

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Adopting and)
Repealing) DOCKET NO. TR-981102
Provisions of Chapter 480-62 WAC)
) GENERAL ORDER No. R-477
Relating to Railroad Companies –) ORDER REPEALING AND
Operations) ADOPTING RULES PERMANENTLY
)
.....)

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission takes this action under Notice WSR # 00-23-131, filed
with the Office of the Code Reviser on November 22, 2000. The Commission brings
this proceeding pursuant to RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010,
81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters
81.48, 81.53, 81.54, 81.60, and 81.61 RCW.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public
Meetings Act (chapter 42.30 RCW); the Administrative Procedure Act (chapter 34.05
RCW); the State Register Act (chapter 34.08 RCW); the State Environmental Policy
Act of 1971 (chapter 43.21C RCW); and the Regulatory Fairness Act (chapter 19.85
RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date this Order is
entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** The
purpose of the proposed revisions to 480-62 WAC is to provide clear, objective
standards for addressing issues at highway-rail grade crossings, including maintenance
and repair, modification, blocking, and safety operations. In addition, the proposed
rule provides requirements regarding the reporting of operational information, and
procedures for requesting changes in train speed limits.

- 5 The effect of the proposed revisions will be to contribute to improved safety at highway-rail grade crossings, provide greater communication between railroad companies and the communities through which they operate, as well as 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.
- 6 RCW 34.05.325 requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the Commission's consideration of the comments.
- 7 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.
- 8 In this docket, to avoid unnecessary duplications, the Commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the Commission considered whether to begin a rulemaking and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.
- 9 **REFERENCE TO AFFECTED RULES:** This Order adopts the following new sections of the Washington Administrative Code (WAC):

480-62-125	Definitions
480-62-130	Application of this chapter
480-62-135	Additional requirements
480-62-140	Exemptions from rules
480-62-145	Commission proceedings
480-62-150	Grade crossing petitions
480-62-155	Procedure to set train speed limits
480-62-160	Compliance policy
480-62-165	Severability
480-62-170	Resolving disputes about the meaning of these rules
480-62-200	Roadway worker safety and operating rules and statutes

480-62-205	Track safety standards
480-62-210	Crossing signal circuitry
480-62-220	Blockage of public grade crossing
480-62-225	Crossing surfaces
480-62-230	Traffic control devices
480-62-235	Flaggers
480-62-240	Passenger carrying vehicles - Equipment
480-62-245	Passenger carrying vehicles - Operations
480-62-250	On track equipment
480-62-300	Annual reports
480-62-305	Railroad community notice requirements
480-62-310	Accident reports
480-62-315	Miscellaneous reporting requirements
480-62-320	Remote controlled operations
480-62-325	Railroad police officers - notice
480-62-999	Adoption by reference

10 This Order repeals the following sections of the Washington Administrative Code (WAC):

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.

11 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a preproposal statement of inquiry (CR-101) on April 1, 1999, at WSR # 99-08-053. The statement advised interested persons that the Commission was considering entering a rulemaking on railroad company operations and would consider amending 480-62 WAC in accordance with Executive Order 97-02.

12 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:**

The Commission informed persons of the inquiry into this matter by

providing notice of the subject and the CR-101 served April 1, 1999, to all railroad companies operating in the state, and to those persons who have expressed interest in related matters before the Commission or appeared on lists of organizations, including: state agencies; city and county governments; labor unions; port associations; and members of the public. In addition to information about the rulemaking, the notice requested written responses to several issue questions and invited participation in a scheduled public workshop on May 27, 1999. The Commission also issued a second Notice of Rulemaking Workshop on June 4.

