

Agenda Date: November 30, 2005
Item Number: C1

Docket: TR-051060

Subject: CR-102, Notice of Proposed Rulemaking, regarding rules establishing a system for disbursements from the Grade Crossing Protective Fund

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Background:

The Commission administers grants from the GCPF created in RCW 81.53.281. When the GCPF was created in 1969, it was designed to help pay for installation and maintenance of railroad warning devices at public railroad crossings. Only road authorities and railroads could apply for grants. Railroads had to contribute ten percent to the cost of all GCPF projects, and road authorities had to pay thirty percent.

In an effort to improve the effectiveness of the GCPF program, to improve safety on and around railroads, and to encourage participation by railroads and road authorities, the Legislature amended RCW 81.53.271 and RCW 81.53.281 in 2003 to:

- Broaden the purpose of the GCPF to include any railroad safety project.
- Expand the program to include all private and public entities.
- Eliminate monetary contribution requirements for projects under \$20,000.
- Provide a funding source for future projects.

The changes required a more detailed and extensive process to allocate funds between competing projects of different types and among a broader range of applicants than under the original GCPF program. On November 26, 2003, the Commission established a process by issuing an Interpretive and Policy Statement in Docket Number TR-031384 .

Discussion:

RCW 34.05.230 encourages agencies to convert longstanding interpretive and policy statements into rules in order to better inform and involve the public. The Commission administered the GCPF grant program under its Interpretive and Policy Statement during the 2003-2005 biennium. The experience gained and lessons learned provide a firm basis to establish a formal process fixed by rule. The topic is an appropriate subject of rulemaking, and other agencies use rules for similar purposes.

The Commission approved beginning a rulemaking proceeding on August 17, 2005, notified interested persons, and published the Notice of Preproposal Inquiry (CR-101) in the State Register. We received no written comments. We understand informally that stakeholders are satisfied with the process established in the policy statement and that they are supportive of rules consistent with that process.

Generally, the proposed rules allow any organization to petition for a grant for a broad range of railroad safety improvements, in one of two ways. For safety improvements at rail and road crossings, an applicant may apply for, and the Commission may consider action on, a grant at any time. For other projects, such as improved pedestrian safety, an organization may apply at any time or in response to a call for grants issued by the Commission. The Commission will consider these projects as a group when the deadline for applications passes as described in the call for grants.

The attached draft aims to establish in a rule the process established in the policy statement.

Conclusion:

The Commission should consider directing the Secretary to file a Notice of Proposed Rulemaking (CR-102) to convert to rules the Commission's Interpretive and Policy statement regarding grants from the Commission's Grade Crossing Protective Fund (GCPF).

Draft Rules
Grade Crossing Protective Fund
November 30, 2005

WAC 480-62-400 Purpose. (1) As authorized by RCW 81.53, this chapter prescribes the manner in which a public, private or nonprofit entity may apply to the commission for grants from the Grade Crossing Protective Fund, and to prescribe a program for the award of such grants.

(2) Grade Crossing Protective Fund grants are to fund projects that:

- a. reduce accident frequency and severity at either public and private railroad crossings; or
- b. reduce pedestrian, trespassing, and motorist injuries and deaths on railroad rights of way at places other than crossings.

WAC 480-62-405 Applications. (1) Any public, private or nonprofit entity may submit an application to the commission for a grant from the Grade Crossing Protective Fund. The commission will consider applications that propose projects that are within one of the following categories:

(a) **Grade crossing signals or other warning devices at public crossings.** This category includes safety improvement projects at public crossings under RCW 81.53.261 and RCW 81.53.295.

(b) **Trespass prevention and pedestrian and motorist safety at locations other than crossings.** This category includes, but is not limited to, fencing or other physical barriers; warning devices; channeling devices; public information efforts; and enforcement-related activities.

(c) **Private crossing safety improvements.** This category includes, but is not limited to, crossing closures or consolidations; signals or warning devices; nighttime and off-hours locked gates; and making existing warning devices more noticeable.

