party's name
- \* The title and date of the comment or comments; and
- \* The type of software used

Please use the three-letter extension noted above for all electronic files. You may also send your comments by electronic mail to the Commission's Records Center at <records@wutc.wa.gov>; if you choose this means of submitting comments, please include all of the information requested above for the diskette label. The Commission will post on the Commission's web site all comments that are provided in electronic format. The web site is located at <http://www.wutc.wa.gov>.

The public hearing to adopt the proposed rules will be held at **9:30 a.m.**, on **Thursday, January 11, 2001**, at the Commission's open meeting. This public hearing will be held in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

Questions regarding this rulemaking docket may be addressed to Ahmer Nizam, at the above address, (360) 664-1345, or e-mail at <anizam@wutc.wa.gov>.

Sincerely,



for CAROLE J. WASHBURN  
Secretary

Enclosures



**PROPOSED RULE MAKING SERVICE DATE**  
**(RCW 34.05.320) NOV 29 2000**

**CR-102 (7/10/97)**

Do NOT use for expedites adoption

**Agency:** WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**Original Notice**

**Preproposal Statement of Inquiry was filed as WSR #99-08-053; or**

**Expedited Adoption--Proposed Rule Making notice was filed as WSR \_\_\_\_\_; or**

**Proposal is exempt under RCW 34.05.310(4).**

**Supplemental Notice to WSR \_\_\_\_\_**

**Continuance of WSR \_\_\_\_\_**

**(a) Title of rule: (Describe Subject)**

Chapter 480-62 WAC Railroad Company - Operations; regulating standards for (1) maintenance, repair, modification, blocking, and safety of operations at railroad grade crossings;(2) reporting operational information; and (3) procedures for requesting changes in train speed limits.

**Purpose:** To provide clear, objective standards for addressing issues at railroad grade crossings to ensure safer crossings and greater communication between railroad companies and the communities through which they operate, as well as to provide communities and railroad companies with clear procedures for requesting changes in train speed limits, and streamlined reporting requirements to allow for more efficient exchange of information with railroad companies.

**Other Identifying Information:** Commission Docket No. TR-981102

**(b) Statutory authority for adoption:**

RCW 80.01.040, RCW 81.04.160, RCW 81.24.010, RCW 81.28.010, RCW 81.28.290, RCW 81.40.110, RCW 81.44.010, RCW 81.44.020, RCW 81.44.101-105, Chapter 81.48 RCW, Chapter 81.53 RCW, Chapter 81.54 RCW, Chapter 81.60 RCW, and Chapter 81.61 RCW.

**Statute being implemented**

Section 2, chapter 239, Laws of 2000

**(c) Summary:**

See section (j) below.

**Reasons supporting proposal:** See section (j) below.

**(d) Name of Agency Personnel Responsible for:**

**Office Location**

**Telephone**

1. **Drafting.....**Ahmer Nizam, Policy Research Specialist, 1300 S. Evergreen Park Dr. S.W., Olympia, WA 98504 360-664-1345

2. **Implementation...**Carole J. Washburn, Secretary, 1300 S. Evergreen Park Dr. S.W., Olympia, WA 98504 360-664-1174

3. **Enforcement.....**Carole J. Washburn, Secretary, 1300 S. Evergreen Park Dr. S.W., Olympia, WA 98504 360-664-1174

**(e) Name of proponent (person or organization)**

Washington Utilities and Transportation Commission

Private  Public  **Governmental**

**(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**(g) Is rule necessary because of:**

**Federal Law?**  Yes  No **If yes, ATTACH COPY OF TEXT**  
**Federal Court Decision?**  Yes  No **Citation:**  
**State Court Decision?**  Yes  No

**(h) HEARING LOCATION:**

Commission Hearing Room 206  
 2<sup>nd</sup> Floor, Chandler Plaza building  
 1300 S. Evergreen Park Dr. SW  
 Olympia, WA 98504-7250

**Date:** January 11, 2001 **Time:** 9:30 a.m.

**Assistance for persons with disabilities: Contact**  
 Pat Valentine by January 3, 2001  
 TDD (360) 586-8203 or (360) 664-1133

**Submit written comments to:** Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504-7250 or E-mail to <records@wutc.wa.gov>. Please include Docket No. TR-981102 in your communication. **FAX (360) 586-1150 By: December 13, 2000**

**DATE OF INTENDED ADOPTION:** January 11, 2001

**NAME (TYPE OR PRINT)**

Carole J. Washburn

**SIGNATURE**

*Carole J. Washburn*

**TITLE**

Secretary

**DATE**

11/22/00

CODE REVISER'S OFFICE  
 STATE OF WASHINGTON  
**CODE REVISER USE ONLY**

NOV 22 2000

TIME 1156 AM

WSR 00-23-131 PM

**(j) Short explanation of rule, its purpose, and anticipated effects:**

These rules address how the WUTC regulates railroad company operating practices concerning maintenance, repair, modification, and blocking of railroad grade crossings, use of traffic control devices and flaggers when performing construction at grade crossings, safety of passenger carrying vehicles, procedures for requesting changes in train speed limits, providing notice to communities, and various reporting requirements. The proposed rules would incorporate and formalize existing policies, would eliminate obsolete rules, and would add some substantive provisions as discussed further below. The proposed rules establish standards for railroad companies and communities to follow when operating, maintaining, repairing, or blocking railroad crossings, including providing notice of planned events that might disrupt travel over crossings. The rules also require railroad companies to report certain information to the WUTC for use by rail section employees. The proposed permanent rule concerning flaggers is in compliance with Section 1, chapter 239, Laws of 2000, requiring the WUTC, as well as other agencies, to adopt rules to reduce dangers to flaggers from behind.

**Does proposal change existing rules?     YES     NO    If yes, describe changes:**

Existing Rules: The proposal recommends repealing all existing rules in order to organize the chapter more effectively. However, the proposal does recommend eliminating several rules which seem to have no present day application, have been preempted by rules issued by the Federal Railroad Administration (FRA), or with which the WUTC has not worked in a number of years, WAC 480-62-010, and -100. Rules governing locomotive speedometers and bridge safety have been preempted by the FRA, and are no longer applicable. A rule governing train operations at a particular crossing in Tacoma is no longer necessary, as the statute addressing the issue, RCW 81.48.050, sufficiently covers the crossing, WAC 480-62-120. A rule governing exemptions from the use of traffic control devices has been incorporated into a new rule addressing the application of the chapter, former WAC480-62-020 to proposed WAC 480-62-230. Changes to the rules addressing traffic control devices, passenger carrying vehicles, annual reports, accident reports, and hazardous materials regulations involve the use of different language and format. Changes to the flagger rule, former WAC 480-62-030 to proposed WAC 480-62-230, are primarily taken from draft rules developed by the Department of Labor & Industries, and are intended to address the requirements of Section 2, chapter 239, Laws of 2000.

Additional Rules: The proposal recommends that a number of new rules be included in chapter 480-62 WAC. Some are general rules, common to all chapters of Commission rules. These rules include sections for definitions, application of rules, exemptions from rules, and severability. Other rules address safety of railroad operations generally and at grade crossings, procedures for requesting changes in train speed limits, and providing notice to the community of planned events, and finally, a number of operational reporting requirements.

Specifically, the proposal includes a number of FRA safety rules for adoption by reference to allow Commission staff to enforce the requirements as a part of the FRA's State Safety Participation Program, as well as to apply federal Crossing Signal Circuitry rules to Logging and Industrial Railroads. The proposal includes rules designed to provide standards and procedures for railroad companies and communities concerning improvements to crossings and signals, maintenance and repair of crossing surfaces, and blocking of railroad grade crossings. The proposal includes a rule requiring railroads to ensure the safety of on-track equipment operated by the railroad, or others, when approaching and passing railroad grade crossings.