- 13 Pursuant to the notices, Commission staff held workshops on May 27, 1999 and June 17, 1999, in Olympia. The workshops were attended by representatives from railroad companies, local agencies, the law enforcement community, labor unions, and the public.
- 14 On September 15, 1999, The Commission issued another Notice of Rulemaking Workshop that contained a discussion draft of the rules. The notice also invited comments regarding the discussion draft. The corresponding workshop, as well as an additional workshop to further discuss the draft rules, were held in Olympia, on September 28, 1999 and October 2, 2000 respectively.
- 15 Discussions at the first three workshops focused mainly on language, format, repealing sections that are no longer valid in the current environment, and drafting new rules regarding maintenance requirements, safety operations, and reporting. The October 2, 2000 workshop focused on identifying unresolved issues and working with interested parties to resolve those issues. At the conclusion of that workshop, unresolved issues included the draft rules relating to train speeds (WAC 480-62-155), crossing surfaces (WAC 480-62-225), flaggers (WAC 480-62-235), community notice requirements (WAC 480-62-305), and miscellaneous reporting requirements (WAC 480-62-315).
- 16 In compliance with chapter 19.85 RCW, on October 5, 2000, the Commission sent all 18 railroad companies operating in the state a memorandum and questionnaire concerning the potential economic effects of the draft rules on regulated companies. Only two incomplete questionnaires were returned. Due to lack of adequate data from railroad companies, it was necessary to explore and utilize data from existing literature, information reported to the Commission, prior survey results from a recent railroad rulemaking completed under Docket No. TR-981101, and the knowledge and experience of staff. A Small Business Economic Impact Statement, or SBEIS, was developed by staff based on responses to the questionnaire, and staff research.

17 On November 8, 2000, at an Open Meeting of the Commission, the Commission received a staff report and heard oral comments from railroad company representatives on the content of the draft rules. After hearing the staff report and oral comments, the Commission directed the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser.

18 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Notice of Proposed Rulemaking (CR-102) and Small Business Economic Impact Statement with the Office of the Code Reviser on November 22, 2000, published at WSR # 00-23-131. In that notice, the Commission scheduled this matter for oral comment and adoption at 9:30 a.m., Thursday, January 11, 2001 in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

19 Further, on November 27, 2000, the Commission issued a Notice of Opportunity to Submit Written Comments on the Proposed Rule and Notice of Proposed Rule Adoption Hearing to all interested persons on file. Written comments were requested by December 13, 2000, and the rule adoption hearing was specified as January 11, 2001.

20 **COMMENTERS – WRITTEN COMMENTS:** Written comments on the proposed rules were received from David Reeve, on behalf of the Burlington Northern Santa Fe Railroad Company (BNSF), Carolyn Larson, on behalf of Union Pacific Railroad Company (UP), James Slakey (Director of the Public Transportation and Rail Division), on behalf of the Washington State Department of Transportation (WSDOT), Christopher Keuss (Deputy Executive Director), on behalf of the Port of Edmonds, David Gebert (Director of Public Works), on behalf of the Town of Steilacoom, Frederick Ohly, Sr. (Associate General Counsel), on behalf of AMTRAK, and Joan Sterling (Legislative and Policy Analyst), on behalf of the Washington Military Department – Emergency Management Division.

21 **BNSF, UP:** All comments from BNSF and UP were submitted jointly. The railroads addressed the proposed rules relating to train speeds (proposed WAC 480-62-155), community notice requirements (WAC 480-62-305) and miscellaneous reporting requirements (WAC 380-62-315). Staff sent letters responding to the railroads' comments on January 3, 2001.

22 First, the railroads questioned the Commission's authority to regulate train speeds, arguing that the regulation of train speeds is preempted by federal law, and that the

proposed rule exceeds Commission authority. In a written response to BNSF and UP, Staff disagreed with the assertion that states were completely preempted by federal law from regulating train speeds. Staff explained that the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20106, limits state authority to regulate train speeds to situations where “essentially local safety hazards” would require reduced train speeds to eliminate or reduce the hazards. Staff maintained that the proposed rule provides an objective mechanism for reviewing requests for changes in train speeds within the authority reserved to states by the FRSA.

23 BNSF and UP requested increased flexibility for railroad companies for proposed rules regarding community notice requirements (WAC 480-62-305) and miscellaneous reporting requirements (WAC 380-62-315).