(d) **Miscellaneous safety projects.** This category includes other projects within the scope of WAC 480-62-400(2) to foster creative and effective ideas and to address newly-discovered problems. Such projects might include, but are not limited to, roadway improvements at or approaching grade crossings; mitigation of problems created by crossing closures; and removal of sight obstructions to signals or trains for the traveling public.

(2) An applicant may at any time submit an application on a form provided by the commission for a grant to pay for costs of public grade crossing

signals or other warning devices as described in (1) (a). The commission will evaluate and act on such applications as they are received.

(3) An applicant may at any time submit an application for a grant to pay for projects falling within the categories described in (1) (b), (c), and (d). When funds are available for disbursement, the commission will issue a call for grant applications with a deadline by which applications must be submitted for competitive consideration. The commission will evaluate and act on all pending applications, deciding whether each application should be granted, in whole or in part; whether the application should be retained for further consideration if funds become available; or whether the application should be denied. Retained applications may remain active until the next ensuing call for grant applications is issued, not to exceed two years from the date of the application, or such shorter time as the commission may specify.

(4) Applicants for projects described in subsections (1) (b), (c), and (d) of this rule must submit grant applications on a form provided by the commission that requires applicants to provide the following information:

(a) a detailed summary of the hazard to be addressed, including location, accident history, and the identities of the relevant railroad company and local agency (local government that has jurisdiction over the issue and/or territory involved);

(b) a summary of the project and how its implementation will mitigate or eliminate the hazard;

(c) cost estimates;

(d) an estimated timeline for project completion;

(e) a description of how the project's success can be measured;

(f) a summary of efforts to coordinate with the railroad and/or local government, and the results of those efforts; and

(g) such other information as the commission may require.

WAC 480-62-410 Funding For Project Categories. The commission may set aside a specific amount for the category that includes public grade crossing signals and other warning devices. It may designate a portion of the total available funds for each of the other project categories. The commission may limit the amount of funding per project for each project category. The commission may also award a grant that pays a portion of a larger safety project.

WAC 480-62-415 Evaluation And Award Process (1) The commission will evaluate each petition for a project involving grade crossing signals or other

warning devices at a public crossing when it is filed. The commission will evaluate projects in other categories after the deadline specified in a call for grant applications. When evaluating projects, the commission may perform diagnostic reviews at the site of proposed projects and may inquire about possible revisions to improve the proposal. If the applicant modifies the grant application in response to commission inquiries, the commission will consider the application in its modified form.

(2) The commission will consider grant applications at regularly scheduled open meetings. Any interested person may speak at the open meeting regarding the grant applications.

(a) , The commission will award a grant for a project involving grade crossing signals or other warning devices at a public crossing if funds are available and the commission determines that the public safety requires the project. The commission will consider the severity of the hazard addressed by the project and the safety benefits expected to be achieved.

(b) For projects in other categories, the commission will award grants for those projects that, in the commission's judgment, will achieve the greatest gains in safety relative to their cost. The commission will consider the relative severity of the hazard being addressed in each application, the safety benefits expected to be achieved by the proposed projects, the costs of implementing each project, and whether the applicant coordinated with and sought approval from the relevant local agency and railroad. The commission may also consider geographic diversity. In deciding whether to approve applications for funding, the commission may vary the requested level of funding, the suggested time limit for completion of the grant project, and any other proposed condition.

WAC 480-62-420 Grant Documents, Time Lines and Fund Transfers. (1) As a condition of every grant award, award recipient must sign an agreement provided by the commission specifying the terms of the grant.

(2) If it appears that an award recipient is not meeting the timelines specified in the application, commission order, or agreement, the commission may set specific project milestones and deadlines for meeting them. The commission may withdraw the award if the award recipient does not achieve a milestone on time.

(3) When an award recipient completes a project, it must submit its request to the commission for disbursement of grant funds on a form provided by the commission.

(4) The commission will verify that the project is complete and meets all terms and conditions of the application, order, and agreement. When the commission confirms that the project has been completed in conformance with the application, order, and agreement, the commission will disburse grant funds to the award recipient. The commission will determine any questions or disputes that arise about whether an award recipient has completed the project on time and in conformance with the application, order and agreement.