The proposal sets forth a requirement that railroad companies notify communities of planned events that may disrupt traffic flow at crossings in the community. In addition, the proposal sets forth procedures for communities and railroad companies when requesting changes in train speed limits. This provision is intended to advise communities of the limits to the Commission's authority for ordering changes in train speed limits and the guidelines the Commission will follow in considering such changes.

Finally, the proposal identifies several streamlined operational reporting requirements for railroad companies, concerning such issues as annual reports, accidents, remote controlled operations, railroad police officers deputized within the state, and other operational information to be used by WUTC rail section employees.

**(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

**Yes. Attach copy of small business economic impact statement.**

**A copy of the statement may be obtained by writing to:**

Washington Utilities and Transportation Commission  
Records Center, Docket No. TR-981102  
P.O. Box 47250  
Olympia, WA 98504-7250

**telephoning: (360) 664-1234**

**faxing: (360) 664-1150**

No. Explain why no statement was prepared.

**(l) Does RCW 34.05.328 apply to this rule adoption?**

YES     NO

**Please explain: RCW 34.05.328 does not apply to the WUTC.**

PART 1: GENERAL AND PROCEDURAL RULES

NEW SECTION

**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 or more;

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

**"Class III railroad company"** means a railroad company having annual operating revenues of \$20 million or less.

**"Commission"** means the Washington utilities and transportation commission.

**"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 and trucks owned, operated, and maintained by a railroad company which transports railroad employees in other than the cab of such vehicle and 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, 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 the state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

**"State"** means the state of Washington.

NEW SECTION

**WAC 480-62-130 Application of this chapter.** The rules in this chapter apply within certain cities and to any railroad company subject to the jurisdiction of the commission under RCW 81.04.010 and chapters 81.04, 81.24, 81.28, 81.36, 81.40, 81.44, 81.48, 81.52, 81.53, 81.54, 81.60, and 81.61 RCW, as set forth below:

(1) To all Class I, II, and III railroad companies operating within the state of Washington, with the exceptions noted in subsections (2), (3), and (4) of this section.

(2) To and within first class cities except for WAC 480-62-145, 480-62-150, 480-62-155, and 480-62-225.

(3) To and within cities with a population of more than 400,000 except for WAC 480-62-145, 480-62-150, 480-62-155, 480-62-225, 480-62-230, and 480-62-235.

(4) To logging and industrial railroads except for WAC 480-62-200, 480-62-205, 480-62-215, 480-62-240, 480-62-245, 480-62-250, 480-62-300, the portions of WAC 480-62-310 that do not involve grade crossing accidents, WAC 480-62-315 (2), (4) and (5), and WAC 480-62-325.

NEW SECTION

**WAC 480-62-135 Additional requirements.** (1) These rules do not relieve any railroad company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any railroad company in appropriate circumstances, consistent with the requirements of law.

NEW SECTION

**WAC 480-62-140 Exemptions from rules.** (1) The commission may grant an exemption from the provision of any rule in this chapter, when doing so in chapter 480-62 WAC is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason the exemption is requested.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other affected persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-09 WAC.

NEW SECTION

**WAC 480-62-145 Commission proceedings.** The commission's rules governing administrative practices and procedures are in chapter 480-09 WAC. When a rule in this chapter conflicts with a rule in chapter 480-09 WAC, the rule in this chapter applies.

NEW SECTION

**WAC 480-62-150 Grade crossing petitions.** (1) Whenever a railroad company, city, county, the department of transportation, the parks and recreation commission, or the commission seeks to take any of the following actions at a railroad-highway grade crossing, it must file a petition with the commission seeking approval under RCW 81.53.020 and 81.53.060:

- (a) Opening a railroad-highway crossing at-grade, or by constructing an overcrossing or undercrossing;

- (b) Closing a railroad-highway crossing;
- (c) Constructing supplemental safety measures under RCW 81.48.015(1), including, but not limited to, median barriers;
- (d) Realigning highway or railroad tracks;
- (e) Widening highways;
- (f) Constructing multiple tracks; or
- (g) Changes to crossing surfaces that alter:
  - The dimensions of an existing surface;
  - The angle at which the tracks intersect a highway; or
  - The vertical alignment of a crossing (i.e., to accommodate track superelevation, or changes in railroad or roadway grade).

(2) Whenever a railroad company, city, county, the department of transportation, the parks and recreation commission, or the commission seeks to take any of the following actions at a railroad-highway grade crossing, it must file a petition with the commission seeking approval under RCW 81.53.261:

- (a) Modifying or upgrading warning signals or devices;
- (b) Adding a crossing signal;
- (c) Adding gates to a crossing signal;
- (d) Modifying or upgrading circuitry for a warning signal; or
- (e) Installing an intertie between railroad crossing signals and highway traffic signals.

(3) This rule applies to all railroad companies, including logging and industrial railroads, however, it does not apply to crossings within the limits of first class cities, unless federal funding is used at the crossing.

NEW SECTION

**WAC 480-62-155 Procedure to set train speed limits.** (1) **Scope of commission authority.** The commission's authority to regulate the speed of trains is established in RCW 81.48.030 but limited by federal law. Under RCW 81.48.030, the commission has the power to "fix and regulate" the speed of trains within the limits of any city and town, other than a first class city and at grade crossings outside the limits of cities and towns. However, under section 205 of the Federal Railroad Safety Act, 49 U.S.C. §20106, states are limited to actions which are "necessary to eliminate or reduce an essentially local safety hazard." Accordingly, the commission will act to limit train speeds below those set by the United States Secretary of Transportation only where it finds that there exists such a local safety hazard and that reduction of the train speed is necessary to eliminate or reduce that hazard. Information about Title 49 U.S.C. regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) **Procedure for setting train speed limits.** The commission will consider whether to set train speed limits below those



authorized by the United States Secretary of Transportation either upon petition or upon its own motion.

(a) **Petition process.**

(i) Any person who seeks to have the commission set a train speed limit different from the federally set speed limit or modify an existing limit set by the commission must file with the commission a petition. Such petition must contain the following information:

- (A) Name and address of the petitioner;
- (B) Specific location and length of track over which the speed limit is sought;
- (C) Reasons for the speed limit;
- (D) If the petitioner seeks a speed limit different from the federally set speed limit, a detailed explanation of why there exists an "essentially local safety hazard" and why that speed limit is necessary to eliminate or reduce the hazard; and
- (E) Any other information the petitioner deems relevant.

(ii) Upon receipt of the petition, the commission will serve the petition on the railroad company; the governing body of any local government within which the proposed speed limit is intended to apply; and the secretary of the department of transportation. The commission will ask for responses from those persons. The commission will set the matter for consideration at a regularly scheduled or special open meeting or, in its discretion, for a formal adjudicatory proceeding under chapter 34.05 RCW.

(b) **Commission-initiated process.** After investigation, the commission may also initiate a proceeding to set a train speed limit. Such a proceeding will be initiated by serving a notice on the railroad company or companies; the chief executive officer of any local government within which the proposed speed limit is intended to apply; and the secretary of the department of transportation. The notice will contain the information described in (a) (i) (A) through (E) of this subsection, the time for filing responses to the notice and the date, time, and place at which the commission will consider the matter. Such consideration may be at a regular or special open meeting or, in the commission's discretion, in a formal adjudicatory proceeding under chapter 34.05 RCW.

(3) **Evidence of what constitutes an "essentially local safety hazard."** In determining whether a train speed limit, lower than authorized by federal law, is necessary to eliminate or reduce an essentially local safety hazard, the commission will include in its consideration the following:

- (a) Whether the local situation is one that is covered by or is capable of being adequately covered by uniform national standards;
- (b) Whether there exist unusual local geographic or other natural conditions which contribute to the existence of the hazard;
- (c) The history of accidents or potential for accidents at the location; and
- (d) Whether there exist alternate means to reduce or eliminate any hazard that can be included as conditions to an order setting

a train speed.