24 The railroad community notice rule requires railroad companies to notify local jurisdictions and the Commission “at least 10 days prior to taking any planned action that may have a significant impact on a community” (e.g., reconstruction or maintenance that impedes traffic flow through a crossing, and may delay emergency response). The purpose of the proposed rule is to allow local jurisdictions to plan detours and otherwise be prepared for the closures of certain roadway routes. At the October 2, 2000 workshop, BNSF and UP explained that since actions at crossings, such as maintenance, rarely coincide with planned schedules, the proposed rule should be revised to include the phrase “best estimate of the start and completion date” for an action. This language, as well as a disclaimer stating, “This rule is not intended to include immediate safety hazards or emergencies,” was incorporated to provide flexibility for the railroads. In their written comments, BNSF and UP continued to express concern about the rule being “inconsistent with maintenance practices and could result in the delays of routine, non-emergency repairs.” For example, if the opportunity presented itself to replace a broken plank, the railroad would be less likely to seize that opportunity if the rule is adopted. The comments requested that the rule be modified to allow flexibility needed to perform routine maintenance.

25 In its written response, Staff explained that there is no need to further change the proposed rule. Since the maintenance practices that BNSF and UP are concerned about are not planned and could prevent safety hazards, the flexibility that the railroads are requesting is already present in the proposed rule.

26 BNSF and UP expressed concern over a section of the proposed rule requiring railroad companies to provide the Commission, upon request, with information in the railroad’s control regarding train operations through crossings. BNSF and UP asserted that the requirement would impose an unreasonable burden on them to collect information the railroad companies do not ordinarily maintain.

- 27 Staff responded that the requested information is important to the Commission's Rail Section in performing various duties. The information has been easily obtained from railroad companies in the past, and staff sees no need to require the information on a scale that would create an unreasonable burden on railroad companies. Therefore, staff did not believe the proposed rule should be modified.
- 28 **WSDOT/AMTRAK:** WSDOT and AMTRAK filed separate comments, but both focused solely on the train speed rule (proposed WAC 480-62-155). Like the railroads, WSDOT and AMTRAK questioned the Commission's authority to regulate train speeds, arguing that the train speed issue is preempted by federal law, and that the proposed rule exceeds Commission authority. In a written response sent to WSDOT and AMTRAK on January 2, 2001, Staff disagreed with the assertion that states were completely preempted by federal law from regulating train speeds. Staff explained that the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20106, limits state authority to regulate train speeds to situations where "essentially local safety hazards" would require reduced train speeds to eliminate or reduce the hazards. Staff maintained that the proposed rule provides an objective mechanism for reviewing requests for changes in train speeds within the authority reserved to states by the FRSA.
- 29 **Port of Edmonds:** The Port of Edmonds submitted comments regarding the proposed rule on crossing surfaces (WAC 480-62-225(5)(a)). The proposed rule requires road authorities to provide 10 days advance notice to railroad companies prior to performing maintenance that would affect a crossing. The Port of Edmond's recommended that road authorities also notify local jurisdictions when such work is carried out.
- 30 Staff incorporated this recommendation into the proposed rule due to the fact that, in some cases, the road authority at a crossing may be a separate agency than the local jurisdiction in which the crossing is located. For example, WSDOT may be the road authority for a crossing in Edmonds. The additional language would require WSDOT to notify the City of Edmonds, in addition to the railroad, when planning work that affects the crossing.
- 31 **Town of Steilacoom:** The Town of Steilacoom submitted comments regarding the proposed rule concerning train speeds (WAC 480-62-155(3)), and specifically what constitutes an "essentially local safety hazard," and the proposed rule on flaggers

(WAC 480-62-235(8)(e)).

32 Steilacoom requested that man-made conditions be considered by the Commission, in addition to natural conditions, when assessing situations that constitute essentially local safety hazards. In written comments sent by Staff on January 3, 2001, Staff agreed that man-made conditions present applicable hazards; however, there is a qualitative difference between the two types of conditions. Man-made conditions can often be changed to eliminate dangers, while natural conditions often cannot be changed. Local discretionary actions, such as placing certain types of structures near tracks are not allowed to dictate national policy, while natural conditions predate track construction. Despite those differences, the proposed rule does allow consideration of man-made structures in the section that provides for analysis of potential for accidents. Man-made structures are simply not emphasized, because of the differences mentioned above.