NEW SECTION

**WAC 480-62-160 Compliance policy.** (1) The commission encourages voluntary compliance with state statutes, rules, and commission orders through the following:

(a) A program emphasizing education and technical assistance; and

(b) A compliance program including inspections and investigation of railroad company operations:

(i) For compliance with state statutes, rules, and commission orders;

(ii) For compliance with Federal Railroad Administration (FRA) rules through the State Safety Participation Program, 49 CFR Part 212. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) The commission may pursue administrative actions, including, but not limited to, issuing defect notices to railroad companies, reports and recommendations to the FRA, warnings, sanctions, and penalty assessments.

NEW SECTION

**WAC 480-62-165 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

**WAC 480-62-170 Resolving disputes about the meaning of these rules.** If the interpretation of any rule in this chapter is questioned by a railroad company, a request for clarification may be filed with the commission.

**PART 2: SAFETY RULES**

NEW SECTION

**WAC 480-62-200 Roadway worker safety and operating rules and statutes.** (1) The commission adopts by reference the following parts of Title 49 of the Code of Federal Regulations (CFR) and Title 49 of the United States Code (U.S.C.) and all pertinent appendices:

- (a) 49 CFR Part 209: Railroad safety enforcement procedure;
- (b) 49 CFR Part 214: Railroad workplace safety;
- (c) 49 CFR Part 217: Railroad operating rules;
- (d) 49 CFR Part 218: Railroad operating practices;
- (e) 49 CFR Part 219: Procedures for transportation workplace drug testing programs;
- (f) 49 CFR Part 220: Radio standards and procedures;
- (g) 49 CFR Part 221: Rear end marking device - passenger, commuter and freight trains;
- (h) 49 CFR Part 225: Railroad Accidents/Incidents: Reports classification, and investigations;
- (i) 49 CFR Part 228: Hours of service of railroad employees;
- (j) 49 CFR Part 239: Passenger train emergency preparedness;
- (k) 49 CFR Part 240: Qualification and Certification of Locomotive Engineers Hours of Service;

(1) 49 U.S.C. Chapter 211: Hours of Service.  
 (2) Information about Title 49 CFR and Title 49 U.S.C. regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(3) All violations of the above incorporated rules and statutes will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR Part 212.

NEW SECTION

**WAC 480-62-205 Track safety standards.** (1) Rules governing track safety standards are prescribed by the United States Department of Transportation in Title 49, Part 213, of the Code of Federal Regulations, along with appendices. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) All violations of the above incorporated rules will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR

Part 212.

NEW SECTION

**WAC 480-62-210 Crossing signal circuitry.** (1) Rules governing grade crossing signal system safety are prescribed by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, Part 234 along with appendices. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) All violations of the above incorporated rules will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR Part 212.

(3) Violations involving all other railroad companies will be enforced pursuant to WAC 480-62-160, Compliance policy.

NEW SECTION

**WAC 480-62-215 Hazardous materials regulations.** (1) Rules governing hazardous materials are prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Parts 171 through 174, and Parts 178 and 179, and the appendices to Title 49. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) All violations of the above incorporated rules and statutes will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR Part 212.

NEW SECTION

**WAC 480-62-220 Blockage of public grade crossings.** (1) Railroad companies must not block a grade crossing for more than ten consecutive minutes, if reasonably possible.

(2) A blocked grade crossing must be cleared immediately by the fastest available method, if the train movement will not violate rules issued by the Federal Railroad Administration, upon the request of law enforcement or other emergency services

personnel, or when the engineer becomes aware that the crossing is being approached by a law enforcement or other emergency services vehicle with its emergency lights flashing or that such a vehicle is stopped with its emergency lights flashing at the crossing blocked by the train.

(3) A grade crossing is "blocked" if any part of a stopped train occupies the crossing or causes warning devices to be activated.

NEW SECTION

**WAC 480-62-225 Crossing surfaces. (1) Areas of responsibility.**

(a) Highway authorities must maintain and keep in repair the surfaces and the subgrades of the roadway approaches up to one foot from the outside of either rail at a grade crossing with one track. At crossings involving more than one track, the highway authority must maintain and keep in repair the roadway approaches up to one foot from the outside of each of the two outside rails.

(b) At a grade crossing with one track, railroad companies must maintain and keep in repair the crossing surfaces between the rails and for a distance of one foot on the outside of either rail. At crossings involving more than one track, railroad companies must maintain and keep in repair the crossing surfaces and the roadway for the entire area between the outermost rails at the crossing, and for a distance of one foot outside of the two outermost rails.

(c) If tracks at a crossing involving more than one track are owned by different railroad companies, each company must maintain and keep in repair the crossing surfaces and roadway within its right of way that is within the area specified in (b) of this subsection.

**(2) Crossing surfaces.**

(a) Crossing surfaces include shoulders and pedestrian walkways immediately adjacent to a roadway or shoulder. If reasonably possible, roadways and adjacent shoulders and pedestrian walkways must be continued through a crossing without narrowing the roadway, shoulder or walkway.

(b) The subgrade to a crossing surface must be maintained in a manner which minimizes damage to the crossing surface, taking into account the effects of topography, water tables, weather, and the types of vehicular traffic generally using the crossing.

**(3) Roadways.**

(a) Roadways between tracks at crossings involving more than one set of tracks, including the roadway subgrade, must be of the same quality as the roadway approaches to the crossing unless the highway authority and the railroad company agree to a higher quality.

(b) Roadway approaches must be constructed and maintained so

that the transition between the roadway and crossing surface is on the same plane and smooth.

(c) At grade crossings where track superelevation exists, roadway approaches must be constructed and maintained so that the transition between the roadway and crossing surface is as smooth as practicable.

(4) **Standards for surface maintenance and repair.** Crossing surfaces must be convenient and safe for passage. Some factors in determining compliance with this general standard are:

(a) Whether crossing surfaces and the adjacent roadways are level with the top of the rails on the plane created by each set of tracks.

(b) Whether crossing surfaces are broken or loose.

(c) The existence of potholes.

(d) The existence of curled or rolled asphalt.

(e) Whether traffic generally slows to traverse the crossing.

(f) Citizen complaints.

(5) **Notice requirements.**

(a) Whenever a highway authority plans to perform maintenance that will affect a crossing, it must notify the railroad company at least ten days before performing the maintenance. Whenever a railroad company plans to perform maintenance that will affect a crossing, it must notify the highway authority at least ten days before performing the maintenance.

(b) Whenever a railroad company plans to perform maintenance that involves changing the type of material used as a grade crossing surface, it must also notify the commission at least ten days prior to performing the replacement, however, this rule is not intended to include situations that would be deemed an immediate safety hazard or an emergency.

#### NEW SECTION

**WAC 480-62-230 Traffic control devices.** (1) Whenever a railroad company performs any construction, maintenance or repairs at a grade crossing or grade separated crossing, the company must install and maintain traffic control devices adequate to protect the public and railroad employees. Flaggers must also be provided where necessary to adequately protect the public and railroad employees.

(2) The rules governing traffic control devices are prescribed in the Manual on Uniform Traffic Control Devices and chapter 468-95 WAC. Information about the Manual on Uniform Traffic Control Devices and chapter 468-95 WAC regarding the versions adopted and where to obtain them is set out in WAC 480-62-999.

(3) Any traffic control device must be used only as long as the device is needed or applicable. Any device that is no longer needed or applicable must be immediately removed or inactivated so

as to prevent confusion.

(4) All barricades, signs, and similar devices must be constructed and installed in a workmanlike manner.

(5) Bushes, weeds, or any other material or object must not be allowed to obscure any traffic control devices.

(6) All signs, barricades, and other control devices intended for use during hours of darkness must be adequately illuminated or reflectorized, with precautions taken to protect motorists from glare.

#### NEW SECTION

**WAC 480-62-235 Flaggers.** (1) The rules in this section apply whenever a railroad company engages in the maintenance, repair, or construction of a grade crossing or grade separated crossing; however, they do not apply when flaggers are provided only because of a crossing signal malfunction or only because of inspections or repairs to a crossing signal system. The latter circumstances are covered by 49 CFR, Part 234. In addition, 49 CFR Part 234.5 recommends that railroad companies follow the requirements of Part VI of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) to the extent possible. The commission further recommends that railroads also abide by the following rules to the extent possible in situations covered by 49 CFR Part 234.

(2) Except as otherwise required in this section, traffic control devices, signs, barricades, and signaling methods must be set up and used by individuals trained in and familiar with the provisions of and according to the guidelines in the Manual on Uniform Traffic Control Devices, Part VI.

(3) Flaggers are to be used only when other reasonable means of control will not adequately control traffic in work zones. It may be reasonable in some cases to close the road on which the crossing is located, but only if agreed to by the public authority responsible for the roadway.

(4) Standards for high-visibility safety apparel.

(a) While flagging during daylight hours, a flagger must, at a minimum, wear:

- A high-visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel, specifically, a garment containing at least seven hundred seventy-five square inches of background material and two hundred one square inches of retroreflective material; and

- A high-visibility hard hat.

(b) While flagging at night, a flagger must, at a minimum, wear:

- A high-visibility safety garment designed according to Class

2 specifications in ANSI/ISEA 107-1999 over white coveralls, or other coveralls or trousers designed according to ANSI/ISEA 107-1999 standards; and

- A high-visibility hard hat that is marked with at least twelve square inches of reflectorized material providing three hundred sixty degrees of visibility.

(c) While flagging during inclement weather, yellow rain gear, white rain gear, or rain gear designed according to ANSI/ISEA 107-1999 may be substituted for white coveralls.

(5) Railroad companies must develop and use a method to ensure that whenever there is any potential hazard associated with motor vehicles, construction equipment, or on-track equipment that flaggers have adequate warning of objects approaching from behind the flagger.

Note: The following are some nonmandatory examples of methods that may be used to adequately warn flaggers:

- Mount a mirror on the flagger's hard hat;
- Use a motion detector with audible warning; or
- Use a spotter.

(6) (a) Railroad companies must conduct an on-site safety briefing for flaggers each time a flagger reports for duty, and also when job site conditions change significantly. The briefing must include applicable portions of the traffic control plan and any changes applicable during the flagger's shift. If not covered in the traffic control plan, the briefing must also include:

- The flagger's role and location of the job site;
- Motor vehicles and equipment in operation at the site;
- Job site traffic patterns;
- Communications and signals to be used between flaggers and equipment operators;
- Expected train and other on-track equipment movements;
- On-foot escape route; and
- Other hazards specific to the job site.

(b) When flaggers are used on a job site at a roadway allowing speeds of forty-five mph or more and the job will last more than one day, the railroad company must keep on the site a current site-specific traffic control plan. The purpose of this plan is to help move traffic through or around the construction zone in a way that protects the safety of the traveling public, pedestrians and workers. The plan must include, but is not limited to, such items as:

- Sign use and placement;
- Application and removal of pavement markings;
- Construction;
- Scheduling;
- Methods and devices for delineation and channelization;
- Placement and maintenance of devices;
- Placement of flaggers;
- Roadway lighting;
- Traffic regulations; and
- Surveillance and inspection.

(7) (a) Where flaggers are used on roads allowing speeds of at least forty-five mph, the railroad company must provide an additional warning sign marked "BE PREPARED TO STOP."

(b) This sign is in addition to those required by Part VI of



the Manual on Uniform Traffic Control Devices. It should be placed between the last two warning signs in the series or on the opposite side of the road when used on undivided roads.

(c) This additional sign does not increase the required advance warning area.

(d) The purpose of this additional sign is to clearly point out that a flagger will be encountered and the driver should be prepared to stop.

(8) To protect flaggers, railroad companies must ensure that:

(a) Flagger workstations are illuminated at night and during inclement weather by floodlights. It is important to adequately illuminate the workstation without creating glare in the eyes of approaching drivers. The adequacy and proper placement of floodlights can best be determined by driving through and observing the workstation from each direction on the roadway.

(b) Warning signs reflect the actual condition of the work zone. When not in use, warning signs should either be taken down or covered.

(c) Flaggers are not assigned other duties while engaging in flagging activities.

(d) Flaggers do not use devices (e.g., cell phones, pagers, radio headphones, etc.) that may distract the vision, hearing, or attention of the flagger. Devices such as two-way radios used for communication between flaggers to direct traffic or ensure flagger safety are acceptable.

(e) Flaggers receive appropriate breaks from flagging so they can remain attentive and alert.

(9) Unless an emergency makes it impossible, before performing any work, railroad companies must coordinate all repair, maintenance, and construction work with the political authority responsible for the road on which the crossing exists.

(10) Information about Title 49 CFR, the Manual on Uniform Traffic Control Devices, and ANSI/ISEA 107-1999 regarding the versions adopted and where to obtain them is set out in WAC 480-62-999.

NEW SECTION

**WAC 480-62-240 Passenger carrying vehicles--Equipment. (1)**  
Equipment requirements for all vehicles.

(a) Vehicles must comply with all applicable equipment requirements of Title 46 RCW. Information about Title 46 RCW regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(b) Vehicles must have exhaust systems that prevent exposure of passengers to the vehicle's emissions.

(c) Vehicles must have two external rear vision mirrors, one at each side of the cab. The mirrors must be firmly attached to

the motor vehicle at a point where the driver is provided a view of the highway to the rear along both sides of the vehicle. An outside mirror may be placed only on the driver's side on vehicles in which the driver has a view to the rear by means of an interior mirror.

(d) Vehicles must be equipped with a steering system maintained to insure that lash or preplay do not exceed those values set forth in 49 CFR, Parts 570.7 and 570.60 (Vehicle in Use Inspection Standards). Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(e) Vehicles must have a heating system that will maintain an ambient temperature of at least fifty-five degrees in passenger areas.

(f) Vehicles must have at least three red-burning fuses, three red portable emergency reflectors, or at least two red cloth flags suitable for warning the motoring public in an emergency. The driver must ensure that such equipment is in the vehicle and is maintained in good condition. Any devices that may create a spark or open flame must be carried in a separate compartment or a closed metal container provided for that purpose.

(g) Vehicles must have a two and one-half pound dry chemical fire extinguisher or its equivalent, properly filled and located where it is readily accessible for use. The extinguisher must allow visual determination of the state of its charge at all times. The extinguishing agent must be nontoxic and preferably noncorrosive. The fire extinguisher must be suitable for attachment to the motor vehicle, bear the label of approval by the Underwriters Laboratories, Inc., and be kept in good working condition at all times.

(h) Vehicles must have a first-aid kit located where it is readily accessible. The kit must contain all of the items specified in WAC 296-24-06145 and 296-24-06160 Appendix 2 adopted by the department of labor and industries. Additionally, the kit must contain gloves capable of preventing exposure to bloodborne pathogens. Items used from first-aid kits must be replaced before the next shift, and kits must be checked for compliance with this rule if the seal on the kit is broken. Information about chapter 296-24 WAC regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) Equipment requirements for specified vehicles.

(a) Coupling devices used on a vehicle equipped with retractable flange wheels for operation on railroad tracks must be substantial and made of metal. The devices must be equipped with safety chains or straps of sufficient strength to prevent separation in the event of accidental uncoupling.

(b) A passenger compartment separate from the cab of the vehicle must be made of metal and be fastened directly to the frame of the vehicle. The compartment must have an interior lining sufficient to absorb condensation, and padded seats and backrests firmly secured in place. The floor of the compartment must be constructed to bear the weight of all cargo and passengers. The floor must not have unnecessary openings, and it must be

constructed to prevent the entry of noxious fumes or permeation with flammable materials. The compartment must have a curtain of nonpermeable material of sufficient weight and size to close off the rear opening and a tailgate which must be closed whenever the vehicle is in motion. If the bottom of the entrance to the passenger compartment is more than three feet six inches above ground level, the vehicle must have permanent or temporary steps designed for the safe boarding and discharge of passengers.