33 Staff notified Steilacoom that it had decided to delete the word “natural” from proposed WAC 480-62-155(3)(b), as it is probably too limiting to suggest that only natural (e.g., geological) conditions would meet the definition of an “essentially local safety hazard” under the State regulation savings clause of the Federal Railroad Safety Act, 49 U.S.C. § 20106.

34 Other comments by Steilacoom requested that a section of the flagger rule, concerning flagger breaks, be modified to include the sentence, “during breaks, another qualified flagger must take over flagging duties.”

35 In written comments, Staff notified Steilacoom that the purpose of the flagger rule is to require methods for ensuring the protection of flaggers when they are used, and is not intended to suggest circumstances when flaggers should be used. However, proposed WAC 480-62-230, “Traffic control devices” states that “flaggers be provided where necessary to adequately protect the public and railroad employees,” thus implicitly stating that when flaggers are appropriate for traffic control, they should be relieved by other qualified flaggers when on breaks. Therefore, there is no need to change the proposed rule.

36 **Washington Military Department – Emergency Management Division:** The Emergency Management Division of the Washington Military Department filed written comments supporting the proposed rule on train speeds (WAC 480-62-155), and suggested changes to the proposed rules on blocking grade crossings (WAC 480-62-220), crossing surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and accident reports (WAC 480-62-310). Specifically the Emergency Management Division recommended that, in addition to notice to the local

jurisdiction in those proposed rules, notice of the location of the affected crossing also be provided to the Public Safety Answering Point (PSAP) responsible for dispatch of necessary services.

37 In written comments sent to the Emergency Management Division on January 2, 2001, Staff agreed that the recommendations were appropriate. However, Staff stated that it would pursue the suggested modifications in a subsequent rulemaking due to the need to adopt certain proposed rules as permanent rules no later than March 1, 2001, and the fact that additional notice requirements would likely require filing an additional CR-102 with the Office of the Code Reviser.

38 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on January 11, 2001 before Chair Marilyn Showalter and Commissioner Richard Hemstad. During the adoption hearing, the Commission received a staff report and heard oral comments from representatives of BNSF, UP, and WSDOT. In addition to the staff report and stakeholder comments, Jonathan Thompson of the Attorney General's Office provided information on the issue of the Commission's jurisdiction over train speeds.

39 **COMMENTS AT ADOPTION HEARING:** The following people provided oral comments at the January 11, 2001, adoption hearing:

40 **UP and BNSF:** Carolyn Larson spoke on behalf of UP, and Daniel Kinerk spoke on behalf of BNSF. In their comments, both parties reaffirmed their comments and concerns from previous written comments regarding the proposed rule concerning train speeds, and Ms. Larson repeated her concerns concerning the proposed rules on miscellaneous reporting requirements, and community notice requirement.

41 **Washington State Department of Transportation:** Jeff Schultz spoke on behalf of WSDOT, also reaffirming previous written comments objecting to the train speed rule.

42 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** As noted above, BNSF, UP, WSDOT, and AMTRAK all suggested that the Commission not adopt the proposed rule concerning train speeds (WAC 480-62-155). In addition, the Town of Steilacoom requested changes to the proposed rule concerning flaggers (WAC 480-62-235(8)(e)), and the Emergency Management Division of the Washington Military Department requested certain changes to be made to a number of proposed notification rules, e.g., blocking grade crossings (WAC 480-62-220), crossing

surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and accident reports (WAC 480-62-310). The Commission rejects the suggestions for change to these proposed rules.

43 **Proposed Flagger Rule:** Steilacoom requested that a section of the flagger rule, concerning flagger breaks, be modified to include the sentence, “during breaks, another qualified flagger must take over flagging duties.” The Commission believes the purpose of the flagger rule is to require methods for ensuring the protection of flaggers when they are used, and is not intended to suggest circumstances when flaggers should be used. However, proposed WAC 480-62-230, “Traffic control devices” states that “flaggers be provided where necessary to adequately protect the public and railroad employees,” thus implicitly stating that when flaggers are appropriate for traffic control, they should be relieved by other qualified flaggers when on breaks. Therefore, there is no need to incorporate the suggested change.