(c) Communication between a cab and a separated passenger compartment must be provided by means of a light or audible device mounted in the cab of the vehicle that may be activated by a passenger in the rear compartment.

(d) On vehicles designed to transport nine or more passengers, an emergency exit must be placed at the end of the vehicle opposite the regular entrance. The exit must be at least six and one-half square feet in area, and the smallest dimension must be at least eighteen inches. The route to and from the emergency exit must be unobstructed at all times.

#### NEW SECTION

#### **WAC 480-62-245 Passenger carrying vehicles--Operation. (1)**

**General.** All passenger carrying motor vehicles must be operated in compliance with state law no matter where the vehicle is operated. Drivers must operate vehicles in a careful and prudent manner and at reasonable and proper speeds, with due regard to circumstances and to the use of highways by others.

(2) **Minimum age, skill, and physical condition of drivers.** Drivers of passenger carrying vehicles must be at least eighteen years old. Before being allowed to drive or operate a passenger carrying vehicle, drivers must have demonstrated the physical capability of handling the controls of the vehicle with ease. Before driving a vehicle, drivers or operators must obtain either a valid Washington state driver's license or a valid license from the state of the driver's residence. The driver must carry the license at all times while operating a vehicle. If the passenger carrying vehicle is a type for which the state of Washington requires an extraordinary license or endorsement, the driver must have such license or endorsement.

(3) **Driver's daily hours of service.** No driver of any passenger carrying motor vehicle may drive for more than ten hours without resting afterward for a minimum of eight consecutive hours.

(4) **Refueling.** No driver or any employee of a railroad company operating within the state may:

- (a) Fuel a passenger carrying vehicle with the engine running;
- (b) Smoke or expose any flame in the vicinity of a vehicle being fueled;
- (c) Fuel a passenger carrying vehicle unless the nozzle of the

fuel hose is continuously in contact with the intake pipe of the fuel tank;

(d) Insofar as practicable, permit any other person to engage in activities that might result in a fire or explosion. Except on buses, all occupants of the vehicle, except the driver and those within the operating cab, must dismount and stand clear while the vehicle is being refueled.

**(5) Driving rules.**

(a) Drivers must bring vehicles to a complete stop not less than fifteen feet from the nearest rail of any at-grade crossing before crossing the track except:

- Where traffic is controlled by a police officer or a duly authorized flagger;
- Where traffic is regulated by a traffic control signal;
- Where traffic is controlled by crossing gate arms or an alternately flashing light signal intended to give warning of the approach of a train;
- Where an official traffic control device as designated by the commission pursuant to RCW 81.53.060 (i.e., an "EXEMPT" sign, specified as R15-3 by the Manual on Uniform Traffic Control Devices) gives notice that the stopping requirement imposed by this section does not apply. Information about the Manual on Uniform Traffic Control Devices regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(b) Drivers must not change gears while crossing any railroad tracks.

(c) No driver may drink intoxicating liquors while on duty, or drive while affected by the use of intoxicating liquor or other substance which might impair the ability to drive.

(d) No driver may proceed down a grade with the gears in neutral or the clutch disengaged.

(e) At the beginning of his or her use of a vehicle, the driver must perform a brake test immediately before, and immediately after, the vehicle begins moving to ensure that the brakes are functioning properly.

**(6) Loading and carrying of passengers.** Drivers are in charge of the vehicle and must require passengers to observe vehicle rules. Passengers may not enter or exit from the vehicle while it is in motion, or ride on running boards, fenders, bumpers, tops of cabs, or with any part of their body projecting beyond the sides or the ends of the vehicle. When equipment or tools are carried inside the vehicle, they must be stored in enclosed racks or boxes that are secured to the vehicle in a manner that prevents employees from being struck in the event of sudden starts, stops, or turns. The driver must assure that tools and materials are properly secured before moving the vehicle.

**(7) Limitation on transportation of explosives, gasoline, and other hazardous materials on passenger carrying vehicles.** Explosives other than track torpedoes and fusees may not be carried in or on any vehicle while the vehicle is being used to transport crew members in a passenger compartment. If track torpedoes or fusees are carried in a passenger carrying vehicle, they must be

carried in a separate compartment or container provided for that purpose. Gasoline, or other hazardous materials, must not be carried in either the cab or in the passenger compartment; however, oxygen or acetylene cylinders may be carried if gauges and regulators have been removed with caps in place before loading. Passenger carrying vehicles may be used to carry flammable materials when they are located outside of and isolated from the passenger carrying area, and are stored in containers approved by the Underwriters Laboratories, Inc. Containers for fuel must be vented in a manner that prevents the hazardous concentration of fumes. All tools and equipment, including cylinders, containers, or drums, must be properly secured where they will not interfere with the use of any exit. A passenger carrying vehicle containing hazardous materials must not be parked within three hundred feet of an open fire. Smoking is prohibited within fifty feet of a vehicle carrying explosive or flammable materials.

NEW SECTION

**WAC 480-62-250 On track equipment.** (1) When approaching and passing over a railroad-highway grade crossing, operators of motor track cars, speeders, or other on track equipment must remain in complete control of the equipment, be prepared to stop for vehicular or pedestrian traffic on the highway, stop if necessary to avoid an accident, and provide effective warning for vehicular or pedestrian traffic at the crossing.

(2) Railroad companies that allow persons other than railroad personnel on official railroad business to operate motor track cars, speeders, or other on track equipment on their track must ensure that the operators comply with subsection (1) of this section.

**PART 3: REPORTING REQUIREMENT RULES**

NEW SECTION

**WAC 480-62-300 Annual reports.** (1) The surface transportation board annual report form R1 must be used by Class I railroad companies as the annual report form for submission to the commission. Class II and Class III railroad companies must use

report forms periodically published by the commission.

(2) Each year every railroad company is responsible for obtaining the proper report form from the commission. Reports must be completed for the preceding calendar year's operations. One copy of the completed annual report must be submitted to the commission no later than May 1 of the succeeding year.

NEW SECTION

**WAC 480-62-305 Railroad community notice requirements.** This rule is not intended to include immediate safety hazards or emergencies.

(1) At least ten days prior to taking any planned action that may have a significant impact on a community, railroad companies must notify, in writing, the governing authority of the community and the commission of the planned action.

(2) Examples of actions that may have significant impact on a community include disrupting the use of a crossing for track inspection, reconstruction, maintenance, or blocking a crossing.

(3) The notice must contain a heading with the words "important notice" in prominent type and contain, at a minimum, the following:

- (a) Date the notice is issued;
- (b) A clear explanation of the type of planned event;
- (c) Specific location of the event;
- (d) An estimation of the start and completion date of the event;
- (e) Any additional information that will assist the community to plan for the event;
- (f) Railroad company contact person and phone number; and
- (g) A statement substantially as follows: "If you have questions about the regulatory process, you may contact the Washington Utilities and Transportation Commission at: WUTC, 1300 S. Evergreen Park Dr. S.W., P.O. Box 47250, Olympia, WA 98504-7250; 1-800-562-6150 (toll-free). Also, you may contact the Federal Railroad Administration at 1-800-724-5998 (toll-free)."

NEW SECTION

**WAC 480-62-310 Accident reports.** (1) A railroad company must make a telephone report to the commission's designee, the Washington state emergency operations center twenty-four hour duty officer (duty officer) at 1-800-258-5990 of any event connected to the operation of the railroad company which results in the:

(a) Release of any hazardous material (i.e., materials that are corrosive, flammable, explosive, reactive with other materials, or toxic);

(b) Death of any person;

(c) Injury to any person involved in a railroad-highway crossing accident, that requires medical treatment in addition to first aid; or

(d) Damage to any property, amounting to fifty thousand dollars or more to property.

(2) (a) Telephone reports of events listed in subsection (1) of this section must be made by the railroad company within thirty minutes of when it learned of the event. The report must provide detailed information of the event to the duty officer. After receiving the telephone report from the railroad company, the duty officer will identify the necessary critical response and remediation resources and agencies on an initial and continuous basis through the completion of the response to the event; and

(b) The duty officer will notify the commission, the affected county or city emergency management office and other appropriate agencies of the event report.

(c) Provisions contained in (a) and (b) of this subsection must be carried out in accordance with the state's twenty-four hour duty officer standard procedures and the state comprehensive emergency management plan. Information about the state comprehensive emergency management plan regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(3) Each event report made under subsection (1) of this section by a railroad company must state, to the extent known, the:

- (a) Name of the railroad(s) involved;
- (b) Name and position of the reporting individual;
- (c) Time and date of the event;
- (d) Circumstances of the event;
- (e) Number and identity of persons suffering injuries;
- (f) Number of fatalities and the identities of the deceased;
- (g) The type and amount of hazardous material spilled; and
- (h) Other details that will assist in identifying the necessary response, as prompted by the duty officer.

(4) Accidents involving joint railroad company operations must be reported by the railroad company that controls the track and directs the movement of trains where the accident has occurred.

(5) Whenever a railroad company submits an event report to the Federal Railroad Administration, it must submit a copy to the commission at the same time.

(6) Whenever a railroad submits a report to the United States Department of Transportation concerning a hazardous materials incident or accident, it must submit a copy of the report to the commission at the same time.

NEW SECTION

**WAC 480-62-315 Miscellaneous reporting requirements.** (1) Within thirty days of being requested to do so, every railroad company must report to the commission on the sales, transfers or abandonments of all trackage which crosses a public road. The report must contain a description of the transaction, clear identification of the track involved in the transaction, the effective date of the transaction, and the name and address of the last known owner(s) or operator(s) of the section transferred.

(2) Upon request, every railroad company and railroad company official must report to the commission the average number of daytime through trains, nighttime through trains, and switching movements over specific grade crossings in its control. Reports must identify each crossing by USDOT number and road name.

(3) Upon request, every railroad company must inform the commission in writing of the names, addresses, and telephone numbers of the persons to whom to report emergencies of any nature, and problems or defects with crossing signals, passive warning devices, and crossing surfaces. The information must be current at all times.

(4) Upon request, every railroad company must provide the commission access to or copies of track profiles. This requirement may be satisfied by allowing electronic access to track profiles.

(5) Upon request, every railroad company must provide the commission with access to or copies of its timetable. This requirement may be satisfied by allowing electronic access to the timetables.

NEW SECTION

**WAC 480-62-320 Remote controlled operations.** (1) Railroad companies, including logging and industrial railroad companies, must report their intention to use remote control devices to operate trains thirty days before operations begin. The report must include:

(a) The name of the railroad company;  
 (b) The date operations will start;  
 (c) The location of the operations; and  
 (d) Whether trains with locomotives operated by remote control will travel over at-grade pedestrian or vehicular crossings.

(2) If remote controlled trains will be operated over crossings, the railroad company must list the affected crossings.

(3) Each railroad company using remote control devices on the effective date of this rule must submit the report within thirty days after the effective date.



NEW SECTION

**WAC 480-62-325 Railroad police officers--Notice.** (1) Every railroad company that has employees who are commissioned as railroad police officers pursuant to chapter 81.60 RCW must send written notice to the commission within thirty days after the effective date of these rules.

(2) When any person is commissioned as a railroad police officer, an officer's commission is terminated, or a change occurs in the information previously reported under subsection (3) of this section, the affected railroad company must send written notice to the commission within ten days after the change occurs.

(3) The notices specified in subsections (1) and (2) of this section must contain the following information:

- (a) The name of the railroad police officer;
- (b) The badge number, identification number, code or other identifying information assigned to the railroad police officer;
- (c) The date of commission;
- (d) The state or states where the railroad police officer is commissioned; and
- (e) The address and telephone number of the officer's primary business office.

**PART 4: ADOPTION BY REFERENCE**

NEW SECTION

**WAC 480-62-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) Title 49 Code of Federal Regulations, cited as 49 CFR, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-160, 480-62-200, 480-62-205, 480-62-210, 480-62-215, 480-62-235 and 480-62-240.

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle Office of the Government Printing Office and from various third-party vendors.

(2) **Title 49 United States Code**, cited as 49 U.S.C., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-155.

(c) Copies of Title 49 United States Code are available from the Seattle Office of the Government Printing Office and from various third-party vendors.

(3) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-230, 480-62-235 and 480-62-245.

(c) Copies of the MUTCD are available from the Seattle Office of the Government Printing Office and from various third-party vendors.

(4) **Title 46 Revised Code of Washington**, cited as Title 46 RCW is published by the Washington state statute law committee.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-240.

(c) Copies of Title 46 Revised Code of Washington are available from the Washington state department of licensing or on the internet website for the office of the code reviser (slc.leg.wa.gov).

(5) **Chapter 38.52 Revised Code of Washington**, cited as the State Comprehensive Emergency Management Plan, is published by the Washington state statute law committee.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-310.

(c) Copies of chapter 38.52 Revised Code of Washington are available from the Washington military department, emergency management division, or on the internet website for the office of the code reviser (slc.leg.wa.gov).

(6) **Washington state department of transportation rules**, cited as chapter 468-95 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-230.

(c) Copies of the Washington state department of transportation rules are available from the department of transportation or on the internet website for the office of the code reviser (slc.leg.wa.gov).

(7) **Washington state department of labor and industries rules**, cited as chapter 296-24 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-240.

(c) Copies of the Washington state department of labor and industries rules are available from the department of labor and

industries or on the internet website for the office of the code reviser (slc.leg.wa.gov).

(8) **ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on January 31, 2000.

(b) This publication is referenced in WAC 480-62-235.

(c) Copies of ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel are available from the American National Standards Institute, 11 West 42nd Street, NY, NY 10036 or on the internet website for the American National Standards Institute (<http://web.ansi.org/>).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 480-62-010 Locomotive speedometers.
- WAC 480-62-020 Traffic control devices.
- WAC 480-62-030 Flagpersons.
- WAC 480-62-040 Exemption.
- WAC 480-62-050 Passenger carrying vehicles--  
General.
- WAC 480-62-060 Passenger carrying vehicles--  
Equipment.
- WAC 480-62-070 Passenger carrying vehicles--  
Operation.
- WAC 480-62-080 Accident reports.
- WAC 480-62-085 Annual reports.
- WAC 480-62-090 Hazardous materials regulations.
- WAC 480-62-100 Bridge safety rules.
- WAC 480-62-120 Train operations--Tacoma.

**Small Business Economic Impact Statement (SBEIS)**  
**Docket No. TR-981102**

**November 21, 2000**

# **Small Business Economic Impact Statement (SBEIS)**

## **Docket No. TR-981102**

### **1. Introduction**

In March 1999, the Washington Utilities and Transportation Commission (Commission) initiated a review of the rules in chapter 480-62 WAC regarding railroad company operations. The Commission initiated this review in Docket No. TR-981102 pursuant to Executive Order 97-02, which requires agencies to review existing rules for readability and content with attention being paid to clarity, intent, statutory authority, need, effectiveness, efficiency, coordination, cost, and fairness. Commission staff also considered whether new rules should be developed to address the following issues: standards for maintenance, repair and modification of highway-rail grade crossings, blocking crossings, safety of operations at crossings, reporting operational information, and procedures for requesting changes in train speed limits.