44 **Proposed Notification Rules:** The Emergency Management Division of the Washington Military Department recommended changes to the proposed rules on blocking grade crossings (WAC 480-62-220), crossing surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and accident reports (WAC 480-62-310). Specifically the Emergency Management Division recommended that, in addition to notifying the local jurisdiction in those proposed rules, notice of the location of the affected crossing also be provided to the Public Safety Answering Point (PSAP) responsible for dispatch of necessary services.

45 The Commission agrees that the recommendations are appropriate, but believes that properly addressing the suggestions would require an additional round of stakeholder meetings and comments. In particular, additional notice requirements would likely require filing an additional CR-102 with the Office of the Code Reviser. Due to the need to adopt certain proposed rules in this docket as permanent rules no later than March 1, 2001, the Commission believes it is best to pursue the suggested modifications in a subsequent rulemaking.

46 **Proposed Train Speed Rule:**

47 In their written and oral comments on the proposed train speed rule, BNSF, UP, WSDOT, and AMTRAK all assert that the Commission is preempted by federal law from regulating train speeds and that the Commission should not adopt the proposed rule. Specifically, BNSF and UP assert that the proposal to require railroad companies to obtain prior approval from the Commission before modifying train speeds is “patently unconstitutional.” Further, the railroads assert that the state statutes authorizing the Commission to regulate train speeds, RCW 81.48.030 and RCW 81.48.040, have been preempted by federal law.

48 The Commission rejects the suggestion that the Commission is preempted from adopting the proposed rule on train speeds. The federal statute addressing the issue of preemption is a section of the Federal Railroad Safety Act, appearing in 49 U.S.C. § 20106. This statute provides that:

Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when the law, regulation, or order—

- (1) is necessary to eliminate or reduce an essentially local safety hazard;
- (2) is not incompatible with a law, regulation, or order of the United States Government; and
- (3) does not unreasonable burden interstate commerce.

U.S.C. § 20106.

49 The statute clearly provides a role for the states in determining whether an essentially local safety hazard exists that should result in a lower train speed than that set by the secretary of transportation. Given the Commission's statutory authority to regulate train speeds, the Commission believes it is appropriate to adopt a rule that establishes a clear procedure for reviewing whether a local safety hazard exists. That procedure requires the Commission to review a proposal made by either a railroad company or other party to modify existing train speed limits, before the speed is modified.

50 Over the past several years, the railroads have made and the Commission has reviewed numerous requests to increase train speed limits in the state of Washington to the limits established by the Federal Railroad Administration. Requests to modify train speed limits usually result in a strong response from local jurisdictions and members of the public requesting the Commission to take action under its statutory authority. The Commission believes that the process set forth in the proposed rule will provide clear guidance to the railroads, local jurisdictions and other interested parties as to the procedure before the Commission when reviewing requests to modify train speed limits, as well as the Commission's jurisdictional limits in setting train speed limits. For these reasons, the Commission rejects the suggestions made by BNSF, UP, WSDOT, and AMTRAK.

- 51 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission repealed the existing rules in chapter 480-62 WAC and adopted the proposed rules with the changes described below.
- 52 **CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes from the text noticed at WSR #00-23-131. First, a number of typographical changes were made to correct grammatical or citation errors in the text. In addition, more detailed changes were made to the rules concerning train speeds (WAC 480-62-155), crossing signal circuitry (WAC 480-62-210), crossing surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and miscellaneous reporting requirements (WAC 480-62-315).
- 53 **Train speeds (WAC 480-62-155):** In order to address some of the concerns raised by the railroads, WSDOT, and AMTRAK, the Commission simplified the language of the rule heading from “Procedure to set train speed limits” to “Train speeds,” to eliminate the focus on the “setting” of train speed limits.
- 54 Second, the Commission added language to subsection (2)(a) to state more explicitly the process a railroad must follow when seeking modification of an existing limit set by the Commission. This language recognizes the different information that the Commission requires from a railroad company than from a person or local jurisdiction seeking to modify a train speed limit.
- 55 Third, the Commission added a section outlining the burden of proof for the railroad and other persons when filing a petition with the Commission to modify or set train speeds. This new subsection, (2)(c), recognizes that the railroad will have made a prima facie case as to why the speed must be modified if the railroad includes all information required by subsection (2)(a)(ii)(A)-(E). The new subsection also recognizes that the local jurisdiction or commission staff bear the burden to show the existence of an essentially local safety hazard.
- 56 Finally, proposed changes to subsection (3) incorporate a suggestion made by the Town of Steilacoom concerning what constitutes an essentially local safety hazard. Specifically, the rule includes the words “at a minimum,” in the first sentence, and deletes the word “natural” from subsection (3)(a).
- 57 **Crossing signal circuitry (WAC 480-62-210):** A change to proposed WAC 480-62-210(3) clarifies that the Commission will enforce the rule against certain railroad companies that are not subject to the jurisdiction of the Federal Railroad

Administration pursuant to the compliance policy set forth in proposed WAC 480-62-160.

58 **Crossing surfaces (WAC 480-62-225):** The Port of Edmonds recommended that the Commission require highway authorities to notify local jurisdictions as well as railroad companies when performing maintenance on a crossing surface. The suggestion is adopted and the entire notification section is moved to WAC 480-62-305 concerning railroad community notice requirements, substituting in Section 225 a reference to WAC 480-62-305.

59 **Railroad community notice requirements (WAC 480-62-305):** The Commission added two new subsections to the proposed rule to clarify requirements for notice by highway authorities and railroad companies when performing maintenance on a crossing.

60 In addition, during the adoption hearing before the Commission on January 11, 2001, The Commission added language to address a concern raised by Ms. Larson, representing UP. The Commission adds a note after subsection (1), to read “NOTE: Maintenance practices, such as replacing broken planks if the opportunity to do so is unexpectedly presented, are not considered to be planned actions and would likely prevent safety hazards. In such situations, advance notice would not be required.”

61 **Miscellaneous reporting requirements (WAC 480-62-315):** During the adoption hearing, Ms. Larson also raised a concern with subsection 2 of the proposed rule on miscellaneous reporting requirements. The Commission adds words to clarify that railroads are not required to conduct new or additional research to provide the required information on train operations.

62 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-62-010, 480-62-020, 480-62-030, 480-62-040, 480-62-050, 480-62-060, 480-62-070, 480-62-080, 480-62-085, 480-62-090, 480-62-100, and 480-62-120 should be repealed; and WAC 480-62-125, 480-62-130, 480-62-135, 480-62-140, 480-62-145, 480-62-150, 480-62-155, 480-62-160, 480-62-165, 480-62-170, 480-62-200, 480-62-205, 480-62-210, 480-62-220, 480-62-225, 480-62-230, 480-62-235, 480-62-240, 480-62-245, 480-62-250, 480-62-300, 480-62-305, 480-62-310, 480-62-315, 480-62-320, 480-62-325, and 480-62-999 should be adopted as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Office of the Code Reviser.

ORDER

63

THE COMMISSION ORDERS:

1. WAC 480-62-010, 480-62-020, 480-62-030, 480-62-040, 480-62-050, 480-62-060, 480-62-070, 480-62-080, 480-62-085, 480-62-090, 480-62-100, 480-62-120 are repealed, and WAC 480-62-125, 480-62-130, 480-62-135, 480-62-140, 480-62-145, 480-62-150, 480-62-155, 480-62-160, 480-62-165, 480-62-170, 480-62-200, 480-62-205, 480-62-210, 480-62-220, 480-62-225, 480-62-230, 480-62-235, 480-62-240, 480-62-245, 480-62-250, 480-62-300, 480-62-305, 480-62-310, 480-62-315, 480-62-320, 480-62-325, and 480-62-999 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).
2. This Order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Office of the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this day of January, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 1, amended 0, repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 27, amended 0, repealed 12.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0;
Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended
0, repealed 0.