Over the last year and a half, Commission staff held four workshops with interested persons to discuss draft rule language, receive comments, and explore options. At the last workshop, held on October 2, 2000, staff advised participants that the Commission would mail a survey to interested persons to assist staff in preparing a Small Business Economic Impact Statement (SBEIS). The SBEIS is intended to evaluate any disproportionate impacts of the rule-making on small businesses.

### **2. Regulatory Fairness Act Requirements**

Administrative rules implemented by State agencies can have a disproportionate impact on small businesses, compared to large business, simply because of the size of those businesses. This disproportionate impact may affect competition, innovation, employment, economic growth, and threaten the very existence of some small businesses. Thus, the Regulatory Fairness Act, chapter 19.85 RCW, was enacted with the intent of reducing any disproportionate impact of state administrative rules on small businesses. The Regulatory Fairness Act requires agencies to review and provide mitigation for rules which have an economic impact on more than 20 percent of the businesses of all industries or more than 10 percent of the businesses in any one industry. Agencies must consider mitigation measures to minimize the economic impact of regulations on small businesses.

### **3. Objective**

Pursuant to chapter 19.85 RCW, staff determined that it was necessary to prepare an SBEIS in Docket No. TR-981102 to investigate whether the proposed rules might impose significant

regulatory costs on small railroad companies or short-lines compared to large railroad companies. Therefore, staff has prepared this SBEIS to examine the anticipated impact on small businesses of the proposed rules for chapter 480-62 WAC, and to propose plausible mitigation strategies, if necessary, based on the magnitude of economic impacts.

#### 4. Study Procedure

In order to determine whether or not the proposed rules would impose a disproportionate economic impact on small railroad companies relative to large railroad companies, staff prepared a survey instrument and mailed it to small and large railroad companies, including logging and industrial railroads, operating in the state of Washington. Staff mailed out 18 surveys and received 2 in return from small railroads, i.e., short line railroads. As 16 of the surveys were sent to short line railroads and logging and industrial railroads, the Commission received responses from approximately 13% of these companies. While logging and industrial railroads may have a small number of employees that appears to place them in the category of small businesses, these railroads are a part of large companies that do not qualify as small businesses, i.e, the Simpson Tacoma-Kraft Company.

Under the statute governing preparation of an SBEIS, RCW 19.85.040, an agency must compare the costs of compliance with the proposed rule for large and small businesses, and then consider how to mitigate the disproportionate impact on small businesses. Because agencies are not required to mitigate the impact of the rule on large businesses, there is little incentive for the larger companies to respond to the survey instrument or to provide accurate information. Neither the large railroad companies nor logging and industrial railroads responded to the survey. Thus, the analysis primarily relied on information provided by small, or short-line, railroad companies.

Many of the proposed rules in Docket No. TR-981102 are existing rules rewritten in clearer language. Only eleven of the proposed rules in Docket No. TR-981102 impose new requirements on railroad companies operating in Washington state. These rules are as follows:

- \* Crossing Signal Circuitry (WAC 480-62-210);
- \* Blockage of Public Grade Crossings (WAC 480-62-220);
- \* Crossing Surfaces (WAC 480-62-225);
- \* Flaggers (WAC 480-62-235);
- \* Passenger Carrying Vehicles (WAC 480-62-240 & 245);
- \* On Track Equipment (WAC 480-62-250);
- \* Railroad Community Notice Requirements (WAC 480-62-305);
- \* Accident Reports (WAC 480-62-310);
- \* Miscellaneous Reporting Requirements (WAC 480-62-315);
- \* Remote Controlled Operations (WAC 480-62-320); and
- \* Railroad Police Officers (WAC 480-62-325).

Many of these proposed rules require railroads to report to the Commission about various

activities, and thus impose only moderate administrative costs on railroad companies. Other proposed rules require railroads to act consistently with their own internal rules or other state and federal rules, i.e., blockage of crossings, crossing surfaces, and railroad police officers, and do not impose additional requirements for railroad companies operating in the state.

Only the rule dealing with inspection and maintenance of crossing signal circuitry requires more than administrative expenses and relatively higher expenses for some railroads. Most railroad companies must already comply, and do comply, with Federal crossing signal circuitry requirements by implementing regularly scheduled inspection and maintenance activities. Only logging and industrial railroads operating in the state will be affected by the proposed rule governing crossing signal circuitry, as these railroads are not currently required to comply with the Federal requirements.

Assuming that logging and industrial railroads are not currently incurring any costs for crossing signal inspection and maintenance, the magnitude of costs incurred as a result of the implementation of the rules contained in Docket No. TR-981102 will be equal to the expenses necessary to bring logging and industrial railroad companies into compliance with FRA signal maintenance standards. However, the data provided by logging and industrial railroads was not tangible for use in an in-depth analysis of the economic impact of the rules on those railroads.

## **5. Results of the Analysis**

A total of 16 questionnaires were sent to short-line railroad and logging and industrial railroad companies operating within the State of Washington, i.e., all railroad companies except for the Burlington Northern Santa Fe and Union Pacific Railroad companies. (See Appendix A-Questionnaire). Of these companies, very few (13%, 2 out of 16) responded to the survey instrument.

A business is categorized as "small" under the Regulatory Fairness Act if the business employs 50 or fewer employees. The Commission surveyed the same businesses in 1999 during a rule-making to review other rules, i.e., the walkway rule, affecting railroad companies in chapter 480-60 WAC. The survey results in that rule-making proceeding, Docket No. TR-981101, indicated that the average number of employees of small, or short line, railroad companies was 22. Therefore, the present study assumed that the same number of employees would hold true for the average small railroad companies that need to implement rules included under chapter 480-62 WAC.

Due to lack of adequate data from the short-line railroad companies and logging and industrial railroads, it was necessary to explore and utilize data from literature, information reported to the Commission, the prior survey results from Docket No. TR-981101, as well as the knowledge and experience of Commission staff. In order to undertake the analysis, the following key assumptions were made regarding the cost structure of an average small railroad company:

1. The average number of employees per railroad company is about 22;
2. Based on the annual reports of the most recent year, the average mileage of tracks owned and operated per railroad company in Washington is about 86 miles;
3. Gross operating revenue and costs for railroad companies are proportional to the number of employees;
4. Administrative costs are proportional to operation and maintenance costs, and maintenance costs are proportional to general and administrative costs;
5. The average number of signalized crossings per railroad company was 25.4;
6. Spending due to the proposed rules does not require major investment, and that inspection, maintenance, and reporting need to be implemented within a short period of time. It is assumed that the costs related to these rules will be distributed over a period of three years. That is, all small companies will be expected to comply with the rule within three years.
7. The average cost of inspection is estimated at \$250/month, or \$3000/year. Maintenance costs are estimated based on information contained in the annual reports submitted by the short lines. The cost of reporting is calculated based on the assumption that it will take about 2hours/month or 24hours/year of a professional paid @\$20/hr (\$38400/year). The cost of reporting is about .083% of General and Administration costs.

The result of the analysis in this SBEIS is, therefore, based on i) data from the annual reports of small railroad companies, ii) results of the SBEIS previously prepared in Docket No. TR-981101 for chapter 480-60 WAC, and iii) the assumptions listed above.

From the companies' perspective, the costs incurred to comply with regulations can be viewed as money that could have been invested in activities that bring greater earnings. This analysis is intended to examine the economic implication of the proposed rules from the companies' perspective as opposed to from societal perspective. Therefore, companies have the choice of using their own money, borrowed money, or a combination to implement the proposed rules. In doing so, they have to compare earnings from spending equal to the regulatory compliance cost of "X" dollars. In order to capture the volatility in earnings from alternative forms of investment, ranges of discount factors (9%, 10%, 10.5% and 11%) were used to estimate the present value of the estimated regulatory cost spending by the company in order to comply with the rules.

Review of literature with respect to the economic impact of regulation indicated that if the increased (additional) cost exceeds approximately 2% of the total operating expenses of a business, the cost of regulation is likely to be significant. This data or value ( i.e., 2%) was used as a benchmark to draw conclusions about the magnitude of impact of implementing the proposed rules contained in Docket No. TR-981102.

The preliminary results of the SBEIS are presented in Tables 1 and 2. The results of the present analysis, on average, shows in Table 1 that the impact is significant for small railroads not already complying with federal crossing signal circuitry requirements. However, as noted above, logging and industrial railroads are not necessarily small businesses, and the impact on such



logging and industrial railroads is not likely to be significant. For those small railroads already complying with Federal crossing signal circuitry requirements, Table 2 shows that the additional administrative costs for reporting requirements are not significant.

Using a discount factor of 9%, the percentage of the present value of the cost of implementing the rules with respect to the present value of gross operating revenue (GOR) is about 2.3% for those that are not in compliance with Federal crossing signal circuitry requirements (Table 1), and .02% for those that are in compliance (Table 2). On the other hand, the cost imposed due to the rules under Docket No. TR-981102 as a percent of total operating expense (TOE) is about 2.8% and .02% for compliant and noncompliant railroad companies respectively. The cost of the rules per employee and per mile of track are approximately \$264 and \$67 for railroad companies that are not in compliance, and \$2.19 and \$0.56 for those that are in compliance.

**Table 1: Summary of the Impacts of the Proposed Rules on an Average Short-line Railroad Companies that do not Comply with Federal Signal Maintenance Requirements**

Parameters	Discount Factors				Average
	9%	10%	10.50%	11%	
Cost of Inspection and Maintenance	\$6,388	\$5,751	\$5,478	\$5,002	\$5,655
Cost of Reporting	\$53	\$48	\$46	\$42	\$47
Total	\$6,442	\$5,799	\$5,523	\$5,044	\$5,702
Overall company cost	\$229,878	\$206,942	\$197,106	\$179,992	\$203,480
Gross Operating revenue	\$278,391	\$250,614	\$238,703	\$217,978	\$246,421
Net Revenue	\$48,513	\$43,673	\$41,597	\$37,985	\$42,942
Cost /Gross Operating revenue (%)	2.31	2.31	2.31	2.31	2.00
Cost/Overall Company cost (%)	2.80	2.80	2.80	2.80	3.00
Total cost/Overall Net Revenue (%)	13.28	13.28	13.28	13.28	13.00
Total cost of rules/employee	\$264	\$251	\$229	\$259	\$251
Total cost of rules/mile of track	\$67	\$64	\$59	\$66	\$64

**Table 2: Summary of the Cost of the Proposed Reporting Rules on an Average Short-line Railroad Company**

Parameters	Discount Factors				Average
	9%	10%	10.50%	11%	
Cost of Inspection and Maintenance	0.00	0.00	0.00	0.00	0.00
Cost of Reporting	\$53.29	\$47.97	\$45.69	\$41.73	\$47.17
Total	\$53	\$48	\$46	\$42	\$47
Overall company cost	\$229,878	\$206,942	\$197,106	\$179,992	\$203,480
Gross Operating revenue	\$278,391	\$250,614	\$238,703	\$217,978	\$246,421
Net Revenue	\$48,513	\$43,673	\$41,597	\$37,985	\$42,942
Cost /Gross Operating revenue (%)	0.02	0.02	0.02	0.02	0.02
Cost/Overall Company cost (%)	0.02	0.02	0.02	0.02	0.02
Total cost/Overall Net Revenue (%)	0.11	0.11	0.11	0.11	0.11
Total cost of rules/employee	\$2.19	\$2.08	\$1.90	\$2.15	\$2.08
Total cost of rules/Mile of track	\$0.56	\$0.53	\$0.49	\$0.55	\$0.53

The analysis is based on data from records, experience, and plausible assumptions. Therefore, the estimates derived are considered to be an order-of-magnitude estimate. The literature on engineering-economics indicates that order of magnitude estimates are accurate within  $\pm 40\%$ . The preliminary estimates indicate that, on average, the costs imposed as a result of these rules is in fact within  $\pm 40\%$  of the 2% rule of thumb obtained from the literature with respect to the economic impact of regulations. There is no data on the largest railroads, including logging and industrial railroads, related to these rules. Therefore, it is difficult to compare and conclude whether or not the proposed rules impose a disproportionate economic impact on small businesses compared to large businesses.

The benefit of implementing these rules is primarily related to improved public safety and the possible reduction in the numbers of injuries or fatalities at highway-rail grade crossings. There is no empirical estimate of the magnitude of these benefits. Furthermore, the costs are borne by private companies while the benefits primarily accrue to the general public. Therefore, it would not be appropriate to compare the estimated costs and benefits. Instead, staff suggests the use of mitigation measures to minimize the economic impact of these rules as described below in section 6.

## **6. Proposed Mitigation Measures**

As discussed above, most of the rules imposing new requirements require additional reporting requirements on all railroad companies. During rule-making workshop sessions, staff included railroad company suggestions into the proposed rules to mitigate the impact of the rules. For example, staff incorporated requests by the railroads to modify how the railroads must report certain miscellaneous information in WAC 480-62-315. The railroads requested that the proposed rule allow railroads to provide certain information upon request of the Commission rather than semi-annually and also that the information be made available electronically. Incorporating these changes allows railroads to incur the expense of reporting certain information only when asked by Commission staff.

The proposed rule requiring railroads to comply with Federal requirements for crossing signal circuitry imposes a new requirement only for Logging and Industrial railroads operating within the state. All other railroads, including short-line railroads, must already comply, and do comply, with the Federal requirements. As discussed above, logging and industrial railroads are not small businesses, but are part of large businesses. However, if a small railroad were not already in compliance with Federal crossing circuitry requirements, and if logging and industrial railroads are considered small businesses, the overall cost of implementing the additional proposed rules (i.e., inspection, maintenance and reporting) is about \$6000 per railroad, a significant cost. Given there appears to be no significant impact of the rule on small businesses, that the Federal crossing signal requirements are safety standards, and that compliance is intended to reduce accidents at highway-railroad grade crossings, staff does not believe that mitigation of the new compliance requirement is necessary or appropriate.

## **7. Conclusions and Recommendations**

The objective of the SBEIS is to examine whether implementing the proposed rules would result in disproportionate economic impact on small railroad companies relative to large railroad companies. It is difficult to conclude whether implementing the proposed rules will cause a disproportionate economic impact, as the Commission did not obtain sufficient data from both small and large companies, including logging and industrial railroads. Some of the rules formalize the present activities of short-lines, others modify the reporting formats and/or schedules, and only one would require inspection and maintenance (crossing signals). Other than logging and industrial railroads, all other railroad companies operating in the state are in compliance with the Federal crossing signal circuitry requirements. If a small railroad company were not already in compliance with Federal crossing circuitry requirements, and if logging and industrial railroads are considered small businesses, the overall cost of implementing the additional proposed rules (i.e., inspection, maintenance and reporting) is about \$6000 per railroad. This translates into total costs of \$264 and \$67 per employee and track mile respectively. Given that the cost of the proposed rules does not appear to impose significant costs on small, or short-line railroad companies, staff does not recommend any mitigation measures in this SBEIS. However, as noted above, staff has incorporated certain mitigation measures into the reporting rules upon the railroads' request.

In the event that implementation of these rules imposes undue financial burden compared to the results obtained from the present SBEIS, staff recommends that small railroad companies be given opportunity to request financial and/or operational mitigation measures. Methods of mitigating the economic impact of the proposed rules include, but are not limited to, reducing or modifying the regulatory requirements, simplifying, reducing, or eliminating reporting requirements, reducing the frequency of inspections, and delaying compliance timetables. Companies are expected to file a formal request with the Commission in order to benefit from mitigation. The approval of a particular mitigation measure would depend on the information provided by railroad companies.